Decision No. C05-1084

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-520G

IN THE MATTER OF THE PROPOSED REPEAL AND RE-ENACTMENT OF ALL RULES REGULATING GAS UTILITIES, AS FOUND IN 4 CCR 723-4, 8, 10, 11, 17 AND 32.

DOCKET NO. 04R-003EG

IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF RULES REGULATING COST ASSIGNMENT AND ALLOCATION FOR GAS AND ELECTRIC UTILITIES FOUND AT 4 CCR 723-47.

DOCKET NO. 04R-170EG

IN THE MATTER OF THE PROPOSED REPEAL AND RE-ENACTMENT OF ALL RULES REGULATING MASTER METER OPERATORS FOUND AT 4 CCR 723-3-33 AND 723-4-31.

ORDER LIFTING STAYS
AND ADOPTING RULES

Mailed Date: September 9, 2005
Adopted Date: September 6, 2005

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider lifting our previous stay of Recommended Decision No. R05-0523 (Recommended Decision) and to adopt the Rules Regulating Gas Utilities (Gas Rules) to replace those currently found in 4 *Code of Colorado Regulations* (CCR) 723-4, 8, 10, 11, 17 and 32; to lift the stay on Recommended Decision No. R05-0496 and to adopt Rules Regulating Cost Assignment and Allocation for Gas and Electric Utilities (CAAM Rules) to replace those currently found in 4 CCR 723-47; and to lift the stay on Recommended Decision No. R05-0534 and adopt Rules Regulating Master Meter Operators (MMO Rules) to replace those currently found in 4 CCR 723-3-33.[1]. We also consider exceptions to the Recommended Decision filed by Aquila, Inc., doing business as Aquila Networks-WPC (Aquila), Kinder Morgan, Inc. and Rocky Mountain Natural Gas Company (KM), which timely filed exceptions. On June 15, 2005, Public Service Company of Colorado (Public Service) filed a motion for extension of time to file exceptions, and subsequently filed its exceptions on June 17, 2005. We grant Public Service's motion for extension of time to file exceptions. On June 28, 2005, Energy Outreach Colorado (EOC) and the Colorado Office of Consumer Counsel (OCC) timely filed responses to exceptions. We also consider the exceptions to Recommended Decision No. R05-0496 (CAAM Rules) filed by Aquila, the Colorado Business Alliance for Cooperative Utility Practices (Alliance), Kinder Morgan, Inc. and Rocky Mountain

[1] The Commission stayed the Gas Rules in Decision No. C05-0565, the CAAM Rules in Decision No. C05-0570, and the MMO Rules in Decision No. C05-0598.

Natural Gas Company (KM), and Public Service. No exceptions were filed to Recommended Decision No. R05-0534 (MMO Rules).

2. By Decision No. C03-1371 issued on December 15, 2003, the Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this gas rulemaking docket. The Commission also issued Decision No. C04-0008 for the CAAM Rules on January 15, 2004, and Decision No. C04-0375 for the MMO Rules on April 13, 2004. The purpose of this docket[2] is to repeal and reenact with modifications, the current Gas Rules, CAAM rules, and MMO rules.[3] That NOPR invited interested persons to participate in the rulemaking by submitting written comments and providing oral comments at scheduled hearings on this matter.

3. The NOPR further indicated that the proposed rules (attached as Attachment B to the NOPR) were intended to address the same subject matters as, and to replace in their entirety, the following Commission rules:

1) Rules Regulating the Service of Gas Utilities, 4 CCR 723-4;

2) Gas Cost Adjustment (GCA) Rules, 4 CCR 723-8;

3) Rules Regulating Applications Filed in Accordance with § 40-3-104.3, C.R.S., Concerning the Authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric, or Steam Utilities, 4 CCR 723-10;

4) Rules Governing Pipeline Safety, 4 CCR 723-11;

5) Gas Transportation Rules, 4 CCR 723-17; and

6) Rules Concerning Appeals of Local Government Land Use Decisions Brought by a Power Utility or Power Authority to the Public Utilities Commission under § 29-20-108, C.R.S., 4 CCR 723-32.

[2] In addition to the repeal and reenactment of these rules, the Commission also issued NOPRs in several other dockets as part of an agency-wide effort to update all of its existing rules.

[3] The adopted CAAM Rules and MMO Rules are incorporated here for administrative efficiency and ease of reference.

4. The overall repeal and reenactment involves an effort by the Commission to revise and recodify the Commission rules currently in effect. The Commission indicated in its NOPR that the proposed repeal and reenactment is intended to update the existing rules for gas utilities; to the extent possible, adopt rules for those utilities which are consistent with other Commission rules; to improve administration and enforcement of relevant sections of Title 40, C.R.S.; to improve administration of, and proceedings brought pursuant to § 29-20-108, C.R.S. to eliminate unnecessary or burdensome regulation; to improve the readability of, and ease of referencing to the rules; and overall to improve the regulation of gas utilities and of proceedings before the Commission.

5. This rulemaking was part of a comprehensive effort to revise all Commission rules. As such, we found it important to coordinate the instant rulemakings with the other repeal and reenactment rulemaking proceedings.

6. We initially issued a NOPR of the proposed gas rules in Docket No. 02R-196G. At the request of the participants in that matter, we terminated the rulemaking in order to conduct a series of workshops on the proposed rules, which were held in 2003. The workshops were informative and provided commentary to identify areas in the rules that needed improvement.

7. Hearings on the proposed rules were held in March, July, August and October 2004, and in March 2005. Written and oral comments were received by: Aquila; OCC; EOC; Kerr-McGee Gathering, LLC; Public Service; and KM. Staff also provided oral presentations addressing the general procedural background of the proposed rules and identified areas of change between the existing and proposed rules.

8. Subsequent to the March 17, 2005 hearing on the proposed rules, the ALJ issued Recommended Decision No. R05-0523 (Recommended Decision) on May 6, 2005.

In the Recommended Decision, the ALJ indicated that the overall objective of this process was to improve consistency between rules. As such, the Commission adopted a new rule numbering convention that uses a four-digit system, with the first digit corresponding to the specific industry. For example, the electric and steam rules are the 3000 series, while the natural gas rules are enumerated as the 4000 series.

9. It is important to note the ALJ's description which indicates that within each of those broad series, the rules are grouped into specific sub-series. For example: the x000 rules include general provisions; the x100 rules pertain to operating authority; the x200 rules pertain to facilities; the x300 rules pertain to meters; the x400 rules pertain to customer billing and service; and the x500 rules pertain to cost assignment and cost allocation. Additionally, these sub-series rules contain rules specific to an industry. For example, the heating value, purity, and pressure rule (rule 4202), the GCA and prudence review rules (the 4600 sub-series), and the gas pipeline safety rules (the 4900 sub-series) are specific to the gas industry.

10. We also find it important to note, as the ALJ did, that the gas rules use nearly identical language to that used in the corresponding electric and steam rules.[4] This was done to make it simpler for a person to find an applicable rule irrespective of the industry involved.

11. The statutory authority for the rules adopted by this Order is found in §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 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.

B. Consistency between the Energy Sets of Rules

12. In Decision No. C03-1370, the Commission's Notice Of Proposed Rulemaking

[4] For example, the general application requirements in rule 4002 here are the same as those requirements in electric rule 3002, which include slight variations to take into account specific industry and statutory differences.

initiating this docket, we stated that one of the goals of this rulemaking was to improve consistency between rules. In order to be consistent between the Electric, Gas, and Water sets of rules, the Commission will adopt certain changes to each of these sets of rules where a common rule exists even if the exception was only raised in one set of exceptions.

C. Exceptions

1. Rule 4001 – Definitions

a. 4001(a) – Definition of Affiliate.

13. Public Service and Aquila take exception to the definition of "affiliate" adopted by the ALJ. They believe the definition of "affiliate" should be consistent with the definition of affiliate as found in § 40-3-104.3(4)(b), C.R.S. and should be consistent with the definition adopted by a different ALJ in the separate rulemaking docket for the Commission's rules of Practice and Procedure. We agree that there should be consistent definitions for the same term between its rules. We find the definition of Affiliate contained in § 40-3-104.3(4)(b) is more readily understandable. However, it should be modified to capture the concept that an affiliate could result if an entity can exercise control over it. Therefore we deny this exception, but make modifications to the definition to clarify our findings.

b. 4001(h) – Definition of Customer.

14. Public Service and Aquila take exception to the definition of "customer." Aquila adds the phrase "within the state of Colorado within the subject-matter jurisdiction of the Commission" and "including residential, commercial, and industrial customers." Public Service proposes to limit the applicability to sales gas or transportation service. We deny these exceptions. However, we make two modifications to the definition to address the parties' concerns. We clarify that a customer is any person receiving "utility service," which is already

defined to address these issues. We also remove the phrase "from a utility within the State of Colorado."

15. Aquila also proposes to delete the phrase "within 30 days." We disagree. Maintaining customer status beyond 30 days is not practical, as it is intended to address a transition between service locations when a customer moves, and is not intended to require utilities to maintain customer status for an individual that does not use the utility service for the long term.

c. 4001(0), (p) – Definition of ITP and LDC.

16. Public Service recommends deleting the terms "intrastate transmission pipeline or ITP" and "local distribution company or LDC." Public Service states that these terms are used only in the definition of "utility" and are unnecessary. Public Service then proposes to delete these terms from the definition of "utility."

17. We disagree. While jurisdictional utilities typically provide distribution service, it is important for the Commission to maintain these terms to recognize that intrastate transmission service may also be a jurisdictional utility service.

d. 4001(r), (dd); 4901(p), (dd) – Definition of Main, Service Lateral, and Service Line

18. Public Service proposes to delete rule 4001(r) "Main" and rule 4001 (dd) "Service lateral" in the general body of rules. Public Service states that these definitions are inconsistent with Gas Pipeline Safety rules and are too broad and over simplified. Public Service then proposes to delete references to "main" and "service lateral" in Line Extension rule 4210(b) and replace them with the term "pipeline."

19. We disagree. The definitions in Rules 4001(r) and (dd) are necessary to maintain a distinction between the two concepts in the application of line extension policies. A pipeline extension designed to serve a single customer has significantly different implications from an extension designed to serve several customers, and warrants this distinction. Further, a broad definition is appropriate because each utility's individual circumstances must be considered in implementing line extension policies.

20. We do agree with Public Service that because the term "main" is defined in both the general rules and in the safety rules, the definitions must be consistent. We will use the gas safety definition for "main" in both the general and safety sections, with modifications. Gas safety rule 4901 (p) will be modified to include "or designed to serve." Also, the general rule definition will refer to "service lateral" and the gas safety rule definition will refer to "service line." "Service lateral" in general definitions and "service line" in safety definitions are different terms with different meanings in rate and safety applications, and should remain separate. For consistency, the gas safety term "service line" will be revised to include facilities that are "designed to transport." We adopt the following changes:

> 4001 (r) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral.
>
> 4001 (dd) "Service lateral" means that part of a pipeline system used, or designed to be used, to serve only one customer.
>
> 4901 (p) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
>
> 4901 (dd) "Service line" means a distribution line that transports gas, or is designed to transport gas, from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a single meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is furthest downstream, or at the connection to customer piping if there is no meter.

e. 4001(x), (cc) – Definition of Purchaser and Seller.

21. Public Service proposes to delete Rules 4001 (x) and (cc) as they are not used in any substantive rule and have no purpose. We agree, and delete these definitions.

f. 4001(y) – Definition of Regulated Charges.

22. Public Service, in its exceptions to the electric rules in Docket No. 03R-519E, proposes to substitute the word "and" for the word "or" in the definition of Regulated charges. We agree with Public Service's proposed revision, and find that it applies also to the gas rules. We include this change in the gas rules as well.

g. 4001(z) – Definition of Sales Customer.

23. Public Service proposes to replace "purchases" with "receives." We agree, and adopt the change.

h. 4001(aa) – Definition of Sales Service.

24. Public Service proposes to revise rule 4001(aa) to better distinguish gas sales service from gas transportation service by clarifying that in sales service the utility both sells and delivers the gas commodity. Public Service also proposes language to state that standby sales, imbalance cash-outs and other incidental sales associated with transportation are not included in sales service[5].

25. Though it would be helpful to clarify precisely what terms apply to sales and transportation, we do not believe that it is appropriate to list the excluded transportation terms as Public Service proposed. Though the listed items generally apply to transportation service, they are not completely severable from sales service. Transportation generally does not maintain a

[5] See PSCo redline rules, page 9 of 81

portfolio of gas supply to perform these functions, so sales service supply is typically used for this function. The best resolution to this issue is to maintain a more general definition, which does not include a list of excluded transportation terms. We change the definition to better distinguish sales and transportation as follows:

> 4001(aa) "Sales service" means a bundled gas utility service in which the utility both purchases gas commodity for resale to the customer and transports the gas for delivery to the customer.

i. 4001(gg), (hh) – Definition of Standby Capacity and Standby Supply.

26. Public Service states that the term "standby capacity" is an unnecessary term not presently offered by Colorado gas utilities and can be confused with standby supply service, and proposes to delete the term.

27. We disagree. "Standby capacity" and "standby supply" are two components that make standby service. We therefore keep both of these terms, but modify them as follows to better clarify their meaning:

> 4001(gg) ""Standby capacity" means the maximum daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer, if the customer purchased optional standby service.
>
> 4001(aa) "Standby supply" means the daily volumetric amount of gas reserved by a utility for the use by a transportation customer should that customer's supply fail, if the customer purchased optional standby service.

j. 4001(ii) – Definition of Transportation.

28. Public Service proposes to replace "seller" with "utility." We agree, and adopt the change.

2. Rule 4002-Applications

29. Aquila strikes the words “renewal” and “extension” from 4002(a)(VI) because it believes they exceed the Commission authority under § 40-1-104. We agree and grant this exception.

30. KM suggests that 4002(b)(IX) be modified to allow for audited financial statements of parent company and consolidated subsidiaries. We grant this exception, so long as the financial statements show the Colorado specific information.

31. Public Service proposes to add the word “relevant” to 4002(b)(IV). We deny this exception since the term “relevant” can be ambiguous.

32. Public Service adds the phrase “an agent for or an attorney for” to 4002(b)(XII). It suggests this change due to the possibility that utility personnel might be unavailable and this requirement could delay filing of applications. We agree and grant this exception.

33. KM believes that the information allowed to be kept on file with the Commission pursuant to rule 4002(c) should be maintained in a central depository. We find that this rule already provides for this treatment. However we nonetheless grant the exception by providing additional language to this rule to remove any possible ambiguity.

34. Both Public Service and Aquila add the phrase “that conduct business in Colorado” to 4002(c)(IV) because, in their opinion, only a handful of their affiliates could affect an application before the Commission. We agree and grant this exception. However to be clear, we add the concept of the affiliate conducting business with the Colorado utility.

3. Rule 4004– Disputes and Informal Complaints:

35. In its proposed redline rules attached to its exceptions for gas utilities, Aquila proposed exceptions to rule 4004(f). We are not convinced that modifications proposed by Aquila, such as changing the word "character" to "nature," would change the intent of the rule or how a utility would be required to act. Therefore we deny this exception.

36. Public Service filed exceptions primarily on the grounds that the definition and administration of disputes and informal complaints could have a negative impact on Public Service's performance and compliance with future Quality of Service Plan measures. As such, we are not convinced that the exceptions filed by Public Service outweigh the greater public interest. We believe that recommended rule 4004 requires a utility provide the basic information necessary for a consumer to address any questions or concerns they may have regarding their utility service, and requires a utility to keep appropriate records to adequately address any dispute that might escalate to the External Affairs section of the Commission. Furthermore, we feel that the rule is not punitive on any utility; rather, it serves as incentive for all utilities to address as fully as possible a customer's concerns or matters requiring resolution.

37. In its proposed redline rule submission Public Service requests the following: 1) removal of the words "Disputes and" from the title,; 2) removal of rule 4004(a) in its entirety; 3) removal of rule 4004(b) in its entirety; 4) moving rule 4004(c) to (a) and inserting the words, "The Commission will refer all informal complaints back to the utility to see if they can be amicably resolved."; 5) removal of rule 4004(e) in its entirety, and 6) removal of the words, "…and of each dispute…" from the first line of rule 4004(f).

38. We deny these exceptions. We do, however, wish to clarify an ambiguity that became apparent during deliberations on rule 4004(e) regarding the differences between a

current customer of the utility and an applicant for service. Consequently, we amend rule 4004(e) to read in relevant part (new language in italics): "*If a current customer or an applicant for service that is not a current customer* is dissatisfied with the utilities proposed adjustment or disposition of a dispute …"

4. Rule 4005– Records and Rule 4008 Incorporation by Reference:

39. Public Service first updates the date of various publications to the most recent available. We grant this exception. Next, Public Service proposes to delete rule 4005(a) (XIV) which requires record keeping of costs of sales customers becoming transportation customers. Public Service argues that the requirement is vague and incomprehensible. Otherwise, the Commission should clarify what types of costs apply. We deny this exception. This requirement is contained in current rules, and the Recommended Decision at paragraph 24 provides a thorough discussion of this issue.

5. Rule 4006– Reports

40. In rule 4006(c), Aquila proposes to clarify reporting requirements to limit information to activities within the Commission's jurisdiction. We deny this clarification as unnecessary.

6. Rule 4100– CPCN for a Franchise:

41. Both Aquila and Public Service delete the sentence at the end of 4100(a), "A utility cannot provide service pursuant to a franchise without authority from the Commission," because they believe it is too broad, wasn't properly noticed as part of this rule, and could misstate the law. Aquila also notes that a utility may begin serving an area before a franchise is granted. While we agree with Aquila and Public Service that the sentence they propose to delete may be overbroad, we do not agree that the language should be stricken in its

entirety. Rather, we amend that language to read as follows: "When a utility enters into a franchise agreement with a municipality for the first time, it shall obtain authority from the Commission pursuant to § 40-5-102, C.R.S. prior to providing services under that initial franchise agreement. A utility maintains the right and obligation to serve a municipality within its service territory after the expiration of any franchise agreement." Within its exceptions to the gas rules, Aquila deletes the requirements for a feasibility study within rule 4100(b) (VI). We deny this exception because we believe a feasibility study is necessary if it's for a new area previously not served by the utility.

42. In rule 4100(b)(III), KM proposes to eliminate the map requirement for a franchise CPCN. In reviewing the ALJ's proposed rule, we find that the phrase "…together with a map of the city or town in which franchise rights would be exercised" should be deleted and the word "area" should be changed to "city or town."

7. Rule 4101– CPCN for a Service Territory:

43. Public Service deletes the sentence at the end of 4101(a), "A utility cannot provide service pursuant to a service territory without authority from the Commission," because Public Service believes this sentence does not accurately state the law.

44. While we agree with Public Service that the language as it appears in the rule may be contrary to law as stated, rather than strike the sentence with no substitute language, we provide the following language to amend that sentence in rule 4101(a): "A utility cannot provide service without authority from the Commission, unless the area proposed to be served is contiguous territory to the existing certificated territory of the utility and such extension into an uncertificated, contiguous territory is necessary in the ordinary course of business."

8. Rule 4102– CPCN for Facilities:

45. Public Service proposes to delete the sentence at the end of 4102(a), "A utility cannot recover for construction and operation of a facility or extension of a facility without authority from the Commission," because Public Service believes this sentence is also contrary to the law. We again agree with Public Service that the language as proposed in the rule may be construed as overbroad. However, rather than strike the offending sentence completely, we will include the following clarifying language: "The utility need not apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is in the ordinary course of business. The utility shall apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is not in the ordinary course of business."

9. Rule 4103– Certificate Amendments for changes in Service, Service Territory, or Facilities:

46. Public Service proposes to delete the sentence at the end of 4103(a), "A utility cannot extend, restrict, curtail, or abandon or discontinue without equivalent replacement any service, service area, or facility without authority from the Commission," because utilities extend, restrict, sell, curtail and abandon "facilities" all the time in the ordinary course of business. It believes that the Commission should only get involved when the extension, restriction, sale, curtailment or abandonment is not in the normal course of business. For the same reasons, Public Service also deletes 4103(f). While we agree with Public Service that the language as it stands now may be overbroad and subject to challenge, we decline to remove the sentence entirely. Rather, we clarify the sentence as follows: "A utility cannot extend, restrict, curtail, or abandon or discontinue without equivalent replacement, any service, service area, or

facility, not in the ordinary course of business, without authority from the Commission." We find the language in (f) is superfluous and we strike that subparagraph in its entirety.

47. Public Service also proposes to add the phrase "a utility applying to curtail, abandon or discontinue service with equivalent replacement" to 4103(c). We deny the exception, in part. The effect of Public Service's proposed change would be that no customer notice would be required in the event of a restriction of service. We are unclear as to when a gas customer might have a restriction of service, but believe the customer should receive notice in that event. The other effect of Public Service's proposed change would be that no customer notice would be required in the event of an extension of service. In this regard we grant the exception. When an extension is part of its normal course of business, we believe that there is no need for customer notification.

48. Similarly, Public Service deletes the words "extension" and "restriction" in rule 4103(d)(II). Consistent with our above discussion, we deny, in part and grant, in part this exception by striking the word "extension," but leaving in place the word "restriction." The notice to customers must contain information regarding restrictions, but not extensions.

10. Rule 4104–Transfer, Controlling Interest, and Mergers:

49. For rules 4104(a), (b), (c), Public Service: 1) adds the phrase "outside the normal course of business"; 2) adds word "transfer"; 3) deletes words "stock" or "transfer stock" or "obtain". Public Service asserts that rule 4104(a) appeared for the first time and is overly broad. Public Service states that under § 40-5-105 a utility may transfer assets in the normal course of business without Commission approval. It also asserts that there is no statutory prohibition on a utility transferring stock.

50. We believe the intent of this rule is to capture items which occur outside the normal course of business. In that regard we grant the exception. However, we disagree with Public Service that the word "transfer" should be substituted for the word "obtain." We find it possible that a utility could obtain another utility through a stock purchase instead of a stock transfer. Therefore we deny Public Service's exception on this point.

11. Rule 4105–Securities:

51. Aquila strikes the words "renewal" and "extension" throughout the whole rule because it believes those terms exceed the Commission authority in § 40-1-104, C.R.S..

52. We agree with Aquila here. These applications for renewal and extension of securities should not apply to securities with a maturity date of 12 months or less, except that the securities cannot in whole or in part be refunded by any issue of securities having a maturity of more than 12 months, except on application and approval by the Commission. We therefore clarify and amend the language of rule 4105(b) to read that: "An application for the issuance, renewal, extension, or assumption of securities with a maturity of 12 months or more or to create a lien shall include …"

53. Aquila also changes the number of days from the filing of information with the SEC from three business days to 30 days in rule 4105(b)(VII) and seeks clarification that "days" refers to business days and not calendar days for the publishing of notice after the filing of the application with the Commission in rule 4105(d). We deny both of these exceptions. Because security application are required to receive expedited treatment by the Commission, increasing the time from three business days to 30 days is too long. However, we nonetheless increase the time to ten days. We disagree with measuring days in terms of business days rather than calendar days for the proof of publishing. As is evident throughout all the reenacted rules,

we have made a concerted effort to maintain the standard as calendar days rather than business days. We find no reason to alter that consistency here.

54. Public Service proposes the following: 1) changes the word "limitation" to "exception" in 4105(a); 2) adds the phrase "as applicable and available" in 4105(b)(II); and 3) deletes the word "amending" in 4105(b)(II). We grant the exception deleting the word "amending," but deny the two other exceptions. We are unclear as to the distinction Public Service is trying to make by changing to the word exception. We believe the additional phrase is problematic because we require proof of the board of directors' resolution approving the security issuance before approving a security application. We therefore deny this exception.

12. Rule 4106–Liens:

55. Aquila and Public Service propose to delete this rule in its entirety. They believe that the rule was not properly noticed, creates burdensome regulation, could be read to apply to each secured debt issuance and there is no showing that this information needs to be provided on a routine basis.

56. We agree and grant the exception. However because § 40-1-104, C.R.S. specifically provides that the Commission must approves liens, we will incorporate the selected portions of the ALJ's proposed lien rule into rule 4105.

13. Rule 4107 - Flexible Regulation:

57. Aquila proposes to add the phrase "if available" to rule 4107(b)(VI) for the special contract for the information to be included in the application, and adds the phrase "demonstrating compliance with statutory requirements for" to 4107(j) for the affidavit for notice of publication. We deny both of these exceptions. We find the phrase "if available" could be interpreted to allow the utility not to provide the special contract prior to Commission approval

which we find to be problematic. As for the second exception, we find that language is unnecessary since the utility must provide proof of publication to the Commission.

58. Public Service proposes the following changes to this rule: 1) adds the word "non-confidential" to 4107(c) for the copy of the application to the utility providing service currently to the customer because in its opinion the intervenor should not be able to see the competitive offer by the utility and the utility should have the option to move for extraordinary protection; 2) deletes the last part of 4107(g) which would give the intervenor a confidential copy of the application if it signs a non-disclosure agreement; 3) adds the phrase "unless the commission orders otherwise" the items required to be included in the notice to 4107(i); 4) reduces the number of days Staff has to determine if the application is complete from 10 to five days in 4107(l); 5) adds language to 4107(n) such that the method used to determine "fully distributed cost methodology" is defined as the Commission recently ruled in the Public Service Phase II case; 6) adds 4107(p) to allow a utility to ask for extraordinary protection of the application and a 5 day response time.

59. With regard to Public Service's proposal to include "non-confidential" to the last sentence in rule 4107(c), we find that proposal could be somewhat confusing. Rather than provide for a blanket grant of confidentiality as Public Service seems to propose by its inclusion of the phrase "non-confidential," we find that such a determination of confidentiality should be made on a case-by-case basis. We note that § 40-3-104.3(1)(e), C.R.S. already provides that

> [w]ithin ten days after the execution of such contract, the public utility shall file with the commission under seal and as a confidential document the final contract or other description of the price and terms of service, together with any additional information required by the commission. The applicant shall also furnish a copy of such information to the office of consumer counsel, who shall treat the information as confidential.

Public Service, while it is required to file the contract as confidential, may still seek extraordinary protection of the application, which the Commission will consider on a case-by-case basis. Therefore, we amend the last sentence of rule 4107(c)[6] to read as follows: "If the Commission grants a protective order preserving the confidentiality of the contents of an application, then the applying utility shall also furnish a non-confidential copy of the application without the contract to any utility then providing service to the customer or potential customer."

60. We grant the exception which allows the utility not to provide a confidential copy to an intervenor, but deny the remaining exceptions. We believe the phrase "unless the Commission orders otherwise" is unnecessary since it is a restatement of the obvious. We find that reducing the number of days in which Staff has to determine whether the application is complete to five days is too short. However, as a compromise we reduce the time to seven days. Finally, we do not find it appropriate to set by rule how these contracts should be addressed in rate cases. We find that circumstances can change over time and it would not be wise to set forth in a rule, a treatment the Commission may want to change in some future proceeding. We therefore lengthen the amount of time provided in (g) from two business days to five calendar days in order to be consistent with other rules for using calendar days within our rules.

61. As for Public Service's proposal to include subparagraph (p), which provides that "[a] utility may move for extraordinary protection of information filed in the utility's application under rule 1110(a). Response time to a motion for extraordinary protection shall be five calendar days," we find that in light of the clarifications we incorporated into subparagraph (c) above, a utility shall request protection contemporaneous with filing its application.

[6] By combining rule 4106 Liens with rule 4105 Securities, as discussed above, the Flexible Regulation rules number changes from 4107 to 4106. All other rules within the 4100 series of rules also decrease by one accordingly.

14. Rule 4109 – Tariffs and Contracts

62. Public Service argues that the rule is overly broad and should only be interpreted to apply to the relationship between the utility and its retail customers. As a result, it contends the following modifications should be made to 4109(a): 1) it adds the phrase "documents pertaining to gas service and gas transportation service subject to the Commission's jurisdiction"; 2) adds the phrase " These documents, unless filed under seal"; and 3) deletes the phrase "unless otherwise provided by law, all tariffs, contracts, privileges, contract forms, and gas transportation service agreements." We agree with Public Service's concern and grant these exceptions.

15. Rule 4110 – New or Changed Tariffs

63. Aquila proposes to delete 4110(d) which provides that the Commission may reject tariff filing if not in the proper form and that any rejected tariff is void. We deny this exception. We find this rule necessary in order to ensure that the utility's tariffs are complete and accurate.

16. Rule 4202– Heating Value, Purity, and Pressure

64. In rule 4202(c), Public Service proposes minor changes to clarify gas interchangeability requirements[7]. We agree with these modifications and grant the proposed changes to paragraph (c).

65. In rule 4202(c)(II), Public Service proposes to change the phrase "Use of actual appliances…" to the phrase "Use of actual appliance testing…." We deny this change. We understand that utilities can use appliance testing, but it is unclear how utilities would use the actual appliances owned by customers for appliance testing.

[7] See page 27 of 81 of Public Service's redline rules.

66. In rule 4202 (d), Public Service proposes to revise the language to be consistent with interchangeability language in paragraph (c).[8] We grant this exception in part, and revise paragraph (d) as follows:

> A utility shall promptly readjust its customers' appliances and devices as necessary to render proper service if the readjustment is required for safe and efficient use in accordance with rule 4202(c). Unless otherwise ordered by the Commission, a readjustment made pursuant to this paragraph shall be done at no charge to the customer. If a utility determines that a readjustment pursuant to this paragraph is necessary, the utility shall notify the Commission, in writing, of the readjustment and of the reason for the readjustment.

67. In rule 4202(f), Public Service proposes to replace the terms "mains or piping" with the term "piping." We grant this exception in part. This paragraph should apply not only to piping, but also to all gas equipment. Therefore we change "mains and piping" to "facilities"

17. Rule 4203– Interruptions and Curtailments of Service

68. In rule 4203(a), Aquila proposes to add "affecting 100 or more customers" for interruption records. We deny this exception. Utilities should track all interruptions, as this information is important to monitor service quality.

69. Public Service proposes alter subparagraph (a) to exclude compressor stations operated without attendants from record requirements. We deny this exception. This exclusion is contained in current rules, but we removed it as most stations are now operated without attendants, and the information is readily available through Supervisory Control And Data Acquisition (SCADA) systems.

70. Public Service proposes changes to subparagraph (e) to clarify the prohibition of confiscating shipper's gas during a gas supply curtailment. We deny this exception because the language is clearer without the change, and is less restrictive.

[8] See page 28 of 81 of Public Service's redline rules.

18. Rule 4205– Gas Transportation Service Requirements

71. In rule 4205(a), Public Service proposes to delete both subparagraphs (I) and (II), stating that these requirements are a remnant of the Commission's initial "instruction manual" of what utilities needed to file when transportation was initiated. According to Public Service, now that gas transportation providers have established tariffs, these provisions are no longer necessary and should be eliminated. We disagree. Even though existing utilities have transportation tariffs, we still need rules describing what should be in tariffs, for new utilities. Further, by removing these rules, existing utilities could receive a signal from the Commission that it no longer desires that utilities maintain such tariff provisions. This is not the case. We therefore deny this exception.

72. Aquila proposes to amend subparagraph (a)(II) by adding: "A utility may, at its discretion, offer natural gas transportation standby capacity service or standby supply service." We agree with this provision, and grant the exception.

19. Rule 4206– Gas Transportation Agreements

73. Public Service states that the ALJ changed language in rule 4206(d) that the Commission currently requires in gas transportation contracts. Public Service maintains that as a result, 300 transportation agreements would have to be rewritten, imposing a large burden on it. As such, it recommends keeping the language from current rules. We deny this exception. The additional language adopted by the ALJ is necessary for customer disclosure, and transportation contracts generally have only a one-year term. As discussed below, utilities can request a variance from a rule for a specified period to help in implementing the change. We don't expect utilities to have to make burdensome changes outside the normal contract cycle, and we believe that a waiver could be used to resolve this issue.

74. Public Service proposes to change the subparagraph (e) term, "marketing broker" to "third party." We agree, and grant this exception.

20. Rule 4208– Anticompetitive Conduct Prohibited

75. In rule 4208(b)(VI), Public Service proposes to delete "or failing to provide information." Public Service does not provide justification for this change, and we believe the phrase proposed to be deleted is consistent with, and a necessary part of, the rule. We therefore deny the exception.

21. Rule 4210– Line Extension

76. Public Service proposes to amend subparagraph (b) by replacing the terms "gas main and service lateral" with "pipeline", and add "from its distribution system." As discussed previously, we deny PSCo's proposal to use the general term "pipeline" because it is important for utilities to specify line extensions in terms of mains and service laterals. We however, agree with the other additional language, and grant that portion of the exception.

22. Rule 4304 - Scheduled Meter Testing.

77. Public Service requests clarification and relief from requirements to file applications for approval of its testing practices and to file an application for a meter testing sampling program. As discussed *infra* we believe it is inappropriate to grant waivers from the rules during the actual rulemaking process. Public Service may, after the Commission issues an administratively final decision on these rules, apply for any waivers it chooses. Of course, it will have to provide justification as to why granting of the waiver is in the public interest.

23. Rule 4305 - Meter Testing Upon Request

78. We change the language in this rule to remove the option for a customer to request a member of the Commission's Staff be present at a meter testing. Historically, this rule has been

used infrequently and Staff's has provided little benefit to the process since it is not trained in metering testing processes. As a result, we re-write the rule to incorporate independent third-party testing. We also will incorporate the concept that if upon completion of the independent test, the disputed meter is found to be accurate within the limits of rule 4302, the customer shall bear all costs associated with conducting the test. If, upon completion of the independent test, the disputed meter is found to be inaccurate beyond the limits prescribed in rule 4302, the utility shall bear all costs associated with conducting the test.

24. Rule 4309 - Meter Reading

79. Aquila adds the phrase, "upon notification to and approval from the Commission" for meter reading to occur every six months in rule 4309(c). We deny this request. We find this to be an unnecessary step if the utility chooses to use estimated bills for a period of time not to exceed six months.

25. Rule 4400 – Applicability

80. Within their exceptions, and proposed redline versions of the rule, both Public Service and Aquila request this rule be either removed or restructured to address their concerns that the Billing and Service portion of rules 4400 to 4410 are too broad, and should not include all commercial classes of customers. While Public Service primarily addressed its concern on a rule-by-rule basis in its pleading and redline, Aquila addressed its concern as part of its overall objection to the scope of rule 4400 as it would impact the 4400 to 4410 portion of rules. Public Service correctly points out that the ALJ sought to address the issue of a "break point" between small and large commercial customers. That is, small commercial customers deserves certain customer protections while larger, more sophisticated commercial and industrial customers are able to protect their interests without the involvement of the Commission. Aquila argued that the

inclusion of all commercial classes of customers in this portion of rules would have a detrimental financial impact on utilities. There are no exceptions by any party to the Commission applying this portion of rules to residential customers.

81. We disagree with Public Service and Aquila that the applicability rule as recommended would have a negative impact on utilities in comparison to the degree of protections the Commission should extend to certain classes of small commercial and agricultural customers. As such we will not attempt to create such a surgically precise division with a single, broad rule. Instead, we find that the recommended rule allows each utility to establish a "break point" between smaller commercial classes of customers and larger commercial or industrial customers within each utility's individual tariff, based on its own circumstances. This will allow each utility to address its unique differences in customer classes, nature of business and revenue protection issues while protecting those residential, agricultural and small commercial customers who are recognized as entitled to certain customer protections. Chairman Sopkin dissents from this requirement in a separate opinion below.

82. Although the recommended rule is designed to allow utilities to establish limits between "small commercial" and "large commercial" customers in tariff, we agree with the exception that natural gas transportation customers inherently demonstrate a higher degree of sophistication. As such, we agree that natural gas transportation customers should not be entitled to the protections offered under the billing and service portion of rules. For these reasons, we deny, in part, the exceptions of both Public Service and Aquila limiting rule 4400, and its associated effects on the remaining portion of the billing and service rules, to residential customers only. However, we approve, in part, Public Service's exception to this rule that would

include specific language excluding natural gas transportation customers from the protections of the remaining portion of the billing and service rules.

83. We therefore revise rule 4400 to now read:

> Rules 4400 through 4410 apply to residential customers and commercial customers served by a utility's rates or tariffs. Rules 4400 through 4410 shall not apply to customers served under a utility's transportation rates or tariffs. In its tariffs, a utility may elect to apply the same or different terms and conditions of service to other customer classes.

26. Rule 4401 – Billing and Information Procedures

84. Public Service does not address this rule in its exceptions, however, in its proposed redline version of the rules, it identifies two areas where modification is requested. In 4401(a)(VII), Public Service proposes to remove the definition of "past due" as being on the 31st day following the due date of current charges. In light of the fact that this definition is consistent with the current definition of past due, we find the proposed change unnecessary and deny the exception.

85. Next, Public Service proposes to modify the language in 4401(c) regarding the use of benefit of service. We find these suggested modifications produce no significant change in the intent or operation of the rule. As a result, we deny the exception.

86. Public Service, in its exceptions to rules 4401, 4407 and 4408, and Aquila in its exceptions, raise concerns regarding the ALJ's recommendation that billing due dates and discontinuance notification dates require a 15 business day timeline instead of 15 calendar days. Both Aquila and Public Service indicate that there was little evidence in the record to support such a recommendation. Inasmuch as the use of "business days" is inconsistent with the standard created by the Commission for the entire recodification project, the result of adopting such language would lengthen the amount of time a utility could expect timely payment, and

would extend the total time a utility would be required to allow before "treating" a delinquent account. We agree with the utilities' exceptions that the enlargement of time for a notice of discontinuance or bill due date from 15 days to 15 business days is not appropriate, that a 15 day bill due date and discontinuance notice date is appropriate. Therefore, we grant the exception.

87. In its exceptions Aquila adds the specific language to 4401(e), "…have the option…," with respect to the offering by a utility of electronic billing. We agree with allowing electronic billing as an option – not a requirement - and grant this exception.

27. Rule 4402 – Adjustments for Meter and Billing Errors

88. In their pleadings and redlines, Public Service and Aquila indicate that a utility should not be held asymmetrically responsible for locating, addressing and resolving metering or billing errors in rule 4402(a)(II). Public Service requests that the "lookback" period for the customer to pursue credits for metering and billing errors for two years be made consistent with a utilities' "lookback" period to collect for metering and billing errors for six months. We are not convinced by this argument. Because a customer pays a utility specifically for metering and billing services, the meter is the property of the utility, operation and maintenance of the meter is the responsibility of the utility, and the likelihood is small that a residential, agricultural or small commercial customer would detect if a meter was not working properly, we feel the utility should be held to a higher standard than the customer. Because this rule serves as an incentive for a utility to properly monitor and maintain its equipment, and as an incentive for a utility to address metering and billing errors expediently, we deny the exception.

89. In its response brief, Energy Outreach Colorado offers an alternative meter reading notification should we grant the Public Service and Aquila exceptions; in light of our decision, we deem Energy Outreach Colorado's alternative moot.

28. Rule 4403 - Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements

90. In its pleading and redline Public Service again requests the inclusion of the word or references to residential customers in numerous places throughout this rule. In light of our earlier ruling not limiting the applicability of this portion of rules solely to residential customers, but excluding natural gas transportation customers from these rules, we deny in part these exceptions in rules 4403(c), 4403(d), 4403(e), 4403(f), 4403(h), 4403(i), 4403(o), and 4403(o)(I) consistent with its earlier ruling on applicability.

91. Public Service also requested the removal of a portion of 4403(f) in which the utility specifically would be required to notify a customer of the availability of the Commission's External Affairs section in order to dispute a utility's deposit decision. In light of our decision to require such notification elsewhere within rule 4004, we believe a second "notice rule" within this portion of the rule is duplicitous and thus grant this exception. Similarly, we grant the exception put forth by Public Service to remove rule 4403(g) requiring written notice regarding a utility's decision for requiring a customer deposit. We do not intend this decision to release a utility from its responsibility to notify a customer or applicant of its right to contact the External Affairs section in the event of a dispute over a deposit.

92. Public Service also requested a modification to rule 4403(p)(III) in its pleading and tariff to remove the requirement of a utility to pay interest to the energy assistance organization on monies obtained from line extensions on which the company had no obligation to accrue interest. Because each utility may have different line extension tariff provisions, we grant the exception.

93. Aquila in its pleading and redline indicates a desire to add a level of protection for utilities in the event a third-party guarantor withdraws a guarantee in writing prior to the

customer's establishing a satisfactory credit history with a utility. We agree that it is appropriate not to allow a loophole through which customers initially could obtain utility service, then later withdraw the appropriate degree of revenue protection without remedy for the utility. For this reason, we grant Aquila's exception to rule 4403(i).

29. Rule 4404 – Installment Payments

94. Aquila and Public Service request the rule language be modified to include wording to limit the availability of payment arrangements to residential customers only. We deny in part and grant in part, with respect to transportation customers, both the Aquila and Public Service exceptions for reasons cited previously in this order.

95. In rules 4404(c)(II) and 4404(c)(III), Public Service address their concerns regarding the length of time between the due date and the "past due date" being 31 days after the due date. We find the proposed language in the exception would create unnecessary confusion, and would allow a utility to disconnect a customer's account for amounts not shown on a discontinuance notice, or would allow amounts that are not "treatable" at the time of the notice to appear on a notice of discontinuance. For these reasons, we deny the exceptions on these two rules.

96. We agree with Public Service and find duplicitous the need to include language on a written notification of a payment arrangement of the customer's ability to contact the External Affairs section of the Commission within rule 4404(d)(III). As a result we grant Public Service's exception.

30. Rule 4405 – Service, Rate, and Usage Information

97. In its proposed redline rules, Public Service proposes new language in 4405(a) regarding when notification to a customer is appropriate. Public Service's proposed language

would make that information available to customers only upon request. We disagree with Public Service's proposal because we find that the utility bears responsibility to notify customers of proposed or actual changes in terms, conditions or quality of service. We therefore deny this exception.

31. Rule 4407 – Discontinuance of Service

98. In its pleading and redline Public Service states that the terms "due date" and "past due" should be 15 days and 31 days respectively, as does Aquila in its comments and redline regarding the applicability rule. As such Public Service and Aquila filed exceptions and proposed changes to rule 4407(b)(I) to reflect their perspective that the timeline should be shortened. However, we are not convinced that shortening the timeline beyond that which is proposed is appropriate. Additionally, we note that the timeline for past due status as it is calculated in the recommended rules is consistent with our current rules. Therefore we deny the exceptions.

99. As per our discussion elsewhere in this order, we deny the exceptions to rule 4407(e)(II) which would limit the rule to residential customers only.

100. Public Service also proposed changing the wording in rule 4407(e)(IV) regarding the effective date of a medical certificate. We find that the change in language could create more ambiguity than the ALJ's recommended language. For this reason we deny the exception.

101. Aquila indicates in its pleading that the use of a medical certificate could be construed to apply to commercial customers should the applicability rule not be modified to specify residential customers only. We note that the wording in rule 4407(e)(IV) specifically limits the use of medical certificates to address, "…the customer or permanent resident of the

customer's household…" We interpret this rule as self-limiting to residential customers inasmuch as there cannot be a resident in a commercial premises. Therefore we deny this exception.

32. Rule 4408 – Notice of Discontinuance of Service

102. Aquila and Public Service have requested in pleadings and redline format to limit the scope of this rule to residential customers only. As stated *infra*, we disagree. In its redline Public Service proposes insertion of references to residential customers in the title and rule 4408(a). We deny both of these exceptions. Additionally, Public Service proposed the removal of a requirement to advise a customer of the ability to contact the External Affairs section of the Commission in the event of a dispute – consistent with its exceptions mentioned earlier to rule 4004. Energy Outreach Colorado, in its response, offered an alternative should we grant the exception of Public Service. In light of our earlier decision regarding rule 4004, we deny the exceptions to rule 4408(b)(VII) and deem moot EOC's alternative.

33. Rule 4410 – Refund Plans

103. Within its exceptions Aquila proposes to: 1) lengthen the payment date to the energy assistance organization from four to six months after refund is deemed undistributed; and 2) delete the six per cent additional interest on refunds if not timely paid to the energy assistance organization. We deny the first exception; however, we find good cause to grant the second.

34. Rule 4500 - Definitions[9]

104. Public Service objects to the ALJ's inclusion of the words "or offered to" in the definition of Activity. It believes that this inclusion has the unintended and inappropriate consequence of expanding the scope of the rules to encompass cost assignment and allocations

[9] The Commission notes that the discussion relating to the 4500 series of rules (the CAAM Rules) is identical to the discussion of the CAAM Rules within the Electric Rules, the 3500 series, except the rule numbers have been changed.

between and among the utility and unrelated entities as well as between and among the utility's affiliates and unrelated entities. Public Service notes that the ALJ wanted to ensure that the definition of activity is broad enough to capture all dealing between the utility and its unregulated divisions or affiliates. In Public Service's opinion, this concern was unfounded. Within its proposed redline version of the rules, Public Service provides two alternative modifications to the definition of Activity which it believes fully addresses the ALJ's concern without impermissibly and inappropriately broadening the CAAM rules. The first alternative definition is essentially a restatement of the Active Parties' proposed definition in the rulemaking proceeding. The second alternative definition captures only situations where the activity was between a utility, its divisions, or its affiliates.

105. We find that both of the proposed alternative definitions are inadequate. The first alternative definition doesn't capture the concept that transactions can flow both ways (i.e., "offered to" and "offered by"). The second alternative definition doesn't capture the possibility that the activity may originate within the utility itself. For instance, if an appliance repair service was offered to the public by the utility itself, it would not be considered an "activity" for cost allocation purposes under this proposed definition. Therefore, we deny the exception of Public Service.

106. The Alliance seeks exception to the definition of "allocate." The Alliance believes the examples included in the Active Parties' definition for "allocate" helped to capture some of the lessons learned in prior CAAM proceedings. It does concede that the example can be omitted as long as the critical point of the example be retained. Namely that if a cost is allocated at any point in the accounting process (even before it is booked into the FERC Uniform System of Accounts),such is an allocation and not a direct assignment. We don't fully

understand the "critical point of the example" which the Alliance is attempting to make. We note that the ALJ's proposed definition of Allocate is nearly identical to the Active Parties' definition, but it does not include the two examples of an allocation of costs. It is hoped that the Alliance can provide further explanation of this point in a Rehearing, Reargument, and Reconsideration pleading, if it chooses to file one.

107. The next definition which the Alliance seeks exception to is "assigned." The Alliance proposes to modify the definition of assigned to parallel the construction with the definition of allocate. To do this it moves the phrase "charged directly" to the beginning of the definition and adds the word "solely." We find that the first proposed change is more stylistic in nature and the second proposed change could create problems through the inclusion of the word "solely." As a result, we deny these exceptions.

108. The Alliance recommends that the definitions for Fully Distributed Costs (FDC) and Fully Distributed Cost Study (FDC Study) be changed to the definitions created by the Active Parties. The Alliance has concern that the definitions in the proposed rules call for the type of study done to support a Phase I revenue requirement and not the type of study envisioned by the Alliance. Likewise, Public Service also takes exception to the proposed definitions for CAAM, FDC, and FDC Study. It notes that the ALJ rejected the Active Parties' suggested definitions for these terms because he felt they were inadequate. Instead, the ALJ used the definitions contained in the original NOPR. In Public Service's opinion, in doing so the ALJ has created inconsistencies and conflicts with the substantive rules governing CAAM and FDC Study. Public Service notes that the definition of CAAM describes it, in part, "as the calculation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and rate base cost components to Colorado jurisdictional activities," whereas the substantive rules

relating to CAAM describe it as "the policies, procedures, and cost allocation methods used to assign and allocate costs between regulated and nonregulated activities." As a result of the two inconsistencies between the two descriptions, the rules are extremely difficult to interpret and apply, according to Public Service. It suggests that the Commission adopt the Active Parties' definitions for these terms which reference the substantive rules. We agree with the ALJ that having definitions which reference other portions of the rules is problematic. However, we agree with Public Service that the definition of CAAM and rule 4503(a) are inconsistent and should be made to be the same. Therefore, we grant this exception and modify rule 4503(a) to be consistent with the definition of CAAM.

109. The next definition Public Service seeks exception to is the term "Transaction". Public Service notes that the ALJ adopted the Active Parties' definition, but rejected the exclusion from the definition the provision of administrative services (accounting, finance, legal, etc.) and transactions involving regulated and nonregulated divisions or affiliates of the utility that are subject to competitive bidding process such as the Commission's Least Cost Planning rules, *see* 4 CCR 723-3-3610. Public Service correctly notes that the term "Transaction" is used only in circumstances under which the asymmetrical pricing principles are to be applied. It contends that the Active Parties recommended excluding the administrative services from the asymmetrical pricing principle because they believed that to price them at their fully distributed cost was sufficient to ensure that regulated activities do not subsidize unregulated activities. According to Public Service, using the fully distributed cost also properly preserves the ability for those utilities that provide administrative services from within the utility to take advantage of economies of scale and scope in the delivery of such services. It also contends that the

competitive bidding process itself contains sufficient safeguards to ensure that services are fairly and equitably priced.

110. KM also takes exception to the ALJ excluding a portion of the Active Parties' definition of Transaction relating to the exemption of shared administrative services from the transactional pricing rules. It recommends that the Active Parties' language be added back to the definition of Transaction.

111. We agree with the utilities that there are sufficient safeguards to ratepayers if the utility acquires a product or service from an affiliate if the product or service is acquired as the winning bid through a competitive bidding process. Therefore, we grant this exception. However, we find that, instead of modifying the definition of "Transaction" to account for this, the concept should be set forth in the rules themselves. *See* rule 4502(e)(I). As for the second exception, namely that administrative services should be exempted from the transaction pricing rules "higher of" and "lower of" standard, we deny this exception. Our primary concern stems from potential situations where the utility would purchase administrative services from entities where there is not an "arms-length" relationship. We find that establishing such a blanket exemption for administrative services could lead to ratepayers paying more for administrative services than is appropriate. This issue is more fully discussed below regarding rule 4502.

35. Rule 4501 - Basis, Purpose and Statutory Authority

112. Aquila raises legal arguments to support its belief that the CAAM rules exceed the Commission's authority because the rules specifically include the concept of jurisdictional cost allocations throughout them. In Aquila's opinion, the Commission has no legal authority to impose such multi-state or multi-jurisdictional regulations under its clear statutory mandate to prevent cross-subsidization of non-regulated services by regulated service of Colorado utilities

pursuant to § 40-3-114, C.R.S. It believes that the allocation of costs between states, interstate, and other jurisdictional operations should only be reviewed during the course of a general rate case when changes in the rates for retail service and jurisdictional allocation factors are properly before the Commission. Aquila claims that, to the extent that a Commission rule regulates outside of the state of Colorado, such regulation does not serve a legitimate end as such regulation has not been delegated to Colorado or the Colorado Commission.

113. Aquila asserts that the proposed rules exceed a Colorado state agency's Tenth Amendment police powers and represent the potential for a significant intrusion of the Commission into interstate commerce matters and thereby is a violation of the Commerce Clause of the U. S. Constitution.

114. While we agree with Aquila's legal analysis regarding our jurisdictional limits and authority, we find that such an analysis is not applicable in this instance. In providing for review by Staff of a utility's specific cost allocations in other states and jurisdictions, we find that the rules merely contemplate a methodology to allow Staff to obtain complete information regarding cost allocations. We find that the rules do not expressly or implicitly allow this Commission to order a utility to revise its cost allocations in other jurisdictions or states. We therefore deny Aquila's exceptions.

36. Rule 4502 - Principles

115. The Alliance believes that the Benefit Principle found in rule 4502(c)(IV) is a corollary to the Cost Causation Principle, rule 4502(c)(I), and, therefore, it should either be included with Cost Causation Principle or be included directly after it in the hierarchy of allocation principles. While an argument can be made that if an activity causes a cost to be

incurred, it also benefits from incurring the cost. This circular reasoning distorts the intent of hierarchy.

116. We disagree and deny the exception. We find that the hierarchy set in the original NOPR and adopted by the ALJ correctly places the Benefit Principle as the fourth level.

117. Public Service takes exception to the Materiality Principle contained in rule 4502(c)(V). It is concerned with the implication that a general allocator will only be appropriate where there is "a small amount of cost left after either direct or indirect assignment or allocation." As a practical matter, it asserts that there are many significant cost categories for which a general allocator is the most appropriate means of allocating costs. They suggest that corporate governance costs is most appropriately allocated based on a three factor general allocator. As a result, it proposes modifications to the Materiality Principle. We disagree with Public Service's contention that cost pools could be used for large dollar items. We find that the last allocation principle should be for residual costs which could not have been allocated based on the four hierarchical principles--Cost Causation, Variability, Traceability, and Benefit. As a result, we modify rule 4502(c)(IV) to capture the concept of *Residuality* instead of *Materiality*.

118. KM takes exception to the transactional pricing rules found at rules 4502(d) and 4502(e). According to KM applying these rules could result in an unconstitutional taking of property and an unlawful forced subsidy of utility rates. In KM's opinion, utility customers should pay no more and no less than their fair share of the fully distributed costs of internal services.

119. KM supports its argument through an example of shared corporate service and rule 4502(d) for the higher of transactional pricing standard. KM claims that such an allocation would result in an unconstitutional taking of property if the higher value allocated to affiliated

businesses were to be imputed for ratemaking purposes as a contribution toward the costs of providing utility services. KM surmises under this scenario that the utility would either be left uncompensated by its rates, in which case the rates would not be just and reasonable, or the affiliate would be forced to effectively subsidize utility rates by paying higher than fully distributed costs. KM likewise concludes that rule 4502(e) could result in an illegal taking and forced subsidization for transactions going the other way, i.e., transactions from a nonregulated activity to the utility.

120. KM also has concerns with the transaction pricing rules relating to sale of assets. It states that assets owned by a utility or by its unregulated affiliated businesses belong to shareholders, not their customers. If assets are sold, customers have no lawful claim to any gain from the sale of such assets. KM believes that the Commission does not have legal authority to set the contract sale price of assets transferred between a utility and an unregulated affiliate, or to confiscate or allocate any gain from such a transfer. In KM's opinion, rules 4502(d)(III) and (e)(III) are unlawful to the extent they require assets that are transferred by the utility to be valued for regulatory purposes at other than net book cost. To correct for the problems it has identified with rules 4502(d) and (e) it provides suggested rule language. Its suggested rule removes the "higher of" and "lower of" standard and replaces it with either fully distributed costs, prudently incurred costs or net book value depending on which direction the transaction is being performed and whether its an asset, service or product.

121. Finally, KM expresses concern with rule 4502(f), because the rule does not indicate what happens after a utility determines that it is impracticable to establish a market price under the transactional pricing rules. It asks whether the transaction must be valued at some hypothetical fully distributed cost for the utility to provide the service internally.

122. Throughout this rulemaking, KM explained how it is corporately organized differently than other Colorado utilities. That is, their shared corporate services reside within its regulated utility operations, whereas Public Service receives its shared corporate services from a service company under its holding company structure. The Commission notes that rulemaking proceedings establish rules of general applicability to all utilities. It becomes impractical to try to craft rules which address every possibility. When KM files its CAAM and FDC Study pursuant to these rules, it can seek a waiver to these portions of the CAAM rules, providing justification for why a waiver is in the public interest. Our overarching concern with any cost allocation rules is to ensure that the ratepayers pay no more or no less than they should. We agree with the point raised by KM regarding rule 4502(f), and we modify this rule.

123. Aquila argues that, in several instances, the ALJ's proposed rules equates regulated non-jurisdictional service with unregulated activities. As an example, it points to rule 4502(g), which states that the terms should not be treated as interchangeable since regulated, non-jurisdictional activities are not subject to § 40-3-114. As a result, it requests that the Commission strike any references to regulated, non-jurisdictional services in the cost allocation rules.

124. We deny this exception. We find that, as a result of our modifications to the Basis, Purpose and Statutory Authority section of these rules, we have addressed Aquila concerns that we are not expanding our regulatory oversight. We also note that rule 4502(g) is intended to lessen the burden on utilities by allowing them to classify, for cost allocation purposes, services which are regulated by another agency. From our perspective, these services are non-jurisdictional.

37. Rule 4503 - Cost Allocation Manuals

125. Aquila also believes the ALJ made some problematic decisions in crafting the rules relating to the filing of the CAAM and FDC Study, specifically, by requiring Aquila to file a CAAM within 180 days of the effective date of the rules. Aquila notes that, as part of a settlement agreement with the Staff, it has agreed to engage in a series of workshops, before filing its CAAM, that will take over six months, *see* Decision No. C04-0999. Therefore Aquila asserts that it would be impossible for Aquila to comply with the proposed rule. We deny this exception. From a policy perspective, we believe that we should not grant waivers as part of a rulemaking process. The proper approach for Aquila will be to file for a waiver of this rule once the rules become effective.

126. Next, Aquila takes exception to rule 4503(h), which requires a FDC Study to be filed simultaneously with the CAAM. Instead, Aquila believes that the requirement to file a FDC Study should be limited to rate case proceedings. Likewise, Aquila takes exception to the requirement that it file a new FDC Study when a change to the CAAM is filed. In its opinion, it would lead to a large increase in regulatory costs and litigation. These costs, Aquila continues, would ultimately lead to higher customer rates and would be paid by the very customers that § 40-3-114 was intended to protect. Aquila asserts that compliance with this requirement would be very difficult in general since it would require a utility to create a completely hypothetical allocation of historical costs when changes to the cost allocation manual are proposed. It notes that the Active Parties recommended that this requirement be eliminated.

127. KM takes exception to rule 4503, which requires that utilities file CAAM and FDC Studies at times other than in the context of a general rate case. In KM's opinion, this rule would impose a large and costly burden on utilities, intervening parties, and the Commission

without sufficient justification or benefits that would outweigh the burden. It contends that this cost-benefit justification has not been done in the present rulemaking proceeding. As such, this rule does not comply with the APA.

128. We note that, in Decision No. C79-179, a previous Commission found that it generally agreed with Staff's desire to evaluate a CAAM through a FDC Study and we affirm this decision today. To use an Internal Revenue Service (IRS) analogy, the CAAM represents the various explanations of what is considered income and deductions in the annual booklet the IRS mails to all taxpayers, while the FDC Study represents the tax forms. A taxpayer could not readily determine whether they were in a tax liability or a refund position by reading the IRS booklet; instead, they need to complete the tax form while following the instructions in the booklet. Likewise, in order to evaluate a CAAM, Staff needs to see how the CAAM assigns and allocates costs through a FDC Study using actual financial results of a utility. Therefore, we deny the exception.

38. Rule 4504 - Fully Distributed Cost Studies

129. Public Service believes that, in adopting rule 4504(b), the ALJ inadvertently modified the last sentence from what was proposed by the Active Parties and, in doing so, created uncertainty as to what it requires. Public Service claims that the intent of the Active Parties was to describe the general form of the FDC Study that was agreed to by Staff and intervenors as part of the settlement of Public Service Phase I rate case in Docket No. 02S-315EG. As a result, Public Service provides two modifications to rule 4504(b). The first modification adds the concept that there could be a non-utility division within a utility. The second modification adds the phrase "of all assigned and allocated costs by division." We agree with Public Service's modifications and grant the exceptions. However we make one addition to

their suggested phrase and add the concept that the costs can be from either regulated or nonregulated divisions.

130. Finally, Aquila deletes the phrase "and the itemized amounts assigned and allocated to other jurisdictions" from rule 4504(d)(III). We deny this exception. In order to ensure the total company numbers shown on the FDC Study agree with the total company numbers shown on its financial statements, Staff needs to see the amounts for other jurisdictions. Furthermore, because utilities keep their books and records in accordance with the Uniform System of Accounts, it should be rather straight forward to provide the itemization by FERC account number for various expenses.

39. Gas Cost Adjustment and Prudence Review

a. Rule 4601 – Definitions

131. KM makes a number of recommended changes to the definitions here. KM proposes the following definition language:

> Rule 4601(a) "Account No. 191" means an account under the Federal Energy Regulatory Commission System of Accounts used to accumulate actual under-or-over recovered gas supply costs."
>
> Rule 4601(g) "Forecasted gas commodity cost" means the cost of gas commodity projected to be incurred by the utility during the GCA effective period, determined by using forecasted gas purchase quantity and forecasted gas purchase prices."
>
> Rule 4601(h) "Forecasted gas purchase quantity" means the quantity of gas commodity the utility anticipates it will purchase during the GCA effective period adjusted for any anticipated variances".
>
> Rule 4601(i) "Forecasted market prices" should be changed to "Forecasted gas purchase prices" defined to mean index prices, fixed prices or other gas contracting price options used in the calculation of the forecasted gas commodity cost."
>
> Rule 4601(j) "Forecasted sales gas quantity" means the quantity of gas commodity projected to be sold by the utility during the GCA effective period, adjusted for anticipated changes."

> Rule 4601(u) "Normalized" means the process of adjusting gas quantities to reflect normal historic temperatures."
>
> Rule 4601 (z) "Upstream services" means all services performed by others under contract with the utility for the purpose of effectuating delivery of gas to the utility's jurisdictional gas facilities."

132. We agree with the revised definition for rule 4601(a) as this language is clearer than the definition contained in the Recommended Decision. We therefore grant the exception. We disagree however, with the changes to rules (g), (h), (i), (j), (u), and (z) and consequently deny these exceptions. KM's proposed definitions do not substantially add clarity, and KM did not identify any specific concerns with the definitions contained in the Recommended Decision that would warrant the revised language.

133. KM also proposes to delete rule 4601(o) "Gas purchase plan (GPP)" and rule 4601 (p) "Gas purchase report (GPR)" as part of its proposal to eliminate the GPP and GPR reporting requirements. We deny this exception, as discussed in more detail below.

134. In rule 4601(x), Public Service proposes to replace "distribution system" with "pipeline system." We agree that the rule should not be limited only to distribution systems, but we nonetheless deny adding "pipeline," as a more general application is appropriate here. In order to make the applicability more general, we delete "distribution" and leave all other language intact.

b. Rule 4603 – Gas Cost Adjustments

135. Aquila and KM argue that interest should be symmetrical for under and over-recoveries. In its reply, OCC indicates that it opposes symmetrical interest. OCC points to Decision No. C01-0231, Docket No. 00S-422G, in which we stated on pages 42-43:

> This "asymmetrical" treatment of interest is based on symmetrical principles. Under the GCA rules the utility has an incentive to neither under-forecast as it will not receive interest payments, nor over-forecast as it will pay interest charges.

> Public Service has a degree of control over its costs through expedited filings, forecasting, and volatility mitigation measures. Customers, on the other hand, have no control over GCA rates. This structure is one of the few incentives in the GCA Rules that cause utilities to strive accurately to match gas purchases and resale prices.

136. We agree with OCC. The symmetrical interest is applied based on symmetrical principles, and is a necessary component of a GCA pass-through mechanism. We therefore deny this exception.[10]

137. In rule 4603(a), Public Service recommends requiring the annual GCA to be filed "at least once during any 12-month period." We deny this exception. This change would conflict with the scheduled GCA filings established in the rules, and a monthly GCA like the one Public Service uses would require a waiver of many rules anyway.

c. Rule 4604 – Contents of GCA Applications

138. In rule 4604(d), KM proposes to add " details of the utility's actual gas purchase costs and." We deny this exception as this phrase is already contained in the introductory sentence of the paragraph.

139. KM proposes in rule 4604(k), (l) and (m) to eliminate the financial exhibits 10 through 12. KM argues that base rate finances are not a part of GCA, and this information is redundant to that contained in annual reports. We disagree. Recommended Decision paragraphs 60-62 provide a thorough discussion of this issue.

140. Public service states that in rule 4604(h) the ALJ imposed a bill insert or bill message GCA notice requirement that would essentially eliminate the expedited nature of GCA

[10] We note that Aquila and KM are free to file a proposal to limit the Account 191 balance, and to limit interest payments, just as Public Service did with their monthly GCA proposal.

filings. Public Service proposes that this new requirement be removed. We agree, and grant this exception.

141. In rule 4604(h)(III), KM proposes to eliminate the requirement to provide a projected peak winter month bill, as the utility provides an average annual bill. We disagree. Gas heating costs are significantly higher in the winter season, and it is helpful to provide both average and peak information.

d. Rule 4605 to 4608 – GPP and GPR filings

142. KM Proposes to eliminate GPP and GPR filings. KM states that this information is duplicative to GCA information and unnecessary. KM argues that the rules would be less burdensome without the GPP and GPR reporting requirements. We disagree, and therefore deny this exception.

143. The GPP and GPR, as required by current rules, are essential. Roughly three quarters of all utility revenues flow through GCA, and it is very difficult for the Commission to oversee the reasonableness of the costs that utilities recover through such automatic pass-through mechanisms. The GPP/GPR system provides a streamlined review so that the Commission does not need to perform a full investigation into each utility's GCA each year.

144. The GCA is a straight pass-through mechanism, which removes part of the economic incentive for utilities that is present under the normal rate regulation process. Of course, utilities want to keep their rates low, and they have the risk of disallowance for imprudent actions, so they do have some incentives to manage their costs. However, given the limited utility resources, and the economic incentive for utilities to devote these resources to areas that have a more direct impact on earnings, the GPP/GPR process plays a vital role in the Commission's oversight of the utility's GCA.

145. Further, it is essential that utilities be fully engaged in up-front gas supply planning, particularly in light of the current gas price and volatility trends. If the utility establishes a reasonable plan to meet its future gas supply needs, it is not burdensome for the utility to provide this information in the form of a GPP. After-the-fact prudence reviews cannot reveal how much up-front planning the utility did unless the utility provides a summary of its planned actions at that time. The GPP, filed before the start of the gas purchase year, accomplishes this task. The GPR then provides an after-the-fact analysis of how well the utility carried out its plan, or responded to changing conditions. The GPR is in the same format, and covers the same gas purchase year as the accompanying GPP.

146. The GPP/GPR-based prudence review system allows staff to efficiently perform a general review of all utility GCAs, and decide whether a more in-depth review is required. In practice, the GPP/GPR prudence review system has allowed Commission Staff to focus its efforts on a few specific areas of selected gas utilities each year. Under the current system, half of the utilities or less are typically selected for review hearings each year, and Staff only investigates selected issues in these reviews. It would be far more burdensome for both staff and utilities if the GPP/GPR system is removed and Staff performs a full prudence review of each utility each year.

e. Rule 4609 – General Provisions

147. KM argues that the Commission should not require all utilities to file quarterly 191 account reports, and could instead require individual utilities to provide such reports as necessary pursuant to subparagraph (b). We disagree. Given the current gas price volatility, and the potential customer impact of under-collected revenues, the quarterly report provides the Commission with timely and necessary information. We therefore deny this exception.

40. Gas Pipeline Safety

a. Rules 4900(b)(IV), 4937, 4941.

148. Aquila proposes grammatical corrections to these rules. Because we find there are no substantive changes to the rules by making these corrections, we grant these exceptions.

b. Rules 4912(a), (d), 4914(b) - Written Reports by Operators of Distribution Systems and Filing of Separate Reports.

149. Public Service proposes to delete the word "pipeline" in these subparagraphs. We disagree. In drafting these rules an effort was made to use the wording that is parallel to the Office of Pipeline Safety rules wherever possible. The word "pipeline" is included in the federal reporting sections of the code. As such, we deny the exception.

c. Rule 4915(a) - Reports of Safety-Related Conditions.

150. Public Service proposes to correct a reference from (b) to (d). The correction should read: "4915(a) except as provided in paragraph (d) of this rule,…" We agree with this correction.

d. Rule 4916 - Reporting of Pipeline Damage and of Locate Information.

151. Upon further review of the rules, we modify parts (c), (d) and (e). These parts requested information that increased the reporting requirements on operators. Past data reflects that damages occurring on smaller systems do not justify additional reporting requirements. Also, to minimize any duplication of other rules, part (e) is deleted. Annually, the Utility Notification Center of Colorado (UNCC) currently files summary underground facility damage data to the Commission.

e. Rule 4917 - Filing Notices of Major Construction or Major Repair

152. Public Service proposes to delete parts (vii), (viii), and (ix) from this reporting rule. Aquila also requests the deletion of parts (viii), and (ix) from this rule. We agree that parts (vii), (viii), and (ix) should be deleted. The intent of this rule is to allow Staff to schedule inspections on larger construction jobs and it should not be assumed that utility companies are negligent in their construction and repairs and therefore must be monitored. We agree with deleting parts 4917 (vii), (viii), and (ix) from the reporting requirement, and therefore grant both Aquila's and Public Service's exceptions.

41. Wavier of Rules

153. Public Service requests in its exceptions for a one-year grace period for the new rules to be implemented because it contends that it will take time to make the necessary changes and to train the employees. Under its proposal, they would be in compliance with the rules if they met either the current or new rules. While we are sympathetic to the possibility of changes and training of employees, we find the request to be problematic. The Commission cannot legally have two different sets of rules in effect at one time. Such an attempt would clearly violate the Colorado Administrative Procedures Act. The new rules will take effect on April 1, 2006. After our rulings are administratively final and prior to the April 1st date, Public Service and any other utility, seeking relief from the new rules, should file a waiver request. All waiver requests should a list by rule number and subpart, if applicable, and include justification as to why the waiver is in the public interest. Therefore, we deny Public Service's request for a blanket waiver.

D. Lifting of the Stay

154. The Commission issued the following decisions to stay the various recommended Decision Nos. C05-0538 for the Water Rules, C05-0564 for the Electric Rules, C05-0565 for the Gas Rules, C05-0570 for the Cost Allocation and Assignment Rules and C05-0598 for the Master Meter Rules. Based on our ruling on exceptions at the deliberations, we lift those stays.

II. ORDER

A. The Commission Orders That:

1. The stay the Commission placed on the Proposed Rules Regulating Gas Utilities to replace those currently found in 4 CCR 723-4, 8, 10, 11, 17 and 32, is lifted.

2. The Commission adopts the Proposed Rules Regulating Gas Utilities attached to this Order as Attachment A.

3. The rules shall be effective on April 1, 2006.

4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

5. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. The 20-day time period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

7. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING September 9, 2005.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

CARL MILLER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
CONCURRING, IN PART, AND
DISSENTING, IN PART.

L:\final\C05-1084_03R-520G_04R-003EG_04R-170EG.doc:lp

III. CHAIRMAN GREGORY E. SOPKIN CONCURRING, IN PART, AND DISSENTING, IN PART:

A. Chairman Sopkin's Dissent Regarding the 4400 Series of Rules:

1. I dissent from the Commission's decision that a host of rules designed for consumer protection should apply to business and commercial customer classes. These rules increase costs and uncollectible accounts for utilities, which are ultimately borne by other ratepayers who act responsibly. While there are reasons to provide extraordinary protections to unsophisticated residential customers who need energy as a basic necessity for their homes, those who run a business, regardless of size, should be responsible enough to pay their utility bills on a timely basis.

2. Specifically, I do not believe the proposed rules concerning billing, customer deposits, third-party guarantees, and installment payment plans should apply outside of the residential context.[11] Residential customers need electricity and natural gas service to live in their homes. By contrast, business and commercial customers need energy to stay in business, which, while important, does not justify increasing costs that are ultimately borne by all ratepayers. Put simply, why should one customer who pays his or her bills on time pay for the bills of a business customer who does not or cannot? Or, why should the general body of ratepayers be responsible to try to ensure that commercial customers do not go out of business?

3. For example, if a business customer fails to pay its monthly energy bill of, say, $3000,[12] the proposed rules allow the customer, after it receives a disconnection notice, to pay only ten percent of the bill, and then receive a six-month installment plan to pay the remaining

[11] I do believe that Rule 4408, concerning notice of discontinuation, should apply to all customer classes. All customers should be notified before disconnection to allow for a chance to cure, or to possibly correct any mistakes that would result in disconnection.

[12] As noted by staff during deliberations, this amount is not highly unusual for a small business customer.

$2700. If the customer then fails to pay the next monthly bill of $3000, while the utility can ultimately disconnect the customer, at least $5700 would remain unpaid. If, as often occurs, the utility is unable to collect the deficiency, the utility would record the unpaid bill into its uncollectible account. The utility, through a rate case, recovers in its rates an amount for all of its uncollectible accounts. Translation: all ratepayers pay for the unpaid bills of other ratepayers.

4. There are reasons for this subsidy to residential ratepayers. Beyond the necessity argument above, residential customers should be afforded extra time to pay bills, in part because they likely reside at the same location and will do everything they can to keep their homes habitable. Businesses can and do go out of business, or change location to another state. Because the principals of a business are often not personally liable for the energy bills when their business collapses, they can redirect their monies to a different business. Opportunities to game the system by "hit and run" businesses abound.

5. Residential customers also are likely to be less sophisticated about their utility bills. While there may be some "mom and pop" businesses whose proprietors are less sophisticated about their utility bills, this does not justify the extraordinary protection provided in the rules the Commission is adopting. These business owners still must be responsible and sophisticated enough to comply with tax and other laws, and earn a profit to stay in business.[13] If figuring out their utility bill is too complicated, they can hire a consultant, just as most small businesses do with their taxes. The point is, we as ratepayers should not pay for any business' inability to pay or negligence.

[13] I note in passing that the same "mom and pop" businesses the Commission is apparently concerned about are unlikely to continue providing services and allow six month payment plans to *their* customers who become delinquent.

6. As noted at the beginning of this Commission's decision, one of the purposes of this rulemaking is to eliminate unnecessary or burdensome regulation – which means the status quo should not be maintained for its own sake. The term "burdensome" applies not just to the regulated entity, but also to ratepayers. At the very least, we should eliminate rules that would have the general body of utility customers pay for the mercenary ends of the business class.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN GREGORY E. SOPKIN

_____

Chairman

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4
RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

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 regulation, 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, 40-3-104.3, 40-3-111, 40-3-114, 40-3-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, and 40-7-117, C.R.S.

GENERAL PROVISIONS

4000. Scope and Applicability.

(a) Absent a specific statute, rule, or Commission order which provides otherwise, 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 concerning gas utilities, gas master meter operators, and gas pipeline safety.

(b) The scope and applicability rules regarding appeals of local government land use decisions are as stated in rule 4700.

(c) The scope and applicability rules regarding pipeline safety, which apply to pipeline operators and to those that are subject to other 4000 series rules, are as stated in rule 4900.

4001. Definitions.

The following definitions apply throughout this Part 4, except where a specific rule or statute provides otherwise. In addition to the definitions stated here, the definitions found in the Public Utilities Law apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Affiliate" of a public utility means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, a subsidiary of a parent corporation of a public utility or where the public utility or the parent corporation ~~can exercise control~~ has a controlling interest over an entity. ~~companies that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the utility. For purposes of this definition, control (including the terms controlling, controlled by, and under common control with) means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stock holders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.~~

(b) "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.

(c) "Basis Point" means one-hundredth of a percentage point (100 basis points = 1%).

(d) "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.

(e) "Commission" means the Colorado Public Utilities Commission.

(f) "Cubic foot" means, as the context requires:

(I) At 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 eight inches of water column gauge pressure, a suitable correction factor shall be applied to provide for measurement of gas as if delivered and metered at a pressure of six inches of water column gauge pressure. A utility may also apply appropriate factors to correct local pressure measurement to standard conditions.

(II) At Standard Conditions. For all other purposes, including testing gas, a standard cubic foot is that amount of gas at standard conditions which occupies a volume of one cubic foot.

(g) "Curtailment" means the inability of a transportation customer or a sales customer to receive gas due to a shortage of gas supply.

(h) "Customer" means any person who is currently receiving utility service ~~from a utility within the State of Colorado~~. Any person who moves within a utility's service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.

(i) "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).

(j) "Distribution system" means that part of a utility pipeline system used to distribute gas to customers.

(k) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.

(l) "Gas" means natural gas; flammable gas; manufactured gas; petroleum or other hydrocarbon gases including propane; or any mixture of gases produced, transmitted, distributed, or furnished by any utility.

(m) "Informal complaint" means an informal complaint as defined and discussed in the Commission's Rules Regulating Practice and Procedure.

(n) "Interruption" means a utility's inability to provide transportation to a transportation customer, or its inability to serve a sales customer, due to constraints on the utility's pipeline system.

(o) "Intrastate transmission pipeline" or "ITP" means any person that provides gas transportation service for compensation to or for another person in the State of Colorado using transmission facilities rather than distribution facilities. Transmission facilities may also be used to perform distribution functions.

(p) "Local distribution company" or "LDC" means any person, other than an interstate pipeline or an intrastate transmission pipeline, engaged in local distribution of gas and the sale or transportation

of gas for ultimate consumption. Distribution facilities may also be used to perform transmission functions.

(q) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to 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 to discontinue utility service in Colorado.

(r) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral~~that part of a pipeline system used, or designed to be used, to serve more than one customer~~.

(s) "Mcf" means 1,000 standard cubic feet.

(t) "MMBtu" means 1,000,000 British Thermal Units, or one Dekatherm.

(u) "Past due" means the point at which a utility can affect a customer's account for regulated service due to non-payment of charges for regulated service.

(v) "Pipeline system" means the piping and associated facilities used in the transmission and distribution of gas.

(w) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.

~~(x) "Purchaser" means the person, including a utility, who has taken title to gas.~~

(x) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission ~~and~~ or contained in a tariff of the utility.

(y) "Sales customer" means a person who ~~purchases~~ receives sales service from a utility.

(z) "Sales service" means a bundled gas utility service in which the utility both purchases gas commodity for resale to the customer and transports the gas for delivery to the customer.

(aa) "Security" includes any stock, bond, note, or other evidences of indebtedness.

~~(cc) "Seller" means any person who conveys title to gas or otherwise has the legal authority to sell the gas to a purchaser.~~

(bb) "Service lateral" means that part of a pipeline system used, or designed to be used, to serve only one customer.

(cc) "Staff" means Staff of the Public Utilities Commission.

(dd) "Standard conditions" means gas at a temperature of 60 degrees Fahrenheit and subject to an absolute pressure equal to 14.73 pounds per square inch absolute.

(ee) "Standby capacity" means the maximum daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer, if the customer purchased optional standby service.

(ff) "Standby supply" means the daily volumetric amount of gas reserved by a utility for the use by a transportation customer should that customer's supply fail, if the customer purchased optional standby service.

(gg) "Transportation" means the exchange, fronthaul, backhaul, flow reversal, or displacement of gas between a ~~seller~~ utility and a transportation customer through a pipeline system.

(hh) "Transportation customer" means a person who, by signing a gas transportation agreement, elects to subscribe to the unbundled service option of gas transportation offered by a utility.

(ii) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff, and are for service or merchandise not required as a condition of receiving regulated utility service.

(jj) "Utility" means a public utility as defined in § 40-1-103, C.R.S., providing sales service or transportation service (or both) in Colorado. This term includes both an ITP and a LDC.

(kk) "Utility service" or "service" means a service offering of a utility, which service offering is regulated by the Commission.

4002. Applications.

(a) By filing an appropriate application, any utility may ask that the Commission take action regarding any of the following matters:

(I) For the issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 4100.

(II) For the issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 4101.

(III) For the issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 4102.

(IV) For the amendment of a certificate of public convenience and necessity in order to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 4103.

(V) To transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets within the jurisdiction of the Commission or stock, or to merge a utility with another entity, as provided in rule 4104.

(VI) For approval of the issuance ~~renewal, extension,~~ or assumption of any security, or to create a lien pursuant to § 40-1-104, as provided in rule 4105.

~~(VII) For approval of a lien, as provided in rule 4106.~~

(VII) For flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 4107.

(VIII) To amend a tariff on less than statutory notice, as provided in rule 4110.

(IX) For approval of meter and equipment testing practices, as provided in rule 4303.

(X) For approval of a meter sampling program, as provided in rule 4304.

(XI) For approval of a refund plan, as provided in rule 4410.

(XII) For approval of a cost assignment and allocation manual, as provided in rule 4503.

(XIII) For appeal of a local government land use decision, as provided in rule 4703.

~~(XV) For exemption of a master meter operator from rate regulation, as provided in rule 4802.~~

(XIV) For any other matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

(b) In addition to the requirements of specific rules, all applications shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The name and address of the applying utility.

(II) The name(s) under which the applying utility is, or will be, providing service in Colorado.

(III) The name, address, telephone number, facsimile number, and e-mail address of the applying utility's representative to whom all inquiries concerning the application should be made.

(IV) A statement that the applying utility agrees to answer all questions propounded by the Commission or its Staff concerning the application.

(V) A statement that the applying utility shall permit the Commission or any member of its Staff to inspect the applying utility's books and records as part of the investigation into the application.

(VI) A statement that the applying utility understands that, if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted pursuant to the application may be revoked upon Commission order.

(VII) In lieu of the separate statements required by sub~~section~~paragraphs (b)(IV) through (VI) of this rule, a utility may include a statement that it has read, and agrees to abide by, the provisions of sub~~section~~paragraphs (b)(IV) through (VI) of this rule.

(VIII) A statement describing the applying utility's existing operations and general service area in Colorado.

(IX) For applications listed in sub~~section~~paragraphs (a)(I), (II), (III), (V), and (VI)~~, and (VII)~~ of this rule, a copy of the applying utility's or parent company's and consolidated subsidiaries' most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows so long as they provide Colorado specific financial information.

(X) A statement indicating the town or city, and any alternative town or city, in which the applying utility prefers any hearings be held.

(XI) Acknowledgment that, by signing the application, the applying utility understands that:

(A) The filing of the application does not by itself constitute approval of the application.

(B) If the application is granted, the applying utility shall not commence the requested action until the applying utility complies with applicable Commission rules and with any conditions established by Commission order granting the application.

(C) If a hearing is held, the applying utility shall present evidence at the hearing to establish its qualifications to undertake, and its right to undertake, the requested action.

(D) In lieu of the statements contained in sub~~section~~paragraphs (b)(XI)(A) through (C) of this rule, an applying utility may include a statement that it has read, and agrees to abide by, the provisions of sub~~section~~paragraphs (b)(XI)(A) through (C) of this rule.

(XII) A statement which is made under penalty of perjury; which is signed by an officer, a partner, an owner, ~~or~~ an employee of, an agent for, or an attorney for the applying utility, as appropriate, who is authorized to act on behalf of the applying utility; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant.

(c) In addition to the requirements of specific rules, all applications either shall include the following items or shall incorporate the following items by referring to information on file with the Commission in a miscellaneous docket created for that purpose. Applying utilities choosing to keep an item on file with the Commission in such miscellaneous docket shall keep the most current version on file and shall state in the application when the item was last filed with the Commission. Applying utilities choosing to include an item with the application shall include it in the following order and specifically identified either in the application or in appropriately identified attached exhibits:

(I) A copy of the applying utility's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreement, Articles of Organization).

(II) If the applying utility is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the applying utility to transact business in Colorado.

(III) The name, business address, and title of each officer, director, and partner.

(IV) The names and addresses of affiliated companies that conduct business with the Colorado utility.

(V) The name and address of the applying utility's Colorado agent for service of process.

4003. [Reserved]

4004. Disputes and Informal Complaints.

(a) For purposes of this rule, "dispute" means a concern, difficulty, or problem which needs resolution and which a customer or a person applying for service brings directly to the attention of the utility without the involvement of Staff or the Commission.

(b) A dispute may be initiated orally or in writing. Using the procedures found in rule 1301, a utility shall conduct a full and prompt investigation of all disputes concerning utility service.

(c) In accordance with the procedures in rule 1301, a utility shall conduct a full and prompt investigation of all informal complaints concerning utility service.

(d) A utility shall comply with all rules regarding the timelines for responding to informal complaints.

(e) If a current customer, or an applicant for service that is not a current customer, ~~or a person applying for service~~ is dissatisfied with the utility's proposed adjustment or disposition of a dispute, the utility shall inform the person, customer or ~~person applying~~ applicant for service of the right to make an informal complaint to the External Affairs section of the Commission and shall provide to the person, customer or ~~the person applying~~ applicant for service the address and toll free number of the Commission's External Affairs section.

(f) A utility shall keep a record of each informal complaint and of each dispute. The record shall show the name and address of the initiating customer or person applying for service, the date and character of the issue, and the adjustment or disposition made. This record shall be open at all times to inspection by the person who initiated the informal complaint or dispute, by the Commission, and by Staff.

4005. Records.

(a) Except as a specific rule may require, every utility shall maintain, for a period of not less than three years, and shall make available for inspection at its principal place of business during regular business hours, the following:

(I) Records concerning disputes, which records are created pursuant to rule 4004.

(II) Complete records of tests to determine the heating value of gas, which records are created pursuant to rule 4202.

(III) Records concerning interruptions and curtailments of service, which records are created pursuant to rule 4203.

(IV) Transportation request logs, which records are created pursuant to rule 4205(e).

(V) Notices of rejected transportation requests, which records are created pursuant to rule 4206(c).

(VI) Transportation agreements created pursuant to rule 4206.

(VII) All distribution pressure records, and all records or charts made with respect to rule 4208, appropriately annotated.

(VIII) Meter calibration records created pursuant to under rule 4303.

(IX) Records concerning meters, which records are created pursuant to rules 4305 and 4306.

(X) Customer billing records, which records are created pursuant to rule 4401(a).

(XI) Customer deposit records, which records are created pursuant to rule 4403.

(XII) Records and supporting documentation concerning its cost assignment and allocation manual and fully-distributed cost study pursuant to rules 4503(g) and 4504(e), for so long as the manual and study are in effect or are the subject of a complaint or a proceeding before the Commission.

(XIII) The total gas transported under transportation tariffs in Mcf or MMBtu and the associated total revenue.

(XIV) Any costs that the utility has incurred as a result of sales customers becoming transportation customers.

(XV) As applicable, the records and documents required to be created pursuant to rules 4910 to 4920.

(b) A utility shall maintain at each of its local offices and at its principal place of business all tariffs filed with the Commission and applying to Colorado rate areas. If the utility maintains a website, it shall also maintain its current and complete tariffs on its website.

(c) A utility shall maintain its books of account and records in accordance with the provisions of 18 C.F.R. Part 201, the Uniform System of Accounts, amended as of April 1, 2005~~4~~. A utility shall maintain its books of accounts and records separately from those of its affiliates.

(d) A utility shall preserve its records in accordance with the provisions of 18 C.F.R. Part 225, the Preservation of Records of Public Utilities and Licensees, amended as of April 1, 2005~~4~~.

4006. Reports.

(a) On or before April 30th of each year, a utility shall file with the Commission an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed 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 nevertheless shall 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.

(b) If a utility publishes an annual report or an annual statistical report to stockholders, other security holders or members, or if it receives an annual certified public accountant’s report of its business, the utility shall file one copy of the report with the Commission within 30 days after publication or receipt of such report.

(c) On an annual basis, a utility shall file a report stating the average time taken for service personnel to respond to gas odor calls from customers for the following:

(I) The entire area served by the utility within Colorado.

(II) Each division of the utility assigned to serve a region or portion of the utility’s entire service area.

(d) As required by rule 4202, a utility shall file with the Commission information concerning gas heating value and readjustment of customers' appliances and devices.

(e) As required by rules 4503(a), 4504(a), and 4503(i), a utility shall file with the Commission cost assignment and allocation manuals, fully-distributed cost studies, and required updates.

(f) As required by rule 4609(b), a utility shall file reports providing GCA account 191 balance information.

(g) A utility shall file reports required by rules 4910 through 4917.

(h) A utility shall file with the Commission any report required by a rule in this 4000 series of rules.

(i) A utility shall file with the Commission such special reports as the Commission may require.

4007. [Reserved]

4008. Incorporation by Reference.

(a) The Commission incorporates by reference 18 C.F.R. Part 201 (as published on April 1, 2005~~4~~) 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.

(b) The Commission incorporates by reference 18 C.F.R. Part 225 (as published on April 1, 2005~~4~~) 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.

(c) Any material incorporated by reference in this Part 4 may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at costs upon request. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library.

4009. – 4099.[Reserved]

OPERATING AUTHORITY

4100. Certificate of Public Convenience and Necessity for a Franchise.

(a) A utility seeking authority to provide service pursuant to a franchise shall file an application pursuant to this rule. When a utility enters into a franchise agreement with a municipality for the first time, it shall obtain authority from the Commission pursuant to § 40-5-102, C.R.S. prior to providing service under that initial franchise agreement. A utility maintains the right and obligation to serve a municipality within its service territory after the expiration of any franchise agreement~~A utility cannot provide service pursuant to a franchise without authority from the Commission~~.

(b) An application for certificate of public convenience and necessity to exercise franchise rights shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The information required in rules 4002(b) and 4002(c).

(II) A statement of the facts (not conclusory statements) relied upon by the applying utility to show that the public convenience and necessity require the granting of the application.

(III) A statement describing the 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 city or town ~~area~~ sought to be served~~, together with a map of the city or town in which franchise rights would be exercised~~.

(IV) A certified copy of the franchise ordinance; proof of publication, adoption, and acceptance by the applying utility; 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.

(V) A statement describing in detail the extent to which the applying utility is an affiliate of any other utility which holds authority duplicating in any respect the authority sought.

(VI) A copy of a feasibility study for areas previously not served by the applying utility, which study shall at least include estimated investment, income, and expense. An applying utility may request that its most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows be submitted in lieu of a feasibility study.

(VII) A statement of the names of public utilities and other entities of like character providing similar service in or near the area sought to be served.

4101. Certificate of Public Convenience and Necessity for Service Territory.

(a) A utility seeking authority to provide service in a new service territory shall file an application pursuant to this rule. ~~The~~A utility cannot provide service pursuant to a franchise ~~within the proposed service territory~~ without authority from the Commission, unless the area proposed to be served is contiguous territory to the existing certificated territory of the utility and such extension into an uncertificated, contiguous territory is necessary in the ordinary course of business.

(b) An application for certificate of public convenience and necessity to provide service in a new territory shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The information required in rules 4002(b) and 4002(c).

(II) A statement of the facts (not conclusory statements) relied upon by the applying utility to show that the public convenience and necessity require the granting of the application.

(III) A description of the type of utility service to be rendered and a description of the area sought to be served.

(IV) A map showing the specific geographic area that the applying utility proposes to serve. If the applying utility intends to phase in service in the territory over time, specific areas and proposed in-service dates shall be included. The map shall describe the geographic areas in section, township, and range convention.

(V) A statement describing in detail the extent to which the applying utility is an affiliate of any other utility which holds authority duplicating in any respect the territory sought.

(VI) 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.

(VII) A copy of a feasibility study for the proposed area to be served, which shall at least include estimated investment, income, and expense. An applying utility may request that its most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows be submitted in lieu of a feasibility study.

(VIII) A statement of the names of public utilities and other entities of like character providing similar service in or near the area sought to be served.

4102. Certificate of Public Convenience and Necessity for Facilities.

(a) A utility seeking authority to construct and to operate a facility or an extension of a facility pursuant to § 40-5-101, C.R.S., shall file an application pursuant to this rule. The utility need not apply to the Commission for approval of ~~to~~ ~~cannot recover for~~ construction and operation of a facility or an extension of a facility which is in the ordinary course of business. The utility shall apply to the Commission ~~to recover for~~for approval of construction and operation of a facility or an extension of a facility which is not in the ordinary course of business. ~~without authority from the Commission.~~

(b) An application for certificate of public convenience and necessity to construct and to operate facilities or an extension of a facility pursuant to § 40-5-101, C.R.S., shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The information required in rules 4002(b) and 4002(c).

(II) A statement of the facts (not conclusory statements) relied upon by the applying utility to show that the public convenience and necessity require the granting of the application or citation to any Commission decision that is relevant to the proposed facilities.

(III) A description of the proposed facilities to be constructed.

(IV) Estimated cost of the proposed facilities to be constructed.

(V) Anticipated construction start date, construction period, and in-service date.

(VI) A map showing the general area or actual locations where facilities will be constructed, population centers, major highways, and county and state boundaries.

(VII) As applicable, information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives.

4103. Certificate Amendments for Changes in Service, in Service Territory, or in Facilities.

(a) A utility seeking authority to do the following shall file an application pursuant to this rule: amend a certificate of public convenience and necessity in order to extend, to restrict, to curtail, or to abandon or to discontinue without equivalent replacement any service, service area, or facility. A utility cannot extend, restrict, curtail, or abandon or discontinue without equivalent replacement any service, service area, or facility not in the ordinary course of business without authority from the Commission.

(b) An application to amend a certificate of public convenience and necessity in order to change, to extend, to restrict, to curtail, to abandon, or to discontinue any service, service area, or facility without equivalent replacement shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) All information required in rules 4002(b) and 4002(c).

(II) If the application for amendment pertains to a certificate of public convenience and necessity for facilities, all of the information required in rule 4102.

(III) If the application for amendment pertains to a certificate of public convenience and necessity for franchise rights, all of the information required in rule 4100.

(IV) If the application for amendment pertains to a certificate of public convenience and necessity for service territory, all of the information required in rule 4101.

(V) If the application for amendment pertains to a service, the application shall include:

(A) The requested effective date for the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement of the service.

(B) A description of the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement sought. This shall include maps, as applicable. This shall also include a description of the applying utility's existing operations and general service area.

(c) In addition to complying with the notice requirements of the Commission's Rules Regulating Practice and Procedure, a utility applying to curtail, restrict, abandon or discontinue service without equivalent replacement ~~the applying utility~~ shall prepare a written notice as provided in ~~section~~paragraph (d) of this rule and shall mail or deliver the notice at least 30 days before the application's requested effective date to each of the applying utility's affected customers. If no customers will 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.

(d) The notice required by ~~section~~paragraph (c) of the rule shall contain all of the following:

(I) The name of the applying utility.

(II) A statement detailing the requested ~~extension,~~ restriction, curtailment, or abandonment or discontinuance without equivalent replacement and the requested effective date.

(III) A statement 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.

(IV) A statement that, in order to participate as a party, a person must file an appropriate and timely intervention according to the Commission's Rules Regulating Practice and Procedure.

(V) The Commission's full address.

(e) Not later than 15 days before the requested effective date, the applying utility shall file with the Commission a written affidavit stating its compliance with the notice requirements of ~~section~~paragraphs (c) and (d) of this rule. The affidavit shall state the date the notice was completed and the method used to give notice. The applying utility shall attach a copy of the notice to the affidavit.

~~(f) No proposed extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement shall be effective unless and until the Commission has entered an order approving it.~~

4104. Transfers, Controlling Interest, and Mergers.

(a) A utility seeking authority to do any of the following shall file an application pursuant to this rule: transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in a utility, transfer assets subject to the jurisdiction of the Commission outside the normal course of business, transfer stock, or merge a utility with another entity. A utility cannot transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in any utility, transfer assets outside the normal course of business or transfer stock, or merge with another entity without authority from the Commission.

(b) An application to transfer a certificate of public convenience and necessity, to obtain a controlling interest in a utility, to transfer assets subject to the jurisdiction of the Commission, to transfer stock, or to merge a utility with another entity shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The information required in rules 4002(b) and 4002(c), 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 transaction which is the subject of the application.

(III) Copies of any agreement for merger, sales agreement, or contract of sale pertinent to the transaction which is the subject of the application.

(IV) Facts showing that the transaction which is the subject of the application is not contrary to the public interest.

(V) An evaluation of the benefits and detriments to the customers of each party and to all other persons who will be affected by the transaction which is the subject of the application.

(VI) A comparison of the kinds and costs of service rendered before and after the transaction which is the subject of the application.

(c) An application to transfer a certificate of public convenience and necessity, an application to transfer assets subject to the jurisdiction of the Commission, or an application to transfer or obtain control of the utility or to merge the utility with another entity ~~stock~~ may be made by joint or separate application of the transferor and the transferee.

(d) When control of a utility is transferred to another entity, or the utility's name is changed, the utility which will afterwards operate under the certificate of public convenience and necessity shall file

with the Commission a tariff adoption notice, shall post the tariff adoption notice in a prominent public place in each local office and principal place of business of the utility, and shall have the tariff adoption notice available for public inspection at each local office and principal place of business. Adoption notice forms are available from the Commission. The tariff adoption notice shall contain all of the following information:

(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) Unless otherwise requested by the applying utility in its application, a statement that the adopting utility is adopting as its own all rates, rules, terms, conditions, agreements, concurrences, instruments, and all other provisions that have been filed or adopted by the previous utility.

4105. Securities and Liens.

(a) Subject to the limitation contained in ~~section~~paragraph (~~f~~g) of this rule, a utility which either derives more than five percent of its consolidated gross revenues in Colorado as a public utility or derives a lesser percentage if its revenues are earned by supplying an amount of energy which equals five percent or more of Colorado's consumption shall file an application for Commission approval of any proposal to issue, ~~, to renew, to extend,~~ or to assume any security or to create a lien.

(b) An application for the issuance~~, renewal, extension,~~ or assumption of securities with a maturity of 12 months or more or to create a lien shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) All information required in rules 4002(b) and 4002(c).

(II) A copy of the resolution of the applying utility's board of directors approving the issuance, ~~renewal, extension,~~ or assumption of the securities or to create a lien, together with, as applicable and available, copies of the proposed indenture requirements, the mortgage note, the amendment to the ~~amending~~ loan contract, and the contract for sale of securities or creation of a lien.

(III) A statement describing each short-term and long-term indebtedness outstanding on the date of the most recent balance sheet.

(IV) 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 most recent balance sheet.

(V) A statement of capital structure showing common equity, long-term debt, preferred stock, if any, and pro forma capital structure on the date of the most recent 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.

(VI) 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 most recent balance sheet.

(VII) A statement describing the type and amount of securities to be issued; the anticipated interest rate or dividend rate; the redemption or sinking fund provisions, if any; and, within ~~three~~ 10 ~~business~~ days of their filing with the Securities and Exchange Commission, a copy of the registration statement, related forms, and preliminary prospectus filed with the Securities and Exchange Commission relating to the proposed issuance.

(VIII) 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.

(IX) A statement of the estimated cost of financing.

(c) For applications for the creation of a lien on the applying utility's property situated within the State of Colorado shall also include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) A description of the property which will be subject to the lien.

(II) The amount of the lien.

(III) The proposed use of the funds to be received from the lien.

(IV) The estimated cost for the creation of the lien.

(V) The anticipated duration of the lien.

(VI) The anticipated release date of the lien.

(VIII) The retirement payment plan to release the lien.

(IX) A statement describing how the applying utility will ensure that neither the creation of the lien nor the use of the proceeds will violate § 40-3-114, C.R.S.

(X) A statement that, for the duration of the lien, the applying utility will advise the Commission within ten days of any bankruptcy, foreclosure, or liquidation proceeding.

(XI) A statement that the applying utility will advise the Commission within ten days of any deviation from its lien retirement payment plan.

(d) The Commission shall publish notice of the application, which shall set a ten-day intervention period and a hearing date.

(e) Within three days after the filing of an application to issue~~, to renew, to extend,~~ or to assume a security, the applying utility shall publish notice of the filing of the application in a newspaper of general circulation. The notice shall contain the following information:

(I) The name and address of the applying 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.

(III) A statement that any person may intervene in the application proceeding by complying with the applicable rule of the Commission's Rules Regulating Practice and Procedure.

(f) The applying 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.

(g) The Commission shall give priority to an application made pursuant to this rule and shall grant or deny the application 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. The Commission shall approve or disapprove an application made pursuant to this rule by written order.

(h) Pursuant to § 40-1-104, C.R.S., a utility may issue~~, renew, extend,~~ or assume liability on securities, other than stocks, with a maturity date of not more than 12 months after the date of issuance, whether secured or unsecured, without application to or order of the Commission provided that no such securities so issued shall be refunded, in whole or in part, by any issue of securities having a maturity of more than 12 months except on application to and approval of the Commission.

(i) Any security requiring Commission approval, but issued~~, renewed, extended,~~ or assumed without such approval, shall be void.

~~4~~106. ~~Liens.~~

~~(a) A utility which either derives more than five percent of its consolidated gross revenues in Colorado as a public utility or derives a lesser percentage if its revenues are earned by supplying an amount of energy which equals five percent or more of Colorado's consumption shall file an application for Commission approval of any proposal to create a lien on its property situated within the State of Colorado.~~

~~(b) An application for the creation of a lien on the applying utility's property situated within the State of Colorado shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:~~

~~(I) All information required in rules 4002(b) and 4002(c).~~

~~(II) A description of the property which will be subject to the lien.~~

~~(III) The amount of the lien.~~

~~(IV) The proposed use of the funds to be received from the lien.~~

~~(V) The estimated cost for the creation of the lien.~~

~~(VI) The anticipated duration of the lien.~~

~~(VII) The anticipated release date of the lien.~~

~~(VIII) The retirement payment plan to release the lien.~~

~~(IX) A statement describing how the applying utility will ensure that neither the creation of the lien nor the use of the proceeds will violate § 40-3-114, C.R.S.~~

(X) A statement that, for the duration of the lien, the applying utility will advise the Commission within ten business days of any bankruptcy, foreclosure, or liquidation proceeding.

(XI) A statement that the applying utility will advise the Commission within ten business days of any deviation from its lien retirement payment plan.

(XII) A statement that, within seven business days of the end of each month, the applying utility will record on its books and records any transaction relating to the lien.

(XIII) A statement that the applying utility agrees to provide to the Commission quarterly cash flow statements during the duration of the lien.

(XIV) A description of how the applying utility will maintain adequate quality of service for its regulated utility operations during the duration of the lien.

(XV) A copy of the resolution of the applying utility's board of directors approving the creation of the lien or a copy of other authorizing document(s).

(XVI) A statement describing each short-term and long-term indebtedness outstanding on the date of the most recent balance sheet.

(XVII) 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 most recent balance sheet.

(XVIII) A statement of capital structure showing common equity, long-term debt, preferred stock, if any, and pro forma capital structure on the date of the most recent balance sheet giving effect to the creation of the proposed lien. Debt and equity percentages to total capitalization, actual and pro forma, shall be shown.

(XIX) 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 most recent balance sheet.

(c) The Commission shall publish notice of the application, which shall set a ten-day intervention period and a hearing date.

(d) Within three days after the filing of an application to create a lien on property in Colorado, the applying utility shall publish notice of the filing of the application in a newspaper of general circulation. The notice shall contain the following information:

(I) The name and address of the applying 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.

(III) A statement that any person may intervene in the application proceeding by complying with the applicable rule of the Commission's Rules Regulating Practice and Procedure.

(e) The applying 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.

~~(f) The Commission shall give priority to an application made pursuant to this rule and shall grant or deny the application 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. The Commission shall approve or disapprove an application made pursuant to this rule by written order.~~

4106~~7~~. Flexible Regulation to Provide Jurisdictional Service Without Reference to Tariffs.

(a) A utility seeking authority to provide a jurisdictional service without reference to a tariff shall file an application pursuant to this rule. A utility cannot provide a jurisdictional service without reference to a tariff without authority from the Commission.

(b) An application for flexible regulation to provide jurisdictional service without reference to tariffs shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) All information required in rules 4002(b) and 4002(c).

(II) The name of the customer or potential customer.

(III) A description of the jurisdictional service or services which the applying utility seeks to provide to a customer or a potential customer.

(IV) A statement describing the manner in which the applying utility will provide the jurisdictional service or services if it contracts with a customer or potential customer.

(V) A statement of the facts (not in conclusory form) which the applying utility believes satisfy the requirements of § 40-3-104.3(1)(a), C.R.S.

(VI) A statement that the applying utility has provided, or will provide, copies of the application and contract as required by ~~section~~paragraph (c) of this rule.

(c) The contract which is the subject of the 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 applying utility shall furnish a copy of the application and, when it is available, of the contract, under seal, to the OCC. Unless the applying utility requests other treatment, the Commission and the OCC shall treat the contract as confidential. If the Commission grants a protective order preserving the confidentiality of the contents of an application, then ~~T~~the applying utility shall also furnish a copy of the application without the contract to any utility then providing service to the customer or potential customer.

(d) The direct testimony and exhibits to be offered at hearing shall accompany the application unless the applying utility believes that the application will be uncontested and unopposed. If an exhibit is large or cumbersome, the applying utility shall file the exhibit with the Commission; shall provide, for the benefit of the intervenors, the title of the exhibit and a summary of the information contained in the exhibit; and shall state the location (other than the Commission) at which parties may inspect the exhibit.

(e) Prefiled testimony or exhibits shall not be modified once filed unless the modification is to correct typographical errors or misstatements of fact or unless all parties to the proceeding agree to the modification. In the event a substantive modification is made without the agreement of all parties, the Commission may consider the effect of the substantive modification as a basis for a motion to continue in order to allow the Staff or any other party a reasonable opportunity to investigate and, if necessary, to address the modification.

(f) The Commission shall provide notice of the application. Any person desiring to intervene in a proceeding initiated pursuant to § 40-3-104.3, C.R.S., and this rule shall move to do so within five days of the date the Commission provides notice.

(g) Within five ~~two business~~ days of receiving written notice of an intervention in a proceeding initiated pursuant to § 40-3-104.3, C.R.S., and this rule, the applying utility shall hand-deliver or otherwise provide to the intervenor a non-confidential copy of the application and the applying utility's prefiled testimony and exhibits. ~~or, if the intervenor has signed the required non-disclosure agreement, a confidential copy of the application and of the applying utility's prefiled testimony and exhibits.~~

(h) Unless the Commission orders otherwise, the applying utility shall publish notice of the application in a newspaper of general circulation within three days of the filing of the application.

(i) The notice provided by the applying utility shall contain the following information:

(I) The name and address of the applying utility.

(II) A statement that the applying utility is seeking an order from the Commission authorizing the applying utility to provide jurisdictional service under contract without reference to its tariffs.

(III) The name of the customer(s) or potential customer(s) involved.

(IV) A statement that the identified customer(s) or potential customer(s) may have the ability to provide its/their own service or may have competitive alternatives available to it/them.

(V) A general description of the jurisdictional services to be provided.

(VI) A statement of where affected customers may call to obtain information concerning the application.

(VII) 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.

(VIII) A statement that anyone desiring to participate as a party must file a petition to intervene within five days from the date of Commission notice of the application and that the intervention must comport with the Commission's Rules Regulating Practice and Procedure.

(j) Within three days of providing notice, the applying utility shall file with the Commission an affidavit showing proof of publication of notice.

(k) On a case-by-case basis, the Commission may require the applying utility to provide additional information.

(l) Should an application be filed which the Commission determines is not complete, the Commission or Staff shall notify the applying utility within ~~ten~~ seven days from the date the application is filed of the need for additional information. The applying utility may then supplement the application so that it is complete. Once the application is complete, the Commission will process the application, with all applicable timelines running from the date the application is completed.

(m) 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.

(n) At the time of any proceeding in which a utility's overall rate levels are determined, the Commission may require the utility to file a fully distributed cost method which segregates investments, revenues, and expenses associated with jurisdictional utility service provided pursuant to contract from other regulated utility operations in order to ensure that jurisdictional utility service provided pursuant to contract is not subsidized by revenues from other regulated utility operations. If revenues from a service provided by a utility pursuant to contract are less than the cost of service for that service, the rates for other regulated utility operations shall not be increased to recover the difference.

(o) The applying utility shall provide final contract or other description of the price and terms of service as specified in § 40-3-104.3(1)(e), C.R.S.

4107~~8~~. [Reserved]

4108~~9~~. Tariffs and Contracts.

(a) A utility shall keep on file with the Commission the following documents pertaining to gas sales service and gas transportation service: its current Colorado tariffs, contracts (including gas sales agreements), privileges, contract forms, gas service agreements, and those gas transportation service agreements which are not the same as the standard gas transportation service agreement contained in the utility's tariffs. These documents, unless filed under seal ~~Unless otherwise provided by law, all tariffs, contracts, privileges, contract forms, gas service agreements, and gas transportation service agreements~~ shall be available for public inspection at the Commission and at the principal place of business of the utility.

(b) Tariffs shall plainly show all terms, conditions, rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, with respect to regulated services and products. A utility's tariffs shall include at least the following:

(I) A description of the minimum heating value for gas service as required by rule 4202(a).

(II) A description of testing methods for gas quality as required by rule 4202(f).

(III) Interruption and curtailment criteria, policies, and implementation priorities, as required by rule 4203.

(IV) Transportation service rates, terms, and conditions, as required by rule 4205.

(V) The utility's transportation service request form, pursuant to rule 4206(a).

(VI) Line extension provisions as required by rule 4210.

(VII) Information regarding the utility's meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, pursuant to rules 4303, 4304, 4305, 4306, and 4309.

(VIII) Information regarding benefit of service transfer policies, pursuant to rule 4401(c).

(IX) Customer deposit policy as required by rule 4403.

(X) Information regarding installment payment plans and other plans, pursuant to rule 4404.

(XI) Information regarding collection fees or miscellaneous service charges, pursuant to rules 4404(c)(VI) and (c)(VIII).

(XII) Information regarding any after-hour restoration fess, pursuant to rule 4409(b).

(XIII) All other rules, regulations, and policies covering the relations between the customer and the utility.

41~~09~~10. New or Changed Tariffs.

(a) A utility shall file with the Commission any new or changed tariffs. No new or changed tariff shall be effective unless it is filed with the Commission and either is allowed to go into effect by operation of law or is approved by the Commission.

(b) A utility shall use one of the following processes to seek to add a new tariff or to change an existing tariff:

(I) The utility may file the proposed tariff, including the proposed effective date, accompanied by an advice letter. The utility shall provide notice in accordance with rule 1206. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's 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. The utility shall provide notice in accordance with rule 1206. The application shall include the information required in rules 4002(b) and 4002(c); shall explain the details of the proposed tariff, including financial data if applicable; shall state the facts which are the basis for the request that the proposed tariff become effective on less than 30-days' notice; and shall note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.

(III) By advice letter to be effective on not less than one-day's notice, the utility may file a tariff to comply with an order of the Commission.

(c) Each tariff sheet which is 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 (for example, "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 Commission decision, the tariff sheet shall show the specific authority or Commission decision number in the space provided at the foot of the sheet.

(d) The Commission may reject any tariff that is not in the form, or does not contain the information, required by statute, by rule, or by Commission order and decision. Any tariff rejected by the Commission shall be void and shall not be used.

411~~0~~1. Advice Letters.

Each proposed tariff shall be accompanied by a serially-numbered advice letter. The letter shall list all sheets included in the filing by number and shall show the sheets being cancelled, if any. The advice letter shall state the purpose of the filing; shall identify each change being proposed; shall state the amounts, if any, by which the utility's revenues will be affected; shall summarize clearly the extent to which customers will be affected; and shall provide information demonstrating that the proposed tariff is just and reasonable.

4112. – 4199. [Reserved]

FACILITIES

4200. Construction, Installation, Maintenance, and Operation.

The gas plant, equipment, and facilities of a utility shall be constructed, installed, inspected, maintained, and operated in accordance with accepted engineering and gas industry practices to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.

4201. Instrumentation.

A utility purchasing gas energy or receiving gas energy for transportation shall install, or shall require the interconnecting pipeline to provide, such instruments or meters as may be necessary to furnish information detailing the quantity and quality, as necessary to maintain system integrity, of gas received.

4202. Heating Value, Purity, and Pressure.

(a) A utility shall establish and maintain in its tariffs a minimum heating value for its gas, expressed in British Thermal Units per standard cubic foot. The minimum heating value shall be no less than the monthly average gross heating value of gas supplied by the utility in any given service area. No deviation below this minimum shall be permitted. The utility shall determine the heating value of gas by testing gas taken from such points on the utility's pipeline system and at such test frequencies as are reasonably necessary for a proper determination. The utility shall maintain records of tests conducted to determine the heating value of gas. The results of these tests shall be stated in terms of standard conditions.

(b) A change in minimum heating value shall require an appropriate adjustment, if any, to rates.

(c) The utility shall insure that the gas it supplies, if from multiple sources or if the supply from a single source changes in composition, is interchangeable for safe and efficient use. The utility shall insure that gas from new supply sources ~~of gas~~ or from supply sources which ~~changes in~~ the gas composition ~~of gas~~has changed is ~~are~~ interchangeable with the gas it currently supplies. The utility shall evaluate interchangeability by means of one of the following:

(I) Use of test results which establish that the gas supplied to the end-user falls within an acceptable range and which take into account the heating value, specific gravity, and composition of the gas.

(II) Use of actual appliances to determine acceptability.

(III) Use of a standard in the natural gas industry.

(d) A utility shall promptly readjust its customers' appliances and devices as necessary to render proper service if the readjustment is required for safe and efficient use in accordance with paragraph (c) of this rule. ~~due to heating value change which is the result of a new source of gas or a change in the composition of the gas supplied.~~ Unless otherwise ordered by the Commission, a readjustment made pursuant to this ~~section~~paragraph shall be done at no charge to the customer. If a utility determines that a readjustment pursuant to this ~~section~~paragraph is necessary, the utility shall notify the Commission, in writing, of the readjustment and of the reason for the readjustment.

(e) A 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 or receives gas on a heat value basis or unless the interconnecting pipeline provides the utility with a record of the heating value of the gas delivered and the interconnecting pipeline's tests are made at least once each week.

(f) All gas supplied to customers shall be substantially free of impurities which may cause corrosion of ~~mains or piping~~facilities or which may form corrosive or harmful fumes when burned in a properly-designed and properly-adjusted burner.

(g) The utility shall deliver gas at a pressure of six inches water column, plus or minus two inches water column, measured at the meter outlet, unless operating conditions require a higher delivery pressure. If a higher pressure is required, the utility shall require the customer to install appropriate pressure regulating equipment in the customer's lines, if necessary.

(h) A utility shall monitor distribution pressure as follows:

(I) In a distribution system 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.

(II) In distribution system serving more than 100 and fewer than 500 customers, the utility shall provide at least one recording pressure gauge or telemetering pressure device at the pressure regulating station or at some other appropriate point in the distribution system.

(III) In a distribution system serving 500 or more customers, the utility shall maintain one or more additional recording pressure gauges or telemetering pressure devices and shall make frequent 24-hour records of the gas pressure prevailing at appropriate points in the system.

(i) In its tariff, a utility shall include a description of test methods, equipment, and frequency of testing used to determine the quality and pressure of gas service furnished.

4203. Interruptions and Curtailments of Service.

(a) A utility shall keep a record of all interruptions and curtailments of service on its entire system or on major divisions of its system, including a statement of the time, duration, and cause of each interruption or curtailment. A utility shall 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.

(b) In its tariff a utility shall establish, by customer class, interruption and curtailment priorities for sales service and for transportation service. These priorities shall be consistent with the requirements in ~~section~~paragraphs (c) and (d) of this rule.

(c) A utility shall interrupt gas transportation service in accordance with the same system of class-by-class priorities as is applicable to sales customers under the utility's tariffs.

(d) A utility shall interrupt service within each class on an equitable basis, consistent with system constraints. A utility shall interrupt service within a locale on a fair and reasonable basis, consistent with local conditions.

(e) A utility shall curtail sales gas service as provided in its tariffs. A utility shall not make up any shortage by using the transportation customer's supplies without the transportation customer's consent.

(f) A utility shall 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 shall curtail service within each class on an equitable basis consistent with system constraints. A utility shall curtail service within a locale on a fair and reasonable basis, consistent with local conditions.

(g) A utility may provide, under applicable sales tariffs, any available supply service to gas transportation customers who have not purchased standby supply service from the utility and are experiencing supply shortages.

4204. [Reserved]

4205. Gas Transportation Service Requirements.

(a) In its tariffs, a utility shall establish maximum rates for gas transportation service. In addition, a utility which desires price flexibility shall include its minimum rates in its tariffs. The following apply to the tariff rates:

(I) Maximum rates for transportation shall be based on fully allocated cost methods and shall include an allowance for return on allocated rate base equal to the last rate of return authorized by the Commission for the utility.

(II) A utility may, at its discretion, offer natural gas transportation standby capacity service or standby supply service. A utility may require separate charges for:

(A) Natural gas transportation standby capacity (if offered).

(B) Standby supply (if offered).

(C) Administration, services and facilities.

(D) A utility's avoidable purchased gas commodity costs based on current market-driven gas prices.

(b) In its tariffs, a utility shall establish terms and conditions for gas transportation service, including at least the following:

(I) All criteria for determining gas transportation capacity.

(II) All gas transportation costs.

(III) All nomination requirements.

(IV) All measurement requirements.

(V) As applicable, all gas supply cost provisions.

(VI) All gas balancing provisions.

(VII) All quality of gas requirements.

(VIII) The utility's line extension policy.

(IX) The gas transportation request form required by rule 4206(a).

(X) The utility's gas transportation standard gas transportation service agreement, which shall include the statements required by rule 4206(d).

(XI) The utility's standard agency agreement required by rule 4206(e).

4206. Gas Transportation Agreements.

(a) When a customer requests transportation service, a utility shall provide the customer requesting transportation with the utility's gas transportation form. This form shall set out clearly the information necessary for the utility to determine whether it can provide the requested transportation.

(b) In determining whether capacity is available to provide the requested transportation, a utility shall take into account all conventional methods of delivering gas through its system, including without limitation 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, shall approve or reject, and shall provide notification of its decision with respect to a transportation request within 60 days after receiving a written request from a transportation customer. If the utility rejects the request, the utility shall provide, within three business days, written notice of its decision to the customer and shall retain a record of the rejection notice for two years. The notice shall detail the reasons for the rejection and shall explain what changes are necessary to make the request acceptable. If the request is approved, the utility shall provide, within three business days, written notification of approval to the customer.

(d) A utility shall maintain on file with the Commission a standard gas transportation agreement. All gas transportation agreements shall contain the following provisions:

> This agreement, and all its rates, terms and conditions as set out in this agreement and as set out in the tariff provisions which are incorporated into this agreement by reference, 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 with the Commission.
>
> If the end-use customer uses a marketing broker for nomination, gas purchases, and balancing, the end-use customer shall provide the utility with an agency agreement.

(e) A utility shall maintain on file with the Commission the standard agency agreement to be used when an end-use transportation customer uses a ~~marketing broker~~third party for nomination, gas purchases, and balancing.

(f) A utility shall maintain logs showing all requests for gas transportation. The log shall contain the following information: 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 these logs for two years.

4207. Purchases Replaced by Transportation.

(a) Any reduction of gas purchases by a current sales customer who replaces sales purchases with transportation reduces proportionately a utility's obligation to provide gas to that customer on both a peak day and on an annual volume basis. Pursuant to tariff and if offered by the utility, a customer may retain rights to gas supplies by electing to pay for standby capacity service and standby supply service.

(b) Any reduction of gas purchases by a current interruptible sales customer who replaces said purchases with transportation gas reduces proportionately the utility's obligation to provide gas supplies to that customer on an annual volume basis. At the discretion of the utility, a customer may retain rights to interruptible gas supplies by electing 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 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.

(d) The utility shall have no sales service obligation to a transportation customer who is solely responsible for its own gas procurement. The customer may retain rights to gas supplies by electing to pay for standby supply service.

4208. Anticompetitive Conduct Prohibited.

(a) A utility shall apply all transportation rates and policies without undue discrimination or preference to its affiliates. Each contract to transport 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.

(b) A utility is prohibited from engaging in anticompetitive conduct, discriminatory behavior, and preferential treatment in transporting gas, including (without limitation) the following:

(I) Disclosure to a marketing or brokering affiliate of confidential information provided by nonaffiliated transportation customers.

(II) Disclosing to any transportation customer the utility's own confidential information unless the same information is communicated contemporaneously to all current transportation customers.

(III) Disclosing to any transportation customer of information filed with a transportation request unless the same information is communicated contemporaneously to all current transportation customers.

(IV) Providing any false or misleading information, or failing to provide information, regarding the availability of capacity for transportation service.

(V) 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 to expedite transportation service to its affiliate for the released gas.

(VI) Providing any false or misleading information, or failing to provide information, about gas releases.

(VII) Failing to notify all affiliate brokers and marketers and all transportation customers of gas releases at the same time and in the same manner or otherwise allowing marketing or brokering affiliates preferential access to released gas.

(VIII) Lending gas to a marketing or brokering affiliate to meet balancing requirements except under terms available to other transportation customers.

(IX) 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 its affiliates.

(X) Charging lower rates to a transportation customer conditioned on the purchase of gas from the utility's marketing or brokering affiliate.

(XI) Conditioning the availability of transportation service upon the use of the utility's marketing or brokering affiliate.

(XII) Providing exchange or displacement services to one transportation customer without providing them to others on the same terms and conditions.

(XIII) 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.

(XIV) Disclosing to its affiliate any information the utility received from a nonaffiliated transportation customer or potential nonaffiliated transportation customer.

(XV) Failing contemporaneously to 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.

(XVI) Failing to make available to all similarly-situated nonaffiliated transportation customers discounts which are comparable to those made to an affiliated marketer.

4209. [Reserved]

4210. Line Extension.

(a) A utility shall have tariffs which set out its line extension policies, procedures, and conditions.

(b) In its tariff a utility shall include the following provisions for gas main extensions and service lateral extensions from its distribution system:

(I) The terms and conditions, by customer class, under which an extension will be made.

(II) Provisions requiring the utility to provide to a customer or to a potential customer, upon request, service lateral connection information necessary to allow the customer's or potential customer's facilities to be connected to the utility's system.

(III) Provisions requiring the utility to exercise due diligence in providing the customer or potential customer with an estimate of the anticipated cost of a connection or extension.

(IV) Provisions addressing steps to ameliorate the rate and service impact upon existing customers, including equitably allowing future customers to share costs incurred by the initial or existing customers served by a connection or extension (as, for example, by including a refund of customer connection or extension payments when appropriate).

4211. – 4299. [Reserved]

METERS

4300. Service Meters and Related Equipment.

(a) All meters used in connection with gas metered service for billing purposes shall be furnished, installed, and maintained by the utility.

(b) Any equipment, devices, or facilities (including, without limitation, service meters) furnished by the utility and which the utility maintains and renews shall remain the property of the utility and may be removed by it at any time after discontinuance of service.

(c) Each service meter shall indicate clearly the cubic feet or other units of service for which the customer is charged. In cases in which the dial reading of a meter, other than an orifice or other chart type meter, must be multiplied by a constant or factor to obtain the units consumed, the factor, factors, or constant shall be clearly marked on the dial or face of the meter, if possible. In the alternative, the constant, constants, or factor, or the method of calculating the constant, constants, or factor, shall be stated clearly on a customer's bill, with step by step instructions to allow customer to convert the unit of measurement from the dial of the meter to the billing unit or billing determinant on the bill.

4301. Location of Service Meters.

(a) As of the time of installation, meters shall be located in accordance with the pertinent utility tariffs and in accordance with accepted safe practice and gas utility industry standards.

(b) As of the time of installation, meters shall be located so as to be easily accessible for reading, testing, and servicing in accordance with accepted safe practice and in accordance with gas utility industry standards.

4302. Service Meter Accuracy.

(a) Before being installed for use by a customer, every gas service meter, whether new, repaired, or removed from service for any cause shall be in good order and, except as provided in ~~section~~paragraph (b) of this rule, shall be adjusted to be correct to within one percent when passing gas at 20 percent of its rated capacity at one-half inch water column differential.

(b) New 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. These meters shall also be adjusted to be correct within two percent slow and one percent fast when passing gas at ten 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. Prior to reuse of a rotary displacement type meter that has been removed from service, the meter shall pass the same testing criteria as a new meter.

4303. Meter Testing Equipment and Facilities.

(a) A utility shall provide, or shall arrange for a qualified third party to provide, such equipment and facilities as may be necessary to make the tests and to provide the service required. Such equipment and facilities shall be available at all reasonable times for inspection by Staff.

(b) A utility having more than 200 meters in service shall maintain, or shall require the qualified third party that provides meter testing equipment and facilities to maintain, suitable gas meter testing equipment in proper adjustment so as to register the condition of meters tested within one-half of one percent. The utility shall have and shall maintain, for the testing equipment, necessary certificate(s) of calibration showing that the equipment has been tested with a standard certified by the National Institute of Standards and Technology or other laboratory of recognized standing.

(c) In its tariff, a utility shall include a description of its meter testing equipment and of the methods employed to ascertain and to maintain accuracy of all testing equipment.

(d) A utility shall keep records of certification and calibrations for all testing equipment required by this rule for the life of the equipment.

4304. Scheduled Meter Testing.

(a) A utility shall test, or shall arrange for testing of, service meters in accordance with the schedule in this rule or in accordance with a sampling program approved by the Commission.

(b) If it wishes to use a sampling program, a utility shall file an application to request approval of a sampling program. The application shall include:

(I) The information required by rules 4002(b) and 4002(c).

(II) A description of the sampling program which the utility wishes to use. This description shall include, at a minimum the following:

(A) The type(s) of meters subject to the sampling plan.

(B) The frequency of testing.

(C) The procedures to be used for the sampling.

(D) The meter test method to be used.

(E) The accuracy of the testing and of the sampling plan.

(III) An explanation of the reason(s) for the requested sampling program.

(IV) An analysis which demonstrates that, with respect to assuring the accuracy of the service meters tested, the requested sampling program is at least as effective as the schedule in this rule.

(c) Revisions to any portion of a sampling program approved pursuant to the procedure in ~~section~~paragraph (b) of this rule shall be accomplished by the filing of, and Commission approval of, a new application.

(d) Every service meter shall 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 shall be tested on a periodic basis, as follows:

(I) 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 six years.

(II) 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 five years.

(III) 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 five years.

(IV) 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 frequency of testing stated in the utility's tariff.

(V) Orifice meters, not less than once each year.

(VI) Meter types not listed, not less than once each year.

(e) In its tariff, a utility shall describe the utility's practices concerning the following:

(I) Testing and adjustment of service meters at installation.

(II) Periodic testing after installation.

4305. Meter Testing Upon Request.

(a) A utility furnishing metered gas service shall test the accuracy of any gas 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 if the customer agrees to accept the results of the test for the purposes of any dispute or informal complaint regarding the meter's accuracy; otherwise, the utility may charge a fee for performing the test. The utility shall provide a written report of the test results to the customer and shall maintain a copy on file for at least two years.

(b) Should a customer request and receive a meter test as prescribed in Rule 4305(a) and continue to dispute the accuracy of a meter, upon written request by a customer the utility shall make the disputed meter available for independent testing by a qualified meter testing facility of the customer's choosing. The customer is not entitled to take physical possession of the disputed meter.~~Upon written request by a customer, the Commission shall send a trained employee to witness a service meter test performed by the utility. The request must be accompanied by payment of the applicable fee of $50.00 for each meter test observed.~~

(c) This rule applies only when there is disagreement between the customer and the utility regarding the accuracy of the meter. If, upon completion of an independent test as prescribed in Rule 4305(b), the disputed meter is found to be accurate within the limits of rule 4302, the customer shall bear all costs associated with conducting the test. If, upon completion of an independent test as prescribed in Rule 4305(b), the disputed meter is found to be inaccurate beyond the limits prescribed in rule 4302, the utility shall bear all costs associated with conducting the test. ~~This rule and the schedule of fees apply only when there is a disagreement between the customer and the utility regarding the accuracy of a meter. If the meter is found to be running fast beyond the limits prescribed in rule 4302, the utility shall reimburse the customer for any fee paid by the customer.~~

(d) In its tariff, a utility shall include any fees associated with customer-requested meter testing conducted within 12 months of a prior test.

4306. Records of Tests and Meters.

(a) For each meter owned or used by it, a utility shall maintain a record showing the date of purchase, the manufacturer's serial number, the record of the present location, and the date and results of the last test performed by the utility. This record shall be retained for the life of the meter plus 30 months.

(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, and 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. This record shall be retained for at least two years.

4307. [Reserved]

4308. [Reserved]

4309. Meter Reading.

(a) Upon a customer's request, a utility shall provide written documentation showing the date of the most recent reading of the customer's meter and the total usage expressed in cubic feet or other unit of service recorded. On request, a utility supplying metered service shall explain to a customer its method of reading meters.

(b) In its tariff, a utility shall include 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. This statement shall specify in detail the procedure that the customer must follow and shall specify any special conditions which apply only to certain classes of service.

(c) Absent good cause, a utility shall read a meter monthly. For good cause shown, a utility shall read a meter at least once every six months.

4310. – 4399. [Reserved]

BILLING AND SERVICE

4400. Applicability.

Rules 4400 through 4410 apply to residential customers and to commercial customers served by a utility's rates or tariffs. Rules 4400 through 4410 shall not apply to customers served under a utility's

transportation rates or tariffs. In its tariffs, a utility may elect to apply the same or different terms and conditions of service to other customer classes.

4401. Billing Information and Procedures.

(a) All bills issued to customers for metered service furnished shall show:

(I) The dates and meter readings beginning and ending the period during which service was rendered.

(II) An appropriate rate or rate code identification.

(III) The net amount due for regulated charges.

(IV) The date by which payment is due, which shall not be earlier than 15 ~~business~~ days after the mailing or the hand-delivery of the bill.

(V) A distinct marking to identify an estimated bill.

(VI) The total amount of all payments or other credits made to the customer's account during the billing period.

(VII) Any past due amount. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges.

(VIII) The identification of, and amount due for, unregulated charges, if applicable.

(IX) Any transferred amount or balance from any account other than the customer's current account.

(X) All other essential facts upon which the bill is based, including factors and constants, as applicable.

(b) A utility that bills for unregulated services or goods shall allocate any partial payment first to regulated charges and then to unregulated charges or non-tariffed charges and to the oldest balance due separately within each category.

(c) A utility that transfers to a customer a balance from the account of a person other than that customer shall have in its tariffs the utility's benefit of service transfer policies and criteria. The tariffs shall contain an explanation of the process by which the utility will verify, prior to billing a customer under the benefit of service tariff, that the person to be billed in fact received the benefit of service.

(d) A utility may transfer a prior unpaid debt to a customer's bill if the prior bill was in the name of the customer and the utility has informed the customer of the transferred amount and of the source of the unpaid debt (for example, and without limitation, the address of the premises to which service was provided and the period during which service was provided).

(e) If it is offered in a tariff, upon request from a customer and where it is technically feasible, a utility may have the option to provide electronic billing (e-billing), in lieu of a typed or machine-printed bill, to the requesting customer. If a utility offers the option of e-billing, the following shall apply:

(I) The utility shall obtain the affirmative consent of a customer to accept such a method of billing in lieu of printed bills.

(II) The utility shall not charge a fee for billing through the e-billing option.

(III) The utility shall not charge a fee based on customer payment options that is different from the fee charged for the use of the same customer payment options by customers who receive printed bills.

(IV) A bill issued electronically shall contain the same disclosures and Commission-required information as those contained in the printed bill provided to other customers.

4402. Adjustments for Meter and Billing Errors.

(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 back to the previous meter test, with such period not to exceed 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 excess charge for the period dating from the discovery of the meter error back to the previous meter test, with such period not to exceed two years.

(III) When a meter does not register, registers intermittently, or partially registers for any period, the utility may estimate, using the method stated in its tariff, a charge for the gas used based on amounts metered to the customer over a similar period in previous years. The period for which the utility charges the estimated amount shall not exceed six months.

(IV) In the event of under-billings not provided for in sub~~section~~paragraph (a)(I) or (III) of this rule (such as, but not limited to, an incorrect multiplier, an incorrect register, or a billing error), the utility may charge for the period during which the under-billing occurred, with such period not to exceed two years.

(V) In the event of over-billings not provided for in sub~~section~~paragraph (a)(II) of this rule, the utility shall refund for the period during which the over-billing occurred, with such period not to exceed two years.

(b) The periods set out in ~~section~~paragraph (a) of this rule shall commence on the date on which (1) either the customer notifies the utility or the utility notifies the customer of a meter or billing error or (2) the customer informs the utility of a billing or metering error dispute or makes an informal complaint to the External Affairs section of the Commission.

(c) In the event of an over-billing, 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. Such over-billings shall not be subject to interest.

(d) In the event of under-billing, the customer may elect to enter into a payment arrangement on the under-billed amount. The payment arrangement shall be equal in length to the length of time during which the under-billing lasted. Such under-billings shall not be subject to interest.

4403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.

(a) A utility shall process an application for utility service which is made either orally or in writing and shall apply nondiscriminatory criteria with respect to the requirement of a cash deposit prior to commencement of service.

(b) If billing records are available for a customer who has received service from the utility, the utility shall not require that person to make new or additional cash deposits to guarantee payment of current bills unless the records indicate recent or substantial delinquencies. All customers shall be treated without undue discrimination with respect to cash deposit requirements, pursuant to the utility's tariff.

(c) A utility shall not require a cash deposit from an applicant for service who provides written documentation of a 12 consecutive month good credit history from the utility from which that person received similar service. For purposes of this ~~section~~paragraph, the 12 consecutive months must have ended no earlier than 60 days prior to the date of the application for service.

(d) If a utility uses credit scoring to determine whether to require a cash deposit from an applicant for service or a customer, the utility shall have a tariff which describes, for each scoring model that it uses, the credit scoring evaluation criteria and the credit score limit which triggers a cash deposit requirement.

(e) If a utility uses credit scoring, prior payment history with the utility, or customer-provided prior payment history with a like utility as a criterion for establishing the need for a cash deposit, the utility shall include in its tariff the specific evaluation criteria which trigger the need for a cash deposit.

(f) If a utility denies an application for service or requires a cash deposit as a condition of providing service, the utility immediately shall inform the applicant for service of the decision and shall provide, within three business days, a written explanation to the applicant for service stating the reasons the application for service has been denied or a cash deposit is required. ~~The utility also shall advise the applicant for service of the opportunity to dispute the utility's decision and of the opportunity to make an informal complaint regarding the utility's decision to the External Affairs section of the Commission.~~

~~(g) If a utility requires a cash deposit from a customer, the utility shall provide, within three business days, a written explanation to the customer stating the reasons a cash deposit is required. The utility also shall advise the customer of the opportunity to dispute the utility's decision and of the opportunity to make an informal complaint regarding the utility's decision to the External Affairs section of the Commission.~~

(g) No utility shall require any security other than either a cash deposit to secure payment for utility services or a third-party guarantee of payment in lieu of a cash deposit. 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 a judgment. Should the guarantor terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility may require a deposit at that time depending on the customer's payment record to date and such other criteria as the utility would ordinarily consider under the circumstances in the absence of a third party guarant~~or~~ee.

(h) A cash 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 cash deposit shall not exceed an estimated 60 days' bill of the customer. The cash 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 in the utility's tariffs.

(i) A utility receiving cash deposits shall maintain records showing:

(I) The name of each customer making a cash deposit.

(II) The amount and date of the cash deposit.

(III) Each transaction, such as the payment of interest or interest credited, concerning the cash deposit.

(IV) Each premises where the customer receives service from the utility while the cash deposit is retained by the utility.

(V) If the cash deposit was returned to the customer, the date on which the cash deposit was returned to the customer.

(VI) If the unclaimed cash deposit was paid to the energy assistance organization, the date on which the cash deposit was paid to the energy assistance organization.

(j) In its tariffs, a utility shall state its customer deposit policy for establishing or maintaining service. The tariff shall state the circumstances under which a cash deposit will be required and the circumstances under which it will be returned.

(k) A utility shall issue a receipt to every customer from whom a cash deposit is received. No utility shall refuse to return a cash deposit or any balance to which a customer may be entitled solely on the basis that the customer is unable to produce a receipt.

(l) The payment of a cash deposit shall not relieve any customer from the obligation to pay current bills as they become due. A utility is not required to apply any cash deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.

(m) A utility shall pay simple interest on a cash deposit at the percentage rate per annum as calculated by the Staff and in the manner provided in this ~~section~~paragraph.

(I) At the request of the customer, the interest shall be paid to the customer either on the return of the cash deposit or annually. The simple interest on a cash deposit shall be earned from the date the cash deposit is received by the utility to the date the customer is paid. At the option of the utility, interest payments may be paid directly to the customer or by a credit to the customer's account.

(II) The simple interest to be paid on a cash 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 12 monthly average rates of interest expressed in percent per annum, as quoted for one-year United States Treasury constant maturities, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, the Staff shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall

be used. The Commission shall send a letter to each utility stating the rate of interest to be paid on cash deposits during the next calendar year. Annually following receipt of Staff's letter, if necessary, a utility shall file by advice letter or application, as appropriate, a revised tariff, effective the first day of January of the following year, or on an alternative date set by the Commission, containing the new rate of interest to be paid upon customers' cash deposits, except when there is no change in the rate of interest to be paid on such deposits.

(n) A utility shall have tariffs concerning third-party guarantee arrangements and, pursuant to those tariffs, shall offer the option of a third party guarantee arrangement for use in lieu of a cash deposit. The following shall apply to third-party guarantee arrangements:

(I) An applicant for service or a customer may elect to use a third-party guarantor in lieu of paying a cash deposit.

(II) The third-party guarantee form, signed by both the third-party guarantor and the applicant for service or the customer, shall be provided to the utility.

(III) The utility may refuse to accept a third-party guarantee if the guarantor is not a customer in good standing at the time of the guarantee.

(IV) The amount guaranteed shall not exceed the amount which the applicant for service or the customer would have been required to provide as a cash deposit.

(V) The guarantee shall remain in effect until the earlier of the following occurs: it is terminated in writing by the guarantor; if the guarantor was a customer at the time of undertaking the guarantee, the guarantor is no longer a customer of the utility; or the customer has established a satisfactory payment record, as defined in the utility's tariffs, for 12 consecutive months.

(VI) Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariffs, may require a cash deposit or a new third party guarantor.

(o) A utility shall pay all unclaimed monies, as defined in § 40-8.5-103(5), C.R.S., that remain unclaimed for more than two years to the energy assistance organization. "Unclaimed monies" shall not include (1) undistributed refunds for overcharges subject to other statutory provisions and rules and (2) credits to existing customers from cost adjustment mechanisms.

(I) Monies 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 cash deposit or the construction advance was made or when left with the utility for more than two years after the cash deposit or the construction advance becomes payable to the customer pursuant to a final Commission order establishing the terms and conditions for the return of such deposit or advance and the utility has made reasonable efforts to locate the customer.

(II) Interest on a cash deposit shall accrue at the rate established pursuant to ~~section~~paragraph (n) of this rule commencing on the date on which the utility receives the cash deposit and ending on the date on which the cash deposit is paid to the energy assistance organization. If the utility does not pay the unclaimed cash deposit to the energy assistance organization within four months of the date on which the unclaimed cash deposition is deemed to be unclaimed or abandoned pursuant to sub~~section~~paragraph (o)(I) of this rule, then at the conclusion of the four-month period,

interest shall accrue on the unclaimed cash deposit at the rate established pursuant to ~~section~~paragraph (n) of this rule plus 6%.

(III) If payable under the utility's line extension tariff provisions, interest ~~Interest~~ on a construction advance shall accrue at the rate established pursuant to ~~section~~paragraph (n) of this rule commencing on the date on which the construction advance is deemed to be owed to the customer pursuant to the utility's extension policy and ending on the date on which the construction advance is paid to the energy assistance organization. If the utility does not pay the unclaimed construction advance to the energy assistance organization within four months of the date on which the unclaimed construction advance is deemed to be unclaimed or abandoned pursuant to sub~~section~~paragraph (o)(I) of this rule, then at the conclusion of the four-month period, interest shall accrue on the unclaimed construction advance at the rate established pursuant to ~~section~~paragraph (n) of this rule plus 6%.

(p) A utility shall resolve all inquiries regarding a customer's unclaimed monies and shall not refer such inquiries to the energy assistance organization.

(q) If a utility has paid unclaimed monies to the energy assistance organization, a customer later makes an inquiry claiming those monies, and the utility resolves the inquiry by paying those monies to the customer, the utility may deduct the amount paid to the customer from future funds submitted to the energy assistance organization.

~~(s) For purposes of sections (p), (q), and (r) of this rule, "utility" means and includes (1) a cooperative electric association which elects to be so governed and (2) a utility as defined in rule 4001(ll).~~

4404. Installment Payments.

(a) In its tariffs, a utility shall have a budget or levelized payment plan available for its customers.

(b) In its tariff, a utility shall have an installment payment plan which permits a customer to make installment payments if one of the following applies:

(I) The plan is to pay regulated charges from past billing periods and the past due amount arises solely from events under the utility's control (such as, without limitation, 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). A utility shall advise a customer who is eligible for this type of plan of the customer's eligibility. At the request of the customer and at the customer's discretion, an installment payment plan under this sub~~section~~paragraph shall extend over a period equal in length to that during which the errors were accumulated and shall not include interest.

(II) The customer pays at least ten percent of the amount shown on the notice of discontinuance for regulated charges and enters into an installment payment plan on or before the expiration date of the notice of discontinuance.

(III) The customer pays at least ten percent of any regulated charges amount more than 30 days past due and enters into an installment payment plan on or before the last day covered by a medical certification. A customer who has entered into and failed to abide by an installment payment plan prior to receiving a medical certification shall pay all amounts that were due for regulated charges up to the date on which the customer presented a medical certification which meets the requirements of rule 4407(e)(IV) and then may resume the installment payment plan.

(IV) If service has been disconnected, the customer pays at least any collection and reconnection charges and enters into an installment payment plan. This subsection~~section~~paragraph shall not apply if service was discontinued because the customer breached a prior payment arrangement.

(c) Installment payment plans shall include the following amounts that are applicable at the time the customer requests a payment arrangement:

(I) The unpaid remainder of amounts due for regulated charges shown on the notice of discontinuance.

(II) Any amounts due for regulated charges not included in the amount shown on the notice of discontinuance which have since become more than 30 days past due.

(III) All current regulated charges contained in any bill which is past due but is less than 30 days past the due date.

(IV) Any new regulated charges contained in any bill which has been issued but is not past due.

(V) Any regulated charges which the customer has incurred since the issuance of the most recent monthly bill.

(VI) Any collection fees as provided for in the utility's tariff, whether or not such fees have appeared on a regular monthly bill.

(VII) 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 a cash deposit required as a condition of initiating service.

(VIII) Any other regulated charges or fees provided in the utility's tariff (including without limitation miscellaneous service charges, investigative charges, and checks returned for insufficient funds charges), whether or not they have appeared on a regular monthly bill.

(d) Within seven calendar days of entering into a payment arrangement with a customer, a utility shall provide the customer with a copy of this rule and a statement describing the payment arrangement. The statement describing the payment arrangement shall include the following:

(I) The terms of the payment plan.

(II) A description of the steps which the utility will take if the customer does not abide by payment plan.

~~(III) A statement informing the customer of the opportunity to dispute the terms of the payment plan and of the opportunity to make an informal complaint to the External Affairs Staff of the Commission.~~

(e) Except as provided in subsection~~section~~paragraph (b)(I) of this rule, an installment payment plan shall consist, at a minimum, of equal monthly installments for a term selected by the customer but not to exceed six months. In the alternative, the customer may choose a modified budget billing, levelized payment, or similar tariffed payment arrangement 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 changes. The resulting amount shall be divided and billed in 11 equal monthly budget

billing payments, followed by a settlement billing in the twelfth month, or shall follow other payment-setting practices consistent with the tariffed plan available.

(f) For an installment payment plan entered into pursuant to this rule, the first monthly installment payment, and with the new charges (unless the new charges have been made part of the arrangement amount) shall be due on a date which is not earlier than the next regularly-scheduled due date of the customer who is entering into the installment payment plan. Succeeding installment payments, together with the new charges, shall be due in accordance with the due date established in the installment payment plan. Any payment not made on the due date established in the installment payment plan shall be considered in default. Any new charges that are not paid by the due date shall be considered past due, excluding those circumstances covered in sub~~section~~paragraph (b)(I) of this rule.

(g) This rule shall not be construed to prevent a utility from offering any other installment payment plan terms to avoid discontinuance or terms for restoration of service, provided the terms are at least as favorable to the customer as the terms set out in this rule.

4405. Service, Rate, and Usage Information.

(a) A utility shall inform its customers of any change proposed or made in any term or condition of its service if that change or proposed change will affect the quality of the service provided.

(b) A utility shall transmit information provided pursuant to this rule through the use of a method (such as, without limitation, bill inserts or periodic direct mail) that will assure receipt by each customer.

(c) Upon request, a utility shall provide the following information to a customer:

(I) A clear and concise summary of the existing rate schedule applicable to each major class of customers for which there is a separate rate.

(II) An identification of each class whose rates are not summarized.

(III) A clear and concise explanation of the existing rate schedule applicable to the customer. This shall be provided within ten days of a customer's request or, in the case of a new customer, within 60 days of the commencement of service.

(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 are not reasonably ascertainable by the utility.

(V) Any other information and assistance as may be reasonably necessary to enable the customer to secure safe and efficient service.

4406. Itemized Billing Components.

(a) A utility shall 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.

(b) The information provided pursuant to this rule shall include the following:

(I) For transportation customers:

(A) The per-unit and monthly local distribution company costs billed to the customer.

(B) If applicable, the per-unit and monthly gas cost adjustment transportation costs.

(II) For all other customers:

(A) The per-unit and monthly local distribution company costs billed to the customer.

(B) The per-unit and monthly gas commodity costs for that customer.

(C) The per-unit and monthly costs of upstream services for that customer.

4407. Discontinuance of Service.

(a) A utility shall not discontinue the service of a customer for any reason other than the following:

(I) Nonpayment of regulated charges.

(II) Fraud or subterfuge.

(III) Service diversion.

(IV) Equipment tampering.

(V) Safety concerns.

(VI) Exigent circumstances.

(VII) Discontinuance ordered by any appropriate governmental authority.

(VIII) Properly discontinued service being restored by someone other than the utility when the original cause for proper discontinuance has not been cured.

(b) A utility shall not discontinue service for nonpayment of any of the following:

(I) Any amount which has not appeared on a regular monthly bill or which is not past due. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges.

(II) Any amount due on another account now or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred either to an account which is for the same class of service or to an account 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 of discontinuance as if it had been billed for the first time.

(III) Any amount due on an 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. This sub~~section~~paragraph does not apply if the customer is or was obtaining service through fraud or subterfuge or if rule 4401(c) applies.

(IV) Any amount due on an account for which the present customer is or was the customer of record, if another person established the account through fraud or subterfuge and without the customer's knowledge or consent.

(V) Any delinquent amount, unless the utility can supply billing records from the time the delinquency occurred.

(VI) Any debt except that incurred for service rendered by the utility in Colorado.

(VII) Any unregulated charge.

(c) If the utility discovers any connection or device installed on the customer's premises, including any energy-consuming device connected on the line side of the utility's meter, which would prevent the meter from registering the actual amount of energy used, the utility shall do one of the following:

(I) Remove or correct such devices or connections. If the utility takes this action, it shall leave at the premises a written notice which advises the customer of the violation, of the steps taken by the utility to correct it, and of the utility's ability to bill the customer for any estimated energy consumption not properly registered. This notice shall be left at the time the removal or correction occurs.

(II) Provide the customer with written notice that the device or connection must be removed or corrected within 15 ~~ten calendar~~ days and that the customer may be billed for any estimated energy consumption not properly registered. If the utility elects to take this action and the device or connection is not removed or corrected within the 15~~ten calendar~~ days permitted, then within seven calendar days from the expiration of the 15 ~~ten~~ days, the utility shall remove or correct the device or connection pursuant to sub~~section~~paragraph (c)(I) of this rule.

(d) If a utility discovers evidence that any utility-owned equipment has been tampered with or that service has been diverted, the utility shall provide the customer with written notice of the discovery. The written notice shall inform the customer of the steps the utility will take to determine whether non-registration of energy consumption has or will occur and shall inform the customer that the customer may be billed for any estimated energy consumption not properly registered. The utility shall mail or hand-deliver the written notice within three calendar days of making the discovery of tampering or service diversion.

(e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met:

(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 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 plan with the utility, as provided in rule 4404.

(III) If it is between 12 Noon on Friday and 8 a.m. the following Monday; between 12 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday; or between 12 Noon on the day prior to and 8:00 a.m. on the day following any day during which the utility's local office is not open.

(IV) If discontinuance of residential service would aggravate an existing medical condition or would 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. The certification shall show clearly the name of the customer or individual whose illness is at issue and the Colorado medical identification number, the telephone number, and the signature of the physician or health care practitioner acting under a physician's authority who certifies the medical emergency. The certification shall be incontestable by the utility as to medical judgment, although the utility may use reasonable means to verify the authenticity of the certification. A medical certification is effective on the date it is received by the utility and is valid to prevent discontinuance of service for 60 days. The customer may receive one 30-day extension by providing a second medical certification prior to the expiration of the original 60-day period. A customer may invoke this sub~~section~~paragraph only once in any 12 consecutive month period.

4408. Notice of Discontinuance.

(a) Except as provided in ~~section~~paragraphs (g) and (h) of this rule, a utility shall provide, by first class mail or by hand-delivery, written notice of discontinuance of service at least 15 ~~business~~ days in advance of any proposed discontinuance of service. The notice shall 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 ABOUT YOUR LEGAL RIGHTS AND REMEDIES. YOU MUST ACT PROMPTLY TO AVOID UTILITY SHUT OFF.

(b) The body of the notice of discontinuance under ~~section~~paragraph (a) of this rule shall advise the customer of the following:

(I) The reason for the discontinuance of service and of the particular rule (if any) which has been violated.

(II) The amount past due for utility service, deposits, or other regulated charges, if any.

(III) The date by which an installment payment plan must be entered into or full payment must be received in order to avoid discontinuance of service.

(IV) How and where the customer can pay or enter into an installment payment plan prior to the discontinuance of service.

(V) That the customer may avoid discontinuance of service by entering into an installment payment plan with the utility pursuant to rule 4404 and the utility's applicable tariff.

(VI) That the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency.

(VII) That the customer has the right to dispute the discontinuance directly with the utility by contacting the utility, and how to contact the utility toll-free from within the utility's service area.

(VIII) That the customer has the right to make an informal complaint to the External Affairs section of the Commission in writing, by telephone, or in person, along with the Commission's address and local and toll-free telephone number.

(IX) That the customer has the right to file a formal complaint, in writing, with the Commission pursuant to rule 1302 and that this formal complaint process may involve a formal hearing.

(X) That in conjunction with the filing of a formal complaint, the customer has a right to file a motion for a Commission order ordering the utility not to disconnect service pending the outcome of the formal complaint process and that the Commission may grant the motion upon such terms as it deems reasonable, including but not limited to the posting of a cash deposit or bond with the utility or timely payment of all undisputed regulated charges.

(XI) That if service is discontinued for non-payment, the customer may be required, as a condition of restoring service, to pay reconnection and collection charges in accordance with the utility's tariff.

(XII) That qualified low-income customers may be able to obtain financial assistance to assist with the payment of the utility bill and that more detailed information on that assistance may be obtained by calling the utility toll-free. The utility shall state its toll-free telephone number.

(c) At the time it provides notice of discontinuance to the customer, a 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 arrangement.

(d) A discontinuance notice shall be printed in English and a specific language or languages other than English where the utility's service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information.

(e) A utility shall explain and shall offer the terms of an installment payment plan to each customer who contacts the utility in response to a notice of discontinuance of service.

(f) Following the issuance of the notice of discontinuance of service, and at least 24 hours prior to discontinuance of service, a utility shall attempt to give notice of the proposed discontinuance in person or by telephone both to the customer 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 to do so, it shall leave written notice of the attempted contact and its purpose.

(g) If a customer has entered into an installment payment plan and has defaulted or allowed a new bill to remain unpaid past its due date, a utility shall provide, by first class mail or by hand-delivery, a written notice to the customer. The notice shall contain:

(I) A heading as follows: NOTICE OF BROKEN ARRANGEMENT.

(II) Statements that advise the customer:

(A) That the utility may discontinue service if it does not receive the monthly installment payment within ten days after the notice is mailed or hand-delivered.

(B) That the utility may discontinue service if it does not receive payment for the current bill within 30 days after its due date.

(C) That, if service is discontinued, the utility may refuse to restore service until the customer pays all amounts for regulated service more than 30 days past due and any collection or reconnection charges.

(D) That the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency.

(h) A utility is not required to provide notice under this rule if one of the following applies:

(I) The situation involves safety concerns or exigent circumstances.

(II) Discontinuance is ordered by any appropriate governmental authority.

(III) Either rule 4407(c) or rule 4407(d) applies.

(IV) 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.

(i) Where a utility knows that the service to be discontinued is used by customers in multi-unit dwellings, in places of business, or in a cluster of dwellings or places of business and the utility service is recorded on a single meter used either directly or indirectly by more than one unit, the utility shall issue notice as required in ~~section~~paragraphs (a) and (b) of this rule, except that:

(I) The notice period shall be 30 days.

(II) Such notice may include the current bill.

(III) The utility shall provide written notice to each individual unit, stating that a notice of discontinuance has been sent to the party responsible for the payment of utility bills for the unit and that the occupants of the 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.

(IV) The utility shall post the notice in at least one of the common areas of the affected location.

4409. Restoration of Service.

(a) Unless prevented from doing so by safety concerns or exigent circumstances, a utility shall restore, without additional fee or charge, any discontinued service which was not properly discontinued or restored as provided in rules 4407, 4408, and 4409.

(b) Unless prevented by safety concerns or exigent circumstances, a utility shall restore service within 24 hours (excluding weekends and holidays), or within 12 hours if the customer pays any necessary after-hours charges established in tariffs, if the customer does any of the following:

(I) Pays in full the amount for regulated charges shown on the notice and 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 plan, and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an arrangement.

(III) Presents a medical certification, as provided in rule 4407(e)(IV).

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

4410. Refunds.

(a) If it seeks to refund monies, a utility shall file an application for Commission approval of a refund plan.

(b) The application for approval of a refund plan shall include, in the following order and specifically identified, the following information either in the application or in the appropriately identified attached exhibits:

(I) All the information required in rules 4002(b) and 4002(c).

(II) The reason for the proposed refund.

(III) A detailed description of the proposed refund plan, including the type of utility service involved, the service area involved, the class(es) of customers to which the refund will be made, and the dollar amount (both the total amount and the amount to be paid to each customer class) of the proposed refund. The interest rate on the refund shall be the current interest rate in the applying utility's customer deposits tariff.

(IV) The date the applying utility proposes to start making the refund, which shall be no more than 60 days after 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.

(V) If applicable, a reference (by docket number, decision number, and date) to any Commission decision requiring the refund or, if the refund is to be made because of receipt of monies by the applying utility under the order of a court or of another state or federal agency, a copy of the order.

(VI) A statement describing in detail the extent to which the applying utility has any financial interest in any other company involved in the refund plan.

(VII) A statement showing accounting entries under the Uniform System of Accounts.

(VIII) A statement that, if the application is granted, the applying utility will file an affidavit establishing that the refund has been made in accordance with the Commission's decision.

(c) A utility shall pay 90% of all undistributed balances, plus associated interest, to the energy assistance organization. For purposes of this rule, 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.

(d) A utility shall pay an undistributed refund to the energy assistance organization within four months after the refund is deemed undistributed. A utility shall pay interest on an undistributed refund

from the time it receives the refund until the refund is paid to the energy assistance organization. ~~If the refund is timely paid to the energy assistance organization, t~~The interest rate shall be equal to the interest rate set by the Commission pursuant to rule 4403(~~g~~m). ~~If the refund is not timely paid, the interest rate shall be equal to the interest rate set by the Commission pursuant to rule 3403(n) plus an additional six percent.~~

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

(I) The definition of master meter operator, as set forth in these rules.

(II) A statement regarding a mater meter operator's obligation to do the following:

(A) To notify its end users of their right to claim, within 90 days, their proportionate share of the refund.

(B) After 90 days, if the unclaimed balance exceeds $100, to remit the unclaimed balance to the energy assistance organization.

(f) A utility shall resolve all inquiries regarding a customer's undistributed refund and shall not refer such inquiries to the energy assistance organization.

(g) If a utility has paid an undistributed refund to the energy assistance organization, a customer later makes an inquiry claiming that refund, and the utility resolves the inquiry by paying that refund to the customer, the utility may deduct the amount paid to the customer from future funds submitted to the energy assistance organization.

~~(h) For purposes of sections (c), (d), (e), (f), and (g) of this rule, "utility" means and includes (1) a cooperative electric association which elects to be so governed and (2) a utility as defined in rule 4001(ll).~~

4411. – 4499. [Reserved]

UNREGULATED GOODS AND SERVICES

4500. Special Definitions.

The following special definitions apply only to rules 4501 – 4505.

(a) "Activity" means a business activity, product or service whether offered by or offered to a Colorado utility, a division of a Colorado utility, or an affiliate of a Colorado utility.

(b) "Allocate" or "Allocated" or "Cost Allocation" means to distribute a joint or common cost to or from more than one activity or jurisdiction.

(c) "Assigned Costs" or "Cost Assignment" means a cost that is specifically identified with a particular activity or jurisdiction and charged directly to that activity or jurisdiction. At no point in the process of making the cost assignment is an allocation applied.

(d) "Cost Assignment and Allocation Manual" (CAAM) means the indexed document filed by a utility with the Commission that describes and explains the calculation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and ratebase cost components assigned or allocated to Colorado jurisdictional activities. It includes the calculation methods to

segregate and account for costs between and among jurisdictions, between regulated and nonregulated activities, and between and among utility divisions.

(e) "Division" means an activity conducted by a Colorado utility but not through a legal entity separate from the Colorado utility. It includes the electric, gas, or thermal activities of a Colorado utility and any nonregulated activities provided by the Colorado utility.

(f) "Fully Distributed Cost" means the process of segregating, assigning, and allocating the revenues, expenses, assets, liabilities and ratebase amounts recorded in the utility's accounting books and records using cost accounting, engineering, and economic concepts, methods and standards. Fully distributed cost includes a return on investment in cases where assets are used.

(g) "Fully Distributed Cost Study" is a cost study that reflects the result of the fully distributed revenues, expenses, assets, liabilities and ratebase amounts for the Colorado utility to and from the different activities, jurisdictions, divisions, and affiliates using cost accounting, engineering, and economic concepts, methods, and standards.

(h) "Incidental Services" means non-tariffed or nonregulated services that have traditionally been offered incidentally to the provisions of tariff services where the revenues for all such services do not exceed:

(I) The greater of $100,000 or one percent of the provider's total annual Colorado operating revenues for regulated services; or,

(II) Such amount established by the Commission considering the nature and frequency of the particular service.

(i) "Jurisdictional" means having regulatory rate authority over a utility. Jurisdiction can be at a state or federal level.

(j) "Regulated Activity" means any activity that is offered as a public utility service as defined in Title 40, Articles 1 to 7 C.R.S., and is regulated by the Commission or regulated by another state utility commission or the FERC, or any nonregulated activity which meets the criteria specified in rules 4502(g).

(k) "Nonregulated Activity" means any activity that is not offered as a public utility service as defined in Title 40, Articles 1 to 7, C.R.S., and is not regulated by this Commission or another state utility commission or the FERC.

(l) "Transaction" means the activity that results in the provision of products, services, or assets by one division or an affiliate to another division or an affiliate.

4501. ~~Basis,~~Overview and Purpose~~, and statutory authority~~.

The purpose of these rules is to establish cost assignment and allocation principles to assist the Commission in setting just and reasonable rates, as required by § 40-3-114 C.R.S. and to ensure that utilities do not use ratepayer funds to subsidize nonregulated activities, in accordance with § 40-3-114 C.R.S. In order to promote these purposes, these rules also specify information that utilities must provide to the Commission.

4502. Cost Assignment and Allocation Principles.

In determining fully distributed cost, the utility shall apply the following principles (listed in descending order of required application in (a), (b) and (c) below):

(a) Tariffed services provided to an activity will be charged to the activity at the tariffed rates.

(b) If only one activity or jurisdiction causes a cost to be incurred, that cost shall be directly assigned to that activity or jurisdiction.

(c) Costs that cannot be directly assigned to either regulated or nonregulated activities or jurisdictions will be described as common costs. Common costs shall be grouped into homogeneous cost categories designed to facilitate the proper allocation of costs between regulated and nonregulated activities or jurisdictions. Each cost category shall be fairly and equitably allocated between regulated and nonregulated activities or jurisdictions in accordance with the following principles:

(I) Cost causation. All activities or jurisdictions that cause a cost to be incurred shall be allocated a portion of that cost. Direct assignment of a cost is preferred to the extent that the cost can easily be traced to the specific activity or jurisdiction.

(II) Variability. If the fully distributed cost study indicates a direct correlation exists between a change in the incurrence of a cost and cost causation, that cost shall be allocated based upon that relationship.

(III) Traceability. A cost may be allocated using a measure that has a logical or observable correlation to all the activities or jurisdictions that cause the cost to be incurred.

(IV) Benefit. All activities or jurisdictions that benefit from a cost shall be allocated a portion of that cost.

(V) ~~Materiality~~Residual. The residual of ~~If there is a small amount of a~~ cost~~s~~ left after either direct or indirect assignment or allocation~~, the residual of the cost~~ shall be allocated based upon an appropriate general allocator to be defined in the utility's CAAM.

(d) For cost assignment and allocation purposes, the value of all transactions from the Colorado utility to a nonregulated activity shall be determined as follows:

(I) If the transaction involves a product or service provided by the utility pursuant to tariff, the value of the transaction shall be at the tariff rate.

(II) If the transaction involves a product or service that is not provided pursuant to a tariff, the value of the transaction shall be the higher of the utility's fully distributed cost or market price. Market price shall be either the price charged by the utility, or if this condition cannot be met, the lowest price charged by another person for a comparable product or service.

(III) If the transaction involves the sale of an asset, the value of the transaction shall be the higher of net-book cost or market price. If the transaction involves the use of an asset, the value of the transaction shall be the higher of fully distributed cost or market price. Market price shall be either the price charged by the utility or if this condition cannot be met, the lowest price charged by another person in the market for the sale or use of a comparable asset, when such prices are publicly available.

(e) For cost assignment and allocation purposes, the value of all transactions from a nonregulated activity to the utility shall be determined as follows:

(I) If the transaction involves a product or service that is not provided pursuant to a tariff, the value of the transaction shall be the lower of the fully distributed cost or the market price except if the transaction results from a competitive solicitation process then the value of the transaction shall be the winning bid price. Fully distributed cost in this circumstance, shall be the cost that would be incurred by the utility to provide the service internally. Market price shall be either the price charged by the supplying nonregulated activity or if that condition is not met, the lowest price charged by other persons in the market for a comparable product or service, when such prices are publicly available.

(II) If the transaction involves the sale of an asset, the value of the transaction shall be the lower of net-book cost or market price. If the transaction involves the use of an asset, the value of the transaction shall be at the lower of fully distributed cost or market price. Market price shall be either the price charged by the nonregulated activity or, if this condition cannot be met, the lowest price charged by another person in the market for the sale or use of a comparable asset, where such prices are publicly available.

(f) If it is impracticable for the utility to establish a market price pursuant to paragraphs (d) or (e), the utility shall provide a statement to that effect, including its reasons in its fully distributed cost study as well as its proposed method and amount for valuing the transaction. Parties in a Commission proceeding retain the right to advocate alternative market prices pursuant to paragraphs (d) and (e).

(g) A utility may classify nonjurisdictional services as regulated if the services are rate-regulated by another agency (i.e., another state utility commission or the FERC) and where there are agency-accepted principles or methods for the development of rates associated with such services. This rule may apply, for example, to a provider's wholesale sales of electric power and energy. For such services, the utility shall identify the services in its manual, and account for the revenues, expenses, assets, liabilities, and ratebase associated with these services as if these services are regulated.

(h) For cost assignment and allocation purposes, the value of all transactions between regulated divisions within a utility shall be determined as follows:

(I) If the transaction involves a service provided by the utility pursuant to tariff, the value of the transaction shall be at the tariff rate.

(II) If the transaction involves a service or function that is not provided pursuant to a tariff, the value of the transaction shall be at cost.

(i) If the utility offers a service that is a combination of regulated and nonregulated activities (i.e., a bundled service), the utility shall assign and/or allocate costs to the regulated and nonregulated activities separately.

(j) A utility may classify incidental activities as regulated activities. If an incidental activity is classified as a regulated activity, the utility shall clearly identify the activity as an incidental activity, and account for the revenues, expenses, assets, liabilities and ratebase items as if that activity were a regulated activity.

(k) To the extent possible, all assigned and allocated costs between regulated and nonregulated activities should have an audit trail which is traceable on the books and records of the applicable

regulated utility to the applicable accounts pursuant to the Federal Energy Regulatory Commission Uniform System of Accounts.

(l) In a rate proceeding involving the calculation of revenue requirements, a complaint proceeding where cost assignments or allocations are at issue, or a proceeding where CAAM approval is sought, the utility or any party may advocate a cost allocation principle other than that already in use, if the Commission has already approved the principle for that cost. The party requesting the alternative approach shall have the burden of proving the need for an alternative principle and why the particular principle is appropriate for the particular cost.

4503. Cost Assignment and Allocation Manuals.

(a) Each utility shall maintain on file with the Commission an approved indexed cost assignment and allocation manual which describes and explains the calculation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and ratebase cost components assigned or allocated to Colorado jurisdictional activities. It includes the calculation methods to segregate and account for costs between and among jurisdictions, between regulated and nonregulated activities, and between and among utility divisions.~~the policies, procedures, and cost allocation methods used to assign and allocate costs between regulated and nonregulated activities.~~

(b) Each utility shall include the following information in its CAAM:

(I) A listing of all regulated or nonregulated divisions of the Colorado utility together with an identification of the regulated or nonregulated activities conducted by each.

(II) A listing of all regulated or nonregulated affiliates of the Colorado utility together with an identification of which affiliates allocate or assign costs to and from the Colorado utility.

(III) A listing and description of each regulated and nonregulated activity offered by the Colorado utility. The Colorado utility shall provide a description in sufficient detail to identify the types of costs associated with the activity and shall identify how the activity is offered to the public and identify whether the Colorado utility provides the activity in more than one state. If an activity is offered subject to tariff, the Colorado utility may identify the tariff and the tariff section that describes the service offering in lieu of providing a service description.

(IV) A listing of the revenues, expenses, assets, liabilities and ratebase items by Uniform System of Accounts (USoA) account number that the utility proposes to include in its revenue requirement for Colorado jurisdictional activities including those items that are partially allocated to Colorado as well as those items that are exclusively assigned to Colorado.

(V) A detailed description showing how the revenues, expenses, assets, liabilities and ratebase items by account and sub-account are assigned and/or allocated to the Colorado utility's nonregulated activities, along with a description of the methods used to perform the assignment and allocations.

(VI) A description of each transaction between the Colorado utility and a nonregulated activity which occurred since the Colorado utility's prior CAAM was filed and, for each transaction, a statement as to whether, for this Commission's jurisdictional cost assignment and allocation purposes, the value of the transactions is at cost or market as applicable.

(VII) A description of the basis for how the assignment or allocation is made.

(VIII) If the utility believes that specific cost assignments or allocations are under the jurisdiction of another authority, the utility shall so state in its CAAM and give a written description of the prescribed methods. Nothing herein shall be construed to be a delegation of this Commission's ratemaking authority related to those assignments or allocations.

(IX) Any additional information specifically required by Commission order.

(c) A utility may treat certain transactions as confidential pursuant to the Commission rules on confidentially.

(d) Public Service Company of Colorado and Aquila, Inc. shall each initially file an application for approval of its CAAM within 180 days of the effective date of these rules. These utilities shall also simultaneously file a FDC study reflecting the assignment and allocation methods detailed and described in its manual.

(e) All other utilities shall each initially file an application for approval of its CAAM within 360 days of the effective date of these rules, or such other time to accommodate a staggered filing schedule if the Commission establishes one. These utilities shall also simultaneously file a FDC study reflecting the cost assignment and allocation methods detailed and described in its manual.

(f) Following the initial approval of its CAAM, the utility shall file an updated CAAM in each rate case proceeding where revenue requirements are determined or every five years following approval of the CAAM then in effect, whichever is earlier.

(g) The utility may, at its discretion, file an application seeking Commission approval of updates to its CAAM at any time.

(h) Whenever a utility files for approval of an update to its CAAM as a result of (f) or (g) above, the utility shall also simultaneously file a FDC study reflecting the results of the cost allocation methods in its updated manual.

(i) Each utility shall maintain all records and supporting documentation concerning its CAAMs for so long as such manual is in effect or are subject to a complaint or a proceeding before the Commission.

4504. Fully Distributed Cost Study

(a) The utility shall submit its fully distributed cost study in both electronic and paper format simultaneously with filing its CAAM for all Colorado divisions and activities.

(b) The utility shall prepare a FDC study that identifies all the nonregulated activities provided by each division in Colorado. The FDC study shall show the revenues, expenses assets, liabilities and ratebase items assigned and allocated to each nonregulated activity. If the utility has more than one division (e.g., gas, electric, ~~or~~ thermal or non-utility) in Colorado, the FDC study shall include a summary of all regulated and unregulated assigned and allocated costs by division. ~~for each nonregulated activity.~~

(c) In preparation of its FDC study, the utility shall complete an analysis of each nonregulated activity to identify the costs that are associated with and/or should be charged to each nonregulated

activity to ensure each nonregulated activity is assigned and allocated the appropriate amount of revenues, expenses, assets, liabilities and ratebase items.

(d) If the CAAM is filed in connection with a rate case, the FDC study shall be based on the same test year used in the utility's rate case filing. The utility's FDC study shall include revenues, expenses, assets, liabilities and ratebase items in order for the Commission to determine if all appropriate revenues, expenses, assets, liabilities and ratebase items have been appropriately assigned and allocated, and to determine the utility's compliance with the principles established in rule 4502. For each assignment and allocation the utility shall:

(I) Identify the revenues, expenses, assets, liabilities and ratebase items by account number, sub-account number and account description; and

(II) For each account in (I) above, identify the assignment and allocation method used to assign and allocate costs in sufficient detail to verify the assignment and allocation method used to assign and allocate costs to Colorado divisions and activities is accurate and consistent with the utility's CAAM methodology and reference the CAAM section that describes the allocation.

(III) Provide the test year total dollar itemized amounts of revenues, expenses, assets, liabilities, and ratebase assigned and allocated to each Colorado division and activity; the itemized amounts assigned and allocated to the Colorado utility for regulated activities; the itemized amounts assigned and allocated to the Colorado utility for Colorado nonregulated activities; and the itemized amounts assigned and allocated to other jurisdictions.

(e) Each utility shall maintain all records and supporting documentation concerning its FDC study for so long as such study is in effect or are subject to a complaint or a proceeding before the Commission.

4505. Disclosure of Nonregulated Goods and Services.

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

4506. – 4599. [Reserved]

GAS COST ADJUSTMENT AND PRUDENCE REVIEW

4600. Overview and Purpose.

Rules 4601 through 4609 are used to revise gas rates on an expedited basis. These rules provide instructions for the filing of: (1) gas cost adjustment applications; (2) annual gas purchase plan submittals; and (3) annual gas purchase reports. The purpose of the Gas Cost Adjustment is to enable utilities, on an expedited basis, to reflect in their rates for gas sales and gas transportation services the increases or decreases in gas costs, including (but not limited to) gas commodity costs and upstream services costs. The purpose of the Gas Purchase Plan 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 Gas Purchase Report is to present the utility's actual purchases of gas commodity and upstream services during each month of the gas purchase year.

4601. Definitions.

The following definitions apply to rules 4600 - 4609 unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Account No. 191" means an account under the Federal Energy Regulatory Commission System of Accounts used to accumulate actual under-or-over recovered 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~~0.

(b) "Base gas cost" means a rate component which is expressed in at least the accuracy of one mil ($0.001) per Mcf or Dth, which is used in the calculation of the GCA, and 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 which is expressed in at least the accuracy of one mil ($0.001) per Mcf or Dth and 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 which is expressed in at least the accuracy of one mil ($0.001) per Mcf or Dth and which is 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 firm maximum sales gas and firm 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 for exchange gas imbalances, which is projected to be incurred by the utility during the GCA effective period and which is 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 forecasted 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 gas facilities.

(m) "Gas cost adjustment" or "GCA" means a gas rate adjustment to reflect increases or decreases in gas costs.

(n) "GCA effective period" means the period of time that the GCA rate change is intended to be in effect before being superseded on 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" or "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" or "GRP" means a report which is filed with the Commission and which 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 12-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 based on National Oceanic and Atmospheric Administration data.

(v) "Peak day" means a defined period (such as a 24 hour period or a three consecutive day average), not less than 24 hours, during which gas commodity throughput is at its maximum level on the utility's system.

(w) "Receipt point/area" means the point or group of points in a discrete geographic area, such as a supply basin, hub, or market area, at which 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 (whether base, swing, or peak) 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.

(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 of effectuating delivery of gas commodity to the utility's jurisdictional gas facilities.

4602. Schedule for Filings by Utilities.

Utilities subject to rules 4600-4609 shall make the required filings in accordance with the following schedule:

(a) October 1 filing schedule. Public Service Company of Colorado, Eastern Colorado Utility Company, and Aquila, Inc., shall file with the Commission annual GCA applications with an effective date of October 1. 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.

(b) November 1 filing schedule. Atmos Energy Corporation, Kinder Morgan, Inc., Colorado Natural Gas, Inc., and Rocky Mountain Natural Gas Company shall file with the Commission annual GCA applications with an effective date of November 1. 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.

(c) A utility shall file its GPP submittal annually on or before June 1 for the next gas purchase year beginning July 1.

4603. Gas Cost Adjustments.

(a) A utility shall file an application to adjust its GCA. The GCA application shall be filed pursuant to the schedule provided in rule 4602. A utility shall file a GCA application not less than two weeks in advance of the proposed effective date.

(b) A GCA application shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) The information required by rules 4002(b) and 4002(c).

(II) The information required by rule 4604. Exhibits 2, 3, 5 and 6 listed in rule 4604 shall be provided in written form and shall be provided electronically, in executable format with all cell formulas intact, using spreadsheet software that is compatible with software used by the Staff.

(c) If the projected gas costs have changed from those used to calculate the currently effective 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.

(d) Applicability of the GCA. The GCA shall be applied to all utility sales gas rate schedules. A utility 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. Absent a Commission decision, a utility engaged in the provision of gas transportation service shall not be required to calculate a transportation GCA factor.

(e) 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), is 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.

(f) 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 and subject to the prudence review standard.

(g) Calculation of the GCA. The GCA shall be calculated to at least the accuracy of one mil per Mcf or Dth pursuant to the following formula:

GCA = (current gas cost + deferred gas cost)
- (base gas cost).

4604. Contents of GCA Applications.

(a) A GCA application shall meet the following requirements:

(I) Every application shall contain exhibits 1 through 9. Exhibits 10 through 12 shall be filed with the annual GCA application. The exhibits shall meet the requirements set out in this rule.

(II) The exhibits shall be organized in a manner that specifically references, and responds to, the requirements contained in each sub~~section~~paragraph of this rule.

(III) Cross-referenced and footnoted work-papers fully explaining the amounts shown in each exhibit shall be submitted.

(IV) The application shall cross-reference the docket numbers of the associated GPP submittals.

(V) When preparing exhibits 10 through 12, the rate base, net operating earnings, capital structure, and cost of capital shall be calculated 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.

(VI) An explanation of all pro forma adjustments shall be provided.

(b) 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 on a total dollar and mil ($0.001, 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 ($0.001, 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.

(c) 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:

current gas cost = (forecasted gas commodity cost + forecasted upstream service cost) / 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 for each month of the GCA effective period, as required pursuant to rule 4606.

(d) GCA Exhibit No. 3 - Deferred Gas Cost Calculation. This exhibit shall contain the details of the utility's actual gas purchase costs and the calculation of deferred gas cost. In addition, this exhibit 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 its 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 per Mcf or Dth. Each cost a utility desires to have 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.

(e) 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.

(f) 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.

(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.

(g) GCA Exhibit No. 6 - Current Gas Cost Allocations. This exhibit shall fully explain and justify the method(s) used to do each of the following:

(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.

(II) Derive the amount of the GCA applied to each specific sales gas customer class and, where applicable, gas transportation customer rate classes.

(h) 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. ~~The utility shall provide notice by means of a bill insert or a bill message on or before the month in which the proposed GCA rates are to take effect.~~ In its customer notice for each sales gas customer class, the utility shall include the following:

(I) Current and proposed GCA rates and percentage change.

(II) Comparison of last year's average annual bill under prior rates and the projected average annual bill under the proposed GCA rates and percentage change in the total bill amount using an average usage amount for each customer class.

(III) Comparison of the prior year's peak winter month bill under prior rates and the projected peak winter month bill under the proposed GCA rates and percentage change using an average peak winter month usage amount for each customer class.

(IV) With the annual GCA application, a statement that the utility made a separate gas purchase report filing in accordance with rule 4607 to begin the initial prudence review evaluation process for the prior gas purchase year.

(i) 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 4406.

(j) GCA Exhibit No. 9 - Proposed Tariff. This exhibit shall contain the tariff sheets proposed by the utility to reflect the proposed GCA change.

(k) 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.

(l) GCA Exhibit No. 11 - Net Operating Earnings. This exhibit shall calculate the utility's net operating earnings for jurisdictional gas operations during the most recently completed 12-month period ending June 30.

(m) 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 jurisdictional gas operations.

(II) The utility's cost of long-term debt and preferred equity.

(III) The utility's cost of common equity.

(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 submittal shall include the following 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 of its submittal.

(b) Contents of GPP filing. In the GPP, the utility shall submit to the Commission the following:

(I) The information required by rule 4606.

(II) The utility's forecasted quantity of gas to be purchased over the ensuing gas purchase year for each service level.

(III) The utility's forecasted pricing for each receipt point/area.

(IV) The utility's portfolio management plan.

(c) Commission procedures for processing filings. Upon receipt of a GPP submittal, 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 of the GPP, entertain interventions by interested parties, require the filing of testimony and exhibits, or permit discovery. The Commission shall not render a decision approving or disapproving the substantive information contained in the submittal.

(d) Review timelines. Staff shall review the submittal and, within 15 calendar days of the filing, shall provide written notification to the utility of any deficiencies in the submittal. 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 the written statement, Staff shall 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 of the submittal within 15 calendar days of receipt of final information or the written statement, the submittal shall be deemed complete.

(e) Utilities with multiple GCA rate areas. A utility with more than one GCA rate area in Colorado shall file a separate GPP for each GCA rate area. These GPPs may be filed in a single submittal.

(f) GPP no longer reflects market conditions. A utility shall file a new GPP within 30 days of its determination 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 of ~~section~~paragraphs (a) through (d) of this rule. With its submittal the utility shall provide cross-referenced and footnoted work-papers fully explaining the amounts shown in each exhibit.

(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, including a projection of such costs.

(d) GPP Exhibit No. 4 - Forecasted Upstream Service Costs. This exhibit shall include 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, that 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 distribution 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.

(IV) Forecasted capacity release volumes and revenues for upstream services.

4607. Gas Purchase Reports and Prudence Reviews.

(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 from, and at the same time as, the annual GCA application. The utility shall file an original and ten copies. 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. The Commission 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 standard of review to be used in assessing the utility's action (or lack of action) in a specific gas purchase year is: 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.

(e) Utility testimony and exhibits. If the Commission sets a hearing, the utility shall file its testimony and exhibits supporting gas cost recovery for the gas purchase year at issue. The testimony shall be filed in question-and-answer format. The utility shall file its testimony and exhibits not later than 45 days after the Commission sets the matter for 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, ~~section~~paragraphs (a) through (d) of this rule. 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. The utility shall provide an explanation of, and justification for, any material deviations from its GPP. All underlying support documentation and work papers shall be made available. With its filing the utility shall provide cross-referenced and footnoted work-papers fully explaining the amounts shown in each exhibit.

(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, using the standard of review specified in rule 4607(c), the prudence of actual portfolio purchases. This exhibit shall include a detailed itemization of gas price volatility risk management 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.

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

4609. General 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.

(b) A 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, a utility shall file, within 30 days of the end of the quarter, a report to the Commission stating the Account No. 191 balance calculation for each rate area. The 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.

4610. – 4699. [Reserved]

APPEALS OF LOCAL GOVERNMENT LAND USE DECISIONS

4700. Scope and Applicability.

Rules 4700 through 4707 apply to all utilities or power authorities which seek to appeal a local government action concerning a major natural gas facility.

4701. Definitions.

The following definitions apply to rules 4700 - 4707, unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

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

(b) "Local government action" means (1) 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 a major natural gas facility or (2) a decision imposing 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)(e), C.R.S., or by any other applicable statute.

(e) "Power authority" means an authority created pursuant to § 29-1-204, C.R.S.

4702. Precondition to Application.

In order for a utility or power authority to appeal a local government action to the Commission pursuant to this rule and pursuant to § 29-20-108, C.R.S., one or more of the following conditions must be met:

(a) The utility or power authority 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 or power authority to construct the major natural gas facility that is the subject of the local government action.

(c) The Commission has previously entered an order pursuant to § 40-4-102, C.R.S., that conflicts with the local government action.

4703. Applications.

(a) To commence an appeal of a local government land use decision, a utility or power authority shall file with the Commission an application pursuant to this rule.

(b) An application filed in accordance with §§ 29-20-108, C.R.S., and this rule shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) All of information required in rules 4002(b) and 4002(c).

(II) A showing that one of the preconditions set out in rule 4702 has been met.

(III) Identification of the major natural gas facility.

(IV) Identification of the local government action and its impact on the major natural gas facility.

(V) A statement of the reasons the applying utility or power authority believes that the local government action would unreasonably impair its ability to provide safe, reliable, and economical service to the public.

(VI) The demonstrated need for the major natural gas facility or reference to the application made to the Commission with respect to the major natural gas facility and the resulting decision of the Commission regarding such facility.

(VII) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans.

(VIII) Whether the proposed facility would exacerbate a natural hazard.

(IX) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards.

(X) The relative merit, as determined through use of the normal system planning evaluation techniques of the utility or power authority, of any reasonably available and economically feasible alternatives proposed by the utility, the power authority, or the local government.

(XI) 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.

(XII) The basis for the local government action. If available, the utility or power authority shall attach a copy of the local government action.

(XIII) 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. If the residents have already paid to place facilities underground, the Commission will give strong consideration to that fact.

(XIV) Information concerning how the proposed major natural gas facility will affect the safety of residents within and without the boundaries of the jurisdiction of the local government.

(XV) An attestation that the utility or power authority will, upon filing the application with the Commission, simultaneously send a copy of the application to the local government body which took the local government action which is the subject of the appeal.

4704. 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 a public hearing held at a location specified by the local government.

4705. Scheduling Conference, Parties, and Public Notice.

(a) In order to assist the parties in scheduling the public hearing, determining the scheduling of the evidentiary hearing, developing the list of persons to receive notice of these hearings, and addressing other pertinent issues, the Commission will hold a prehearing conference.

(b) The Commission shall conduct a prehearing conference within 15 days after the application is deemed complete by the Commission.

(c) The Commission shall join as an indispensable party the local government which took the contested local government action.

(d) Ten days before the commencement of the prehearing conference, the local government shall submit to the parties and the Commission its preference for the location of the public hearing to be held in accordance with § 29-20-108(5)(b), C.R.S., and rule 4704.

(e) The Commission will decide the date and time of the public hearing after receiving comments from the parties at the prehearing conference.

(f) By the date of the prehearing conference, each party shall provide to the utility a list of individuals and groups to receive notice of the public hearing.

(g) The utility or power authority shall give notice of the public hearing to the identified 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 public hearing, and space needs to be acquired, then the utility or power authority shall bear any cost associated with the rental of such space for the public hearing.

(i) The parties are encouraged to confer prior to the prehearing conference to develop a schedule for the filing of testimony and the dates for the formal evidentiary hearing.

4706. Denial of Appeal.

In accordance with § 29-20-108(5)(e), C.R.S., the Commission shall deny an appeal of a local government action if the utility or power authority has failed to comply with the following notification and consultation requirements:

(a) A utility or power authority 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 major natural gas facility or the extension of an existing facility. If a utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or to file annually with the Commission to notify the Commission of proposed construction of a new major natural gas facility or the extension of an existing facility, then the utility or power authority shall notify any affected local governments of its intention to site a new major natural gas facility within the jurisdiction of the local government when such utility or power authority determines that it intends to proceed to permit and to construct the facility. Following such notification, the utility or power authority 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 to 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 or power authority shall consider and present reasonable siting and design alternatives to the local government or shall explain why no reasonable alternatives are available.

4707. Procedural Rules.

Pursuant to § 29-20-108(5)(b), C.R.S., any appeal brought by a utility or power authority under this section shall be conducted in accordance with the procedural requirements of Article 6, Title 40, C.R.S., including § 40-6-109.5, C.R.S. Evidentiary hearings on any such appeals shall be conducted in accordance with § 40-6-109, C.R.S.

4708. – 4799. [Reserved]

MASTER METER OPERATORS

4800. ~~[Reserved]~~Applicability.

These rules are applicable to any person who purchases gas service from a utility for the purpose of delivery of that service to end-users whose aggregate usage is to be measured by a master meter or other composite measurement device.

4801. ~~[Reserved]~~Definitions.

The following definitions apply to Rules 4800 - 4805, unless a specific statute or rule provides otherwise. In addition to these definitions, the definitions in rule 4001 apply.

(a) "Check-meter" means a meter or other composite measurement device which is used by a master meter operator and which is used to determine gas consumption by end-users served by the master meter operator.

(b) "Master meter" means a meter or other composite measurement device which a serving utility uses to bill a master meter operator.

(c) "Master meter operator" or "MMO" means a person who purchases gas service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter.

(d) "Refund" means a refund, rebate, rate reduction, or similar adjustment.

(e) "Serving utility" means the utility from which the master meter operator receives the gas service which the master meter operator then delivers to end-users.

4802. ~~[Reserved]~~Exemption from Rate Regulation.

(a) Pursuant to § 40-1-103.5, C.R.S., and by this rule, the Commission exempts from rate regulation under Articles 1 to 7 of Title 40, C.R.S., a master meter operator which is in compliance with rules 4803 and 4804.

(b) A master meter operator which is not in compliance with rules 4803 and 4804 is subject to rate regulation under Articles 1 to 7 of Title 40, C.R.S., and shall comply with the applicable rules.

4803. [Reserved] Exemption Requirements.

(a) In order to retain its exemption from rate regulation, a MMO shall do the following:

(I) As part of its billing for utility service, the MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any other costs (such as, without limitation, the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility.

(II) If the MMO bills its end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility.

(III) If the MMO bills its end-users separately for service, the MMO shall pass on to its end-users all refunds the MMO receives from the serving utility or otherwise.

(IV) The MMO shall establish procedures for giving notice of a refund to those who are not current end-users but who were end-users during the period for which the refund is paid.

(V) A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users.

(b) In order to retain its exemption from rate regulation, a MMO shall not resell gas for profit. Resale is a basis for revocation of an exemption from rate regulation.

(c) A MMO may check-meter tenants, lessees, or other persons to whom the gas ultimately is distributed but may do so only if the following conditions are met:

(I) The check-meter is used solely for the purpose of reimbursing the MMO by means of an appropriate allocation procedure.

(II) The MMO does not receive more than the actual amount billed to the MMO by the serving utility.

4804 Refunds.

(a) When a serving utility notifies a MMO of a refund or when a refund is otherwise made, a MMO shall notify its end-users of the refund and shall inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication. The MMO shall also notify former customers who were end-users during the period for which the refund is made. The MMO shall give the notice required by this paragraph within 30 days of notification about the refund or, if there is no prior notification, within 30 days of receipt of the refund.

(b) A MMO may retain any portion of a refund which rightfully belongs to the MMO.

(c) If the aggregate amount of a refund which remains unclaimed after 90 days exceeds $100, the MMO shall contribute that unclaimed amount to the energy assistance organization in accordance

with rules 4410(d), (f), and (g). If the aggregate amount which remains unclaimed after 90 days does not exceed $100, the MMO may retain the aggregate amount.

(d) A MMO shall pay interest on undistributed refunds in accordance with rule 4410(d).

4805 Complaints, Penalties, and Revocation of Exemption.

(a) Pursuant to rules 1301 and 1302, a person (including without limitation anyone subject to a master meter) may make an informal complaint to the External Affairs section of the Commission or may file a formal complaint with the Commission with the respect to an alleged violation of rules 4803 and 4804.

(b) As a result of a complaint or on its own motion, the Commission will investigate complaints concerning MMOs. If the Commission determines after investigation that an MMO has violated any of the requirements of rules 4803 and 4804, the MMO may have its exempt status revoked or may be subject to penalties as set forth in § 40-7-107, C.R.S., or both.

4806.4 – 4899. [Reserved]

GAS PIPELINE SAFETY

General Provisions

4900. Scope and Applicability.

(a) The pipeline safety rules prescribe requirements for construction, operation, and maintenance of pipeline facilities and for reporting by operators of gas pipeline systems of the following: incidents, safety-related conditions, notice of construction and repair, conversion to service as a regulated pipeline, and annual pipeline summary data. Pursuant to these rules, the Commission conducts its pipeline safety program activities under 49 U.S.C. § 60105. The statutory authority permitting the Commission to enter into cooperative agreements with federal agencies and to adopt rules to administer and to enforce 49 U.S.C. §§ 60101, et seq., can be found at §§ 40-2-115 and 40-7-117, C.R.S.

(b) Rules 4900 to 4999 apply to, establish, and govern the:

(I) Reporting by operators of gas pipeline systems of incidents, safety-related conditions, damage statistics, notice of construction and repair, and annual pipeline information to the Commission and to the U.S. DOT [rules 4910 - 4929].

(II) Enforcement by Staff of the Rules Regulating Gas Pipeline Safety [rules 4930 – 4949].

(III) Adoption of minimum safety standards for transportation of natural gas and other gas by pipeline [rules 4950 – 4959].

(IV) Adoption of minimum safety standards for liquefied natural gas facilities[rules 4960 – 4969].

(V) Adoption and enforcement of a drug and alcohol-testing program [rules 4970 – 4979].

(c) These rules apply to gathering pipelines and gathering pipeline segments under the scope of 49 C.F.R. § 192.1.

(d) Nothing in these rules shall be construed to exempt gathering pipeline operators from complying with § 9-1.5-105, C.R.S.

4901. Definitions.

The following definitions apply to rules 4900 - 4999, except where a specific statute or rule provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Chief" means the program manager of the Gas Pipeline Safety Section of the Commission.

(b) "Damage," when used in reference to a pipeline, means the penetration or destruction of any protective coating of an underground pipeline, the partial or complete severance of an underground pipeline, or the denting or puncturing of an underground pipeline.

(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 meter" means a meter that measures the transfer of gas to a direct sales customer purchasing gas for its own consumption.

(e) "Direct sales pipeline" means a pipeline which runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter or to the direct sales customer's property line, whichever is the furthest downstream.

(f) "Distribution pipeline" means a pipeline other than a transmission pipeline or a gathering pipeline.

(g) "Emergency repair" means a repair that is on a transmission or gathering pipeline operating at or above 20% SMYS and that requires immediate action to prevent loss of life or significant damage to property or to preserve the integrity of the pipeline.

(h) "Excavation" means the moving or removing of earth by means of any tools, equipment, or explosives and includes (without limitation) auguring, boring, backfilling, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, or tunneling.

(i) "Gas" means natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.

(j) "Gathering pipeline" means a pipeline that transports gas from a current production facility to a transmission pipeline or main.

(k) "Hazardous facility" means a pipeline facility that, if allowed to go into operation or to remain in operation, would be hazardous to life and property.

(l) "Incident" means a release of gas from a pipeline, or a release of liquefied natural gas or gas from an LNG facility, which results in any of the following:

(I) Death or personal injury necessitating in-patient 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 results in an emergency shutdown of an LNG facility.

(IV) An event that is significant, in the judgment of the operator, even though it does not meet the criteria of sub~~section~~paragraphs (I)(I), (II), or (III) of this ~~section~~paragraph.

(m) "Intrastate pipeline" means a pipeline facility within the state of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

(n) "Liquefied Natural Gas" or "LNG" means natural gas or synthetic gas which has methane (CH4) as its major constituent and which has been changed to a liquid.

(o) "LNG facility" means a pipeline facility that is used for liquefying natural gas or synthetic gas or for transferring, storing, or vaporizing liquefied natural gas.

(p) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.

(q) "Major construction" means the construction of any new pipeline that originally is estimated to cost $100,000 or more. As used in this rule, cost includes only the direct costs associated with the construction.

(r) "Major repair" means a repair, replacement, renewal, or upgrade of a pipeline that originally is estimated to cost $50,000 or more. As used in this rule, cost includes only the direct costs associated with the repair.

(s) "Master meter system" means a pipeline system for distributing gas within a definable area (for example, a mobile home park) where the operator or owner purchases gas from an outside source for delivery through a pipeline system to an end user.

(t) "Municipality" means a city, town, or village in the State of Colorado.

(u) "Natural Gas Pipeline Act" means the federal statute found at 49 U.S.C. §§ 60101, et seq., as amended.

(v) "Operator" means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline. "Operator" also may include an owner, such as a pipeline corporation.

(w) "OPS" means the Office of Pipeline Safety, a unit of the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.

(x) "Person" means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(y) "Pipeline" or "pipeline system" means all parts of those physical intrastate facilities through which gas moves in transportation, 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.

(z) "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

(aa) "Production facility" means a flowline and associated equipment used in producing, extracting, recovering, lifting, stabilizing, separating, treating, dehydrating, and storing of liquid hydrocarbons (above ground), and associated natural hydrocarbon gases, at a wellsite. To be a production facility under this definition, a flowline must be used in the process of extracting hydrocarbons from the ground or from facilities where hydrocarbons are produced or must be used for injection in reservoir maintenance or recovery operations.

(bb) "Propane gas system" means a pipeline system serving ten or more structures from a single tank.

(cc) "Roadway" means a main artery, highway, or interstate highway.

(dd) "Service line" means a distribution line that transports gas, or is designed to transport gas, from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a single meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is furthest downstream, or at the connection to customer piping if there is no meter.

(ee) "Service regulator" means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

(ff) "Specified Minimum Yield Strength" or "SMYS" means:

(I) For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification.

(II) For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with 49 C.F.R. § 192.107(b).

(gg) "Staff" means the Staff of the Gas Pipeline Safety Section of the Commission.

(hh) "Transmission pipeline" means a pipeline, other than a gathering pipeline or distribution pipeline, that does one of the following:

(I) Transports gas from a gathering pipeline or storage facility to a distribution pipeline, distribution center, or storage facility.

(II) Operates at a hoop stress of 20 percent or more of SMYS.

(III) Transports gas within a storage field.

(IV) Is a direct sales pipeline serving a large volume customer not downstream of a distribution center, which may include, but not be limited to, factories and power plants.

(ii) "Transportation of gas" means the gathering, transmission, distribution, or storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

4902. Incorporation by Reference.

(a) The Commission adopts by reference the minimum federal safety standards for the transportation of natural gas and other gas by pipeline of the U.S. DOT that are published in 49 C.F.R. Part 192

(October 1, 2004). This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.

(b) The Commission adopts by reference the federal safety standards for liquefied natural gas facilities of the U.S. DOT that are published in 49 C.F.R. Part 193 (October 1, 2004). This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.

(c) The Commission hereby adopts by reference the drug and alcohol testing program of the U.S. DOT published in 49 C.F.R. Parts 40 and 199 (October 1, 2004). This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.

(d) Any material incorporated by reference in this rule may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at costs upon request. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library.

4903. Conflict.

In the event of a conflict between the provisions of 49 C.F.R. Parts 40, 192, 193, or 199 and the rules 4900 to 4999 regarding the administrative, the enforcement, and the reporting requirements, the rules 4900 to 4999 shall apply.

4904. Interpretation.

(a) An operator may request a regulatory interpretation of any of these rules by submitting a written request to the Chief. The requestor shall include his or her return address and the specific application and rule reference with the request.

(b) After a request for interpretation is received, the Chief will notify the requestor of the disposition of the request and if additional information is required.

(c) If the request is consistent with the state pipeline safety program and is justified, the Chief will provide the Federal Administrator for Pipeline Safety a written recommendation with terms and conditions as are appropriate.

(d) The interpretation is effective upon approval by the Federal Administrator for Pipeline Safety or, no action is taken by the Federal Administrator for Pipeline Safety, 60 days after the receipt of the recommendations from the Chief.

4905. Waiver.

The Commission may grant a request for waiver of any of these rules in accordance with 49 U.S.C. § 60118 and the Commission's Rules Regulating Practice and Procedure.

4906. Alert Notices.

An alert or advisory notice may be disseminated to an operator based on recommendations from the National Transportation Safety Board, the Federal Office of Pipeline Safety, or as a result of a situation which may pose a threat to pipeline systems and the public. After receiving information concerning an

alert or advisory notice, an operator shall take appropriate action to review and to revise its operating and maintenance procedures.

4907. – 4909. [Reserved]

Filing Incident, Safety-Related Condition, Construction, Damage, and Annual Reports

4910. Written Reports.

(a) Written reports required by these rules, except notices of major construction, notices of major repair, and pipeline damage reports, shall be filed with the Information Resources Manager, Office of Pipeline Safety, U.S. DOT.

(b) A copy of each written report filed with the Information Resources Manager shall be furnished to the Staff on the same day as the report is filed with the Information Resources Manager.

(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.

4911. Telephonic Reports of Incidents.

(a) As soon as possible after discovery, but generally not to exceed two hours after discovery, an operator shall telephonically report any incident to the Staff and to the National Response Center of the U.S. DOT.

(b) If there is an emergency repair to, or if a gas leak occurs on, an intrastate pipeline or a LNG system and results in the evacuation of 50 or more people from a normally occupied public building, a master meter system, or a propane gas system, or results in the closure of a roadway, the operator shall telephonically report the incident to the Staff within two hours after discovery.

(c) A telephonic report made pursuant to ~~section~~paragraphs (a) or ~~section~~ (b) of this rule shall include the following information:

(I) The name and telephone number of the operator and of the person making the report.

(II) The location of the incident.

(III) The date and time of the beginning of the incident.

(IV) The date and time of the ending of the incident, if appropriate.

(V) The date and time of the discovery of the incident.

(VI) The number of fatalities and personal injuries, if any.

(VII) All other significant facts that are known by the person making the report that are relevant to the cause of the incident or the extent of the damage.

(VIII) The National Response Center control number, if known.

4912. Written Reports by Operators of Distribution Systems.

(a) Except as provided in ~~section~~paragraph (c) of this rule, an operator of a distribution pipeline system shall file an incident report on U.S. DOT Form PHMSA F 7100.1 with the agencies listed in rule 4910 as soon as possible after the discovery of an incident, but not later than 30 days after discovery.

(b) After filing an incident report pursuant to ~~section~~paragraph (a) of this rule, an operator shall file a supplemental report with the agencies listed in rule 4910 if the operator obtains additional, relevant information. The operator shall file the supplemental report as soon as possible, but not more than 60 days after obtaining the additional information. The supplemental report shall reference the original report by date and subject.

(c) An operator of a master meter system or a propane gas system is not required to file an incident report.

(d) Except as provided in ~~section~~paragraph (e) of this rule, an operator of a distribution pipeline system shall file an annual report for its intrastate pipeline on U.S. DOT Form PHMSA F 7100.1-1 with the agencies listed in rule 4910. This report shall be filed annually by March 15 for the preceding calendar year.

(e) An operator of a propane gas system which serves fewer than 100 customers from a single source, a master meter system, or a LNG facility is not required to file an annual report.

4913. Written Reports by Operators of Transmission and Gathering Systems.

(a) An operator of a transmission pipeline system or a gathering pipeline system shall file an incident report on U.S. DOT Form PHMSA F 7100.2 with the agencies listed in rule 4910 as soon as possible after the discovery of an incident, but not later than 30 days after discovery.

(b) After filing an incident report pursuant to ~~section~~paragraph (a) of this rule, an operator shall file a supplemental report with the agencies listed in rule 4910 if the operator obtains additional, relevant information. The operator shall file the supplemental report as soon as possible, but not more than 60 days after obtaining the additional information. The supplemental report shall reference the original report by date and subject.

(c) An operator of a transmission pipeline system or a gathering pipeline system shall file an annual report for intrastate pipeline on U.S. DOT Form PHMSA 7100.2-1 with the agencies listed in rule 4910. This report shall be filed annually by March 15 for the preceding calendar year.

4914. Filing of Separate Reports.

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

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

4915. Reports of Safety-Related Conditions.

(a) Except as provided in ~~section~~paragraph (~~b~~d) of this rule, an operator shall file a written safety-related condition report on 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, (a) general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure and (b) localized corrosion pitting to a degree where leakage might result.

(II) Unintended movement or abnormal loading by naturally-occurring environmental causes (for example, earthquakes, landslides, or floods) that impairs the serviceability or integrity of a pipeline.

(III) Any crack or other material defect that impairs the structural integrity or reliability of a LNG facility that contains, controls, or processes gas or LNG.

(IV) 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.

(V) Any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices.

(VI) A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency.

(VII) Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of a LNG storage tank.

(VIII) Any safety-related condition that could lead to an imminent hazard and that causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline or a LNG facility that contains or processes gas or LNG.

(b) A written report of a safety-related condition shall be filed with the Associate Administrator, Office of Pipeline Safety, within five business days (not including Saturday, Sunday, or federal or State holidays) after the day on which the operator or its representative first determines that a safety-related condition exists. The report shall not be filed later than ten business days after the day an operator or its representative discovers the condition. Separate conditions may be reported in a single report if they are closely related. On the same day that the report is filed with the Associate Administrator, Office of Pipeline Safety, the operator shall provide to Staff a copy of the report filed with the Associate Administrator, Office of Pipeline Safety. Reports may be filed with the U.S. DOT and the Staff by facsimile.

(c) The written report shall be headed "Safety-Related Condition Report" and shall 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 exists.

(V) Date the condition was discovered and, if different, date condition was first determined to exist.

(VI) Location of the condition. This requires identification of the town, city, or county in which the condition exists and, as appropriate, the nearest street address, milepost, or landmark; and the name of pipeline.

(VII) Description of the condition, of the circumstances leading to its discovery, of any significant effects the condition has on safety, and of the type of gas transported or stored.

(VIII) Description of the corrective action taken (including reduction of pressure or shutdown) before the report was submitted.

(IX) Description of any planned future follow-up or corrective action, including the anticipated schedule for starting and concluding such action.

(d) A written report need not be made for any safety-related condition that:

(I) Exists on a master meter system, a propane gas system, or a customer-owned service line.

(II) Is an event or results in an event which occurs before a permanent repair or replacement pertaining to an already-reported incident can be completed.

(III) Exists on a pipeline (other than a LNG 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 or roadway.

(IV) Is corrected by permanent repair or replacement in accordance with applicable safety standards within five business days of the day on which the operator first determines that the condition exists, but not later than ten business days after an operator or its representative discovers the condition. This sub~~section~~paragraph does not apply to localized corrosion pitting on an effectively coated and cathodically protected pipeline.

4916. Reporting of Pipeline Damage and of Locate Information.

(a) Annually, by March 15, an operator of an intrastate pipeline system shall file with the Commission information concerning known pipeline damage and general pipeline locate information. This report applies to damage to underground pipelines, excluding any damage to electrically conductive tracer wire.

(b) The specific damage information shall contain, at a minimum, the following:

(I) The location of the damaged pipeline by city and county.

(II) The type of facility locate request (normal or emergency); the date of facility locate request; the date the facility was located; the date the facility was relocated, if applicable; the date the facility damage occurred, if known.

(III) The name of the excavation company and the type of equipment causing the damage (for example, track hoe, backhoe, trencher, directional bore, shovel). If a homeowner caused the damage, the term "homeowner" will suffice for excavation company name.

(IV) The reason for the excavation (for example, communications, sewer, water, electric, ditch maintenance, road maintenance, pipeline, landscaping, homeowner).

(V) The type of pipeline damaged (service, main, or transmission).

(VI) The damage resulting from locator error or excavator error, if applicable.

(c) The report of general facility locate information shall contain~~, at a minimum and by system type (that is, distribution or transmission),~~ the following:

(I) The number of monthly facility locate requests.

(II) The number of monthly facility locates performed by the operator.

(III) The number of monthly facility locates performed by the operator's contract facility locator.

(d) Regulated gathering, master meter, propane gas, LNG, direct sales pipeline, and ~~municipal-owned~~ local distribution company pipeline system operators serving fewer than 50,000 customers need not file the annual pipeline damage report.

~~(e) Pursuant to § 9-1.5-105, C.R.S., gathering and municipal-owned pipeline system operators shall report their annual pipeline damage statistics to the UNCC.~~

4917. Filing Notices of Major Construction or Major Repair.

(a) A written notice of major construction or major repair shall be submitted to the Staff not later than 20 business days prior to the scheduled commencement date of the construction or repair, if practicable. In no event shall the written notice of major construction or major repair be submitted to the Staff later than the date on which the construction or repair commences.

(b) The notice shall contain the following information:

(I) The type of construction or repair.

(II) The date of commencement.

(III) The estimated period of construction or repair.

(IV) The test medium (for example, gas, inert gas, water).

(V) The location of the construction or repair.

(VI) The estimated cost of the construction or repair project.

~~(VII) The reason for the construction or repair.~~

~~(VIII) The date on which the decision was made that the construction or repair was necessary.~~

~~(IX) The date on which the decision was made to proceed with the construction or repair.~~

4918. Conversion to Service.

A pipeline previously used in service not subject to 49 C.F.R. Part 192 qualifies for service subject to 49 C.F.R. Part 192 if the operator prepares and follows a written procedure addressing the requirements of 49 C.F.R. § 192.14. The operator shall make its written procedures and applicable records available to Staff upon request.

4919. Conversion to Regulated Gathering Pipeline.

Within two years of becoming a regulated gathering pipeline segment subject to the scope of 49 C.F.R. § 192.1, an operator shall prepare and shall follow written procedures addressing the requirements of 49 C.F.R. §§ 192.14, 192.605, 192.613, 192.614, 192.615, 192.616, and 192.617 for any metallic or plastic gathering pipeline segment previously not subject to 49 C.F.R. § 192. The operator shall report any safety-related condition and any emergency repair and promptly shall repair any hazardous leakage. The operator shall make its written procedures and applicable records available to Staff upon request.

4920. Procedural Updates.

As soon after the end of an incident, an emergency repair, a safety-related condition, or an abnormal operating condition as defined in 49 C.F.R. § 192.605 as possible, each operator shall review, and shall make applicable changes to, the operator qualification program and the written procedural manual(s) used for conducting operations, for maintenance, and for emergencies. At a minimum, the operator shall review (and update, if necessary) the procedural manual(s) at intervals not exceeding 15 months, but at least once each calendar year.

4921. Amendment of Plans or Procedures.

(a) If the Chief believes that an operator's plans or procedures required by 49 C.F.R. Part 192 or by 49 C.F.R. Part 193 are inadequate to assure safe operation of a pipeline facility or a LNG facility, the Chief shall issue a notice of amendment to initiate a proceeding to determine whether the plans or procedures are inadequate. The notice of amendment shall:

(I) Provide an opportunity for a hearing pursuant to rule 4935.

(II) Specify the alleged inadequacies and the proposed action for revision of the plans or procedures.

(III) Allow the operator 30 days after receipt of the notice to submit written comments pursuant to rule 4935 or to request a hearing.

(b) In determining the adequacy of an operator's plans or procedures, the Chief shall consider the following:

(I) Relevant available pipeline safety data.

(II) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility and for the location of the facility.

(III) The reasonableness of the plans or procedures.

(IV) The extent to which the plans or procedures contribute to public safety.

(c) Amendment of an operator's plans or procedures as prescribed in ~~section~~paragraph (a) of this rule is in addition to, and may be used in conjunction with, other enforcement action.

4922. – 4929. [Reserved]

Procedure For Enforcement

4930. Service.

(a) An order, notice, complaint or other document required to be served under these rules 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.

4931. Subpoenas.

(a) The Commission, an Administrative Law Judge, or the Director may issue a subpoena in accordance with rule 1406.

(b) Rule 45 of the Colorado Rules of Civil Procedure, 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.

4932. Inspections and Testing.

(a) Upon presentation of Commission credentials, Staff authorized by the Chief are authorized to enter upon, to inspect, and to examine, at reasonable times, an operator's records, intrastate pipeline, or, upon request of the OPS, interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et seq., with these rules, with Commission orders, or with orders issued pursuant to these rules.

(b) Staff may require testing of an operator's intrastate pipeline. Staff shall make every effort to negotiate with the operator of the pipeline a mutually-acceptable testing plan before performing such tests.

(c) If 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, a request for specific information, or other sources indicates that enforcement action is warranted, the Chief may do one of the following:

(I) Serve on the operator a Warning Letter pursuant to rule 4933 or a Notice of Probable Violation pursuant to rule 4934.

(II) File a formal complaint with the Commission requesting a Hazardous Facilities Order pursuant to rule 4940.

4933. Warning Letters.

(a) If the Chief believes that an operator has committed a probable violation of 49 U.S.C. §§ 60101 et seq., of these rules, of a Commission order, or of an order issued pursuant to these rules, the Chief may serve a warning letter on the operator advising the operator of the probable violation and advising the operator to correct the probable violation or be subject to an enforcement action under these rules.

(b) Within 30 days after receipt of a warning letter, an operator shall respond to the Chief by submitting a written explanation, information, or other material in answer to the allegations contained in the warning letter.

4934. Notices of Probable Violation.

(a) If the Chief believes that an operator has committed a probable violation of 49 U.S.C. §§ 60101 et seq., of these rules, of a Commission order, or of an order issued pursuant to these rules, 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., of these rules, of a Commission order, or of an order issued pursuant to these rules.

(b) A notice of probable violation served pursuant to ~~section~~paragraph (a) of 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, rule(s), or order(s) that the operator is alleged to have violated.

(III) A statement of the response options available to the operator.

(IV) Either or both of the following:

(A) A proposed civil penalty, including the maximum amount of a penalty for which the operator may be liable, pursuant to rule 4936.

(B) A proposed compliance directive pursuant to rule 4937.

4935. Response Options to Amendment and to Notice of Probable Violation.

(a) Within 30 days after receipt of an amendment issued pursuant to rule 4921 or of a notice of probable violation issued pursuant to rule 4934, an operator shall respond in writing to the Chief in one or more of the following ways:

(I) The operator may pay the proposed civil penalty in full.

(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. The Chief will consider the offer in compromise in light of the criteria established in § 40-7-117(2), C.R.S., and of other relevant factors. 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 ten days after receipt of a notice of rejection, the operator shall respond to the Chief in one or more of the ways provided in ~~section~~paragraph (a) of this rule.

(IV) The operator may request the execution of a consent stipulation pursuant to rule 4939.

(V) The operator may submit a written explanation, information, or other material in response to the allegations contained in the notice of probable violation; in objection to the proposed compliance directive; or in mitigation of the proposed civil penalty.

(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. After that time, a notice of probable violation may be amended only in accordance with the Commission's Rules Regulating Practice and Procedure.

(b) If the operator fails to respond as provided in this rule, the notice of probable violation shall be set for hearing.

(c) If the operator fails to respond as provided in this rule, the notice of amendment shall be set for hearing.

4936. Civil Penalties.

(a) As provided in §§ 40-2-115(2) and 40-7-117, C.R.S., an operator who violates 49 U.S.C. §§ 60101 et seq., these rules, an order of the Commission, or an order issued under these rules shall be subject to a civil penalty not to exceed $100,000 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 $1,000,000.

(b) No operator shall be subject to a second or additional civil penalty for violations based on the same act.

4937. Compliance Directives.

When the Chief serves a notice of probable violation on an operator, the Chief may include in ~~the~~ that notice a compliance directive requiring the operator to take remedial action.

4938. Hearing on Notice of Probable Violation.

(a) If it requests a hearing in response to a notice of probable violation, an operator shall include in its request a written statement of the issues that it intends to raise at the hearing. The issues may include new information. Failure of the operator to specify an issue shall result in a waiver of that issue at the hearing unless, for good cause shown, the Commission permits the issue to be raised.

(b) The hearing shall be held, and an order issued, in accordance with the Commission's Rules Regulating Practice and Procedure and Article 6 of Title 40, C.R.S.

(c) The Commission may include in its order a civil penalty. If it includes a civil penalty, the order shall specify the amount of the penalty and the procedures for paying the penalty. The Commission may order a civil penalty only after considering the following:

(I) The nature, circumstances, and gravity of the violation.

(II) The operator's degree of culpability and its history of prior violations.

(III) Any good faith efforts by the operator to remedy the violation or to prevent future similar violations.

(IV) The size of the operator's business.

(V) The operator's ability to pay the civil penalty and to continue in business after doing so.

(VI) Any other matter in aggravation or in mitigation.

(d) The Commission may include in its 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.

(e) The Commission may include in its order any other remedial action, requirement, or directive to ensure the public safety.

4939. Consent Stipulations.

(a) At any time before the issuance of a decision by the Commission, the Chief and the operator may agree to dispose of the matter by a consent stipulation, which shall be submitted to the Commission for approval or rejection.

(b) A consent stipulation executed under this rule shall include the following:

(I) An admission by the operator of all jurisdictional facts.

(II) An express waiver by the operator of further procedural steps, including (without limitation) its right to a hearing; its right to seek judicial review or otherwise to challenge or to contest the validity of the consent stipulation; and its right to seek judicial review of the Commission order accepting the consent stipulation.

(III) An acknowledgment by the operator that the notice of probable violation may be used to construe the terms of the consent stipulation.

(IV) A statement of the actions which the operator will take and the date by which such actions shall be completed.

(c) As appropriate, a consent stipulation executed under this rule may include a civil penalty.

4940. Hazardous Facilities Orders.

(a) After an inspection and/or a test, if the Chief is of the opinion that a pipeline facility or a LNG facility may be a hazardous facility, Staff may file a formal complaint with the Commission against the operator of the pipeline facility or the LNG facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support a hazardous facility order. In an

appropriate case and with the complaint, Staff may file a motion for an order pursuant to ~~section~~paragraph (j) of this rule.

(b) A formal complaint by Staff shall be issued, and hearing shall be conducted, in accordance with the Commission's Rules Regulating Practice and Procedure and Article 6 of Title 40, C.R.S.

(c) Except as provided in ~~section~~paragraph (j) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

(d) A pipeline facility or a LNG facility may be found to be a hazardous facility if the pipeline facility or a LNG facility 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 facility or a LNG facility is hazardous to life or property, the following shall be considered, as appropriate:

(I) The characteristics of the pipe used in the pipeline facility or the LNG facility involved, including (without limitation) 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 the pipeline facility or the LNG facility, including its corrosive and deteriorative qualities; the sequence in which the gas is transported; and the pressure required for transportation of the gas.

(III) The characteristics of the areas in which the pipeline facility or the LNG facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with the areas, the population, the population density, and the growth patterns of the areas.

(IV) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by that Board.

(V) Such other factors as may be relevant.

(f) A Commission decision finding that a pipeline facility or a LNG facility is a hazardous facility shall contain the following:

(I) Findings of fact that form the basis for the conclusion that the pipeline facility or the LNG facility is hazardous to life or property.

(II) Conclusion that the pipeline facility or the LNG facility is a hazardous facility.

(III) Legal basis for the decision and order.

(IV) Description of the corrective action required of the operator.

(V) The date by which the operator shall complete the ordered corrective action.

(g) The Commission shall dismiss the complaint if it determines that the pipeline facility or the LNG facility is not hazardous to life or property.

(h) Upon a showing that the ordered corrective action has been completed and has eliminated the condition(s) which made a pipeline facility or a LNG facility hazardous to life or to property, the Commission shall issue an order of satisfaction. Prior to issuing an order of satisfaction, the Commission may hold a hearing to determine whether the operator has completed the corrective action and whether the corrective action has eliminated the condition(s) which made the pipeline facility or the LNG facility hazardous to life or property. The order of satisfaction shall be issued in the complaint docket in which the hazardous facilities order was entered.

(i) Following issuance of an order of satisfaction, the Chief may issue a notice of probable violation pursuant to rule 4934.

(j) If the Commission determines that the delay inherent in holding a hearing may result in, and significantly increases the likelihood of, serious harm to life or property, the Commission may issue a summary hazardous facilities order before holding a hearing. The provisions of ~~section~~paragraph (b) of this rule shall apply to a hearing held pursuant to this ~~section~~paragraph. The purpose of a hearing held pursuant to this ~~section~~paragraph is to determine whether the summary hazard facilities order should remain in effect, should be amended, or should be rescinded. The summary hazardous facilities order shall include the following:

(I) The findings which support the determination that a summary hazardous facilities order is appropriate.

(II) The corrective or remedial actions required of the operator.

(III) A statement informing the operator of its right to a hearing, upon request, as soon as practicable after issuance of the order.

4941. 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 which constitutes a violation of 49 U.S.C. §§ 60101 *et seq.*, these rules, an order of the Commission, or an order issued under these rules, the Commission may request that the Attorney General bring an action in a district court for an injunctive or other relief as provided in Article 7 of Title ~~.~~40, C.R.S.

4942. – 4949. [Reserved]

Safety Standards for Gas Transportation by Pipeline and Gas Pipeline Systems

4950. Compliance.

An operator shall comply with the minimum safety standards for the transportation of natural gas and other gas by pipeline which are incorporated by reference in rule 4902(a).

4951. – 4959. [Reserved]

Safety Standards for Liquefied Natural Gas Facilities

4960. Compliance.

An operator shall comply with the safety standards for liquefied natural gas facilities which are incorporated by reference in rule 4902(b).

4961. – 4969. [Reserved]

Drug and Alcohol Testing

4970. Compliance.

An operator shall comply with the drug and alcohol testing program which is incorporated by reference in rule 4902(c).

4971. – 4999. [Reserved]

GLOSSARY OF ACRONYMS.

CAAM –	Cost Allocation and Assignment Manual
CCR –	Colorado Code of Regulations
C.F.R. –	Code of Federal Regulations
CPCN -	Certificate of Public Convenience and Necessity
CRCP –	Colorado Rules of Civil Procedure
C.R.S. -	Colorado Revised Statutes
EAO –	Energy Assistance Organization
e-mail -	Electronic mail
FDC -	Fully Distributed Cost
FERC –	Federal Energy Regulatory Commission
GAAP -	Generally Accepted Accounting Principles
GCA –	Gas Cost Adjustment
GPP –	Gas Purchase Plan
GPR –	Gas Purchase Report
ITP –	Intrastate Transmission Pipeline
LDC –	Local Distribution Company
LNG –	Liquefied Natural Gas
MMO –	Master Meter Operator
NGA –	Natural Gas Act
OPS –	Office of Pipeline Safety (Federal DOT)
OCC -	Office of Consumer Counsel
P & P -	Practice and Procedure
SMYS –	Specified Minimum Yield Strength
UNCC –	Utility Notification Center of Colorado
U.S.C.-	United States Code
U.S. DOT –	United States Department of Transportation
USOA –	Uniform System of Accounts

Glossary of Gas Measurement Units:

Btu –	British Thermal Unit
MMBtu –	1,000,000 Btu (approximately one Mcf, depending on heat content of gas)
Dth –	Dekatherm or One MMBtu
Therm –	100,000 Btu (approximately one Ccf, depending on heat content of gas)

Scf -	Standard cubic feet
Ccf –	100 cubic feet (typically actual cf at meter, rather than Scf)
Mcf –	1,000 standard cubic feet
MMcf –	1,000,000 standard cubic feet
Bcf –	1,000,000,000 standard cubic feet
MMcfd –	One MMcf per day