

Decision No. C03-1246

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-288W

IN THE MATTER OF AMENDMENTS TO THE RULES REGULATING WATER UTILITIES,
4 CCR 723-5, WATER UTILITIES CUSTOMER DEPOSIT RULES, 4 CCR 723-5-11.1.

DECISION ADOPTING RULES

Mailed Date: November 7, 2003
Adopted Date: November 5, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of proposed rules pertaining to the interest rate for customer deposits that water utilities must pay. These rules make permanent the emergency rules this Commission adopted on January 22, 2003, which became effective January 23, 2003.

2. The changes in the Commission's customer deposit interest rate rules were made necessary when, on August 27, 2001, the Department of the Treasury stopped reporting secondary market yields for one-year Treasury Bills. As a result, the Board of Governors of the Federal Reserve System discontinued reporting the average monthly rate in the secondary market for the one-year Treasury Bill in its *Federal Reserve Bulletin*. Since Commission rules for determining the appropriate interest rate that water utilities must pay on customer deposits held employs this reported secondary market rate in setting the interest rate for customer deposits, a rule change was required.

3. As a result of the change in reporting of secondary market yields for one-year Treasury Bills in the *Federal Reserve Bulletin* the Commission adopted emergency rules (referenced above) which required water utilities to pay simple interest on a customer deposit during any calendar year at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent *per annum*, as quoted for one-year United States constant maturities as published in the *Federal Reserve Bulletin*. The emergency rules also provided 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 would continue for the next calendar year.

4. In Decision No. C03-0747, we issued a notice of proposed rulemaking to make the emergency rules regarding the interest rate water utilities (as well as telecommunications, electric, and gas utilities) were required to pay on customer deposits permanent. We set the matter for hearing on September 16, 2003 before the Commission *en banc*. Written comments were filed by Qwest Corporation (Qwest). At the hearing held on September 16, 2003, appearances were entered by Qwest and Commission Staff (Staff).

B. Findings of Fact and Conclusions of Law

5. Qwest proposed several modifications to the rules. First, Qwest suggested retaining a deadline of November 1 for Staff to send the notification letter advising of any interest rate change. According to Qwest, this gives providers sufficient time to implement the necessary processes and system changes required to ensure that the new rate can be implemented on January 1. Under Qwest's proposal, providers would in turn file their tariff changes no later than December 15. Qwest also proposed that the rule be modified to provide for a minimum

time frame between the notification letter and the implementation date, so as to preserve sufficient time for providers to modify their systems and properly implement the rate change upon receipt of the notification letter from Staff. Qwest suggests 45 days between receipt of the notification letter and submission of the advice letter and corresponding tariffs.

6. Qwest also proposes that Staff send out a notification letter only upon a change in rates pursuant to the formula described in the rule. Qwest also suggests that no tariff filing would be necessary if the rate remains unchanged for the following year. The tariff language can be worded to allow an existing rate to remain in effect until a change is required and a notice letter is received by the utilities from the Commission.

7. All references to “LEC” in 4 CCR 723-2-8.5.2 should be changed to “provider” according to Qwest. Doing so, according to Qwest, will capture all entities providing jurisdictional services, not just LECs.

8. Additionally, Qwest suggested several minor wording changes to improve the readability and organization of the rule. Qwest suggested combining the two sentences describing the rate change formula into a single sentence for clarity. Qwest also suggested that the rule begin with an introductory sentence stating that the interest rate is to be determined by Staff on an annual basis.

9. All parties present at the hearing accepted the change from secondary market to constant maturities adjustment, and also accepted the 25 basis point change threshold. Qwest presented its written comments suggesting: (1) that the proposed permanent rules be modified to clarify misunderstandings regarding timelines for filing related tariff changes; and (2) that a 45-day period between the date the Staff sends its letter informing utilities of the new rate and the

required effective date of the new rate be established to allow ample time for the utility to implement the change.

10. Staff presented general oral comments regarding the customer deposit rules as well. The current emergency rules require that utilities file their revised tariff sheets, reflecting a change in the customer deposit interest rate, on not less than 30 days' notice to the Commission. Staff suggests that for procedural efficiency, this portion of the rule should read that a utility file its revised tariff sheet (when necessary) on not less than one day's notice.

11. Qwest's written recommendations and oral comments at hearing regarding the customer deposit interest rate rules will be adopted. However, Qwest's recommendations regarding the change of terms from "LEC" to "provider" in the rules is only applicable to the customer deposit interest rate rules for telecommunications providers. We therefore find that recommendation irrelevant to this water utility rule making. We find the modifications suggested by Qwest help clarify the intent and spirit of the rules. We also find Staff's recommended change to the rules in the public interest and we adopt those changes.

II. ORDER

A. The Commission Orders That:

1. The proposed rules relating to the water utility customer deposit rules 4 *Code of Colorado Regulations* 723-5-11.1 attached to this Order are adopted as described above.
2. The rules shall be effective 20 days after publication by the Secretary of State.
3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted 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 an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Mailed Date of this Order.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 5, 2003.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY SOPKIN

POLLY PAGE

JIM DYER

Commissioners

RULE (4 CCR) 723-5-11. CUSTOMER DEPOSITS.

723-5-11.1 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~~ The simple interest rate to be paid on customer deposits shall be determined by the Commission Staff on an annual basis. The rate shall be computed ~~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 interest rate shall be used beginning January 1 of the following year; otherwise the rate shall remain unchanged. When it is determined that a change in the interest rate is warranted, the Commission shall send a letter to each utility within the State by November 15th identifying the new rate to be paid on deposits beginning January 1 of the next year. Following notification by the Commission, each provider shall file an Advice Letter and revised tariff containing the new interest rate, on not less than one day's notice, citing this rule as authority, to be effective January 1 of the following year. To the extent any of the dates contemplated herein are modified, there shall be at least 45 days between the date of the notification letter and the effective date of the rate change. 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 of Rule 11.~~