

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.

**COMMISSION DECISION GRANTING
PETITION FOR RULEMAKING AND
DENYING REQUEST FOR EMERGENCY RULE**

Mailed Date: April 13, 2021

Adopted Date: March 31, 2021

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the request for a permanent rulemaking to revise Rule 1207 in the Commission's Rules of Practice and Procedure, 4 *Code of Colorado*

Regulations (CCR) 723-1, contained in the Petition for Rulemaking filed by the Office of Consumer Counsel (OCC), on December 21, 2020.

2. Consistent with the discussion below, the Commission directs Commission staff to prepare a Notice of Proposed Rulemaking (NOPR) for consideration at a future Commissioners' Weekly Meeting.

3. Additionally, this Decision denies the OCC's request for an emergency rule to revise Rule 1207.

B. Discussion

4. On December 21, 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, which 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). 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. The OCC states that this notice practice results in any public comments on the propriety of the rider having no effect.

5. 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.

6. More generally, the OCC argues that § 40-3-104(1), C.R.S., which sets forth the statutory requirements for utility notice, 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(a) to apply.

7. 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 applications 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. The OCC proposes specific changes to Rule 1207(a) to reflect this modification.

8. Additionally, the OCC recommends the Commission issue an emergency rule to address customer notice immediately.

9. By Decision No. C21-0050-I, issued January 28, 2021, the Commission accepted and noticed the Petition for rulemaking and required that comments be filed by February 26, 2021.

C. Comments

10. In its comments filed February 26, 2021, Staff of the Colorado Public Utilities Commission (Staff) agrees with the OCC that there is a lack of clarity between Rule 1207 and § 40-3-104(1), C.R.S., that creates confusion and inconsistency in proceedings involving riders. Staff states that clarifying Rule 1207(a) as OCC suggests would improve current notice practices

by requiring that customers be notified at the Application stage of a rider review while interested parties can still participate. Staff takes no position on the OCC's request for an emergency rule.

11. Public Service filed comments on February 26, 2021, in which it agrees that clarification of Rule 1207 would be beneficial. Public Service supports some of the OCC's proposed changes to Rule 1207(a) but opposes others as duplicative and potentially confusing. Public Service also addresses its current practice of providing for customer notice in its quarterly rider LSN applications and explains that it sets forth the form of notice in the body of the LSN application rather than in a separate motion for approval of an alternative form of notice. Public Service states that it is not opposed to filing a separate motion with the quarterly LSN rider applications for separate Commission approval. Public Service does not address the OCC's request for an emergency rule.

12. Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc. (collectively, Black Hills) also filed comments on February 26, 2021. Black Hills encourages the Commission to consider notice costs in its decision and it sets forth recent customer notice costs. Black Hills does not otherwise comment on the Petition.

13. In its comments filed on February 26, 2021, Atmos Energy Corporation (Atmos) opposes the Petition and states that the current rules are adequate, comply with statutory requirements, and allow the Commission the flexibility to order additional notice if appropriate. Atmos also opposes the OCC's proposal as it relates to LSN applications, arguing that the current rules comply with § 40-3-104(2), C.R.S. Atmos does not address the OCC's request for an emergency rule.

D. Findings and Conclusions

14. The OCC raises legitimate inconsistencies in the notice provided to customers for applications to implement a rider and considering this issue through a rulemaking may provide clarity. Therefore, we find that the Petition and comments received in this Proceeding constitute good cause to consider modifying and clarifying Rule 1207. We grant the Petition's request for rulemaking and direct Commission staff to prepare a NOPR to modify and clarify Rule 1207 for consideration at a future Commissioners' Weekly Meeting.

15. We decline to issue an emergency rule to modify Rule 1207, as the OCC recommends. Pursuant to § 24-4-103(6), C.R.S., temporary or emergency rules must be imperatively necessary to preserve the public health, welfare, and safety, or to comply with a state or federal law. We do not find that the possible need to clarify or modify Rule 1207 provides a sufficient basis for deviating from the full stakeholder process afforded by a permanent rulemaking.

II. ORDER**A. The Commission Orders That:**

1. The request for a rulemaking to modify and clarify Rule 1207 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, contained in the Petition for Rulemaking filed on December 21, 2021, by the Office of Consumer Counsel (OCC) is granted, consistent with the discussion above.

2. Commission staff shall prepare a Notice of Proposed Rulemaking to modify and clarify Rule 1207, 4 CCR 723-1, for consideration at a future Commissioners' Weekly Meeting.

3. The OCC's request for an emergency rule revising Rule 1207 is denied.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 31, 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