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4 CCR 723-5-PART I. - SERVICE TO BE PROVIDED BY JURISDICTIONAL WATER UTILITIES TO THEIR CUSTOMERS

[Rules 4 CCR 723-5-1 through 723-5-27.7 become Part I as titled above. No other changes are proposed for Part I in this rulemaking.]

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[Rules 4 CCR 723-5-28 through 723-5-31, proposed for Part II, are entirely new.]

[NEW]

4 CCR 723-5-PART II - RULES REGULATING APPLICATIONS BY SMALL PRIVATELY OWNED WATER COMPANIES FOR SIMPLIFIED REGULATORY TREATMENT

BASIS, PURPOSE AND STATUTORY AUTHORITY

The basis and purpose of these rules is to establish regulations regarding applications for simplified regulatory treatment by small, privately-owned water companies that serve fewer than one thousand five hundred customers. These rules are intended to balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from such regulation while continuing to consider the public interest, quality of service, financial condition, and just and reasonable rates.

These rules are issued pursuant to §§ 40-3-104.4, C.R.S.

1 **RULE (4 CCR) 723-5-28. APPLICABILITY.**

2 These rules apply to all small, privately-owned water
3 companies serving fewer than one thousand five hundred
4 customers that request simplified regulatory treatment.

5 **RULE (4 CCR) 723-5-29. DEFINITIONS.**

6 The meaning of terms used in these rules shall be consistent
7 with their general usage in the water utility industry unless
8 specifically defined by Colorado statute or by this rule. In
9 addition to the definitions in this section, the statutory
10 definitions apply. In the event the general usage of terms in
11 the water utility industry or definitions in this rule
12 conflict with the statutory definitions, the statutory
13 definitions control. As used in these rules the following
14 definitions apply:

15 723-5-29.1 Advice letter - Filing made by a water
16 utility with the Commission that proposes a new or changed
17 tariff.

18 723-5-29.2 Applicant - Any provider of jurisdictional
19 water utility services, or any person seeking to be authorized
20 by the Commission to offer water utility services, who files
21 an application with the Commission pursuant to these rules and
22 who serves less than one thousand five hundred customers.

23 723-5-29.3 Customer - Any person, group of persons,
24 partnership, firm, corporation, institution, any agency of the
25 Federal, State or local governments, their lessees, trustees,
26 or receivers appointed by any court, contracting for water
27 service from any utility for domestic, commercial, or
28 industrial use or for wholesale distribution.

29 723-5-29.4 Small Water Company - A water company that
30 serves fewer than one thousand five hundred customers.

1 723-5-29.5 Privately- Owned Water Company - A water
2 service provider that is owned by one or more persons or a
3 corporation. “Privately-owned water company” does not
4 include any company owned or operated by any political
5 subdivision of the state, a special district, or any
6 municipal, quasi-municipal, or public corporation organized
7 pursuant to Colorado law.

8 **RULE (4 CCR) 723-5-30. SIMPLIFIED REGULATORY TREATMENT.**

9 Five options will be available for small privately-owned water
10 companies seeking simplified regulatory treatment. The *Annual*
11 *Rate Adjustment, Resource Cost Pass-Through, Operating Ratio*
12 *Methodology,* and the *Capital Improvement Reserve Options,* as
13 identified in this rule, will be presumed by the Commission to
14 be reasonable methods of simplified regulatory treatment
15 unless data and evidence is provided to demonstrate that the
16 option is not reasonable for the applicant. A small,
17 privately owned water company seeking a *Company Specific,*
18 *Customized Option* shall have the burden of proving that such
19 an option is reasonable for the applicant and its customers,
20 and that such an option is not discriminatory.

21 **723-5-30.1 Procedures.**

22 The simplified regulatory treatment shall be implemented as
23 follows:

24 723-5-30.1.1 The small, privately-owned water
25 company shall file an application with the Commission
26 requesting one or more of the options identified above. The
27 application shall be filed in accordance with Commission Rules
28 of Practice and Procedures, 4 CCR 723-1. However, a small,
29 privately-owned water company is prohibited from participating

1 in both the *Annual Rate Adjustment Option* and the *Resource*
2 *Cost Pass-Through Option* at the same time.

3 723-5-30.1.2 The application shall include the
4 requirements of the respective option, as set forth below, and
5 an explanation of how approval of the application will balance
6 reasonable regulatory oversight with the costs and benefits of
7 regulation, while continuing to consider the public interest,
8 quality of service, financial condition, and just and
9 reasonable rates.

10 723-5-30.1.3 Within five days of the filing of the
11 application, the small, privately-owned water company shall
12 provide notice to its customers of the filing of the
13 application. Such notice shall be given by filing with the
14 Commission and keeping open for public inspection at the small
15 water company's local business office the form established by
16 the Commission. Additionally, the small, privately-owned
17 water company shall either cause the notice to be published in
18 each newspaper of general circulation in each county in which
19 the water company provides service, or shall include a bill
20 insert containing the same information contained in the
21 notice. An applicant electing to provide notice with a bill
22 insert must take appropriate measures to provide each and
23 every customer with the insert. Providing a bill insert to
24 only the master meter operator is not sufficient customer
25 notice. This notice shall allow interested parties 30 days to
26 intervene or file comments regarding the filing. If the
27 small, privately-owned water company elects to provide notice
28 through publication, proof of said publication shall be
29 provided to the Commission. Failure to provide the Commission
30 with proof of publication may cause the Commission to deem the
31 application incomplete.

1 723-5-30.1.4 The Commission may grant the
2 application, or set the application for hearing in accordance
3 with the Rules of Practice and Procedure relating to
4 applications, 4 CCR 723-1.

5 723-5-30.1.5 A small, privately-owned water company
6 may file an application to change to an alternative simplified
7 regulatory treatment at any time. The application shall
8 request authorization to terminate the existing simplified
9 regulatory treatment and shall request a new simplified
10 regulatory treatment.

11 723-5-30.1.6 A small, privately-owned water company
12 may file an application to terminate an existing simplified
13 regulatory treatment and return to traditional rate base
14 regulation at any time. The Commission may set the
15 application for hearing and existing rates for water services
16 may be adjusted. At the conclusion of such a rate case
17 proceeding, the rates and conditions established in the rate
18 case proceeding will replace the rates and conditions
19 developed under any simplified regulatory treatment option.

20 723-5-30.1.7 A small, privately-owned water company
21 shall not be permitted to terminate participation in one or
22 more simplified regulatory treatment options for the purpose
23 of avoiding a potential decrease in rates to its customers.

24 723-5-30.1.8 Nothing in these rules shall limit a
25 customer's right to file a formal complaint against a small
26 water company. Nothing in these rules shall prohibit or
27 restrict the Commission from initiating an investigation or
28 show cause proceeding against a small privately-owned water
29 company.

1 **723-5-30.2 Additional Eligibility Criteria, and**
2 **Reporting Requirements**

3 723-5-30.2.1 For the purpose of determining whether
4 a water utility meets the definition of a small water company,
5 multi-residential or multi-commercial units, including
6 wholesale purchasers of water from a small water company
7 subject to a master meter operating agreement, shall not be
8 aggregated and counted as one customer. Instead, the number
9 of singular units in the complex or served under the master
10 meter operating arrangement is to be used in determining
11 compliance with this rule.

12 723-5-30.2.2 Consistent with the requirement of
13 paragraph 1 above, the small water company shall require
14 multi-residential or multi-commercial entities or master meter
15 operators to annually furnish the small water company with a
16 numeric listing of the number of singular units receiving
17 water services directly or indirectly from such entities. In
18 the event the small water company fails to obtain and annually
19 submit this information to the Commission, the Commission may
20 revoke or deny simplified regulatory treatment for that
21 company.

22 **723-5-30.3 Simplified Regulatory Treatment Options.**

23 The Commission may grant to a small, privately-owned water
24 company authority to participate in any of the following
25 simplified regulatory treatment options:

26 **723-5-30.3.1 Annual Rate Adjustment Option.**

27 723-5-30.3.1.1 The Commission on or before
28 March 31 of each year, by letter, shall inform all
29 participants in the Annual Rate Adjustment Option of the rate

1 adjustment to be effective May 1, of each year. The
2 percentage adjustment shall be determined by the net,
3 positive or negative, of the difference between:

4 · the annual percent change in the United States Gross
5 Domestic Product Chain-Type Price Index ("GDPPI") as published
6 by the United States Department of Commerce, Bureau of
7 Economic Analysis, and as published in the Economic Report Of
8 The President,¹ and;

9 · an appropriate measure of productivity, specifically
10 the "Private And Non-Farm Business Multifactor Productivity
11 Percentage Change" ("PNFBMPP") as published by the Bureau of
12 Labor Statistics, and as published in The Economic Report Of
13 The President.²

14 This Price Adjustment Formula is as follows:

15
$$\text{Price Adjustment} = \text{GDPPI} - \text{PNFBMPP}$$

16

17 723-5-30.3.1.2 On or before April 15 of each
18 year, each small, privately-owned water company participating
19 in this simplified regulatory treatment shall file an advice
20 letter and accompanying tariff sheets with the Commission to
21 implement the change effective May 1.

¹ For the edition published in January 2001, the GDPCTPI appears in the third column (GDP chain-type price index) of Table -3 "Quantity and price indexes for gross domestic product, and percent changes, 1959-2000 [quarterly data seasonally adjusted],. Source: Department of Commerce, Bureau Of Economic Analysis." The index also is available from the Bureau Of Economic Analysis,

² Source: Department Of Labor, Bureau Of Labor Statistics.

1 **723-5-30.3.2 Resource Cost Pass-Through Option.**

2 Under this option, the small, privately-owned water company
3 may seek Commission authority to pass-through price changes
4 (increases and decreases) relating to the acquisition cost for
5 wholesale water from a local municipality, other governmental
6 entity, or other source as approved by the Commission.
7 Following Commission approval to participate in this
8 simplified regulatory treatment option, the water company
9 shall timely inform the Commission of all increases or
10 decreases in the cost of water and shall file an advice letter
11 to implement any resulting change in customer rates within 30
12 days of the effective date of the price change for wholesale
13 water. For good cause, the water company may seek Commission
14 approval to include other water company expenditures ordered
15 by a governmental entity. Examples of such other expenditures
16 could include, but would not necessarily be limited to,
17 changes in water augmentation assessments and changes in costs
18 associated with compliance with provisions of the Safe
19 Drinking Water Act of 1974.

20 **723-5-30.3.3 Operating Ratio Methodology Option.**

21 Under this option the water company may request that the
22 Commission employ an operating ratio methodology in
23 determining appropriate rates to be charged by the water
24 company. An operating ratio methodology for setting rates
25 differs from a traditional rate base methodology, and may be
26 an acceptable tool in evaluating rates when little or no rate
27 base exists.

1 **723-5-30.3.4 Reserve Account for Major Capital**
2 **Improvements Option.**

3 A small, privately owned water company may file an application
4 seeking Commission authority to establish a reserve account to
5 fund future major capital expenditures. Under this option,
6 the water company may be authorized to implement a monthly
7 surcharge to fund a reserve account for future capital
8 improvement expenditures. In filing an application to initiate
9 this option or to amend any provisions of this option, the
10 water company should clearly identify the proposed method for
11 collecting funds to be contributed to the reserve account, and
12 the expected use of such funds.

13 723-5-30.3.4.1 The level and method for
14 collecting money for the reserve account for major capital
15 improvements must be specifically approved by the Commission.
16 Accordingly, the water company in applying to implement this
17 option must submit sufficient financial information for the
18 Commission to review the company's proposed capital
19 improvement needs and explain the merits of its funding
20 methodology. Funds in the reserve account shall be kept in a
21 separate interest bearing cash account. Interest accrued
22 shall be credited to the reserve account and become part of
23 the corpus of the reserve account. Funds from the account
24 shall not be employed for a purpose other than those permitted
25 under this option without specific written permission from the
26 Commission. Disbursements from the fund shall be restricted
27 to the uses identified in a the application approved by the
28 Commission. The burden of demonstrating that actual or
29 proposed expenditures are reasonable and in the public
30 interest shall be borne by the water company.

1 723-5-30.3.4.2 The water company shall report
2 all disbursements from the reserve account by written notice
3 to the Commission and to other persons as the Commission may
4 direct. Disbursements from the reserve account that are found
5 by the Commission to have been made improperly, or in
6 violation of any statute, regulation or order of the
7 Commission shall be returned to the account or refunded to
8 ratepayers as the Commission may direct.

9 723-5-30.3.4.3 Plant capitalized by means of
10 the reserve account shall be accounted for as a contribution
11 in aid of construction.

12 **723-5-30.3.5 Company Specific, Customized Option.**

13 723-5-30.3.5.1 A small, privately-owned water
14 company may file an application seeking Commission
15 authorization to implement provisions of a company specific,
16 customized option plan. The Commission shall consider the
17 merits of any specific option presented and determine whether
18 such provisions are consistent with the objectives of these
19 rules. In presenting an option for the Commission's
20 consideration, the small water company shall bear the burden
21 of proving that: (1) the proposals appropriately balance
22 reasonable regulatory oversight with the costs and benefits of
23 regulation; (2) the provisions are not discriminatory; and (3)
24 implementation of such provisions is in the public interest,
25 improves the quality of water service to customers, is
26 financially compensatory, and promotes the development and
27 maintenance of just and reasonable rates.

28 723-5-30.3.5.2 The small, privately-owned
29 water company must maintain accounting records to provide
30 sufficient financial information for the commission to assess

1 the merits of the proposal and its projected impact on the
2 company.

3 **RULE 4 (CCR) 723-5-31. TRANSITIONAL PROVISIONS.**

4 When the number of customers, as reported in its annual report
5 to the Commission, served by the water company meets or
6 exceeds one thousand five hundred, the water company shall
7 immediately notify the Commission and provide the Commission
8 with a proposed transitional regulatory plan. For good cause
9 shown, the Commission's regulatory oversight of the small
10 water company may continue to permit the water company to
11 participate in regulatory treatment options as described in
12 this rule when its customer count exceeds the established
13 limit.

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