

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-848W

IN THE MATTER OF THE PROPOSED RULES REGULATING FINING OF WATER AND
COMBINED WATER AND SEWER UTILITIES, 4 CODE OF COLORADO REGULATIONS
723-5 UNDER HOUSE BILL 08-1227.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 20, 2009

Adopted Date: November 19, 2009

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Water and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* (CCR) 723-5.

2. This NOPR proposes changes to the Commission's rules necessitated by the passage of House Bill 08-1227 (the bill).

3. The bill adds, *inter alia*, § 40-7-113.5 and § 40-7-116.5, C.R.S. The bill became effective on July 1, 2008.

4. The bill's amendment of Article 7 of Title 40 of the *Colorado Revised Statutes* applies to water and combined water and sewer utilities. Under the bill, the Commission was granted authority to issue civil penalties to certain public utility service providers including electric, gas, water, water and sewer, and telecommunications service providers.

5. The Commission's existing rules for water utilities were established in Docket No. 06R-501W and are proposed to be modified in Docket No. 09R-130W to accommodate

other changes necessitated by House Bill 08-1227 relating to water and combined water and sewer companies.

6. The basis and purpose of the proposed amendments is to revise the current water rules to add rules regarding fining of water and combined water and sewer utilities.

7. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-3-102, 40-3-103, 40-3-104.4, 40-4-101, 40-4-108, 40-4-109, 40-7-113.5, and 40-7-116.5, C.R.S.

8. New rules have been added to establish the fining process and to list the finable rules.

9. Rule 5009 is added to define civil penalty, civil penalty assessment, civil penalty assessment notice, and public utility as used in the proposed fining rules.

10. Rule 5010 is added to identify regulated water and water and sewer utility violations, civil enforcement, and enhancement of civil penalties.

11. Rule 5420 is added to list the specific fineable rules.

12. Rules not specifically discussed in this NOPR do not constitute a portion of this NOPR. The Commission is not proposing any changes to the rules not specifically discussed in this NOPR.

13. The proposed amendments will be published in the December 10, 2009, edition of *The Colorado Register*. Additionally, interested persons may acquire a copy of the proposed amendments, either in hard-copy or electronic form, from the Commission's Records Management Unit. The Records Management Unit may be contacted by phone or email at 303.894.2040 or Cheryl.Fisher@dora.state.co.us, respectively. The proposed amendments will also be available on the Commission's website:

www.dora.state.co.us/puc/rulemaking/RulemakingNotices.htm

14. Considering the limited scope of the instant NOPR, the Commission requests that interested persons limit their comments to the proposed rule changes only. The instant rulemaking should not be construed as an opportunity to reopen contentious issues resolved in preceding rulemakings.

15. An Administrative Law Judge (ALJ) will conduct a hearing on the proposed amendments and related issues at the below-stated time and place. Interested persons may submit written comments on the amendments, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than January 8, 2010. Reply comments should be submitted by January 22, 2010. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 10, 2009, edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: February 4, 2010

TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The ALJ may set additional hearings, if necessary.
4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary. Interested persons may file written comments in this matter before hearing. The Commission prefers that such pre-filed comments be submitted in both paper and, when possible, electronic format no later than January 8, 2010. Reply comments should be submitted by January 22, 2010.
5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 19, 2009.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
ABSENT.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-5

PART 5 RULES REGULATING WATER UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to generally set forth rules describing the service to be provided by jurisdictional water utilities to their customers. The rules address a wide variety of subject areas including, but not limited to application requirements, operating authorities, facility requirements, cost allocation and assignment, simplified regulatory treatment, service interruption, meter testing and accuracy, customer information, customer deposits, rate schedules filings and tariffs, discontinuance of service, water quality, and water pressure.

The statutory authority for these rules can be found at §§ 40-2-108, 40-3-102, 40-3-103, 40-3-104.4, 40-4-101, 40-4-108, ~~and~~ 40-4-109, and 40-7-113.5(2)(a), C.R.S.

* * *

[indicates omission of unaffected rules]

[new rule follows]

CIVIL PENALTIES

5009. Definitions.

The following definitions apply to rules 5009, 5010, and 5420 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) "Civil penalty" means any monetary penalty levied against a public utility because of violations of statutes, regulations, rules, or Commission decisions.

(b) "Civil penalty assessment" means the act of imposing a civil penalty against a public utility.

(c) "Civil penalty assessment notice" means the written document by which a public utility is notified of a violation and proposed civil penalty.

(d) "Public utility" means those public utilities defined in § 40-7-113.5-(1)(a), C.R.S.

5010. Regulated Water and Water and Sewer Utility Violations, Civil Enforcement, and Enhancement of Civil Penalties.

(a) The Commission may impose a civil penalty in accordance with the requirements and contents contained in § 40-7-113.5, C.R.S., § 40-7-116.5, C.R.S., and paragraph 1302(b), 4 Code of Colorado Regulations 723-1, for finable offenses as specified in these rules.

(b) Notwithstanding any provision in these rules to the contrary, the Commission may assess doubled or tripled civil penalties against any public utility, as provided by statute and this rule.

(c) The Commission may assess any public utility a civil penalty containing doubled penalties if:

- (I) the public utility engaged in prior conduct that resulted in the issuance of a prior civil penalty assessment notice;
- (II) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct that was cited in a prior civil penalty assessment notice;
- (III) the conduct for which doubled civil penalties are sought occurred within one year after conduct that resulted in the issuance of a civil penalty assessment notice;
- (IV) the conduct for which doubled civil penalties are sought occurred after the public utility's receipt of a prior civil penalty assessment notice; and
- (V) a prior civil penalty assessment notice resulted in the public utility's admission to the prior conduct or in a finding of liability related to the prior conduct.

(d) The Commission may assess any public utility a civil penalty containing tripled penalties if:

- (I) the public utility engaged in prior conduct that resulted in the issuance of two or more prior civil penalty assessment notices;
- (II) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct that was cited in prior civil penalty assessment notices;
- (III) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent prior instances of conduct cited in prior civil penalty assessment notices;
- (IV) the conduct for which tripled civil penalties are sought occurred after the public utility's receipt of two or more prior civil penalty assessment notices; and
- (V) the prior civil penalty assessment notices resulted in the public utility's admission to at least two instances of the prior conduct or in a finding of liability related to at least two instances of the prior conduct.

(e) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the conduct for which tripled civil penalties are sought.

- (f) Nothing in this rule shall preclude the assessment of tripled penalties when doubled and tripled penalties are sought on the same civil penalty assessment notice.
- (g) The Commission shall not issue a decision on doubled or tripled penalties until after the effective date of the Commission decision upon which the single penalty was based.
- (h) If the respondent pays the doubled or tripled civil penalties prior to the effective date of the Commission decision upon which the doubled or tripled civil penalties are based, and such Commission decision finds the respondent not liable for the violation(s), on its own motion the Commission shall refund the appropriate amount of any overpayment. By way of example, if the respondent pays a doubled civil penalty and is later found to be not liable for the first violation upon which the doubled penalty is based, the Commission shall retain one half of the doubled civil penalty amount and refund the other half to the respondent. Likewise, for payment of the reduced amount provided in paragraph (i) of this rule, the Commission shall make an appropriate proportional refund.
- (i) The civil penalty assessment notice shall contain the maximum penalty amount provided by rule for each individual violation noted, with a separate provision for a reduced penalty of 50 percent of the maximum penalty amount if paid within ten days of receipt of the civil penalty assessment notice.
- (j) The civil penalty assessment notice shall contain the maximum penalty amount provided by the rule for each individual violation noted, and the amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S.
- (k) A penalty surcharge referred to in paragraph (j) of this rule shall equal to the percentage set by the Department of Regulatory Agencies on an annual basis. The surcharge shall not be included in the calculation of the statutory limits set in § 40-7-113.5(5), C.R.S.
- (l) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of issuing civil penalties.

500911. – 5099. [Reserved].

* * *

[indicates omission of unaffected rules]

[new rule follows]

5412. – 5419. [Reserved].

5420. Regulated Water and Water and Sewer Utility Rule Violations, Civil Enforcement, and Civil Penalties.

A violation of the following rules may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limit set in § 40-7-113.5, C.R.S.

<u>Citation</u>	<u>Failure to Comply with Commission Rules Regarding:</u>
	<u>Failure to Follow a Commission Decision</u>
<u>Rule 1301(c) and 5004</u>	<u>Disputes and Informal Complaints</u>
<u>Rule 5005</u>	<u>Records and Record Retention</u>
<u>Rule 5005(c)</u>	<u>Uniform System of Accounts</u>
<u>Rule 5006</u>	<u>Annual Reporting Requirements</u>
<u>Rule 5100</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for a Franchise</u>
<u>Rule 5101</u>	<u>Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to Operate in a Service Territory</u>
<u>Rule 5102</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for Facilities</u>
<u>Rule 5103</u>	<u>Amending a Certificate of Public Necessity for Changes in Service Territory or Facilities</u>
<u>Rule 5108</u>	<u>Keeping a Current Tariff on File with the Commission</u>
<u>Rule 5109</u>	<u>Filing a New or Changed Tariff with the Commission</u>
<u>Rule 5110</u>	<u>Filing an Advice Letter to Implement a Tariff Change</u>
<u>Rule 5112</u>	<u>Simplified Regulatory Treatment</u>
<u>Rule 5200</u>	<u>Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards</u>
<u>Rule 5202</u>	<u>Maintaining Appropriate Purity and Pressure Standards</u>
<u>Rule 5203</u>	<u>Trouble Report Response, Interruptions and Curtailments of Service</u>
<u>Rule 5204</u>	<u>Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage</u>
<u>Rule 5210</u>	<u>Line Extensions</u>
<u>Rule 5303</u>	<u>Meter Testing</u>
<u>Rule 5304</u>	<u>Meter Testing Upon Request</u>

Rule 5306	Record Retention of Tests and Meters
Rule 5309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read
Rule 5401	Billing Information, Procedures, and Requirements
Rule 5402	Meter and Billing Error Adjustments
Rule 5403	Applications for Service, Customer Deposits, and Third Party Guarantees
Rule 5404	Availability of Installation Payments to Customers
Rule 5405	Provision of Service, Rate, and Usage Information to Customers
Rule 5407	Discontinuance of Service
Rule 5408	Notice of Discontinuation of Service
Rule 5409	Restoration of Service
Rule 5411	Emergencies – Public Notification Plans

* * *

[indicates omission of unaffected rules]