

Decision No. C03-0081

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-028E

IN THE MATTER OF REPEAL AND ADOPTION OF EMERGENCY AMENDMENTS TO
THE RULES REGULATING ELECTRIC UTILITIES, 4 CCR 723-3.

**DECISION REPEALING EMERGENCY RULES
AND ADOPTING NEW EMERGENCY RULES**

Mailed Date: January 23, 2003

Adopted Date: January 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of an emergency rule amending the Commission's Rules Regulating the Service of Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-3. The emergency rule repeals Emergency Rule 11(a) of the Electric Rules, and requires that the simple interest to be paid on a customer deposit shall be at a rate equal to the average of the preceding year's 12 monthly average rates of interest for one-year U.S. Treasury constant maturities, as published in the *Federal Reserve Bulletin* by the Board of Governors of the Federal Reserve System. For the reasons set forth in this decision, we now adopt, on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the rule appended to this order as Attachment A. We take this emergency action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. We find that adoption of the rule is necessary for the preservation of public health, safety, and welfare, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

3. As grounds for these findings, we state: It is necessary to adopt this emergency rule due to the termination of the publication by the Federal Reserve System that served as the benchmark for setting the interest rates that electric utilities were required to pay on customer deposits.

4. In our Decision No. C02-1374 in Docket No. 02R-632E, we adopted an emergency rule continuing the interest rate on customer deposits at 4.32 percent, thereby maintaining the status quo of Rule 11(a) and avoiding a regulatory gap that would have occurred on January 1, 2003 without adoption of the emergency rule.

5. Pursuant to 4 CCR 723-3-11(a), an electric utility may require customers to maintain a cash deposit with it to ensure payment for services. The utility is required to pay simple interest on the deposit held.

6. Staff of the Commission calculates the interest rate to be paid on customer deposits pursuant to guidelines in Rule 4 CCR 723-3-11(a). Specifically, the interest to be paid on deposits for the forthcoming year is to be the average monthly rate in the secondary market for one-year U.S. Treasury Bills for the previous 12-month period beginning October 1 and ending September 30, as posted in the Federal Reserve Bulletin, Board of Governors of the Federal Reserve System, Washington D.C., from the page entitled, *Interest Rate, Money and Capital Markets*.

7. The Board of Governors of the Federal Reserve Bank no longer publishes the information on the secondary market for one-year U.S. Treasury Bills necessary to establish the interest rate for customer deposits held by electric utilities.

8. We also found that the Proposed Repeal and Reenactment of the Rules for Electricity, Gas, Water and Telephone Services will address the interest rate on customer deposits, however, the process for establishing those rules is ongoing and would not be completed prior to early January 2003. The existing rate of 4.32 percent terminated on December 31, 2002.

9. To avoid a regulatory gap, we found it essential that a new rule be in place as rapidly as possible in order for electric utilities to have a specific interest rate in place for customer deposits subsequent to December 31, 2002. We determined that implementation of the emergency rule maintaining the interest rate at 4.32 percent served to continue the interest rate until the proposed new electric utilities rules become effective.

10. However, it was brought to our attention that the 4.32 percent interest rate could be nearly double the rate that should be paid because of the significant drop in short-term interest rates that occurred over the past year.

11. Because it is not clear when our repeal and reenactment of the electric rules will become effective, we are concerned with the adverse financial impact on regulated utilities of maintaining the interest rate on customer deposits at such a high level.

12. Commission Staff determined that a simple interest rate accurately reflecting current market conditions could still be calculated utilizing U.S. Treasury constant maturities averages for the previous year, as published in the *Federal Reserve Bulletin*. The rule also

provides that if the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. Implementation of this emergency rule will serve to establish an accurate short-term interest rate.

13. Therefore, emergency adoption of the attached rule is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-102, 40-3-103 and 40-4-101, C.R.S. The rule attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. **ORDER**

A. **The Commission Orders That:**

1. The emergency electric rule adopted by the Commission on December 4, 2002 in Decision No. C02-1374 in Docket No. 02R-632E and effective on December 10, 2002 is repealed.

2. Emergency Rule 4 *Code of Colorado Regulations* 723-3-11(a), appended to this Decision as Attachment A is hereby adopted as an emergency rule consistent with the above discussion.

3. This order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2003.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

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RULE (4 CCR) 723-3-11. CUSTOMER DEPOSITS.

723-3-11(a) A utility may require at any time from a customer or prospective customer, a cash deposit intended to guarantee payment of current bills, but only in accordance with this rule. A deposit intended to guarantee payment of current bills shall not exceed an amount equal to an estimated ninety days' bill of the customer, except in the case of a customer whose bills are payable in advance of service, in which case, the deposit shall not exceed an estimated sixty days' bill of the customer. A deposit required pursuant to this rule may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities, as provided in the extension policy of the utility's tariffs on file with the Commission. Simple interest shall be paid by the utility upon a deposit at the percentage rate per annum as calculated by the Staff of the Commission and in the manner provided in this rule, payable upon the return of the deposit, or annually at the request of the customer. Interest on a deposit shall be earned for the time such deposit is held by the utility, and shall be calculated from the date the deposit is received by the utility to the date of payment to the customer or to the date an amount equal to the deposit is credited to the customer's account. Interest payments, at the option of the utility, may be paid directly to the customer or by a credit to the customer's account. Simple interest to be paid on a deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the twelve monthly average rates of interest expressed in percent per annum, as quoted ~~in the secondary market~~ for one-year United States Treasury ~~Bills~~ constant

maturities, as published in the *Federal Reserve Bulletin*, by the Board of Governors of the Federal Reserve System. Each year, the Staff of the Commission shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. ~~—and~~ The Commission shall send a letter to each utility within the State stating the rate of interest to be paid on deposits during the calendar year. Annually, following receipt of Staff's letter, each utility, ~~no later than December 1 of each year,~~ shall file by advice letter, or application, as appropriate, a revised tariff, effective the first day of January of the following year, or an alternative date set by the Commission, containing the new rate of interest to be paid upon customers' deposits, except when there would be no change in the rate of interest to be paid on such deposits as calculated in this paragraph (a) of Rule 11.