

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14R-0394EG

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IN THE MATTER OF THE PROPOSED RULES RELATING TO DATA ACCESS AND PRIVACY FOR ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3 AND DATA ACCESS AND PRIVACY RULES FOR GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4.

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**DECISION ADDRESSING EXCEPTIONS,  
AMENDING DATA ACCESS AND PRIVACY RULES  
FOR ELECTRIC UTILITIES, AND  
ADOPTING DATA ACCESS AND PRIVACY RULES  
FOR GAS UTILITIES**

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Mailed Date: July 23, 2015  
Adopted Date: July 8, 16, 2015

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**I. BY THE COMMISSION****A. Statement**

1. This Decision addresses exceptions to the Recommended Decision<sup>1</sup> amending the Data Access and Privacy rules for electric utilities at 4 *Code of Colorado Regulations* (CCR) 723-4-3025 through 3035 (Electric Data Rules) and adopting Data Access and Privacy Rules for the Commission's Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4-4025 through 4035 (Gas Data Rules). Exceptions were filed by Public Service Company of Colorado (Public Service or Company), the City of Westminster (Westminster), the City and County of Denver (Denver), the City of Boulder (Boulder), and the Colorado Communications and Utility Alliance (CCUA).

2. By this decision, we adopt the Recommended Decision, with limited modification to the Electric Data Rules and Gas Data Rules. We grant, in part, and deny, in part, exceptions filed by Public Service and Westminster; we deny exceptions filed by Denver, Boulder, and CCUA. On our own motion we amend the Gas Data Rules to ensure consistency with the Electric Data Rules, including our determinations on exceptions. We also make typographical correction and revisions for consistency and clarity in the adopted rules attached to this decision.

**B. Background and Discussion of Recommended Decision**

3. On May 6, 2014, the Commission Issued the Notice of Proposed Rulemaking (Data Access and Privacy NOPR) to simplify processes and to make more efficient its rules on access to and privacy of customer data in the possession of utilities in the Electric Data Rules.<sup>2</sup>

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<sup>1</sup> Decision No. R15-0406, issued May 1, 2015 (Recommended Decision).

<sup>2</sup> The NOPR built on stakeholder input received in Proceeding No. 13M-1052EG, in which we directed Staff of the Commission to hold workshops and to work with interested persons to determine the scope of changes to the data privacy rules in place at the time.

The Data Access and Privacy NOPR also proposed amending the Commission's Gas Data Rules to introduce similar data access and privacy rules for gas utilities.

4. During the course of this proceeding Administrative Law Judge (ALJ) Harris Adams held four hearings and issued multiple drafts of proposed rule changes, providing extensive opportunities for stakeholders, including industry, local governments, public interest groups, individual customer, and small business representatives,<sup>3</sup> to review and comment on proposed modifications to the electric and gas data rules. Many of the comments proposed by the participants are adopted in the final rules.

5. On May 1, 2015, the ALJ issued his Recommended Decision amending the Electric Data Rules governing privacy of and access to customer data for regulated electric utilities. The Recommended Decision also adopts Gas Data Rules protecting customer data and specifying conditions for interested persons to access customer data from regulated gas utilities. The Gas Data Rules are consistent, to the extent practicable, with the Electric Data Rules. The rules proposed in the Recommended Decision protect customer information by balancing the interest of respecting customer privacy with the interest of allowing governmental entities and certain third parties to have access to meter data upon informed consent.<sup>4</sup>

6. Exceptions to the Recommended Decision were timely filed by: Public Service, Westminster, Denver, Boulder, and CCUA.

7. The Commission deliberated on the exceptions at the Commissioner's Weekly Meeting of July 8, 2015. We completed our deliberation at the Commissioner's Weekly Meeting of July 16, 2015.

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<sup>3</sup> See Recommended Decision, at ¶ 2

<sup>4</sup> Decision No. C14-0461, issued May 6, 2014 (Data Access and Privacy NOPR), at ¶¶ 6-8.

8. We concur with the ALJ's determination that the Commission's rules on data privacy and access maintain the existing commitment to the privacy and protection of individual customer data.<sup>5</sup> We also support the ALJ's conclusion that new technologies provide utilities and their customers with energy use information and find that the adopted rules strike an appropriate balance between protecting customer privacy and allowing customers to effectively access this information. Consistent with the intent of the NOPR, the rules adopted by the ALJ clarify and simplify the process for customers to provide informed consent for third parties to access data and for utilities to provide aggregated data reports that make access to new types of data available. The limited revisions we make on our own motion to the Gas and Electric Data Rules are consistent with the intent of protecting customer privacy while allowing broader and more consistent access to information as stated in both the Data Access and Privacy NOPR and Recommended Decision.

### C. Exceptions to Rules

#### 1. Rule 3001 - Definitions

##### a. Rule 3001(j) – Customer Data

9. The ALJ defines customer data in Rule 3001(j)<sup>6</sup> with the following revisions:

“Customer data” means customer- specific data or information, excluding personal information as defined in paragraph 1004(x), that:-(1) is;

(I) collected from the electric meter by the utility and stored in its data systems (e.g., kWh, kW, voltage, VARs and power factor); (2) is received by or

(II) combined with customer-specific energy usage information on bills issued to the utility from customer for regulated utility service when not publicly or lawfully available to the customer identifying whether they participate general public; or

<sup>5</sup> See Data Access and Privacy NOPR, at ¶¶ 8-9.

<sup>6</sup> Rules proposed in the Recommended Decision are referenced in this decision as “Rule XXXX” for brevity.

~~(III) about the customer's participation in regulated utility programs, such as renewable energy, demand-side management, load management, and or energy efficiency; and (3) information other than personal information that is shown on bills issued to customers for metered service furnished. programs.~~

10. In its exceptions, Westminster argues that the ALJ intended the phrase, "when not publicly or lawfully available" to modify all customer specific data or information, and not just customer information combined with information on a customer's bill under Rule 3001(j)(II).

11. The rule adopted in the Recommended Decision provides three distinct conditions under which information about a customer is customer data. Westminster misinterprets the judge's decision at paragraphs 22 through 35. At paragraph 35, the ALJ purposefully correlates "when not publicly or lawfully available" to customer information appearing on bills *only*, as identified in Rule 3001(j)(II). Specifically, the ALJ states "[c]ustomer specific information that is not publicly available *and appears on the customer's bill* will remain customer data."<sup>7</sup> Westminster is incorrect that the ALJ intended "when not publicly or lawfully available" to apply to all three categories of customer data. We agree with the ALJ that the phrase "when not publicly or lawfully available" should apply only to customer bill information identified in Rule 3001(j)(II). The proposed language is clear that certain customer specific information contained on a bill is not customer data if it is publically available from another source.

12. We deny Westminster's exception and affirm the definition of Customer Data in the Recommended Decision.

**b. Rule 3001(aa) – Property Owner**

13. Denver recommends the Commission revise the definition of "property owner" to include the term "authorized agent." Denver states that owners of large, multi-tenant buildings

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<sup>7</sup> Recommended Decision, at ¶ 35 (emphasis added).

often contract with property management companies to manage buildings on their behalf. According to Denver, property managers are often authorized agents on the property owner's utility account and therefore should have access to the whole building data report for the purpose of benchmarking the building's energy use.

14. In its exceptions to Rule 3034, Public Service also observes that multi-tenant buildings are often managed by agents other than the property owner. Public Service states that in its experience those property managers are often authorized agents on the property owner's utility account and therefore it would not present a burden to verify those managers or agents. The Company proposes adding the term "authorized agent" to Rule 3034 instead of changing the definition of property owner.

15. Denver's exception to the definition of "Property Owner" is denied; we do not agree that the definition of a property owner should include both the property owner and its authorized agent. However, we agree with Denver and Public Service that an authorized agent of a property owner should have access to whole building data, consistent with Commission rules. We therefore revise Rule 3034 as requested by Public Service and as further discussed below.

**c. Rule 3001(mm) – Unique Identifier**

16. Westminster argues that the ALJ's use of "*including*" in the definition of unique identifier makes it unclear if the list of unique identifiers is exhaustive, or if the ALJ intended additional items that may be displayed on a customer's utility bill to be included. Westminster suggests the Commission clarify this definition and specify whether the listed items on a customer's bill are an exhaustive or non-exhaustive list.

17. Westminster's exception is granted, in part. We find that additional clarity about what items uniquely identify a customer will help utilities and those seeking access to customer

data better understand what information is protected. On our own motion we revise the definition of unique identifier to specify that only the items listed within the definition are “unique identifiers” for purposes of the Electric Data Rules.<sup>8</sup>

18. Further, we revise the definition of “Aggregated data” and replace the term “customer-identifying information” with “unique identifier.” This revision makes the rule for aggregated data reports<sup>9</sup> more clear and consistent with the intent of protecting customer information by specifying which items on a customer’s electric bill, in addition to personal information,<sup>10</sup> are excluded from release in an aggregated data report.<sup>11</sup>

**d. Rule 3001(jj) – Third Party**

19. The rules adopted by the ALJ define a third party as “a person who is **not** the customer, an agent of the customer who has been designated by the customer with the utility and is acting on the customer’s behalf, a regulated utility serving the customer, or a contracted agent of the utility.”<sup>12</sup>

20. Public Service suggests that the placement of the word “not” in the definition makes it unclear exactly which entity is a third party. The Company proposes the Commission adopt one of two different suggestions to clarify the definition.

21. The adopted definition specifies that each of the listed entities is not a third party. A third party is anyone other than these entities who is seeking access to customer data.

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<sup>8</sup> These items on a customer’s bill are: a customer’s name, mailing address, telephone number, and email address.

<sup>9</sup> Rule 3033

<sup>10</sup> Personal information is defined by Rule 1004(x) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

<sup>11</sup> Rule 3033 already prohibits a utility from disclosing personal information as defined in Rule 1004(x).

<sup>12</sup> Rule 3001(jj)(emphasis added).

Public Service's exception is denied. On our own motion we make a minor structural revision to clarify the definition.

## **2. Rule 3028 - Customer Notice**

22. Public Service argues that the requirement to charge customers for a translation of the customer notice in Rule 3028 is inconsistent with the discretion the proposed data rules give to the Company in deciding whether to charge a customer for the translation of the Customer Consent Form.<sup>13</sup> Further, the Company suggests that it may be less costly to customers not to bill the person requesting the translation. Public Service recommends the Commission modify the proposed rule to provide discretion to utilities on whether to charge a fee for a translation.

23. We affirm the ALJ's determination that the cost of translating these documents is part of basic utility service and should be recovered as are other costs to inform customers of rights or obligations.<sup>14</sup> The modification to Rule 3028 suggested by Public Service is consistent with the ALJ's approach of providing utilities with flexibility to decide how best to recover the cost for translating forms. We grant the exception and revise the rule.

## **3. Rule 3031 – Local Government Access to Customer Data**

24. Boulder, CCUA, and Westminster filed exceptions to Rule 3031 proposed by the ALJ. Public Service filed replies to these exceptions.

25. Boulder requests the Commission amend Rule 3031 to allow utilities to disclose to local governments customer data that the government deems necessary for auditing certain tax payments by utilities. Boulder states that this change is necessary because it currently has no franchise agreement with Public Service but that the Company passes through to Boulder a

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<sup>13</sup> Rules 3029 (g)

<sup>14</sup> See paragraph 74 and footnote 1 of Decision No. R15-0406



utility occupation tax. Boulder contends that the occupation tax is equivalent to a franchise fee and therefore should receive the same treatment under the rules.

26. CCUA argues requiring the non-disclosure agreement to “at a minimum” comply with the rule presents the potential for a utility to place additional requirements through the nondisclosure agreement on local governments requesting data pursuant to Rule 3031. CCUA further states that any additional terms required by the utility would likely result in local governments not receiving timely access to data. Therefore, CCUA requests the Commission remove the phrase “at a minimum” from Rule 3031.

27. Westminster states that it supports the adoption of a rule clarifying the rights of local governments to receive access to customer data, but that it concurs with the concerns about the nondisclosure agreement raised by CCUA.

28. In its response, Public Service recommends the Commission reject the arguments by Boulder, Westminster, and CCUA. The Company argues that tax audits are addressed in separate statutes and ordinances and that protection of privacy interests pursuant to information sought under those statutes is established there.

29. The Recommended Decision makes clear that the Commission is not attempting to limit or address local government jurisdiction. Public Service correctly observes that local governments have existing authority to tax. Moreover, the arguments presented on exceptions to include fees or taxes in Rule 3031 were considered and rejected by the ALJ.

30. We agree with the ALJ and uphold the Recommended Decision. The adopted rules strikes the right balance between meeting a demonstrated need for a rule to ensure local governments’ ability to audit franchise fee payments and local governments’ desires to access

customer data for other purposes.<sup>15</sup> In addition, the rule states a minimum condition of the required nondisclosure agreement, which preserves customers' privacy rights consistent with the Commission's intentions. A local government can seek relief before the Commission if it believes that a utility is not complying with Rule 3031 or that the terms of an NDA are onerous.

31. The exceptions filed by Boulder, CCUA, and Westminster requesting revision to Rule 3031 are denied.

#### **4. Rule 3032 – Third Party Access to Customer Data**

32. Rule 3032(a) requires that a utility shall not disclose customer data without informed consent. Westminster suggests the Commission add Rule 3035, the rule governing community energy reports, to the list of exemptions provided in Rule 3032(a).

33. The community energy report in Rule 3035 provides only aggregated data, and this aggregated data may be disclosed pursuant to Commission rule. While Rule 3032(a) generally requires informed consent, it also allows disclosure pursuant to Rule 3027(b). Rule 3027(b) allows disclosure so long as "such disclosure conforms to these rules..." No change to the rule is necessary and Westminster's exception regarding Rule 3032 is denied; however we clarify that no customer consent form is required for reports that conform with Rule 3035.

#### **5. Rule 3033 – Aggregated Data Reports**

34. Public Service states two exceptions to Rule 3033 adopted by the ALJ. First, The Company notes the rule adds the requirement that "the recipient is authorized to receive all customer data within the aggregated data." Public Service opines that this requirement is unnecessary because, by definition, aggregated data does not contain any personal information or individually identifiable customer information. Public Service therefore

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<sup>15</sup> See Decision No. R15-0406 at paragraph 88.

recommends deleting the phrase “the recipient is authorized to receive all customer data within the aggregated data.”

35. There is no customer-specific information within an aggregated data report. However, the language in the proposed rule specifies that a recipient of aggregated data is permitted to receive *all* of the data in the report<sup>16</sup> and affords necessary protections to customers. We affirm the rule as proposed in the Recommended Decision and deny Public Service’s exception.

36. Public Service also suggests the Commission change the requirement in 3033(g) that a utility shall not provide overlapping aggregated customer data reports that have the potential to identify customer data to instead be permissive. The Company argues that the requirement not to allow re-identification of customer data in conjunction with the word “potential” in the rule requires the utility to determine the likelihood of disclosure of customer data from overlapping request for data and therefore may expose the utility to liability when responding to such requests. The Company states that it likely would deny overlapping data requests unless its relief is granted.

37. We maintain our interest in ensuring a utility protect customer information in its possession. The ALJ carefully considered balancing protections of personal privacy with interest in accessing information. A utility shall not disclose aggregated data that could potentially identify individual customer information. The ALJ was correct in placing the onus on the utility to determine whether disclosure of data in response to multiple, over-lapping requests may identify a customer.

38. We deny Public Service’s exceptions to Rule 3033.

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<sup>16</sup> Reports include those available pursuant to rules 3033, 3031, 3034, or 3035.

## 6. Rule 3034 – Whole Building Data

39. Public Service states that it supports the provision of whole building energy use data but recommends two changes to the rule.

40. First, the Company recommends the Commission amend Rule 3034 to allow an agent of the property owner, in addition to the property owner, to request whole building energy use data. The Company suggests that allowing the agent of the property owner to request the data is not contrary to Recommended Decision and that in many instances an agent of the owner is already on record with the Company, so verifying the authenticity of the agent would not be a burden for the utility.

41. Denver sought similar relief in proposing the Commission modify the definition of property owner to allow a property manager as an agent of the owner to access whole building data. We agree with Denver and Public Service that large, multi-tenant buildings are likely to be managed by a firm acting as the agent of the owner and that allowing those agents access to whole building energy use data will facilitate the goal of building benchmarking that is the purpose of this rule. We therefore adopt Public Service's suggested change; the phrase "or its authorized agent" will be added to the rule.

42. Public Service also recommends the Commission remove the phrase "with the utility" from Rule 3034(a)(III). The Company states that the inclusion of that phrase leaves it responsible for enforcing violations of a nondisclosure agreement signed by a property owner or its agent.

43. The proposed rule correctly requires a utility to have a signed nondisclosure agreement between it and either the building owner or owner's agent before the utility can disclose whole building data. Nondisclosure agreements required by the Commission must be

“with the utility” as the regulated entity in possession or control of the data. We deny Public Service’s exception and uphold the determination of the ALJ.

## 7. Rule 3035 – Community Energy Reports

44. Denver and Boulder each filed an exception recommending the Commission reconsider the appropriateness of the 15/15 standard<sup>17</sup> as the aggregation standard for annual, community wide energy consumption data in the community energy report<sup>18</sup>.

45. Denver argues that the 15/15 Rule is unnecessarily restrictive given the level of data being made available and that the record provides examples of less restrictive data aggregation standards that are sufficient to protect customer privacy. Denver suggests adoption of a 4/80 standard.<sup>19</sup>

46. Boulder also argues that the 15/15 standard is too restrictive and suggests that meeting the standard will require a utility to exclude information from community energy reports that will prevent the reports from being a meaningful tool for local government policy making. Boulder suggests that the 15/15 standard can be replaced by a different standard that protects customer data and is more consistent with industry best practices on privacy protection for data.<sup>20</sup>

47. Boulder states that the record addressing the whole building energy reports supported a range of aggregation standards. Boulder argues that on adopting a standard, the ALJ applied a “reasonableness test” to balance access to data with customer privacy and that if the

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<sup>17</sup> The 15/15 standard specifies that a utility cannot release aggregated data unless there are at least 15 customers in the data set and no single customer uses more than 15 percent of the total data in the set.

<sup>18</sup> Rule 3035(d).

<sup>19</sup> A 4/80 standard would permit the disclosure of aggregated data as long there are at least 4 customer in the aggregated group and no customer represents more than 80 percent of the energy used.

<sup>20</sup> Boulder indicates that the record includes proposed thresholds of 4/80, 3/50 or 3/60 among others. Boulder recommends the Commission consider adopting a standard of 3 to 4 customers where no one customer accounts for more than 50 to 80 percent of total energy use. Examples of such standards would include 3/50, 4/40, or 4/80.

same test were applied to the data aggregation standard used in the community energy reports, the 15/15 standard would fail.

48. The ALJ considered carefully the record on the appropriate aggregation standard for data provided in the community energy report. We agree with his determination that the existing 15/15 standard is necessary to preserve customer privacy interests. We therefore deny the exceptions filed by Boulder and Denver regarding Rule 3035.

49. Public Service also filed exceptions to the rule on the community energy report. The Company states that pursuant to Commission decisions, it reports information on solar installations (rooftop and gardens), on customer participation in demand-side management, and on participation in Green pricing programs without any aggregation standard.<sup>21</sup>

50. In adopting the 15/15 standard, the ALJ sought to preserve protections for customers' data. However, as Public Service notes, this information is already publically available through the Commission's website without an aggregation standard being applied. We therefore grant Public Service's exception. The aggregation standard in the proposed rules for data on solar installations (rooftop and gardens), customer participation in demand-side management, and participation in Green pricing programs will be removed. However, we clarify that information provided as aggregated data must conform to Commission rules, including that, by definition, unique identifiers and personal information must be removed from all aggregated data.

51. All exceptions not discussed are denied.

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<sup>21</sup> Public Service supports and does not oppose the use of the 15/15 Rule for aggregation of general customer data included in the community energy report.

**D. Changes for Consistency and Clarity**

52. On our own motion, we make revisions to achieve consistency between the Gas and Electric Rules and in revise the rules for clarity. We correct typographic errors, make corrections to reflect the exceptions granted by this decision, and add needed citations. For consistency, we also update penalty requirements between the Gas and Electric Rules to make them parallel<sup>22</sup> and add references to all rules allowing for release of aggregated data by the utility within the required customer notice.<sup>23</sup>

**II. ORDER****A. The Commission Orders That:**

1. The Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3, contained in redline and strikeout format attached to this Decision as Attachment A, and in final format as Attachment C, are adopted consistent with the discussion above. The permanent rules are available through the Commission's Electronic Filings (E-Filings) system at: [https://www.dora.state.co.us/pls/efi/EFI.Show Docket?p\\_session\\_id=&p\\_docket\\_id=14R-0394EG](https://www.dora.state.co.us/pls/efi/EFI.Show Docket?p_session_id=&p_docket_id=14R-0394EG).

2. The Rules Regulating Gas Utilities and Pipeline Operators, 4 Code of Colorado Regulations 723-4, contained in redline and strikeout format attached to this Decision as Attachment B, and in final format attached as Attachment D, are adopted, consistent with the discussion above. The permanent rules are available through the Commission's E-Filings system at: [https://www.dora.state.co.us/pls/efi/EFI.Show Docket?p\\_session\\_id=&p\\_docket\\_id=14R-0394EG](https://www.dora.state.co.us/pls/efi/EFI.Show Docket?p_session_id=&p_docket_id=14R-0394EG).

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<sup>22</sup> Penalties in Rules 3976 and 4976 are made parallel by adding a penalty for violation of Rules 3031(a) and (b), consistent with penalties required in the Gas Data Rules for Rules 4031(a) and (b), and adding a penalty for violation of Rule 4027(d) consistent with violation for Energy Data Rule 3027(d).

<sup>23</sup> Attached Rule 3028(a)(IX) is therefore revised to include notice of aggregated data that may be provided to local governments for audit pursuant to Rule 3031, for whole building data reports pursuant to Rule 3034, and for community energy reports pursuant to Rule 3035, in addition to the current general citation to requests for aggregated data pursuant to Rule 3033.

3. The exceptions to Recommended Decision No. R15-0406 file by Public Service Company of Colorado on June 4, 2015 are denied, in part, and granted, in part, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R15-0406 file by the City of Boulder on June 4, 2015 are denied, consistent with the discussion above.

5. The exceptions to Recommended Decision No. R15-0406 file by The City and County of Denver on June 4, 2015 are denied consistent with the discussion above.

6. The exceptions to Recommended Decision No. R15-0406 file by the City of Westminster on June 4, 2015 are denied, in part, and granted, in part, consistent with the discussion above.

7. The exception to Recommended Decision No. R15-0406 file by the Colorado Communication and Utility Alliance on June 4, 2015 is denied consistent with the discussion above.

8. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

9. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

10. This Decision is effective upon its Mailed Date.



**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 8, 16, 2015.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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PAMELA J. PATTON

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GLENN A. VAAD

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Commissioners