

Decision No. R09-0437-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-130W

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

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PROVIDING ADDITIONAL NOTICE
OF PROPOSED RULEMAKING AND
SCHEDULING ADDITIONAL HEARING
ON PROPOSED RULES**

Mailed Date: April 28, 2009

I. STATEMENT

1. By Decision No. C09-0187, the Commission issued its Notice of Proposed Rulemaking (NOPR) regarding Rules Regulating Water and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* (CCR) 723 Part 5. The proposed Rules were appended to Decision No. C09-0187 as Attachment A.

2. In that Order, the Commission also assigned this proceeding to an Administrative Law Judge (ALJ).

3. Decision No. C09-0187 scheduled a rulemaking hearing for April 24, 2009. At the time and place noticed, the ALJ called that hearing to order. At that hearing, the ALJ announced that an additional hearing would be held in this proceeding and that the hearing would be held on **June 25, 2009**. This Order schedules that additional rulemaking hearing.

4. The NOPR proposed Rule changes that were made necessary by an amendment to § 40-1-103, C.R.S., that became effective on July 1, 2008. Specifically, the statutory amendment changed the definition of public utility so that the definition now includes water service providers that provide a combined water and sewer service and, with that change, brought these combined water and sewer providers within the Commission's jurisdiction.

5. 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, and 40-4-109, C.R.S. The principal purposes of the proposed Rule amendments are to revise the current water rules to account for combined water and sewer providers and to add to those rules requirements specifically for sewer providers under the Commission's jurisdiction.

6. In various locations throughout the rules, including the rule title, the Commission proposes to add the term "combined water and sewer utilities."

7. Proposed Rule 5005 would add record-keeping and record maintenance requirements for sewer operations; would adopt the 1996 Uniform System of Accounts for Class A, B, and C Wastewater Utilities published by the National Association of Regulatory Utility Commissioners; would add a requirement that the results of all tests required by the Water Quality Control Division of the Colorado Department of Public Health and Environment be provided to the Commission; and would require the utility to maintain records demonstrating compliance with the effluent limits established in the utility's Colorado Discharge Permit System permit issued by the Water Quality Control Division of the Colorado Department of Public Health and Environment.

8. Proposed Rule 5008 would incorporate by reference the 1996 edition of the Uniform System of Accounts for Class A, B, and C Wastewater Utilities published by the National Association of Regulatory Utility Commissioners.

9. Proposed Rule 5112 would revise the existing rule to create a single definition for a "small, privately owned water company" and to add that term consistently throughout the rule.

10. Proposed Rule 5202 would add requirements under purity and pressure for sewer operations.

11. Proposed Rule 5209 would add service connection requirements for sewer operations.

12. Proposed Rule 5411 would require all water and combined water and sewer providers to prepare and to present to the Commission for approval an emergency notification plan outlining how the utility will inform its customers and the community of emergency enforcement actions and/or corrective measures that are required by the Colorado Department of Public Health and Environment.

13. Minor wording changes are proposed in the Rules to correct references, to make references uniform throughout the Rules, and to conform the Rules to changes in Commission process that have occurred since Docket No. 06T-501W (the last water utility rulemaking proceeding).

14. The Rules that are the subject of the NOPR are appended to this Order as Appendix A. Rules that are not specifically discussed in this Order and the NOPR and that are not changed in Appendix A do not come within the NOPR. The Commission does not propose to change rules that are not specifically discussed.

15. The proposed amendments will be published in the May, 2009 edition of *The Colorado Register*. In addition, interested persons may acquire a copy of the proposed amendments, either in hard-copy or electronic form, from the Commission's Records Management Unit.¹ Finally, the proposed amendments are available on the Commission's website at www.dora.state.co.us/puc/rulemaking/RulemakingNotices.htm.

16. Considering the limited scope of the NOPR, interested persons will limit their comments to the proposed rule changes only. This rulemaking proceeding is not -- should not be construed as -- an opportunity to reopen issues that were resolved in previous rulemaking proceedings. The ALJ will take steps as necessary to limit comments to the Rules that are the subject of the NOPR (*see* Appendix A to this Order).

17. Interested persons may submit written comments on the proposed amendments, including data, views, or arguments, and may present oral comments at hearing.

18. The ALJ 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 ALJ requests that the comments be filed no later than **May 29, 2009**. In the event interested persons wish to file reply comments before the hearing, the ALJ requests that the comments be filed no later than **June 19, 2009**. Interested persons who submit comments are requested to submit the comments in paper and, when possible, in electronic format. The Commission may post electronically-submitted comments to its website.

19. The Commission will consider all comments, whether oral or written.

¹ The Records Management Unit may be contacted by telephone (303.894.2040) or by e-mail (Cheryl.Fisher@dora.state.co.us).

II. ORDER

A. It Is Ordered That:

1. This Order, and its Attachment A, shall be filed with the Colorado Secretary of State for publication in the May, 2009 edition of *The Colorado Register*.

2. A hearing on the proposed Rules and related matters shall be held on the following date, at the following time, and in the following location:

DATE: June 25, 2009
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. Additional hearings may be scheduled as necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present oral comments. Interested persons may file written comments in this matter before hearing.

5. On or before May 29, 2009, interested persons may submit initial written comments. Those comments shall be submitted in paper and, when possible, in electronic format.

6. On or before June 19, 2009, interested persons may submit reply written comments. Those comments shall be submitted in paper and, when possible, in electronic format.

7. This Order is effective immediately.

(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 JENNINGS-FADER

Administrative Law Judge

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-5

PART 5

RULES REGULATING WATER, AND COMBINED WATER AND SEWER 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, and jurisdictional combined water and sewer 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, C.R.S.

GENERAL PROVISIONS

5000. Scope and Applicability.

Absent a specific statute, rule or Commission order which provides otherwise, all rules in this Part 5, the "5000" series, shall apply to all jurisdictional water and combined water and sewer utilities and to all Commission proceedings and operations concerning water and combined water and sewer service.

5001. Definitions.

The following definitions apply throughout this Part 5, except where a specific rule or statute provides otherwise:

- (a) "Affiliate" of a public utility means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, a subsidiary of a parent corporation of a public utility or where the public utility or the parent corporation has a controlling interest over an entity.
- (b) "Aggregate water service provider" means a person who:

- (I) Purchases water service from a serving utility for the purpose of delivering that service to end users whose aggregate usage is to be measured by a composite measurement device;
 - (II) Does not charge end users for any costs in addition to the actual cost billed to such person for water service, including without limitation, costs of construction, maintenance, financing, administration, metering, or billing for the distribution system owned by such person;
 - (III) If billing end users separately, does not bill the end users, in the aggregate, more than the amount billed to such person for water service; and
 - (IV) If billing end users separately, passes on to the end users any refunds, rebates, rate reductions, or similar adjustments such person receives for water service.
- (c) "AWWA" means the American Water Works Association.
- (d) "Basis point" means one-hundredth of a percentage point (100 basis points = 1 percent).
- (e) "Customer" means any person who is currently receiving utility service. 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.
- (f) "Distribution Line Extension" means any construction of distribution facilities (excluding meters and meter installation facilities) necessary to supply service to one or more additional customers.
- (g) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or 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 discontinue utility service in Colorado.
- (h) "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.
- (i) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals that directly oversee the utility's operations in Colorado are located.
- (j) "Service Line Extension" means any construction of distribution facilities (including meters and meter installation facilities) necessary to supply service to a single customer household or a single multi-unit dwelling.
- (k) "Utility" means any public utility as defined in § 40-1-103(1)(a), C.R.S providing water [or combined water and sewer](#) to customers in the State of Colorado.
- (l) "Utility service" or "service" means a service offering of a public utility, which service offering is regulated by the Commission.

* * *

[indicates omission of unaffected rules]

5005. Records.

- (a) Except as a specific rule may require, every ~~water~~-utility shall maintain for a period of not less than three years and shall make available for public inspection at its principal place of business during regular business hours, the following:
 - (I) Records concerning disputes and informal complaints, which records are created pursuant to rule 5004.
 - (II) Instrumentation records, which records are created pursuant to rule 5201.
 - (III) Purity and pressure records required under rule 5202, for at least two years, except as may be required for longer periods by AWWA or applicable federal, state, county, or municipal codes, regulations, or rules.
 - (IV) The results of all tests made by the Water Quality Control Division of the [Colorado Department of Public Health and Environment](#), indicating when, where, and by whom each test was conducted.
 - (V) The results of all tests required by the Water Quality Control Division of the Colorado Department of Public Health and Environment, indicating when, where, and by whom each test was conducted.
 - (VI) All records made with respect to meter testing equipment and facilities, meter testing upon request, and records of meter tests under rules 5303, 5305 and 5306.
 - (VII) All customer billing records, which records are created pursuant to rule 5401(a).
 - (VIII) All customer deposits, which records are created pursuant to rule 5403.
- (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) Each utility shall maintain its books of account and records in accordance with the provisions of the 1996 editions of the Uniform System of Accounts for Class A, B, and C Water Utilities, [and Class A, B, and C Wastewater Utilities as applicable](#), published by the National Association of Regulatory Utility Commissioners. No later amendments to or editions of the Uniform System of Accounts are Incorporated into these rules. A utility must maintain its books of account and records separately from those of its affiliates.
- (d) Each utility shall preserve its records as follows:

- (I) All General and Subsidiary Ledgers shall be retained for 10 years; and
- (II) All Continuing Property Records shall be retained for the longer of 25 years or the life of the plant.
- (III) Each utility shall maintain records demonstrating its compliance or non-compliance with all applicable quality, purity, monitoring, testing, and record-keeping standards and requirements of:
 - (A) The federal Clean Water Act, Safe Drinking Water Act, and the rules and regulations promulgated there under.
 - (B) The drinking water regulations promulgated by the Water Quality Control Division of the Colorado Department of Public Health and Environment;
 - (C) The effluent limits established in the utility's Colorado Discharge Permit System permit issued by Water Quality Control Division of the Colorado Department of Public Health and Environment; and
 - (D) The water treatment standards adopted by AWWA.

5006. Reports.

Each utility shall provide reports to the Commission as follows:

- (a) On or before April 30 of each year, an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed and supplied by the Commission; shall properly complete the forms; shall ensure the forms are verified and signed by a person authorized to act on behalf of the utility and shall file the required number of copies pursuant to subparagraph 1204(a)(IV) of the Commission's Rules of Practice and Procedure. 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 certified public accountant prepares an annual report for a utility, the utility shall file two copies of the report with the Commission within 30 days after publication.
- (c) On or before April 30 of each year, and as part of the report required by paragraph (a) of this rule, small, privately owned water or combined water and sewer companies shall file a report with the Commission detailing the information required by paragraph 5112(d).
- (d) All reports and supporting documentation concerning simplified regulatory treatment, as required by rule 5112.
- (e) All reports and substantiating documentation concerning incidents resulting in death, serious injury, or serious property damage, as required by rule 5204.
- (f) Such special reports as the Commission may require.

5007. [Reserved].

5008. Incorporation by Reference.

- (a) The Commission incorporates by reference the 1996 editions of the Uniform System of Accounts for Class A, B, and C Water Utilities, [and the Uniform System of Accounts for Class A, B, and C Wastewater Utilities](#), published by the National Association of Regulatory Utility Commissioners. No later amendments to or editions of the Uniform System of Accounts are incorporated into these rules.
- (b) The Commission incorporates by reference the American Water Works Association Standards, Volume 5, Number 1, revised as of April 1, 2002. No later amendments to or editions of the American Water Works Standards are incorporated into these rules.
- (c) Any material incorporated by reference in this Part 5 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, 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.

5009. - 5099. [Reserved].

OPERATING AUTHORITY

* * *

5103. 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 shall not extend, restrict, curtail, or abandon or discontinue without equivalent replacement, any service, service area, or facility not in the ordinary course of business without authority from the Commission.
- (b) An application to amend a certificate of public convenience and necessity in order to change, to extend, to restrict, to curtail, to abandon, or to discontinue any service, service area, or facility without equivalent replacement shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
 - (I) All information required in rules 5002(b) and 5002(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 5102.

- (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 5100.
- (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 5101.
- (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) Customer notice of application. In addition to complying with the notice requirements of the Commission's Rules ~~of~~[Regulating](#) Practice and Procedure, a utility applying to curtail, restrict, abandon or discontinue service without equivalent replacement shall prepare a written notice as provided in rule 5002(d)(I) - (XII) 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. The customer notice shall include a statement detailing the requested restriction, curtailment, or abandonment or discontinuance without equivalent replacement.
- (d) If no customers will be affected by the grant of the application, the notice must meet the requirements of 5002(d)(I) – (XII) and shall be mailed to the Board of County Commissioners of each affected county, and to the mayor of each affected city, town, or municipality.

* * *

5108. Tariffs.

- (a) General.
 - (I) A utility shall keep on file with the Commission the following documents pertaining to retail water service or combined retail water and sewer service: its current Colorado tariffs, forms of contracts and water or combined water and sewer service agreements. These documents, unless filed under seal, shall be available for public inspection at the Commission and at the principal place of business of the utility.
 - (II) All tariffs shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.
- (b) Filing and contents of tariff.
 - (I) In addition to the requirements and contents in rule 1210, the following shall be included in a utility's tariff, as applicable:

- (A) Information regarding any tariff provisions that specifically allocate the cost of service connections, other than meters, between the utility and the customer pursuant to rule~~paragraph~~ 5209(d).
- (B) Information regarding its meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, pursuant to rules 5303, 5304, 5305, and 5309.
- (C) Information regarding its benefit of service transfer policies, pursuant to rule 5401(c).
- (D) Information regarding its installment payment plans and other plans, pursuant to rule 5404.
- (E) Information regarding collection fees or miscellaneous service charges, pursuant to rules~~subparagraphs~~ 5403(c)(VI) and (VIII).
- (F) Information regarding after-hours restoration fees pursuant to rule 5409(b).
- (G) All other rules, regulations, and policies covering the relations of customer and utility.

* * *

5112. Simplified Regulatory Treatment.

- (a) Definitions. In addition to the definitions generally applicable to water or combined water and sewer utilities, the following definitions apply only in the context of this rule:
 - (I) "Customer" means any person or group of persons contracting for water service or combined water and sewer service from any utility for domestic, commercial, or industrial use, or for wholesale distribution. Multi-residential units, multi-commercial units, and wholesale purchasers of water supplying water service to multiple end-users, are not considered as singular customers; instead, the number of singular customers is determined by the number of singular units or end-users.
 - (II) "Small, Pprivately owned water company" means a utility that is owned by one or more persons that provides water service or combined water and sewer service and serves fewer than one thousand five hundred customers. "Small, Pprivately owned water company" does not include any utility owned or operated by any political subdivision of the state, a special district, or any municipal, quasi-municipal, or public corporation organized pursuant to Colorado law.

~~(III) "Small water company" means a utility that serves fewer than one thousand five hundred customers.~~

- (b) Simplified regulatory treatment. Five options are available for small, privately owned water companies seeking simplified regulatory treatment. The Annual Rate Adjustment, Resource Cost Pass-Through, Operating Ratio Methodology, and the Capital Improvement Reserve Options, as identified in this rule, shall be presumed by the Commission to be reasonable methods of simplified regulatory treatment unless data and evidence is provided to demonstrate that the option is not reasonable for the applicant. A small, privately owned water company seeking a Company Specific, Customized Option shall have the burden of proving that such an option is reasonable for the applicant and its customers, and that such an option is not discriminatory.
- (c) Procedures. The simplified regulatory treatment shall be implemented as follows:
 - (I) The small, privately owned water company shall file an application with the Commission requesting one or more of the options identified above. The application shall be filed in accordance with Commission Rules Regulating Practice and Procedure, 4 CCR 723-1. However, a small, privately owned water company is prohibited from participating in both the Annual Rate Adjustment Option and the Resource Cost Pass-Through Option at the same time.
 - (II) The application shall include any requirements of the respective option, as provided by paragraph (e) of this rule, and an explanation of how approval of the application will balance reasonable regulatory oversight with the costs and benefits of regulation, while continuing to consider the public interest, quality of service, financial condition, and just and reasonable rates.
 - (III) Notice of application to customers. Within five days of the filing of the application, the applicant shall provide notice to its customers of the filing of the application. Such notice shall be given by:
 - (A) Keeping open for public inspection at the applicant's local business office a copy of the utility's application with the Commission; and
 - (B) Within three days of filing the application with the Commission, the applicant shall cause notice of the application to be published in each newspaper having general circulation in each county in which the applicant provides service, or shall provide notice to all its customers by bill insert or direct mail.
 - (i) Either notice shall meet the requirements of paragraph 5002(d)(I) – (XII).
 - (ii) If the utility elects to provide such notice through bill inserts or direct mail to its customers, the utility shall also work with aggregate water service providers in its service area to ensure notice is provided to end-use customers served by the aggregate arrangement.
 - (IV) A small, privately owned water company may file an application to change to an alternative simplified regulatory treatment at any time. The application shall request

authorization to terminate the existing simplified regulatory treatment and shall request a new simplified regulatory treatment.

- (V) A small, privately owned water company may file an application to terminate an existing simplified regulatory treatment and return to traditional rate base regulation at any time. The Commission may set the application for hearing and existing rates for water services may be adjusted. At the conclusion of such a rate case proceeding, the rates and conditions established in the rate case proceeding will replace the rates and conditions developed under any simplified regulatory treatment option.
 - (VI) A small, privately owned water company shall not be permitted to terminate participation in one or more simplified regulatory treatment options for the purpose of avoiding a potential decrease in rates to its customers.
 - (VII) Nothing in these rules shall limit a customer's right to file a complaint against a small, privately owned water company. Nothing in these rules shall prohibit or restrict the Commission from initiating an investigation or complaint proceeding against a small, privately owned water company.
- (d) Reporting requirements. Each small, privately owned water company that has been granted simplified regulatory treatment, shall, as part of its annual report to the Commission, provide a count of all customers served by the utility. To comply with this requirement, the utility shall require multi-residential entities, multi-commercial entities, and wholesale purchasers of water supplying water service to multiple end-users, to annually furnish the company with a count of the number of singular units receiving water services directly or indirectly from such entities. In the event the small, privately owned water company fails to obtain and annually submit this information to the Commission, the Commission may revoke or deny simplified regulatory treatment for that company.
- (e) Simplified regulatory treatment options. The Commission may grant a small, privately owned water company authority to participate in any of the following simplified regulatory treatment options:
- (I) Annual rate adjustment option.
 - (A) The Commission on or before March 31 of each year, by letter, shall inform all participants in the Annual Rate Adjustment Option of the rate adjustment to be effective May 1, of each year. As prescribed by subparagraph (e)(I)(B) of this rule, the percentage adjustment shall be determined using the following figures:
 - (i) The annual percent change in the United States Gross Domestic Product Chain-Type Price Index (GDPPI) as published by the United States Department of Commerce, Bureau of Economic Analysis, and as published in the Economic Report Of The President, and;

- (ii) An appropriate measure of productivity, specifically the "Private And Non-Farm Business Multifactor Productivity Percentage Change" (PNFBMPP) as published by the Bureau of Labor Statistics, and as published in The Economic Report Of The President.

- (B) The percentage adjustment formula is:

$$\text{Price Adjustment} = \text{GDPPI} - \text{PNFBMPP}$$

- (C) On or before April 15 of each year, each small, privately owned water company participating in this simplified regulatory treatment shall file an advice letter and accompanying tariff sheets with the Commission to implement the change effective May 1.

- (II) Resource cost pass-through option. Under this option, the small, privately owned water company may seek Commission authority to pass-through price changes (increases and decreases) relating to the acquisition cost for wholesale water from a local municipality, other governmental entity, or other source as approved by the Commission. Following Commission approval to participate in this simplified regulatory treatment option, the small, privately owned water company shall timely inform the Commission of all increases or decreases in the cost of water and shall file an advice letter to implement all resulting changes in customer rates within 30 days of the effective date of the price change for wholesale water. For good cause, the small, privately owned water company may seek Commission approval to include other ~~utility water company~~ expenditures ordered by a governmental entity. Examples of such other expenditures could include, but would not necessarily be limited to, changes in water augmentation assessments and changes in costs associated with compliance with provisions of the Safe Drinking Water Act of 1974.

- (III) Operating ratio methodology option. Under this option the small, privately owned water company may request that the Commission employ an operating ratio methodology in determining appropriate rates to be charged by the water company or combined water and sewer company. An operating ratio methodology for setting rates differs from a traditional rate base methodology, and may be an acceptable tool in evaluating rates when little or no rate base exists.

- (IV) Reserve account for major capital improvements option. An applicant may seek Commission authority to establish a reserve account to fund future major capital expenditures. Under this option, the small, privately owned water company may be authorized to implement a monthly surcharge to fund a reserve account for future capital improvement expenditures. In filing an application to initiate this option or to amend any provisions of this option, the small, privately owned water company should clearly identify the proposed method for collecting funds to be contributed to the reserve account, and the expected use of such funds.

- (A) The level and method for collecting money for the reserve account for major capital improvements must be specifically approved by the Commission. Accordingly, the applicant must submit sufficient financial information for the Commission to review the company's proposed capital improvement needs and explain the merits of its funding methodology. Funds in the reserve account shall

be kept in a separate interest bearing cash account. Interest accrued shall be credited to the reserve account and become part of the corpus of the reserve account. Funds from the account shall not be employed for a purpose other than those permitted under this option. Disbursements from the fund shall be restricted to the uses identified in the application approved by the Commission. The burden of demonstrating that actual or proposed expenditures are reasonable and in the public interest shall be borne by the [small, privately owned](#) water company.

- (B) The small, privately owned water company shall report all disbursements from the reserve account by written notice to the Commission and to other persons as the Commission may direct. Disbursements from the reserve account that are found by the Commission to have been made improperly, or in violation of any statute, regulation, or order of the Commission shall be returned to the account or refunded to ratepayers as the Commission may direct.
 - (C) Plant capitalized by means of the reserve account shall be accounted for as a contribution in aid of construction.
- (V) Company specific, customized option.
- (A) A small, privately owned water company may file an application seeking Commission authorization to implement provisions of a company specific, customized option plan. The Commission shall consider the merits of all specific options presented and determine whether such provisions are consistent with the objectives of these rules.
 - (B) In presenting an option for the Commission's consideration, the [small, privately owned water](#) company shall bear the burden of proving that:
 - (i) The proposals appropriately balance reasonable regulatory oversight with the costs and benefits of regulation;
 - (ii) The provisions are not discriminatory; and
 - (iii) Implementing such provisions is in the public interest, improves the quality of water service [or combined water and sewer service](#) to customers, is financially compensatory, and promotes the development and maintenance of just and reasonable rates.
 - (C) The small, privately owned water company must maintain accounting records to provide sufficient financial information for the Commission to assess the merits of the proposal and its projected impact on the company.

- (f) Transitional provisions. When the number of customers served by the utility, as reported in its annual report to the Commission, meets or exceeds 1,500, the utility shall immediately notify the Commission and provide the Commission with a proposed transitional regulatory plan. For good cause shown, the Commission's regulatory oversight of the utility may continue to permit the utility to participate in regulatory treatment options as described in this rule when its customer count exceeds the established limit.

5113. - 5199. [Reserved].

FACILITIES

5200. Construction, Installation, Maintenance, and Operation.

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

5201. Instrumentation.

Each water or combined water and sewer utility shall install such indicating instruments or meters as may be necessary to obtain records of the water flow volume(s) of its plants. Each utility purchasing water shall install such instruments or meters as may be necessary to furnish the Commission with full information related to the purchases, including purchase dates, sources, volumes, and unit costs. Each utility shall keep a record of its periodic readings of such instruments.

5202. Purity and Pressure.

- (a) Each utility supplying water for domestic, commercial, or industrial purposes shall ensure that all water intended for human consumption and general household purposes is free from disease producing organisms, bacteria, and injurious chemical and physical substances, and is agreeable to sight and smell.
- (b) A utility shall maintain a steady pressure, not at any time falling below the adequate minimum for domestic service. Each utility furnishing fire hydrant service must be able to supply added service to local fire fighting equipment and facilities in accordance with the best standard practice. A utility shall maintain pressure and keep records in accordance with AWWA standards, unless otherwise required by the Water Quality Control Division of the Colorado Department of Public Health and Environment or county or municipal codes or ordinances.
- (c) A utility providing combined water and sewer service shall comply with the effluent limits outlined in the utility's Colorado Discharge Permit System permit issued by the Water Quality Control Division of the Colorado Department of Public Health and Environment.

5209. Service Connections.

- (a) Upon application of a bona fide applicant for service, the utility shall furnish, install, and maintain service pipe of suitable capacity, including the curb cock and curb box required, from its water main to the property line and for combined water and sewer providers, from its sewer main to the property line.
- (b) Except as provided in paragraphs (c) and (d) of this rule, service connections shall be furnished, installed, and maintained at the expense of the utility.
- (c) All meters used in connection with metered service shall be furnished, installed, and maintained at the expense of the utility, unless the Commission grants special authority to the contrary for good cause.
- (d) The utility may seek approval of tariff provisions that specifically allocate the cost of service connections, other than meters, between the utility and the customer. Such tariff proposals shall specify the terms and conditions that initiate such cost allocation. The utility shall account for all such funds received from customers as a contribution in aid of construction.
- (e) All facilities furnished or installed at the expense of the utility shall remain the utility's property and may be removed by the utility at any time after discontinuance of service.

* * *

5310. - 5399. [Reserved].

BILLING AND SERVICE

* * *

5401. Billing Information and Procedures.

- (a) All bills issued to customers for metered service furnished shall show:
 - (I) The dates and meter readings if applicable, beginning and ending the period during which service was rendered;
 - (II) An appropriate rate or rate code identification;
 - (III) Net amount due for regulated charges;

- (IV) The date by which payment is due, which shall not be earlier than 15 days after the mailing or the hand-delivery of the bill;
 - (V) A distinct marking to identify an estimated bill;
 - (VI) The total amount of all payments or other credits made to the customer's account during the billing period.
 - (VII) Any past due amount. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges.
 - (VIII) The identification of, and amount due for, unregulated charges, if applicable.
 - (IX) Any transferred amount or balance from any account other than the customer's current account.
 - (X) All other essential facts upon which the bill is based, including factors and constants, as applicable.
- (b) A utility that bills for unregulated services or goods shall allocate partial payments 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 tariff the utility's benefit of service transfer policies and criteria. The tariff shall contain an explanation of the process by which the utility will verify, prior to billing a customer under the benefit of service tariff, that the person to be billed in fact received the benefit of service.
- (d) A utility may transfer a prior unpaid debt to a customer's bill if the prior bill was in the name of the customer and the utility has informed the customer of the transferred amount and of the source of the unpaid debt (for example, and without limitation, the address of the premises to which service was provided and the period during which service was provided).
- (e) If it is offered in a tariff, upon request from a customer and where it is technically feasible, a utility may have the option to provide electronic billing (e-billing), in lieu of a typed or machine-printed bill, to the requesting customer. If a utility offers the option of e-billing, the following shall apply:
- (I) The utility shall obtain the affirmative consent of a customer to accept such a method of billing in lieu of printed bills.
 - (II) The utility shall not charge a fee for billing through the e-billing option.
 - (III) The utility shall not charge a fee based on customer payment options that is different from the fee charged for the use of the same customer payment options by customers who receive printed bills.
 - (IV) A bill issued electronically shall contain the same disclosures and Commission-required information as those contained in the printed bill provided to other customers.

* * *

5403. 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 paragraph, the 12 consecutive months must have ended no earlier than 60 days prior to the date of the application for service.
- (d) If a utility uses credit scoring to determine whether to require a cash deposit from an applicant for service or a customer, the utility shall have a tariff which describes, for each scoring model that it uses, the credit scoring evaluation criteria and the credit score limit which triggers a cash deposit requirement.
- (e) All utilities requiring deposits shall offer customers at least one non-cash alternative that does not require the use of the customer's social security number, in lieu of a cash deposit.
- (f) 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.
- (g) 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.

- (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. 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 tariff, may require a cash deposit or a new third party guarantor.
- (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 tariff.
- (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 premise 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.
- (k) A utility shall state in its tariff 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) Each 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 [Commission](#) ~~Staff~~ and in the manner provided in this paragraph.

- (I) At the request of the customer, the interest shall be paid to the customer either on the return of the cash deposit or annually. The simple interest on a cash deposit shall be earned from the date the cash deposit is received by the utility to the date the customer is paid. At the option of the utility, interest payments may be paid directly to the customer or by a credit to the customer's account.
 - (II) The simple interest to be paid on a cash deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent per annum, as quoted for one-year United States Treasury constant maturities, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, the ~~Commission~~~~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 ~~issue an order~~~~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 ~~the Commission's~~~~Staff's order~~~~letter~~, if necessary, each 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 the tariff, 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 tariff, 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 tariff, may require a cash deposit or a new third party guarantor.

* * *

5407. Discontinuance of Service.

- (a) A utility shall not discontinue the service of a customer for any reason other than the following:
 - (I) Nonpayment of regulated charges.
 - (II) Fraud or subterfuge.
 - (III) Service diversion.
 - (IV) Equipment tampering.
 - (V) Safety concerns.
 - (VI) Exigent circumstances.
 - (VII) Discontinuance ordered by any appropriate governmental authority.
 - (VIII) Properly discontinued service being restored by someone other than the utility when the original cause for proper discontinuance has not been cured.
- (b) A utility shall not discontinue service for nonpayment of any of the following:
 - (I) Any amount which has not appeared on a regular monthly bill or which is not past due. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges.
 - (II) Any amount due on another account now or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred either to an account which is for the same class of service or to an account which the customer has agreed will secure the other account. Any amount so transferred shall be considered due on the regular due date of the bill on which it first appears and shall be subject to notice of discontinuance as if it had been billed for the first time.
 - (III) Any amount due on an account on which the customer is or was neither the customer of record nor a guarantor, or any amount due from a previous occupant of the premises.

This subparagraph does not apply if the customer is or was obtaining service through fraud or subterfuge or if rule 5401(c) applies.

- (IV) Any amount due on any 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 which would prevent the meter from registering the actual amount of water 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 water consumption not properly registered. This notice shall be left at the time the removal or correction occurs.
 - (II) Provide the customer with written notice that the device or connection must be removed or corrected within 15 -days and that the customer may be billed for any estimated water consumption not properly registered. If the utility elects to take this action and the device or connection is not removed or corrected within the 15 days permitted, then within seven calendar days from the expiration of the 15 days, the utility shall remove or correct the device or connection pursuant to subparagraph (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 water consumption has or will occur and shall inform the customer that the customer may be billed for any estimated water 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 5404.
- (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) Medical emergencies.
 - (A) A utility shall postpone discontinuance of ~~water~~ service to a residential customer for 60 days from the date of a medical certificate issued by a Colorado-licensed physician or health care practitioner acting under a physician's authority which evidences that discontinuance of service will aggravate an existing medical emergency or create a medical emergency for the customer or a permanent resident of the customer's household. The customer may receive a single 30-day extension by providing a second medical certification prior to the expiration of the original 60-day period. A customer may invoke this subparagraph (IV)(A) only once in any twelve consecutive months.
 - (B) As a condition of obtaining a new installment payment plan on or before the last day covered by a medical certificate, a customer who had already entered into a payment arrangement, but had broken the arrangement prior to seeking a medical certification, ~~may~~ be required to pay all amounts that were due up to the date of the original medical certificate as a condition of obtaining a new payment arrangement. At no time shall a payment from the customer be required as a condition of honoring a medical certificate.
 - (C) The certificate of medical emergency shall be in writing, sent to the utility from the office of a licensed physician, and show clearly the name of the customer or individual whose illness is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical emergency. Such certification shall be incontestable by the utility as to the medical judgment, although the utility may use reasonable means to verify the authenticity of such certification.

5411. Emergencies – Public Notification Plans.

Every water and combined water and sewer utility shall prepare and present to the Commission for its approval an emergency notification plan for how the utility will inform its customers and the community of emergency enforcement actions and/or corrective measures required by the Colorado Department of Public Health and Environment.

5412. - 5999. [Reserved].

GLOSSARY OF ACRONYMS

* * *

G:\ORDER\R09-0437-I_09R-130W_MLJF9068_WaterSewerRules.doc