

Decision No. C10-0697

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

DOCKET NO. 09R-846E

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IN THE MATTER OF THE PROPOSED RULES REGULATING FINING OF ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3 UNDER HOUSE BILL 08-1227.

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**ORDER LIFTING STAY, GRANTING EXCEPTIONS,  
AND ADOPTING RULES**

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Mailed Date: July 7, 2010

Adopted Date: June 23, 2010

**I. BY THE COMMISSION**

**A. Statement**

1. The Commission initiated this proceeding on November 20, 2009 by issuing a Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. By Decision No. C09-1303, we stated that the basis and purpose of the rulemaking proceeding was to make changes to the Commission's rules necessitated by the passage of House Bill 08-1227 (the bill). The bill adds, *inter alia*, § 40-7-113.5 and § 40-7-116.5, C.R.S., giving the Commission the statutory authority for the proposed rules.

2. We assigned this proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing by Decision No. C09-1303. The hearing took place on February 4, 2010.

3. Public Service Company of Colorado and Black Hills/Colorado Electric Utility Company filed joint written comments, and the Office of Consumer Counsel filed comments in this proceeding. The hearing in this matter was held simultaneously with the hearings for the proposed fining rules in the telecommunications, gas, and water and combined water and sewer

industries, Docket Nos. 09R-845T, 09R-847G, and 09R-848W respectively. Oral comments were provided during this hearing by the telecommunications, electric, and gas industries.

4. ALJ Ken F. Kirkpatrick issued his Recommended Decision Adopting Rules on April 16, 2010 (Decision No. R10-0356 or Recommended Decision).

5. We stayed the Recommended Decision and set a deadline for the filing of exceptions by Decision No. C10-0432, mailed on May 6, 2010.

6. On May 21, 2010, Black Hills/Colorado Electric Utility Company, L.P. and Public Service Company of Colorado filed exceptions (Joint Exceptions) to the Recommended Decision. The Joint Exceptions point out that the definitions contained in Appendix A to the recommended decision in Docket 09R-847G do not match the definitions contained in the instant matter. The Joint Exceptions request that the language in the electric fining rules be revised in order to comport with the language contained in the gas fining rules.

7. In our review of the rules adopted by the Recommended Decision in this matter in conjunction with the rules adopted by the recommended decisions in Docket Nos. 09R-845T, 09R-846E, and 09R-847G, we found that the same situation with the telecommunications fining rules and the water and combined water and sewer fining rules. We are making minor changes to these rules in the other matters to ensure consistency of the fining rules across the telecommunications, electric, gas, and water and combined water and sewer rules and will grant the Joint Exceptions.

8. Rule 3009 adds the definitions for civil penalty, civil penalty assessment, civil penalty assessment notice, and intentional violation. We have revised the definitions for civil penalty, civil penalty assessment, and civil penalty assessment notice to match the definitions in

the rules adopted by the recommended decision in Docket 09R-847G regarding the fining rules for gas utilities.

9. We have also reformatted the tables of finable offenses to make them consistent with the tables adopted by the recommended decision in Docket No. 09R-846E regarding the fining rules for electric industry.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The stay of Decision No. C10-0432 is hereby vacated.
2. The Exceptions filed by Black Hills/Colorado Electric Utility Company, L.P. and Public Service Company of Colorado are granted.
3. The Commission adopts a modification to the rules attached to Recommended Decision R10-0356 consistent with the above discussion. The Commission adopts the rules attached to this Order as Attachment A.
4. The rules shall be effective 20 days after the publication in the Colorado Register by the Office of the Secretary of State. (The rules shall be effective August 30, 2010 if published in the August 10, 2010 edition of the *Colorado Register* by the Office of the Secretary of State.)
5. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.
6. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

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

8. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
June 23, 2010.**

(SEAL)



ATTEST: A TRUE COPY

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

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RONALD J. BINZ

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JAMES K. TARPEY

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MATT BAKER

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Commissioners

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

#### BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-124(2), 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-113.5, 40-7-116.5, 40-8.7-105(5), and 40-9.5-107(5), C.R.S.

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[indicates omission of unaffected rules]

[new rule follows]

#### CIVIL PENALTIES

##### 3009.- Definitions.

The following definitions apply to rules 3009, 3010, and 3976, 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 intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission regulations, rules, or Commission orders/decisions.
- (b) "Civil penalty assessment" means the act by the Commission of imposing a civil penalty against a public utility after the public utility has admitted liability or has been adjudicated by the Commission to be liable for intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders.

- (c) "Civil penalty assessment notice" means the written document by which a public utility is given notice of an alleged intentional violation of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders and of a proposed civil penalty.
- (d) —"Intentional violation." A person acts "intentionally" or "with intent" when his conscious objective is to — cause the specific result proscribed by the statute, rule, or order defining the violation.

**3010. —Regulated Electric Utility Violations, Civil Enforcement, and Enhancement of Civil Penalties.**

- (a) The Commission may impose a civil penalty in accordance with the requirements and procedures 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 intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders as specified in §§ 40-7-113.5 and 40-7-116.5, C.R.S., and in these rules.
- (b) The director of the commission or his or her designee shall have the authority to issue civil penalty assessments for the violations enumerated in § 40-7-113.5, C.R.S., subject to hearing before the Commission. When a public utility is cited for an alleged intentional violation, the public utility shall be given notice of the alleged violation in the form of a civil penalty assessment notice.
- (c) The public utility cited for an alleged intentional violation may either admit liability for the violation pursuant to § 40-7-116.5(1)(c) or the public utility may contest the alleged violation pursuant to § 40-7-116.5(1)(d), C.R.S. At any hearing contesting an alleged violation, trial staff shall have the burden of demonstrating a violation by a preponderance of the evidence.
- (d) In any written decision entered by the Commission pursuant to § 40-6-109, C.R.S., adjudicating a public utility liable for an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order, the Commission may impose a civil penalty of not more than two thousand dollars, pursuant to § 40-7-113.5(1), C.R.S. In imposing any civil penalty pursuant to § 40-7-113.5(1), C.R.S., the Commission shall consider the factors set forth in Rule 1302(b).
- (e) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
- (f) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
- (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
  - (II) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable; and
  - (III) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable.

- (g) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted two or more prior intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
  - (II) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment or been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
  - (III) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent prior instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (h) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the date of such alleged conduct for which tripled civil penalties are sought.
- (i) Nothing in this rule shall preclude the assessment of tripled penalties when doubled and tripled penalties are sought in the same civil penalty assessment notice.
- (j) The Commission shall not issue a decision on doubled or tripled penalties until after the effective date of the administratively final Commission decision upon which the single civil penalty was based.
- (k) 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 penalty amount sought if paid within ten days of the public utility's receipt of the civil penalty assessment notice.
- (l) The civil penalty assessment notice shall contain the maximum amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S., if any.
- (m) A penalty surcharge referred to in paragraph (l) of this rule shall be 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.
- (n) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of issuing civil penalties.

**3011. – 3099. [Reserved].**

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[indicates omission of unaffected rules]

[new rule follows]

**3976. — Regulated Electric Utility Rule Violations, Civil Enforcement, and Civil Penalties.**

An admission to or Commission adjudication for liability for an intentional violation of the following 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 limits set in § 40-7-113.5, C.R.S.

<b>Citation</b>	<b>Description</b>	<b>Maximum Penalty Per Violation</b>
	Articles 1-7 of Title 40, C.R.S.	\$2000
	Commission Order	\$2000
Rule 3005(a)-(c);(f)	Records and Record Retention	\$2000
Rule 3100(a)	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	\$2000
Rule 3101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to Operate in a Service Territory	\$2000
Rule 3102(a)	Obtaining a Certificate of Public Convenience and Necessity for Facilities	\$2000
Rule 3103(a),(c),(d)	Amending a Certificate of Public Necessity for Changes in Service Territory or Facilities	\$2000
Rule 3108(a),(c)	Keeping a Current Tariff on File with the Commission	\$2000
Rule 3109	Filing a New or Changed Tariff with the Commission	\$2000
Rule 3110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 3200(a),(b)	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 3204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	\$2000
Rule 3210	Line Extensions	\$2000
Rule 3251	Reporting Major Events	\$2000

Rule 3252	Filing a Report on a Major Event with the Commission	\$2000
Rule 3303(a)-(j)	Meter Testing	\$2000
Rule 3306	Record Retention of Tests and Meters	\$2000
Rule 3309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 3401	Billing Information, Procedures, and Requirements	\$2000
Rule 3603	Resource Plan Filing Requirements	\$2000
Rule 3654(a),(d)	Renewable Energy Standards	\$2000
Rule 3657(a)	QRU Compliance Plans	\$2000
Rule 3662	Annual Compliance Reports	\$2000
Rule 3803(c)	Master Meter Exemption Requirements	\$2000
<del>Rule 3004(b)-(f)</del>	<del>Disputes and Informal Complaints</del>	<del>\$1000</del>
<del>Rule 3202(a),(b),(f),(g)</del>	<del>Maintaining a Standard Voltage and Frequency</del>	<del>\$1000</del>
<del>Rule 3203(a),(b)</del>	<del>Trouble Report Response, Interruptions and Curtailments of Service</del>	<del>\$1000</del>
<del>Rule 3405</del>	<del>Provision of Service, Rate, and Usage Information to Customers</del>	<del>\$1000</del>
<del>Rule 3406</del>	<del>Provision of Source Information to Customers</del>	<del>\$1000</del>
<del>Rule 3253</del>	<del>Filing a Supplemental Report on a Major Event with the Commission</del>	<del>\$1000</del>
<del>Rule 3208(a)-(c)</del>	<del>Poles</del>	<del>\$500</del>
<del>Rule 3403(a)-(q),(s)</del>	<del>Applications for Service, Customer Deposits, and Third Party Guarantees</del>	<del>\$500</del>
<del>Rule 3658</del>	<del>Standard Rebate Offer</del>	<del>\$500</del>
<del>Rule 3006(a),(b),(c)-(m)</del>	<del>Annual Reporting Requirements</del>	<del>\$100</del>
<del>Rule 3304</del>	<del>Scheduled Meter Testing</del>	<del>\$100</del>
<del>Rule 3305</del>	<del>Meter Testing Upon Request</del>	<del>\$100</del>
<del>Rule 3402(a),(c),(d)</del>	<del>Meter and Billing Error Adjustments</del>	<del>\$100</del>

<a href="#">Rule 3404(a)-(f)</a>	<a href="#">Availability of Installation Payments to Customers</a>	<a href="#">\$100</a>
<a href="#">Rule 3407</a>	<a href="#">Discontinuance of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3408(a)-(g);(i)</a>	<a href="#">Notice of Discontinuance of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3409</a>	<a href="#">Restoration of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3411(c)(IV),(d)(I),(d)(II),(e)</a>	<a href="#">Low-Income Energy Assistance Act</a>	<a href="#">\$100</a>
<a href="#">Rule 3614</a>	<a href="#">Filing of Annual Reports</a>	<a href="#">\$100</a>

<a href="#">Citation</a>	<a href="#">Description</a>	<a href="#">Maximum Penalty Per Violation</a>
<a href="#">Rule 3004(b)-(f)</a>	<a href="#">Disputes and Informal Complaints</a>	<a href="#">\$1000</a>
<a href="#">Rule 3202(a),(b),(f),(g)</a>	<a href="#">Maintaining a Standard Voltage and Frequency</a>	<a href="#">\$1000</a>
<a href="#">Rule 3203(a),(b)</a>	<a href="#">Trouble Report Response, Interruptions and Curtailments of Service</a>	<a href="#">\$1000</a>
<a href="#">Rule 3405</a>	<a href="#">Provision of Service, Rate, and Usage Information to Customers</a>	<a href="#">\$1000</a>
<a href="#">Rule 3406</a>	<a href="#">Provision of Source Information to Customers</a>	<a href="#">\$1000</a>
<a href="#">Rule 3253</a>	<a href="#">Filing a Supplemental Report on a Major Event with the Commission</a>	<a href="#">\$1000</a>

<a href="#">Citation</a>	<a href="#">Description</a>	<a href="#">Maximum Penalty Per Violation</a>
<a href="#">Rule 3208(a)-(c)</a>	<a href="#">Poles</a>	<a href="#">\$500</a>
<a href="#">Rule 3403(a)-(g);(s)</a>	<a href="#">Applications for Service, Customer Deposits, and Third Party Guarantees</a>	<a href="#">\$500</a>
<a href="#">Rule 3658</a>	<a href="#">Standard Rebate Offer</a>	<a href="#">\$500</a>

<a href="#">Citation</a>	<a href="#">Description</a>	<a href="#">Maximum Penalty Per Violation</a>
<a href="#">Rule 3006(a),(b),(e)-(m)</a>	<a href="#">Annual Reporting Requirements</a>	<a href="#">\$100</a>

<a href="#">Rule 3304</a>	<a href="#">Scheduled Meter Testing</a>	<a href="#">\$100</a>
<a href="#">Rule 3305</a>	<a href="#">Meter Testing Upon Request</a>	<a href="#">\$100</a>
<a href="#">Rule 3402(a),(c),(d)</a>	<a href="#">Meter and Billing Error Adjustments</a>	<a href="#">\$100</a>
<a href="#">Rule 3404(a)-(f)</a>	<a href="#">Availability of Installation Payments to Customers</a>	<a href="#">\$100</a>
<a href="#">Rule 3407</a>	<a href="#">Discontinuance of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3408(a)-(g):(i)</a>	<a href="#">Notice of Discontinuation of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3409</a>	<a href="#">Restoration of Service</a>	<a href="#">\$100</a>
<a href="#">Rule 3411(c)(IV),(d)(I),(d)(II),(e)</a>	<a href="#">Low-Income Energy Assistance Act</a>	<a href="#">\$100</a>
<a href="#">Rule 3614</a>	<a href="#">Filing of Annual Reports</a>	<a href="#">\$100</a>

**3977. – 3999. [Reserved].**

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[indicates omission of unaffected rules]