

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 RATE SCHEDULE FOR MEDICAL REASONS,
4 CODE OF COLORADO REGULATIONS 723-3.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
CLOSING RULEMAKING PROCEEDING**

Mailed Date: June 6, 2013

I. STATEMENT

1. On August 24, 2011, the Public Utilities Commission issued the Notice of Proposed Rulemaking that commenced this docket. *See* Decision No. C11-0910. That Order invited public comment regarding the proposed rulemaking and referred the matter to an Administrative Law Judge (ALJ) to conduct public hearings and issue a Recommended Decision. A hearing on the proposed rulemaking was scheduled for October 21, 2011. The Order further advised that the ALJ may set additional hearings if necessary.

2. By Interim Order No. R11-1129-I, effective on October 21, 2011, the ALJ assigned to this rulemaking permitted additional written comments to be filed on the proposed rules and scheduled a public hearing for November 4, 2011.

3. Subsequent to that hearing, on December 23, 2011, the ALJ issued Recommended Decision No. R11-1389 adopting rules. By Decision No. C12-0030, issued January 11, 2012, the Commission stayed the Recommended Decision in order to review the ALJ's recommendations along with any exceptions filed to that Recommended Decision.

4. Pursuant to Decision No. C12-0101 issued on January 31, 2012, the rulemaking was remanded to the assigned ALJ for additional proceedings and for further public comment. A session was convened on March 5, 2012, in a hearing room of the Commission. It was the Commission's concern that a lack of data existed regarding how many customers might be eligible for an alternative rate and the level of their electricity usage. The Commission sought a clearer picture of the group of customers that would qualify for an alternative rate.

5. The Commission also set out five factors for which it sought additional information including: 1.) what factors should be considered in deciding the eligibility for the customer rate class, including prioritization of (a) persons with medical conditions, and (b) persons who utilize essential life support; 2.) whether some form of means testing or limitation on the level of electricity usage was an appropriate condition for inclusion in this customer rate class; 3.) how to determine eligibility for inclusion in the customer rate class; 4.) whether the customer rate class should be limited in size and the criteria for such a determination; and 5.) whether an alternative rate was necessary for the affected customers or whether educational outreach regarding other available programs would be adequate. In addition, a supplemental hearing was set for March 5, 2012.

6. Subsequent to the March 5, 2012 public comment hearing, the assigned ALJ issued Interim Order No. R12-0342-I on April 2, 2012. By that Order, the ALJ sought additional information regarding Public Service Company of Colorado (Public Service) billing data. The ALJ set an additional hearing for July 19, 2012.

7. Subsequent to the July 19, 2012 hearing, the ALJ assigned to the rulemaking left the employ of the Commission prior to issuance of a Recommended Decision in this matter. The matter was then assigned to the undersigned ALJ. After a review of the file, it was found

that several questions remained regarding the proposed rules and the most effective means to carry forward the legislation. Therefore, it was found that it would be most helpful to the undersigned ALJ in consideration of the proposed rules, to schedule an additional hearing. A public comment hearing was scheduled for January 31, 2013 pursuant to Interim Order No. R12-1459-I issued on December 19, 2012.

8. The Interim Order further provided that interested persons who wished to do so would have an opportunity to make oral presentations. Persons attending the hearing would have an opportunity to ask questions of any person making a presentation at the hearing. Parties in attendance were also advised to be prepared to discuss whether the concerns raised by the Commission in Decision No. C12-0101 had been adequately addressed and how comments and information supplied in response to those concerns affected the proposed rules. The undersigned ALJ was particularly interested in whether an alternative rate was necessary for the affected customers or whether educational outreach regarding other available programs would be adequate such as the Low Income Energy Assistance Program of Colorado. Comment was also invited as to how the Public Service billing data should influence the proposed rules. Parties were invited to present any other data or information they felt was relevant.

9. The public comment hearing was held on the scheduled date and time. In addition to the comments take by several members of the public, including members of the Multiple Sclerosis Society, Public Service offered comments and additional information including certain residential customer billing data.

10. Subsequent to the public comment hearing, the undersigned ALJ took the matter under advisement in order to issue a Recommended Decision on the proposed rules. However, prior to the issuance of that Recommended Decision, legislation was introduced on

April 18, 2013 as Senate Bill (SB) 13-282. SB13-282 significantly changed the language of § 40-3-103.5, C.R.S., the statute which addresses medical exemptions from tiered rates. As a result, the rulemaking proceeding was delayed pending the outcome of the proposed legislation. On May 6, 2013, SB13-282 was passed and on May 21, 2013 was sent to the Governor for his signature.

11. Because of the significant changes to the language of the applicable medical exemptions from the tiered rates statute, the current rulemaking docket (which addresses SB11-087) is no longer germane. Therefore, the most reasonable course of action is to close this rulemaking proceeding and issue a new Notice of Proposed Rulemaking as soon as possible after SB13-282 becomes law, in order to promulgate rules based on the new statutory language.

12. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. This rulemaking proceeding is closed.
2. A new Notice of Proposed Rulemaking shall be instituted as soon as possible after § 40-3-103.5, C.R.S., as amended by Senate Bill 13-282 becomes law.
3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the 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.

5. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge