

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-170EG

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

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

Mailed Date: May 6, 2005

I. STATEMENT

1. On April 12, 2004, the Public Utilities Commission issued the Notice of Proposed Rulemaking which commenced this docket. Decision No. C04-0375. The purpose of this proceeding is to repeal existing rules pertaining to master meter operators and to promulgate a complete replacement set. The rules proposed on April 12, 2004 supersede the 3800 sub-series rules noticed with the electric and steam rules (Docket No. 03R-519E) and with the gas rules (Docket No. 03R-520G).

2. Appended to that notice as Attachments A and 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, Rule 4 *Code of Colorado Regulations* (CCR) 723-3-33 and Rule 4 CCR 723-4-31. The Commission notice invited interested persons to participate in the rulemaking by submission of written comments and/or by presentation of oral comments.

3. The proposed repeal and promulgation involves an effort by the Commission to revise and to recodify the rules now in effect. The proposed repeal and recodification is intended

to update the existing rules for master meter operators; to the extent possible, to adopt rules for those operators which are consistent with other Commission rules; to improve administration and enforcement of relevant sections of Title 40, C.R.S.; to eliminate unnecessary or burdensome regulation by removing master meter operators from rate regulation, provided they comply with specific requirements; to improve the readability of, and ease of referencing to, the rules; and overall to regulate master meter operators as appropriate. Because this rulemaking proceeding is part of a comprehensive effort by the Commission to revise its rules regulating electric and gas utilities, the Commission believed it was important to coordinate the instant rulemaking with the other currently-pending rulemaking proceedings involving those utilities.

4. The undersigned Administrative Law Judge (ALJ) held hearings on the proposed rules. Hearings were held on July 13, 14, 19 and 20, 2004, August 5 and 16, 2004, October 12, 13, 18, and 19, 2004, and March 17, 2005. There were no written comments received, and no oral comments made, concerning the rules proposed in this rulemaking. Staff of the Commission made an oral presentation addressing the general procedural background of this matter and identifying areas of difference between existing rules and the proposed rules.

5. 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

6. 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 rules in this rulemaking fall towards the policy end of that continuum.

7. The statutory authority for the rules promulgated by this Decision is found in §§ 40-1-103.5, 40-2-108, and 40-7-117, C.R.S.

8. The rules attached to this Decision as Appendix A and Appendix B substantially change the existing rules. In addition, the rules attached to this Decision as Appendix A and Appendix B change the rules as proposed. Those changes which are grammatical or are made for clarity and which are minor will not be discussed in the body of 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.¹

A. General Structure of the Rules

9. 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.

10. 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. The rules promulgated in this rulemaking are the x800 sub-series to be included in the electric and steam rules (the 3000 series) and in the gas rules (the

¹ Rule, section, and subsection numbers referenced in this Decision are the numbers found in Appendix A and Appendix B to this Decision. The numbers may be 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.

4000 series). In addition to the standardization of the sub-series, the rules use a standard outline format. Finally, these rules use identical language with respect to both the electric and steam rules and the gas rules.

11. 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. Master Meter Operators (rules x800 to x805)

12. Section 40-1-103.5(1), C.R.S., provides that, either on its own motion or upon application, the Commission may exempt master meter operators from rate regulation so long as the requirements established in that statutory provision are met. Rules x803(a) and x804 set out those statutory requirements.

13. Section 40-1-103.5(1)(d), C.R.S., permits the Commission to establish any additional conditions for exemption which the Commission deems necessary. As permitted by that provision, the Commission has added a specific prohibition against a master meter operator's reselling for profit electricity or gas (rule x803(b)). This prohibition is in keeping with the fundamental principle of § 40-1-103.5, C.R.S.: a master meter operator who supplies electricity or gas to end-users may not recover an amount of money which exceeds the amount of money which the master meter operator paid to the serving utility for the electricity or gas. While this prohibition may be implicit in the requirements of rule x803(a), the Commission deems it necessary and appropriate to make it explicit in rule x803(b). This will avoid any confusion and alleviate any uncertainty.

14. In addition, a new requirement has been added to the rules as proposed. Subsection x803(a)(V) reads: "A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users." This record-keeping requirement is necessary to allow the Commission, Staff, and interested persons (including end-users) to determine whether a master meter operator is in compliance with the rules. In addition, maintaining these records will assist a master meter operator in giving notice of a refund. Finally, these records will assist the Commission and its Staff in their monitoring function.

15. The Commission finds that, so long as the requirements of rules x803 and x804 are met, rate regulation of master meter operators is unnecessarily burdensome. The Commission further finds that, so long as the requirements of rules x803 and x804 are met, the end-users of master meter operators are protected, particularly when the availability of informal complaints and formal complaints and of Commission action (rule x805) is taken into consideration. For these reasons, the Commission determines that it will exempt from rate regulation a master meter operator which is in compliance with rules x803 and x804.

16. It may be necessary to change the rules set out in Appendix A and Appendix B to make them consistent with the rules which are the product of Dockets No. 03R-519E (the electric and steam rulemaking) and No. 03R-520G (the gas rulemaking). At this time, however, it is not practical to take steps to assure that the entire 3000 series and the entire 4000 series are 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.

17. In addition, the rules promulgated by this Decision require changes in the rules which are the product of Dockets No. 03R-519E (the electric and steam rules) and No. 03R-520G (the gas rules). For example, rule x005(a) (records) should be amended to add a subsection which reads: "Records maintained pursuant to rule x803(a)(V)." As another example, rule x002(a) contains a reference to an application for "exemption of a master meter operator from rate regulation, as provided in rule 3802." Because there is no such application required, this reference should be deleted.

C. General Findings

18. The rules attached to this Decision as Appendix A and Appendix B are reasonable and will provide guidance to and guidelines for the master meter operators required to comply and to the end-users of those operators.

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

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

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

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

23. The rules attached to this Decision as Appendix A and Appendix B are consistent with the subject matter of this proceeding (*i.e.*, repeal and promulgation of rules governing

master meter operators) as set out in the notice of proposed rulemaking (Decision No. C04-0375) which initiated this docket.

III. CONCLUSIONS

24. The existing rule found in 4 CCR 723-3-33 should be repealed.
25. The existing rule found in 4 CCR 723-4-31 should be repealed.
26. The rules attached to this Decision as Appendix A and as Appendix B meet the statutory requirements.
27. The rules attached to this Decision as Appendix A should be adopted in their entirety.
28. The rules attached to this Decision as Appendix B should be adopted in their entirety.

IV. ORDER

A. The Commission Orders That:

1. Rule 4 *Code of Colorado Regulations* 723-3-33 is repealed in its entirety.
2. Rule 4 *Code of Colorado Regulations* 723-4-31 is repealed in its entirety.
3. Rules 3800 to 3805 of the Rules Regulating Electric Utilities and Steam Utilities, 4 *Code of Colorado Regulations* 723-3, which are contained in Appendix A to this Order, are adopted.
4. Rules 4800 to 4805 of the Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* 723-4, which are contained in Appendix B to this Order, are adopted.

5. 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.

6. 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.

7. 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.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink 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) 723-3

PART 3

RULES REGULATING ELECTRIC UTILITIES AND STEAM UTILITIES

MASTER METER OPERATORS

3800. Applicability.

These rules are applicable to any person who purchases electric service from a utility for the purpose of delivery of that service to end-users whose aggregate usage is to be measured by a master meter or other composite measurement device.

3801. Definitions.

The following definitions apply to Rules 3800 - 3805, unless a specific statute or rule provides otherwise. In addition to these definitions, the definitions in rule 3001 apply.

- (a) "Check-meter" means a meter or other composite measurement device which is used by a master meter operator and which is used to determine electric consumption by end-users served by the master meter operator.
- (b) "Master meter" means a meter or other composite measurement device which a serving utility uses to bill a master meter operator.
- (c) "Master meter operator" or "MMO" means a person who purchases electric service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter.
- (d) "Refund" means a refund, rebate, rate reduction, or similar adjustment.
- (e) "Serving utility" means the utility from which the master meter operator receives the electric service which the master meter operator then delivers to end-users.

3802. Exemption from Rate Regulation.

- (a) Pursuant to § 40-1-103.5, C.R.S., and by this rule, the Commission exempts from rate regulation under Articles 1 to 7 of Title 40, C.R.S., a master meter operator which is in compliance with rules 3803 and 3804.

- (b) A master meter operator which is not in compliance with rules 3803 and 3804 is subject to rate regulation under Articles 1 to 7 of Title 40, C.R.S., and shall comply with the applicable rules.

3803. Exemption Requirements.

- (a) In order to retain its exemption from rate regulation, a MMO shall do the following:
 - (I) As part of its billing for utility service, the MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any other costs (such as, without limitation, the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility.
 - (II) If the MMO bills its end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility.
 - (III) If the MMO bills its end-users separately for service, the MMO shall pass on to its end-users all refunds the MMO receives from the serving utility or otherwise.
 - (IV) The MMO shall establish procedures for giving notice of a refund to those who are not current end-users but who were end-users during the period for which the refund is paid.
 - (V) A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users.
- (b) In order to retain its exemption from rate regulation, a MMO shall not resell electricity for profit. Resale is a basis for revocation of an exemption from rate regulation.
- (c) A MMO may check-meter tenants, lessees, or other persons to whom the electricity ultimately is distributed but may do so only if the following conditions are met:
 - (I) The check-meter is used solely for the purpose of reimbursing the MMO by means of an appropriate allocation procedure.
 - (II) The MMO does not receive more than the actual amount billed to the MMO by the serving utility.

3804. Refunds.

- (a) When a serving utility notifies a MMO of a refund or when a refund is otherwise made, a MMO shall notify its end-users of the refund and shall inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication. The MMO shall also notify former customers who were end-users during the period for which the refund is made. The MMO shall give the notice required by this section within 30 days of notification about the refund or, if there is no prior notification, within 30 days of receipt of the refund.
- (b) A MMO may retain any portion of a refund which rightfully belongs to the MMO.
- (c) If the aggregate amount of a refund which remains unclaimed after 90 days exceeds \$100, the MMO shall contribute that unclaimed amount to the energy assistance organization in accordance with rules 3410(d), (f), and (g). If the aggregate amount which remains unclaimed after 90 days does not exceed \$100, the MMO may retain the aggregate amount.
- (d) A MMO shall pay interest on undistributed refunds in accordance with rule 3410(d).

3805. Complaints, Penalties, and Revocation of Exemption.

- (a) Pursuant to rules 1301 and 1302, a person (including without limitation anyone subject to a master meter) may make an informal complaint to the External Affairs section of the Commission or may file a formal complaint with the Commission with the respect to an alleged violation of rules 3803 and 3804.
- (b) As a result of a complaint or on its own motion, the Commission will investigate complaints concerning MMOs. If the Commission determines after investigation that an MMO has violated any of the requirements of rules 3803 and 3804, the MMO may have its exempt status revoked or may be subject to penalties as set forth in § 40-7-107, C.R.S., or both.

3806. -3899 [Reserved].

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

MASTER METER OPERATORS.

4800. Applicability.

These rules are applicable to any person who purchases gas service from a utility for the purpose of delivery of that service to end-users whose aggregate usage is to be measured by a master meter or other composite measurement device. Gas Pipeline Safety Rules, rules 4900 to 4999 (including incident reporting and safety standards), apply to master meter operators.

4801. Definitions.

The following definitions apply to rules 4800 - 4805, unless a specific statute or rule provides otherwise. In addition to these definitions, the definitions in rule 4001 apply.

- (a) "Check-meter" means a meter or other composite measurement device which is used by a master meter operator and which is used to determine gas consumption by end-users served by the master meter operator.
- (b) "Master meter" means a meter or other composite measurement device which a serving utility uses to bill a master meter operator.
- (c) "Master meter operator" or "MMO" means a person who purchases gas service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter.
- (d) "Refund" means a refund, rebate, rate reduction, or similar adjustment.
- (e) "Serving utility" means the utility from which the master meter operator receives the gas service which the master meter operator then delivers to end-users.

4802. Exemption from Rate Regulation.

- (a) Pursuant to § 40-1-103.5, C.R.S., and by this rule, the Commission exempts from rate regulation under Articles 1 to 7 of

Title 40, C.R.S., a master meter operator which is in compliance with rules 4803 and 4804.

- (b) A master meter operator which is not in compliance with rules 4803 and 4804 is subject to rate regulation under Articles 1 to 7 of Title 40, C.R.S., and shall comply with the applicable rules.

4803. Exemption Requirements.

- (a) In order to retain its exemption from rate regulation, a MMO shall do the following:
 - (I) As part of its billing for utility service, each MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any costs (including without limitation the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility.
 - (II) If the MMO bills its end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility.
 - (III) If the MMO bills its end-users separately for service, the MMO shall pass on to its end-users all refunds the MMO receives from the serving utility or otherwise.
 - (IV) Each MMO shall establish procedures for giving notice of a refund to those who are not current end-users but who were end-users during the period for which the refund is paid.
 - (V) A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users.
- (b) In order to retain its exemption from rate regulation, a MMO shall not resell gas for profit. Resale activity is a basis for revocation of an exemption from rate regulation.
- (c) A MMO may check-meter tenants, lessees, or other persons to whom the electricity ultimately is distributed but may do so only if the following conditions are met:
 - (I) The check-meter is used solely for the purpose of reimbursing the MMO by means of an appropriate allocation procedure.
 - (II) The MMO does not receive more than the actual amount billed to the MMO by the serving utility.

4804. Refunds.

- (a) When a serving utility notifies a MMO of a refund or when a refund is otherwise made, a MMO shall notify its end-users of the refund and shall inform its end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication. Each MMO shall also notify former customers who were end-users during the period for which the refund is paid. The MMO shall give the notice required by this section within 30 days of notification about the refund or, if there is no prior notification, within 30 days of receipt of the refund.
- (b) A MMO may retain any portion of a refund which rightfully belongs to the MMO.
- (c) If the aggregate amount of a refund which remains unclaimed after 90 days exceeds \$100, the MMO shall contribute that unclaimed amount to the energy assistance organization in accordance with rules 4410(d), (f), and (g). If the aggregate amount which remains unclaimed after 90 days does not exceed \$100, the MMO may retain the aggregate amount.
- (d) A MMO shall pay interest on undistributed refunds in accordance with rule 4410(d).

4805. Complaints, Penalties, and Revocation of Exemption.

- (a) Pursuant to rules 1301 and 1302, a person (including without limitation anyone subject to a master meter) may make an informal complaint to the External Affairs section of the Commission or may file a formal complaint with the Commission with the respect to an alleged violation of rules 4803 and 4804.
- (b) As a result of a complaint or on its own motion, the Commission will investigate complaints concerning MMOs. If the Commission determines after investigation that an MMO has violated any of the requirements of rules 4803 and 4804, the MMO may have its exempt status revoked or may be subject to penalties as set forth in § 40-7-107, C.R.S., or both.

4806. -4899 [Reserved].