

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF RULE 11(a))
CUSTOMER DEPOSITS, OF THE RULES OF)
THE PUBLIC UTILITIES COMMISSION OF)
THE STATE OF COLORADO REGULATING) CASE NO. 5320
THE SERVICE OF ELECTRIC UTILITIES)
WITHIN THE STATE OF COLORADO.)

IN THE MATTER OF RULE 11(a))
CUSTOMER DEPOSITS, OF THE RULES OF)
THE PUBLIC UTILITIES COMMISSION OF)
THE STATE OF COLORADO REGULATING) CASE NO. 5321
THE SERVICE OF GAS UTILITIES)
WITHIN THE STATE OF COLORADO.)

IN THE MATTER OF RULE 11(a))
CUSTOMER DEPOSITS, OF THE RULES OF)
THE PUBLIC UTILITIES COMMISSION OF)
THE STATE OF COLORADO REGULATING) CASE NO. 5322
THE SERVICE OF WATER UTILITIES)
WITHIN THE STATE OF COLORADO.)

IN THE MATTER OF RULE 11(a))
SUBSCRIBER DEPOSITS, OF THE RULES)
OF THE PUBLIC UTILITIES COMMISSION)
OF THE STATE OF COLORADO REGULATING) CASE NO. 5323
THE SERVICE OF TELEPHONE UTILITIES)
WITHIN THE STATE OF COLORADO.)

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September 25, 1979
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Appearances: John J. Conway, Esq., Denver, for
Colorado Rural Electric Association;
Richard J. Banta, Esq., Englewood, for
Intermountain Rural Electric
Association;
Donald D. Cawelti, Esq., Denver, for
Public Service Company of Colorado,
Home Light and Power Company, Greeley
Gas Company and Salida Gas Company;
Jarvis W. Seccombe, Esq., Denver, for
Mountain States Telephone and
Telegraph Company;
Kenneth R. Fish, Esq., Denver, for
the Staff of the Public Utilities
Commission of the State of Colorado;
Eugene C. Cavaliere, Esq., Denver, for
the Public Utilities Commission of
the State of Colorado.

S T A T E M E N T

BY THE COMMISSION:

Case Nos. 5320, 5321, 5322 and 5323.

On December 22, 1978, by Decision No. C78-1688 in Case No. 5320, the Commission gave notice that it proposed to revise Rule 11(a) of its Rules Regulating the Service of Electric Utilities.

On December 22, 1978, by Decision No. C78-1689 in Case No. 5321, the Commission gave notice that it proposed to revised Rule 11(a) of its Rules Regulating the Service of Gas Utilities.

On December 22, 1978, by Decision No. C78-1690 in Case No. 5322, the Commission gave notice that it proposed to revise Rule 11(a) of its Rules Regulating the Service of Water Utilities.

On December 22, 1978, by Decision No. C78-1691 in Case No. 5323, the Commission gave notice that it proposed to revise Rule 11(a) of its Rules Regulating the Service of Telephone Utilities.

The proposed revision to Rule 11(a) was set forth in Decision Nos. C78-1688, C78-1689, C78-1690 and C78-1691 as follows:

"11(a) Customer Deposits. Any utility may require at any time from any customer or prospective customer, a cash deposit intended to guarantee payment of current bills only in accordance with this rule. Such required deposit shall not exceed the amount of an estimated ninety days' bill of such customer, or in the case of a customer whose bills are payable in advance, it shall not exceed an estimated sixty days' bill for such customer. The deposit pursuant to this rule may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities as provided for in the extension policy as stated in the utility's tariffs. Simple interest shall be paid by the utility upon such deposits at SUCH PERCENTAGE RATE PER ANNUM AS PROVIDED FOR IN THE UTILITY'S TARIFF, payable upon the return of the deposit, or annually upon request of the customer, for the time such deposit was held by the utility and the customer was served by the utility, unless such period be less than six months. Interest payments may, at the option of the utility, be made either in cash or by a credit to the customer's account. In computing interest, no consideration need be given to fractional parts of months. EACH UTILITY ON OR BEFORE THE 20TH DAY AFTER THE EFFECTIVE DATE OF THE AMENDMENT OF RULE 11(a) HEREIN AND THEREAFTER ANNUALLY SHALL FILE ON OR BEFORE JANUARY 31 AN APPLICATION WITH THE COMMISSION FOR APPROVAL OF ITS TARIFF SETTING FORTH THE ANNUAL PERCENTAGE RATE OF INTEREST TO BE PAID UPON DEPOSITS. THE COMMISSION MAY MODIFY THE ANNUAL PERCENTAGE RATE OF INTEREST PROPOSED TO BE PAID UPON DEPOSITS BY THE UTILITY. UPON APPROVAL OF THE TARIFF PROPOSED BY THE UTILITY, OR MODIFICATION OF THE SAME BY THE COMMISSION, THE TARIFF ANNUAL PERCENTAGE RATE OF INTEREST SHALL BE EFFECTIVE FOR A TWELVE MONTH PERIOD EFFECTIVE ON MARCH 1 OF EACH YEAR."*

* Changes are identified in capital letters.

In the ordering parts of Decisions No. C78-1688, C78-1689, C78-1690 and C78-1691, the Commission provided that any person, firm or corporation desiring to intervene or participate as a party in said proceeding was required to file a petition for leave to intervene within fifteen days after the date of the Order, and further provided that any person, firm or corporation desiring to file any objection, suggestion or modification to the proposed revision of Rule 11(a) set forth in each decision was required to file its objections, suggestions or modifications on or before January 26, 1979.

Case No. 5320:

On January 5, 1979, Home Light and Power Company, Public Service Company of Colorado and Home Builders Association of Metropolitan Denver filed petitions for leave to intervene. Said petitions were granted on January 17, 1979, by Decision No. C79-98.

On January 9, 1979, Union Rural Electric Association, Inc. filed a petition for leave to intervene. Said petition was granted on January 17, 1979, by Decision No. C79-98.

On January 22, 1979, Intermountain Rural Electric Association, Inc. and the Colorado Rural Electric Association filed petitions for leave to intervene. Said petitions were granted on January 30, 1979, by Decision No. C79-142, and June 5, 1979, by Decision No. C79-840, respectively.

On January 25, 1979, the City of Colorado Springs filed a petition for leave to intervene, which petition was granted on January 30, 1979, by Decision No. C79-142.

Objections, suggestions and/or modifications to the proposed revision of Rule 11(a) of the Rules Regulating Service of Electric Utilities were filed by Gunnison County Electric Association, Inc. on January 8, 1979; by Mountain Parks Electric, Inc., on January 16, 1979; by the Colorado Rural Electric Association on January 17, 1979; by Union Rural Electric Association, Inc., on January 19, 1979; by Grand Valley Rural Power Lines, Inc., and Intermountain Rural Electric Association on January 22, 1979; by Empire Electric Association, Inc. on January 25, 1979; by San Isabel Electrical Services, Inc. on January 26, 1979; by Public Service Company of Colorado on January 29, 1979; by Home Builders Association of Metropolitan Denver on January 30, 1979; and by K. C. Electric Association on January 31, 1979.

Case No. 5321:

On January 5, 1979, Public Service Company of Colorado and Home Builders Association of Metropolitan Denver filed petitions for leave to intervene, and on January 25, 1979, the City of Colorado Springs filed a petition for leave to intervene. Leave to intervene was granted to Public Service Company of Colorado and Home Builders Association of Metropolitan Denver on January 17, 1979, by Decision No. C79-99. Leave to intervene was granted to the City of Colorado Springs on January 30, 1979, by Decision No. C79-143.

Objections, suggestions and/or modifications to the proposed revision of Rule 11(a) of the Rules Regulating the Service of Gas Utilities were filed by Home Builders Association of Metropolitan Denver and Public Service Company of Colorado on January 29, 1979.

Case No. 5322:

On January 5, 1979, Public Service Company of Colorado and Home Builders Association of Metropolitan Denver filed petitions for leave to intervene. Leave to intervene was granted to both petitioners on January 17, 1979, by Decision No. C79-100.

Objections, suggestions and/or modifications to the proposed revision of Rule 11(a) of the Rules Regulating the Service of Water Utilities were filed by the Home Builders Association of Metropolitan Denver and Public Service Company of Colorado on January 29, 1979.

Case No. 5323:

On January 5, 1979, Mountain States Telephone and Telegraph Company filed a petition for leave to intervene, which petition was granted by the Commission on January 17, 1979, by Decision No. C79-101.

Objections, suggestions and/or modifications to the proposed revision of Rule 11(a) of the Rules Regulating the Service of Telephone Utilities were filed by the Rye Telephone Company, Inc. on January 2, 1979; by El Paso County Telephone Company on January 9, 1979; by Mountain View Electric Association, Inc. on January 17, 1979; by Delta County Telephone Company on January 24, 1979; and by Mountain States Telephone and Telegraph Company on January 25, 1979.

Case Nos. 5320, 5321, 5322, 5323:

On May 15, 1979, by Decision No. C79-713, the Commission set Case Nos. 5320, 5321, 5322 and 5323 for consolidated hearing on July 11, 1979. The Commission stated in Decision No. C79-713 that in view of the diverse responses set forth in the objections, suggestions and/or modifications to each Rule 11(a) filed by the various parties in each proceeding, it should set the above four cases for consolidated hearing in order to afford parties the opportunity to present evidence and/or oral argument with respect to the proposed revision of each Rule 11(a).

On June 28, 1979, by Decision No. C79-996, the Commission added two new issues to the issues relative to the amount of interest on customer deposits. Specifically, the Commission stated in Decision No. C79-996:

"Two other matters have come to the attention of the Commission involving Rule 11(a). First of all, the Commission wishes to clarify that in the hearing of July 11, 1979, it will consider possible rates of interest to be paid on deposits as well as the manner in which a rate of interest may be determined.

"Second, it appears that there is a lack of uniformity among the utilities with respect to the period of time for which interest is paid on deposits. In some cases interest has not been paid for the full period during which the deposit has been held by the utility even though the deposit may have been held by the utility more than a fractional part of a month. The Commission believes it should consider changing the rule so as to remove any uncertainty as to the period during which interest on deposits must be paid, and that such period should coincide with the period during which such deposit is held.

"Accordingly, the Commission proposes to amend its previously noticed proposed amendment of Rule 11(a) of the Rules Regulating the Service of Electric Utilities, Gas Utilities, Water Utilities, and Telephone Utilities, respectively, so as to read:

"Simple interest shall be paid by the utility upon such deposits at such percentage rate per annum as provided for in the utility's tariff payable, upon return of the deposit, or annually upon the request of the customer. Interest on such deposit shall be for the period of time such deposit was held by the utility and shall be calculated to the date of payment by the utility in cash or to the date the deposit is credited to the customer's account."

On July 11, 1979, the Commission conducted a formal hearing in each of the above-captioned cases. Mr. James Grundy testified as a witness for the Staff of the Colorado Public Utilities Commission and Ms. Cassandra Best testified as a witness for Mountain View Electric Association. At the close of the hearing on July 11, 1979, the Commission took the matter under advisement.

D I S C U S S I O N

Fifteen parties filed objections, suggestions and/or modifications pursuant to Decision Nos. C78-1688, C78-1689, C78-1690 and C78-1691. Of the parties so filing, two recommended that the rate to be paid on customer deposits should not be changed; five parties recommended that the rate should be the rate of interest paid by commercial banks on passbook savings; one party recommended that the rate should be the rate paid on passbook savings by savings and loan associations; one party recommended that the rate should be the prime rate charged by one of Denver's regional banks; one party recommended that the rate should be set at a rate between passbook savings rate and the prime interest rate; one party recommended that the rate be equitable as between the customer and utility; one party recommended that the rate not exceed what a utility could earn on short term, highly liquid investments; and three parties made no recommendation.

Most of the parties commenting on the rate of interest to be paid on customer deposits approached the issue from the standpoint of what rate of interest the customer could receive from investing a like amount of money for a like period of time. This point of view was expressed ably in the comments filed by El Paso County Telephone Company:

"Since the amount of deposit is limited by Rule 11(a) and is usually not in a great amount, we would respectfully submit to the Commission that the amount of interest that should be paid on deposits should be no greater than the same amount of interest each consumer would receive if he deposited a like sum in an open passbook account in a savings institution at its highest passbook interest rate. . . .

"It is true that if the consumer were investing amounts in excess of \$10,000.00, he could receive a higher rate of interest by the purchase of short-term money certificates, treasury bills from the United States or other secure places. However, the deposit from each consumer would not in almost every case be an amount this large and in the case of the El Paso County Telephone Company, the average deposit would normally be around \$29.00 or \$30.00."

The Commission, however, is persuaded more by the approach to the issue and comments filed by The Home Builders Association of Metropolitan Denver. The Home Builders Association approached the issue of what interest rate should be paid on customer deposits, not from the viewpoint of what interest rate a single customer could receive from an investment of a like amount of money over a similar period of time, but from the viewpoint of what would it cost the utility to secure in the open money markets the total amount of money represented by customer deposits. The Commission agrees with that portion of the analysis of The Home Builders Association wherein the Association writes:

"Customer's deposits are a source of funds to a utility. There is no restriction in Rule 11 as currently written as to how a utility may use these funds. If a utility were to seek funds from other sources, such as the money markets or from a lender, it would currently be required to pay an interest rate on those borrowed funds greater than the 7% currently provided for by Rule 11(a).

"The cost of money to the utility is the best measure of the interest rate that should be paid by the utility on customer's deposits because if a utility sought funds from other sources, it would be required to pay the prevailing cost of money from a particular source.

"The interest paid on customer's deposits should not be determined by what other investment vehicles would be available to a customer who had a like amount of money to invest for the same time the utility retains his deposit. The reason such a measure is an inappropriate yard stick is that the funds a customer would invest come from his discretionary income, which the customer could invest it in a wide variety of investments or spend now if he thought the inflation rate was so confiscatory that inflation would outpace any investment. On the other hand, a customer's deposit required by the utility is not a discretionary matter; the customer has no choice on whether or not to deposit the funds with the utility. If he does not make the deposit, he will not receive the utility service. The purpose of the customer deposit is not to provide investment vehicles for customers, but to give the utility some assurance that a new or unfamiliar customer's bills will be paid. The utility has use of these funds during the time the funds are held by the utility. It is as if the funds derived from customer deposits were obtained by fiat from the money market. Therefore, the utility should be required to pay to the customer whose deposit it has obtained the same simple annual interest that it would pay to any other lender or source of funds in the money market."

The Commission has considered all of the recommendations relative to what rate of interest should be paid on customer deposits and has concluded that the rate should be equal to the average of the twelve monthly averages in percent per annum payable on one-year United States Treasury bills. Customer deposits, collectively are a source of short term money to the utility, and since the customers are the source of these funds, they should receive a return commensurate with the rate paid on like short-term funds.

Many of the parties commenting on the proposed revision of Rule 11(a) strongly objected to the proposed revision because of the possibility for a diversity of interest rates to be paid on customer deposits. It was suggested that a diversity of interest rates may lead to customer misunderstanding and customer complaints. All parties expressing an opinion in their objections, suggestions or modifications on the subject of possible diversity of interest rates suggested that the rate to be paid on customer deposits be uniform for all utilities subject to the jurisdiction of the Commission. The Commission agrees and will hereinafter so provide.

At the hearing, however, it was suggested, in response to Staff testimony, that rural electric associations be treated separately from investor-owned utilities, since the sources of their funds were different, and rural electric associations were able to secure funding at 5%. The Commission does not accept this suggestion. The 5% funding referred to during the hearing is available only on long-term borrowings. Short-term funds for rural electric associations are secured from the National Rural Utilities Cooperative Finance Corporation, commonly referred to as C.F.C. (rural telephone associations secure short-term funds from the Rural Telephone Bank, commonly referred to as R.T.B). At the time of hearing herein, the C.F.C. short-term rate to members was 9.5%, slightly higher than the current one-year U.S. Treasury bill rate. The rates being comparable, different treatment is not mandated.

Many of the parties strongly objected to the annual tariff filing requirement, in light of the fact that neither a specific interest rate nor any standards or criteria were provided in the proposed revision of Rule 11(a). Mountain Bell suggested that the lack of standards in the proposed revision could render the revision invalid. Commenting parties argued that the proposed revision imposed needless, costly and burdensome filing and possible hearing requirements upon the utilities and the Commission. Most suggested that there were simpler, less costly and less burdensome procedures for arriving at the apparent goal of the proposed revision. Typical of such comments were those of Union Rural Electric Association, Inc.:

"Even allowing for the eventual establishment of precedents, the Rule as proposed by the Commission is very uncertain and would be subject to virtual limitless change. It does not give the utility even a hint as to what should be proposed. More importantly, it does not specify any standard under which the Commission would operate. This could change from year to year or from utility to utility. Such uncertainty would not seem appropriate in that this context where a standard which references the money market can be easily established.[sic]. . . .

"The proposed revision requires the utility to make application for revision of its tariff. The Commission may modify or may approve. It appears inevitable that this Rule adds to the already considerable filing requirements of affected utilities, as well as the administrative and paper work of the Commission and its staff. Union respectfully suggests that, with established standards, the filing can be eliminated or greatly simplified. With a standard, there would, at worst, need be only an informational filing which would be subject to review by the Commission if it so desires. At best, no utility filing would be required. This would be much preferred to required tariff filings and Commission action."

* * *

"Similarly, if the circumstances of the money market do not justify a change, the previously established interest rate should be continued, more or less automatically, for the next ensuing year, without the necessity of the additional paper work of filings and approval. The Commission's proposed revision would make filing (and hopefully approval) an annual requirement, regardless of whether justified by changes in the money market. As proposed herein by Union, the interest rate for the previous year will be continued unless a filing is made or unless that interest rate is not in compliance with the standards established. Again, such a procedure would seem much preferred to what could become meaningless filings and approvals requiring the time of the utilities and the Commission."

The Commission agrees that any revision to Rule 11(a) should not impose unnecessary costs upon the utilities, because it is the ratepayers that ultimately pay these costs; nor should the revision require burdensome hearing requirements for the utilities and the Staff of the Commission. Staff, annually, in November will calculate the rate of interest to be paid on customer deposits for the next calendar year. Utilities, at their option, may contact Staff concerning the rate of interest for the next calendar year. The revisions to Rule 11(a) hereinafter adopted should entail neither.

One commenting party, Empire Electric Association, Inc., pointed out that most utilities operate on a calendar year, but that the proposed revision to Rule 11(a), if a change in the interest rate to be paid on customer deposits were mandated, the change would occur on March 1. Empire Electric suggested that this would result in budgeting problems for some utilities. Although the Commission is not convinced that this would create more than a minor budgeting problem, there appears to be no compelling reason in favor of March 1 as opposed to January 1. Accordingly, in the revision to Rule 11(a) adopted herein, any change in interest rates to be paid on customer deposits will take effect on January 1.

Based upon the Commission's desire that interest rates to be paid on customer deposits reflect more current money market conditions; the objections, suggestions and/or modifications filed by the parties herein; and the testimony at the hearing held on July 11, 1979, the Commission has determined that each respective Rule 11(a) should be amended in the following particulars:

(1) The rate of interest to be paid on customer deposits should be equal to the average of the twelve monthly averages in percent per annum, payable on one-year United States Treasury Bills;

(2) The average should be the average of the twelve monthly averages for the twelve months, October 1 through September 30;

(3) The twelve monthly averages to be utilized should be the monthly average, in percent per annum, as published in the Federal Reserve Bulletin by the Board of Governors of the Federal Reserve System, Washington, D.C.;

(4) Change, if necessary, in the interest rate to be paid on customer deposits should be accomplished by a tariff filing, effective January 1;

(5) Interest paid on customer deposits should be paid from the date received by the utility to the date paid over to the customer or credited to the customer's account;

(6) Interest on customer deposits should be calculated as simple interest, unless the deposit is retained by the utility for a period longer than twelve months and is not returned to the customer annually, in which case, interest shall be compounded annually.

FINDINGS OF FACT

1. The rate of interest to be paid on customer deposits required by a utility under its respective Rule 11(a) should be equal to the average of the twelve monthly averages in percent per annum payable on one-year United States Treasury Bills.

2. The average should be the average of the twelve monthly averages in percent per annum for one-year United States Treasury Bills calculated for the twelve months, October 1 through September 30.

3. The monthly averages should be the monthly average, in percent per annum, as published in the Federal Reserve Bulletin by the Board of Governors of the Federal Reserve System, Washington, D.C.

4. Any changes in the interest rate to be paid on customer deposits required under Rule 11(a), should be made effective January 1 for the next twelve months, or succeeding twelve-month period until the average changes.

5. Interest paid on customer deposits required under Rule 11(a) should be paid from the date the utility receives the deposit, to the date the deposit is paid to the customer or credited to the customer's account.

6. Interest paid on customer deposits required under Rule 11(a) should be calculated as simple interest, unless the deposit is retained by the utility for a period in excess of twelve months and the interest is not paid to the customer annually or credited to the customer's account annually, in which case, interest shall be compounded annually.

CONCLUSIONS ON FINDINGS OF FACT

Rule 11(a) of the Rules Regulating the Service of Electric Utilities, Rule 11(a) of the Rules Regulating the Service of Gas Utilities, Rule 11(a) of the Rules Regulating the Service of Water Utilities and Rule 11(a) of the Rules Regulating the Service of Telephone Utilities should be amended to include the matters contained in Findings of Fact Nos. 1 through 6 above.

An appropriate order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

Rule 11(a) of the Rules Regulating the Service of Electric Utilities, in Case No. 5320; Rule 11(a) of the Rules Regulating the Service of Gas Utilities, in Case No. 5321; Rule 11(a) of the Rules Regulating the Service of Water Utilities, in Case No. 5322; and Rule 11(a) of the Rules Regulating the Service of Telephone Utilities, in Case No. 5323, be, and hereby are, amended to read as follows:

(a) A utility may require at any time from a customer or prospective customer, a cash deposit intended to guarantee

payment of current bills, but only in accordance with this rule. A deposit intended to guarantee payment of current bills shall not exceed an amount equal to an estimated ninety 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 sixty days' bill of the customer. A deposit required pursuant to this rule 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 on file with the Commission. Simple interest shall be paid by the utility upon a deposit at the percentage rate per annum and in the manner provided in this rule, payable upon the return of the deposit, or annually at the request of the customer. Interest on a deposit shall be earned for the time such deposit is held by the utility, and shall be calculated from the date the deposit is received by the utility to the date of payment to the customer in cash or to the date an amount equal to the deposit is credited to the customer's account. In the event that a deposit is retained for a period longer than twelve months and interest is not payable annually, interest on such deposit shall be compounded annually. Interest payments, at the option of the utility, may be paid either in cash, or by a credit to the customer's account. Interest to be paid on a deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the twelve monthly average rates of interest expressed in percent per annum, payable on one-year United States Treasury Bills, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each utility, annually in November or December, but no later than December 15, shall file by advice letter, or application, as appropriate, a revised tariff, effective the first day of January of the next following year, containing the new rate of interest to be paid upon customer deposits, except when there would be no change in the rate of interest to be paid on such deposits as calculated in this paragraph (a) of Rule 11.

This Order shall be effective on the twenty-first (21st) day after the date hereof, unless stayed pursuant to the provisions of C.R.S. 1973, 40-6-114.

DONE IN OPEN MEETING the 25th day of September, 1979.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



_____ EDYTHE S. MILLER _____

_____ DANIEL E. MUSE _____
Commissioners

COMMISSIONER SANDERS G. ARNOLD NOT PARTICIPATING.

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Harry A. Galligan, Jr.
Executive Secretary