

(Decision No. R93-1544)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED AMEND-)	
MENTS TO THE RULES REGULATING)	DOCKET NO. 93R-410EG
THE SERVICE OF ELECTRIC UTILI-)	
TIES, 4 CCR 723-3, AND RULES)	RECOMMENDED DECISION OF
REGULATING THE SERVICE OF GAS)	ADMINISTRATIVE LAW JUDGE
UTILITIES, 4 CCR 723-4.)	WILLIAM J. FRITZEL

- - - - -
Mailed Date: December 16, 1993
- - - - -

Appearances: James R. Lewis, Senior Assistant
Attorney General, Denver,
Colorado, for the Office
of Consumer Counsel;

Steven H. Denman, Esq., Denver,
Colorado, for WestPlains
Energy and Peoples Natural
Gas Company;

C. Chandler Lippitt, Esq.,
Denver, Colorado, for Public
Service Company of Colorado;
and

Richard L. Fanyo, Esq., Denver,
Colorado, for Vesgas Company.

STATEMENT

By Decision No. C93-828 adopted on August 31, 1993, the Commission instituted rulemaking regarding master meter operators. The Commission stated that the intent of the proposed rules was to implement the provisions of House Bill 93-1153 codified as § 40-1-103.5, C.R.S. By this statute, the Legislature directed that master meter operators may be exempted from Commission regulation provided that certain conditions were met. Section 40-1-103.5(3), C.R.S., directed the Commission to adopt rules as were necessary for implementation of the statute.

Notice of proposed rulemaking was mailed by the Commission on September 3, 1993. An errata notice to Decision No. C93-828 was mailed on September 23, 1993. A second errata notice was mailed on September 30, 1993.

A corrected copy of the proposed rules was attached to the errata notice. The statutory authority for the proposed rules is found at §§ 40-1-103.5 and 40-2-108, C.R.S.

The notice of proposed rulemaking was published in The Colorado Register on October 10, 1993. The Commission set the proposed rules for hearing for November 9, 1993, at 9:00 a.m. at the Commission hearing room in Denver. Oral comments were received from the Office of Consumer Counsel (OCC), WestPlains Energy (WestPlains), Peoples Natural Gas Company (Peoples), Public Service Company of Colorado (Public Service), Vesgas Company (Vesgas), Staff of the Commission, and Representative Snyder of the Colorado House of Representatives. Vesgas filed written comments on November 9, 1993.

Pursuant to § 40-6-109, C.R.S., the record of this proceeding along with a written recommended decision are transmitted to the Commission.

FINDINGS OF FACT AND CONCLUSIONS THEREON

The commentators generally favored the proposed rules, however, there were suggestions for changes as detailed below.

Vesgas suggested minor changes in the definition section of Rule 31(Gas) and Rule 33(Electric). Vesgas suggested that the parenthetical phrase ("exemption from regulation of certain master meter operators") found in the first and second lines of I.A. be deleted since this is more properly a title for the entire rule rather than a part of the master meter operators' definition. It is found that this suggestion should be adopted. Vesgas also suggests that the phrase "and the imposition of a charge" found at lines 4 and 5 of I.A. be replaced with the phrase "at a charge." This suggestion should be adopted. Vesgas next suggests that the definition of master meter contained at I.C. be revised to read "the meter or other composite measurement device used for billing purposes by the Colorado regulated utility" in order to allow for the possibility that a measurement device different than a meter be used. This suggestion should be adopted since it conforms to the master meter operators' definition found at I.A. and § 40-1-103.5, C.R.S. Vesgas recommends that in I.E., the definition of sub/meter be revised to read "meter used for purposes of determining usage of end users by an MMO that is not exempt from regulation." This suggestion should be adopted. Vesgas next suggests that the definition of resale found at I.F. be revised to read: "charging more in aggregate to end users for service in the amount billed to the MMO by the Colorado regulated utility . . .". This suggestion will not be adopted since the definition of "resale" in the proposed rules defines resale in terms consistent with the statute.

The OCC comments that with regard to the procedure concerning refunds, rebates, and rate reductions found at II(4), the rules only address current end users and not the non-current end users. OCC suggests that the non-current end users, be notified in the same manner as current end users as provided by Section II(4) of the proposed rules. Representative Snyder, who is the prime sponsor of House Bill 93-1153 commented that although the bill originally provided for notice to current as well as non-current end users, the final bill codified as § 40-1-103.5, C.R.S., deleted notice to non-current end users as a result of a compromise. Representative Snyder commented that II(5) of the proposed rules adequately provides for the non-current end users. It is found that the clear wording of § 40-1-103.5(2), C.R.S., along with the comments of Representative Snyder demonstrates that the procedure for treating refunds, rebates, or other rate reductions contained in the proposed rules is consistent with the statute. It should be noted, as suggested by some of the commentators, that proposed Rule II(5) addresses refunds to non-current end users by requiring a master meter operator who wishes to be exempt from regulation of rates, propose in its application with the Commission, its procedure for notifying the former end users.

WestPlains and Peoples comment that the proposed rules do not provide for monitoring of the master meter operators. WestPlains and Peoples propose that an addition be made to the proposed rules to provide that complaints will be addressed by the Public Utilities Commission and that the serving utility not be required to monitor the operations of master meters. Public Service also is concerned that the serving utility not be involved in any dispute between the end user and master meter operator. It is found that the suggestion should not be adopted. The Public Utilities Commission would not have jurisdiction to entertain complaints or to monitor master meter operators once it is satisfied that a master meter operator is exempt under the criteria established by § 40-1-103.5, C.R.S., and the proposed rules.

It is found and concluded that proposed Rule 31 of the Rules Regulating the Service of Gas Utilities and proposed Rule 33 of the Rules Regulating the Service of Electric Utilities with the modifications recommended in this decision are consistent with § 40-1-103.5, C.R.S., and by the adoption of said rules, the Commission will be able to implement the statute. The rules contained in Appendix A, attached to this recommended decision should be adopted.

Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. Rule 31 of the Rules Regulating the Service of Gas Utilities, 4 CCR 723-4 and Rule 33 of the Rules Regulating the Service of Electric Utilities, 4 CCR 723-3 attached as Appendix A to this Decision are adopted.

2. The rules shall be effective 20 days after publication by the Secretary of State.

3. An opinion of the Attorney General of the State of Colorado shall be sought regarding the constitutionality and legality of the rules found in Appendix A of this Decision.

4. The Commission Director shall file with the Office of the Secretary of State of Colorado, for publication in The Colorado Register, a copy of the rules found in Appendix A adopted by this Decision, and when obtained, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules.

5. The rules found in Appendix A should be submitted by the Commission's Director to the appropriate committee of reference of the Colorado General Assembly, if the General Assembly is in session at the time this Order becomes effective, or to the Committee on Legal Services, if the General Assembly is not in session, for the opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. 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.

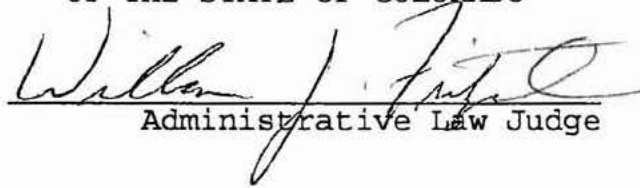
7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- 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.

8. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

WJF:srs

PROPOSED NEW RULE 31
OF THE
RULES REGULATING THE SERVICE
OF GAS UTILITIES
4 CCR 723-4

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose of the proposed new Rule 31 of the Rules Regulating the Service of Gas Utilities is to adopt rules for Master Meter Operators in accordance with House Bill 93-1153 codified as § 40-1-103.5. The statutory authority for this new rule is found in § 40-1-103.5(3).

RULE 31

I. DEFINITIONS.

A. Master Meter Operators -- (MMO) -- any person who purchases gas service from a Colorado regulated public utility for the purpose of delivery to end users at a charge the aggregate usage for which is to be measured by a master meter or other composite measurement device, which will be used by the Colorado regulated public utility for billing the MMO.

B. Application. -- pleading filed with the Commission under this rule to obtain an order that the MMO is exempt from regulation.

C. Master Meter. -- the meter or other composite measurement device used for billing purposes by the Colorado regulated utility.

D. Check Meter. -- meter used by the MMO for purposes of determining usage of those served by the MMO, if the MMO is exempt from regulation.

E. Sub Meter. -- meter used for purposes of determining usage of end users by an MMO that is not exempt from regulation.

F. Resale. -- charging more than the amount billed to the MMO by the Colorado regulated utility, or including unauthorized charges in the amounts passed on to end users.

II. PROCEDURE.

Any MMO desiring to be exempt from regulation of rates under the "Public Utilities Law", Articles 1 to 7 of Title 40 C.R.S., shall file an application requesting such, and which shows:

- (1) The MMO does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including without limitation costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO;
- (2) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility;
- (3) If the MMO bills the end users separately for service, the MMO passes on to the end users any refunds, rebates, rate reductions, or similar adjustments it receives from the serving utility;
- (4) In passing on refunds, rebates, rate reductions, or similar adjustments to end users, the MMO shall notify its current end users, either by first class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication, of such adjustments and inform the end users that they may claim the adjustments within ninety days after receipt of the notice. The MMO may retain any portion of such adjustments which rightfully belongs to the MMO. Upon the expiration of the ninety-day claims period, the MMO shall identify any such adjustments which are unclaimed and, if the aggregate amount unclaimed exceeds one hundred dollars, the MMO shall contribute such unclaimed amount to the fund established by the Legislative Commission on Low-Income Energy Assistance pursuant to section 40-8.5-104.
- (5) The procedures proposed by the MMO for notifying those that are not current end users, but who were users during the period covered, for the matters discussed in (4) above.
- (6) The methods the MMO proposes to use to show compliance with (1) through (5) above.

III. ACTION BY COMMISSION ON ITS OWN MOTION.

- A. The Commission may on its own motion enter an order exempting an MMO, just as if an application had been filed, so long as appropriate information has been obtained to show such an order would be authorized by § 40-1-103.5 C.R.S.

IV. RESALE NOT AUTHORIZED.

- A. MMOs having obtained an order of exemption are not authorized to engage in any practice that would constitute a resale under these rules.
- B. Resale activity is a basis for revocation of an exemption order. Sub-meters are used for resale activity. If it is shown that § 40-1-103.5 C.R.S. is complied with, the meter will be deemed a check meter.

PROPOSED NEW RULE 33
OF THE
RULES REGULATING THE SERVICE
OF ELECTRIC UTILITIES
4 CCR 723-3

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose of the proposed new Rule 33 of the Rules Regulating the Service of Electric Utilities is to adopt rules for Master Meter Operators in accordance with House Bill 93-1153 codified as § 40-1-103.5. The statutory authority for this new rule is found in § 40-1-103.(3).

RULE 33

I. DEFINITIONS.

A. Master Meter Operators. -- (MMO) -- any person who purchases electric service from a Colorado regulated public utility for the purpose of delivery to end users at a charge the aggregate usage for which is to be measured by a master meter or other composite measurement device, which will be used by the Colorado regulated public utility for billing the MMO.

B. Application. -- pleading filed with the Commission under this rule to obtain an order that the MMO is exempt from regulation.

C. Master Meter. -- the meter or other composite measurement device used for billing purposes by the Colorado regulated utility.

D. Check Meter. -- meter used by the MMO for purposes of determining usage of those served by the MMO, if the MMO is exempt from regulation.

E. Sub Meter. -- meter used for purposes of determining usage of end users by an MMO that is not exempt from regulation.

F. Resale. -- charging more than the amount billed to the MMO by the Colorado regulated utility, or including unauthorized charges in the amounts passed on to end users.

II. PROCEDURE.

Any MMO desiring to be exempt from regulation of rates under the "Public Utilities Law", Articles 1 to 7 of Title 40 C.R.S., shall file an application requesting such, and which shows:

- (1) The MMO does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including without limitation costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO;
- (2) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility;
- (3) If the MMO bills the end users separately for service, the MMO passes on to the end users any refunds, rebates, rate reductions, or similar adjustments it receives from the serving utility;
- (4) In passing on refunds, rebates, rate reductions, or similar adjustments to end users, the MMO shall notify its current end users, either by first class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication, of such adjustments and inform the end users that they may claim the adjustments within ninety days after receipt of the notice. The MMO may retain any portion of such adjustments which rightfully belongs to the MMO. Upon the expiration of the ninety-day claims period, the MMO shall identify any such adjustments which are unclaimed and, if the aggregate amount unclaimed exceeds one hundred dollars, the MMO shall contribute such unclaimed amount to the fund established by the Legislative Commission on Low-Income Energy Assistance pursuant to section 40-8.5-104.
- (5) The procedures proposed by the MMO for notifying those that are not current end users, but who were users during the period covered, for the matters discussed in (4) above.
- (6) The methods the MMO proposes to use to show compliance with (1) through (5) above.

III. ACTION BY COMMISSION ON ITS OWN MOTION.

- A. The Commission may on its own motion enter an order exempting an MMO, just as if an application had been filed, so long as appropriate information has been obtained to show such an order would be authorized by § 40-1-103.5 C.R.S.

IV. RESALE NOT AUTHORIZED.

- A. MMOs having obtained an order of exemption are not authorized to engage in any practice that would constitute a resale under these rules.
- B. Resale activity is a basis for revocation of an exemption order. Sub-meters are used for resale activity. If it is shown that § 40-103.5 C.R.S. is complied with, the meter will be deemed a check meter.