

Decision No. R23-0512-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0315G

KRISTIN AND MATTHEW DEUTSCH,

COMPLAINANTS,

V.

HIGHMARK RESIDENTIAL, LLC

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DESIGNATING COMMISSION TRIAL STAFF AS AN
INDISPENSABLE PARTY AND REQUIRING FILINGS,
RESCHEDULING HEARING, AND PROVIDING
INSTRUCTIONS CONCERNING EXHIBITS AND
PARTICIPATING IN REMOTE HEARINGS**

Mailed Date: August 3, 2023

I. STATEMENT

A. Procedural Background

1. On June 14, 2023, Complainants Kristen and Matthew Deutsch filed a Complaint against Highmark Residential, LLC (Highmark Residential). Complainants generally allege that Highmark Residential, the owner of their apartment complex, uses a master meter for gas usage and has been overcharging for gas since taking over the property in late 2021.

2. On June 20, 2023, the Commission issued its Order Setting Hearing and Notice of Hearing (Notice), which set this matter for hearing on August 28, 2023 at 9:00 a.m., before an Administrative Law Judge (ALJ). The Notice also stated that the ALJ would establish the place and manner in which the hearing would be held.

3. Also on June 20, 2023, the Commission issued its Order to Satisfy or Answer, which ordered Highmark Residential to satisfy the matters in the complaint or to answer the complaint in writing within 20 days from service of the order.

4. As of the date of this Decision, Highmark Residential has not filed a written answer to the Complaint.

5. On June 28, 2023, the Commission referred this proceeding to an ALJ by minute entry.

B. Commission Trial Staff as an Indispensable Party

6. Rule 4805 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-4 governs Complaints, Penalties, and Revocation of Exemption for gas utilities. Rule 4805(a) specifically states that anyone taking service from a master meter operator may make an informal complaint or file a formal complaint with the Commission for alleged violation of rules 4803 and 4804. Complainants have obviously done so. The parties were established, and the matter was set for hearing.

7. Rule 4805(b) states that "[a]s a result of a complaint or on its own motion, the Commission *will* investigate complaints concerning MMOs [master meter operators]." (Emphasis added). As the filing of the Complaint is the condition precedent, a decision on the merits of the

Complaint might be had without either party or the Commission benefiting from Staff's investigation.

8. Where not otherwise inconsistent with Title 40 or the Commission's rules, an Administrative Law Judge may seek guidance from or may employ the Colorado Rules of Civil Procedure. Rule 19(a) C.R.C.P. provides that "person who is properly subject to service of process in the action shall be joined as a party in the action if: (1) In his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." C.R.C.P. 19

9. The ALJ finds that Trial Staff of the Public Utilities Commission (Trial Staff) is an indispensable party to this action so that appropriate procedures might be adopted to accommodate and benefit from Staff's investigation and the interests of the litigants may be determined without risk of inconsistent determinations outside of the complaint that initiated the investigation.

10. Trial Staff shall conduct and complete the investigation into Highmark Residential based upon the Complaint as prescribed by Rule 4805(b), 4 CCR 723-4, and file the same within 30 days of the date of this Decision. However, if 30 days is not sufficient to complete the investigation, then Staff shall file a status report of the investigation within 21 days of the date of this Decision and indicate when Trial Staff will be able to complete this investigation.

C. Advisements

11. The parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

12. Each party is specifically advised that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

D. Remote Evidentiary Hearing and Unified Numbering System for Hearing Exhibits

13. Due to the addition of Trial Staff as an indispensable party to this proceeding and the need for Trial Staff to conduct its investigation, the evidentiary hearing scheduled for August 28, 2023, will be rescheduled for October 9, 2023 at 9:00 a.m.

14. The evidentiary hearing will be held remotely. This Decision and Attachments A and B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

15. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

16. The evidentiary hearing will be conducted via videoconference using the Zoom platform. Attachment A to this Decision provides information about the Zoom platform and how

to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

17. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this proceeding. Given that the hearing will accommodate remote participation by video conference, exhibits must be presented electronically.

18. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of remote evidentiary hearing.¹ As such, it is essential that the parties ensure they are able to access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

19. Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as page 1, regardless of content before uploading the exhibits to the party's designated

¹ Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

20. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

21. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Complainants are assigned hearing exhibit numbers 100 to 199;
- Highmark Residential is assigned hearing exhibit numbers 200 to 299; and
- Trial Staff is assigned hearing exhibit numbers 300 to 399.

E. Additional Procedural Notices

22. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

23. Additional procedural requirements may be addressed in future Interim Decisions.

F. Informal Video-Conference Practice Session.

24. The ALJ will hold an informal practice video-conference session if requested by at least one party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

25. The parties may contact a Commission Legal Assistant by email at stephanie.kunkel@state.co.us or casey.federico@state.co.us to schedule an informal practice video-conference session.

26. The parties will receive information and a link to participate in the informal practice session by email.

II. ORDER

A. It Is Ordered That:

1. Trial Staff of the Public Utilities Commission (Trial Staff) is joined as an indispensable party to this proceeding.

2. Trial Staff shall enter and appearance in this proceeding within ten days of this Decision.

3. Trial Staff shall conduct and complete the investigation into Highmark Residential based upon the Complaint as prescribed by Rule 4805(b), 4 CCR 723-4, and file the same within 30 days of the date of this Decision. However, if 30 days is not sufficient time to complete the investigation, then Staff shall file a status report of the investigation within 21 days of the date of this Decision and indicate when Trial Staff will be able to complete this investigation.

4. The evidentiary hearing previously scheduled for August 28, 2023 is vacated.

5. The evidentiary hearing scheduled for October 9, 2023 at 9:00 a.m. will be held remotely via Zoom.²

² Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. The parties are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

6. No one should appear in-person for the remote evidentiary hearing.
7. Participants in the evidentiary hearing may not distribute the Zoom link and access code to anyone not participating in the remote evidentiary hearing.
8. All participants in the hearing must comply with the requirements in Attachments A and B to this Decision, which are incorporated herein.
9. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses, as applicable, may attend the evidentiary hearing by videoconference using the Zoom platform.
10. **Evidence Presentation at the Evidentiary Hearing.** Because the participation in the evidentiary hearing will be via videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.
11. The Administrative Law Judge will hold an informal Zoom practice session upon request.
12. The parties shall comply with the requirements established in this Interim Decision and shall make the filings as required by the adopted procedural schedule.

13. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director