

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03R-520G

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

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
REPEALING AND ADOPTING RULES**

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Mailed Date: May 6, 2005

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**I. STATEMENT**

1. On December 15, 2003, the Public Utilities Commission issued the Notice of Proposed Rulemaking which commenced this docket. Decision No. C03-1371. The purpose of this proceeding is to repeal existing rules pertaining to gas utilities and to promulgate a complete replacement set. That notice invited interested persons to participate in the rulemaking by submission of written comments and/or by presentation of oral comments.

2. Appended to that notice as Attachment B were proposed rules. That notice clarified that the proposed rules were intended to cover the same subject matters as, and to replace in their entirety, the following Commission regulations: (a) Rules Regulating the Service of Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4; (b) Gas Cost Adjustment (GCA) Rules, 4 CCR 723-8; (c) 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; (d) Rules Governing Pipeline Safety, 4 CCR 723-11; (e) Gas Transportation Rules, 4 CCR 723-17; and (f) 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.

3. The proposed repeal and promulgation involves an effort by the Commission to revise and to recodify the rules now in effect. The Commission stated in its notice that the proposed repeal and recodification is intended to update the existing rules for gas utilities and pipeline operators (regulated entities); to the extent possible, to adopt rules for those regulated entities 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.

4. Because this rulemaking proceeding is part of a comprehensive effort by the Commission to revise all of its rules, the Commission believed it was important to coordinate the instant rulemaking with other rulemaking proceedings currently before the Commission, such as the rules regulating practice and procedure, telecommunications, transportation, water, electric, steam, and railroads. The Commission stated that it would consider suggestions addressing how any of the proposed rules might be made more efficient, rational, or meaningful.

5. The Commission initially issued a notice of proposed repeal and reenactment of the gas rules in Docket No. 02R-196G. At the request of the participants in that proceeding, the Commission terminated that rulemaking so that workshops on the proposed rules might be held. During the summer and fall of 2003, Staff of the Commission (Staff) held a series of workshops on the proposed changes to the existing electric, steam, gas, and telecommunications rules. The workshops helped the Commission and its Staff to identify areas in the rules which needed improvement, areas where the participants in the workshops could agree, and areas where participants could not agree. With respect to the energy-related (*i.e.*, electric, gas, and steam) workshops, the following participated: Aquila, Inc., doing business as Aquila Networks-WPC; Atmos Energy; Colorado Business Alliance; Colorado Natural Gas Company; Colorado Office of Consumer Counsel; Colorado Rural Electric Association; Energy Outreach Colorado; Kinder Morgan, Inc.; Public Service Company of Colorado (Public Service Company); Staff; and Tri-State Generation and Transmission Association.

6. The workshops were informative and assisted the participants but did not produce results which are binding on the Commission. The fact that an area or a rule was not discussed in, or agreed to in, the workshops does not limit or restrict in any way the Commission's authority or ability to promulgate a rule or to change the language of a proposed rule in this docket. Similarly, the fact that the participants (or a majority of the participants) in the workshops agreed to the language of, or to a concept embodied in, a proposed rule does not limit or restrict in any way the Commission's authority or ability to promulgate a rule or to change the language of a rule in this docket.

7. The undersigned Administrative Law Judge (ALJ) held hearings on the proposed rules. Hearings were held on March 10 and 11, 2004, July 19 and 20, 2004, August 5 and 16, 2004, October 18 and 19, 2004 and March 17, 2005. Written comments or oral comments, or both, were provided by: Aquila, Inc., doing business as Aquila Networks-WPC; Colorado Office of Consumer Counsel; Energy Outreach Colorado; Kerr-McGee Gathering, LLC; Kinder Morgan, Inc.; Public Service Company; and Rocky Mountain Natural Gas Company. In addition, Staff of the Commission made oral presentations addressing the general procedural background of this matter and identifying areas of change between existing rules and the proposed rules. Hearing Exhibits No. 1<sup>1</sup> through and including No. 4 were offered and admitted into the record.

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<sup>1</sup> Hearing Exhibit No. 1 consists of the transcript of the rulemaking hearing held in Docket No. 03R-519E on July 13 and 14, 2004 (regarding billing and service issues) and seven documents related to those issues.

8. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

## **II. DISCUSSION**

9. Rulemaking is a quasi-legislative function. Rulemakings encompass a range of determinations, with one end of the continuum being regulations based purely on policy considerations and the other end of the continuum being regulations the need for which may turn upon proof of discrete facts. *Citizens for Free Enterprise v. Department of Revenue*, 649 P.2d 1054 (Colo. 1982). The majority of the rules in this rulemaking fall towards the policy end of that continuum.

10. The statutory authority for the rules promulgated by this Decision 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. As these statutory provisions -- and controlling decisions of the Colorado Supreme Court -- make clear gas utilities are, by and large, monopoly service providers which the Commission fully regulates. This core fact distinguishes these utilities from telecommunications and, to a large extent, accounts for the relatively more stringent requirements placed on gas utilities as compared to telecommunications providers. In addition, with respect to pipeline operators, the public health, safety, and welfare require that those operators be subject to strict regulation to reduce the possibility of death, serious injury, or substantial property damage. This accounts for the relatively tighter regulation of these operators.

11. The rules attached to this Decision as Appendix A substantially change the existing rules, and some change the proposed rules. Many requirements found in the existing rules have been modified to reflect current conditions, and there are "grand-fathering" provisions

(e.g., rule 4301), as necessary and appropriate, to permit the *status quo* to carry forward. Some of the notable changes to the rules will be discussed in the following paragraphs.

12. Myriad changes have been made to the rules as noticed. Some of these are minor, many are uncontested, and they will not be discussed in the body of this decision. In addition, the format of some rules was changed to make the format consistent with that used throughout the rules. Grammatical changes or changes for clarity were made. These changes are in the rules attached to this Decision. To allow interested persons to see all the changes made, the rules as originally proposed with the changes adopted by this Decision shown in legislative drafting format (*i.e.*, track changes showing) are posted on the Commission's website.<sup>2</sup>

**A. General Structure of the Rules**

13. As part of its overall objective to improve consistency between rules, the Commission has adopted a rule numbering convention that uses a four-digit approach with the first digit corresponding to the specific industry. For example, the electric and steam rules are the 3000 series; and the gas rules are the 4000 series.

14. Within each series the rules are grouped into specific sub-series. Thus, irrespective of the industry (water, electric, steam, or gas) each set of rules has the following: the x000 rules which are general provisions; the x100 rules which pertain to operating authority; the x200 rules which pertain to facilities; the x300 rules which pertain to meters; the x400 rules which pertain to customer billing and service; and the x500 rules which pertain to cost assignment and cost allocation. Sprinkled throughout these sub-series are rules which are specific to an industry. For example, the heating value, purity, and pressure rule (rule 4202), the

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<sup>2</sup> Rule, section, and subsection numbers referenced in this Decision are the numbers found in Appendix A to this Decision. In many cases, the numbers are different from those of the proposed rules. By using the red-lined version available on the Commission's website, one should be able to find the original number.

GCA and prudence review rules (the 4600 sub-series), and the gas pipeline safety rules (the 4900 sub-series) are peculiar to the gas industry.

15. In addition to the standardization of the sub-series, the rules use a standard outline format.

16. Finally, these rules use identical -- or nearly so -- language to that used in the corresponding electric and steam rules. There are slight variations necessitated by differences between industries or in applicable statutory language.

17. This overall approach should make it easier for interested persons to find an applicable rule irrespective of the specific industry involved. In addition, standardization should improve Commission-industry interactions and processes because the requirements are clear and are uniform (insofar as possible given industry and statutory language differences) across regulated industries.

**B. General Provisions (rules 4000 to 4009)**

18. Definitions are found in rule 4001. This is one of two definitions rules in these rules; the other is rule 4901, which applies exclusively to pipeline operators and others subject to the gas pipeline safety rules (the 4900 sub-series). The two definitions rules are necessary because the gas pipeline safety rules are based on federal statute and rules (which the Commission enforces through the gas pipeline safety rules), and the definitions in those federal authorities are not always identical to Colorado state statute. While some of the definitions found in rule 4001 apply to the 4900 sub-series, the definitions found in rule 4901 apply only to the 4900 sub-series.

19. There is a definition of “affiliate” which is similar to the definition adopted by the Federal Communications Commission in its Uniform System of Accounts, 47 *Code of Federal*

*Regulations* § 32.9000, glossary of terms. There is a definition for "applicant for service," for "benefit of service," for "regulated charges," and for "unregulated charges" in the rules. Each of these was added because the term is used in the billing and service rules. Similarly, definitions were added for terms used in other rules where it seemed appropriate to define the term. The definition of "cubic foot" (rule 4001(f)) was changed in response to industry commenters. The definition of "customer," which has been changed, incorporates two concepts: first, a person who is currently receiving service from a utility regardless of the customer's legal structure or status and, second, a person who moves within the service territory of the utility and obtains utility service at a new location within 30 days of terminating service at the old location. Industry commenters suggested changing the definitions of "curtailment" and "interruption" (rules 4001(g) and 4001(n)). The definitions were not changed. The definitions are carried forward from the existing rules, and changes might have unintended consequences because of the impact changed definitions might have on current tariffs. In addition, there was no persuasive information provided about the need for changed definitions.

20. Kerr-McGee Gathering, LLC, commented on, and requested revision of, the definition of "intrastate transmission pipeline" and of "local distribution company," rules 4001(o) and 4001(p). The commenter argued that these definitions sweep too broadly and include pipelines used for gathering and storage. To correct this perceived problem, the commenter suggested the following: substitute "person" for "utility" in each definition. The suggested changes were not made. First, the suggested change would result in circular definitions: the definition of "intrastate transmission pipeline" and of "local distribution company" would begin "a utility ..." and the definition of "utility" (rule 4001(l)) explicitly includes both "intrastate transmission pipeline" and "local distribution company." Second, rules 4001(o) and 4001(p) as

promulgated are consistent with § 40-1-103, C.R.S. Third, the language of rules 4001(o) and 4001(p) limits the applicability of those terms to exclude pipelines which are used *exclusively* for functions (such as gathering and storage) which are not jurisdictional to this Commission. If a pipeline is used for both jurisdictional and non-jurisdictional purposes, then the definitions would capture the jurisdictional uses and, appropriately, require the "intrastate transmission pipeline" and the "local distribution company" to comply with the 4000 series of rules.

21. Rule 4002 establishes who may file an application, under what circumstances an application must be filed, and the information that must be included in the application. Commenting utilities urged that rule 4002 be changed to make it clear that only a utility may file an application; this change was made. The requirements of this rule apply to all applications filed under the 4000 series. In response to comments, changes were made to the rule to reduce what must be provided (*see, e.g.*, rule 4002(b)(IX) and the elimination of proposed rule 4002(c)(V)) and to reduce the number of statements which an applying utility must make (*see* rules 4002(b)(VII) and rule 4002(b)(XI)(D)). The requirement that an application be verified is necessary, and is retained, because it provides the sworn evidentiary record upon which the Commission can decide an unopposed, uncontested application.

22. Rule 4004 provides for dispute and informal complaint resolutions. This section clarifies the distinction between customers' disputes directly with the utility and informal complaints made to the External Affairs section of the Commission and also contains record-keeping requirements for both.

23. Utility commenters objected to the requirement, found in rule 4004(e) and in the billing and service rules (the 4400 sub-series), that a utility inform a customer or an applicant for service of that person's right to make an informal complaint to the External Affairs section of the

Commission. Utility commenters also objected to the requirement, found in the billing and service rules, that a utility inform a customer of that person's right to file a formal complaint with the Commission. They stated that these requirements might encourage frivolous or unfounded informal and formal complaints, thus skewing the results of a performance-based regulation plan which contains a metric which measures complaints and thereby imposing penalties on a utility subject to such a plan. They urged that the requirements be eliminated. The requirements were retained. First, the rules apply to all utilities, are more far-reaching than one utility, and will be in effect longer than a time-limited utility-specific performance-based regulation plan. Second, not all utilities are subject to a performance-based regulation plan; and rules of general applicability should not be written to accommodate one utility. To accommodate individual situations, a utility has available the option of seeking a waiver of or variance from a rule. Third, persons must be aware of their rights in order to take advantage of them. These notice requirements are the avenue by which customers and persons applying for service are informed of their avenues of redress. Fourth and finally, as noted by the Office of Consumer Counsel, a utility which believes that the results of a complaint-measuring metric are being affected by this rule change and which has accumulated data (for example, over a year or so) to substantiate its claim can apply to the Commission to change the affected metric.

24. Rule 4005 pertains to records and requires utilities to maintain listed records for a period of at least three years. Commenting utilities recommended that the Commission eliminate the requirements that utilities maintain records of "any costs that the utility has incurred as a result of sales customers becoming transportation customers" (rule 4005(a)(XIV)). This change was not made, and the rule was retained. As the starting point, it is important to remember that sales service is the default and that transportation service is an option elected by an end-use customer. An

end-use customer which elects to become a transportation customer should pay all costs associated with its conversion from sales service to transportation service; this is an application of the general principle that there should be no cost subsidization by the general body of sales customers. Keeping records of the costs allows the Commission and its Staff to check for, and investigate as necessary, improper cross-subsidization. In addition, all similarly-situated customers should be treated the same. Thus, if a utility offers something (such as facility enhancement or a lower rate) as an inducement to one customer to convert from sales service to transportation service, other similarly-situated customers should be able to find out about and receive the same treatment. This is an application of the no undue discrimination principle. Keeping records of the costs should capture inducements because they are costs to the utility. Keeping records of the costs allows the Commission, its Staff, and interested persons to find out what has transpired.

25. Certain sections contained in the existing Rules of Practice and Procedure (4 CCR 723-1) were moved into industry-specific rules in order to make the rules, including these rules, more complete and easier to use. Rules moved from the existing practice and procedure rules into the electric and steam rules include annual reports, moved from Rule 4 CCR 723-1-25 to rule 4006(a).

26. Utility commenters recommended that rule 4006(c), annual reporting of average time to respond to gas odor calls from customers, either be deleted or be changed significantly. The rule was not changed. The report is not intended to compare Utility A's performance with Utility B's performance *per se*.<sup>3</sup> Rather, the report provides an indication of service adequacy

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<sup>3</sup> A significant difference between response time of Utility A and that of Utility B may lead Staff to inquire into the reasons for the perceived difference. This possible use of the reported data is no different than the use made of other reported data and provides no basis for elimination or amendment of the rule.

and should provide a comparison of an individual utility's trend over time, so long as the utility uses the same parameters.

27. The Office of Consumer Counsel and Energy Outreach Colorado urged the Commission to adopt additional reporting requirements. The suggested changes to rule 4006 were not adopted. The need for the additional reports is not evident. In addition, if it wishes to obtain the data, the Commission can do so by requiring the submission of a special report.

28. Utility commenters suggested that rule 4008 (incorporation by reference) be amended to state simply that the most current version of the identified federal regulations and of other referenced publications is incorporated. They noted that it is often the case that the version incorporated into the Commission rules is not the most current one and that, as utilities are required by federal law to comply with the most current version, the affected utilities are faced with conflicting requirements. The situation described by the utilities may exist, but it is created by the language of § 24-4-103(12.5)(c)(I), C.R.S., which states: "The reference to any incorporated material shall identify the incorporated material by appropriate agency, organization, or association and by date, title, or citation. The reference shall also state that the rule does not include later amendments to or editions of the incorporated material." The Commission cannot adopt the suggestion of the utility commenters. To address conflicting requirements, an affected utility can file a petition for rulemaking to amend rule 4008 (or any other rule which contains an incorporation by reference) when an incorporated document is changed.

**C. Operating Authority (rules 4100 to 4111)**

29. Some sections contained in the existing Rules of Practice and Procedure (4 CCR 723-1) were moved into industry-specific rules in order to make the rules more complete and

easier to use. The rules moved from the practice and procedure rules into these gas rules include: advice letters, moved from Rule 4 CCR 723-1-40 to rule 4111; new or changed tariffs, moved from Rule 4 CCR 723-41 to rule 4110; applications for transfers, controlling interest, and merger, moved from Rules 4 CCR 723-1-42 and 4 CCR 723-1-55 to rule 4104; applications for certificates of public convenience and necessity, moved from Rule 4 CCR 723-1-55 to rules 4100, 4101, and 4102; applications to amend certificates of public convenience and necessity, moved from Rules 4 CCR 723-1-55 and 4 CCR 723-1-57 to rule 4103; and applications pertaining to securities, moved from Rule 4 CCR 723-1-56 to rule 4105.

30. Commenting utilities stated that the documents to be filed with an application for transfers, controlling interest, and mergers (rule 4104(b)(III)) ought to be limited to the pertinent documents and ought not to include all documents pertaining to the proposed transaction. This limitation is reasonable and was adopted. The Commission can obtain additional documentation, if required, through audit.

31. Utility commenters suggested that rule 4104(b)(V) be changed to remove the requirement that 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 contain "an evaluation of the benefits and detriments [of the proposed action] ... to all other persons who will be affected by the transaction which is the subject of the application." This suggestion was not adopted. The Commission's "public interest" determination is based, in part, on evaluation of consumer welfare maximization. Necessarily, this involves consideration of the impact of the proposed action on a range of persons broader than simply the utility's customers. The language of rule 4104(b)(V) reflects that broader inquiry.

32. Rule 4106 (applications for liens) did not appear in the proposed rules. Section 40-1-104, C.R.S., applies to both securities and to liens. In keeping with that grouping, proposed rule 4105 applied to both securities and liens. Review of rule 4105's language revealed that it did not address liens adequately. As a result, rule 4106 was created to address liens specifically. The requirements found in this rule are taken from the Commission's decision in the Aquila, Inc., application to place a lien on its facilities used to provide regulated utility service, Docket No. 03A-177SEG. The structure of rule 4106 mirrors that of rule 4105. The addition of rule 4106 caused a renumbering of rules 4107 through 4111.

33. As a point of clarification, one utility commented that rule 4110(c) appeared to mandate the symbols used to identify changes in tariffs. Rule 4110(c) does not mandate use of any particular symbols, as evidenced by the use of "for example" in the section.

**D. Facilities (rules 4200 to 4210)**

34. Rule 4202 pertains to heating value, purity, and pressure of gas supplied by a utility. Rules 4202(c) and 4202(d), concerning interchangeability of gas, were changed in response to utility commenters' suggestions. The plus- or minus-5 percent standard contained in the Commission's existing rules is eliminated and is replaced with an interchangeability standard. Rule 4202(c) requires a utility to evaluate gas interchangeability using one of three stated means, one of which is subsection (c)(III) ("use of a standard in the natural gas industry"). In providing this option, the ALJ is aware that, while at present there is no standard for interchangeability in the natural gas industry, work is underway to develop such a standard. Rule 4202(c)(III) is included, therefore, in anticipation of development of such a standard whether by standard-development work or by industry practice.

35. Utility commenters suggested amending rule 4203(a), which pertains to keeping records of curtailments and interruptions, to limit the record-keeping to curtailments and interruptions which affect 100 or more customers. The changes were not made. A utility should make records of any curtailment and interruption, and the cause, for its internal purposes; maintaining those records and making them available to the Commission should not be burdensome. In addition, the commenters provided no sufficient explanation of how, in their experience, the existing requirement has proven to be burdensome.

36. In response to the comments of one utility commenter, rule 4205 was restructured for clarity.

37. Utility commenters recommended that rule 4205(a), pertaining to gas transportation service requirements, be changed. As proposed, that rule made it mandatory for a utility to offer standby capacity to its transportation customers; the utilities argued that that offering ought to be discretionary. The change is reasonable and was made.

38. Rule 4205(a) allows for flexible pricing for transportation service. The rule also establishes requirements for setting maximum rates, one of which is that "maximum rates for transportation ... shall include an allowance for return on allocated rate base equal to the last rate of return authorized by the Commission for the utility." One utility commenter suggested deletion of this requirement. Because maximum transportation rates should be set using the same regulatory principles as those used to set current rates, the rule was not changed.

**E. Meters (rules 4300 to 4309)**

39. To state explicitly the requirement that a utility read its service meters monthly, rule 4309(c) was added. The rule provides that, for good cause, a utility may read its meters (or some meters) less frequently than monthly. However, a utility must read its service meters at

least once every six months. Thus, this rule sets the parameters for service meter reading, a concept not included in the proposed rules. As discussed below, this rule works in concert with rule 4402(a).

**F. Billing and Service (rules 4400 to 4410)**

40. All participants agreed that the billing and service rules for gas utilities (the 4400 sub-series) and for electric and steam utilities (the 3400 sub-series) ought to be identical. To the extent possible, considering differences in statutory provisions and differences between the industries involved, the two sub-series are identical. This uniformity of treatment should reduce the overall regulatory burden on utilities which provide both gas and electric/steam services.

41. Certain sections contained in the existing Rules of Practice and Procedure (4 CCR 723-1) were moved into industry-specific rules in order to make the rules more complete and easier to use. The rules moved from practice and procedure rules into the gas rules include refund applications, moved from Rule 4 CCR 723-1-58 to rule 4410.

42. The most significant and all-encompassing issue concerning the 4400 sub-series was the question of its applicability. As proposed, these rules would have applied to all classes of customers: residential, small commercial, large commercial, transportation, and industrial. All participants agreed that this was overly-inclusive. There was agreement that, with respect to industrial customers (which are typically large, are capable of negotiating for themselves with a utility, and have contracts or other instruments which contain the specifics of their interaction with the utility), to transportation customers (which have individual gas transportation contracts which contain the specifics of their interaction with the utility), and probably to large commercial customers, the billing and service rules should not apply *en toto*. Due in large part to differences

among the utilities with respect to what constitutes a "small" or a "large" commercial customer from an individual utility's perspective, the participants did not offer a break-point for differentiation between "large" commercial customers and "small" commercial customers.

43. Rule 4400 limits the applicability of the 4400 sub-series "to residential customers and to commercial customers served by a utility's rates or tariffs."<sup>4</sup> The rule gives a utility leeway to elect, in its tariffs, "to apply the same or different terms and conditions of service to other customer classes." Thus, absent something in a utility's tariffs, this sub-series does not apply to industrial customers or to transportation customer. Missing from this rule is a break-point between "small" commercial customers (such as, for example, a mom and pop grocery store) which are akin to residential customers so that the 4400 sub-series should apply and "large" commercial customers (such as, for example, a shopping center) which are akin to industrial customers so that the sub-series should not apply. Given the absence of a clear break-point and the fact that the utilities are monopoly providers, the ALJ chose to be overly-inclusive so as to protect small commercial customers.

44. The Office of Consumer Counsel suggested adding line items and information to monthly bills. The information is too complicated for inclusion on a bill and can be obtained more effectively and understandably by direct contact with the billing utility. In addition, Public Service Company presented testimony that its ability to include additional information on its bills is near exhaustion; that it was not sure that it could include the additional items requested; and that (assuming it was able to do so) it could not include the additional information and line items without incurring significant expense. Given the lack of evidence that customers in

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<sup>4</sup> The only rule which is applicable solely to residential customers is rule 4407(e)(IV) (medical certification).

Colorado want, need, would understand, or would use the additional information, and in view of the extensive information already provided on bills and elsewhere, the recommendation to add information and line items to the monthly bills was not adopted.

45. Rules 4401(a)(VIII) and 4401(a)(IX), which require a utility to show unregulated charges and transferred balances on a customer's bill, were added. The current rules do not require a utility to show unregulated charges or transferred balances on a customer's bill. Having information about unregulated charges and transferred balances provided and clearly labeled on a monthly bill allows a customer to identify and, if necessary, to question those charges. In addition, rule 4401(b) contains directions on how partial payments are allocated; this is new.

46. Rule 4401(c) for the first time requires a utility to have a benefit of service tariff on file with the Commission if the utility wishes to have the ability to transfer to a customer a balance from the account of a person other than that customer. That tariff must contain, *inter alia*, an explanation of the verification process which the utility will use to establish, prior to billing under a benefit of service tariff, that the customer to be billed in fact received the benefit of the service for which the customer will be billed. This approach is a reasonable compromise between the positions of the participants, some of which wanted the utility to have written documentation to establish the existence of a benefit of service before transferring a balance and others of which wanted the utility to be able to transfer a balance with no investigation or documentation. Under the approach in rule 4401(c) the utility is responsible for making some effort to verify benefit of service, but the exact action and level of effort is left to an individual utility's tariff.

47. Rule 4401(e) allows a utility to offer electronic billing for customers who make a request for electronic billing. To offer electronic billing a utility must have a provision in its tariffs and must meet stated requirements and restrictions. Proposed rule 4407(a), which would have permitted a utility to give notice of discontinuance of service by electronic notification to a customer on electronic billing, was deleted from the rules. Notification of discontinuance is too important to leave to the uncertainties inherent in electronic notification.

48. A utility is responsible for the accuracy of its service meters and for maintenance and servicing of those meters. In addition, a utility must take actual meter reading within the parameters of rule 4309(c). In view of these facts, rule 4402(a)(I) provides that a utility can recover for six months of under-billing due to a slow meter; rule 4402(a)(III) provides that a utility can recover for six months of under-billing due to a meter that does not register, registers intermittently, or registers partially; and rule 4402(a)(II) provides that a customer can recover for up to two years of over-billing due to a fast meter. This asymmetrical treatment affords the proper incentive to a utility to assure the accuracy of its service meters and to take meter readings as required. Because the asymmetrical treatment established in rule 4402(a) provides sufficient incentive, the suggestion that interest on over-billing be permitted (rule 4402(c)) was not adopted.<sup>5</sup>

49. Rule 4403 addresses applications for service, customer deposits, and third-party guarantee arrangements. Perhaps the most significant change from the proposed rules is the limitation placed on a third-party guarantor's liability or responsibility: it is restricted to an

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<sup>5</sup> If the Commission determines that the time periods in rule 4402(a) should be the same (*i.e.*, six months, two years, or some other period under all circumstances), then (for the reasons discussed above) the Commission should require asymmetrical treatment with respect to interest. Rule 4402(c) should require interest on over-billings, and rule 4402(d) should not permit interest on under-billing.

amount not to exceed the amount which would be required as a cash deposit (rule 4403(o)(IV)). This is a reasonable limitation and accurately reflects the purpose of a third-party guarantee: to serve as an alternative to a cash deposit. It is unreasonable for a utility to expect more protection from a third-party guarantee arrangement than it receives from a cash deposit. If a cash deposit based on a 90 days' (or 60 days') estimated bill is a sufficient basis upon which to provide service, then a third-party guarantee arrangement which gives the same protection is also a sufficient basis.

50. Sections (p), (q), (r), and (s) of rule 4403 address the payment of unclaimed monies, as defined in § 40-8.5-103(5), C.R.S., to the energy assistance organization. Section (r) of that rule was added to clarify the circumstances under which a utility may deduct from funds submitted to the energy assistance organization an amount paid to a customer. This change, suggested by a utility commenter, applies to the situation in which a utility pays out funds twice: once to the claiming customer and once to the energy assistance organization. Similar changes were made to rule 4410 (refunds).

51. Rule 4407 addresses discontinuance of service. Rule 4407(a) lists the circumstances under which a utility *can* discontinue service, and rules 4407(b) and 4407(e) list the circumstances under which a utility *cannot* discontinue service.

52. To deal with a diversion or energy theft situation, rule 4407(c) was added. This rule requires a utility which learns of diversion or theft to take specific action within a specific time period, thus limiting the harm to the utility's ratepayers. The current and the proposed rules have no such requirement, but the requirement is necessary to protect ratepayers.

**G. Unregulated Goods and Services (rules 4500 to 4599)**

53. These rules are reserved because they are the subject of another rulemaking proceeding, Docket No. 04R-003EG. When that proceeding is concluded, the final rules will be included in this sub-series.

54. It may be necessary to change the rules set out in Appendix A to make them consistent with the rules which are the product of Docket No. 04R-003EG. At this time, however, it is not practical to incorporate the substance of the cost assignment and cost allocation rules and to be sure that the entire 4000 series is internally consistent through all sub-series because rules may change upon Commission review of the rules. Accordingly, this is a function better performed as part of the Commission's final review of all the rules promulgated in the various rulemakings now underway.

**H. Gas Cost Adjustment and Prudence Review (rules 4600 to 4609)**

55. In general, the rules in this sub-series carry forward the GCA, the gas purchase plan (GPP), and the gas purchase report (GPR) processes found in the existing gas rules. These are three aspects of the same process and, when taken together, provide an administratively-efficient and interconnected course of action which allows the Commission to conduct prudence reviews. For example, the Commission uses information provided in the GPR to make an initial evaluation of the prudence of a utility's actual costs of purchasing gas commodity and upstream services during the gas purchase year. The tripartite process (GPP, GPR, and GCA) serves to inform the Commission by providing timely information and data, thereby reducing the

potentially adverse impact which asymmetrical access to information<sup>6</sup> can have on ratepayers and customers. For these reasons, the utility commenters' recommendation that the GPP and the GPR processes be eliminated was not accepted.

56. At present and as proposed, the GCA is an annual filing/review process. Utility commenters also suggested numerous changes throughout this sub-series which, when taken together, would have permitted (if not encouraged) a gas utility to have a monthly GCA or fixed gas cost terms. The Commission has determined previously that, as a matter of policy, it does not wish to approve such a program unless and until a utility has presented a whole plan for Commission review. In keeping with this Commission policy, the 4600 rules were not changed; and the GCA remains an annual filing/review process. If a utility desires to have a monthly GCA, fixed gas cost terms, or any other plan or approach which is different from that contained in these rules, it may file an application with the Commission. Public Service Company presented a plan for a monthly GCA which, after review, the Commission approved; this is the approach which best fits with the Commission's current policy.

57. In the existing rule and in the proposed rule 4603(c), net positive interest is excluded from the calculation of the deferred gas cost. This treatment is based on the following Commission discussion:

We find that "asymmetrical" treatment of interest on under/over-recovery of gas costs is appropriate. 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. [The utility] has a degree of control over its costs

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<sup>6</sup> "Asymmetrical access to information" refers to a reality of regulation: in almost all cases the regulated utility has the information "advantage" over the regulator because the regulated utility has access to the data and the regulator is in the position of trying to gain access. A reasonable step which reduces that information imbalance serves the public interest because it provides the regulator with the information available to the regulated utility, thus putting the regulator and the regulated on an even par. Overcoming asymmetrical access to information is one very important purpose of the GPP and of the GPR, as it is of all recordkeeping and reporting requirements. This, in turn, leads to more rational and certainly better-informed decision-making and regulation.

through expedited GCA 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 causes utilities to strive accurately to match gas purchase and resale prices.

Decision No. C01-0231 at 42-43.

58. The commenters did not establish that they are harmed by the existing asymmetrical treatment of interest. In addition, the commenters did not explain how, in their opinion, adopting their suggested symmetrical treatment of interest would advance the Commission policy objectives articulated in the quoted Decision. The Commission has stated clearly and persuasively the basis for asymmetrical treatment of interest. The suggestion was not adopted, and the rule was not changed.

59. The Commission requested rulemaking participants to comment on GCA notice (rule 4604). Extensive comments were received and considered. On balance, however, the ALJ was unable to discern how additional customer notice would be beneficial, would be effective, or would be effectuated. Accordingly, rule 4604 was not modified.

60. Rule 4604 establishes the contents of a GCA application. Utility commenters urged the Commission to eliminate exhibits 10, 11, and 12 (rules 4604(k), (l), and (m)) because they are duplicative of information available to the Commission, may be obtained by audit or special report, and are not relevant to determination of GCA-related issues. The recommended deletions were not made.

61. The Commission is broadly responsible for oversight of regulated utilities, including ensuring that they are financially viable. Over the years the Commission (through its Staff) has fulfilled this responsibility by performing financial monitoring activities of gas utilities through, *inter alia*, the review of financial statements prepared based on regulatory principles

included in the GCA filings.<sup>7</sup> The inclusion of these financial statements has allowed the Commission (through its Staff) to affirm and to execute its financial oversight responsibility by means of the informal mid-year review of a utility's financial status which occurs during the review of the GCA applications made in the fall. In the wake of the Enron debacle (as one example), the importance of periodic monitoring of a company's financial condition on a total basis, as opposed to just one segment, has been highlighted. At present, a large portion of a utility's total revenue/expenses is (or may be) recovered outside of a rate case proceeding (as, for example, through the use of a rider). As a result, from a common sense and protection of ratepayers standpoint, it makes sense to look at (or, at least, to have the opportunity to review) a company's financial status more often than the once-a-year look which occurs with the filing of an annual report. The GCA annual filing, which occurs at the mid-point between annual report filings, presents an excellent opportunity for that mid-year review of a utility's financials.<sup>8</sup>

62. Historically, the Commission has recognized the importance of the financial statements and required periodic financial reporting function of the GCA mechanism. For example, in Decision No. C97-0376 at 7-8, the Commission stated: "A rule requiring the inclusion of [exhibits 10, 11, and 12] in a GCA filing will be adopted[.] The Commission finds that these exhibits are necessary to receive standardized information from all utilities, and to establish the general financial status of utilities at a time when significant rate changes are requested." Similarly, in Decision No. C02-0181 at 6, the Commission more recently stated: "Though the Commission's decision to approve or reject GCA rates should not be based on the

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<sup>7</sup> The requirement for providing these statements (that is, the three exhibits at issue) has been reduced to the once a year June 30 statement.

<sup>8</sup> In addition, the ALJ notes that a utility's GCA filing may result in the utility's recovering up to 75 percent of its annual revenues/expenses by means of the GCA rider. Under these circumstances, providing financial data seems a small price, especially considering the gas utility's monopoly provider status *vis-à-vis* its sales customers.

financial exhibits, we disagree with [Public Service Company's] proposal to eliminate [GCA exhibits 10, 11, and 12]. At some future time, should there be a substantial change to GCA rates, it is imperative the Commission have access to a complete understanding of the utility's overall financial status." The Commission has determined that exhibits 10, 11, and 12 are important and serve a necessary function, and the commenters have not demonstrated a reasonable basis for eliminating those exhibits. Rules 4604(k), (l), and (m) continue the existing rules and require the filing of those three exhibits in the annual GCA.

63. Rule 4609(b) requires a utility to file, "on a quarterly basis, or *as otherwise established individually for a utility*," a report of its Account No. 191 balance calculation for each rate area. (Emphasis supplied.) Commenting utilities suggested eliminating this requirement. The suggestion was not adopted. First, as the rule itself states, a utility may seek (and may obtain) different treatment. Second, this reporting serves an important function, which has not changed since the reporting was first mandated:

The Commission proposed this additional rule to ensure quarterly monitoring, as a minimum, of each utility's Account No. 191 balance. By requiring such reporting, the Commission believed it would learn of unusual out-of-period variances in the Account No. 191 balance on a sufficiently regular basis to limit the potential for rate shock.

Decision No. C98-0924 at 2, *citing with approval* Decision No. C98-0320.

64. Third, on a practical level, the quarterly reporting allows Staff, OCC, and the utilities to monitor the balance in the deferred gas cost accounts. The idea is that a utility will manage the size of the deferred gas cost balance by making, if necessary, an interim filing with the Commission if the balance becomes too large and that such an interim filing would reduce the rate shock which would result from the effect of a GCA filing which contains both a sustained high gas price and the amortization of a very sizeable deferred gas cost balance.

Commenters did not address what mechanism would serve this function if the reporting requirement were eliminated. Fourth, the rule 4609(b) requirement is in existing rules; and the commenters did not explain how the reporting requirement is burdensome to them or the costs of compliance. On balance, the rule was not changed because it serves important functions, particularly its ratepayer-protection function.

**I. Appeals of Local Government Land Use Decisions (rules 4700 to 4707)**

65. Changes to this sub-series, by and large, were made for formatting purposes and for clarity. Rule 4702 was added for clarity. This rule states the preconditions to filing an application to appeal a local government action.

**J. Master Meters (rules 4800 to 4802)**

66. These rules are reserved because they are the subject of another rulemaking proceeding, Docket No. 04R-170EG. When that proceeding is concluded, the final rules will be included in this sub-series.

67. It may be necessary to change the rules set out in Appendix A to make them consistent with the rules which are the product of Docket No. 04R-170EG.<sup>9</sup> At this time, however, it is not possible to predict the substance of the master meter operator rules because they have not yet been promulgated. In addition, it is not practical to take steps to assure that the entire 4000 series is internally consistent through all sub-series because rules may change upon Commission review of the rules. Accordingly, this is a function better performed as part of the Commission's final review of all the rules promulgated in the various rulemakings now underway.

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<sup>9</sup> For example, rule 4200(a)(XIX) refers to an application for an exemption of a master meter operator from rate regulation. If the master meter operator rules as promulgated do not provide for such an application, rule 4200(a)(XIX) will need to be changed.

**K. Gas Pipeline Safety (rules 4900 to 4970)**

68. The gas pipeline safety rules are based on federal statute and rules which the Commission enforces through the gas pipeline safety rules. These rules are essential to the Commission's enforcement function. A commenter recommended that the gas pipeline safety rules should be a separate set of rules, but that recommendation was not adopted. The current structure appears to work, and the commenter did not provide rule changes to implement its recommendation. After some practical experience with these rules, should it appear that the gas pipeline safety rules should be separated, an interested person may petition to amend the rules or the Commission may undertake a rulemaking *sua sponte*.

69. Rule 4901 sets out definitions which apply exclusively to the 4900 sub-series. For purposes of the 4900 sub-series, the rule 4901 definitions control, to the extent there may be differences, over the rule 4001 general definitions. The two definitions rules are necessary because the gas pipeline safety rules pertain to Commission enforcement of federal statute and rules and the definitions in those federal authorities are not always identical to Colorado state statute. While some of the definitions found in rule 4001 apply to the 4900 sub-series, the definitions found in rule 4901 apply only to the 4900 sub-series.

70. The 4900 sub-series rules were reorganized. Some of the rules were changed for clarity.

**L. Glossary of Acronyms and Glossary of Gas Measurement Units**

71. To make the rules more user-friendly and easier to read, there are a glossary of acronyms and a glossary of gas measurement units.

**M. General Findings**

72. The rules attached to this Decision as Appendix A are reasonable and will provide guidance to and guidelines for the gas utilities and pipeline operators required to comply and to customers of those entities.

73. The record of this proceeding demonstrates the need for the rules attached to this Decision as Appendix A.

74. The Commission has the necessary and proper authority to issue the rules attached to this Decision as Appendix A.

75. The rules attached to this Decision as Appendix A are clearly and simply stated so that their meaning can be understood by any person required to comply with them.

76. The rules attached to this Decision as Appendix A do not conflict with any other provision of law and do not duplicate or overlap other rules.

77. The rules attached to this Decision as Appendix A are consistent with the subject matter of this proceeding (*i.e.*, repeal and promulgation of rules regulating gas utilities and pipeline operators) as set out in the notice of proposed rulemaking (Decision No. C03-1371) which initiated this docket.

**III. CONCLUSIONS**

78. The existing rules pertaining to gas utilities should be repealed.

79. The existing rules pertaining to pipeline operators should be repealed.

80. The rules attached to this Decision as Appendix A meet the statutory requirements.

81. The rules attached to this Decision as Appendix A should be adopted in their entirety.

**IV. ORDER**

**A. The Commission Orders That:**

1. The Rules Regulating the Service of Gas Utilities, 4 *Code of Colorado Regulations* 723-4, are repealed in their entirety.

2. The Gas Cost Adjustment Rules, 4 *Code of Colorado Regulations* 723-8, are repealed in their entirety.

3. The 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 *Code of Colorado Regulations* 723-10, are repealed in their entirety.

4. The Rules Governing Pipeline Safety, 4 *Code of Colorado Regulations* 723-11, are repealed in their entirety.

5. The Gas Transportation Rules, 4 *Code of Colorado Regulations* 723-17, are repealed in their entirety.

6. The 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 *Code of Colorado Regulations* 723-32, are repealed in their entirety.

7. The Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* 723-4, which are contained in Appendix A to this Order, are adopted.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

---

Administrative Law Judge

**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**

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**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" means 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 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 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.
- (y) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission and contained in a tariff of the utility.
- (z) "Sales customer" means a person who purchases sales service from a utility.
- (aa) "Sales service" means a bundled gas utility service in which the utility purchases gas commodity for resale to the customer and transports the gas to the customer.
- (bb) "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.
- (dd) "Service lateral" means that part of a pipeline system used, or designed to be used, to serve only one customer.
- (ee) "Staff" means Staff of the Public Utilities Commission.
- (ff) "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.
- (gg) "Standby capacity" means the daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer.
- (hh) "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.

- (ii) "Transportation" means the exchange, fronthaul, backhaul, flow reversal, or displacement of gas between a seller and a transportation customer through a pipeline system.
- (jj) "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.
- (kk) "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.
- (ll) "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.
- (mm) "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, as provided in rule 4105.
  - (VII) For approval of a lien, as provided in rule 4106.

- (VIII) For flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 4107.
  - (IX) To amend a tariff on less than statutory notice, as provided in rule 4110.
  - (X) For approval of meter and equipment testing practices, as provided in rule 4303.
  - (XI) For approval of a meter sampling program, as provided in rule 4304.
  - (XII) For approval of a refund plan, as provided in rule 4410.
  - (XIII) For approval of a cost assignment and allocation manual, as provided in rule 4503.
  - (XIV) 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.
  - (XVI) 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 subsections (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 subsections (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 subsections (a)(I), (II), (III), (V), (VI), and (VII) of this rule, a copy of the applying utility's most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows.
- (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 subsections (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 subsections (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 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. Applying utilities choosing to keep an item on file with the Commission 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.
  - (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 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 customer or person applying for service of the right to make an informal complaint to the External Affairs section of the Commission and shall provide to

the customer or the person applying for service the address and toll free number of the Commission.

- (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, 2004. 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, 2004.

**4006. Reports.**

- (a) On or before April 30<sup>th</sup> 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, 2004) 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, 2004) 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. 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 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 utility cannot provide service within the proposed service territory without authority from the Commission.
- (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 cannot recover for construction and operation of a facility or an extension of a facility 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 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, the applying utility shall prepare a written notice as provided in section (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 (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 sections (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, obtain a controlling interest in a utility, transfer assets subject to the jurisdiction of the Commission, transfer stock, or merge a utility with another entity. A utility cannot transfer a certificate of public convenience and necessity, obtain a controlling interest in any utility, transfer assets or 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 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.**

- (a) Subject to the limitation contained in section (f) 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.
- (b) An application for the issuance, renewal, extension, or assumption of securities 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, together with copies of the proposed indenture requirements, the mortgage note, the amendment to amending loan contract, and the contract for sale of securities.
  - (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 business day 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) 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 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.
- (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.
- (g) 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.
- (h) Any security requiring Commission approval but issued, renewed, extended, or assumed without such approval shall be void.

**4106. 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.

**4107. 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 (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. 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 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 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.

**4108. [Reserved].**

**4109. Tariffs and Contracts.**

- (a) A utility shall keep on file with the Commission the following: 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. 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.

**4110. 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 "1<sup>st</sup> revised sheet No. \_\_\_ cancels original sheet No. \_\_," or "2<sup>nd</sup> revised sheet No. \_\_\_ cancels 1<sup>st</sup> 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.

**4111. 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 new sources of gas or changes in the composition of gas 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 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 shall be done at no charge to the customer. If a utility determines that a readjustment pursuant to this section 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 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 sections (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 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 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 extension and service lateral extension:
  - (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

(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 (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) 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 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. 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 31<sup>st</sup> 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 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 subsection (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 subsection (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 (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, 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.

- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.
- (l) 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.

- (m) 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.
- (n) 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.
  - (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.
- (o) 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.
- (p) 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 (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 subsection (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 (n) of this rule plus 6%.

- (III) Interest on a construction advance shall accrue at the rate established pursuant to section (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 subsection (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 (n) of this rule plus 6%.
- (q) A utility shall resolve all inquiries regarding a customer's unclaimed monies and shall not refer such inquiries to the energy assistance organization.
- (r) 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(11).

**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 subsection 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 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 (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 subsection (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 31<sup>st</sup> 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 subsection 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 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 ten calendar days permitted, then within seven calendar days from the expiration of the ten days, the utility shall remove or correct the device or connection pursuant to subsection (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 subsection only once in any 12 consecutive month period.

**4408. Notice of Discontinuance.**

- (a) Except as provided in sections (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 (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 sections (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, the interest rate shall be equal to the interest rate set by the Commission pursuant to rule 4403(g). If the refund is not timely paid, the interest rate shall be equal to the interest rate set by the Commission pursuant to rule 4403(g) 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(11).

**4411. - 4499 [Reserved].**

#### **UNREGULATED GOODS AND SERVICES**

**4500. - 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 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.
- (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:

$$\begin{aligned} \text{GCA} = & (\text{current gas cost} + \text{deferred gas cost}) \\ & - (\text{base gas cost}). \end{aligned}$$

**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 subsection 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:

$$\begin{array}{rcl} \text{current gas cost} & = & (\text{forecasted gas} \\ \text{commodity cost} & + & \text{forecasted upstream} \end{array}$$

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 sections (a) through (d) of this rule. With its submittal the utility shall provide cross-referenced and footnoted workpapers 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, sections (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].**

**4801. [Reserved].**

**4802. [Reserved].**

**4803. - 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 subsections (1)(I), (II), or (III) of this section.
- (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 (CH<sub>4</sub>) 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 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 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 (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 (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 (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 (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 (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 (b) 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 subsection 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, and municipal-owned 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 (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 (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 (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 (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 (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 (b) of this rule shall apply to a hearing held pursuant to this section. The purpose of a hearing held pursuant to this section 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