

Decision No. C02-312

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-173W

IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF THE
RULES REGULATING WATER UTILITIES, 4 CCR 723-5.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: March 19, 2002
Adopted Date: March 13, 2002

I. BY THE COMMISSION:

Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding its rules regulating Water Utilities. The intent of the proposed rules is to repeal and reenact the rules found at 4 *Code of Colorado Regulations* ("CCR") 723-5.

2. The proposed repeal and reenactment is part of a greater Commission effort to recodify all its current rules. The proposed repeal and reenactment is intended to update the existing Water Utilities rules; to make them consistent, to the extent possible, with other Commission rules; to improve administration and enforcement of the water utility provisions of Title 40 of the Colorado Revised Statutes; and to improve the regulation of water proceedings before the Commission. A copy of

the proposed rules is attached to this notice of proposed rulemaking.

3. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-3-102, 40-3-103, 40-3-104.4, 40-4-101, 40-4-108, and 40-4-109, C.R.S.

4. An Administrative Law Judge ("ALJ") for the Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before hearing, the Commission requests that such comments be filed no later than May 31, 2002. Reply comments should be submitted by June 28, 2002. The Commission requests that interested persons submitting comments do so both in paper and electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions.

5. Because the proposed rules will result in the repeal of the Commission's existing rules regulating Water Utilities, 4 CCR 723-5, interested persons may also submit

comments regarding whether specific provisions in the presently existing rules should be retained in the reenacted rules.

6. Coordination of this rulemaking with other imminently planned rulemakings for practice and procedure, telecommunications, gas, electric, steam, railroads, and transportation is a sizeable undertaking. Because of the need to coordinate all efforts, the Commission anticipates that it will make the initial decision in this matter pursuant to § 40-6-109(6), C.R.S. Furthermore, the Commission finds that hearings in this matter should consider: (a) coordination of efforts among the various other ongoing or planned rulemakings; and (b) whether future hearing dates should be set for that purpose.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the April 10, 2002 edition of *The Colorado Register*.

2. A hearing on the proposed rules and related matters shall be held before an Administrative Law Judge as follows:

DATE: August 1, 2002

TIME: 9:00 a.m.

PLACE: Commission Hearing Room A
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

At the times set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary. At the hearings referenced above, the Administrative Law Judge may set further hearing dates to continue the discussion and comment.

3. Interested persons may file written comments in this matter before the hearing. The Commission requests that such prefiled comments be submitted in both paper and electronic format no later than May 31, 2002. Reply comments should be submitted by June 28, 2002. The Commission will consider all submissions, whether oral or written.

4. This order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 13, 2002.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

JIM DYER

Commissioners

~~THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO
WATER UTILITIES~~

~~4 CODE OF COLORADO REGULATIONS (CCR) 723-5~~

~~BASIS, PURPOSE, AND STATUTORY AUTHORITY~~

~~The basis and purpose of these rules is to generally set forth rules describing the service to be provided by jurisdictional water utilities to their customers. The rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, water quality, and water pressure.~~

~~The statutory authority for these rules can be found at §§ 40-2-108, 40-3-102, 40-3-103, 40-4-101, 40-4-108, and 40-4-109, C.R.S.~~

~~**RULE (4 CCR) 723-5-1. APPLICATION OF RULES.**~~

~~723-5-1.1 The following Rules shall apply to any person, partnership, firm, corporation, their lessees, trustees, or receivers appointed by any court, now or hereafter engaged in the business of a public utility furnishing water to domestic, commercial or industrial customers operating under the jurisdiction of the Public Utilities Commission of the State of Colorado.~~

~~723-5-1.2 The adoption of these Rules shall in no way preclude the Commission from altering or amending the same in whole or in part or from requiring any other additional service,~~

~~equipment, facility or standard, either upon complaint or upon its own motion, or upon the application of any utility. In special cases for good cause shown, not contrary to statute, the Commission may permit deviation from these Rules insofar as it may find compliance therewith to be impossible, impractical or unnecessary. If, for good cause shown, any utility is permitted a deviation from any of these rules, such modified Rule(s) as authorized by the Commission shall be set forth in the filed tariffs of the utility. These Rules shall in no way relieve any utility from any of its duties under the laws of the State of Colorado.~~

~~RULE (4 CCR) 723-5-2. DEFINITIONS.~~

~~723-5-2.1 The word "utility" as used in these Rules shall be construed to mean any person, partnership, firm, corporation, whether privately owned or otherwise, when subject to the jurisdiction of this Commission, their lessees, trustees, or receivers, appointed by any court whatsoever, that may now or hereafter be engaged as a public utility in the business of furnishing water to domestic, commercial or industrial customers in the State of Colorado.~~

~~723-5-2.2 The word "Commission" as used in these Rules shall be construed to mean the Public Utilities Commission of the State of Colorado.~~

~~723-5-2.3 The word "customer" as used in these Rules shall be construed to mean any person, partnership, firm, corporation, their lessees, trustees, or receivers appointed by any court, supplied by any utility with water for domestic commercial or industrial use.~~

[Omitted Material: All the current rules regulating Water Utilities, 4 CCR 723-5, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**PART 5
RULES REGULATING WATER UTILITIES**

4 CCR 723-5

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to generally set forth rules describing the service to be provided by jurisdictional water utilities to their customers. The rules address a wide variety of subject areas including, but not limited to, simplified regulatory treatment, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, water quality, and water pressure.

The statutory authority for these rules can be found at §§ 40-2-108, 40-3-102, 40-3-103, 40-3-104.4, 40-4-101, 40-4-108, and 40-4-109, C.R.S.

GENERAL PROVISIONS

5000. Scope and Applicability. All rules in this Part 5, the "5000" series, shall apply to all water utilities and to all Commission proceedings and operations concerning water utilities, unless a specific statute or rule provides otherwise.

5001. Definitions. The following definitions apply throughout this Part 5, except where a specific rule or statute provides otherwise:

- (a) "Aggregate water service provider" means a person that:
 - (I) purchases water service for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a composite measurement device;

- (II) does not charge end users for any costs in addition to the actual cost billed to such person for water service, including without limitation, costs of construction, maintenance, financing, administration, metering, or billing for the distribution system owned by such person;
 - (III) if billing end users separately, does not bill the end users, in the aggregate, more than the amount billed to such person for water service; and
 - (IV) if billing end users separately, passes on to the end users any refunds, rebates, rate reductions, or similar adjustments such person receives for water service.
- (b) "AWWA" means the American Water Works Association.
 - (c) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or discontinue utility service. If the utility does not operate any office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or discontinue utility service in Colorado.
 - (d) "Utility" means "water corporation" as that term is used in § 40-1-103(1)(a), C.R.S., including but not limited to any person furnishing water to domestic, commercial, or industrial customers in the State of Colorado.¹

5002. Applications. A water utility may seek Commission action regarding any of the following matters through the filing of an appropriate application:

- (a) For the issuance or extension of a certificate of public convenience and necessity, as provided in rule 5100.
- (b) To amend a certificate of public convenience and necessity, as provided in rule 5101.
- (c) To transfer a certificate of public convenience and necessity, assets, or stock, or to merge a utility with another entity, as provided in rule 5102.
- (d) To amend a tariff on less than statutory notice, as provided in rule 5104.
- (e) For simplified regulatory treatment, as provided in rule 5109.
- (f) For approval of refund plan, as provided in rule 5409.

¹ § 40-1-103(1)(a); 723-5-2.1.

- (g) For any other matter provided by statute or rule but not specifically described in this rule.

5003. [Reserved].

5004. Disputes.² Each utility shall make a full and prompt investigation of all disputes with its customers concerning jurisdictional service, which are initiated either directly with the utility or through the Commission. Each utility shall keep a record of all written disputes, which shall show the name and address of the customer, the date and character of the issue, and the adjustment or disposition made thereof. This record shall be open at all times to the inspection of the duly authorized representatives of this Commission, and shall be retained by the utility for a period of 2 years.

5005. Records.³

- (a) Every water utility shall maintain required records, available for public inspection at its principal place of business during regular business hours, as follows:
- (I) Records concerning disputes, as required under Rule 5004.
 - (II) Instrumentation records, as required under Rule 5201.
 - (III) Purity and pressure records required under Rule 5202, for at least two years, except as may be required for longer periods by AWWA or applicable federal, state, county, or municipal codes, regulations, or rules.
 - (IV) The results of all tests made by the Water Quality Control Division of the Department of Public Health and Environment, indicating when and where and by whom each test was conducted, for 2 years.
 - (V) All records or charts made with respect to meters under rule 5305 and 5306, for 2 years.
 - (VI) All customer billing records as required under Rule 5401(b).
- (b) All tariffs filed with the Commission and applicable to the territory concerned shall be on file at each local office of the utility.

² 723-5-8.

³ 723-1-25(b); 723-1-100; 723-5-3; 723-5-12; 723-5-13(b)(7); 723-5-19.3; 723-5-21.2.

5006. Reports.⁴ Each utility shall provide reports to the Commission as follows:

- (a) Each utility shall file with the Commission, on or before April 30 of each year, an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed and supplied by the Commission; shall properly complete the forms; and shall ensure the forms are verified and signed by a person authorized to act on behalf of the utility. If the Commission grants the utility an extension of time to file the annual report, the utility shall nevertheless file with the Commission, on or before April 30, the utility's total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year. Unless otherwise approved by the Commission, depreciation for book purposes shall be determined by applying the straight-line method of depreciation.
- (b) If a utility publishes an annual report or an annual statistical report to stockholders, or other security holders or members, or receives an annual certified public accountant's report of its business, it must file one copy with the Commission within 30 days after publication or receipt of such report.
- (c) On or before April 30 of each year, and as part of the report required by paragraph (a) of this rule, small, privately owned water companies shall file a report with the Commission detailing the information required by Rule 5109(d).
- (d) Such special reports as the Commission may require.

5007. [Reserved].

5008. Incorporation by Reference.

- (a) Uniform System of Accounts. The Commission incorporates by reference the 1996 editions of the Uniform System of Accounts for Class A, B, and C Water Utilities, published by the National Association of Regulatory Utility Commissioners. No later amendments to or editions of the Uniform System of Accounts are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief of Utilities, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.
- (b) American Water Works Association Standards ("AWWA"). The Commission incorporates by reference the American Water Works Association Standards, Volume 4, Number 2, revised as of September 1, 2001. No later amendments to or editions of the

⁴ 723-1-25; 723-5-13(b) (7); 723-5-13(h); 723-5-16.

American Water Works Standards are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief of Utilities, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.

OPERATING AUTHORITY

5100. Certificate Applications.⁵ An application for the issuance of a certificate of public convenience and necessity, including authority for approval of the exercise of franchise rights, must include all of the following:

- (a) The applicant's name and complete physical and mailing addresses.
- (b) The trade name under which the applicant's operations are being or will be conducted.
- (c) If the applicant is a corporation: a statement that the applicant is a corporation; the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors, officers, and Colorado agent for service; and a copy of its Articles of Incorporation or Charter.
- (d) If the applicant is an out-of-state corporation: a copy of the current authority qualifying it to do business in Colorado. If such authority is not available at the time of the application, the applicant shall so state, shall acknowledge that the application will not be granted without the authority, and shall file the authority with the Commission as soon as possible.
- (e) If the applicant is a partnership: the names and addresses of all general and limited partners, and a copy of the partnership agreement establishing the partnership, including subsequent amendments, if any.
- (f) The name and address of applicant's representative to whom all inquiries concerning the application may be made.
- (g) A statement describing the authority sought, or franchise rights proposed to be exercised. The statement shall include a description of the type of utility service to be rendered and a description of the area sought to be served, together with a map of the area. The statement also shall include a description of applicant's existing operations and general service area.

⁵ 723-1-55.

- (h) A statement describing in detail the extent to which the applicant is affiliated with any other company and the extent to which the applicant, or any person affiliated with applicant, holds authority duplicating in any respect the authority sought.
- (i) A copy of a feasibility study for areas previously not served, which shall at least include estimated investment, income, and expense. An applicant may request that balance sheets, income statements, and statements of retained earnings be submitted in lieu of a feasibility study.
- (j) A copy of the applicant's most recent balance sheet, covering a period ending not earlier than six months before the date of the filing of the application.
- (k) A statement of income and of retained earnings for the same time period as the balance sheet referred to in paragraph (j) of this rule.
- (l) A statement of the names of public utilities and other entities of like character providing similar service in or near the area involved in the application.
- (m) A statement that the applicant understands it must present evidence at the hearing to show its qualifications to conduct the utility operations proposed in the application.
- (n) A statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application.
- (o) Where the application is to exercise franchise rights: a certified copy of the franchise ordinance; proof of publication, adoption, and acceptance by the applicant; a statement as to the number of customers served or to be served and the population of the city or town; and any other pertinent information.
- (p) A statement indicating the town or city where the applicant prefers any hearing regarding the application to be held, as well as any alternative choices.
- (q) A statement indicating the applicant's understanding that the mere filing of the application does not, by itself, constitute authority to operate.
- (r) A verified statement or affidavit, signed by an officer, partner, or owner, as applicable, who is authorized to act on behalf of the applicant, stating that the contents of the application and supporting documentation are true, accurate, and correct.

5101. Certificate Amendments.⁶

- (a) Except as provided in paragraph (b) of this rule, an application to amend a certificate of public convenience and necessity, or to change, extend, curtail, or abandon any service or facility without equivalent replacement, must contain all of the information required under rule 5100.
- (b) For applications to curtail or abandon any service or facility, or for applications to in any manner restrict a certificate of public convenience and necessity:
 - (I) The applicant shall indicate the requested effective date for the curtailment, abandonment, or restriction.
 - (II) The applicant's response to Rule 5100(g) shall contain a statement describing the curtailment, abandonment, or restriction sought. The statement shall include maps, as applicable. The statement shall also include a description of the applicant's existing operations and general service area.
 - (III) The applicant need not respond to Rules 5100(h) and (i).
 - (IV) The applicant's response to Rule 5100(m) shall contain a statement that the applicant understands it must present evidence at the hearing showing how the public interest will be affected by the grant of the application.
 - (V) The applicant's response to Rule 5100(q) shall contain a statement indicating the applicant's understanding that the mere filing of the application does not, by itself, constitute authority to curtail or abandon any service or facility, or to restrict a certificate of public convenience and necessity.
 - (VI) In addition to the notice requirements of the Rules Regulating Practice and Procedure, the applicant shall prepare a written notice as provided in subparagraph (b)(VII) of this rule and shall mail or deliver the notice at least 30 days before the application's requested effective date to each of the applicant's affected customers. If no customers would be affected by the grant of the application, the notice shall be mailed to the Board of County Commissioners of each affected county, and to the mayor of each affected city, town, or municipality.
 - (VII) The notice of subparagraph (VI) of this paragraph shall contain all of the following:
 - (A) The name of the applicant.

⁶ 723-1-57.

- (B) A statement detailing the requested curtailment, abandonment, or restriction, and its requested effective date.
 - (C) A statement indicating that any person may file a written objection with the Commission no later than ten days prior to the requested effective date; but that a written objection alone will not preserve any right to participate as a party in any Commission proceeding on the matter.
 - (D) A statement indicating that in order for any person to participate as a party, such person must file an appropriate and timely intervention according to the Commission's Rules Regulating Practice and Procedure.
 - (E) The Commission's full address.
- (VIII) Prior to 15 days before the requested effective date, the applicant shall file with the Commission a written affidavit stating its compliance with the notice requirements of subparagraphs (VI) and (VII) of this paragraph. The affidavit shall state the date the notice was completed and the method used to give notice. The applicant shall attach a copy of the notice to the affidavit.
- (c) No proposed amendment, change, extension, curtailment, or abandonment shall be effective unless and until the Commission has entered an order approving it.

5102. Transfers and Mergers.⁷

- (a) An application to transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets or stock, or to merge a utility with another entity, must include:
 - (I) All the information required by Rule 5100, as pertinent to each party to the transaction.
 - (II) A statement showing accounting entries, under the Uniform System of Accounts, including any plant acquisition adjustment, gain, or loss proposed on the books by each party before and after the proposed transfer;
 - (III) Copies of any sales agreement or contract of sale and all documents pertaining to the transfer;

⁷ 723-1-42; 723-1-55.

- (IV) Facts showing that the transfer is in the public interest,⁸ and an evaluation of the benefits and detriments, if any, to the customers of each party and to all other persons who will be affected by the transfer; and
 - (V) A comparison of the kinds and costs of service rendered before and after the proposed transfer.
- (b) An application to transfer a certificate may be made by joint or separate applications of the transferor and the transferee.
- (c) When control of a utility is transferred to another utility, or the name is changed, the utility which will afterwards operate under the certificate shall file an adoption notice with the Commission, post the adoption notice in a prominent public place in each local office of the utility, and have the adoption notice available for public inspection at each local office. Adoption notice forms are available from the Commission. The adoption notice shall contain all of the following information:
- (I) The name, phone number, and complete address of the adopting utility.
 - (II) The name of the previous utility.
 - (III) The number of the tariff adopted, and the description or title of the tariff adopted.
 - (IV) The number of the tariff after adoption, and the description or title of the tariff after adoption.
 - (V) A statement that the adopting utility is making its own all rates, rules, terms, conditions, agreements, concurrences, instruments, and all other provisions that have been filed or adopted by the previous utility.

5103. Tariffs and Contracts.⁹ A utility shall keep its current tariffs, contracts and water service agreements on file with the Commission. Unless otherwise provided by law all tariffs, contracts, and water service agreements shall be available for public inspection at the Commission and each local office of the utility. Tariffs must plainly show all terms, conditions, rates, tolls, rentals, charges, and

⁸ Current rules use "not contrary to the public interest." However, actual practice is more aligned with the proposed language.

⁹ 723-1-40; 723-5-11(f); 723-5-14; 723-5-15; 723-5-19; 723-5-22.3; 723-5-27; 723-5-30.

classifications collected or enforced, or to be collected and enforced, including:

- (a) Specific provisions regarding extensions, including:
 - (I) The terms and conditions under which such connections and extensions will be made;
 - (II) Provisions requiring the utility to provide service connection information to a customer, upon request, necessary to allow the customer's facilities to be connected to the utility's system; and
 - (III) Provisions requiring the utility to exercise due diligence in providing the customer with an estimate of the anticipated cost of a connection or extension.
- (b) A description of each customer class.
- (c) A clear statement describing where meters will be read by the utility and the circumstances, if any, under which the customer must read the meter and submit the data to the utility, specifying in detail the procedure that the customer must follow, and if special conditions apply to certain classes of service, such as residential, commercial, industrial or seasonal.
- (d) A statement setting forth the utility's customer deposit requirement policy for establishing water service, explaining when a deposit will be required and when it will be returned.
- (e) All other rules, regulations, and policies covering the relations of customer and utility.

5104. New or Changed Tariffs.¹⁰

- (a) A utility may seek to add a new tariff or change an existing tariff in either of the two following ways:
 - (I) The utility may file the proposed tariff, including the proposed effective date, accompanied by an advice letter, and providing notice in accordance with rule 1206. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the proposed effective date, the proposed tariff shall take effect on the proposed effective date.
 - (II) The utility may file an application to implement a proposed tariff on less than 30 days' notice, accompanied by the proposed tariff, including the proposed effective date, and providing notice in accordance with rule 1206. The

¹⁰ 723-1-41; 723-1-43; 723-5-12.

application must explain the details of the proposed tariff, including financial data if applicable, justify why the proposed tariff must become effective on less than 30 days' notice, and note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.

- (b) Each tariff sheet, not an original, shall be designated "1st revised sheet No. ___ cancels original sheet No. __," or "2nd revised sheet No. ___ cancels 1st revised sheet No. __," as appropriate. Each sheet shall direct attention to the changes by the use of symbols in the right margin such as "I" for increase, "D" for decrease, "C" for change in text, and "N" for new text. On a contents or index page the utility shall show the meaning of the symbols used by it to point out changes contained in its revised tariff filings. If a tariff sheet is issued under a specific authority or decision of the Commission, each sheet so affected shall show the number in the space provided at the foot of the sheet.
- (c) The Commission may reject any tariff which is not in the form required by statutes, rules, regulations, orders, and decisions of the Commission. Any tariff rejected by the Commission shall be void and shall not be used.

5105. Advice Letters.¹¹ Each proposed tariff must be accompanied by a serially-numbered advice letter. The letter shall list all sheets included in the filing by number, and show the sheets, being cancelled, if any. The purpose of the filing, the changes being proposed, the amounts, if any, by which the utility's revenues will be affected, and the extent to which customers will be affected shall be clearly summarized, along with information demonstrating that the proposed tariff is just and reasonable.

5106. [Reserved].

5107. [Reserved].

5108. Aggregate Water Service Providers.¹² Aggregate water service providers are exempt from regulation of rates under Articles 1 to 7 of Title 40, C.R.S., and need not file any tariff with the Commission.

¹¹ 723-1-40.1; 723-5-12.2.

¹² While § 40-1-103.5 does not apply to water regulation, its language has been duplicated here in order to exempt water "MMOs".

5109. Simplified Regulatory Treatment.

- (a) Definitions. In addition to the definitions generally applicable to water utilities, the following definitions apply only in the context of this rule:
- (I) "Customer" means any person or group of persons contracting for water service from any utility for domestic, commercial, or industrial use, or for wholesale distribution. Multi-residential units, multi-commercial units, and wholesale purchasers of water supplying water service to multiple end-users, are not considered as singular customers; instead, the number of singular customers is determined by the number of singular units or end-users.¹³
 - (II) "Privately owned water company" means a utility that is owned by one or more persons. "Privately owned water company" does not include any utility owned or operated by any political subdivision of the state, a special district, or any municipal, quasi-municipal, or public corporation organized pursuant to Colorado law.
 - (III) "Small water company" means a utility that serves fewer than one thousand five hundred customers.
- (b) Simplified Regulatory Treatment. Five options are available for small, privately owned water companies seeking simplified regulatory treatment. The *Annual Rate Adjustment*, *Resource Cost Pass-Through*, *Operating Ratio Methodology*, and the *Capital Improvement Reserve Options*, as identified in this rule, shall be presumed by the Commission to be reasonable methods of simplified regulatory treatment unless data and evidence is provided to demonstrate that the option is not reasonable for the applicant. A small, privately owned water company seeking a *Company Specific, Customized Option* shall have the burden of proving that such an option is reasonable for the applicant and its customers, and that such an option is not discriminatory.
- (c) Procedures. The simplified regulatory treatment shall be implemented as follows:
- (I) The small, privately owned water company shall file an application with the Commission requesting one or more of the options identified above. The application shall be filed in accordance with Commission Rules Regulating Practice and Procedure, 4 CCR 723-1. However, a small, privately owned water company is prohibited from participating in both the *Annual Rate Adjustment Option* and the *Resource Cost Pass-Through Option* at the same time.

¹³ 723-5-30.2.1.

- (II) The application shall include any requirements of the respective option, as provided by paragraph (e) of this rule, and an explanation of how approval of the application will balance reasonable regulatory oversight with the costs and benefits of regulation, while continuing to consider the public interest, quality of service, financial condition, and just and reasonable rates.

- (III) Within five days of the filing of the application, the applicant shall provide notice to its customers of the filing of the application. Such notice shall be given by filing with the Commission and keeping open for public inspection at the applicant's local business office the form established by the Commission. Additionally, the applicant shall either cause the notice to be published in each newspaper of general circulation in each county in which the applicant provides service, or shall issue notice by bill insert. Such additional notice shall contain the same information as contained in the notice filed with the Commission. An applicant electing to provide notice with a bill insert must take appropriate measures to provide each and every customer with the insert. Providing a bill insert to only the master meter operator is not sufficient customer notice. This notice shall allow interested parties 30 days to intervene or file comments. If the applicant elects to provide notice through newspaper publication, proof of said publication shall be provided to the Commission. Failure to provide the Commission with proof of publication may cause the Commission to deem the application incomplete.

- (IV) A small, privately owned water company may file an application to change to an alternative simplified regulatory treatment at any time. The application shall request authorization to terminate the existing simplified regulatory treatment and shall request a new simplified regulatory treatment.

- (V) A small, privately owned water company may file an application to terminate an existing simplified regulatory treatment and return to traditional rate base regulation at any time. The Commission may set the application for hearing and existing rates for water services may be adjusted. At the conclusion of such a rate case proceeding, the rates and conditions established in the rate case proceeding will replace the rates and conditions developed under any simplified regulatory treatment option.

- (VI) A small, privately owned water company shall not be permitted to terminate participation in one or more simplified regulatory treatment options for the sole purpose of avoiding a potential decrease in rates to its customers.

- (VII) Nothing in these rules shall limit a customer's right to file a complaint against a small, privately owned water company. Nothing in these rules shall prohibit or restrict the Commission from initiating an investigation or complaint proceeding against a small, privately owned water company.
- (d) Reporting Requirements. Consistent with the definition of "customer" under this rule, a small, privately owned water company shall require multi-residential entities, multi-commercial entities, and wholesale purchasers of water supplying water service to multiple end-users, to annually furnish the small, privately owned water company with a numeric listing of the number of singular units receiving water services directly or indirectly from such entities. In the event the small, privately owned water company fails to obtain and annually submit this information to the Commission, the Commission may revoke or deny simplified regulatory treatment for that company.
- (e) Simplified Regulatory Treatment Options. The Commission may grant a small, privately owned water company authority to participate in any of the following simplified regulatory treatment options:
- (I) Annual Rate Adjustment Option.
- (A) The Commission on or before March 31 of each year, by letter, shall inform all participants in the Annual Rate Adjustment Option of the rate adjustment to be effective May 1, of each year. As prescribed by subparagraph (e)(I)(B) of this rule, the percentage adjustment shall be determined using the following figures:
- (i) the annual percent change in the United States Gross Domestic Product Chain-Type Price Index ("GDPPI") as published by the United States Department of Commerce, Bureau of Economic Analysis, and as published in the Economic Report Of The President,¹⁴ and;
- (ii) an appropriate measure of productivity, specifically the "Private And Non-Farm Business Multifactor Productivity Percentage Change" ("PNFBMPP") as published by the Bureau of Labor

¹⁴ 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,

Statistics, and as published in The Economic Report Of The President.¹⁵

- (B) The percentage adjustment formula is:
Price Adjustment = GDPPI - PNFBMPP
- (C) On or before April 15 of each year, each small, privately owned water company participating in this simplified regulatory treatment shall file an advice letter and accompanying tariff sheets with the Commission to implement the change effective May 1.
- (II) Resource Cost Pass-Through Option. Under this option, the small, privately owned water company may seek Commission authority to pass-through price changes (increases and decreases) relating to the acquisition cost for wholesale water from a local municipality, other governmental entity, or other source as approved by the Commission. Following Commission approval to participate in this simplified regulatory treatment option, the water company shall timely inform the Commission of all increases or decreases in the cost of water and shall file an advice letter to implement any resulting change in customer rates within 30 days of the effective date of the price change for wholesale water. For good cause, the water company may seek Commission approval to include other water company expenditures ordered by a governmental entity. Examples of such other expenditures could include, but would not necessarily be limited to, changes in water augmentation assessments and changes in costs associated with compliance with provisions of the Safe Drinking Water Act of 1974.
- (III) Operating Ratio Methodology Option. Under this option the water company may request that the Commission employ an operating ratio methodology in determining appropriate rates to be charged by the water company. An operating ratio methodology for setting rates differs from a traditional rate base methodology, and may be an acceptable tool in evaluating rates when little or no rate base exists.
- (IV) Reserve Account for Major Capital Improvements Option. An applicant may seek Commission authority to establish a reserve account to fund future major capital expenditures. Under this option, the small, privately owned water company may be authorized to implement a monthly surcharge to fund a reserve account for future capital improvement expenditures. In filing an application to initiate this option or to amend any provisions of this option, the water company should clearly identify the proposed method for

¹⁵ Source: Department Of Labor, Bureau Of Labor Statistics.

collecting funds to be contributed to the reserve account, and the expected use of such funds.

- (A) The level and method for collecting money for the reserve account for major capital improvements must be specifically approved by the Commission. Accordingly, the applicant must submit sufficient financial information for the Commission to review the company's proposed capital improvement needs and explain the merits of its funding methodology. Funds in the reserve account shall be kept in a separate interest bearing cash account. Interest accrued shall be credited to the reserve account and become part of the corpus of the reserve account. Funds from the account shall not be employed for a purpose other than those permitted under this option. Disbursements from the fund shall be restricted to the uses identified in the application approved by the Commission. The burden of demonstrating that actual or proposed expenditures are reasonable and in the public interest shall be borne by the water company.
 - (B) The small, privately owned water company shall report all disbursements from the reserve account by written notice to the Commission and to other persons as the Commission may direct. Disbursements from the reserve account that are found by the Commission to have been made improperly, or in violation of any statute, regulation, or order of the Commission shall be returned to the account or refunded to ratepayers as the Commission may direct.
 - (C) Plant capitalized by means of the reserve account shall be accounted for as a contribution in aid of construction.
- (V) Company Specific, Customized Option.
- (A) A small, privately owned water company may file an application seeking Commission authorization to implement provisions of a company specific, customized option plan. The Commission shall consider the merits of any specific option presented and determine whether such provisions are consistent with the objectives of these rules.

- (B) In presenting an option for the Commission's consideration, the company shall bear the burden of proving that:
- (i) the proposals appropriately balance reasonable regulatory oversight with the costs and benefits of regulation;
 - (ii) the provisions are not discriminatory; and
 - (iii) implementation of such provisions is in the public interest, improves the quality of water service to customers, is financially compensatory, and promotes the development and maintenance of just and reasonable rates.
- (C) The small, privately owned water company must maintain accounting records to provide sufficient financial information for the Commission to assess the merits of the proposal and its projected impact on the company.
- (f) **Transitional Provisions.** When the number of customers, as reported in its annual report to the Commission, served by the utility meets or exceeds one thousand five hundred, the utility shall immediately notify the Commission and provide the Commission with a proposed transitional regulatory plan. For good cause shown, the Commission's regulatory oversight of the utility may continue to permit the utility to participate in regulatory treatment options as described in this rule when its customer count exceeds the established limit.

FACILITIES

5200. Construction, Installation, Maintenance, and Operation.¹⁶ The water plant, equipment, and facilities of the utility shall be constructed, installed, inspected, maintained, and operated in accordance with sound engineering and industry practices to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.

5201. Instrumentation.¹⁷ Each water utility shall install such indicating instruments or meters as may be necessary to obtain records of the water flow volume(s) of its plants. Each utility purchasing water shall install such instruments or meters as may be necessary to furnish the Commission with full information related to the purchases, including purchase dates, sources, volumes, and unit costs. Each

¹⁶ 723-5-4.

¹⁷ 723-5-21.

utility shall keep a record of its periodic readings of such instruments.

5202. Purity and Pressure.¹⁸

- (a) Each utility supplying water for domestic, commercial, or industrial purposes shall ensure that all water intended for human consumption and general household purposes is free from disease producing organisms, bacteria, and injurious chemical and physical substances, and is agreeable to sight and smell. Each utility supplying such water shall comply with all applicable quality, purity, monitoring, testing, and record-keeping standards and requirements of:
 - (I) The federal Clean Water Act, Safe Drinking Water Act, and the rules and regulations promulgated thereunder.
 - (II) The drinking water regulations promulgated by the Water Quality Control Division of the Colorado Department of Public Health and Environment; and
 - (III) The water treatment standards adopted by AWWA.
- (b) A utility shall maintain a steady pressure, not at any time falling below the adequate minimum for domestic service. Each utility furnishing fire hydrant service must be able to supply added service to local fire fighting equipment and facilities in accordance with the best standard practice. A utility shall maintain pressure and keep records in accordance with AWWA standards, unless otherwise required by the Water Quality Control Division of the Colorado Department of Public Health and Environment or county or municipal codes or ordinances.

5203. Interruptions of Service.¹⁹

- (a) During times of threatened or actual water shortage a utility shall equitably apportion its available water supply among its customers with due regard to public health and safety.
- (b) If a utility must restrict water distribution, it shall, except in emergencies:
 - (I) Give advance, written notice to the Commission, as prescribed by paragraph (c) of this rule.
 - (II) Give advance notice to the utility's customers, as prescribed by paragraph (c) of this rule.

¹⁸ 723-5-18; 723-5-19; 723-5-20.

¹⁹ 723-5-3; 723-5-15; 723-17-2.4; 723-4-3(b).

- (c) The notice contemplated by paragraph (b) of this rule shall contain the following information:
- (I) The reason for the restriction;
 - (II) The nature and extent of the restriction, including outdoor use, use by certain classes of customers, and similar matters;
 - (III) The date such restriction is to go into effect; and
 - (IV) The probable date of termination of such restriction.

5204. Accidents.²⁰

- (a) Each utility shall immediately report to the Commission each accident occurring in connection with the operation of its property, facilities or service, resulting in any deaths, serious injuries, or serious property damage.
- (b) The report must describe in detail the:
- (I) Date, time, place, and location of the accident;
 - (II) Type of accident;
 - (III) Names of all parties involved; and
 - (IV) Nature and extent of injuries and damage.

5205. [Reserved].

5206. [Reserved].

5207. [Reserved].

5208. [Reserved].

5209. Service Connections.²¹

- (a) Upon application of a bona fide applicant for service, the utility shall furnish, install, and maintain service pipe of suitable capacity, including the curb cock and curb box required, from its water main to the property line.
- (b) Except as provided in paragraphs (c) and (d) of this rule, service connections shall be furnished, installed, and maintained at the expense of the utility.

²⁰ 723-5-7.

²¹ 723-5-14.

- (c) All meters used in connection with metered service shall be furnished, installed, and maintained at the expense of the utility, unless the Commission grants special authority to the contrary for good cause.
- (d) The utility may seek approval of tariff provisions that specifically allocate the cost of service connections, other than meters, between the utility and the customer. Such tariff proposals shall specify the terms and conditions that initiate such cost allocation.
- (e) Any facilities furnished or installed at the expense of the utility shall remain the utility's property and may be removed by the utility at any time after discontinuance of service.

METERS

5300. Service Meters and Related Equipment.²² Each service meter shall indicate clearly the units of service in cubic feet or gallons for which charge is made to the customer. In cases where the register reading of a meter must be multiplied by a constant to obtain the units consumed, such constant shall be clearly marked on the meter.

5301. Location of Service Meters.²³ As of the time of meter installation, meters shall be located in conformity with:

- (a) applicable local building codes; and
- (b) applicable meter placement standards adopted by AWWA.

5302. Service Meter Accuracy and Capacity.²⁴ Each meter shall meet the accuracy and capacity requirements of the applicable AWWA meter standard for that meter type. Meters must immediately be repaired or replaced if they fail to meet the applicable AWWA standard at the time of testing.

²² 723-5-10.1.

²³ *Gas rules.*

²⁴ 723-5-22.

5303. Meter Testing Equipment and Facilities.²⁵ Meter testing equipment shall meet all applicable AWWA standards. Each utility shall provide such equipment and facilities as may be necessary to make the tests and provide the service required. Such testing equipment and facilities shall be available at all reasonable times for inspection by Commission staff. If the utility does not have suitable means for testing, the utility must have a certificate from the meter manufacturer showing that each meter has been tested for accuracy and that it complies with the accuracy and capacity requirements of the applicable AWWA meter standards.

5304. Scheduled Meter Testing.²⁶ All meters must be periodically tested in accordance with applicable AWWA time intervals.

5305. Meter Testing Upon Request.²⁷ Each utility furnishing metered water service shall make a test of the accuracy of any water service meter upon request of a customer. The customer may be present during any meter test. The test shall be conducted free of charge if the meter has not been tested within the previous 12 months and the customer agrees to accept the results of the test for the purposes of any dispute regarding the meter's accuracy. The utility shall provide a written report of the test results to the customer and maintain a copy on file for at least 2 years.

5306. Records of Tests and Meters.²⁸

(a) A utility shall maintain a record for each meter owned or used by the utility, showing the date of purchase, manufacturer's serial number, record of the present location, and date and results of the last test performed by the utility, which record shall be retained for the life of the meter.

(b) Whenever a meter is tested either on request or upon complaint, the test record shall include the information necessary for identifying the meter, the reason for making the test, the reading of the meter if removed from service, the result of the test, together with all data taken at the time of the test in a sufficiently complete form to permit the convenient checking of the methods employed and the calculations made. Such record shall be retained for at least 2 years.

5307. [Reserved].

5308. [Reserved].

²⁵ 723-5-5; 723-5-22.

²⁶ 723-5-23.

²⁷ 723-5-24; 723-5-25.

²⁸ 723-5-6.

5309. Meter Reading.²⁹ Upon the customer's request, the utility will provide a card or slip showing the date of the reading of the customer's meter, and the total usage expressed in gallons or other unit of service recorded. Each utility supplying metered service, on request, shall explain to its customers the method of reading meters.

BILLING AND SERVICE

5400. Billing Information.³⁰ All bills issued to customers for metered service furnished shall show:

- (a) Dates and meter readings beginning and ending the period during which service was rendered;
- (b) An appropriate rate or rate code identification;
- (c) Net amount due;
- (d) Last date payable after which the bill becomes past due, which shall not be any earlier than 15 days subsequent to the billing date;
- (e) A distinct marking to identify an estimated bill; and
- (f) All other essential facts upon which the bill is based, including factors and constants, as applicable.

5401. Adjustments for Meter and Billing Errors.³¹

- (a) A utility shall adjust customer charges for water incorrectly metered or billed as follows:
 - (I) When, upon any meter accuracy test, a meter is found to be running slow in excess of error tolerance levels allowed under Rule 5302, the utility may charge for one-half of the under-billed amount for the period dating from the discovery of the meter error to the previous meter test, with such period not exceeding six months.
 - (II) When, upon any meter accuracy test, a meter is found to be running fast in excess of error tolerance levels allowed under Rule 5302, the utility shall refund one-half of the over-billed amount for the period dating from the discovery of the meter error to the previous meter test, with such period not exceeding six months.

²⁹ 723-5-9.2; 723-5-10.2.

³⁰ 723-5-10.3; 723-5-13.3.

³¹ 723-5-26.

- (III) When a meter does not register, registers intermittently, or partially registers for any period, the utility may equitably estimate a charge for the water used based on amounts metered to the customer over similar periods in previous years. The period for which the utility charges the estimated amount shall not exceed six months.
 - (IV) In the event of underbillings not provided for in subparagraphs (I) or (III) of this paragraph, such as an incorrect multiplier, register, or billing error, the utility may charge for the period during which the underbilling occurred, with such period not exceeding six months.
 - (V) In the event of overbillings not provided for in subparagraph (II) of this paragraph, such as an incorrect multiplier, register, or billing error, the utility shall refund for the period during which the overbilling occurred based on available records.
- (b) Each utility shall maintain customer billing records for a minimum of two years.
 - (c) In the event of an overbilling, the customer may elect to receive the refund as a credit to future billings or as a one-time payment. If the customer elects a one-time payment, the utility shall make the refund within 30 days.

5402. Customer Deposits.³²

- (a) A utility shall not require customers who have previously received service within the past two years to make new or additional deposits to guarantee payment of current bills, unless their previous payment records include recent or substantial delinquencies. Customers who have not previously been served by the utility shall be treated uniformly within each rate classification, pursuant to the utility's tariff, so that either all or none of the new customers within such classification will be required to make a deposit.
- (b) No utility shall require any security other than a cash deposit to secure payment for utility services. However, a third-party guarantee of payment may be accepted instead of a cash deposit. In no event shall the furnishing of utility services or extension of utility facilities or any indebtedness in connection therewith result in a lien, mortgage, or other security interest in any real or personal property of the customer, unless such indebtedness has been reduced to judgment.
- (c) A deposit shall not exceed an amount equal to an estimated 90 days' bill of the customer, except in the case of a customer

³² 723-5-11.

whose bills are payable in advance of service, in which case the deposit shall not exceed an estimated 60 days' bill of the customer. The deposit may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities, as provided in the extension policy of the utility's tariffs.

- (d) Each utility receiving deposits shall maintain records showing:
 - (I) The name of each customer making a deposit;
 - (II) The amount and date of the deposit;
 - (III) Each transaction, such as the payment of interest or interest credited, concerning the deposit; and
 - (IV) Each premises occupied by the customer while the deposit is retained by the utility.
- (e) Each utility shall issue a receipt to every customer from whom such deposit is received. However, no utility shall refuse to return a deposit or any balance to which a customer may be entitled solely upon the basis that the customer is unable to produce a receipt.
- (f) The making of a deposit shall not relieve any customer from payment of current bills as they become due, and the utility is not required to apply any deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.
- (g) The utility shall pay simple interest upon each deposit, earned from the date the deposit is received by the utility to the date the customer is paid. The Commission shall periodically set the interest rate by order and at such time intervals as the Commission deems appropriate.

5403. Installment Payments.³³

- (a) A utility shall permit a customer to make installment payments:
 - (I) To pay charges from past billing periods arising solely from events under the utility's control such as meter malfunctions, billing errors, utility meter reading errors, or failures to read the meter, except where the customer refuses to read the meter and it is not readily accessible to the utility. Such installment payments may extend over a period equal in length to that during which the errors were accumulated, and shall not bear interest.

³³ 723-5-10.4; 723-5-13.2; 723-5-13.5; 723-5-13.6.

- (II) If the customer pays at least 10 percent of the amount shown on a notice of discontinuance and enters into an installment payment agreement on or before the expiration date of the notice.
 - (III) If the customer pays at least 10 percent of any amount more than 30 days past due and enters into an installment payment agreement on or before the last day covered by a medical certification. A customer that has already entered but broken an agreement prior to receiving a medical certification must pay all amounts that were due up to that date and resume the installment payment agreement.
 - (IV) If the customer pays at least any collection and reconnection charges and enters into an installment payment agreement, if service has been discontinued, unless the service was discontinued because the customer breached a prior payment agreement.
- (b) Installment payment agreements must include any and all of the following amounts as may be applicable at the time the customer requests a payment agreement:
- (I) The unpaid remainder of the amount shown on the notice;
 - (II) Any amounts not included in the amount shown on the notice which have since become more than 30 days past due;
 - (III) All current charges, contained in any bill which is past due but is less than 30 days past the due date;
 - (IV) Any new charges, contained in any bill which has been issued but is not past due;
 - (V) Any collection fees as provided for in the utility's tariff, whether or not such fees have appeared on a regular monthly bill;
 - (VI) Any deposit, whether already billed, billed in part, or required by the utility's tariff due for discontinuance or delinquency or to establish initial credit, other than those required as a condition of initiating service; and
 - (VII) Any other charges or fees provided in the utility's tariff, whether or not they have appeared on a regular monthly bill, including but not limited to miscellaneous service charges, investigative charges, and insufficient-check charges.
- (c) The utility shall provide the customer with a copy of this rule and a statement describing the payment agreement within 10 days

of entering into a payment agreement. The copy shall include a prominent heading:

YOUR RIGHTS AND RESPONSIBILITIES CONCERNING
INSTALLMENT PAYMENT PLAN ARRANGEMENTS.

- (d) An installment payment plan agreement shall consist of equal monthly installments, for a term selected by the customer not to exceed 6 months. In the alternative, the customer may choose a modified budget billing payment agreement, in which the total due shall be added to the preceding year's total billing to the customer's premises, modified for any base rate or cost adjustment increases. The resulting amount shall be divided and billed in 11 equal monthly budget billing payments, followed by a settlement billing in the twelfth month.
- (e) The first monthly installment payment shall be due, together with the new charges unless the new charges have been made part of the agreement amount, on the due date of the new charges. Succeeding installment payments shall be due, together with the new charges, on the due date of the new charges. Any installment or budget billing payment not paid on the due date of the new charges shall be considered in default. Any new charges which are not paid by the due date shall be considered past due.

5404. Service, Rate, and Usage Information.³⁴

- (a) Each utility shall inform each customer of any change proposed or made in any term or condition of its service which would affect the quality of the service.
- (b) The utility must also provide customers with the following information upon request:
 - (I) A clear and concise summary of the existing rate schedule applicable to each of the major classes of customers for which there is a separate rate;
 - (II) An identification of any classes whose rates are not summarized;
 - (III) A clear and concise explanation of the existing rate schedule applicable to such consumer within 10 days of a customer's request, or within 60 days of the commencement of service if it is a new customer;
 - (IV) A clear and concise statement of the customer's actual consumption of water for each billing period during the prior year, unless such consumption data is not reasonably ascertainable by the utility; and

³⁴ 723-5-9.

- (V) Any other information and assistance as may be reasonably necessary to enable customers to secure safe and efficient service.
- (c) Information provided under this rule must be transmitted through a method which will assure receipt by each customer, such as "bill stuffers" or periodic direct mail.

5405. Meter Reading, Estimated Billing, and Ratepayer Readings.³⁵ Except as provided in this rule, a utility shall render bills based on actual meter readings by utility company personnel.

- (a) If a utility bills on a monthly basis, it may estimate usage of service every other billing month.
- (b) A utility may estimate the bill of a ratepayer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading.
- (c) A utility may estimate the bill of a ratepayer if utility personnel are unable to gain access to obtain an actual meter reading. Similarly, the utility may provide the ratepayer with the opportunity to read the meter and report the usage in lieu of the estimated bill; however, the utility, at least once every 12 months must obtain an actual meter reading to verify the accuracy of the readings, either estimated or ratepayer read.
- (d) If a water company has estimated bills and if the ratepayer or occupant during that period has consumed an amount of water in excess of normal seasonal usage because of a verified leak that could not reasonably have been detected or other unknown loss of water, the ratepayer is not liable for more than 150% of the average amount of water consumed for the corresponding period during the previous year. This provision does not apply when the water utility was unable to gain access.

5406. Discontinuance of Service.³⁶

- (a) No utility shall discontinue the service of any customer for any reason, other than nonpayment, fraud or subterfuge, service diversion, equipment tampering, safety concerns, or exigent circumstances, or discontinuance is ordered by any appropriate governmental authority, or if service, having been already properly discontinued, has been restored by someone other than the utility and the original cause for discontinuance has not been cured.

³⁵ This rule is modeled on the Pennsylvania statute on estimated billings, generally.

³⁶ 723-5-13.

- (b) Service shall not be discontinued for nonpayment of:
- (I) Any amount which has not appeared on a regular monthly bill, or which is less than 30 days past due;
 - (II) Any amount due on another account presently or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred to an account which is for the same class of service, or which the customer has agreed will secure the other account. Any amount so transferred shall be considered "due" on the regular due date of the bill on which it first appears and shall be subject to notice the same as if it had been billed for the first time;
 - (III) Any amount due on any other account on which the customer is or was neither the customer of record nor a guarantor, or any amount due from a previous occupant of the premises, unless the customer is or was obtaining service through fraud or subterfuge, such as obtaining service in the name of another party by an applicant whose account is delinquent;
 - (IV) Any amount due on any account for which the present customer is or was the customer of record, if another person established the account through fraud or subterfuge without the customer's knowledge or consent;
 - (V) Any delinquent amount that is more than two years old, unless the utility can supply detailed billing records from the time the delinquency occurred; or
 - (VI) Any debt except that incurred for service rendered by the utility in Colorado.
- (c) If the utility discovers any connections or devices installed on the customer's premises which would prevent the meter from metering the actual amount of water used, it may:
- (I) Remove or correct such devices or connections and leave written notice at the premises, advising the customer of the violation, the steps taken by the utility to correct it, and that the customer may be billed for any estimated water consumption not properly metered; or
 - (II) Provide the customer written notice that the devices or connections must be removed within 10 days, and that the customer may be billed for any estimated water consumed but not properly metered.
- (d) If the utility discovers evidence that any equipment has been tampered with or service diverted, it must provide the customer written notice of the discovery, the steps the utility will take

to determine whether non-metering of water has or will occur, and that the customer may be billed for any estimated water consumption not properly metered.

- (e) No utility shall discontinue any service for any reason other than safety concerns or exigent circumstances:
- (I) If a customer at any time tenders full payment in accordance with the terms and conditions of the notice of discontinuance to a utility employee authorized to receive payment, including any employee dispatched to discontinue service. Payment of a charge for a service call shall not be required to avoid discontinuance.
 - (II) If a residential customer pays, on or before the expiration date of the notice of discontinuance, at least one-tenth of the amount shown on the notice and enters into an installment payment agreement with the utility, as provided in rule 5403.
 - (III) Between 12 noon on Friday and 8 a.m. the following Monday, or between 12 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday.
 - (IV) If discontinuance would aggravate an existing medical condition or create a medical emergency for the customer or a permanent resident of the customer's household, as evidenced by a written medical certification from a Colorado-licensed physician or licensed health practitioner acting under a physician's authority. A medical certification is valid to prevent discontinuance of service for 60 days. The customer may receive a single 30-day extension by providing a second medical certification prior to the expiration of the original 60-day period. A customer may invoke this subparagraph (e)(IV) only once in any twelve consecutive months.

5407. Notice of Discontinuance.³⁷

- (a) The utility must provide written notice by first class mail or hand delivery at least 10 days in advance of any proposed discontinuance of service, except in cases of broken agreements as provided in section (f) of this rule. The notice must be conspicuous and in easily understood language, and the heading shall contain, in capital letters, the following warning:

THIS IS A FINAL NOTICE OF DISCONTINUANCE OF
UTILITY SERVICE AND CONTAINS IMPORTANT
INFORMATION INVOLVING YOUR LEGAL RIGHTS AND
REMEDIES. PROMPT ACTION IS REQUIRED TO AVOID
DISCONTINUANCE.

³⁷ 723-5-13; Gas rules.

- (b) The body of the notice of discontinuance under section (a) of this rule must advise the customer:
- (I) What particular rule has been violated, if any;
 - (II) The amount past due for utility service, deposits, or other tariffed charges, if any;
 - (III) The date by which full payment must be received to avoid discontinuance;
 - (IV) Whether the utility requires payment of the amount due only in the form of cash or certified funds;
 - (V) That a residential customer may avoid discontinuance of service by paying, on or before the expiration date of the notice, at least one-tenth of the amount shown on the notice and entering into an installment agreement with the utility to pay the remaining past due balance in equal monthly installments, according to rule 5403;
 - (VI) That the customer has the right to a hearing in person, at a reasonable time and place, within 10 days of the date the notice was sent, before the utility's manager or the manager's designee, according to procedures adopted by the utility for such hearings;
 - (VII) How to contact the utility, toll-free, from within the utility's service area, to resolve the matter;
 - (VIII) That the customer has the right to make a grievance to the Commission staff by letter, telephone, or in person; and that the customer has a right to a hearing by filing a formal written complaint with the Commission;
 - (IX) Of the address and telephone number of the Commission's consumer affairs section;
 - (X) That the customer has a right to file a motion for an order to the utility not to disconnect service pending the outcome of the hearing on the complaint, and that the Commission may grant the motion upon such terms as it deems reasonable, including but not limited to the posting of a deposit or bond with the utility or timely payment of all undisputed charges;
 - (XI) That if a residential customer is unable to pay for service as regularly billed, and delivers a medical certification to the utility indicating that discontinuance of service would aggravate an existing medical condition or create a medical emergency for the customer or a permanent resident of the customer's household, that there will not be discontinuance of

service for 60 days from the date of the medical certification with a possible 30-day extension upon delivery of a second medical certification;

- (XII) That if service is discontinued for non-payment, service may be restored if a residential customer pays any reconnection and collection charges as may be specifically required according to the utility's tariff and enters into an installment payment arrangement or the customer provides a medical certification; and
 - (XIII) Of federal, state, and local government agencies which the utility believes may provide customer assistance or benefits relating to utility service.
- (c) The utility shall also provide written notice by first class mail or hand delivery to any third party the customer has designated in writing to receive notices of discontinuance or broken agreement.
 - (d) The terms of an installment payment agreement, including a modified budget billing agreement, must be explained and offered to each residential customer who contacts the utility in response to a notice of discontinuance.
 - (e) Following the issuance of the notice of discontinuance, and at least 24 hours prior to discontinuance, the utility must attempt to give notice of the proposed discontinuance in person or by telephone both to the residential customer (or to an adult member of the customer's household) and to any third party the customer has designated in writing to receive such notices. If the utility attempts to notify the customer in person but fails, it shall leave written notice of the attempted contact and its purpose.
 - (f) If the customer has entered into an installment payment agreement, and defaults or allows a new bill to become past due, the utility shall provide, by first class mail or hand delivery, a written notice, with the following heading:

NOTICE OF BROKEN AGREEMENT

The body of the notice must advise the customer:

- (I) That the utility may discontinue service if it does not receive the monthly installment payment within 10 days after the notice is sent or delivered;
- (II) That the utility may discontinue service if it does not receive payment for the current bill within 30 days after its due date;

- (III) That if service is discontinued, the utility may refuse to restore service until all amounts more than 30 days past due have been paid, together with any collection or reconnection charges; and
 - (IV) That if a residential customer is unable to pay for service as regularly billed, and delivers a medical certification to the utility indicating that discontinuance of service would aggravate an existing medical condition or create a medical emergency for the customer or a permanent resident of the customer's household, that there will not be discontinuance of service for 60 days from the date of the medical certification with a possible 30-day extension upon delivery of a second medical certification.
- (g) The utility is not required to provide notice under this rule in situations involving safety concerns, or exigent circumstances, or if discontinuance is ordered by any appropriate governmental authority, or if service, having been already properly discontinued, has been restored by someone other than the utility and the original cause for discontinuance has not been cured.
- (h) Where the utility knows that the service to be discontinued is used by permanent residents in multi-unit dwellings or a cluster of dwellings, and the utility service is recorded on a single meter used either directly or indirectly by more than one dwelling unit, the utility shall issue notice as required in sections (a) and (b) of this rule, except that:
- (I) The notice period shall be 30 days;
 - (II) The such notice also may include the current bill;
 - (III) The utility shall also shall provide written notice to each individual dwelling unit, stating that a notice of discontinuance has been sent to the party responsible for the payment of utility bills for the dwelling, and that the occupants of the dwelling units may avoid discontinuance by paying the next new bill in full within 30 days of its issuance and successive new bills within 30 days of issuance; and
 - (IV) The utility must post the notice in at least one of the common areas of the multi-unit dwelling.

5408. Restoration of Service.³⁸

- (a) Any service already discontinued must be restored if it was not properly discontinued as provided in rule 5406.

³⁸ 723-5-13; Gas rules.

- (b) Service must be restored within 12 hours, unless prevented by safety concerns, or exigent circumstances, if the customer:
 - (I) Pays in full the amount shown on the notice, plus any deposit and/or fees as may be specifically required by the utility's tariff in the event of discontinuance of service;
 - (II) Pays any reconnection and collection charges specifically required by the utility's tariff, enters into an installment payment agreement and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an agreement;
 - (III) Presents a medical certification, as provided in rule 5406(e) (IV); or
 - (IV) Demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.

5409. Refund Plans.³⁹ Any utility proposing to make a refund, either upon its own initiative or as required by the Commission, shall file an application for approval of the refund plan, containing the following information:

- (a) A detailed description of the proposed refund plan, including the type of utility service involved, the service area involved, and the dollar amount of the proposed refund. The interest rate on the refund shall be the current interest rate in the applicant's customer deposits tariff.
- (b) The date the applicant proposes to start making the refund, which must be within 60 days of the filing of the application, the date by which the refund will be completed, and the means by which the refund is proposed to be made.
- (c) A reference by docket number, decision number and date of any Commission decision requiring the refund or, if the refund is to be made because of receipt of monies by the applicant under the order of another state or federal agency, a copy of the order.
- (d) A statement describing in detail the extent to which the applicant has any financial interest in any other company involved in the refund plan.
- (e) A statement showing accounting entries under the Uniform System of Accounts.
- (f) A statement that if the application is granted, the applicant will file an affidavit establishing that the refund has been made in accordance with the Commission decision.

³⁹ 723-1-58.