

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-682EG

IN THE MATTER OF THE EMERGENCY ELECTRIC AND GAS RULES IMPLEMENTING PROCEDURES FOR APPLICATIONS STEMMING FROM THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: September 23, 2009
Adopted Date: September 23, 2009

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for second adoption of emergency rules implementing procedures for applications stemming from the American Recovery and Reinvestment Act of 2009 (ARRA).

2. The ARRA was signed into law on February 17, 2009. This significant piece of federal legislation addressing numerous topics intending to stimulate the American economy. Within the legislation are important provisions that may permit public utilities to receive federal funding for various programs and projects.

3. We originally adopted emergency rules on this subject matter in Docket No. 09R-158EG by Decision No. C09-0234. We expected utilities to take advantage of the new rules shortly after we adopted them March 2009. However, delays at the federal level in issuing ARRA rules pushed back the anticipated deadlines for utilities to submit requests for funding opportunities. The delay at the federal level has resulted in Colorado utilities needing the Commission to preserve a default process or application description sufficient to meet the

requirements of the ARRA for longer than the duration of the emergency rules adopted by Decision No. C09-0234.

4. Therefore, 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 emergency rules appended to this Decision as Attachments A and B. These rules are identical to those currently effective. We adopt these rules simply to keep the same opportunities in place for an additional 210 days.

5. We take this action in accordance with the provisions of §§ 40-2-108(2) and 24-4-103(6), C.R.S.

6. We find that adoption of the emergency rules is imperative and necessary to continue the currently effective rules so as to preserve the status quo concerning utility applications made in relation to ARRA funding opportunities. Compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to public interest.

7. The rules attached to this order shall become effective on 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 rules appended to this Decision as Attachments A and B are hereby adopted as emergency rules consistent with the above discussion.

2. The attached rules shall be effective on the mailed date of this Decision.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 23 2009.**

(SEAL)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
ABSENT.

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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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[signifies omission of unaffected rule sections]

SMALL POWER PRODUCERS AND COGENERATORS

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[signifies omission of unaffected rule sections]

3954. – 3974. [Reserved].

3975. Applications for financial incentives including ratemaking treatment concerning projects and programs stemming from the American Recovery and Reinvestment Act (ARRA).

In order to encourage electric utilities in the state of Colorado to aggressively seek funding for programs and projects under the ARRA, the Commission shall allow for an expedited review of applications filed to request financial incentives including ratemaking treatment. At the applicant's option, it may choose the procedural process outlined in this rule or propose an alternative procedural schedule. There is no requirement that a utility use this process or obtain prior approval of a planned ARRA-funded project. The utility may choose to raise cost recovery and incentives at a later point after ARRA funding has been obtained.

- (a) The Commission shall allow for an expedited review process for applications filed for financial incentives including ratemaking treatment, as follows:
- (I) The Commission shall give priority to applications filed pursuant to this rule and shall dispose of the application within 45 days after filing unless the Commission, for good cause shown, enters an order continuing the proceeding and stating fully the facts necessitating the continuance. The Commission may dispose of a non-contested application without a hearing, as provided by § 40-6-109(5), C.R.S.
 - (II) The intervention and notice period shall run for ten days after the notice is mailed by the Commission. The Commission shall mail notice of the application within three business days of the filing of the application. If it intends to participate as a party, Staff of the Commission is required to file its notice of intervention as of right within the ten day notice period. Any party requesting a hearing on the application must clearly state so in its request for intervention and set forth its reasons that a hearing is necessary.

- (III) Response time to all motions to intervene by permission shall be three business days. All motions to intervene shall be served on the applicant through electronic mail at the electronic mail address provided in the application.
 - (IV) Response time to audit and discovery shall be three business days. Discovery rights and obligations shall begin upon the Commission's grant of a motion to intervene or the filing of an intervention by right. The Commission may enter an order limiting the number of discovery and audit questions based on the scope of the application and the number of interventions.
 - (V) If a hearing is scheduled, summaries of answer testimony shall be due ten days prior to the scheduled hearing date.
 - (VI) Oral legal arguments, expanded answer testimony, rebuttal testimony and surrebuttal testimony will be allowed at hearing.
 - (VII) Absent a showing of good cause to the contrary, response time to motions shall be three business days.
- (b) Contents of Application. All applications filed pursuant to this rule 3975 shall include, in addition to the information required by rule 3002(b), the following information, either within the application or in attached exhibits:
- (I) A description of the program(s) or project(s) for which the application is requesting a financial incentive. This description shall include a justification for how the program(s) or project(s) is additive to current requirements or commitments. If the program(s) or project(s) is not additive, an explanation of why the request for financial incentives is warranted;
 - (II) A statement regarding whether the program(s) or project(s) will proceed absent the Commission's approval of the requested financial incentive;
 - (III) An estimate of the costs for the program(s) or project(s) and the financial incentive for which federal funding is sought along with an identification of the preferred cost-recovery mechanism and timeline the applicant expects to request in the future;
 - (IV) A description of how the proposed program(s) or project(s) will meet the goals of the ARRA and the state of Colorado;
 - (V) A citation to the applicable section of the ARRA through which federal funds will be sought;
 - (VI) An explanation of the process at the federal and state level to request and be awarded funds, including known milestone dates;
 - (VII) Justification for expedited treatment from the Commission;
 - (VIII) Type(s) of financial incentive the applicant is requesting from the Commission;

- (IX) Justification as to why the requested financial incentive is necessary, just and reasonable, and is in the public interest. This shall include, but is not limited to, a description of the applicant's capital budget for the current year and the next three years and of the impact the program(s) or project(s) will have on the capital budget for each of those years;
 - (X) A plan for accountability and tracking of program(s) or project(s), including proposed measurement and verification of program goals; how the plan complies with federal accountability standards; and identification of how the program(s) and project(s) revenues and costs will be separately identified in the applicant's books of account;
 - (XI) If competitive bidding is already required by Commission rule, a description of how the resources for the program(s) or project(s) will be acquired through competitive bidding, or justification as to why a waiver of the Commission's competitive bidding rules is necessary;
 - (XII) Identification of all additional waivers of Commission rules or decisions the applicant anticipates may be necessary to complete the program(s) or project(s) if the applicant's request for federal funding is granted;
 - (XIII) Any additional requests to the Commission that the applicant anticipates will be necessary if the applicant's request for federal funding for the program(s) or project(s) is accepted; and
 - (XIV) Identification of all other requests for ARRA funding that the applicant, or its affiliates, has already made or intends to make. This list shall include requests made for programs and projects in other states. The list shall also include any financial incentive awarded by other state commissions associated with the ARRA funding requests.
- (c) The applicant shall meet with Staff of the Commission to explain an anticipated request at least seven calendar days prior to the filing of an application for approval of financial incentives. The applicant and Staff may agree to a shorter time period between the meeting and filing of the application. If such agreement is reached, the applicant shall inform the Commission of such agreement in its application.
- (d) The Commission encourages settlement of any issues raised in an application proceeding filed pursuant to this rule. To achieve this goal, the applicant shall meet with all intervenors within seven days after interventions have been granted.

3976. – 3999. [Reserved].

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[signifies omission of unaffected rule sections]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4

RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

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[signifies omission of unaffected rule sections]

GAS PIPELINE SAFETY

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[signifies omission of unaffected rule sections]

4971. – 4974. [Reserved].

4975. Applications for financial incentives including ratemaking treatment concerning projects and programs stemming from the American Recovery and Reinvestment Act (ARRA).

In order to encourage gas utilities in the state of Colorado to aggressively seek funding for programs and projects under the ARRA, the Commission shall allow for an expedited review of applications filed to request financial incentives including ratemaking treatment. At the applicant's option, it may choose the procedural process outlined in this rule or propose an alternative procedural schedule. There is no requirement that a utility use this process or obtain prior approval of a planned ARRA-funded project. The utility may choose to raise cost recovery and incentives at a later point after ARRA funding has been obtained.

- (a) The Commission shall allow for an expedited review process for applications filed for financial incentives including ratemaking treatment, as follows:
- (I) The Commission shall give priority to applications filed pursuant to this rule and shall dispose of the application within 45 days after filing unless the Commission, for good cause shown, enters an order continuing the proceeding and stating fully the facts necessitating the continuance. The Commission may dispose of a non-contested application without a hearing, as provided by § 40-6-109(5), C.R.S.
 - (II) The intervention and notice period shall run for ten days after the notice is mailed by the Commission. The Commission shall mail notice of the application within three business days of the filing of the application. If it intends to participate as a party, Staff of the Commission is required to file its notice of intervention as of right within the ten day notice period. Any party requesting a hearing on the application must clearly state so in its request for intervention and set forth its reasons that a hearing is necessary.
 - (III) Response time to all motions to intervene by permission shall be three business days. All motions to intervene shall be served on the applicant through electronic mail at the electronic mail address provided in the application.

- (IV) Response time to audit and discovery shall be three business days. Discovery rights and obligations shall begin upon the Commission's grant of a motion to intervene or the filing of an intervention by right. The Commission may enter an order limiting the number of discovery and audit questions based on the scope of the application and the number of interventions.
 - (V) If a hearing is scheduled, summaries of answer testimony shall be due ten days prior to the scheduled hearing date.
 - (VI) Oral legal arguments, expanded answer testimony, rebuttal testimony and surrebuttal testimony will be allowed at hearing.
 - (VII) Absent a showing of good cause to the contrary, response time to motions shall be three business days.
- (b) Contents of Application. All applications filed pursuant to this rule 4975 shall include, in addition to the information required by rule 4002(b), the following information, either within the application or in attached exhibits:
- (I) A description of the program(s) or project(s) for which the application is requesting a financial incentive. This description shall include a justification for how the program(s) or project(s) is additive to current requirements or commitments. If the program(s) or project(s) is not additive, an explanation of why the request for financial incentives is warranted;
 - (II) A statement regarding whether the program(s) or project(s) will proceed absent the Commission's approval of the requested financial incentive;
 - (III) An estimate of the costs for the program(s) or project(s) and the financial incentive for which federal funding is sought along with an identification of the preferred cost-recovery mechanism and timeline the applicant expects to request in the future;
 - (IV) A description of how the proposed program(s) or project(s) will meet the goals of the ARRA and the state of Colorado;
 - (V) A citation to the applicable section of the ARRA through which federal funds will be sought;
 - (VI) An explanation of the process at the federal and state level to request and be awarded funds, including known milestone dates;
 - (VII) Justification for expedited treatment from the Commission;
 - (VIII) Type(s) of financial incentive the applicant is requesting from the Commission;
 - (IX) Justification as to why the requested financial incentive is necessary, just and reasonable, and is in the public interest. This shall include, but is not limited to, a description of the applicant's capital budget for the current year and the next three years and of the impact the program(s) or project(s) will have on the capital budget for each of those years;

- (X) A plan for accountability and tracking of program(s) or project(s), including proposed measurement and verification of program goals; how the plan complies with federal accountability standards; and identification of how the program(s) and project(s) revenues and costs will be separately identified in the applicant's books of account;
 - (XI) Identification of all additional waivers of Commission rules or decisions the applicant anticipates may be necessary to complete the program(s) or project(s) if the applicant's request for federal funding is granted;
 - (XII) Any additional requests to the Commission that the applicant anticipates will be necessary if the applicant's request for federal funding for the program(s) or project(s) is accepted; and
 - (XIII) Identification of all other requests for ARRA funding that the applicant, or its affiliates, has already made or intends to make. This list shall include requests made for programs and projects in other states. The list shall also include any financial incentive awarded by other state commissions associated with the ARRA funding requests.
- (c) The applicant shall meet with Staff of the Commission to explain an anticipated request at least seven calendar days prior to the filing of an application for approval of financial incentives. The applicant and Staff may agree to a shorter time period between the meeting and filing of the application. If such agreement is reached, the applicant shall inform the Commission of such agreement in its application.
- (d) The Commission encourages settlement of any issues raised in an application proceeding filed pursuant to this rule. To achieve this goal, the applicant shall meet with all intervenors within seven days after interventions have been granted.

4976. – 4999. [Reserved].

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[signifies omission of unaffected rule sections]