

Decision No. C02-324

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-196G

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: March 28, 2002

Adopted Date: March 27, 2002

I. BY THE COMMISSION:

Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding its rules regulating Gas Utilities. The intent of the proposed rules is to repeal and reenact the rules found at 4 *Code of Colorado Regulations* ("CCR") 723-4, 723-8, 723-11, and 723-17. The Commission anticipates reenacting the proposed rules as 4 CCR 723-4.

2. Rules concerning flexible regulation, found at 4 CCR 723-10, are also included in the proposed rules. However, the Commission does not propose to repeal the rules in 723-10 because those rules also govern electric and steam utilities. Rather, the Commission anticipates proposing repeal of the rules in 723-10 as part of future rulemakings.

3. Rules concerning cost allocation are not proposed as part of this rulemaking. Rather, cost allocation rules will be proposed in future rulemakings.

4. Rules concerning appeals of local government land use decisions are proposed to be included in this rulemaking. In Docket No. 01R-485EG, the Commission issued a recommended decision adopting rules on such appeals. Decision No. R02-176. This proposed rulemaking uses the Administrative Law Judge's recommended decision as a template for the proposed rules, even though the Commission has stayed the recommended decision and the 01R-485EG docket has not yet been finalized.

5. 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 rules related to gas utilities; to make the gas rules consistent, to the extent possible, with other Commission rules; to improve administration and enforcement of the gas utility provisions of Title 40 of the Colorado Revised Statutes; and to improve the regulation of gas proceedings before the Commission. A copy of the proposed rules is attached to this notice of proposed rulemaking.

6. The statutory authority for the proposed rules is found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102,

40-3-103, 40-3-104, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, and 40-7-117, C.R.S.

7. 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.

8. Because the proposed rules will result in the repeal of some of the Commission's existing rules regulating gas utilities, interested persons may also submit comments regarding whether specific provisions in the presently existing rules should be retained in the reenacted rules.

9. Coordination of this rulemaking with other imminently planned rulemakings for practice and procedure,

telecommunications, water, 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:

DATES: August 5 & 6, 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 August 5 and 6, 2002 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 27, 2002.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith
Director

JIM DYER

Commissioners

~~THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING THE SERVICE
OF
GAS UTILITIES~~

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

~~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 gas utilities and master meter operators 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, and master meter operations.~~

~~— The statutory authority for these rules can be found at §§ 40-1-103.5, 40-2-108, 40-3-102, 40-3-103, 40-4-101, 40-4-106, 40-4-108, 40-4-109, C.R.S.~~

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

~~— 723-4-1(a) — The following rules shall apply to any person, partnership, cooperative association, non-profit corporation or association, firm, corporation, their lessees, trustees, or receivers appointed by any court, now or hereafter~~

~~engaged in the business of a public utility furnishing gas to domestic, commercial or industrial customers, operating under the jurisdiction of The Public Utilities Commission of the State of Colorado.~~

~~723-4-1(b) 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, impracticable or unnecessary. If, for good cause shown, any utility is permitted a deviation from any of these rules, such modified rules as authorized by the Commission shall be set forth in the filed tariffs of the utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under the laws of this State.~~

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

~~723-4-2(a) The word "Utility" as used in these rules shall be construed to mean any person, partnership, cooperative association, non-profit corporation or association, 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 gas to domestic, commercial or industrial customers in the State of Colorado.~~

[Omitted Material: All the current rules found in 4 CCR 723-4, 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~~

~~GAS COST ADJUSTMENT (GCA) RULES
4 CODE OF COLORADO REGULATIONS (CCR) 723-8~~

~~**BASIS, PURPOSE, AND STATUTORY AUTHORITY.**~~

~~The purpose of these Rules is to: 1) establish a standardized process that enables gas utilities to reflect changes in the cost of gas commodity and Upstream Services in the rates charged for sales gas and gas transportation service; and 2) establish a standardized process for the review of such costs by the Commission and other interested parties. These Rules are promulgated pursuant to the power to regulate public utilities delegated to the Commission by Article XXV of the Colorado Constitution and by §§ 40-2-108, 40-3-102, 40-3-111, and 40-5-103, C.R.S. These Rules are not intended to restrict management's exercise of reasonable judgment in procuring gas commodity or Upstream Services.~~

~~**RULE (4 CCR) 723-8-1. APPLICABILITY.**~~

~~These Rules shall apply to all gas utilities in the State of Colorado engaged in the provision of sales gas and/or gas transportation services subject to the Commission's jurisdiction under the Public Utilities Law, C.R.S. §40-1-101, et seq.~~

[Omitted Material: All the current rules found in 4 CCR 723-8, 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~~

~~RULES GOVERNING GAS PIPELINE SAFETY~~

~~4 CODE OF COLORADO REGULATIONS (CCR) 723-11~~

~~BASIS, PURPOSE, AND STATUTORY AUTHORITY.~~

~~This part prescribes requirements for the reporting of incidents, safety related conditions, and annual pipeline summary data by operators of gas pipeline systems located in the State of Colorado to the United States Department of Transportation and the Safety and Enforcement Section of the Commission.~~

~~— This part does not apply to —~~

~~(a) Gathering of gas outside of the following areas:~~

~~(i) The limits of any incorporated or unincorporated city, town, or village.~~

~~(ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.~~

~~— These rules are adopted by the Commission, acting as agent for the United States Department of Transportation by virtue of the annual submission for certification under 49 U.S.C. § 60105. Under these rules, the State of Colorado enforces the provisions of 49 U.S.C. §§ 60101, et seq., with respect to the intrastate pipeline transportation of gas over which it has jurisdiction under state law. The Commission has authority under § 40-2-115,~~

~~C.R.S. to enter into cooperative agreements with any agency of the United States and to adopt rules to administer and enforce 49 U.S.C. §§ 60101, et seq. The Commission has authority under § 40-2-108, C.R.S. to adopt rules as are necessary for the proper administration and enforcement of Title 40, C.R.S.~~

~~**RULE (4 CCR) 723-11-1. DEFINITIONS.**~~

~~As used in these rules and in the RSPA (Research and Special Programs Administration) Forms referenced in these rules--~~

~~723-11-1.1 "Commission" means the Public Utilities Commission of the State of Colorado.~~

~~723-11-1.2 "Direct Sales Pipeline" means a pipeline from an interstate or intrastate gas pipeline to a direct sales meter or to the connection with a direct sales customer's piping, whichever is farther downstream. A direct sales meter is the meter that measures the transfer of gas to a direct sales consumer purchasing gas for its consumption.~~

~~723-11-1.3 "Gas" means natural gas, flammable gas, gas which is toxic or corrosive, and petroleum gas as defined in § 192.11(e), 49 C.F.R.~~

~~723-11-1.4 "Gathering pipeline" means a pipeline that transports gas from a current production facility to a transmission pipeline or main.~~

~~723-11-1.5 "Incident" means any of the following:~~

~~723-11-1.5.1 An event that involves a release of gas from a jurisdictional pipeline which results in-~~

~~(a) Death, or personal injury necessitating inpatient hospitalization; or~~

[Omitted Material: All the current rules found in 4 CCR 723-11, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

~~DEPARTMENT OF
REGULATORY AGENCIES~~

~~PUBLIC UTILITIES COMMISSION~~

~~GAS TRANSPORTATION RULES~~

~~4 CCR 723-17~~

~~GAS TRANSPORTATION RULES~~

~~1.1 BASIS, PURPOSE, AND STATUTORY AUTHORITY~~

~~The basis and purpose for these rules is to provide guidance to public utilities regarding the Commission's requirements for the transportation of natural gas in intrastate commerce in the State of Colorado. It is the goal of these rules, among other things, to set forth guidelines for the development of rates, terms, and conditions for the provision of natural gas transportation. Such rates, terms, and conditions shall be in the public interest, as determined by the Commission. The principles used to develop such rates, terms, and conditions should be uniformly applied to public utilities.~~

~~The Commission's specific statutory authority to promulgate these rules is found in § 40-2-108, C.R.S.~~

~~1.2 APPLICABILITY~~

~~The provisions of these rules shall apply to the rates, terms, and conditions of transportation by a public utility of natural gas owned by a purchaser. These rules shall not apply to wellhead, gathering, processing, or storage facilities and services.~~

~~1.3 DEFINITIONS~~

[Omitted Material: All the current rules found in 4 CCR 723-17, 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 4
RULES REGULATING GAS UTILITIES**

4 CCR 723-4

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth rules describing the service to be provided by jurisdictional gas utilities and master meter operators to their customers, and describing the manner of regulation over jurisdictional gas utilities, master meter operators, and the services they provide. These 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, master meter operations, transportation service, flexible regulating, cost allocation between regulated and unregulated operations, recovery of gas costs, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, and 40-7-117, C.R.S.

The pipeline safety rules also prescribe requirements for the reporting of incidents, safety-related conditions, and annual pipeline summary data by

operators of gas pipeline systems. Under these rules the Commission acts as an agent for the United States Department of Transportation pursuant to 49 U.S.C. §§ 60105 and 60101.

GENERAL PROVISIONS

4000. Scope and Applicability. All rules in this Part 4, the "4000" series, shall apply to all jurisdictional gas utilities, gas master meter operators, and gas pipeline systems operators, and to all Commission proceedings and operations concerning gas utilities, gas master meter operators, and gas pipeline safety, unless a specific statute or rule provides otherwise. Scope and applicability rules regarding appeals of local government land use decisions are as indicated under Rule 4700; scope and applicability rules regarding pipeline safety are as indicated under Rule 4800.

4001. Definitions. The following definitions apply throughout this Part 4, except where a specific rule or statute provides otherwise:

- (a) "CEAF" means Colorado Energy Assistance Foundation, the nonprofit corporation established for Low-Income Energy Assistance pursuant to § 40-8.5-104, C.R.S.
- (b) "Check-meter" means a meter or other composite measurement device, used by a master meter operator who is exempt from rate regulation, to determine usage of those served, but not for purposes of charging the end users for such usage.¹
- (c) "Cost allocation manual" [**Reserved**].
- (d) "Cubic foot" has the following meanings, as the context requires:²
 - (I) Local Pressure Conditions. For the purpose of measuring gas to a customer at local pressure conditions, a cubic foot is that amount of gas which occupies a volume of one cubic foot under the conditions existing in the customer's meter as and where installed. When gas is metered at a pressure in excess of four ounces per square inch above local atmospheric pressure, a suitable correction factor shall be applied to provide for measurement of gas as if delivered and metered at a pressure of four ounces per square inch above average local atmospheric pressure. A utility may also apply appropriate factors to correct local pressure measurement to standard conditions.
 - (II) Standard Conditions. For testing gas and all other purposes, a cubic foot at standard conditions is that amount of gas, which when saturated with water vapor at a

¹ 723-4-31(a)(4).

² 723-4-19; 723-8-3.22.

temperature of sixty degrees (60°) Fahrenheit and subject to an absolute pressure equal to thirty inches (30") of mercury at thirty-two (32°) Fahrenheit, (14.73 pounds per square inch absolute) occupies a volume of one cubic foot.

- (e) "Curtailement" means the inability of a transportation customer or a sales customer to receive natural gas, due to a shortage of natural gas supply.
- (f) "Dekatherm" or "Dth" means a measurement of gas commodity heat content. One Dekatherm is the energy equivalent of 1,000,000 British Thermal Units (1 MMBtu).
- (g) "Financial elements" **[Reserved]**.
- (h) "Full cost accounting" **[Reserved]**.
- (i) "Gas" means natural gas, flammable gas, manufactured gas, and petroleum or other hydrocarbon gases including propane, or any mixture of gases produced, transmitted, distributed, or furnished by any utility.³
- (j) "Interruption" means a utility's inability to provide transportation to a transportation customer, or inability to serve a sales customer, due to constraints on the utility's pipeline system.
- (k) "Intrastate pipeline" or "IP" means any person engaged in natural gas transportation for compensation to or for another person in intrastate commerce in the State of Colorado using transmission facilities, rather than distribution facilities.⁴ Transmission facilities may also be used to perform distribution functions.
- (l) "Local distribution company" or "LDC" means any person, other than an intrastate pipeline, engaged in local distribution of natural gas and the sale or transportation of natural gas for ultimate consumption.⁵ Distribution facilities may also be used to perform transmission functions.
- (m) "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.

³ 723-4-2(d); 723-11-1.3.

⁴ 723-17-1.3(g).

⁵ 723-17-1.3(h).

- (n) "Master meter" means the meter or other composite measurement device used for billing purposes by a regulated utility.⁶
- (o) "Master meter operator" means a person who purchases gas service from a regulated utility for the purpose of delivery to end users, the aggregate gas usage being measured by a master meter.⁷
- (p) "Mcf" means 1,000 standard cubic feet.
- (q) "MMBtu" means 1,000,000 British Thermal Units, or one Dekatherm.
- (r) "Point of delivery" means that point on a utility's system at which natural gas owned or controlled by a transportation customer leaves the utility's system.⁸
- (s) "Point of receipt" means that point on a utility's system at which natural gas owned or controlled by a transportation customer first enters the utility's system.⁹
- (t) "Purchaser" means the person, including a utility, who has taken title to natural gas.¹⁰
- (u) "Regulated service" **[Reserved]**.
- (v) "Resale" means the reselling of gas service by charging more than the amount billed to the master meter operator by the utility, or including unauthorized charges in the amounts passed on to end users.¹¹
- (w) "Sales customer" means one who purchases natural gas from a utility.¹²
- (x) "Security" means any stock, bond, note, or other evidence of indebtedness with a maturity date of more than 12 months (other than stocks) after the date of issuance, the proceeds which are proposed to be used for the following purposes: acquisition of property; construction, completion, extension or improvement of facilities; improvement or maintenance of service; discharge or lawful refunding of obligations; reimbursement of monies actually expended for these purposes from income, or from any other monies not secured by or obtained from the issuance of securities within

⁶ 723-4-31(a)(3).

⁷ 723-4-31(a)(1).

⁸ 723-17-1.3(I).

⁹ 723-17-1.3(j).

¹⁰ 723-17-1.3(k).

¹¹ 723-4-14(d); 723-4-31(a)(6).

¹² 723-17-1.3(m).

5 years before the filing of an application for approval with the Commission; or any other purpose authorized by the Commission.¹³

- (y) "Seller" means any person who conveys title to natural gas, or otherwise has the legal authority to sell the natural gas to a purchaser.¹⁴
- (z) "Standby capacity" means the daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer.¹⁵
- (aa) "Standby supply" means the daily volumetric amount of natural gas reserved by a utility for the use by a transportation customer should that customer's supply fail.¹⁶
- (bb) "Transportation" means the exchange, fronthaul, backhaul, flow reversal, or displacement of natural gas between a seller and a transportation customer through a pipeline system.¹⁷
- (cc) "Transportation customer" means one who purchases natural gas transportation service from a utility.¹⁸
- (dd) "Unregulated service" **[Reserved]**.
- (ee) "Utility" means a gas corporation as defined in § 40-1-103(1)(a), C.R.S., including an IP or an LDC.

4002. Applications. A gas 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 4100.
- (b) To amend a certificate of public convenience and necessity, as provided in rule 4101.
- (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 4102.
- (d) To amend a tariff on less than statutory notice, as provided in rule 4104.

¹³ 723-1-56(b).

¹⁴ 723-17-1.3(n).

¹⁵ 723-17-1.3(o).

¹⁶ 723-17-1.3(p).

¹⁷ 723-17-1.3(q).

¹⁸ 723-17-1.3(r).

- (e) For flexible regulation, as provided in rule 4109.
- (f) For exemption of a master meter operator from rate regulation, as provided in rule 4307.
- (g) For approval of refund plan, as provided in rule 4409.
- (h) For any other matter provided by statute or rule but not specifically described in this rule.

4003. [Reserved].

4004. Disputes.¹⁹ 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.

4005. Records.²⁰

- (a) Every gas 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 4004.
 - (II) Records concerning interruptions and curtailments of service under rule 4203.
 - (III) Complete records of tests to determine the heating value of gas, pursuant to rules 4201 and 4202, for 2 years from the date of such tests.
 - (IV) All distribution pressure records, and all records or charts made with respect to rule 4208, appropriately annotated, for a period of at least 2 years.
 - (V) Transmission request logs, as required under Rule 4205(f).
 - (VI) Records concerning meters, as required under Rules 4305 and 4306.
 - (VII) Customer billing records, as required under Rule 4401(b).

¹⁹ 723-4-8.

²⁰ 723-1-25(b); 723-1-100; 723-4-3; 723-4-12(e); 723-4-13(b)(7); 723-4-21(a); 723-17-5.1(c); 723-17-6.1(e); 723-17-6.1(f); 723-47-9.

- (b) All tariffs filed with the Commission and applicable to the territory concerned shall be on file at each local office of the utility.
- (c) Each gas utility operating in Colorado shall maintain its books of account and records under the Uniform System of Accounts prescribed for Natural Gas Companies, Classes A and B, and Class C, by the Federal Energy Regulatory Commission (FERC). A utility must maintain its books of accounts and records separately from those of its affiliates.
- (d) Preservation of records shall be pursuant to 18 C.F.R. Part 225, regarding the Preservation of Records of Natural Gas Companies, as incorporated into these rules under Rule 4008(b).

4006. Reports.²¹ Each utility shall provide reports to the Commission as follows:

- (a) Each utility shall file with the Commission, on or before April 30th 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, 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) Within 60 days of the end of each calendar quarter, each utility shall report the total natural gas transported in Mcf or MMBtu and the associated total revenue.
- (d) On or before April 1st of each year, each utility shall provide a summary indicating any costs that the public utility has incurred as a result of sales customers becoming transportation customers.
- (e) Sworn and verified reports relating to deposits and refunds as required by Rules 4402(i) and 4409(c).

²¹ 723-1-25(a)(2); 723-4-13(b)(7); 723-4-13(h); 723-4-16; 723-4-32; 723-17-5.1(a); 723-17-5.1(b); 723-47-6.4.

- (f) Reports providing GCA account 191 balance information required under Rule 4609(b).
- (g) On an annual basis, each utility shall file a report stating the average time taken for service personnel to respond to gas odor calls from customers
 - (I) for the entire area served by the utility, and
 - (II) for each division of the utility assigned to serve a region or portion of the utility's entire service area.
- (h) Reports required under safety rules 4810 through 4817.
- (i) Such special reports as the Commission may require.

4007. [Reserved].

4008. Incorporation by Reference.

- (a) The Commission incorporates by reference the April 1, 2001 edition of 18 C.F.R. Part 201 regarding the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. No later amendments to or editions of 18 C.F.R. Part 201 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) The Commission incorporates by reference the April 1, 2001 edition of 18 C.F.R. Part 225 regarding the Preservation of Records of Natural Gas Companies. No later amendments to or editions of 18 C.F.R. Part 225 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

4100. Certificate Applications.²² 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:

²² 723-4-55.

- (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.
- (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.

4101. Certificate Amendments.²³

- (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 4100.
- (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 4100(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

²³ 723-1-57.

of the applicant's existing operations and general service area.

- (III) The applicant need not respond to Rules 4100(h) and (i).
- (IV) The applicant's response to Rule 4100(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 4100(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 (VII) of this paragraph 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.
 - (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.

4102. Transfers and Mergers.²⁴

- (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 4100, 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;
 - (IV) Facts showing that the transfer is in the public interest,²⁵ 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:

²⁴ 723-1-42; 723-1-55.

²⁵ Current rules use "not contrary to the public interest." However, actual practice is more aligned with the proposed language.

- (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.

4103. Tariffs and Contracts.²⁶ A utility shall keep its current tariffs, contracts, privileges, and gas service agreement forms on file with the Commission. Unless otherwise provided by law all tariffs, contracts, privileges, and gas service agreement forms 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 classifications collected or enforced, or to be collected and enforced, including:

- (a) A description of test methods, equipment, and frequency of testing used to determine the quality and pressure of gas service furnished.
- (b) Specific provisions regarding gas main and service extensions.
- (c) A description of the standard or minimum heating value for gas service provided in conformity with Rule 4202.
- (d) A clear statement describing when 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.
- (e) A statement setting forth the utility's customer deposit requirement policy for establishing service, explaining when a deposit will be required and when it will be returned.
- (f) The utility's transportation service request form, pursuant to Rule 4205(a).

²⁶ 723-1-40; 723-4-11(f); 723-4-14; 723-4-15; 723-4-19; 723-4-30; 723-17-2.2; 723-17-4.2.

- (g) Maximum rates for transportation service. In addition, each utility desiring price flexibility shall include its minimum rates. Maximum rates for transportation must be based on fully allocated cost methods, and must include an allowance for return on allocated rate base equal to the last rate of return authorized by the Commission for the utility. A utility may require separate charges for gas transportation standby capacity, standby supply, administration, services and facilities, and LDC's avoidable purchased natural gas commodity costs.
- (h) Interruption and curtailment criteria, policies, and implementation priorities, in conformity with Rule 4203.
- (i) Terms and conditions for gas transportation, including:
 - (I) Criteria for determining capacity;
 - (II) Nomination requirements;
 - (III) Measurement requirements;
 - (IV) Any gas supply cost provisions;
 - (V) Balancing provisions;
 - (VI) Quality of gas requirements;
 - (VII) Line extension policy; and
 - (VIII) Gas transportation request forms.
- (j) All other rules, regulations, and policies covering the relations of customer and utility.

4104. New or Changed Tariffs.²⁷

- (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

²⁷ 723-1-41; 723-1-43; 723-4-12(c).

providing notice in accordance with rule 1206. The 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 or does not contain the information 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.

4105. Advice Letters.²⁸ 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 and the extent to which customers will be affected by it shall be clearly summarized, along with information demonstrating that the proposed tariff is just and reasonable.

4106. [Reserved].

4107. [Reserved].

4108. Securities.²⁹

- (a) Any utility which derives more than 5 percent of its consolidated gross revenues in Colorado as a public utility, or which derives a lesser percentage if its revenues are earned by supplying an amount of energy which equal 5 percent or more of this State's consumption, must file an application for Commission approval of any proposal to issue, renew, extend, assume, or guarantee any security, or to create any lien on its property within the State of Colorado.

²⁸ 723-1-40.1; 723-4-12(b).

²⁹ 723-1-56.

- (b) A securities application shall contain all of the following data, information, and material, to the extent applicable, either in the application or attached exhibits:
- (I) All information required by paragraphs (a)-(f), (j), (k), (p), and (r) of Rule 4100.
 - (II) A statement describing the applicant's existing operations and general service area.
 - (III) A statement describing in detail the extent the applicant is affiliated with any other utility, including any financial interest.
 - (IV) A statement describing each short-term and long-term indebtedness outstanding on the date of the balance sheet.
 - (V) A statement describing the classes and amounts of capital stock authorized by the articles of incorporation, and the amount by each class of capital stock outstanding on the date of the balance sheet.
 - (VI) A statement of capital structure, showing common equity, long-term debt and preferred stock, if any, and pro forma capital structure on the date of the balance sheet giving effect to the issuance of the proposed securities. Debt and equity percentages to total capitalization, actual and pro forma, shall be shown.
 - (VII) A statement of the amount and rate of dividends declared and paid, or the amount and year of capital credits assigned and capital credits refunded, during the previous four calendar years including the present year to the date of the balance sheet.
 - (VIII) A statement describing the type and amount of securities to be issued, the anticipated interest rate or dividend rate, redemption or sinking fund provisions if any, and a copy of the registration statement, related forms, and preliminary prospectus filed with the Securities and Exchange Commission relating to the proposed issuance.
 - (IX) A statement of proposed uses, including construction, to which the funds will be or have been applied, and a concise statement of the need for the funds.
 - (X) A statement of the estimated cost of financing.
 - (XI) A copy of the resolution of the applicant's board of directors approving the issuance, renewal, extension, assumption, or guarantee of the securities, together with copies of the proposed indenture requirements, the mortgage

note, the amendment to amending loan contract, and the contract for sale of securities.

- (c) The Commission shall publish notice of the application, which shall set a ten-day intervention period and a hearing date. Within three days after the filing of an application to issue, renew, extend, assume, or guarantee a security, or to create a lien on property in Colorado, the utility shall publish notice of the filing of the application in a newspaper of general circulation. The notice shall contain all the following information:
 - (I) The name and address of the utility.
 - (II) A statement of the purpose of the application, including a statement of the effect the application would have upon existing customers if granted.
- (d) The utility shall file with the Commission a copy of the published notice and an affidavit of publication as soon as possible after the filing of the application. The Commission shall not grant the application without a filed copy of the notice and the affidavit of publication.
- (e) The Commission shall give priority to all securities applications, and shall grant or deny them within 30 days after filing, unless the Commission, for good cause shown, enters an order granting an extension and stating fully the facts necessitating the extension.
- (f) The Commission, consistent with the provisions of § 40-1-104, C.R.S., shall approve or disapprove a securities application via written order.
- (g) Unless approved by the Commission, no security shall be used to refund in whole or in part any bond, note, or other evidence of indebtedness having a maturity date more than 12 months after the date of issuance. Any security issued, renewed, extended, assumed, or guaranteed without Commission approval shall be void.

4109. Flexible Regulation.³⁰

- (a) Any utility may file an application with the Commission seeking authority to provide service to a customer or potential customer by contract, without reference to its tariffs. Such an application must contain the following information:
 - (I) All information required by paragraphs (a)-(f), (p), and (r) of Rule 4100.

³⁰ 723-10-1, *et seq.*

- (II) The name of the customer or potential customer.
 - (III) A description of the services which the applicant seeks to provide to a customer or a potential customer.
 - (IV) A statement regarding how the applicant will provide service if it contracts with a customer or potential customer.
 - (V) The facts which the applicant believes satisfy the requirements of § 40-3-104.3(1)(a), C.R.S.
 - (VI) A statement that the applicant has provided copies of the application and contract as required by paragraph (c) of this rule.
- (b) An application must be accompanied by the direct testimony or exhibits to be offered at hearing, unless the applicant believes that it will be uncontested and unopposed. If an exhibit is large or cumbersome the applicant shall file the title of each exhibit and a summary of the information contained in the exhibit, and provide the location of the exhibit where parties may inspect it.
- (c) Any contract filed with an application shall be filed with the Commission under seal pursuant to Rules 1100 - 1102 and § 40-3-104.3(1)(b), C.R.S. The applicant shall furnish a copy of the application and contract to the office of consumer counsel and to any utility then providing service to the customer. The Commission, the office of consumer counsel, and any utility receiving a copy of the contract shall treat the contract as confidential.
- (d) Prefiled testimony or exhibits shall not be modified once filed except for typographical errors or mistakes or where all parties to the proceeding agree to the change. In the event a substantive change is made without the agreement of all parties, the Commission may consider the effect of the substantive change as a basis for a motion to continue in order to allow the Staff of the Commission and any other party a reasonable opportunity to properly address the change.
- (e) Any party desiring to intervene must move to do so within 5 days of the date the utility provides notice.
- (f) In the event a person intervenes in a proceeding initiated under § 40-3-104.3, C.R.S., upon notice to the applicant, either in writing, by facsimile, or by any other method, the applicant shall hand deliver or otherwise provide to the intervenor, copies of all prefiled testimony and exhibits within two days.
- (g) Unless the Commission orders otherwise, the applicant shall publish notice of the application in a newspaper of general

circulation on the same day as the filing of the application. The Commission may, but need not, provide notice of the application.

- (I) The notice provided by the applicant shall contain all the following information:
 - (A) The name and address of the applicant.
 - (B) A statement that the applicant is seeking an order from the Colorado Public Utilities Commission authorizing it to provide service under contract without reference to its tariffs;
 - (C) The name of the proposed customer;
 - (D) A statement that the proposed customer may have the ability to provide its own service or may have competitive alternatives available to it;
 - (E) A general description of the types of services to be affected;
 - (F) A statement of where affected customers may call to obtain information concerning the application;
 - (G) A statement that anyone may file a written objection to the application, but that the mere filing of a written objection will not permit participation as a party in any proceeding before the Commission;
 - (H) A statement that anyone desiring to participate as a party must file a petition to intervene within five days from the date of this notice, and that the intervention must comport with the Commission's Rules Regulating Practice and Procedure;
- (II) Within 3 days of providing notice, the applicant must file with the Commission an affidavit showing proof of publication of notice.
- (h) Should an application be filed which the Commission determines is not complete, the Commission shall notify the applicant within ten days from the date the application is filed of the need for additional information. The applicant may then supplement the application so that it is complete. Once complete, the Commission will process the application, with all applicable timelines running from the date the application is completed.
- (i) The Commission shall issue an order approving or disapproving the application within the time permitted under § 40-3-104.3(1)(b), C.R.S.

- (j) The Commission may require the utility to file an accounting plan according to a specific fully distributed cost allocation methodology which segregates investments, revenues, and expenses associated with utility service provided by a contract from other regulated utility operations, to ensure that such gas services are not subsidized by revenues from other utility operations. If revenues from a service provided by a gas utility under a contract are less than the cost of service, the rates for other regulated utility operations may not be increased to recover the difference. A utility may not provide service under an authorized contract for less than the utility's marginal cost of gas service.
- (k) The utility shall provide final terms of service as specified in § 40-3-104.3 (1)(e), C.R.S.

FACILITIES

4200. Construction, Installation, Maintenance, and Operation. The gas 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.

4201. Instrumentation.³¹ Each utility purchasing gas energy shall install such instruments or meters as may be necessary to furnish full information as to the monthly purchases. Each utility whose gas delivery exceeds 20 million cubic feet per annum shall test the heating value of gas at least once each week, unless the utility purchases gas on a heat value basis, or the wholesaler provides the utility with a record of the heating value of the gas delivered and the wholesaler's tests are made at least once each week.

4202. Heating Value, Purity, and Pressure.³²

- (a) Each utility supplying gas for domestic, commercial or industrial purposes shall establish and maintain in its tariffs either a standard or a minimum heating value for its product, expressed in British Thermal Units per standard cubic foot. Any change in minimum or standard heating value shall include an appropriate adjustment to rates. All records and statements shall be based on tests made under standard conditions, i.e., at 60 degrees Fahrenheit and under a pressure of 30 inches of mercury, or other conditions approved by the Commission.

- (I) The standard heating value shall be the monthly average total heating value determined by tests of gas taken from

³¹ 723-4-21.

³² 723-4-20; 723-4-22; 723-4-23.

such points on the distribution system and at such test frequencies as are reasonably necessary for a proper determination.

- (II) The minimum heating value shall be the lowest monthly average total heating value of gas supplied by the utility in any given service area. No deviation below said minimum shall be permitted.
- (b) The utility shall maintain the heating value of the gas with as little deviation as is practicable and such deviation is limited to the range of 5 percent above to 5 percent below the standard adopted. The utility shall promptly make any readjustment of customer appliances and devices to render proper service under any new standard, without charge to the customers.
- (c) All gas supplied to customers shall be substantially free of impurities which may cause corrosion of mains or piping, or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.
- (d) The utility shall deliver gas at a pressure of 6 inches water column, plus or minus 2 inches water column, measured at the meter outlet, unless operating conditions require a higher delivery pressure. If a higher pressure is required, the utility will require the customer to install appropriate pressure regulating equipment in the customer's lines.

4203. Interruptions and Curtailments of Service.³³

- (a) Each utility shall keep a record of all interruptions and curtailments of service upon its entire system or major divisions thereof, including a statement of the time, duration, and cause of any such interruption or curtailment. Each utility shall, except for stations operated without attendants, also keep a record of the time of starting up or shutting down of the compressing equipment, and the period of operation of all regulators used for the maintenance of constant gas pressure. The utility shall retain all such records for three years.
- (b) A utility must interrupt gas sales and transportation service in accordance with the same system of class-by-class priorities as is applicable to sales customers or transportation customers under the utility's tariffs, including customers who have contracted for standby supply service. A utility must interrupt service within each class on an equitable basis, consistent with system constraints. A utility must interrupt service within a locale on a fair and reasonable basis, consistent with local conditions.

³³ 723-4-3; 723-17-2.4.

- (c) A utility must curtail sales gas service as provided in its tariffs, and shall not make up any shortage by using the transportation customer's supplies without the transportation customer's consent.
- (d) A utility must curtail service to transportation customers who have contracted for standby supply service in accordance with the same system of class-by-class priorities as is applicable to sales customers established by the utility's tariffs. A utility must curtail service within each class on an equitable basis consistent with system constraints. A utility must curtail service within a locale on a fair and reasonable basis, consistent with local conditions.
- (e) A utility may provide any available supply service to gas transportation customers who have not purchased standby supply service from the utility and the experiencing supply shortages, under applicable sales tariffs.

4204. [Reserved].

4205. Gas Transportation Agreements.³⁴

- (a) A utility shall provide a customer requesting transportation with a form, clearly setting forth the information necessary for the utility to determine whether it can provide the requested transportation. Each utility shall file a transportation service request form in its tariff.
- (b) In determining whether capacity is available to provide requested transportation, a utility shall take into account all conventional methods of delivering natural gas through its system, including fronthaul, compression, exchange, flow reversal, backhaul, and displacement. The utility is not required to perform exchanges or displacements over segments of its system which are not physically connected.
- (c) A utility shall process, and approve or reject, every transportation request within 60 days after receiving a written application from a transportation customer. If the utility rejects the request, the utility shall provide written notice of its decision to the customer and the Commission. The notice must detail the reasons for rejection, and explain what changes would make the application acceptable. If the request is approved, the utility shall provide written notification of approval to the customer.
- (d) The utility's customers shall have a right of first refusal for any upstream capacity that the utility has contracted for on another utility or pipeline system when the utility intends to broker, sell, assign, reduce, or relinquish its capacity

³⁴ 723-17-2.2; 723-17-2.7; 723-17-3.2.

entitlement on these other utilities or pipeline systems. Customers may apply for assignment of this upstream capacity by submitting written nominations to the utility.

- (e) All transportation agreements shall contain the following provision:

This agreement, and all its rates, terms and conditions, shall at all times be subject to modification by order of the Commission upon notice and hearing and a finding of good cause therefor. In the event that any party to this agreement requests the Commission to take any action which could cause a modification in the conditions of this agreement, the party shall provide written notice to the other parties at the time of filing the request.

- (f) Each utility shall maintain logs showing all requests for gas transportation, including the identity of the party making the transportation request, the date of the request, the volume requirements, duration, receipt and delivery points, type of service and the disposition of the request. The utility shall retain such logs for 2 years.

4206. Purchases Replaced by Transportation.³⁵

- (a) Any reduction of natural gas purchases by a current sales customer, who replaces said purchases with transportation, proportionately reduces the utility's obligation to provide natural gas to that customer on both a peak day and on an annual volume basis. The customer may retain rights to natural gas supplies by electing to pay for standby capacity service and standby supply service.
- (b) Any reduction of natural gas purchases by a current interruptible sales customer, who replaces said purchases with transportation gas, proportionately reduces the utility's obligation to provide natural gas supplies to that customer on an annual volume basis, unless that customer has elected to pay for standby supply service.
- (c) If a sales customer converts all, or a portion of its service to transportation, and if it does not elect standby supply service, then the customer must reapply for natural gas sales service in the future if it wishes to convert the transportation portion of its service back to sales service. The utility may charge that customer fees equivalent to those charged a new sales customer. The utility has no gas service obligation to those transportation customers who are solely responsible for their own natural gas

³⁵ 723-17-2.6.

procurement, unless those customers have elected to pay for standby supply service.

4207. Anticompetitive Conduct Prohibited.³⁶ A utility shall apply all transportation rates and policies without undue discrimination or preference to its affiliates. Each contract to transport natural gas for a marketing or brokering affiliate of a utility shall be an arm's-length agreement containing only terms which are available to other transportation customers. A utility is prohibited from engaging in anticompetitive conduct, discriminatory behavior, and preferential treatment in transporting natural gas, which includes, but is not limited to:

- (a) Disclosure of confidential information provided by nonaffiliated transportation customers to a marketing or brokering affiliate;
- (b) Disclosure of its own confidential information to any transportation customer unless it is communicated contemporaneously to all current transportation customers;
- (c) Disclosure of information filed with transportation requests to any transportation customer unless it is communicated contemporaneously to all current transportation customers;
- (d) Providing any false or misleading information or failure to provide information regarding the availability of capacity for transportation service;
- (e) Tying an agreement to release gas to an agreement by the transportation customer to obtain services from a marketing or brokering affiliate of the utility or to an offer by the utility to provide or expedite transportation service to its affiliate for the released gas;
- (f) Providing any false or misleading information about gas releases;
- (g) Failing to notify all affiliate brokers and marketers and all transportation customers of gas releases at the same time in the same manner, or otherwise allowing marketing or brokering affiliates preferential access to released gas;
- (h) Lending a marketing or brokering affiliate gas to meet balancing requirements except under terms available to other transportation customers;
- (i) Directing potential customers to the utility's own marketing or brokering affiliate, but the utility may provide a list of all registered gas marketers and brokers, including their affiliates;

³⁶ 723-17-6.1.

- (j) Charging lower rates to a transportation customer conditioned on the purchase of gas from the utility's marketing or brokering affiliate;
- (k) Conditioning the availability of transportation service upon the use of the utility's marketing or brokering affiliate;
- (l) Providing exchange or displacement services to one transportation customer without providing them to others on the same terms and conditions;
- (m) Giving its marketing affiliate preference over nonaffiliated customers in matters relating to transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority;
- (n) Disclosing to its affiliate any information the utility received from a nonaffiliated transportation customer or potential nonaffiliated transportation customer;
- (o) Failing to contemporaneously provide identical gas transportation sales or marketing information it provides to a marketing affiliate, to all potential transportation customers, affiliated and nonaffiliated, on its system; or
- (p) Failing to make discounts available to all similarly situated nonaffiliated transportation customers, comparable to those made to an affiliated marketer.

4208. Distribution Pressure Monitoring.³⁷

- (a) In distribution systems serving 100 or fewer customers, the utility shall semi-annually check distribution pressures by indicating gauges at the district regulator station or other appropriate point in the distribution system.
- (b) In distribution systems serving more than 100 and fewer than 500 customers, the utility shall maintain a continuous recording pressure gauge at its plant, office, district regulator station, or at some other appropriate point in the distribution system.
- (c) In distribution systems serving 500 or more customers, the utility shall maintain one or more additional continuous recording pressure gauges and shall make frequent 24-hour records of the gas pressure prevailing at appropriate points in the system.

4209. - 4299. [Reserved].

³⁷ 723-4-23 (d).

METERS

4300. Service Meters and Related Equipment.³⁸

- (a) Any equipment, devices, or facilities furnished at the expense of the utility or for which the utility bears the expense of maintenance and renewal, including service meters, remain the property of the utility and may be removed by it at any time after discontinuance of service.
- (b) Each service meter shall indicate clearly the cubic feet or other units of service for which charge is made to the customer. In cases where the dial reading of a meter, other than an orifice or other chart type meter must be multiplied by a factor, or factors, or a constant to obtain the units consumed, the factor, factors, or constant shall be clearly marked on the dial or face of the meter.

4301. Location of Service Meters. Meters shall be located so as to be easily accessible for reading, testing and servicing, in accordance with accepted safe practice, and utility standards.

4302. Service Meter Accuracy.³⁹

- (a) Every gas service meter, whether new, repaired, or removed from service for any cause shall, before being installed for the use of a customer, be in good order and shall, except as provided in paragraph (b) of this rule, be adjusted to be correct to within one percent when passing gas at twenty percent of its rated capacity at one-half inch water column differential.
- (b) Rotary displacement type gas service meters in sizes having a rated capacity of more than 5,000 cubic feet per hour at a differential not to exceed two inches water column shall be tested and calibrated at the factory in accordance with recognized and accepted practices and shall be adjusted to be correct within two percent slow and one percent fast when passing gas at 10 percent of its rated capacity and shall be adjusted to be correct within one percent slow and one percent fast when passing gas at 100 percent of its rated capacity.

4303. Meter Testing Equipment and Facilities.⁴⁰

- (a) Each utility shall provide such equipment and facilities as may be necessary to make the tests and provide the service required. Such equipment and facilities shall be available at all reasonable times for inspection by Commission staff.

³⁸ 723-4-10 (a); 723-4-14 (b).

³⁹ 723-4-25 (a).

⁴⁰ 723-4-5; 723-4-15; 723-4-29.

- (b) Each utility having more than 200 meters in service shall maintain one or more suitable gas meter provers of standard design, and shall keep them in proper adjustment so as to register the condition of meters tested within one-half of one percent. Each meter prover must be accompanied by a certificate of calibration indicating that it has been tested with a standard certified by the National Bureau of Standards or other laboratory of recognized standing.

4304. Scheduled Meter Testing.⁴¹ Every service meter must be tested and adjusted before installation to ensure that it registers accurately and conforms with the requirements of Rule 4302. In addition, every service meter must be tested on a periodic basis, as follows:

- (a) Diaphragm type gas service meter in sizes having rated capacity of 800 cubic feet or less per hour at one-half inch water column differential, every 6 years.
- (b) Diaphragm type gas service meter in sizes having a rated capacity of more than 800 cubic feet per hour at one-half inch water column differential, every 5 years.
- (c) Rotary displacement type gas service meter in sizes having a rated capacity of 5,000 cubic feet or less per hour at one-half inch water column differential, every 5 years.
- (d) Rotary displacement type gas service meters in sizes having a rated capacity of more than 5,000 cubic feet per hour at a differential not to exceed two inches water column. The utility shall establish the frequency of testing for a meter of this type and size.
- (e) Orifice meters, not less than once each year.

4305. Meter Testing Upon Request.⁴²

- (a) Each utility furnishing metered gas service shall make a test of the accuracy of any gas service meter upon request of a customer. 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 may establish a tariffed fee schedule for tests within 12 months of a prior test. The utility shall provide a written report of the test results to the customer and maintain a copy on file for at least two years.
- (b) This rule and the schedule of fees apply only when there is a dispute between the customer and the company regarding the accuracy of a meter. If the meter is found to be fast beyond the

⁴¹ 723-4-25.

⁴² 723-4-26; 723-4-27.

limits prescribed in Rule 4302, the fee shall be reimbursed to the customer by the utility.

4306. Records of Tests and Meters.⁴³

- (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.

4307. Master Meter Operators.⁴⁴

- (a) Either upon its own motion or upon the application of any master meter operator ("MMO"), the Commission may exempt such MMO from rate regulation under Articles 1 to 7, C.R.S., if the Commission finds that the MMO has adopted adequate policies and procedures that comply with the following requirements:
 - (I) The MMO does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO.
 - (II) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility. The MMO shall pass on to the end users any refunds, rebates, rate reductions, or similar adjustments ("refunds") it receives from the serving utility.
 - (III) Other conditions deemed necessary by the Commission.
- (b) In passing on refunds to end users, a MMO shall notify its current end users, either by first-class mail with a certificate of mailing, or by inclusion in any monthly or more frequent regular written communication, of any refunds, and that they may claim the refunds within 90 days after receipt of the notice.

⁴³ 723-4-6.

⁴⁴ 723-4-31; 723-4-32.

The MMO shall also notify former customers who were end users during the subject period.

- (c) If the aggregate amount of refunds, remaining unclaimed after 90 days exceeds 100 dollars, the MMO shall contribute such unclaimed amount to the Low-Income Energy Assistance Program fund pursuant to section 40-8.5-104, C.R.S. A MMO may retain any portion of such refunds that rightfully belongs to the MMO.
- (d) An MMO shall pay interest on undistributed refunds at an interest rate of six percent from the time the refund is received by the MMO until it is paid to CEAF.
- (e) On or before July 1 of each year, every MMO shall file a report with the Commission and CEAF containing the following information:
 - (I) Whether the MMO either received a refund from a utility or was in the process of distributing a refund to customers, and with respect to each such refund,
 - (II) The amount and date received;
 - (III) The amount retained by the MMO as a customer in its own right;
 - (IV) The amount returned by the MMO to customers entitled to such refund amounts;
 - (V) All undistributed amounts from the refund, and the calculation of interest on said amounts from the date received by the MMO to the date paid by the MMO to CEAF, or if not yet paid to CEAF;
 - (VI) The date and amount of undistributed amounts, including associated interest, paid by the MMO to CEAF.
- (f) Resale of Gas.⁴⁵ Resale of gas by an MMO exempt from rate regulation is strictly prohibited. A MMO may check-meter tenants, lessees, or other persons to whom ultimately the gas is distributed, for the purpose of reimbursing the MMO by an appropriate allocation procedure, provided the MMO does not receive more than is necessary to pay the master-metered bill. Resale activity is a basis for revocation of an exemption order.

4308. [Reserved].

4309. Meter Reading.⁴⁶ Upon the customer's request, the utility will provide a card or slip showing the date of the most recent reading of the

⁴⁵ 723-4-14 (d).

⁴⁶ 723-4-9 (b); 723-4-10 (b).

customer's meter, and the total usage expressed in cubic feet 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

4400. Billing Information.⁴⁷ 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 10 days subsequent to the mailing or delivery of the bill;
- (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.

4401. Adjustments for Meter and Billing Errors.⁴⁸

- (a) A utility shall adjust customer charges for gas 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 4302, 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 4302, 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.
 - (III) When a meter does not register, registers intermittently, or partially registers for any period, the utility may equitably estimate a charge for the gas used based on amounts metered to the customer over similar periods in

⁴⁷ 723-4-10(c); 723-4-13(c)(1).

⁴⁸ 723-4-28.

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.

4402. Customer Deposits.⁴⁹

- (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. The customer may mail or deliver to the utility the third-party guarantee form, signed by both the customer and the third party guarantor. 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 whose bills are payable in advance of service, in which case the deposit shall not exceed an estimated 60 days' bill of the

⁴⁹ 723-4-11; 723-4-32.

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.
- (h)
 - (I) All utilities shall pay all unclaimed moneys, as defined in § 40-8.5-103(5), C.R.S., plus associated interest, that remains unclaimed for more than two years to CEAF. "Unclaimed moneys" shall not include undistributed refunds for overcharges subject to other statutory provisions and credits to existing customers from cost adjustment mechanisms.
 - (II) Moneys shall be deemed unclaimed and presumed abandoned when left with the utility for more than two years after termination of the services for which the deposit or advance was made, or for more than two years after the deposit or advance becomes payable to the customer pursuant to a final order of the Commission establishing the terms and conditions for the return of such deposit or advance and the utility has made reasonable efforts to locate the customer.

- (III) A utility must pay interest on a deposit from the time it receives a security deposit, or from the time a construction advance is deemed owed to the customer pursuant to the utility's extension policy, until it is paid into CEAF. If a deposit is timely paid to CEAF, the interest rate shall be 6%. If a deposit is not timely paid, the interest rate shall be 12%.
- (IV) A utility shall resolve all inquiries regarding a customer's undistributed refund or unclaimed funds, and shall not refer such inquiries to CEAF.
- (i) On or before July 1 of each year, each utility shall file a report with the Commission, with a copy to CEAF for the preceding calendar year providing the following information:
 - (I) Stating the amount of deposits and advances, and associated interest, attributable to amounts received from customers associated with security, new connections, new construction, or new pipelines under the utility's extension policies or tariffs; and
 - (II) Payments by the utility to CEAF of unclaimed deposits and advances associated with security, new connections, new construction, or new pipelines under the utility's extension policies or tariffs.

4403. Installment Payments.⁵⁰

- (a) A utility must 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.
 - (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

⁵⁰ 723-4-10(e); 723-4-13(b)(7); 723-4-13(e); 723-4-13(f).

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.
- (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.

4404. Service, Rate, and Usage Information.⁵¹

- (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 or degree-day adjusted consumption of gas for each billing period during the prior year, unless such consumption data is not reasonably ascertainable by the utility; and
 - (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.

4405. Itemized Billing Components.⁵² Each utility must provide itemized gas cost information to all customers commencing with the first complete billing cycle in which the new rates are in effect. The information may be provided in the form of a bill insert or a separate mailing. The information provided must include the following:

⁵¹ 723-4-9.

⁵² 723-4-10(e); 723-4-10(f).

- (a) For transportation customers,
 - (I) The per-unit and monthly local distribution company costs billed to the customer; and
 - (II) The per-unit and monthly gas cost adjustment transportation costs, if applicable.
- (b) For all other customers,
 - (I) The per-unit and monthly local distribution company costs billed to the customer;
 - (II) The per-unit and monthly gas commodity costs for that customer; and
 - (III) The per-unit and monthly costs of upstream services for that customer.

4406. Discontinuance of Service.⁵³

- (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.
- (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

⁵³ 723-4-13(a); 723-4-13(b); 723-4-13(c); 723-4-13(f).

- 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, including any energy-consuming devices connected on the line side of the utility's meter, which would prevent the meter from registering the actual amount of energy 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 energy consumption not properly registered; 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 energy consumed but not properly registered.
- (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-registration of energy has or will occur, and that the customer may be billed for any estimated energy consumption not properly registered.
- (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 343.

- (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 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 rule 346(e)(IV) only once in any twelve consecutive months.

4407. Notice of Discontinuance.⁵⁴

- (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.

- (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;

⁵⁴ 723-4-13(b); 723-4-13(e).

- (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 4403;
- (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 agreement 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:

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) Such notice also may include the current bill;
 - (III) The utility shall also 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.

4408. Restoration of Service.⁵⁵

- (a) Any service already discontinued must be restored if it was not properly discontinued as provided in Rule 4406.
- (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 4406(e) (IV); or

⁵⁵ 723-3-13(e); 723-3-13(f).

- (IV) Demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.

4409. Refund Plans.⁵⁶

- (a) 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:
- (I) 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 deposits tariff.
 - (II) 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.
 - (III) 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.
 - (IV) A statement describing in detail the extent to which the applicant has any financial interest in any other company involved in the refund plan.
 - (V) A statement showing accounting entries under the Uniform System of Accounts.
 - (VI) 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's decision.
- (b) All utilities shall pay 90% of all undistributed balances, plus associated interest, to CEAF. A refund is deemed undistributed if, after good faith efforts, a utility is unable to find the person entitled to a refund within the period of time fixed by the Commission in its decision approving the refund plan.
- (I) A utility must pay an undistributed refund into CEAF within four months of the time the refund is deemed undistributed pursuant to the refund plan approved by the Commission. A utility must pay interest on undistributed refunds from the time it receives the refund until it is paid into CEAF. If

⁵⁶ 723-1-58; 723-4-32.

the refund is timely paid into CEAF, the interest rate shall be 6%. If the refund is not timely paid, the interest rate shall be 12%.

(II) Whenever a utility makes a refund, it shall provide written notice to those customers that it believes may be MMOs. The notice shall contain:

(A) the definition of MMO, as defined in these rules; and

(B) a statement regarding an MMO's obligation

(i) to notify its end users of their right to claim, within 90 days, their proportionate share of the refund, and

(ii) after 90 days, if the unclaimed balance exceeds \$100, to remit the unclaimed balance to CEAF.

(III) A utility shall resolve all inquiries regarding a customer's undistributed refund or unclaimed funds, and shall not refer such inquiries to CEAF.

(c) On or before July 1 of each year, each utility shall file a report with the Commission for the preceding calendar year stating whether the utility made or was making any refunds, stating the amounts and interest associated with any such refunds, and giving a brief summary of what gave rise to the refund. The utility shall also provide CEAF with a copy of the report.

UNREGULATED GOODS AND SERVICES

4500. Disclosure of Unregulated Goods and Services.⁵⁷ Whenever a utility engages in the provision or marketing of goods or services that are not subject to Commission regulation, or the utility's name or logo is used in connection with the provision of such unregulated goods and services, there must be conspicuous, clear, and concise disclosure to prospective customers that such goods and services are not regulated by the Commission. Such disclosure to prospective customers shall be included in all advertising or marketing materials, proposals, contracts, and bills for unregulated goods and services, regardless of whether the utility provides such goods or services directly or through a division, subsidiary, or affiliate.

⁵⁷ 723-47-8.1.

4501. Cost Allocation Principles [Reserved].

4502. Cost Allocation Manuals [Reserved].

GAS COST ADJUSTMENT AND PRUDENCE REVIEW

4600. Overview and Purpose. These rules are used to revise gas rates on an expedited basis. These Rules provide instructions for the filing of: (1) gas cost adjustment ("GCA") applications to reflect changes in the cost of gas commodity and upstream services in the rates charged in the cost of gas sales and gas transportation services; (2) annual gas purchase plan ("GPP") submittals; and (3) annual gas purchase reports ("GPR"). The purpose of the GCA is to enable utilities, on an expedited basis, to reflect increases or decreases in gas costs, such as the cost of the gas commodity and upstream services. The purpose of the GPP is to describe the utility's plan for purchases of gas commodity and upstream services in order to meet the forecasted demand for sales gas service and gas transportation service during each month of the gas purchase year. The purpose of the GPR is to present the utility's actual purchases of gas commodity and upstream services during each month of the gas purchase year. The Commission shall use information provided in the GPR to make an initial evaluation of the prudence of the utility's actual costs of purchasing gas commodity and upstream services during the gas purchase year.

4601. Special Definitions. The following special definitions apply only to rules 4600 - 4609:

- (a) "Account No. 191" means an account under the Federal Energy Regulatory Commission System of Accounts used to accumulate actual gas supply costs, and corresponding actual revenues in a given period, such as a gas purchase year, resulting in a net under- or over-recovery to be amortized in the next GCA effective period.
- (b) "Base gas cost" means a rate component, expressed in at least the accuracy of one mil (\$0.001) per Mcf or Dth, used in the calculation of the GCA which reflects the cost of gas commodity and upstream services included in the utility's base rates for sales gas and gas transportation service.
- (c) "Base rates" means the utility's currently effective rates for sales gas and gas transportation service as authorized by the Commission in the utility's last general rate case.
- (d) "Current gas cost" means a rate component of the GCA, expressed in at least the accuracy of one mil (\$0.001) per Mcf or Dth, which reflects the cost of gas commodity and upstream service projected to be incurred by the utility during the GCA effective period.

- (e) "Deferred gas cost" means a rate component of the GCA, expressed in at least the accuracy of one mil (\$0.001) per Mcf or Dth, designed to amortize over the GCA effective period the under- or over-recovered gas costs reflected in the utility's account No. 191 or other appropriate costs for a defined period such as a gas purchase year.
- (f) "Forecasted design peak day quantity" means the total quantity of gas commodity anticipated to be required to meet maximum sales gas and gas transportation service demand on the utility's system on a peak day.
- (g) "Forecasted gas commodity cost" means the cost of gas commodity, including appropriate adjustments for storage gas injections and withdrawals and exchange gas imbalances, projected to be incurred by the utility during the GCA effective period, determined by using forecasted gas purchase quantity and forecasted market prices.
- (h) "Forecasted gas purchase quantity" means the quantity of gas commodity the utility anticipates it will purchase during the GCA effective period, based upon the forecasted sales gas quantity, adjusted for system gas loss, use, or other anticipated variances.
- (i) "Forecasted market prices" means index prices, fixed prices or other gas contracting price options used in the calculation of the forecast gas commodity cost.
- (j) "Forecasted sales gas quantity" means the quantity of gas commodity projected to be sold by the utility during the GCA effective period, based upon the normalized, historic quantity of gas commodity sales, adjusted for anticipated changes.
- (k) "Forecasted upstream service cost" means the total cost of upstream services projected to be incurred by the utility during the GCA effective period.
- (l) "Gas commodity throughput" means the amount of gas commodity flowing through the utility's jurisdictional natural gas facilities.
- (m) "Gas cost adjustment ('GCA')" means a gas rate adjustment to reflect increases or decreases in gas costs, such as the cost of gas commodity or upstream services.
- (n) "GCA effective period" means the period of time that the GCA rate change is intended to be in effect before being superseded upon the effective date of the next scheduled GCA. For annual GCAs, the 12 month period begins October 1 or November 1, pursuant to Rule 4602.

- (o) "Gas purchase plan ('GPP')" means a submittal that describes the utility's planned purchases of gas commodity, and upstream services to be used to meet sales gas and gas transportation demand.
- (p) "Gas purchase report ('GPR')" means a report to be filed with the Commission that describes the utility's actual purchases of gas commodity and upstream services in order to meet sales gas and gas transportation demand.
- (q) "Gas purchase year" means a twelve-month period from July 1 through June 30.
- (r) "Gas transportation service" means the delivery of gas commodity on the utility's pipeline system pursuant to any of the utility's gas transportation rate schedules on file with the Commission.
- (s) "Index price" means a published figure identifying a representative price of gas commodity available in a geographic area during a specified time interval (i.e., daily, weekly, or monthly).
- (t) "Mil" means one-tenth of one cent, (\$0.001).
- (u) "Normalized" means the process of adjusting gas quantities to reflect normal historic temperature as defined by the National Oceanic and Atmospheric Administration ("NOAA").
- (v) "Peak day" means a defined period (such as a 24 hour period, or three consecutive day average) during which gas commodity throughput is at its maximum level on the utility's system.
- (w) "Receipt point/area" means that point or group of points in a discrete geographic area, such as a supply basin, hub, or market area, where the utility acquires title to the gas commodity purchased.
- (x) "Sales gas service" means the regulated, sale of gas commodity by the utility to customers on the utility's jurisdictional gas distribution system.
- (y) "Service level" means the type or level of gas supply service contracted for by the utility based upon the respective obligations of the supplier to deliver and sell, and the utility to take and purchase gas commodity. For example, a "base load" service level would require the supplier to deliver and sell gas at a specified contract quantity for a specified period of time; whereas a "swing" service level would require the supplier to deliver and sell quantities of gas within a range of minimum and maximum contract quantities for a specified period of time.
- (z) "Upstream services" means all transmission, gathering, compression, balancing, treating, processing, storage and like

services performed by others under contract with the utility for the purpose effectuating delivery of gas commodity to the utility's jurisdictional natural gas facilities.

4602. Schedule. Utilities subject to rules 4600 - 4609 shall make the required filings pursuant to the following schedule:

- (a) October 1 filing schedule. Public Service Company of Colorado, Kinder Morgan, Inc., Rocky Mountain Natural Gas Company, and Peoples Natural Gas Company shall file annual GCA applications with an effective date of October 1 with the Commission. Additional GCA applications may also be filed as necessary. The GPR, for the preceding gas purchase year in which a GPP was filed, shall be filed as a separate filing at the same time as the annual GCA application to be effective October 1. The GPP submittal shall be filed annually on or before June 1 for the next gas purchase year beginning July 1.
- (b) November 1 filing schedule. Greeley Gas Company, Eastern Colorado Utility Company, ComFurT Gas Company, and Colorado Natural Gas Company shall file annual GCA applications with an effective date of November 1 with the Commission. Additional GCA applications may also be filed as necessary. The GPR, for the preceding gas purchase year in which a GPP was filed, shall be filed as a separate filing at the same time as the annual GCA application to be effective November 1. The GPP submittal shall be filed annually on or before June 1 for the next gas purchase year beginning July 1.

4603. Gas Cost Adjustments.

- (a) GCA filing requirements. The utility shall file GCAs in the form of an application that complies with Rules 4100 and 4604. The GCA application shall be filed pursuant to the schedule provided in Rule 4602. Utilities shall file GCA applications not less than two weeks in advance of the proposed effective dates to allow for adequate investigation by the Commission. Exhibits 2, 3, 5 and 6, as listed in Rule 4604, shall also be provided electronically, utilizing spreadsheet software that is compatible with software being used by the Commission Staff. If the projected gas costs, such as the cost of gas commodity or upstream services, changes from those used to calculate the currently effective current gas cost, or if a utility's deferred gas cost balance increases or decreases sufficiently, the utility may file an application to revise its currently effective GCA to reflect such changes, provided that the resulting change to the GCA equates to at least one cent (\$0.01) per Mcf or Dth.
- (b) Applicability of the GCA. The GCA shall be applied to all utility sales gas rate schedules. Utilities engaged in the provision of gas transportation service may calculate a GCA that may be applied to transportation gas rate schedules in order to reflect appropriate costs, such as the cost of pipeline balancing or back-up supply or other similar services acquired on behalf of

gas transportation customers. Absent a Commission decision, utilities engaged in the provision of gas transportation service shall not be required to calculate a transportation GCA factor.

- (c) Interest on under- or over-recovery. The amount of net interest accrued on the average monthly balance in account No. 191 (whether positive or negative), determined by multiplying the monthly balance by an interest rate equal to the Commission authorized customer deposit rate for gas utilities. If net interest is positive, it will be excluded from the calculation of the deferred gas cost.
- (d) Price Volatility Risk Management Costs. Costs related to gas price volatility risk management for jurisdictional gas supply may be included for recovery through the GCA, if allowed by tariffs, subject to the prudence review standard.
- (e) Calculation of the GCA. The GCA shall be calculated to at least the accuracy of one mil (\$.001) per Mcf or Dth pursuant to the following formula:

$$\begin{aligned} \text{GCA} = & \text{(current gas cost + deferred gas cost)} \\ & - \text{(base gas cost)} \end{aligned}$$

4604. Contents of GCA Applications. All GCA applications shall contain exhibits 1 through 9. Exhibits 10 through 12 shall be filed with the annual GCA application. The utility shall organize the exhibits in a manner that specifically references, and responds to, the requirements contained in each of these Rules. Cross-referenced and footnoted workpapers fully explaining the amounts shown in each exhibit shall also be provided. Additionally, all GCA applications shall cross-reference the docket numbers of the associated GPP submittals. When preparing exhibits 10 through 12, the utility shall calculate rate base, net operating earnings, capital structure, and cost of capital in conformance with the regulatory principles authorized by the Commission in the utility's most recent general rate case, including all required pro forma adjustments. Additionally, the utility shall provide an explanation of all pro forma adjustments.

- (a) GCA Exhibit No. 1 - GCA Summary. This exhibit shall illustrate all of the following:
 - (I) The impact the utility's currently effective GCA has on each sales gas customer class and, when applicable, the gas transportation rate class from a total dollar and mil (\$.001, minimum) per Mcf or Dth basis.
 - (II) The impact the utility's proposed GCA has on each sales gas customer class and, when applicable, gas transportation rate class on a total dollar and mil (\$.001, minimum) per Mcf or Dth basis.

(III) The percent change in total bill for a customer of average usage for each sales gas customer class. This percent change in total bill calculation shall include an itemization of the monthly service and facility charge, base rates and GCA commodity components, and all other tariff charges on the customer bill.

(b) GCA Exhibit No. 2 - Current Gas Cost Calculation. This exhibit shall contain the calculation of the current gas cost and shall provide month-by-month information with respect to the forecasted gas commodity cost, forecasted gas purchase quantity, forecasted market prices, forecasted upstream service cost, and forecasted sales gas quantity.

(I) The utility shall calculate current gas cost at least to the accuracy of the nearest mil (\$0.001) per Mcf or Dth according to the following formula:

$$\text{current gas cost} = \frac{(\text{forecasted gas commodity cost} + \text{forecasted upstream service cost})}{\text{forecasted sales gas quantity}}$$

(II) The utility shall present all such information in a format comparable with, and corresponding to, the information forecasted in the utility's GPP submittal, as required pursuant to Rule 4606.

(c) GCA Exhibit No. 3 - Deferred Gas Cost Calculation. This exhibit shall contain the calculation of deferred gas cost and shall provide month-by-month information detailing the activity in account No. 191, interest on under- or over-recovery, and all other included gas costs. The utility shall calculate deferred gas cost as the aggregate total of the under- or over-recovered gas costs reflected in the utility's account No. 191, or other approved gas costs, recorded at the close of business for each month of the period at issue, such as the previous gas purchase year, plus interest on under- or over-recovery (if net amount is negative), divided by forecasted sales gas quantity. The utility shall calculate deferred gas cost at least to the accuracy of the nearest mil (\$0.001) per Mcf or Dth. Each cost a utility desires to be included in the deferred gas cost calculation shall be itemized and clearly identified and itemized for applicability to the period at issue. In its annual GCA applications the utility shall reflect actual deferred costs for the most recent period ending June 30, or as otherwise approved by the Commission.

(d) GCA Exhibit No. 4 - Current Tariff. This exhibit shall contain the tariff pages which illustrate the gas cost components of the utility's currently effective rates for sales gas service and, where applicable, gas transportation service.

- (e) GCA Exhibit No. 5 - Forecasted Gas Transportation Demand. This exhibit applies only to utilities that have a GCA component within their authorized rates for gas transportation service. This exhibit shall provide the following information, with all demand forecast information provided on a Mcf or Dth basis:
 - (I) a forecast of gas commodity throughput attributable to gas transportation service for each month of the GCA effective period; and
 - (II) a forecast of firm backup supply demand quantities under the utility's firm gas transportation service agreements for each month of the GCA effective period.
- (f) GCA Exhibit No. 6 - Current Gas Cost Allocations. This exhibit shall fully explain and justify the methodology used to:
 - (I) allocate the costs associated with the gas commodity and upstream services to each specific sales gas customer class and, where applicable, gas transportation customer rate class; and
 - (II) derive the amount of the GCA applied to each specific sales gas customer class and, where applicable, gas transportation customer rate classes.
- (g) GCA Exhibit No. 7 - Customer Notice. This exhibit shall provide the form of notice to customers and the public concerning the utility's proposed GCA change. In its customer notice for each sales gas customer class the utility shall include:
 - (I) current and proposed rates;
 - (II) percentage changes for an average annual total bill;
 - (III) a projected peak winter month total bill; and
 - (IV) a statement that it also filed a gas purchase report for the period specified.
- (h) GCA Exhibit No. 8 - Components of Delivered Gas Cost. This exhibit shall detail the itemized rate components of delivered gas cost to the customer (rate), per Rule 4405.
- (i) GCA Exhibit No. 9 - Proposed Tariff. This exhibit shall contain the tariff sheets proposed by the utility to reflect the proposed GCA change.
- (j) GCA Exhibit No. 10 - Rate Base. This exhibit shall calculate the used and useful rate base assets employed by the utility for Commission-regulated gas operations for the most recently completed 12-month period ending June 30.

- (k) GCA Exhibit No. 11 - Net Operating Earnings. This exhibit shall calculate the utility's net operating earnings for Commission-regulated gas operations during the most recently completed 12-month period ending June 30.
- (l) GCA Exhibit No. 12 - Capital Structure and Cost of Capital. This exhibit shall calculate the following information for the most recently completed 12-month period ending June 30:
 - (I) the utility's capital structure for Commission-regulated gas operations;
 - (II) the utility's cost of long-term debt and preferred equity;
 - (III) the utility's cost of common equity; and
 - (IV) the utility's weighted average cost of capital.

4605. Gas Purchase Plans.

- (a) GPP filing requirements. The utility shall file its GPP as a "Submittal for Determination of Completeness of GPP". This filing shall include the docket caption: "In the matter of Gas Purchase Plans and Gas Purchase Reports for [utility] for the gas purchase year from July 1, [year] through June 30, [year]." The utility shall file an original and ten copies. In the GPP, the utility shall submit to the Commission the utility's:
 - (I) forecasted quantity of gas to be purchased over the ensuing gas purchase year for each service level;
 - (II) forecasted pricing for each receipt point/area; and
 - (III) portfolio management plan.
- (b) Commission procedures for processing filings. Upon receipt of a GPP filing, the Commission shall assign a docket number and shall review the submittal solely for completeness, *i.e.*, compliance with the information requirements of these rules. The Commission shall not hold a hearing on the substance or approval of the GPP, entertain interventions by interested parties, require the filing of testimony and other exhibits, permit discovery, and shall not render a decision approving or disapproving the substantive information contained in this filing.
- (c) Review timelines. Staff of the Commission shall review the submittal and provide written notification of any deficiencies to the utility within 15 calendar days. The utility shall file the requested information, or a written statement indicating that the utility believes the additional information is not required, within 15 calendar days after the date of the Staff notification. Upon receipt of final information, or written statement, Staff will place the submittal on the agenda for consideration at the

next available Commissioners' weekly meeting. If the Commission fails to mail its determination on completeness on the status of the submittal within 15 calendar days of receipt of final information or written statement, the submittal shall automatically be deemed complete.

- (d) Utilities with multiple GCA rate areas. A utility with more than one GCA rate area in Colorado shall provide a separate GPP for each GCA rate area. These GPPs may be filed in a single submittal.
- (e) GPP no longer reflects market conditions. The utility shall file a new GPP within 30 days if it determines that the currently effective GPP no longer reflects market conditions or the utility's planned purchasing practices.

4606. Contents of the GPP. A GPP submittal shall contain the following exhibits. The utility shall organize exhibits in a manner that specifically references, and responds to, the requirements contained in each of these Rules. Cross-referenced and footnoted work-papers fully explaining the amounts shown in each exhibit shall also be provided.

- (a) GPP Exhibit No. 1 - Gas Purchase Schedule. This exhibit shall provide a forecast of the specific gas commodity supplies, segregated by receipt point/area, that the utility plans to purchase in order to meet forecasted sales gas demand during each month of the applicable gas purchase year.
- (b) GPP Exhibit No. 2 - Market Pricing Description. For each specific receipt point/area, this exhibit shall provide an estimate of applicable ranges of forecast index prices, short-term fixed prices (one-year, or other appropriate term), and other relevant pricing options, as applicable to the portfolio management plan described in GPP exhibit 3.
- (c) GPP Exhibit No. 3 - Portfolio Management Plan. This exhibit shall provide a plan stating how the utility plans to manage its gas supply portfolio for the gas purchase year. This exhibit shall also include a description and analysis of the options the utility considered or will consider, and the steps the utility has taken or will take to reduce customers' risk of gas price volatility for the gas purchase year. To the extent a utility proposes to use gas price volatility risk management tools, this exhibit shall include a description of the utility's policy for implementing such risk management tools.
- (d) GPP Exhibit No. 4 - Forecasted Upstream Service Costs. This exhibit shall provide the following information for each month of the applicable gas purchase year:
 - (I) an itemized list of all upstream services, by provider and service level or rate schedule, and associated costs the

utility expects to purchase in order to meet sales gas and gas transportation demand;

- (II) a comparison of forecasted design peak day quantity with all sources of delivery capacity available to the utility, including forecasted upstream services, forecasted gas commodity to be purchased directly into the utility's pipeline system (*i.e.*, city gate purchases) on a firm basis, and the utility's own gas storage facilities;
- (III) a comprehensive explanation of the utility's forecasted level of planned upstream service purchases; and
- (IV) forecasted capacity release volumes and revenues for upstream services.

4607. Gas Purchase Reports.

- (a) GPR filing requirements. The utility shall file a GPR under the previous year's GPP Docket number (filed approximately 15 months previously), as a separate filing, at the same time as the annual GCA application. The utility shall file an original and ten copies shall be filed. Specific exhibits or other information may be filed under seal.
- (b) Prudence review process. Based on the initial evaluation of the GPR, the Commission may initiate a prudence review hearing. It shall initiate this hearing by written order within 120 days of the filing of the GPR. The prudence review may result in tariff or rate changes that could affect different classifications of customers.
- (c) Prudence review standard. For purposes of GCA recovery, the Commission's standard of review to be utilized in assessing the action (or lack of action) of a utility in a specific gas purchase year shall be whether the action (or lack of action) of a utility was reasonable in light of the information known, or which should have been known, at the time of the action (or lack of action).
- (d) Burden of proof. If the Commission elects to hold a hearing, the utility shall have the burden of proof and the burden of going forward to establish the reasonableness of actual gas commodity and upstream service costs incurred during the review period. The utility shall file its testimony and exhibits supporting gas cost recovery for the gas purchase year at issue, to meet the Prudence Review Standard. The testimony shall be filed in question-and-answer format, not later than 15 days after the expiration of the intervention period established by the Commission for such hearing.

4608. Contents of the GPR. A GPR shall contain the following exhibits. The utility shall organize the exhibits in a manner that specifically

references, and responds to, the requirements contained in each of the Rules. The utility shall also present all such information in a format comparable with, and corresponding to, the information forecasted in the utility's GPP submittal as required pursuant to Rule 4606 and GCA application pursuant to Rule 4604. Cross-referenced and footnoted work-papers fully explaining the amounts shown in each exhibit shall also be provided. All underlying support documentation and work papers shall be made available. Additionally, the utility shall provide an explanation of, and justification for, any material deviations from its GPP.

- (a) GPR Exhibit No. 1 - Actual Gas Commodity Purchases. This exhibit shall provide, in a format comparable to the information provided in GPP exhibit 1, the quantities of, and actual invoice costs of, specific gas commodity supplies, segregated by receipt point/area that the utility purchased in order to meet actual sales gas and gas transportation demand during the peak day and for each month of the gas purchase year.
- (b) GPR Exhibit No. 2 - Description of Actual Market Prices. This exhibit shall provide, in a format comparable to the information provided in GPP exhibit 2, actual index prices, short-term fixed prices (one-year, or other appropriate term), and other relevant pricing options for each specific receipt point area, as applicable to the portfolio management plan described in GPP and GPR exhibits 3.
- (c) GPR Exhibit No. 3 - Actual Portfolio Purchases. This exhibit shall provide, in a format comparable to the information provided in GPP exhibit 3, a comparison of the utility's portfolio management plan and the results actually achieved through the implementation of this plan or modification thereto, in order to demonstrate the prudence of actual portfolio purchases, in accordance with the standard of review specified in Rule 4607. This exhibit shall include a detailed itemization of gas price volatility risk management costs, including a projection of such costs, if applicable.
- (d) GPR Exhibit No. 4 - Actual Upstream Service Costs. This exhibit shall provide, in a format comparable to the information provided in GPP exhibit 4, the following information for each month of the gas purchase year:
 - (I) an itemized list of the upstream services the utility actually purchased in order to meet sales gas and gas transportation demand;
 - (II) an itemized listing of the specific costs the utility incurred to purchase upstream services;
 - (III) actual peak day demand experienced by the utility during the gas purchase year; and

(IV) an itemized list of capacity release volumes and revenues.

4609. General GCA Provisions.

- (a) For each exhibit filed by the utility as confidential under Rules 4600 - 4609, the utility shall provide, at a minimum, a version of the exhibit with publicly available information.⁵⁸
- (b) Each utility shall monitor the net under- or over-recovery balance in account No. 191 on a monthly basis. On a quarterly basis, or as otherwise established individually for a utility, each utility shall provide a report to the Commission within 30 days of the end of each quarter stating the account No. 191 balance calculation for each rate area. Reports shall include the account No. 191 balance information specified in GCA Exhibit 3 and shall be filed under one common docket number, established by the Commission to receive account No. 191 balance filings from all utilities. If the utility identifies a significant net under- or over- recovery balance during the gas purchase year, the utility shall initiate appropriate action to mitigate the significant under- or over- recovery balance.

APPEALS OF LOCAL GOVERNMENT LAND USE DECISIONS

4700. Scope and Applicability. These rules are applicable to all utilities. In order for a utility to appeal a local government action to the Commission under this rule, according to § 29-20-108(5)(a), C.R.S., one or more of the following conditions must be met:

- (a) The utility has applied for or has obtained a certificate of public convenience and necessity from the Commission pursuant to § 40-5-101, C.R.S., to construct the major natural gas facility that is the subject of the local government action;
- (b) A certificate of public convenience and necessity is not required for the utility to construct the major natural gas facility that is the subject of the local government action; or
- (c) The Commission has previously entered an order pursuant to § 40-4-102, C.R.S., that conflicts with the local government action.

4701. Definitions. The following definitions apply only in the context of Rules 4700 - 4706, unless a specific statute or rule provides otherwise.

- (a) "Local Government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

⁵⁸ 723-8-7. This provision may be deleted, depending upon the outcome of the P&P rulemaking.

- (b) "Local government action" means any decision, in whole or in part, by a local government which has the effect or result of denying a permit or application of a utility that relates to the location, construction, or improvement of major natural gas facilities, or if the local government imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the utility to provide safe, reliable, and economical service to the public.
- (c) "Local land use decision" means the decision of a local government within its jurisdiction to plan for and regulate the use of land.
- (d) "Major natural gas facility" is defined by § 29-20-108(3)(d), C.R.S., or by any other applicable statute.
- (e) "Natural Gas Utility" means any person, partnership, cooperative association, non-profit corporation or association, 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 utility in the business of furnishing gas to domestic, commercial or industrial customers in the State of Colorado.
- (f) "Utility" means a natural gas utility as defined within this section, or as defined by § 40-1-103, C.R.S.

4702. Applications. In accordance with § 29-20-108(5)(c) and (d), all applications filed with the Commission appealing a local government action shall include information supporting each of the following requirements:

- (a) A statement of the reasons why the local government action would unreasonably impair the ability of a utility to provide safe, reliable, and economical service to the public;
- (b) The demonstrated need for the major natural gas facility;
- (c) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans;
- (d) Whether the proposed facility would exacerbate a natural hazard;
- (e) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards;
- (f) The relative merit of any reasonably available and economically feasible alternatives proposed by the utility, the power authority, or the local government;

- (g) The impact that the local government action would have on the customers of the utility or power authority who reside within and without the boundaries of the jurisdiction of the local government;
- (h) The basis for the local government's decision to deny the application or impose additional conditions to the application;
- (i) The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact; and
- (j) The safety of residents within and without the boundaries of the jurisdiction of the local government.

4703. Public Hearing. In addition to the formal evidentiary hearing on the appeal, and pursuant to § 29-20-108(5)(b), C.R.S., the Commission shall take statements from the public concerning the appealed local government action at an open hearing held at a location specified by the local government.

4704. Scheduling Conference.

- (a) In order to assist the parties in scheduling the open hearing, determining the scheduling of the evidentiary hearing, and developing the list of persons to receive notice of these hearings, the Commission will require a scheduling conference.
- (b) The utility filing an appeal of a local government action shall file a motion requesting that the Commission conduct a scheduling conference within 30 days after the application is deemed complete by the Commission.
- (c) The local government shall be enjoined as an essential party by the Commission and will be compelled to attend the pre-hearing conference.
- (d) Ten days before the commencement of the scheduling conference, the local government shall submit to the parties and the Commission its preference for the location of the open hearing in accordance with § 29-20-108(5)(b), C.R.S.
- (e) The Commission will decide the date and time of the open hearing after receiving comments from the parties at the scheduling conference.
- (f) By the date of the scheduling conference, each party shall provide to the utility a list of individuals and groups to receive notice of the open hearing.

- (g) The utility will be required to give notice to all the individuals and groups in a manner specified by the Commission. Notice may be accomplished by newspaper publication, bill insert, first class mail, or any other manner deemed appropriate by the Commission.
- (h) If the local government is unable to provide meeting space for the open hearing, and space needs to be acquired, then the utility shall bear any cost associated with the rental of such space for the open hearing.
- (i) The parties are encouraged to confer prior to the scheduling conference to develop a schedule for the filing of testimony and the dates for the formal evidentiary hearing.

4705. Denial of Appeal. In accordance with § 29-20-108(5)(e), C.R.S., the Commission shall deny any appeal of a local government action unless the utility has complied with the following notification and consultation requirements:

- (a) A utility shall notify the affected local government of its plans to site a major natural gas facility within the jurisdiction of the local government prior to submitting the preliminary or final permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or the filing of any annual filing with the Commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a utility is not required to obtain a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or file annually with the Commission to notify the Commission of proposed construction of a new facility or the extension of an existing facility, then the utility shall notify any affected local governments of its intention to site a major natural gas facility within the jurisdiction of the local government when such utility determines that it intends to proceed to permit and construct the facility. Following such notification, the utility shall consult with the affected local governments in order to identify the specific routes or geographic locations under consideration for the site of the major natural gas facility and attempt to resolve land use issues that may arise from the contemplated permit application.
- (b) In addition to its preferred alternative within its permit application, the utility shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.

4706. Procedural Rules. Section 29-20-108(5)(b), C.R.S. requires that any appeal brought by a utility to the Commission shall be conducted in accordance with the procedural requirements of § 40-6-109.5, C.R.S., and that in evidentiary hearings such appeals be conducted in accordance with § 40-6-109. Additionally, § 29-20-108(5)(g) requires

that such appeals be conducted in accordance with Article 6 of Title 40 of the Colorado Revised Statutes.

4707. - 4799. [Reserved].

GAS PIPELINE SAFETY

GENERAL PROVISIONS

4800. Scope and Applicability.

- (a) Rules 4800 to 4899 apply to, establish and govern the:
 - (I) Reporting by operators of gas pipeline systems of incidents, safety-related conditions, third party damage and annual pipeline information to the Commission and to the United States Department of Transportation [Rules 4810 - 4819];
 - (II) Enforcement by Staff of the Rules Regulating Gas Pipeline Safety [Rules 4820 - 4839];
 - (III) Adoption and enforcement of minimum safety standards for gas transportation by pipeline and for gas pipeline systems [Rules 4840-4849];
 - (IV) Adoption and enforcement of minimum safety standards for liquefied natural gas systems used in the transportation of gas by pipeline [Rules 4850-4859];
 - (V) Adoption and enforcement of a drug and alcohol-testing program [Rules 4860 - 4869];
- (b) Rules 4810 to 4819 do not apply to the gathering of gas outside the limits of any incorporated or unincorporated city, town, or village or any designated residential or commercial area, such as a subdivision, business or shopping center, or community development.

4801. Definitions. The following definitions apply only to Rules 4800 - 4899, except where a specific statute or rule provides otherwise or where the context otherwise indicates:

- (a) "Chief" means the head of the Gas Pipeline Safety Section of the Commission.
- (b) "Damage" means the penetration or destruction of any protective coating, housing, or protective device of an underground pipeline, the partial or complete severance, denting or puncturing of an underground pipeline, or the rendering of any underground pipeline inaccessible.

- (c) "Damage prevention program" means an operator's written program to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- (d) "Direct sales pipeline" means a pipeline from an interstate pipeline or intrastate pipeline to a direct sales meter or to a connection with a direct sales customer's pipeline, whichever is farther downstream. A direct sales meter is the meter that measures the transfer of gas to a direct sales customer purchasing gas for its own consumption.
- (e) "Distribution pipeline" means a pipeline other than a transmission pipeline or a gathering pipeline.
- (f) "Emergency repair" means a repair on a transmission pipeline that requires immediate action to prevent loss of life or significant damage to property.
- (g) "Excavation" means the moving or removing of earth by means of any tools, equipment, or explosives, and includes auguring, boring, backfilling, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching or tunneling.
- (h) "Gas" means natural gas, flammable gas, toxic or corrosive gas and petroleum gas, as defined in 49 C.F.R. § 192.11(c).
- (i) "Gathering pipeline" means a pipeline that transports gas from a current production facility or field to a transmission pipeline or main.
- (j) "Hazardous facility" means a pipeline that, if allowed to remain in operation, would be hazardous to life or property.
- (k) "Incident" means a release of gas from an intrastate pipeline, which results in any of the following:
 - (I) Death or personal injury necessitating inpatient hospitalization;
 - (II) Estimated property damage, including the cost of gas lost to the operator or others, or both, of \$50,000 or more;
 - (III) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subparagraphs (I) or (II) of this paragraph.
- (l) "Intrastate pipeline" means a pipeline wholly within State of Colorado that is subject to the jurisdiction of the Commission and not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

- (m) "Major construction" means the construction of any new pipeline that originally is estimated to cost \$100,000 or more. Cost includes only the direct costs associated with the construction.
- (n) "Major repair" means a repair, replacement, renewal or upgrade of a pipeline that originally is estimated to cost \$50,000 or more. Cost includes only the direct costs associated with the repair.
- (o) "Master meter system" means a pipeline system for distributing gas within a definable area, such as a mobile home park, housing project, or apartment complex, where the operator of the mobile home park, housing project or apartment complex purchases metered gas from an outside source for delivery through the pipeline system to an end user.
- (p) "Municipality" means a city, town or village in the State of Colorado.
- (q) "Operator" means a person engaged in the transportation of gas and/or has the right to bury underground pipeline. The word operator also may include an owner.
- (r) "OPS" means the Office of Pipeline Safety, a unit of the Research and Special Programs Administration of the United States Department of Transportation.
- (s) "Person" means an individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.
- (t) "Pipeline" or "pipeline system" means all physical facilities through which gas moves, can move, or will move in the transportation of gas, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
- (u) "Production facility" means a pipeline used in producing, extracting, recovering, lifting, stabilizing, separating, treating, and storing of liquid hydrocarbons (above ground), and associated natural hydrocarbon gases, on the production lease property. To be a production facility under this definition, a pipeline must be used in the process of extracting hydrocarbons from the ground or from facilities where hydrocarbons are produced, or for injection in recovery operations.
- (v) "SMYS" (specified minimum yield strength) means:
 - (I) The minimum yield strength specified for steel pipe manufactured in accordance with a listed specification; or

- (II) The minimum yield strength determined in accordance with 49 C.F.R. § 192.107(b), for steel pipe manufactured in accordance with unknown or unlisted specifications.
- (w) "Staff" means the staff of the Gas Pipeline Safety Section of the Commission.
- (x) "Transmission pipeline" means a pipeline, other than a gathering pipeline or distribution pipeline, that:
 - (I) Transports gas from a gathering pipeline or storage facility to a distribution pipeline, distribution center or storage facility; or
 - (II) Operates at a hoop stress of 20 percent or more of SMYS; or
 - (III) Transports gas within a storage field; or
 - (IV) Serves a large volume customer not downstream of a distribution center, which may include, but not be limited to, factories, power plants, or institutional users of gas.
- (y) "Transportation of gas" means the gathering, transmission, distribution, or storage of gas in intrastate commerce within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

4802. How Material Incorporated by Reference May Be Obtained.

- (a) Material incorporated by reference in Rules 4800 to 4899 may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203, between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays, except when such days are state holidays.
- (b) The material incorporated by reference may be examined, also, at any state publications depository library.
- (c) The title and address of the person employed by the Commission from whom information concerning how the material incorporated by reference may be obtained or examined is:

Chief, Gas Pipeline Safety Section
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, Colorado 80203

4803. - 4809. [Reserved].

FILING INCIDENT, SAFETY-RELATED CONDITION, THIRD PARTY DAMAGE, AND ANNUAL REPORTS

4810. Names of Agencies for Written Reports.

- (a) Written reports required by these rules, except for notices of major construction and notices of major repair, shall be filed with the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation.
- (b) A copy of each written report filed with the Information Resources Manager shall be filed with the Staff.
- (c) Copies of the prescribed reporting forms are available, without charge, upon request. Additional copies may be reproduced and used if on the same size and kind of paper.

4811. Telephonic Reports of Incidents.

- (a) As soon as possible after discovery of an incident, but generally not to exceed two hours after discovery, an operator shall telephonically report any incident to the National Response Center (NRC) of the United States Department of Transportation and to the Staff. In addition, if an emergency repair, or if a natural gas leak occurs on an intrastate pipeline resulting in the evacuation of 50 or more people from a normally occupied public building, a master meter system, or the closure of a public street or highway, the operator shall telephonically report the incident to the Staff.
- (b) The Telephonic Report shall include the following information:
 - (I) The names of the operator and person making the report and their telephone numbers;
 - (II) The time and location of the incident;
 - (III) The number of fatalities and personal injuries, if any;
 - (IV) All other significant facts that are known by the person making the report that are relevant to the cause of the incident or extent of the damages, and
 - (V) The National Response Center control number, when applicable.

4812. Written Reports by Operators of Distribution Systems.

- (a) Except as provided in paragraph (c) of this rule, an operator of a distribution pipeline system shall file an Incident Report on Department of Transportation Form RSPA F 7100.1 with the agencies listed in Rule 4810 as soon as possible after the discovery of an incident, but not later than 30 days after discovery.

- (b) When an operator obtains additional, relevant information after the filing of an Incident Report, the operator shall file a supplementary report as soon as possible with a reference by date and subject to the original report.
- (c) An operator of a master meter system or a liquefied natural gas (LNG) facility is not required to file an Incident Report.
- (d) Except as provided in paragraph (e) of this rule, an operator of a distribution pipeline system shall file an Annual Report for its intrastate pipeline on Department of Transportation Form RSPA F 7100.1-1 with the agencies set forth in Rule 4810. This report shall be filed annually by March 15 for the preceding calendar year.
- (e) An operator of a petroleum gas system which serves fewer than 100 customers from a single source, or a master meter system, or LNG facility is not required to file an Annual Report.

4813. Written Reports by Operators of Transmission and Gathering Systems.

- (a) An operator of a transmission or a gathering pipeline system shall file an Incident Report on Department of Transportation Form RSPA F 7100.2 as soon as possible after the discovery of an incident, but not later than 30 days after discovery.
- (b) When an operator obtains additional, relevant information after an Incident Report has been filed, the operator shall file a supplemental report as soon as possible with a reference by date and subject to the original report.
- (c) An operator of a transmission or gathering pipeline system shall file an Annual Report for intrastate pipeline on Department of Transportation Form RSPA 7100.2-1. This report shall be filed annually by March 15 for the preceding calendar year.

4814. Filing of Separate Reports.

- (a) An operator primarily engaged in gas distribution, which also operates a gas transmission or a gas-gathering pipeline system, shall file separate reports for each pipeline system.
- (b) An operator primarily engaged in gas transmission or gas gathering, which also operates a gas distribution pipeline system, shall file separate reports for each pipeline system.

4815. Reports of Safety-Related Conditions.

- (a) Except as provided in paragraph (b) of this rule, an operator shall report the existence of any of the following safety-related conditions with respect to a pipeline in service:

- (I) In the case of a pipeline that operates at a hoop stress of 20 percent or more of its SMYS, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result;
 - (II) Unintended movement or abnormal loading by environmental causes, such as earthquakes, landslides or floods that impair the serviceability of a pipeline;
 - (III) Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its SMYS;
 - (IV) Any malfunction or operation error that causes the pressure of a pipeline that contains gas to rise above its maximum allowable operating pressure, plus the build-up allowed for operation of pressure limiting or control devices;
 - (V) A leak in a pipeline containing gas that constitutes an emergency; or
 - (VI) Other than for abandonment, any safety-related condition that could lead to an imminent hazard and cause (either directly or indirectly by remedial action of the operator), a 20 percent or more reduction in operating pressure, or shutdown of the operation of a pipeline.
- (b) A report need not be made for any safety-related condition that:
- (I) Exists on a master meter system or a customer-owned service line;
 - (II) Is an incident or results in an incident before the deadline for filing a Safety-Related Condition Report;
 - (III) Exists on a pipeline (other than a liquefied natural gas pipeline) that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or
 - (IV) Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing a Safety-Related Condition Report, except that reports are required for conditions under subparagraph (a)(I) of this rule, other than for localized corrosion pitting on an effectively coated and cathodically protected pipeline.
- (c) Each report of a safety-related condition shall be filed in writing within 5 working days (not including Saturday, Sunday, or federal or state holidays) after the day on which an operator

first determines that a safety-related condition exists, but not later than 10 working days after the day the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be filed with the United States Department of Transportation and the Staff by facsimile.

- (d) The report shall be headed "Safety-Related Condition Report" and provide the following information:
- (I) Name and principal address of operator;
 - (II) Date of report;
 - (III) Name, job title, and business telephone number of the person submitting the report;
 - (IV) Name, job title, and business telephone number of the person who determined that the condition existed;
 - (V) Dates the condition was discovered and was first determined to exist, if different;
 - (VI) Location of the condition, with reference to the town, city, or county; and as appropriate, nearest street address, survey station number, milepost, landmark, or name of pipeline;
 - (VII) Description of the condition and circumstances leading to its discovery, any significant its effects on safety, and the type of gas transported or stored; and
 - (VIII) The corrective action taken (including reduction of pressure or shutdown) before the report was submitted and any planned future corrective action, including the anticipated schedule for starting and concluding such action.

4816. Reporting Third-Party Damage.

- (a) An operator of an intrastate pipeline system shall file annually with the Commission by March 15 information concerning damage to its pipeline by third parties.
- (b) Specific third-party damage information shall, at a minimum, contain the following:
 - (I) Location of the damaged pipeline by county or locate area, as defined by the Utility Notification Center of Colorado ("UNCC");

- (II) Date the damage occurred, if known; date the operator located the damage; date of the locate request, with the UNCC ticket number, and date of relocate, if applicable;
 - (III) Damage resulting from locator error or excavator error, if applicable;
 - (IV) Name of the excavation company and the type of equipment causing the damage (track hoe, backhoe, bore rig, etc.);
 - (V) Reason for the excavation (routine or emergency repair), if known;
 - (VI) Cost to the operator from the damage; and
 - (VII) Any deaths or injuries resulting from the damage.
- (c) General third-party damage information shall, at a minimum contain the following:
- (I) Total number of accurate locates and inaccurate locates resulting in damage; and
 - (II) Total number of service lines damaged, main lines damaged, and transmission lines damaged.
- (d) General third-party locate information shall include the total number of monthly locate requests and total number of such locate requests that were not on the operator's pipeline system.
- (e) A Master Meter Operator need not report third-party damage.

4817. Filing Notices of Major Construction or Major Repair. A written notice of major construction or major repair shall be filed with the Staff not later than 20 working days prior to the scheduled commencement date of the construction or repair. The notice shall contain information concerning the type of construction or repair, date of commencement, estimated period of construction or repair, location, and estimated cost.

4818. [Reserved].

4819. [Reserved].

PROCEDURE FOR ENFORCEMENT

4820. Service.

- (a) An order, notice, complaint or other document required to be served under Rules 4820 to 4839 shall be served personally, or by registered or certified mail.

- (b) Service upon an operator's authorized representative or agent constitutes service upon that operator.
- (c) Service by registered or certified mail is complete upon mailing. An official U.S. Postal Service receipt evidencing a registered or certified mailing constitutes *prima facie* evidence of service.

4821. Subpoenas.

- (a) The Commission or Director may issue a subpoena in accordance with Rule 1406.
- (b) Rule 45 of the Colorado Rules of Civil Procedure ("CRCP"), except as provided in Rule 1406 and §§ 40-6-102 and 103, C.R.S., shall govern a subpoena issued under this rule.
- (c) A subpoena issued under this rule may be enforced in the district court, as provided by § 40-6-103(2), C.R.S.

4822. Inspections and Testing.

- (a) Staff employees authorized by the Chief, upon presentation of Commission credentials, are authorized to enter upon, inspect, and examine, at reasonable times, an operator's records, intrastate pipeline, or interstate pipeline upon request of the OPS to determine compliance with 49 U.S.C. §§ 60101, et seq., and/or these rules, or orders issued thereunder.
- (b) Staff employees may require testing of an operator's intrastate pipeline. Staff shall make every effort to negotiate a mutually acceptable plan with the operator of the pipeline before performing such tests.
- (c) If further information is needed, the Chief may send the operator a Request for Specific Information to be answered within 45 days after receipt of the request.
- (d) When information obtained from an inspection, testing or Request for Specific Information, or other sources indicates that enforcement action is warranted, the Chief may serve a Warning Letter or a Notice of Probable Violation on the operator, or file a complaint with the Commission requesting a Hazardous Facilities Order.

4823. Warning Letters. If the Chief believes that an operator has committed a probable violation of 49 U.S.C. §§ 60101, et seq., these rules or an order issued thereunder, he may serve a Warning Letter on the operator advising such person to correct the probable violation or be subject to an enforcement action under Rules 4820 to 4839.

4824. Notices of Probable Violation.

- (a) The Chief may commence an enforcement proceeding against an operator by serving the operator with a Notice of Probable Violation charging such person with a probable violation of 49 U.S.C. §§ 60101, et seq., and/or these rules or order issued thereunder.
- (b) A Notice of Probable Violation served under this rule shall include:
 - (I) A statement of the facts upon which the Notice of Probable Violation is based;
 - (II) A statement of the law, rules or orders that the operator is alleged to have violated;
 - (III) A statement of the Response Options available to the operator; and either, or both
 - (IV) A proposed Civil Penalty, including the maximum amount of the penalty, that the operator may be liable for;
 - (V) A proposed Compliance Directive.

4825. Response Options.

- (a) An operator shall respond in writing to the Chief within 30 days after receipt of a Notice of Probable Violation in one or more of the following ways:
 - (I) The operator may pay the proposed Civil Penalty, as provided in these rules, and the Staff will close the matter with prejudice;
 - (II) The operator may agree to the proposed Compliance Directive;
 - (III) The operator may submit an Offer in Compromise of the proposed Civil Penalty. The operator may make an Offer-in-Compromise by submitting a check or money order for the amount offered. If the Offer in Compromise is accepted by the Chief, the operator will be notified in writing that the acceptance is in full settlement of the proposed Civil Penalty. If an Offer-in-Compromise is rejected by the Chief, the check or money order will be returned to the operator with a written notification. Within 10 days after receipt of such notification, the operator shall respond to the Chief in one or more of the ways provided in paragraph (a) of this rule.
 - (IV) The operator may request the execution of a Consent Stipulation;

- (V) The operator may submit a written explanation, information or other material in answer to the allegations of the Notice of Probable Violation, in objection to the proposed Compliance Directive, and/or in mitigation of the proposed Civil Penalty; or
 - (VI) The operator may request a hearing. If an operator requests a hearing, the Chief may amend the Notice of Probable Violation at any time up to 30 days prior to the first day of hearing, else the Chief may amend such notice only with leave of the presiding officer.
- (b) If the operator fails to respond as provided in this rule, the Notice of Probable Violation shall be set for hearing.

4826. Civil Penalties.

- (a) As provided in §§ 40-2-115(2) and 40-7-117, C.R.S., a person who violates 49 U.S.C. §§ 60101, et seq., these rules, or an order issued under these rules shall be subject to a Civil Penalty not to exceed \$10,000 per violation. Each day of a continuing violation shall constitute a separate violation. In the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$500,000.
- (b) No person shall be subject to a second or additional Civil Penalty, if the violations are based on the same act.

4827. Compliance Directives. When the Chief serves a Notice of Probable Violation on an operator, he may include in the Notice of Probable Violation a Compliance Directive requiring the operator to take remedial action.

4828. Hearing.

- (a) If an operator requests a hearing in response to a Notice of Probable Violation, it shall include in its request a written statement of the issues that the operator intends to raise at the hearing. The issues may include new information. Failure by the operator to specify an issue shall result in a waiver of that issue at the hearing, unless, for good cause shown, the presiding officer permits the raising of such issue.
- (b) The hearing shall be held and an order issued in accordance with the Rules of Practice and Procedure of the Commission, 4 CCR 723-1, and Article 6 of Title 40, C.R.S.
- (c) The presiding officer may include in the order a Civil Penalty under these rules. If the order includes a Civil Penalty it shall specify the amount of the penalty and the procedures for paying the penalty, provided that the amount of the penalty may not exceed the amount of the penalty proposed in the Notice of

Probable Violation. The presiding officer may include in the order a Civil Penalty only after considering:

- (I) The nature, circumstances and gravity of the violation;
 - (II) The operator's degree of culpability and history of prior violations;
 - (III) Any good faith efforts by the operator to achieve compliance and to prevent future similar violations;
 - (IV) The size of the operator's business and its ability to pay the Civil Penalty and continue in business;
 - (V) Other matters required by equity and fairness.
- (d) The presiding officer may include in the order a Compliance Directive. If the order includes a Compliance Directive, the order shall specify the actions to be taken by the operator and the time by which such actions must be completed.

4829. Consent Stipulations.

- (a) At any time before the issuance of a decision by the presiding officer, the Chief and the operator may agree to dispose of the matter by joint execution of a Consent Stipulation, which shall be submitted to the presiding officer for approval or rejection.
- (b) A Consent Stipulation executed under this rule shall include:
 - (I) An admission by the operator of all jurisdictional facts;
 - (II) An express waiver by the operator of further procedural steps, including its right to a hearing, its right to seek judicial review or otherwise challenge or contest the validity of the Consent Stipulation;
 - (III) An acknowledgement by the operator that the Notice of Probable Violation may be used to construe the terms of the Consent Stipulation; and
 - (IV) A statement of the actions required of the operator and the time by which such actions shall be completed.

4830. Hazardous Facilities Orders.

- (a) If, after inspection and/or testing the Chief is of the opinion that a pipeline may be hazardous to life or property, Staff may file a complaint with the Commission against the operator of the pipeline. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and support a Hazardous Facilities Order. The Staff may file with the complaint a motion for an order under paragraph (i) of this rule.

- (b) A complaint by Staff and hearing under this rule shall be conducted in accordance with the Rules of Practice and Procedure of the Commission, 4 CCR 723-1, and Article 6 of Title 40, C.R.S.
- (c) Except as provided in paragraph (i) of this rule, if the presiding officer finds, after hearing, that a pipeline is hazardous to life or property, he shall issue an order directing the operator to take corrective action. Corrective action may include suspension or restriction of the use of the pipeline, physical inspection, testing, repair, replacement, or other action.
- (d) A pipeline may be found to be hazardous to life or property if the pipeline has been constructed or operated with any equipment, material, or technique that is hazardous to life or property.
- (e) In making a determination that a pipeline may be hazardous to life or property, the following shall be considered, if relevant:
 - (I) The characteristics of the pipe used in the pipeline involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;
 - (II) The nature of the gas transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such gas is transported, and the pressure required for such transportation;
 - (III) The characteristics of the areas in which the pipeline is located, in particular the climatic and geologic conditions (including soil characteristics) associated with the areas, and the population, population density and growth patterns of such areas;
 - (IV) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and
 - (V) Such other factors as may be relevant.
- (f) A decision finding a pipeline to be hazardous to life or property shall contain the following:
 - (I) Findings of fact that form the basis for the conclusion that the pipeline is hazardous to life or property;
 - (II) Conclusion that the pipeline facility is hazardous to life or property;
 - (III) Legal basis for the decision and order;

- (IV) Description of the corrective action required of the operator; and
 - (V) The date by which the corrective action must be completed.
- (g) If the pipeline facility is found not to be hazardous to life or property, the complaint shall be dismissed.
- (h) The Commission shall rescind or suspend an order under this rule whenever it is shown to the Commission's satisfaction that the pipeline facility is no longer hazardous to life or property. A Notice of Probable Violation may be issued following the rescission or suspension of a Hazardous Facilities Order.
- (i) The Commission may waive the requirements for a hearing before issuing a Hazardous Facilities Order when it determines that a hearing may result in delay and the likelihood of serious harm to life or property. The Commission shall include in the Hazardous Facilities Order a statement informing the operator of its right to a hearing, upon request, as soon as practicable after issuance of the order. The provisions of paragraph (b) of this rule shall apply to a post-order hearing. The purpose of such a hearing is to determine whether the order should remain in effect, or be amended, rescinded or suspended.

4831. Payment of Penalty.

- (a) If an operator fails to pay the full amount of a Civil Penalty within 45 days after service of a Notice of Probable Violation, or service of an administratively final decision when a hearing is held, the Commission may request that the Attorney General bring an action in court to collect the Civil Penalty.
- (b) If an operator elects to make an Offer in Compromise, it shall do so in accordance with the procedures set forth in these rules.

4832. Injunctive Action. Whenever it appears to the Commission that an operator has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of 49 U.S.C. §§ 60101, *et seq.*, these rules, or an order issued under these rules, the Commission may request that the Attorney General bring an action in a district court for an injunction and/or monetary penalty, as provided in Article 7 of Title.40, C.R.S.

4833. - 4839. [Reserved].

STANDARDS FOR GAS TRANSPORTATION BY PIPELINE AND GAS PIPELINE SYSTEMS

4840. Incorporation by Reference of Federal Minimum Safety Standards. The Commission adopts by reference the federal minimum safety standards for the transportation of natural gas and other gas by pipeline of the United States Department of Transportation that are published in 49 C.F.R., Part 192 (October 1, 2001). This incorporation by reference

does not include later amendments to, or editions of, 49 C.F.R., Part 192, adopted after October 1, 2001.

4841. Conflict. In the event of a conflict between the provisions of 49 C.F.R., Part 192, and Rules 4850 to 4859, Rules 4850 to 4859 shall govern.

4842. - 4849. [Reserved].

SAFETY STANDARDS FOR LIQUEFIED NATURAL GAS SYSTEMS

4850. Incorporation by Reference of Federal Safety Standards for Liquefied Natural Gas. The Commission adopts by reference the federal safety standards for liquefied natural gas facilities of the United States Department of Transportation that are published in 49 C.F.R., Part 193 (October 1, 2001). This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R., Part 193, adopted after October 1, 2001.

4851. Conflict. In the event of a conflict between the provisions of 49 C.F.R., Part 193, and Rules 4840 to 4849, Rules 4840 to 4849 shall govern.

4852. - 4859. [Reserved].

DRUG AND ALCOHOL TESTING

4860. Incorporation by Reference of the Drug and Alcohol Testing Program. The Commission hereby adopts by reference the drug and alcohol testing program of the United States Department of Transportation that is published in 49 C.F.R., Parts 40 and 199, (October 1, 2001). This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R., Parts 40 and 199, adopted after October 1, 2001.

4861. Conflict. In the event of a conflict between the provisions of 49 C.F.R., Parts 40 and 199, and Rules 4860 to 4869, Rules 4860 to 4869 shall govern.

4862 - 4899. [Reserved].

4900 - 4999. [Reserved].