

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.

ORDER LIFTING STAY AND ADOPTING RULES

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 Water and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* (CCR) 723-5. By Decision No. C09-1305, 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. C09-1305. The hearing took place on February 4, 2010.

3. No written comments were offered in this proceeding. The hearing in this matter was held simultaneously with the hearings for the proposed fining rules in the telecommunications, electric, and gas industries, Docket Nos. 09R-845T, 09R-846E, and 09R-847G respectively. Oral comments were provided during this hearing by the

telecommunications, electric, and gas industries. No oral comments were provided by any water or combined water and sewer providers.

4. ALJ Ken F. Kirkpatrick issued his Recommended Decision Adopting Rules on April 16, 2010 (Decision No. R10-0359 or Recommended Decision).

5. We stayed the Recommended Decision and set a deadline for the filing of exceptions by Decision No. C10-0435, mailed on May 5, 2010.

6. No exceptions to the Recommended Decision were filed in this matter.

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 are making minor changes to these rules on our own motion to ensure consistency of the fining rules across the telecommunications, electric, gas, and water and combined water and sewer rules.

8. Rule 5009 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. C10-0435 is hereby vacated.

2. The Commission adopts a modification to the rules attached to Recommended Decision R10-0359 consistent with the above discussion. The Commission adopts the rules attached to this Order as Attachment A.

3. 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.)

4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

5. 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.

6. 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.

7. This Order is effective upon its Mailed Date.

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

(S E A L)



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

JAMES K. TARPEY

MATT BAKER

Commissioners

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, 40-4-109, 40-7-113.5, and 40-7-116.5, 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 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.

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 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.

5011. – 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.

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.

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
	<u>Article 1-7 of Title 40, C.R.S.</u>	<u>\$2000</u>
	<u>Commission Order</u>	<u>\$2000</u>
<u>Rule 5005</u>	<u>Records and Record Retention</u>	<u>\$2000</u>
<u>Rule 5100</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for a Franchise</u>	<u>\$2000</u>
<u>Rule 5101(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service territory</u>	<u>\$2000</u>
<u>Rule 5102(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for facilities</u>	<u>\$2000</u>
<u>Rule 5103(a),(c),(d)</u>	<u>Amending a Certificate of Public Necessity for changes in service territory or facilities</u>	<u>\$2000</u>
<u>Rule 5108</u>	<u>Keeping a Current Tariff on File with the Commission</u>	<u>\$2000</u>
<u>Rule 5109</u>	<u>Filing a New or Changed Tariff with the Commission</u>	<u>\$2000</u>

Rule 5110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 5112(d),(f)	Simplified Regulatory Treatment	\$2000
Rule 5200	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 5204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	\$2000
Rule 5210	Line Extensions	\$2000
Rule 5303(a)-(f)	Meter Testing	\$2000
Rule 5306	Record Retention of Tests and Meters	\$2000
Rule 5309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 5401	Billing Information, Procedures, and Requirements	\$2000
Rule 5411(a),(b)	Emergencies – Public Notification Plans	\$2000
<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
5004(b)-(f)	Disputes and Informal Complaints	\$1000
Rule 5202	Maintaining Appropriate Purity and Pressure Standards	\$1000
Rule 5203	Trouble Report Response, Interruptions and Curtailments of Service	\$1000
Rule 5405	Provision of Service, Rate, and Usage Information to Customers	\$1000

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
<u>Rule 5403</u>	<u>Applications for Service, Customer Deposits, and Third Party Guarantees</u>	<u>\$500</u>

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
<u>Rule 5006</u>	<u>Annual Reporting Requirements</u>	<u>\$100</u>
<u>Rule 5304</u>	<u>Scheduled Meter Testing</u>	<u>\$100</u>
<u>Rule 5305</u>	<u>Meter Testing Upon Request</u>	<u>\$100</u>
<u>Rule 5402(a),(c),(d)</u>	<u>Meter and Billing Error Adjustments</u>	<u>\$100</u>
<u>Rule 5404(a)-(f)</u>	<u>Availability of Installation Payments to Customers</u>	<u>\$100</u>
<u>Rule 5407</u>	<u>Discontinuance of Service</u>	<u>\$100</u>
<u>Rule 5408(a)-(g):(i)</u>	<u>Notice of Discontinuation of Service</u>	<u>\$100</u>
<u>Rule 5409</u>	<u>Restoration of Service</u>	<u>\$100</u>

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
	<u>Article 1-7 of Title 40, C.R.S.</u>	<u>\$2000</u>
	<u>Commission Order</u>	<u>\$2000</u>
<u>Rule 5005</u>	<u>Records and Record Retention</u>	<u>\$2000</u>
<u>Rule 5100</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for a Franchise</u>	<u>\$2000</u>
<u>Rule 5101(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service territory</u>	<u>\$2000</u>

Rule 5102(a)	Obtaining a Certificate of Public Convenience and Necessity for facilities	\$2000
Rule 5103(a),(c),(d)	Amending a Certificate of Public Necessity for changes in service territory or facilities	\$2000
Rule 5108	Keeping a Current Tariff on File with the Commission	\$2000
Rule 5109	Filing a New or Changed Tariff with the Commission	\$2000
Rule 5110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 5112(d),(f)	Simplified Regulatory Treatment	\$2000
Rule 5200	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 5204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	\$2000
Rule 5210	Line Extensions	\$2000
Rule 5303(a)-(f)	Meter Testing	\$2000
Rule 5306	Record Retention of Tests and Meters	\$2000
Rule 5309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 5401	Billing Information, Procedures, and Requirements	\$2000
Rule 5411(a),(b)	Emergencies — Public Notification Plans	\$2000

Citation	Failure to comply with Commission Rules regarding:	Maximum Penalty Per Violation
5004(b)-(f)	Disputes and Informal Complaints	\$1000
Rule 5202	Maintaining Appropriate Purity and Pressure Standards	\$1000
Rule 5203	Trouble Report Response, Interruptions and Curtailments of Service	\$1000
Rule 5405	Provision of Service, Rate, and Usage Information to Customers	\$1000

Citation	Failure to comply with Commission Rules regarding:	Maximum Penalty Per Violation
Rule 5403	Applications for Service, Customer Deposits, and Third Party Guarantees	\$500

Citation	Failure to comply with Commission Rules regarding:	Maximum Penalty Per Violation
Rule 5006	Annual Reporting Requirements	\$100
Rule 5304	Scheduled Meter Testing	\$100
Rule 5305	Meter Testing Upon Request	\$100
Rule 5402(a),(c),(d)	Meter and Billing Error Adjustments	\$100
Rule 5404(a)-(f)	Availability of Installation Payments to Customers	\$100
Rule 5407	Discontinuance of Service	\$100
Rule 5408(a)-(g);(i)	Notice of Discontinuation of Service	\$100

Rule 5409	Restoration of Service	\$100
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[indicates omission of unaffected rules]