

Decision No. C23-0714

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0408EG

IN THE MATTER OF TEMPORARY RULES AMENDING THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING RATE TREND REPORTS AND FILING REQUIREMENTS FOR BASE RATE TARIFF FILINGS.

**COMMISSION DECISION ADDRESSING
APPLICATION FOR REHEARING, REARGUMENT OR
RECONSIDERATION**

Mailed Date: October 20, 2023
Adopted Date: September 20, 2023

I. BY THE COMMISSION

A. Statement

1. By Decision No. C23-0538, issued on August 14, 2023, the Commission adopted temporary rules to amend provisions in the Commission's Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-4 and provisions in the Commission's Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-3. The temporary rules implement the provisions in § 40-3-102.5(1)(b), C.R.S., requiring the filing of certain information with a utility's base rate tariff filing. The temporary rules also implement § 40-3-102.5(2)(a), C.R.S., requiring the filing of rate trend reports when an electric or gas utility seeks to increase a rate or charge. The temporary rules further implement the annual reporting requirement related to costs prohibited from utility rates in § 40-3-114, C.R.S. The statutory

provisions requiring these temporary rules were enacted by Senate Bill (SB) 23-291 effective August 7, 2023.

2. By this Decision, the Commission memorializes the Commission's decision to deny the application for rehearing, reargument, or reconsideration of Decision No. C23-0538 (RRR Application) filed jointly by Public Service Company of Colorado, Black Hills Colorado Electric, LLC, and Black Hills Colorado Gas, LLC (the Utilities).¹ The Commission also clarifies the process by which a utility may implement certain provisions of the temporary rules when a base rate tariff filing does not involve a change in the level of base rate caused by a change in the utility's overall base rate revenue requirement, consistent with the discussion below.

B. Discussion

1. Utilities' RRR Application

3. The Utilities primarily object to the certification process for the completeness of a base rate filing (*i.e.*, the filing of a new rate case) as set out in the temporary rules in paragraph 3109(f). They request that the temporary rules instead implement a minimal three-point check on whether the utility's initial rate case filing includes: (1) a cost of service study for a historic test year (2) in executable format (3) with workpapers.² They likewise object to the Commission determining on a case by case basis what other information must be included in its base rate tariff filing before certifying the filing as complete.³

¹ The RRR Application was denied by operation of § 40-6-114(1), C.R.S., on October 5, 2023.

² RRR Application, Attachment 1, pp. 9-10.

³ RRR Application, pp. 6-7 and 9.

4. The Utilities want the temporary rules to limit the Commission's determination of the completeness of a base rate tariff filing only to filings where a utility seeks to change base rates based on its presentation of a higher overall revenue requirement.⁴ The Utilities' proposed certification process would also not involve any protests from ratepayers or reviews by the Staff of the Colorado Public Utilities Commission and the Colorado Office of the Utility Consumer Advocate as set forth in subparagraph 3109(f)(II).⁵ Moreover, their certification process would not have any impact on the 30-day window between the filing of the rate case and the effective date of the tariff sheets or on the 250-day statutory suspension period in § 40-6-111, C.R.S.⁶ Their proposals for the temporary rules further entail a written order issued by the Commission ten days prior to the filed effective date, with those ten days available to the utility to remedy any alleged absence of an item from the three-point check.⁷

5. The Utilities also fault the temporary rules for failing to account for filings intended to amend existing tariffs that are non-rate-related or textual.⁸

6. With respect to the temporary rule provisions implementing § 40-3-102.5(2)(a), C.R.S., the Utilities object to preparing rate trend reports for rates that apply to non-residential customers as required by paragraph 3109(e).⁹ They argue that most of their customers are residential customers and that the multitude of rates for the non-residential rate classes makes the rate trend reports burdensome and confusing.

⁴ RRR Application, Attachment 1, pp. 9-10.

⁵ RRR Application, p. 9.

⁶ RRR Application, p. 7.

⁷ RRR Application, Attachment 1, p. 10.

⁸ RRR Application, p. 5.

⁹ RRR Application, Attachment 1, p. 6.

7. The Utilities illustrate in legislative format more than twenty specific modifications they seek to the rule language of the temporary rules.¹⁰ These changes generally support the three main objections raised in their RRR pleading, but also include: modifications to definitions and the addition of new terms¹¹ and the removal of the provision in subparagraph 3109(f)(III)(C) that: “The Commission may suspend the proposed tariff’s effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.”¹²

8. In sum, the Utilities favor a more limited set of procedures to implement the rate-related provisions in SB 23-291, based on the philosophy that the temporary rules are only intended to bridge the gap until permanent rules are established through a robust rulemaking process.¹³ They also claim that certain provisions in the temporary rules are not “imperatively necessary in order to comply with SB 23-291 or for the preservation of public health, safety, or welfare.”¹⁴

2. UCA Motion to Respond

9. On September 19, 2023, UCA filed a motion for leave to file a response to the RRR Application. UCA argues that § 40-3-102.5(2)(a), C.R.S., affords the Commission a broad mandate regarding what utilities must provide when filing for authorization to increase rates, charges, fees, fares, tolls, rentals, *etc.* UCA fears the Utilities are attempting to limit these statutory requirements through their RRR Application.

¹⁰ RRR Application, Attachment 1.

¹¹ RRR Application, Attachment 1, pp. 3-4.

¹² RRR Application, Attachment 1, p. 10.

¹³ RRR Application, p. 3.

¹⁴ RRR Application, p. 8.

10. While we appreciate the concern expressed by its motion, we find that UCA's response is not necessary in helping the Commission reach its decision in this matter. We, therefore, deny the UCA's motion.

C. Findings and Conclusions

11. Although it is clear from the RRR Application that the Utilities dislike several aspects of the temporary rules, they fail to demonstrate how any of the provisions are impossible to implement or are unduly burdensome for the period they will be in effect. The Utilities further make no compelling argument that the provisions put in place on a temporary basis are contrary to law or harmful to the public interest. We therefore deny the RRR summarily. The Commission will properly address the issues and concerns raised by the Utilities in the permanent rulemaking that will replace the temporary rules.

12. Although we decline to modify the temporary rules, we acknowledge that utilities periodically seek changes to a base rate tariff sheets in ways that are entirely independent of a change in the utility's overall base rate cost of service or revenue requirement. In those situations, we can see how the provisions in the temporary rules regarding the filing of cost-of-service information may not be necessary. However, changes in definitions, requirements, exclusions, variances, and terms and conditions in a base rate tariff sheet can impact how a base rate is implemented and thus affect customer bills even when the level of the base rate does not change. We therefore clarify that, in the event the base rate tariff filing does not affect the level of base rate, it is reasonable for the utility to seek a waiver from the cost-of-service study filing requirements (*i.e.*, subparagraphs 3109(f)(I)(A) through (D)) while the temporary rules are in effect, for good cause shown.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, and reconsideration filed jointly by Public Service Company of Colorado, Black Hills Colorado Electric, LLC, and Black Hills Colorado Gas, LLC on September 5, 2023, is denied.

2. The motion to reply to the application for rehearing, reargument, and reconsideration filed by the Colorado Office of the Utility Consumer Advocate on September 19, 2023, is denied.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 20, 2023.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director