

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-707E

IN THE MATTER OF THE PROPOSED RULES RELATING TO EXEMPTION FROM
ELECTRICITY INVERTED BLOCK RATESCHEDULE FOR MEDICAL REASONS, 4 CODE
OF COLORADO REGULATIONS 723-3.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEITH J. KIRCHUBEL
ADOPTING RULES**

Mailed Date: December 23, 2011

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I. BACKGROUND

1. The Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) regarding exemptions from electricity inverted block rate schedules (also known as tiered rates) for medical reasons in Decision No. C11-0910, mailed August 24, 2011. The NOPR was in response to Senate Bill 11-087 (codified as § 40-3-103.5, C.R.S. and referred to herein as “the statute”) and commenced this rulemaking proceeding.

2. The statute allows, but does not require, the Commission to issue rules as follows:

The Commission may adopt rules creating an exemption from any tiered electricity rate plan based on a customer’s medical condition or use of an essential life support device.¹

3. In Decision No. C11-0910, the Commission invited interested parties to file comments on the proposed rules and to respond to a set of questions set forth by the Commission. A hearing to receive public comment was scheduled for October 21, 2011. By the same Decision, disposition of this matter was referred to the undersigned administrative law judge (ALJ).

¹ The terms used in the statute, including ‘medical condition’ and ‘essential life support device’ are not defined.

4. The proposed rules for exemption from tiered rates for qualifying medical condition and/or use of an essential life support device were published in the *Colorado Register* on September 10, 2011. The proposed rules require that

- a) utilities with inverted block rates for electricity file an Advice Letter providing non-preferential rates for customers who are certified to be eligible due to a qualifying medical condition and/or use of an essential life support device;
- b) the effect of the exemption must be revenue neutral with respect to the utility's revenue requirement;
- c) a licensed physician or a health care practitioner acting under a physician's authority certify a customer's eligibility for up to one year; and
- d) the Advice Letter be filed by January 1, 2012 if the utility had an inverted block rate schedule on July 13, 2011.

5. Written comments on the proposed rules were received on September 23, 2011.²

Reply Comments were received on October 7, 2011.³

6. Pursuant to Decision No. C11-0910, the undersigned ALJ conducted a hearing to accept oral comments on October 21, 2011.⁴ At the hearing, the ALJ invited further comment regarding the feasibility and desirability of implementing the statute under an interim or pilot program. Public Service Company of Colorado (Public Service or the Company) agreed to file a framework for a proposed pilot program for review and comment by others. On October 21, 2011, the ALJ issued Decision No. R11-1120-I⁵ requesting comment on a pilot program within the rulemaking and setting an additional hearing for November 4, 2011.

² Comments were received from Public Service Company of Colorado (Public Service); AARP; and Kara Nett Hinkley of Hinkley and Associates Consulting (Hinkley). This order will treat comments provided by Ms. Hinkley as having been made on behalf of Hinkley and Associates or its client(s).

³ Reply comments were received from Public Service; Colorado Office of Consumer Counsel (OCC); and Hinkley and Associates on behalf of the National Multiple Sclerosis Society, Colorado-Wyoming Chapter (MS Society).

⁴ Comments were provided by Mary Ellen Friedman, Commission Staff; Kara Nett Hinkley, Hinkley and Associates; Stephen Southwick and Thomas Dixon, OCC; Scott Brockett and Pat Boland, PSCo; and Steven Merrill, AARP.

⁵ Errata notice mailed on October 24, 2011.

7. Public Service filed a proposed pilot program on October 28, 2011. Written comments to this proposal were filed by Hinkley and Associates (Hinkley), the Colorado Office of Consumer Counsel (OCC), and AARP.

8. A hearing was convened on November 4, 2011, and oral comments were received by the ALJ.⁶

9. The ALJ reviewed the record in this proceeding to date, including written and oral comments.

10. The ALJ declines to adopt any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached.⁷

11. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. DISCUSSION AND CONCLUSIONS

A. Responses to Commission Questions in Decision No. C11-0910

1. What should be included in the definition of a qualifying medical condition for purposes of permitting an exemption from a tiered rate schedule? How can that definition be most fairly determined?

12. There was no consensus from commenters as to a definition of a qualifying medical condition. Comments submitted by Hinkley advocated a narrow definition based on a

⁶ Oral comments were provided by Scott Brockett and Pat Boland, Public Service; Thomas Dixon, OCC; Kara Nett Hinkley and Kirk Williams, MS Society; and Steven Merrill, AARP.

⁷ The redline version of the Rules recommended for adoption is included herewith as Attachment A.

diagnosis of heat sensitivity as a symptom of chronic disease, disability, or ingestion of prescribed pharmaceuticals known to cause heat sensitivity.⁸ Public Service favored Commissioner Information Meetings (CIMs) or workshops in which Parties could learn about from experts what various conditions are and how the conditions benefit from summer-only energy usage. AARP recommended that a qualifying condition be determined by a physician and be one which requires medical equipment powered by electricity and/or assurance that customer can maintain adequate heating or cooling.

2. What should be included in the definition of an essential life support device for purposes of permitting an exemption from a tiered rate schedule? How can that definition be most fairly determined?

13. Hinkley's written comments referenced the California Public Utilities Commission Codes, which include, among other items, respirators, iron lungs, hemodialysis machines, and motorized vehicles; Hinkley recommended that air conditioning be added to the list as essential for those severely affected by heat sensitivity.⁹ AARP suggested that the list include any electric powered equipment determined by a physician to be essential to maintaining the health and life of the customer. Public Service pointed to its life support program,¹⁰ but noted that the list is not all-inclusive. As with the question regarding medical conditions, Public Service recommended CIMs or workshops.

⁸ Many multiple sclerosis (MS) patients would be covered by this definition.

⁹ Later, in oral comments during the second hearing, Ms. Hinkley urged that the definition of essential life support device be interpreted to mean only air conditioning units, and no other devices.

¹⁰ Under this voluntary program, customers who file a form verifying that the termination of electricity would disrupt the use of life support equipment that and create a medical emergency may receive guidance during outages and special support, including priority in having service restored.

3. For each potential definition of “qualifying medical condition” and “essential life support device,” how many customers would likely be eligible to elect an alternative rate schedule?

14. Hinkley estimated 4,630 customers would participate¹¹ because of extreme heat sensitivity symptoms (pain, extreme fatigue, numbness in the extremities, concentration difficulties, and blurred vision) that can be mitigated through the use of additional air conditioning. In comments at the October 21, 2011 hearing, Hinkley identified an additional 1,000 persons who likely suffer severe heat sensitivity as a result of taking prescription pharmaceuticals. Public Service did not have an estimate of likely participation but noted that 3,522 residential customers filed medical certificates¹² in 2009, and 2,842 residential customers participated in the life support program during 2010. It is likely that some Public Service customers participate in both programs.

4. Who should determine what constitutes a qualifying medical condition for exemption from a tiered rate schedule and what evidence of the qualifying medical condition should be required?

5. Who should determine what constitutes an essential life support device for purposes of permitting an exemption from a tiered rate schedule and what evidence of such use should be required?

15. Public Service, Hinkley, and AARP stated that qualified medical personnel should make the determination of both the qualifying medical condition and essential life support equipment. Citing concerns over customer privacy, Public Service stated that the Company should not be the entity to determine eligibility and suggested that a State agency or non-profit with expertise in that area maintain a list of qualifying customers. AARP stated that nothing more than a certificate from a licensed professional medical physician or someone working

¹¹ This estimate was derived through the calculation that there are 7,982 Coloradans with MS in PSCo's service territory and 58% of MS patients with MS experience extreme heat sensitivity.

¹² Pursuant to 4 CCR 723-3-3407(e)(IV) Public Service must delay any discontinuance of service for customers that file a valid medical certificate.

under that person should be required. In comments at hearing on October 21, 2011, Mr. Thomas Dixon, on behalf of OCC, concurred with AARP, noting that there had never been a problem with the existing medical certificate program.

6. What is the most effective and efficient method for demonstrating a customer's eligibility for exemption from a tiered rate schedule?

16. Public Service, Hinkley, and AARP all recommended the use of a form similar to that used for the medical certificate and life support programs, to be completed and signed by a licensed medical practitioner. AARP noted that neither the Commission nor the utility should make an evaluation of eligibility. Hinkley recommended a five-year exemption period if the customer has a condition for which there is no known cure and a one-year exemption period if the customer suffers extreme heat sensitivity due to pharmaceuticals.¹³

7. What is an appropriate definition of "exemption" as used in § 40-3-103.5, C.R.S.?

17. Public Service, Hinkley, and AARP all defined exemption as providing customers with a flat rate. Public Service posited a flat summer rate of 6.3219 cents/kWh and expressed concerns that the implementation of a flat rate for certain customers would lead to revenue loss for the Company.¹⁴ Public Service re-emphasized concern regarding revenue erosion in comments at the hearing on October 21, 2011.

B. Other Comments

1. Public Service

18. In initial comments, Public Service questioned the need for rules because there are several programs already in place to assist customers who have difficulty paying their bills,

¹³ At the hearing on October 21, 2011, Ms. Hinkley clarified her intent that the five-year certification period should only be for MS patients.

¹⁴ This rate was initially put forth in the last electric rate case for Public Service. If that rate was charged to all residential electric customers, it would equalize the revenue anticipated from tiered rates during summer months. This rate would not likely produce equal revenues if charged to a smaller subset of customers.

and because very little information appears to be available about the numbers of eligible ratepayers and their electric usage. Public Service pointed out that under any program that allows customers to opt-in, Public Service will suffer revenue erosion.¹⁵ Furthermore, without an income qualification, a tiered-rate exemption would likely raise rates for low income customers over time. Public Service proposed that its Monthly Average Payment program (also known as budget billing) would be the most helpful for customers who do not qualify for low-income programs but who are concerned about higher bills in the summer relative to the winter. Public Service also stated that low income customers could benefit from Energy Outreach Colorado's program, and that customers with medical conditions can participate in the Company's medical certificate program to avoid discontinuation of service.

19. In addition to concerns about collecting private information from its customers for the purpose of determining exemptions from tiered rates, Public Service also expressed concerns about the administrative costs associated with tracking exemptions and administering an outreach program. In terms of billing, Public Service suggested that it would be more practical to focus on low-income customers with medical conditions because the Company currently has systems in place to track low-income customers.

20. Public Service provided three options for the Commission in this rulemaking: 1) put the rulemaking on hold and hold a series of workshops or Commissioner Information Meetings; 2) require that a pilot program with funding for qualifying non-low income customers be included in the next rate case, or 3) have Public Service convert all customers to a flat annual rate or a non-tiered seasonally differentiated revenue-neutral rate. Public Service noted that

¹⁵ *I.e.*, customers would only be expected to voluntarily opt for the alternative rate if it was economically beneficial to do so. In all such circumstances, that economic benefit would create less revenue to Public Service for the same amount of electricity delivered.

the third option would likely increase electric billings for some, if not most, customers, while reducing bills for high volume users.

21. Public Service proposed a rule that would allow the utility to include an exemption from tiered rates in its tariffs. According to Public Service, this rule would remove the prohibition on special rates for customers, except those who are low-income customers.

22. At the October 21, 2011 hearing, Mr. Scott Brockett and Mr. Pat Boland of Public Service emphasized administrative costs and the need for extensive customer education related to implementation of a program exempting certain customers from tiered rates.

2. Hinkley and Associates, on Behalf of the National Multiple Sclerosis Society Colorado-Wyoming Chapter¹⁶

23. In addition to responding to Commission questions from Decision No. C11-0910, Hinkley provided several comments from individuals whose health is adversely impacted by heat sensitivity and a spreadsheet indicating the 2011 summer electricity use of twelve Public Service customers with MS; the average use by these customers was 1,475 kWh per month.

24. In Reply to the Company's comments, Hinkley stated that support for SB11-087 was based on medical necessity, not on income necessity; Hinkley does not support any form of means-testing to qualify for an exemption. Furthermore, the initial position taken by Hinkley maintained that the medical exemption should be based on heat sensitivity resulting from all of the following: MS, scleroderma, or certain medications used in the treatment of lupus, some mental health conditions, and epilepsy in children.

25. Hinkley indicated support for a pilot program as proposed by PSCo, but stated that such a pilot would not be necessary prior to implementation of a medical exemption.

¹⁶ See note above re: Hinkley/MS/Coalition

3. OCC

26. In Reply Comments, the OCC agreed with privacy concerns raised by PSCo and recommended deletion of Subsection 3401(f)(II)(D)¹⁷ of the proposed rules. With that deletion, the OCC noted that the proposed rules are virtually identical to the Commission's disconnection rules for telecommunications, electric, gas, and water utilities, and these rules should be implemented in the same manner that the medical certificate and life support programs are implemented.

27. The OCC also recommended that Subsection (f)(I) be modified to clarify that non-preferential rates are for residential customers. Additionally, the OCC recommended that the effect of exemption be revenue neutral to the utility and to all customers.

28. With regard to workshops or informational meetings, the OCC recommended that if the Commission believes these are appropriate, they should be held after completion of this rulemaking so that the rules can be implemented prior to June 1, 2012.

29. The OCC also recommended that the rates for customers exempted from tiered rates be flat, year-round rates.

C. Pilot Program

30. During the hearing on October 21, 2011, the ALJ introduced the subject of whether an implementation of rules on an interim or pilot basis would be feasible and beneficial. Specifically, the ALJ questioned whether a pilot program might help to determine: a) how many customers might be eligible and how many would opt in; b) what the anticipated per customer use would be; c) whether an exempt "flat rate" would benefit customers as intended by the

¹⁷ "clearly identify the qualifying medical condition and/or use of essential life support equipment necessitating the certification;"

Legislature; and d) the impact on the Company's revenue stream. Comments on a pilot program were ordered by Decision No. R11-1129-I, mailed October 21, 2011.

31. On October 28, 2011, Public Service filed a description of a proposed pilot program limited to 1,000 customers on flat seasonal rates. Under this program, customers would first obtain a verification of eligibility for medical exemption from a physician or licensed professional working for a physician. Eligible customers would then contact PSCo customer support staff who would research the customer's historical use so that the customer could understand the likely financial impact of remaining on tiered rates, opting to convert to flat seasonal rates, or enrolling in an Average Monthly Payment plan. The pilot program was proposed to run through December 2012; by March 2013, Public Service pledged to provide the Commission with the number of customers for whom certificates were provided, how many of those customers chose each of the three options, and what the average monthly bill reduction was for customers who selected the flat seasonal rate structure. Public Service also proposed that it would request deferred accounting for recovery of costs for program administration and annual revenue erosion; if losses were to exceed \$1 million, Public Service stated it would request recovery through the Electric Commodity Adjustment.

32. With its proposed pilot program, Public Service included an analysis of anticipated revenue erosion at a flat-seasonal rate of 6.322 cents/kWh, based on individual customer electricity use and the number of customers choosing the alternate rate.

33. At the November 4, 2011 hearing, Mr. Brockett emphasized the potential for revenue erosion under any rate design for an alternate rate. He noted that administrative costs¹⁸ and lost revenues are a function of the size of the program and requested that the rules

¹⁸ Exemplified by setting up a system to calculate energy charges and bill eligible customers separately under the alternative (exempt) flat rate.

specifically provide for a manner by which such costs could be recovered. He stated that by placing a limit on the number of participants in the pilot program the Company could gain an understanding of what the costs would be. As an option, Mr. Brockett noted that tiered rates could be eliminated for the residential class as a whole, but cautioned that the Company is not necessarily proposing this.

34. The OCC filed comments in reply to the proposed pilot, stating that a pilot program is not necessary or authorized, that a qualifying customer should only be required to obtain a medical certificate and submit it to the utility for the alternate rate, and that the number of participants should not be limited to 1,000. These comments were echoed in written comments filed by AARP. The OCC further stated that customers should be allowed to determine whether or not to avail themselves of other assistance programs, such as budget billing. In written comments and at the November 4, 2011 hearing, the OCC reiterated its opposition to a seasonal rate design and advocated a flat year-round rate, but also noted that this is not a ratemaking proceeding.

35. In comments filed in response to PSCo's proposed pilot program and at the November 4, 2011 hearing, Hinkley stated that it does not support an exemption for electrical usage from the use of any equipment other than an air conditioner to mitigate the effects of heat sensitivity.¹⁹ If the Commission were to order a pilot program, Hinkley recommended capping participation at 5,000 participants, or not imposing a cap at all. Hinkley also proposed that the rate structure for the pilot program be that which was in effect prior to tiered rates, even though it might result in higher winter rates.²⁰

¹⁹ A letter from the Executive Director of the Colorado Cross-Disability Coalition was filed supporting this position.

²⁰ *I.e.*, in order to comply with the requirement of overall revenue neutrality.

36. In written comments and through oral comments made by its representative, Mr. Steven Merrill, at the November 4, 2011 hearing, AARP opposed limiting eligibility to customers with heat sensitivity.

D. Rules

37. While it is not expressly stated in the statute, the ALJ has determined that the inability of some customers to moderate electric consumption because of these customers' medical conditions is critical to understanding the purpose of the statute and any rules adopted pursuant thereto. Tiered electric rate plans, conversely, are designed to encourage conservation by conferring an economic benefit for reduced consumption. Thus, the ALJ finds that an implicit purpose of the exemption contemplated by the statute is to prevent a customer who cannot reduce consumption for medical reasons from being economically "punished" by tiered rates.

38. In her comments at the October 21, 2011 hearing, Ms. Mary Ellen Friedman of the Commission Staff recommended the removal of (f)(II)(D) of the proposed rules, noting that several commenters suggested that this requirement could result in violation of medical privacy laws. The ALJ agrees that the identification of specific medical conditions and/or life support equipment is not a requirement for these rules and could violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191.²¹ The ALJ finds that it is appropriate to remove this section from the proposed rules.

39. Furthermore, the ALJ finds that the OCC's recommendation to clarify that the rules pertain to residential customers is appropriate and inserts the word "residential" to modify "customers" in Subsection (f)(I).

²¹ 42 U.S.C. 1320d, and 45 *Code of Federal Regulations* § 160.202, *et seq.*

40. The OCC proposed the inclusion of Subsection (f)(I)(A-C) making the exemption revenue neutral to all customers. The purpose of this rule appears to be to affirm the prohibition against cross-subsidy of lower rates for one class of ratepayers by higher rates charged to others.

²² Sections 40-3-102 and 40-3-106, C.R.S.

41. The ALJ finds that the proposed inclusion of Subsection (f)(I)(A-C) is unnecessary given the clear import of §§ 40-3-102 and 40-3-106, C.R.S., and the provision in Subsection (f)(I) specifying that the alternative tariffed rate shall be “non-preferential.” For this reason, the ALJ does not recommend adoption of these amendments.

42. The statute only contemplates the creation of an exemption from any tiered electricity rate plan. At present, Public Service is the only electric utility with a tiered plan in place and that plan is seasonal (summer only).

43. The OCC proposed that the rules be amended to include a requirement for year-round flat rates. The ALJ finds that this amendment exceeds the scope of the statute in that it could require a utility to adopt a separate, exempt rate that did not (as in the present case of Public Service’s non-summer rates) replace a tiered rate. Accordingly, the ALJ will not recommend the adoption of Subsection (f)(V) proposed by the OCC.

44. The ALJ notes concerns expressed by Public Service to the effect that the Commission does not have sufficient facts about the population of eligible customers upon which to adopt rules. Public Service advocated for workshops and CIMs to gain additional insight regarding the potential size of the eligible customer group and the electricity demands of its members. While the ALJ agrees that more information would be helpful to understand the

²² Although the public utilities commission has been granted broad rate-making powers by art. XXV, Colo. Const., the commission’s power to effect social policy through preferential rate-making is restricted by § 40-3-106(1) and this section, no matter how deserving the group benefitting from the preferential rate may be. Mountain States Legal Found. V. Pub. Utils. Comm’n. 197 Colo. 56, 590 P2d 495 (1979)

dimensions of the program, the processes described above would delay the implementation and its potential benefits for customers. To the extent that the program framed by the proposed rules requires modification based on levels of participation or usage, the Commission can always undertake such measures in the future. On balance, the ALJ finds that program implementation should not be postponed to permit the fact-finding proposed by Public Service.

45. After review of answers provided by participants in this proceeding and in comments received from the public to questions posed by the Commission in Decision No. C11-0910 regarding definitions of “medical condition” and “essential life support equipment,” the ALJ finds that the determination as to whether a person’s medical condition and/or use of medical equipment makes that person eligible for exemption from tiered rates should be made by a licensed physician or a health care practitioner acting under a physician’s authority. The rules shall place no limitation on which medical conditions and/or medical equipment shall be considered eligible.²³

46. Although a five-year certification was advocated by Hinkley, the ALJ recommends that certification should be valid for one year. A one-year certification will discourage abuse of the exemption by ensuring that the medical necessity underlying eligibility for the alternative rate is confirmed by a physician every year. While a five-year certification would reduce the administrative burden on eligible customers, the ALJ finds that benefit to be outweighed by the protection against abuse afforded by a one-year certification. In addition, the one-year term is consistent with the Commission’s current medical certificate program.²⁴

²³ The ALJ finds no objective support for the interpretation advanced by Hinkley that the phrase “essential life support device” means only household air conditioners and excludes all other devices such as oxygen systems, ventilators, dialysis machines and the like. Nor did the ALJ find Ms. Hinkley’s subjective support credible.

²⁴ 4 CCR 723-3-3407(e)(IV)(A)

47. After considering the potential benefits of a pilot program the ALJ finds that a pilot program is not appropriate at this time. The purpose of the pilot would have been to gather information upon which the Commission could modify its rules, as necessary, to accomplish the purposes of the underlying statute. Based on the comments received with regard to a pilot program, the ALJ finds that required information can be gathered in the same manner with the implementation of these rules and that the Commission may modify its rules as it determines necessary.

48. In addition, the ALJ finds that a pilot program that limits the number of participants is inconsistent with the language and the overall purpose of the statute. Also, if one goal of a pilot program is to determine the number of customers who are eligible and would opt for the alternative rate, a constraint on the number of participants would thwart that goal.

49. Although much of the discussion in this proceeding addressed rates, rates are not part of this rulemaking. The ALJ notes, however, that the analysis attached to the pilot program proposed by Public Service made it clear that it will not be possible for the Company to set a revenue-neutral rate that allows some customers to opt out of the tiered rate structure. No matter where an alternative rate is set, only those customers who are likely to realize an economic benefit (as compared to the non-exempt tiered rate) will opt for the alternative. This economic benefit equates to paying less for the same amount of energy consumed. Thus, the ALJ can conceive of no alternative flat rate that will accomplish the diametrically opposed goals of benefitting customers who cannot (due to medical necessity) constrain their electric consumption and achieving revenue neutrality.

50. These issues are not for the ALJ in this proceeding to determine but, because HB11-087 did not include a mechanism for funding or otherwise subsidizing the alternative flat rate, they will require consideration when an Advice Letter is filed with rates for customers who wish to be exempted from tiered rates.

51. Finally, based on the timing of this Recommended Decision, the ALJ will modify the filing deadline found in Subsection (f)(IV) of the proposed rules. Any electric utility affected by the adoption of the rules shall have until February 1, 2012, to file an Advice Letter. This date will allow time for the expiration of the exception period, without jeopardizing the implementation of the rules before June 1, when seasonal tiered rates become effective.

III. ORDER

A. The Commission Orders That:

1. Rules Regulating Electric Utilities 4 *Code of Colorado Regulations* 723-3-3401(f) contained in Attachment A to this Order are adopted consistent with the discussion above.

2. This Recommended Decision shall be effective on the day it becomes a Decision of the Commission, if that is the case, and is entered as of the date above.

3. Pursuant to § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the interested parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEITH J. KIRCHUBEL

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

* * * * *

[indicates omission of unaffected rules]

BILLING AND SERVICE

3400. Applicability.

Rules 3400 through 3411 apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility's rates or tariffs. In its tariffs, a utility shall define "residential," "small commercial" and "agricultural" customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

3401. Billing Information and Procedures.

- (a) All bills issued to customers for metered service furnished shall show:
- (I) The dates and meter readings beginning and ending the period during which service was rendered.
 - (II) An appropriate rate or rate code identification.
 - (III) The 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-tariff 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 tariffs the utility's benefit of service transfer policies and criteria. The tariffs 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.
- (f) Medical exemption from tiered rate plans.
 - (I) Any electric utility that has a Commission approved tiered rate plan, also known as inverted block rates, shall file an Advice Letter and tariff, consistent with 4 CCR 723-1-1210, providing non-preferential rates for residential customers who elect alternate rates due to a qualifying medical condition and/or use of essential life support equipment. The effect of such an exemption shall be neutral with respect to the utility's revenue requirement. If a customer qualifies for the alternate rate, that customer shall not be precluded from participating in any low-income program offered by the utility.

- (II) Certification of a qualifying medical condition and/or use of essential life support equipment shall be valid for one year. Certification of a qualifying medical condition and/or use of essential life support equipment shall:
- (A) Be in writing
 - (B) Be sent to the utility from the office of a licensed physician;
 - (C) Clearly state the name of the customer or individual whose medical condition and/or use of life support equipment is at issue; and
 - (D) Clearly state 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 existence of a qualifying medical condition and/or use of essential life support equipment.
- (III) 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.
- (IV) If the electric utility has a Commission approved tiered rate plan as of July 13, 2011, the tariff filing of non-preferential rates for qualifying customers shall be made by February 1, 2012. If an electric utility requests Commission approval of a tiered rate plan after July 13, 2011, the utility shall include in its tiered rate plan request, a non-preferential rate for customers with a qualifying medical condition and/or use of qualifying life support equipment.

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[indicates omission of unaffected rules]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

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[indicates omission of unaffected rules]

BILLING AND SERVICE

3400. Applicability.

Rules 3400 through 3411 apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility's rates or tariffs. In its tariffs, a utility shall define "residential," "small commercial" and "agricultural" customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

3401. Billing Information and Procedures.

- (a) All bills issued to customers for metered service furnished shall show:
- (I) The dates and meter readings beginning and ending the period during which service was rendered.
 - (II) An appropriate rate or rate code identification.
 - (III) The 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-tariff 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 tariffs the utility's benefit of service transfer policies and criteria. The tariffs 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.
- (f) Medical exemption from tiered rate plans.
 - (I) Any electric utility that has a Commission approved tiered rate plan, also known as inverted block rates, shall file an Advice Letter and tariff, consistent with 4 CCR 723-1-1210, providing non-preferential rates for residential customers who elect alternate rates due to a qualifying medical condition and/or use of essential life support equipment. The effect of such an exemption shall be neutral with respect to the utility's revenue requirement. If a customer qualifies for the alternate rate, that customer shall not be precluded from participating in any low-income program offered by the utility.

- (II) Certification of a qualifying medical condition and/or use of essential life support equipment shall be valid for one year. Certification of a qualifying medical condition and/or use of essential life support equipment shall:
 - (A) Be in writing
 - (B) Be sent to the utility from the office of a licensed physician;
 - (C) Clearly state the name of the customer or individual whose medical condition and/or use of life support equipment is at issue; and
 - (D) Clearly state 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 existence of a qualifying medical condition and/or use of essential life support equipment.
- (III) 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.
- (IV) If the electric utility has a Commission approved tiered rate plan as of July 13, 2011, the tariff filing of non-preferential rates for qualifying customers shall be made by February 1, 2012. If an electric utility requests Commission approval of a tiered rate plan after July 13, 2011, the utility shall include in its tiered rate plan request, a non-preferential rate for customers with a qualifying medical condition and/or use of qualifying life support equipment.

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[indicates omission of unaffected rules]