

P.O. Box 840  
Denver, CO 80201-0840

Sub. First Revised \_\_\_\_\_ Sheet No. R49 \_\_\_\_\_  
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RULES AND REGULATIONS  
ELECTRIC SERVICE  
GENERAL

INDEMNITY TO COMPANY

Customer shall hold the Company harmless and indemnify it against all claims and liability for injury to persons or damage to property when such damage or injury results from or is occasioned by the facilities located on customer's side of the point of delivery unless caused by the negligence or wrongful acts of Company's agents or employees.

ENVIRONMENTAL MATTERS

All electric service provided by Company including distribution or transmission line extension agreements shall be subject to the following Environmental Matters provisions. All references in this Environmental Matters section to customer shall be deemed to also include applicants under the Service and Connection and Distribution Line Extension Policy, under these Rules and Regulations, including applicants that have entered into an Extension Agreement.

Nothing in this Environmental Matters section, ~~nor any Environmental Agreement entered into under this section of the tariff,~~ shall be construed to limit the authority of the State of Colorado to administer and enforce any state or federal Environmental Law, including but not limited to the Voluntary Cleanup and Redevelopment Act, C.R.S. § 25-16-301 et seq., nor shall this Environmental Matters section, ~~nor any Environmental Agreement under this section of this tariff~~ be construed to modify, revise, limit, subordinate or amend any state or federal Environmental Law, including but not limited to, the Voluntary Cleanup and Redevelopment Act, C.R.S. § 25-16-301 et seq. and any applicable agreement or No Further Action determination by the State of Colorado under the Voluntary Cleanup and Redevelopment Act, C.R.S. § 25-16-301 et seq.

Definitions

As used in this Environmental Matters section, the following definitions shall apply:

Claims

~~Shall have the meaning ascribed to it in the Environmental Indemnification and Release for Property paragraph below.~~

Company Materials

~~Any Hazardous Materials first brought onto and introduced to Property or Customer Controlled Property by Company or Company Parties. Company Materials shall not include any preexisting Hazardous Materials on the Property or Customer Controlled Property unless they were first brought onto and introduced to Property or Customer Controlled Property by Company or Company Parties.~~

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Colorado PUC Filings System

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ENVIRONMENTAL MATTERS – Cont'd

Definitions – Cont'd

Company Parties

~~Shall have the meaning ascribed to it in the Environmental Indemnification and Release for Property paragraph below.~~

Customer Controlled Property

Any real property that is not owned by customer, but to which customer requests the Company supply service.

Environmental Laws

Any federal, state, or local laws (including common law), regulations, ordinances, orders or decrees of any applicable authority relating to, or claiming jurisdiction over, the property in question, concerning protection or preservation of human health, the environment or natural resources including, without limitation, the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. § 9601, et seq.) (CERCLA), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Hazardous Material Transportation Act, (49 U.S.C. § 5101, et seq.), the Federal Water Pollution Control Act, (33 U.S.C. § 1251, et seq.), the Clean Air Act, (42 U.S.C. § 7401, et seq.), the Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021b et seq., and applicable state counterparts, and their implementing regulations, all as amended from time-to-time, as well as any other such authorities relating to (i) any spill, discharge, release or emission to the environment (including, but not limited to, air, surface water, groundwater, sand, soils, sediment); (ii) the quality of any environmental medium; (iii) the generation, treatment, recycling, storage, disposal, transportation or other handling or management of Hazardous Materials; (iv) the contamination or pollution of any environmental medium; or (v) responsibility for environmental conditions or activities affecting the environment.

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ENVIRONMENTAL MATTERS – Cont'd

Definitions – Cont'd

Hazardous Materials

Any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed, or identified under any Environmental Laws, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste, solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

Notwithstanding the foregoing and in no event shall Hazardous Materials include materials that customer demonstrates, by providing sufficient and applicable information to the Company, are present in a form, location, or concentration that do not trigger worker protection, cleanup, or solid waste, radioactive materials or waste, or hazardous waste management or disposal requirements under Environmental Laws or, if disturbed, may not otherwise pose an imminent and substantial risk to human health or the environment.

Property

Any real property owned by customer and/or real property dedicated by customer to a governmental entity for public purposes, but with respect to dedicated property only for the period within three years following such dedication, provided this time period may be adjusted in any environmental agreement entered into between Company and customer executed pursuant to the Environmental Agreement provision below and hereinafter referred to as Environmental Agreement. For governmental entities, public streets, highways or alleys (including any associated sidewalks, median strips and highway shoulders) owned in fee by a governmental entity public rights-of-way (whether acquired by dedication or otherwise) are not considered Property as defined in this Environmental Matters section except when the Company is providing utility service associated with the construction, operation, maintenance or improvement of such public street, highway or alley, or has been requested to provide such utility service by the governmental entity.

Work Area

Any area(s) where work (including all associated activities) to extend, install, relocate, maintain and/or repair utility facilities occurs on the Property and/or Customer Controlled Property.

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ENVIRONMENTAL MATTERS – Cont'd

Mandatory Disclosures

If requested by Company, Unless a written agreement between Company and customer provides otherwise, customer shall, if requested by Company, disclose to the Company (a) (i) any Hazardous Materials the customer knows or reasonably suspects to be present in the vicinity of the Work Area or that could be reasonably expected to impact the Work Area, and (ii) any other information that would help the Company adequately assess the risks of working in the area, and/or (b) any remediation/monitoring equipment or subterranean structures, that the customer knows or reasonably suspects to be located on, underlying, in, over, or adjacent to, or in the vicinity of the Work Area, or that could otherwise reasonably be expected to impact the Work Area. If requested by the customer, the Company shall agree to treat such disclosures as confidential information (to the extent such information is not publically available), which shall not be shared with third parties unless ordered by the Commission, a court of law or otherwise required to be disclosed by law. This Mandatory Disclosures provision shall not apply to residential customers.

Clean Corridor Requirement

Unless a written agreement between Company and customer provides otherwise, customer shall, If requested by Company, in connection with the extension, installation, or relocation, maintenance or repair of utility facilities, customer shall provide Company with utility corridors that are free from Hazardous Materials and/or perform trenching/boring and backfill in utility corridors on the Property and/or Customer Controlled Property, or alternate location agreed to by customer and Company, pursuant to dimensions and other specifications provided by Company. However, such trenching and backfill/boring will be the responsibility of the customer only in the event that (1) the customer requests to perform such work and Company agrees in writing, or (2) the Company determines that the presence of Hazardous Materials is of such nature, extent or severity that the performance of the work presents (A) a risk to the environment or to the health and safety of the public, the Company, the Company's employees, contractors or agents, and/or (B) a liability risk to the Company. If requested by customer in writing, the Company shall provide customer with a general statement as to why the Company believes there is a risk or outlined in (A) and/or (B) directly above. To the extent the customer performs any utility trenching or backfilling, the customer will not be charged for such portion of the utility trenching or backfilling performed (or will be refunded any funds it has paid the Company for such portion of such activities). This Clean Corridor Requirement provision shall not apply to residential customers.

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ENVIRONMENTAL MATTERS – Cont'd

Management, Transportation and Disposal of Hazardous Materials

~~— In the event Hazardous Materials, other than Company Materials, are known or reasonably suspected to exist in, over, on, or under the Property and/or Customer Controlled Property, or are encountered by the Company during Company's performance of trenching, backfilling or other utility service work, customer, at the request of Company, must provide Company with a qualified environmental professional or specialist to oversee and direct the identification, management and/or disposal of any Hazardous Materials, other than Company Materials, in, on, over or under the Property and/or Customer Controlled Property for the duration of Company's utility service work.~~

~~— Under all circumstances customer shall be responsible for the management, transportation, and/or disposal, whether or not customer is directing or performing the same, of any Hazardous Materials, other than Company Materials, that may be encountered on Property and/or Customer Controlled Property in accordance with applicable Environmental Laws. In no event shall Company be identified or listed as the generator of any Hazardous Materials, other than Company Materials, that are encountered on the Property and/or Customer Controlled Property.~~

~~— Customer further agrees to reimburse Company for all reasonable direct and indirect costs and/or expenses it incurs related to the management, transportation and disposal of Hazardous Materials, other than Company Materials, and all reasonable costs and/or expenses to perform any activities related to the provision of electric service that are directly or indirectly related to the presence of any Hazardous Materials, other than Company Materials in, over, on, or under Property and/or Customer Controlled Property. Such costs and/or expenses may include, without limitation, delays in the construction of trenching/boring, delays related to customer's obligations for the removal, transportation, management and disposal of Hazardous Materials, damage or delays related to the presence of any surface or subsurface environmental monitoring and/or remediation equipment, and all commercially reasonable mobilization/demobilization/crew stand-by fees; provided, however, such costs and/or expenses shall exclude attorneys' fees, lost profits, internal Company overhead, and any third party delay costs (other than any Company Party costs). No period of delay for which the Company claims any indirect costs and/or expenses shall include time elapsed during negotiation of the terms and conditions of any Environmental Agreement or during any Dispute Resolution.~~

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ENVIRONMENTAL MATTERS – Cont'd

Management, Transportation and Disposal of Hazardous Materials

Cont'd

~~Customer shall not seek any compensation from Company related to delays in Company's scheduled installation of its facilities that are caused by customer, including without limitation, delays related to the customer's obligations for the removal, transportation, management and disposal of Hazardous Materials, other than Company Materials. Nothing herein shall affect customer's obligations under the Environmental Indemnification and Release for Property and the Environmental Release for Customer Controlled Property provisions of this Environmental Matters section of these Rules and Regulations, including, without limitation, the indemnity for reasonable attorneys' fees.~~

~~Customer's responsibility for the management, transportation and disposal of Hazardous Materials, other than Company Materials, in accordance with applicable Environmental Laws, and to reimburse Company for costs related to the presence of such materials, as set forth herein, shall apply regardless of whether Company performs trenching/boring, backfilling or other utility service work, or whether trenching/boring and backfilling work is performed by customer pursuant to the Clean Corridor Requirement provision above. This Management, Transportation and Disposal of Hazardous Materials provision shall not apply to residential customers.~~

Cessation of All Work

Unless a written agreement between Company and customer provides otherwise and, notwithstanding anything to the contrary in the Rules and Regulations, if the Company encounters or disturbs any Hazardous Materials in the ordinary course of its electric business on Property or Customer Controlled Property, Company may cease all activities related to the installation, relocation, maintenance or repair of Company facilities at that location until customer has provided the Company notification that, upon Customer's information and belief, such encountered and disturbed Hazardous Materials have been excavated/removed, managed and/or disposed of in accordance with applicable Environmental Laws. If the Company encounters or disturbs any Hazardous Materials in the ordinary course of its electric business on any other property, Company may cease all activities related to the installation, relocation, maintenance or repair of Company facilities at that location until the responsible party has provided the Company notification that, upon the responsible party's information and belief, such encountered and disturbed Hazardous Materials have been excavated/removed, managed and/or disposed of in accordance with applicable Environmental Laws.

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ENVIRONMENTAL MATTERS – Cont'd

Cessation of All Work – Cont'd

If requested by Company, customer or any responsible party, as the case may be, shall provide Company with such notification in writing. If Company ceases work under this provision, it may also resume work in an alternate location if an alternative clean corridor and Work Area are made available to the Company. Where such Hazardous Materials are encountered or disturbed on property that is not customer Property and/or Customer Controlled Property, and where a responsible party is uncooperative or unidentified, the Company shall use commercially reasonable efforts to identify an acceptable alternative clean corridor or other potential solution that otherwise reasonably addresses the Company's concerns.

Environmental Indemnification for Property

~~Customer indemnifies, and agrees to defend Company, its directors, officers, partners, shareholders, members, managers, owners, agents employees, guests, invitees, and representatives (collectively, Company Parties), or any of them, from and against any and all civil claims, orders, suits, liabilities, judgments, demands, actions, causes of action, penalties, fines, losses, costs, damages and expenses, including court costs and reasonable attorneys fees for personal injury (including death) or third party property damages, and for all threatened claims that could be asserted against Company by a federal, state or local government entity or by a third party or customer for violations of any Environmental Laws (collectively, Claims) that arise out of or relate to any or all of the following: (a) the application, discharge, release, spill, handling, storage or disposal of Hazardous Materials in, over, on, or under Property; (b) any off-site transportation and disposal of such Hazardous Materials; and (c) the presence of any Hazardous Materials in, over, on, or under Property. This indemnification is effective irrespective of whether work or activities of the Company causes, contributes to or exacerbates the release of any Hazardous Materials. This indemnification shall not apply, however, (1) in the case of Company Materials, but only to the extent of such Company Materials or (2) for damages, costs or expenses directly associated with any negligence or intentional or willful misconduct by the Company or Company Parties, but only to the extent of such divisible or allocable share directly attributed to such negligence or intentional or willful misconduct.~~

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ENVIRONMENTAL MATTERS – Cont'd

Environmental Indemnification for Property – Cont'd

~~Nothing in this paragraph shall alter, narrow, or otherwise limit the scope of any other liability and indemnification provisions in these Rules and Regulations, including, without limitation, the Liability section and/or Indemnity to Company section of these Rules and Regulations. For purposes of any Environmental Agreement, indemnification provisions in favor of the Company (i) may be included for Customer Controlled Property and, (ii) with regard to governmental entities, shall be addressed in accordance with the Governmental Entities provision of this Environmental Matters section. The indemnification and defense obligations described only in this paragraph will not apply to residential customers or governmental entities, but the release provisions below will apply to residential customers and governmental entities.~~

Environmental Release for Property

~~Customer agrees to release Company Parties, or any of them, from any and all Claims that arise out of or relate to any or all of the following: (a) the application, discharge, release, spill, handling, storage or disposal of Hazardous Materials in, over, on, or under Property; (b) any off-site transportation and disposal of such Hazardous Materials; and (c) the presence of any Hazardous Materials in, over, on, or under Property. This release is effective irrespective of whether work or activities of the Company causes, contributes to or exacerbates the release of any Hazardous Materials. This release shall not apply, however, (1) in the case of Company Materials, but only to the extent of such Company Materials or (2) for damages, costs or expenses directly associated with any negligence or intentional or willful misconduct by the Company or Company Parties, but only to the extent of such divisible or allocable share directly attributed to such negligence or intentional or willful misconduct. Nothing in this paragraph shall alter, narrow, or otherwise limit the scope of any liability and indemnification provisions in these Rules and Regulations, including, without limitation, the Liability section and/or Indemnity to Company section of these Rules and Regulations.~~

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ENVIRONMENTAL MATTERS – Cont'd

Environmental Release for Customer Controlled Property

~~Further, Customer agrees to release Company Parties for Claims that arise out of or relate to any or all of the following: (a) the application, discharge, release, spill, handling, storage, or disposal of Hazardous Materials in, over, on, or under Customer Controlled Property; (b) any off-site transportation and disposal of such Hazardous Materials; and (c) the presence of any Hazardous Materials in, over, on or under Customer Controlled Property. This release is effective irrespective of whether work or activities of the Company causes, contributes to or exacerbates the release of any Hazardous Materials. This release shall not apply, however, (1) in the case of Company Materials, but only to the extent of such Company Materials or (2) for damages, costs or expenses directly incurred as a result of any negligence or intentional or willful misconduct by the Company or Company Parties, but only to the extent of such divisible or allocable share directly attributed to such negligence or intentional or willful misconduct. Nothing in this paragraph shall alter, narrow or otherwise limit the scope of any other liability and indemnification provisions in these Rules and Regulations, including, without limitation, the Liability section and/or Indemnification section of these Rules and Regulations.~~

Environmental Agreement

~~In connection with the extension, installation, relocation, maintenance or repair of utility facilities the Company may require that a customer, negotiate and enter into an Environmental Agreement with the Company, in the event that Hazardous Materials: (1) are known to the Company to exist in the vicinity of the Property and/or Customer Controlled Property (based on, for example, but not limited to, disclosures by the customer, publicly available documents regarding site contamination, or historic land uses in and around the Property and/or Customer Controlled Property); and/or (2) are encountered by the Company while performing work at the Property and/or Customer Controlled Property; and/or (3) are objectively and reasonably suspected, by the Company, to exist in the vicinity of the Property and/or Customer Controlled Property, subject to the procedures below. In the event the Company is requiring an Environmental Agreement pursuant to (3) above, the Company will provide customer with information as to why it reasonably suspects Hazardous Materials exist in the vicinity of the Property and/or Customer Controlled Property.~~

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ENVIRONMENTAL MATTERS – Cont'd

Environmental Agreement – Cont'd

~~To the extent the Customer disagrees with the Company's determination pursuant to (1) or (3) above, the Company will not require an Environmental Agreement if the customer can demonstrate that such Hazardous Materials are not present or are no longer present in the vicinity of the Work Area before work commences, (for example, through production of current, applicable and adequate sampling data collected, the placement of adequate clean fill, etc) and that Hazardous Materials are not reasonably anticipated to migrate into the Work Area over time based on available information. Notwithstanding anything in this Environmental Agreement provision to the contrary, any Environmental Agreement with governmental entities shall be addressed in accordance with the Governmental Entities provision of this Environmental Matters section.~~

~~— In connection with the execution of the Environmental Agreement, the company may require customers to provide financial assurances, such as guarantees, environmental liability insurance, or similar mechanisms; provided, however, with respect to governmental entities, all matters associated with an Environmental Agreement, including any financial assurances, shall be addressed in accordance with the Governmental Entities provision of this Environmental Matters section. The scope and amount of such financial assurances will be commensurate with site risks taking into consideration site specific information, such as the nature, type, extent, severity, concentration, quantity, and scope of Hazardous Materials that could be present in, over, under, and around the site or that could otherwise impact or migrate to the site, and information related to the size and location of the Property and/or Customer Controlled Property and the nature of the surrounding environment. The Company will work with the customer to evaluate these site risks in making the determination. As to the amount and type of any financial assurances described in this paragraph, if the Company and customer cannot otherwise agree, a maximum default pollution legal liability insurance coverage in the amount of \$10,000,000, in 2010 dollars, in coverage for a ten-year term, adjusted for inflation based on the United States Department of Labor consumer price index (CPI), or such reputable, successor index if the CPI is no longer published, will apply, absent extenuating circumstances and provided such maximum default coverage is available under terms and conditions that are generally procurable in the pollution legal liability insurance marketplace in existence at the time of execution of the Environmental Agreement~~

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ENVIRONMENTAL MATTERS – Cont'd

Environmental Agreement – Cont'd

~~(and if it is not available, then the customer and Company will need to identify an alternative financial assurance mechanism). If the Company has a reasonable belief that such maximum default coverage and term is not adequate for the site in question, the Company may petition the Commission for an exception. In such an event, the Company shall have the burden of proving why such deviation is reasonable.~~

~~— The Environmental Agreement will include site specific provisions and provisions regarding the manner in which the general requirements of this Environmental Matters section will be applied. It will also identify any financial assurances that apply. To the extent an Environmental Agreement addresses any Environmental Matters requirements; those provisions of such Environmental Agreement shall not directly conflict with any requirements that are set forth herein. The Environmental Agreement provision shall not apply to residential customers.~~

Pre-Existing Environmental Agreements

~~— To the extent the customer has entered into a private agreement with the Company on or before December 1, 2010, that is contrary to the provisions in this Environmental Matters section and that specifically addresses environmental liabilities and responsibilities for any on-going or planned future installation or relocation of utility facilities, as between the customer and Company in the actual area the Company will be working and that applies to the Property or Customer Controlled Property, the customer may elect to either proceed under that pre-existing agreement or to negotiate a new Environmental Agreement with the Company. No amendment, assignment (provided such assignment is authorized under the terms of such agreement), or extension of such an agreement, after December 1, 2010 shall render such agreement a new agreement for purposes of this Pre-Existing Environmental Agreements provision.~~

Governmental Entities

~~— To the extent a municipality is a customer requesting service and there is a direct conflict between this “Environmental Matters” section and a franchise agreement entered into between the Company and a municipality on or before December 1, 2010, the terms of any such agreement shall control.~~

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ENVIRONMENTAL MATTERS – Cont'd

Governmental Entities – Cont'd

~~For purposes of this Environmental Matters section only and as it relates to governmental entity customers only, the Company and a governmental entity customer may negotiate each of the following, if any, on a case-by-case basis: (a) whether or not an Environmental Agreement will be entered into by the Company and the governmental entity and (b) the provisions of any such agreement, including, but not limited to, (i) whether or not any indemnification in favor of the Company, to the extent permitted by law, will be included in such agreement, and (ii) whether or not financial assurances (including, without limitation type and amount, if any,) will be provided by any governmental entity in association with such agreement.~~

Dispute Resolution

~~To the extent a dispute arises between the Company and customer regarding any matters addressed by this Environmental Matters section, including, without limitation, the requirement to enter into, and terms of, an Environmental Agreement, the amount or type of any financial assurances, or the sufficiency of any customer demonstration, the Company and/or customer may request an expedited non-binding mediation to resolve the dispute. The Company may request mediation by providing written notification of the request to the customer at its billing address on record with the Company (along with a courtesy copy, if requested by Customer, to another specified address), and the customer may request mediation by providing service of process to Company's registered agent. Following receipt of the preceding notice, the customer and the Company each shall designate a third party with experience in environmental law and cleanup no later than ten (10) business days following such request. Such third parties shall jointly select a mediator no later than five (5) business days following their selection. The mediation shall commence no later than ten (10) business days following the selection of the mediator and shall conclude no later than ten (10) business days following the commencement of the mediation. The customer and Company may mutually agree to extend these deadlines, as necessary. If unable to reach agreement through mediation, the customer or Company may seek resolution under existing law from the Commission or from a court of law, as applicable.~~

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