

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0546ALL

IN THE MATTER OF THE PETITION OF THE OFFICE OF CONSUMER COUNSEL
REQUESTING THE COLORADO PUBLIC UTILITIES COMMISSION OPEN A
RULEMAKING ADDRESSING NOTICE UNDER 40-3-104, C.R.S. AND RULE 1207 OF
THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE FOUND AT 4 CCR 723-1.

**INTERIM COMMISSION DECISION ISSUING NOTICE
OF PETITION FOR RULEMAKING
AND REQUESTING COMMENTS**

Mailed Date: January 28, 2021
Adopted Date: January 27, 2021

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Petition filed by the Office of Consumer Counsel (OCC), requesting that the Commission revise Rule 1207 in the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. By this Decision, the Commission accepts the Petition, provides notice of the Petition to interested persons, and establishes a comment period through February 26, 2021, for comment on whether to grant or deny the Petition or take other appropriate action.

B. Findings and Conclusions

2. On December 22, 2020, the OCC filed a petition requesting that the Commission open a rulemaking proceeding to clarify and modify Rule 1207 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, that governs the notice a utility must provide its customers when seeking to modify its rates or terms of service as set forth on tariffs on file with the

Commission (Petition).¹ The OCC further cites § 40-3-104(1), C.R.S., that sets forth the statutory requirements for utility notice.

3. The OCC argues that certain applications recently filed by Colorado utilities essentially entail the approval of a future rate increase through the implementation of a rate adjustment mechanism or “rider,” however the applicant utilities had failed to provide notice to their customers about such rate increases in accordance with statutory mandates. The OCC claims that absent proper notice, the affected utility customers have little or no knowledge of the requested rider at all. The OCC further alleges that the utilities take the position that statutory notice *is not* mandated for applications for Commission approval to implement a rider, while such notice *is* mandated for subsequent advice letters putting the rider into effect, but the timing of such would result in any public comments on the propriety of the rider having no effect.

4. The OCC further claims that at least one utility, Public Service Company of Colorado doing business as Xcel Energy (Public Service), has failed to provide statutorily-required notice prior to tariff changes accomplished through a less-than-statutory notice (LSN) application filing.

5. More generally, the OCC argues that § 40-3-104(1), C.R.S., applies to all changes in any rate, fare, toll, rental, charge, classification, or service and is thus not limited to advice letter and tariff filings as it claims the Commission has interpreted Rule 1207 to apply.

6. The OCC asks the Commission to open a rulemaking proceeding to consider modifying Rule 1207 to require that notice be provided to the public in application and other proceedings as well as for tariff filings and particularly where the relief requested is to allow recovery of costs either (1) through a rider rather than through base rates, or (2) on an LSN basis.

¹ On December 23, 2020, the OCC filed a Correction to the Petition.

The OCC further recommends the Commission issue an emergency rule to address customer notice immediately.

7. In terms of specific rule modifications, the OCC recommends revisions to paragraph 1207(a), as follows:

- (a) A utility, other than a rail carrier or motor carrier, ~~filing tariffs~~ shall provide additional notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. ~~or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S. of the filing of:~~
 - (I) an advice letter accompanied with tariffs;
 - (II) an application, including an application on less than statutory notice, that would change any rate, fare, toll, rental, charge, classification, or service;
 - (III) an application that seeks to change any rate, fare, toll, rental, charge, classification, or service in a subsequent advice letter filing if the application is approved, such as a request in an application to implement a rider or an adjustment clause; or
 - (IV) any other filing that seeks to change any rate, fare, toll, rental, charge, classification, or service.

8. We accept the Petition for purposes of noticing it and establishing a comment period. We invite comment from interested persons on whether the Commission should open a rulemaking to address the issues raised in the Petition, in whole or in part, or whether the Commission should take such other action as may be appropriate regarding the Petition and the issues raised therein. Written comments may be submitted through February 26, 2021.

9. After the comment period, the Commission will deliberate at a Commissioners' Weekly Meeting and determine whether good cause exists to proceed to grant the Petition, in whole or in part, and proceed to issue a notice of proposed rulemaking, or whether to take such other action as may be appropriate.

II. ORDER**A. It Is Ordered That:**

1. The Petition for rulemaking filed on December 22, 2020, by the Office of Consumer Counsel (Petition), is accepted for purposes of establishing a notice and comment period.

2. This Decision shall serve as notice of the Petition to interested persons.

3. Any person desiring to file comments on the Petition may send written comments on or before February 26, 2021, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or through the Commission's E-filing System using Proceeding No. 20M-0546ALL at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 27, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners