

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

#### **4 CODE OF COLORADO REGULATIONS (CCR) 723-4**

#### **PART 4 RULES REGULATING GAS UTILITIES**

##### **BASIS, PURPOSE, AND STATUTORY AUTHORITY.**

The basis and purpose of these rules is to set forth the manner of regulation over jurisdictional gas utilities, the services they provide, and their actions to maintain just and reasonable rates, ensure system safety, reliability, and resiliency, protect disproportionately impacted communities, and reduce greenhouse gas emissions from the use of gas by their customers and from leaks in their facilities. These rules also set forth the manner of regulation over master meter operators. These rules address a wide variety of subject areas including, but not limited to, planning, expenditure and demand forecasting, cost and rate impacts, system safety and integrity planning, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, gas service low-income programs, cost allocation between regulated and unregulated operations, recovery of gas costs, appeals regarding local government land use decisions, demand side management programs, the reduction of greenhouse gas emissions from the distribution and end-use consumption of gas, and authority of the Commission to impose civil penalties on public utilities. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-3-102, 40-3-102.5, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-3-101, 40-3.2-103, 40-3.2-106, 40-3.2-107, 40-3.2-108, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-7-113.5, 40-7-116.5; and 40-8.7-105(5), C.R.S.

##### **GENERAL PROVISIONS**

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[indicates omission of unaffected rules]

##### **4001. Definitions.**

The following definitions apply throughout this Part 4, except where a specific rule or statute provides otherwise. In addition to the definitions here, the definitions found in the Public Utilities Law and Part 1 apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply. In the event of a conflict between these definitions and a definition in Part 1, these definitions shall apply.

- (a) "Affiliate" of a utility means a subsidiary of a utility, a parent corporation of a utility, a joint venture organized as a separate corporation or partnership to the extent of the individual utility's

involvement with the joint venture, a subsidiary of a parent corporation of a utility or where the utility or the parent corporation has a controlling interest over an entity.

- (b) “Aggregated data” means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or a compilation of customer data of one or more customers from which and personal information has been removed.
- (c) “Applicant for service” means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.
- (d) “Air Pollution Control Division” means the Air Pollution Control Division of the Colorado Department of Public Health and Environment established by § 25-1-102(2)(a), C.R.S.
- (e) “Air Quality Control Commission” means the decision-making body within the Colorado Department of Public Health and Environment established by § 25-7-104, C.R.S., to oversee and promulgate the rules to administer Colorado’s air quality programs.
- (f) “Base rate” means charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate adjustment mechanism.
- (g) “Basis Point” means one-hundredth of a percentage point (100 basis points = 1 percent).
- (h) “Benefit of service” means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.
- (i) “Best value employment metrics” means additional labor metrics required to be obtained by a utility from bidders and contractors for a utility construction contract, specifically, the length and type of training and apprenticeship programs available to the workforce, the percentage of labor estimated to be Colorado residents as compared to out-of-state workers, the number and type of long-term careers supported by the project, whether the workforce will be covered by a labor agreement, and the wage rates and health care and pension benefits, including employer pension contribution rates, provided to protect labor.
- (j) “Biomethane” means:
  - (I) a mixture of carbon dioxide and hydrocarbons released from the biological decomposition of organic materials that is primarily methane and provides a net reduction in greenhouse gas emissions; and
  - (II) includes biomethane recovered from manure management systems or anaerobic digesters that has been processed to meet pipeline quality gas standards.
- (k) “Commission” means the Colorado Public Utilities Commission.
- (l) “Contracted agent” means any person that has contracted with a utility in compliance with rule 4030 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).

- (m) "Cubic foot" means, as the context requires.
- (I) At Local Pressure Conditions. For the purpose of measuring gas to a customer at local pressure conditions, a cubic foot is that amount of gas which occupies a volume of one cubic foot under the conditions existing in the customer's meter as and where installed. When gas is metered at a pressure in excess of eight inches of water column gauge pressure, a suitable correction factor shall be applied to provide for measurement of gas as if delivered and metered at a pressure of six inches of water column gauge pressure. A utility may also apply appropriate factors to correct local pressure measurement to standard conditions.
  - (II) At Standard Conditions. For all other purposes, including testing gas, a standard cubic foot is that amount of gas at standard conditions which occupies a volume of one cubic foot.
- (n) "Curtailment" means the inability of a transportation customer or a sales customer to receive gas due to a shortage of gas supply.
- (o) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility's service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.
- (p) "Customer data" means customer specific information, excluding personal information as defined in paragraph 1004(x), that is:
- (I) collected from the gas meter by the utility and stored in its data systems;
  - (II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or
  - (III) about the customer's participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.
- (q) "Dekatherm" (Dth) means a measurement of gas commodity heat content. One Dekatherm is the energy equivalent of 1,000,000 British Thermal Units (1 MMBtu).
- (r) "Dedicated recovered methane pipeline" means a conveyance of recovered methane that is not a part of a common carrier pipeline system, and which conveys recovered methane from where it is generated to a common carrier pipeline or to the end user in Colorado for which the recovered methane was produced so long as the recovered methane replaces geologic gas supplied by a gas distribution utility or small gas distribution utility.
- (s) "Design peak demand" refers to the maximum gas flow rate projected for a utility system, or a portion thereof, which is utilized by a utility for gas infrastructure capacity planning.
- (t) "Disproportionately impacted community" means a geographic area defined pursuant to § 40-2-108(3)(d), C.R.S., and as may be further modified by Commission rule or order. Mapping of such

geographic areas shall be conducted in accordance with the best available mapping tool developed by the Colorado Department of Public Health and Environment, until such time as a different practice is adopted by Commission rule or order.

- (u) "Distribution system" means the utility-owned piping and associated facilities used to deliver gas to customers, excluding facilities owned by a utility that are classified on the books and records of the utility as production, storage, or transmission facilities.
- (v) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.
- (w) "Gas" means natural or geological gas; hydrogen, or recovered methane, or any mixture thereof transported by a common carrier or dedicated pipeline; flammable gas; manufactured gas; petroleum or other hydrocarbon gases including propane; or any mixture of gases injected into a pipeline and transmitted, distributed, or furnished by any utility.
- (x) "Income-qualified utility customer" or "low-income customer" is a customer meeting the requirements of § 40-3-106(1)(d)(II), C.R.S.
- (y) "Informal complaint" means an informal complaint as defined and discussed in the Commission's Rules Regulating Practice and Procedure, 4 CCR 723-1.
- (z) "Interruption" means a utility's inability to provide transportation to a transportation customer, or its inability to serve a sales customer, due to constraints on the utility's pipeline system.
- (aa) "Intrastate transmission pipeline" or "ITP" means generally any person that provides gas transportation service for compensation to or for another person in the State of Colorado using transmission facilities rather than distribution facilities and is exempt from FERC jurisdiction.
- (bb) "Local distribution company" (LDC) means any person, other than an interstate pipeline or an intrastate transmission pipeline, engaged in the sale and distribution of gas for end-user consumption. A LDC may also perform transportation services for its end-use customers, for another LDC or its end-use customers, as authorized under its effective Colorado jurisdictional tariffs.
- (cc) "Local government" means any Colorado county, municipality, city and county, home rule city or town, home rule city and county, or city or town operating under a territorial charter.
- (dd) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.
- (ee) "Mandatory relocation" means a project to relocate the utility's gas infrastructure as required by a federal, tribal, state, county, or local governmental body.
- (ff) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral.

- (gg) "Mcf" means 1,000 standard cubic feet.
- (hh) "MMBtu" means 1,000,000 British Thermal Units, or one Dekatherm.
- (ii) "Natural gas" or "geological gas" means methane or other hydrocarbons that occur underground without human intervention and may be used as fuel.
- (jj) "Non-pipeline alternative" means programs, equipment, or actions that avoid, reduce, or delay the need for investment in certain types of new gas infrastructure and may include energy efficiency, demand response, and beneficial electrification.
- (kk) "Non-standard customer data" means all customer data that are not standard customer data.
- (ll) "Past due" means the point at which a utility can affect a customer's account for regulated service due to non-payment of charges for regulated service.
- (mm) "Pipeline system" means the utility-owned piping and associated facilities used in the transmission or distribution of gas.
- (nn) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.
- (oo) "Pressure district" means a localized area within a utility's service territory whereby an established minimum and maximum pressure range is intended to be maintained and is distinct from neighboring regions.
- (pp) "Property owner" means the legal owner of government record for a parcel of real property within the service territory of a utility. A utility may rely upon the records of a county clerk for the county within which a parcel of real property is located to determine ownership of government record.
- (qq) "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.
- (rr) "Rate adjustment mechanism" or "rate rider" means a charge added to a utility bill to recover a specific cost that is not part of the base rate.
- (ss) "Recovered methane" means any of the following that are located in the State of Colorado and meet the recovered methane protocol approved by the Air Quality Control Commission: biomethane; methane derived from municipal solid waste, the pyrolysis of municipal solid waste, biomass pyrolysis or enzymatic biomass, or wastewater treatment; coal mine methane as defined in § 40-2-124(1)(a)(II), C.R.S, the capture of which is not otherwise required by law; or methane that would have leaked without repairs of the gas distribution or service pipelines from the city gate to customer end use.
- (tt) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission, presented on a tariff sheet, or contained in a tariff of the utility.

- (uu) "Sales customer" or "full service customer" means a customer who receives sales service from a utility and is not served under a utility's gas transportation service at that same meter.
- (vv) "Sales service" means a bundled gas utility service in which the utility both purchases gas commodity for resale to the customer and delivers the gas to the customer.
- (ww) "Security" includes any stock, bond, note, or other evidence of indebtedness.
- (xx) "Service lateral" means that part of a distribution system from the utility's main to the entrance to a customer's physical location.
- (yy) "Standard conditions" means gas at a temperature of 60 degrees Fahrenheit and subject to an absolute pressure equal to 14.73 pounds per square inch absolute.
- (zz) "Standard customer data" means customer data maintained by a utility in its systems in the ordinary course of business.
- (aaa) "Standby capacity" means the maximum daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer, if the customer purchased optional standby service.
- (bbb) "Standby supply" means the daily volumetric amount of gas reserved by a utility for the use by a transportation customer should that customer's supply fail, if the customer purchased optional standby service.
- ~~(ccc) "Test year" means a twelve-month period that is examined to determine a utility's costs of service in a rate case.~~
- (~~ddd~~ccc) "Third party" means 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.
- (~~eee~~ddd) "Transportation" means the exchange, forward-haul, backhaul, flow reversal, or displacement of gas between a utility and a transportation customer through a pipeline system.
- (~~fff~~eee) "Transportation customer" means a person who, by signing a gas transportation agreement, elects to subscribe to gas transportation service offered by a utility.
- (~~ggg~~fff) "Unique identifier" means customer's name, mailing address, telephone number, or email address that is displayed on a bill.
- (~~hhh~~ggg) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff, and are for service or merchandise not required as a condition of receiving regulated utility service.
- (~~###~~hhh) "Utility" means a public utility as defined in § 40-1-103, C.R.S., providing sales service or transportation service (or both) in Colorado. This term includes both an ITP and a LDC.

(jjjii) "Utility service" or "service" means a service offering of a utility, which service offering is by the Commission.

(kkkjjj) "Whole building data" means the sum of the monthly gas use for either all service connections at a building on a parcel of real property or all buildings on a parcel of real property.

#### **4002. Applications.**

- (a) Any person may seek Commission action regarding any of the following matters through the filing of an appropriate application to request a(n):
- (I) issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 4100;
  - (II) issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 4101;
  - (III) issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 4102;
  - (IV) amendment of a certificate of public convenience and necessity to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 4103;
  - (V) transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets within the jurisdiction of the Commission or stock, or to merge a utility with another entity, as provided in rule 4104;
  - (VI) approval of the issuance or assumption of any security, or to create a lien pursuant to § 40-1-104, C.R.S., as provided in rule 4105;
  - (VII) flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 4106;
  - (VIII) approval of a new tariff or an amendment of a tariff for a rate adjustment mechanism on less than statutory notice, as provided in rule 4109;
  - (IX) approval of a meter sampling program, as provided in rule 4304;
  - (X) approval of a refund plan, as provided in rule 4410;
  - (XI) approval of a Low-Income Energy Assistance Plan, as provided in rule 4411;
  - (XII) approval of a cost assignment and allocation manual, as provided in rule 4503;
  - (XIII) approval of a gas infrastructure plan, as provided in rule 4552;
  - (XIV) approval of a clean heat plan, as provided in rule 4729 or 4734;

- (XV) approval of a gas demand side management plan, as provided in paragraph 4752(e) and rule 4753, or for determinations on demand side management strategic issues, as provided in rule 4761;
- (XVI) appeal of a local government land use decision, as provided in rule 4703; or
- (XVII) any other matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

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[indicates omission of unaffected rules]

## **CIVIL PENALTIES**

### **4009. Definitions.**

The following definitions apply to rules 4009, 4010, and 4976, unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “Civil penalty” means any monetary penalty levied against a public utility because of intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders.
- (b) “Civil penalty assessment” means the act by the Commission of imposing a civil penalty against a public utility after the public utility has admitted liability or has been adjudicated by the Commission to be liable for intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders.
- (c) “Civil penalty assessment notice” means the written document by which a public utility is given notice of an alleged intentional violation of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders and of a proposed civil penalty.
- (d) “Intentional violation.” A person acts “intentionally” or “with intent” when his conscious objective is to cause the specific result proscribed by the statute, rule, or order defining the violation.

### **4010. Regulated Gas Utility Violations, Civil Enforcement, and Enhancement of Civil Penalties.**

- (a) The Commission may impose a civil penalty in accordance with the requirements and procedures contained in § 40-7-113.5, C.R.S., § 40-7-116.5, C.R.S., and paragraph 1302(b), 4 Code of Colorado Regulations 723-1, for intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders as specified in §§ 40-7-113.5 and 40-7-116.5, C.R.S., and in these rules.
- (b) The Director of the Commission or his or her designee shall have the authority to issue civil penalty assessments for the violations enumerated in § 40-7-113.5, C.R.S., subject to hearing before the Commission. When a public utility is cited for an alleged intentional violation, the



public utility shall be given notice of the alleged violation in the form of a civil penalty assessment notice.

- (c) The public utility cited for an alleged intentional violation may either admit liability for the violation pursuant to § 40-7-116.5(1)(c) or the public utility may contest the alleged violation pursuant to § 40-7-116.5(1)(d), C.R.S. At any hearing contesting an alleged violation, trial staff shall have the burden of demonstrating a violation by a preponderance of the evidence.
- (d) In any written decision entered by the Commission pursuant to § 40-6-109, C.R.S., adjudicating a public utility liable for an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order, the Commission may impose a civil penalty of not more than two thousand dollars, pursuant to § 40-7-113.5(1), C.R.S. In imposing any civil penalty pursuant to § 40-7-113.5(1), C.R.S., the Commission shall consider the factors set forth in Rule 1302(b).
- (e) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
- (f) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
  - (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
  - (II) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable; and
  - (III) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable
- (g) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
  - (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted two or more prior intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
  - (II) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment or been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and

- (III) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent prior instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (h) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the date of such alleged conduct for which tripled civil penalties are sought.
- (i) Nothing in this rule shall preclude the assessment of tripled penalties when doubled and tripled penalties are sought in the same civil penalty assessment notice.
- (j) The Commission shall not issue a decision on doubled or tripled penalties until after the effective date of the administratively final Commission decision upon which the single civil penalty was based.
- (k) The civil penalty assessment notice shall contain the maximum penalty amount provided by rule for each individual violation noted, with a separate provision for a reduced penalty of 50 percent of the penalty amount sought if paid within ten days of the public utility's receipt of the civil penalty assessment notice.
- (l) The civil penalty assessment notice shall contain the maximum amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S., if any.
- (m) A penalty surcharge referred to in paragraph (l) of this rule shall be equal to the percentage set by the Department of Regulatory Agencies on an annual basis. The surcharge shall not be included in the calculation of the statutory limits set in § 40-7-113.5(5), C.R.S.
- (n) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of issuing civil penalties.

**4011. – 4024. [Reserved].**

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[indicates omission of unaffected rules]

**OPERATING AUTHORITY**

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[indicates omission of unaffected rules]

**4108. Tariffs.**

- (a) A utility shall keep on file with the Commission the following documents pertaining to gas sales service and gas transportation service: its current Colorado tariffs, forms of contracts (including gas sales agreements), and those gas transportation service agreements which are not the same as the standard gas transportation service agreement contained in the utility's tariffs. These documents, unless filed under seal, shall be available for public inspection at the Commission and at the principal place of business of the utility.
- (b) All tariffs shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.
- (c) Filing and contents of tariff.
  - (l) In addition to the requirements and contents in rule 1210, the following shall be included in a utility's tariff as applicable:
    - (A) a description of the minimum heating value for gas service as required by paragraph 4202(a);
    - (B) a description of testing methods for gas quality as required by paragraph 4202(f);
    - (C) interruption and curtailment criteria, policies, and implementation priorities, as required by rule 4203;
    - (D) transportation service rates, terms, and conditions, as required by rule 4205;
    - (E) the utility's transportation service request form as required by paragraph 4206(a);
    - (F) information regarding the utility's meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, as required by rules 4303, 4304, 4305, 4306, and 4309;
    - (G) information regarding benefit of service transfer policies as required by paragraph 4401(c);
    - (H) information regarding installment payment plans and other plans, as required by rule 4404;
    - (I) information regarding collection fees or miscellaneous service charges, as required by subparagraph 4404(c)(VI) and (c)(VIII).
    - (J) information regarding any after-hour restoration fees, as required by paragraph 4409(b); and
    - (K) all other rules, regulations, and policies covering the relations between the customer and the utility.

**4109. New or Changed Tariffs.**

- (a) A utility shall file with the Commission any new or changed tariffs. No new or changed tariff shall be effective unless it is filed with the Commission and either is allowed to go into effect by operation of law or is approved by the Commission.
- (b) A utility shall use one of the following filing processes to seek to add a new tariff ~~other than a tariff setting forth a base rate or to change an existing tariff. If the new tariff represents an increase in the utility's rates, charges, fees, fares, tolls, rentals, or classifications, the utility shall include a rate trend report with the elements in subparagraphs 4109(e)(I) through (IV). A utility seeking to add a new base rate tariff or to change to an existing base rate tariff shall follow the process and requirements outlined in rules 4350 through 4355.~~
- (I) The utility ~~may shall~~ file the proposed ~~new~~ tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1206. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date by operation of law.
- (II) The utility may file an application to implement a new-proposed tariff on less than 30-days' notice, accompanied by the proposed tariff, including the proposed effective date. The utility shall provide notice in accordance with rule 1207. The application shall include the information required in paragraphs 4002(b) and 4002(c); shall explain the details of the proposed tariff, including financial data if applicable; shall state the facts which are the basis for the request that the proposed tariff become effective on less than 30 days' notice; and shall identify any prior Commission action, in any proceeding, pertaining to the present or proposed tariff. If the application is approved by the Commission, the utility shall file a compliance advice letter and tariff which tariff shall be the same in substance as was approved by decision. The advice letter and tariff shall be filed in a new proceeding with the prescribed notice period either in the decision or pursuant to paragraph 1207(g). In order to be eligible to make a compliance advice letter filing on less than 30 days' notice if the application is approved by the Commission, the utility shall provide notice in accordance with rule 1207 at the time of the application filing for any rate, fare, toll, rental, charge, classification, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility.
- ~~(c) A utility shall use the following filing process to change an existing tariff for a rate adjustment mechanism. A filing to increase a rate, charge, fee, fare, toll, rental, or classification pursuant to a tariff for an existing rate adjustment mechanism also shall include a rate trend report in accordance with paragraph 4109(e).~~
- ~~(I) The utility may file the proposed change to the tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207. If the Commission does not suspend the proposed tariff in accordance with rule 1305 prior to the tariff's proposed effective date, the proposed tariff shall take effect on the proposed effective date.~~

- ~~(II) — The utility may file an application to implement the change to the tariff on less than 30-days' notice, accompanied by the proposed tariff, including the proposed effective date. The utility shall provide notice in accordance with rule 1207. The application shall include the information required in paragraphs 3002(b) and 3002(c); shall explain the details of the proposed tariff, including financial data if applicable; shall state the facts which are the basis for the request that the proposed tariff become effective on less than 30-days' notice; and shall note any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.~~
- ~~(d) — A utility shall use the following filing process to change a tariff setting forth a base rate. A filing to increase a base rate also shall include a rate trend report in accordance with paragraph 4109(e).~~
- ~~(I) — The utility shall file the proposed new tariff, including the proposed effective date, accompanied by an advice letter pursuant to rule 1210. The utility shall provide notice in accordance with rule 1207.~~
- ~~(II) — The Commission shall certify the advice letter filing for completeness in accordance with paragraph 4109(f).~~
- (ec) A utility tariff filing, either submitted through an advice letter or an application, that introduces or increases any rate, charge, fee, fare, toll, rental, or classification shall include a rate trend report. ~~Unless not required by another rule, the~~ The rate trend report shall include:
- (I) the amount of increase in the rate, charge, fee, fare, toll, rental, or classification relative to the amount in effect on the date of the utility's filing;
  - (II) the amount in-of change in annual revenues collected by the utility as a result of the utility's filing;
  - (III) a chart, graph, or other pictographic demonstration of each of the utility's rates, charges, fees, fares, tolls, rentals, or classifications, including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing; and
  - (IV) for the same rate, charge, fee, fare, toll, rental, or classification as the utility's filing over the ten years prior to the date of the utility's filing:
    - (A) the dates when a previous increase or decrease went into effect;
    - (B) the amount of the rate, charge, fee, fare, toll, rental, or classification before a previous increase or decrease went into effect;
    - (C) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect;
    - (D) the change in annual revenues collected by the utility as a result of the utility's filing; and

(E) the proceeding number for the tariff filing where the rate, charge, fee, fare, toll, rental, or classification either was allowed to go into effect by operation of law or was approved by the Commission.

(V) the utility's total residential retail revenues, including base rates and all rate adjustment mechanisms, and total residential retail sales over the ten years prior to the date of the utility's filing; the projected increase in residential revenues from the increase in the rate charge, fee, fare, toll, rental or classification addressed in the tariff filing; the projected residential sales for the first year after the increase in the rate charge, fee, fare, toll, rental or classification addressed in the tariff filing takes effect; and the ten-year historic and one-year projected total residential revenue per sales unit calculated using such data.

~~(f) The Commission shall certify by written decision that a utility base rate tariff filing made in accordance with paragraph 4109(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.~~

~~(I) The utility shall include in its base rate tariff filing:~~

~~(A) a cost of service study that calculates the utility's base rate revenue requirement for a twelve-month period concluding no later than six months prior to the date of the utility's base rate tariff filing;~~

~~(B) detailed explanations of all adjustments made to the auditable historical data used in all of the cost of service studies presented in the utility's filing;~~

~~(C) an executable copy of each of the cost of service studies presented in the utility's filing, with links and formulas intact;~~

~~(D) workpapers, in executable format, to which the executable copies of the cost of service study are linked; and~~

~~(E) any other information or documentation, as determined by the Commission.~~

~~(II) To prevent delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.~~

~~(III) The process for certifying a utility base rate tariff filing as complete shall be implemented as follows.~~

~~(A) The utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.~~

~~(B) Any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.~~

~~(C) — The Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The Commission may suspend the proposed tariff's effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.~~

~~(D) — The Commission shall provide the utility an opportunity to cure any deficiencies of its base rate tariff filing. The Commission may condition the certification of the remedied utility base rate tariff filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.~~

~~(IV) — The Commission shall not issue a decision approving a base rate whose base rate tariff filing has been determined to be incomplete until any deficiencies are cured.~~

~~(V) — The Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.~~

#### **4110. Advice Letters.**

- (a) All advice letter filings shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.
- (b) In addition to the requirements and contents in rule 1210, the advice letter shall include the estimated amounts, if any, by which the utility's revenues will be affected, calculated on an annual basis.
- (c) Customer notice of advice letter. If the utility is required by statute, Commission rule or order to provide notice to its customers of the advice letter, such notice shall include the requirements of subparagraphs 4002(d)(I) – (XII).

#### **4111. – 4199. [Reserved].**

\* \* \* \*

[indicates omission of unaffected rules]

### **BASE RATE PROCEEDINGS**

#### **4350. Annual Reporting on Costs Prohibited from Rates Overview and Purpose.**

The purpose of these rules is to establish requirements for the filing and review of the components of base rate tariff filings.

#### **4351. Definitions.**

The following definitions apply only to rules 4350 through 4555. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “Cost of service study” means a calculation, typically made using a spreadsheet model, of the utility’s costs of providing service to its customers as a measure the amount of revenue to be collected from base rates. A cost of service study thus calculates the utility’s base rate revenue requirement.
- (b) “Test year” means a twelve-month period that is examined in a cost of service study to determine a utility’s base rate revenue requirement.

**4352. Certification of Completeness.**

- (a) The Commission shall certify by written decision the completeness of a utility base rate tariff filing made in accordance with paragraph 4109(d).
- (b) Filing requirements.
  - (I) If the utility is seeking to change base rates to cause an overall increase in its base rate revenues, the utility shall include in its base rate tariff filing:
    - (A) a source cost of service study that calculates the utility’s base rate revenue requirement using only auditable historical data for a test-year concluding prior to the date of the utility’s base rate tariff filing; and
    - (B) detailed explanations of all adjustments made to the auditable historical data used in the source cost of service study and of all further adjustments made to such data in relation to each cost of service study presented in the utility’s filing.
  - (II) If the utility is seeking to change base rates in accordance with a base rate revenue requirement previously established by the Commission, the utility shall include in its base rate tariff filing:
    - (A) the cost of service study that calculates the utility’s base rate revenue requirement as approved by the Commission; and
    - (B) detailed explanations of all allocations of and adjustments to the approved revenue requirement in relation to each cost of service study presented in the utility’s filing.
  - (III) The utility shall include in its base rate tariff filing:
    - (A) an executable copy of each of the cost of service studies presented in the utility’s filing, with links and formulas intact; and
    - (B) workpapers, in executable format, to which the executable copies of the cost of service studies are linked.
- (c) To prevent delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion



for an order certifying the base rate tariff filing to be complete in accordance with paragraph 4352(b).

- (d) The process for certifying a utility base rate tariff filing as complete shall be implemented as follows.
- (I) A written protest submitted in accordance with rule 1210 of the Commission's Rules of Practice and Procedure may claim the utility failed to provide the information required by paragraph 4352(b).
  - (II) The Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The Commission may suspend the proposed tariff's effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.
  - (III) The Commission shall provide the utility an opportunity to cure any deficiencies of its base rate tariff filing. The Commission may condition the certification of the remedied utility base rate tariff filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.
- (e) The Commission shall not issue a decision approving a base rate whose base rate tariff filing has been determined to be incomplete until any deficiencies are cured.
- (f) The Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

#### **4353. Procedural Schedule and Discovery.**

- (a) Procedural schedule.
- (I) The Commission will establish a procedural schedule for its review of the utility's base rate tariff filing in the event the tariffs are suspended pursuant to § 40-6-111(1)(a) and (b), C.R.S.
  - (II) The utility shall confer with parties and potential parties timely submitting intervention pleadings in the proceeding to develop a proposed procedural schedule including discovery procedures. The utility shall file no later than seven business days following the close of the notice and intervention period a conferral report addressing the proposed procedural schedule or a motion to adopt a proposed procedural schedule.
  - (III) A proposed procedural schedule shall include a date for a technical conference to be conducted in accordance with paragraph 3353(b).
- (b) Technical conference.
- (I) The Commission will schedule a technical conference at which the utility shall present the principal components of each executable cost of service study submitted with the base rate tariff filing.

(II) Parties may ask the utility clarifying questions at the technical conference related to the cost of service studies included in the utility's base rate tariff filing and to the adjustments made to data used in those studies.

(III) The technical conference will be on the record and a transcript shall be made available to the parties by the utility.

(c) Standards for discovery and data requests.

(I) Parties to the base rate proceeding shall conduct discovery in accordance with rule 1405 of the Commission's Rules of Practice and Procedure unless the Commission adopts modified procedures.

(II) No later five business days following the mailed date of the Commission's decision setting the base rate tariff filing for hearing, the utility shall file:

(A) a template for discovery and data requests; and

(B) instructions for using its electronic systems for the exchange of data request, interrogatories, and responses.

(III) Discovery requests and responses shall be served on all parties.

(d) Disclosures and updates.

(I) The utility shall file in the administrative record for the proceeding, no later than five business days following the mailed date of the Commission decision setting the base rate tariff filing for hearing, the following information:

(A) a table listing all of the utility's requests for approvals related to the base rate tariff filing and an index to the utility's testimony that addresses each request;

(B) an index to the utility's testimony identifying where key items and adjustments made in the utility's cost of service models are addressed;

(C) worksheets, in executable format, summarizing forecasted base rates and rate adjustment mechanisms in each of the ten twelve-month periods following the source cost of service test year;

(D) worksheets, in executable format, summarizing forecasted revenues collected through base rates and revenues collected through each rate adjustment mechanism in each of the ten twelve-month periods following the source cost of service test year;

(E) a summary of all active performance incentive mechanisms; and

(F) an index to the utility's testimony identifying the portions claimed to be confidential and an index to the testimony that the utility claims is highly confidential.

- (II) If the utility is seeking to change base rates to cause an overall increase in its base rate revenues, the utility shall file in the administrative record for the proceeding, no later than five business days following the mailed date of the Commission decision setting the base rate tariff filing for hearing, the following information.
- (A) Credit ratings and credit rating reports from S&P, Moody's, and Fitch, the principal credit rating entities, as applicable, for both the utility's holding company and for the utility (if the utility issues its own debt) issued in the three years prior to the base rate tariff filing.
- (B) A four-year forecast of the financial metrics used by the credit rating agencies to determine the credit ratings for the utility's holding company and the utility (if the utility issues its own debt) based on the following three assumptions:
- (i) the base rate tariff filing was not filed;
- (ii) the utility's base rate tariff filing is approved without modification; and
- (iii) the utility's base rate base tariff filing is approved as filed but recalculated using the cost of capital measures (i.e., authorized return on equity, costs of debt, and capital structure) established by the Commission in the utility's most recent base rate tariff proceeding resulting in a change to its base rate revenues.
- (C) An executable worksheet model demonstrating the impact of changes in capital structure, authorized return on equity, regulatory lag, depreciation expenses, and other factors as identified by the utility on the utility's credit metrics. The utility shall explain all model inputs and calculations.
- (D) Equity analyst reports addressing the utility or its holding company issued in the three years prior to the base rate tariff filing.
- (E) Investor presentations addressing the utility or its holding company for the three years preceding the date of the base rate tariff filing.
- (F) The return on equity for the utility's holding company in the most recent quarter prior to the base rate tariff filing as measured by the relevant stock price, dividend yield, and growth expectations as represented in relevant investor presentations.
- (G) The most recent annual reports as filed with the Securities and Exchange Commission for the utility's holding company and the utility, as applicable in the three years prior to the base rate tariff filing.
- (H) For a utility with more than 500,000 retail customers, worksheets, in executable format, summarizing the utility's total projected residential retail revenues, including base rates and all rate adjustment mechanisms, and total projected residential retail sales over each of the fifteen years following the date of the utility's filing.

- (III) If the utility is seeking to change base rates to cause an overall increase in its base rate revenues, the utility shall provide the parties to the proceeding, no later than five business days following the mailed date of the Commission decision establishing the parties in the proceeding, the following information.
- (A) Worksheets, in executable format, summarizing the capital expenditures in the source cost of service study, by category of plant, and in each of the nine previous twelve-month periods prior to the source cost of service test year. A discussion should be included to identify which of the listed capital expenditures have been subject to review in other proceedings, such as in a Gas Infrastructure Plan, Certificate of Public Convenience and Necessity, or other relevant proceeding. If a capital expenditure would or could typically fall under the purview of another proceeding before the Commission, a detailed explanation should be provided if the expenditure was not included in the relevant prior proceeding.
- (B) Worksheets, in executable format, summarizing the utility's forecasted capital expenditures, by category of plant, in each of the ten twelve-month periods following to the source cost of service test year. A discussion should be included to identify which of the listed capital expenditures have been subject to review in other proceedings, such as in a Gas Infrastructure Plan, Certificate of Public Convenience and Necessity, or other relevant proceeding. If a capital expenditure would or could typically fall under the purview of another proceeding before the Commission, a detailed explanation should be provided if the expenditure was not included in the relevant prior proceeding.
- (C) Worksheets, in executable format, summarizing the operations and maintenance expenditures in the source cost of service study, by category of expenditure, and in each of the nine previous twelve-month periods prior to the source cost of service test year.
- (D) Worksheets, in executable format, summarizing the utility's forecasted operations and maintenance expenditures, by category of expenditure, and in each of the ten twelve-month periods the source cost of service test year.
- (E) A discussion on any improvements or changes made to forecasting and budgeting as relevant to the worksheets provided by the utility pursuant to paragraph 4353(d).
- (F) Instructions for toggling between year-end and 13-month average valuations of the rate base in each cost of service study filed by utility.
- (G) A list of all active regulatory assets, deferred accounts, and trackers.
- (H) A presentation of the salaries (base pay), incentive compensation, and total compensation of the utility's ten highest compensated executives whose compensation is included, in whole or in part (e.g., an employee of the utility, its holding company, or an affiliated shared services company), in each cost of service study filed by the utility.

(I) The underlying data for rate trend report filed with the advice letter pursuant to paragraph 3109(e).

(e) The utility shall file updates the items set forth in subparagraphs 4353(d)(I) and (II) with its submission of rebuttal testimony as applicable. The utility shall provide parties updates to the items set forth in subparagraph 4353(d)(III) as available prior to the first day of the scheduled evidentiary hearing.

**4354. Costs Prohibited from Rates.**

(a) A revenue requirement for any test year used to establish base rates shall exclude:

(I) expenses related to marketing and administration or customer service for unregulated products or services provided or sold by the utility or the utility's affiliates in accordance with the rules addressing unregulated goods and services 4 CCR 723-3-36500, et seq.;

(II) entertainment or gift expenses;

(III) penalties or fines related to taxes;

(IV) expenses associated with investor-relations;

(V) expenses associated with lobbying or other activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure. For the purpose of a base rate proceeding and related reporting, lobbying means directly, or through the solicitation of others, communication with a person that is in a position to make a policy decision in order to influence the outcome of local, state, or federal legislation;

(VI) organizational dues, membership dues, or other contributions to any organization, association, institution, corporation, or other entity that engages in lobbying or other similar activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure;

(VII) advertising and public relations expenses incurred to promote or improve the utility's brand, to influence public opinion about the utility, to create good will toward the utility from the general public. Advertising regarding service interruptions, safety measures, emergency conditions, or employment opportunities with the utility may be included in a revenue requirement for any test year as determined by the Commission;

(VIII) advertising and public relations expenses not directly related to a purpose or program that is required or authorized under statute, rule, or order. Advertising or other consumer education expenses directly related to income-based rates and services, including special rates, pilot programs, energy efficiency, beneficial electrification, renewable energy, and transportation electrification, may be included in a revenue requirement for any test year as determined by the Commission;

- (IX) charitable giving expenses, including contributions to organizations qualified under Section 501(c)(3) or 501(c)(4) of the federal "Internal Revenue Code of 1986", 26 U.S.C. Sec. 501, as amended;
  - (X) contributions to political candidates, campaign committees, issue committees, or independent expenditure committees or similar political expenses;
  - (XI) travel, lodging, food, and beverage expenses of the utility's officers;
  - (XII) travel, lodging, food, and beverage expenses and at least fifty-one percent of all other reimbursed expenses of the utility's board of directors;
  - (XIII) expenses related to any owned, leased, or chartered aircraft for the utility's board of directors and officers, where aircraft has the meaning set forth in § 41-23-101(1), C.R.S.; and
  - (XIV) at least fifty-one percent of compensation to the utility's board of directors.
- (b) The costs in paragraph 4354(a) that are excluded from base rates shall not be otherwise recovered through a rate adjustment mechanism or through other utility charges.
- (ac) Reporting. On or before April 30th of each year, each utility shall file with the Commission a report that demonstrates compliance with prohibitions of costs recoverable through the utility's rates in accordance with § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers. The report shall be filed concurrently with and in the same proceeding as the investor-owned utility's annual report filed in accordance with rule 4006.
- (d) Penalties. If the Commission determines that an investor-owned utility improperly recovered through rates any of the prohibit costs or expenditures listed in paragraph 4354(a), the Commission may assess a civil penalty against the utility pursuant to rules 4009 and 4010.
- (e) Refunds. If the Commission assesses a civil penalty against the utility in accordance with paragraph 4354(d), the Commission shall also order the utility to submit for approval a refund plan pursuant to rule 4410. The utility shall refund the amount of prohibited costs or expenditures improperly recovered through rates, plus interest, to customers.

**4355. Recovery of Rate Case Expenses.**

**43514356. – 4399.** [Reserved].

\* \* \* \*

[indicates omission of unaffected rules]

**4405. Service, Rate, and Usage Information.**

- (a) In addition to the requirement found in rule 1206, a utility shall inform its customers of any change proposed or made in any term or condition of its service if that change or proposed change will affect the quality of the service provided.
- (b) A utility shall transmit information provided pursuant to this rule through the use of a method (such as, without limitation, bill inserts or periodic direct mail) that will assure receipt by each customer.
- (c) Upon request, a utility shall provide the following information to a customer.
  - (I) A clear and concise explanation of the existing rate schedule applicable to the customer, the rate components for that rate schedule, and an explanation of how those components are calculated and applicable to the customer. This shall be provided within ten days of a customer's request or, in the case of a new customer, within 60 days of the commencement of service.
  - (II) A clear and concise statement of the customer's actual consumption or degree-day adjusted consumption of gas for each billing period during the prior year, unless such consumption data are not reasonably ascertainable by the utility.
  - (III) A clear and concise explanation of the terms and conditions of service applicable to the customer.
- (d) A utility shall post and keep current on its website the data required to be submitted pursuant to paragraph 4109(c), including the chart, graph, or other pictographic demonstration showing the total of all utility bill line items such as base rates and rate adjustment mechanisms for the prior ten years.

\* \* \* \*

[indicates omission of unaffected rules]

**4410. Refunds.**

- (a) A utility shall file an application for Commission approval of a refund plan if it seeks to refund monies of an amount that exceeds one half of one percent of the utility's prior year's total gross revenues as reported to the Commission in its most recent annual report. The utility may refund amounts to the appropriate customers or classes of customers of less than one half of one percent of the utility's prior year's gross revenues without Commission approval; however, such refunds are required to be noted in the utility's annual report when filed with the Commission pursuant to paragraph 4006(a).
- (b) The application for approval of a refund plan shall include, in the following order and specifically identified, the following information either in the application or in the appropriately identified attachments:
  - (I) all the information required in paragraphs 4002(b) and 4002(c);

- (II) the reason for the proposed refund;
  - (III) a detailed description of the proposed refund plan, including the type of utility service involved, the service area involved, the class(es) of customers to which the refund will be made, and the dollar amount (both the total amount and the amount to be paid to each customer class) of the proposed refund. The interest rate on the refund shall be the current interest rate in the applying utility's customer deposits tariff;
  - (IV) the date the applying utility proposes to start making the refund, which shall be no more than 60 days after the filing of the application; the date by which the refund will be completed; and the means by which the refund is proposed to be made;
  - (V) if applicable, a reference (by proceeding number, decision number, and date) to any Commission decision requiring the refund or, the order itself if the refund is to be made because of receipt of monies by the applying utility under the order of a court or of another state or federal agency;
  - (VI) a statement describing in detail the extent to which the applying utility has any financial interest in any other company involved in the refund plan;
  - (VII) a statement showing accounting entries under the Uniform System of Accounts; and
  - (VIII) a statement that, if the application is granted, the applying utility will file an affidavit verifying that the refund has been made in accordance with the Commission's decision.
- (c) A utility shall pay 90 percent of all undistributed balances, plus associated interest, to the energy assistance organization. For purposes of this rule, a refund is deemed undistributed if, after good faith efforts, a utility is unable to find the person entitled to a refund within the period of time fixed by the Commission in its decision approving the refund plan.
- (d) A utility shall pay an undistributed refund to the energy assistance organization within four months after the refund is deemed undistributed. A utility shall pay interest on an undistributed refund from the time it receives the refund until the refund is paid to the energy assistance organization. The interest rate shall be equal to the interest rate set by the Commission pursuant to paragraph 4403(m).
- (e) Whenever a utility makes a refund, it shall provide written notice to those customers that it believes may be master meter operators. The notice shall contain:
- (I) the definition of master meter operator, as set forth in these rules;
  - (II) a statement regarding a mater meter operator's obligation to do the following:
    - (A) to notify its end users of their right to claim, within 90 days, their proportionate share of the refund; and
    - (B) after 90 days, if the unclaimed balance exceeds \$100, to remit the unclaimed balance to the energy assistance organization.



- (f) A utility shall resolve all inquiries regarding a customer’s undistributed refund and shall not refer such inquiries to the energy assistance organization.
- (g) If a utility has paid an undistributed refund to the energy assistance organization, a customer later makes an inquiry claiming that refund, and the utility resolves the inquiry by paying that refund to the customer, the utility may deduct the amount paid to the customer from future funds submitted to the energy assistance organization.

\* \* \* \*

[indicates omission of unaffected rules]

## **UNREGULATED GOODS AND SERVICES**

### **4500. Overview and Purpose.**

The purpose of these rules is to establish cost assignment and allocation principles to assist the Commission in setting just and reasonable rates and to ensure that utilities do not use ratepayer funds to subsidize non-regulated activities, in accordance with § 40-3-114, C.R.S. In order to promote these purposes, these rules also specify information that utilities must provide to the Commission. In providing for review of a utility’s specific cost allocations in other states and jurisdictions, the rules merely contemplate a methodology to allow interested parties to obtain complete information regarding cost allocations. These rules do not expressly or implicitly allow this Commission to order a utility to revise its cost allocations in other jurisdictions or states.

### **4501. Definitions.**

The following special definitions apply only to rules 4501 through 4505. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “Activity” means a business activity, product or service whether offered by a Colorado utility, a division of a Colorado utility, or an affiliate of a Colorado utility.
- (b) “Allocate” or “Allocated” or “Cost Allocation” means to distribute a joint or common cost to or from more than one activity or jurisdiction.
- (c) “Assigned Costs” or “Cost Assignment” means a cost that is specifically identified with a particular activity or jurisdiction and charged directly to that activity or jurisdiction. At no point in the process of making the cost assignment is an allocation applied.
- (d) “Cost Assignment and Allocation Manual” (CAAM) means the indexed document filed by a utility with the Commission that describes and explains the cost assignment and allocation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and rate base cost components assigned or allocated to Colorado jurisdictional activities. It includes the cost assignment and allocation methods to segregate and account for costs between and among jurisdictions, between regulated and non-regulated activities, and between and among utility divisions.

- (e) “Division” means an activity conducted by a Colorado utility but not through a legal entity separate from the Colorado utility. It includes the electric, gas, or thermal activities of a Colorado utility and any non-regulated activities provided by the Colorado utility.
- (f) “Fully Distributed Cost” (FDC) means the process of segregating, assigning, and allocating the revenues, expenses, assets, liabilities and rate base amounts recorded in the utility’s accounting books and records using cost accounting, engineering, and economic concepts, methods and standards. Fully distributed cost includes a return on investment in cases where assets are used.
- (g) “Fully Distributed Cost Study” is a cost study that reflects the result of the fully distributed revenues, expenses, assets, liabilities and rate base amounts for the Colorado utility to and from the different activities, jurisdictions, divisions, and affiliates using cost accounting, engineering, and economic concepts, methods, and standards.
- (h) “Incidental Services” means non-tariff or non-regulated services that have traditionally been offered incidentally to the provisions of tariff services where the revenues for all such services do not exceed:
  - (I) The greater of \$100,000 or one percent of the provider’s total annual Colorado operating revenues for regulated services; or,
  - (II) Such amount established by the Commission considering the nature and frequency of the particular service.
- (i) “Jurisdictional” means having regulatory rate authority over a utility. Jurisdiction can be at a state or federal level.
- (j) “Regulated activity” means any activity that is offered as a public utility service as defined in Title 40, Articles 1 to 7 C.R.S., and is regulated by the Commission or regulated by another state utility commission or the FERC, or any non-regulated activity which meets the criteria specified in rules 4502(g).
- (k) “Non-regulated activity” means any activity that is not offered as a public utility service as defined in Title 40, Articles 1 to 7, C.R.S., and is not regulated by this Commission or another state utility commission or the FERC.
- (l) “Transaction” means the activity that results in the provision of products, services, or assets by one division or an affiliate to another division or an affiliate.

**4502. Cost Assignment and Allocation Principles.**

In determining fully distributed cost, the utility shall apply the following principles (listed in descending order of required application in paragraphs 4502 (a), (b) and (c) below).

- (a) Tariff services provided to an activity will be charged to the activity at the tariff rates.
- (b) If only one activity or jurisdiction causes a cost to be incurred, that cost shall be directly assigned to that activity or jurisdiction.

- (c) Costs that cannot be directly assigned to either regulated or non-regulated activities or jurisdictions will be described as common costs. Common costs shall be grouped into homogeneous cost categories designed to facilitate the proper allocation of costs between regulated and non-regulated activities or jurisdictions. Each cost category shall be fairly and equitably allocated between regulated and non-regulated activities or jurisdictions in accordance with the following principles.
- (I) Cost causation. All activities or jurisdictions that cause a cost to be incurred shall be allocated a portion of that cost. Direct assignment of a cost is preferred to the extent that the cost can easily be traced to the specific activity or jurisdiction.
  - (II) Variability. If the fully distributed cost study indicates a direct correlation exists between a change in the incurrence of a cost and cost causation, that cost shall be allocated based upon that relationship.
  - (III) Traceability. A cost may be allocated using a measure that has a logical or observable correlation to all the activities or jurisdictions that cause the cost to be incurred.
  - (IV) Benefit. All activities or jurisdictions that benefit from a cost shall be allocated a portion of that cost.
  - (V) Residual. The residual of costs left after either direct or indirect assignment or allocation shall be allocated based upon an appropriate general allocator to be defined in the utility's CAAM.
- (d) For cost assignment and allocation purposes, the value of all transactions from the Colorado utility to a non-regulated activity shall be determined as follows:
- (I) if the transaction involves a product or service provided by the utility pursuant to tariff, the value of the transaction shall be at the tariff rate;
  - (II) if the transaction involves a product or service that is not provided pursuant to a tariff, the value of the transaction shall be the higher of the utility's fully distributed cost or market price. Market price shall be either the price charged by the utility, or if this condition cannot be met, the lowest price charged by another person for a comparable product or service; or
  - (III) if the transaction involves the sale of an asset, the value of the transaction shall be the higher of net-book cost or market price. If the transaction involves the use of an asset, the value of the transaction shall be the higher of fully distributed cost or market price. Market price shall be either the price charged by the utility or if this condition cannot be met, the lowest price charged by another person in the market for the sale or use of a comparable asset, when such prices are publicly available.
- (e) For cost assignment and allocation purposes, the value of all transactions from a non-regulated activity to the utility shall be determined as follows:

- (I) if the transaction involves a product or service that is not provided pursuant to a tariff, the value of the transaction shall be the lower of the fully distributed cost or the market price except if the transaction results from a competitive solicitation process then the value of the transaction shall be the winning bid price. Fully distributed cost in this circumstance, shall be the cost that would be incurred by the utility to provide the service internally. Market price shall be either the price charged by the supplying non-regulated activity or if that condition is not met, the lowest price charged by other persons in the market for a comparable product or service, when such prices are publicly available; or
  - (II) if the transaction involves the sale of an asset, the value of the transaction shall be the lower of net-book cost or market price. If the transaction involves the use of an asset, the value of the transaction shall be at the lower of fully distributed cost or market price. Market price shall be either the price charged by the non-regulated activity or, if this condition cannot be met, the lowest price charged by another person in the market for the sale or use of a comparable asset, where such prices are publicly available.
- (f) If it is impracticable for the utility to establish a market price pursuant to paragraphs (d) or (e), the utility shall provide a statement to that effect, including its reasons in its' fully distributed cost study as well as its proposed method and amount for valuing the transaction. Parties in a Commission proceeding retain the right to advocate alternative market prices pursuant to paragraphs (d) and (e).
- (g) A utility may classify non-jurisdictional services as regulated if the services are rate-regulated by another agency (i.e., another state utility commission or the FERC) and where there are agency-accepted principles or methods for the development of rates associated with such services. This rule may apply, for example, to a provider's wholesale sales of electric power and energy. For such services, the utility shall identify the services in its manual, and account for the revenues, expenses, assets, liabilities, and rate base associated with these services as if these services are regulated.
- (h) For cost assignment and allocation purposes, the value of all transactions between regulated divisions within a utility shall be determined as follows:
- (I) if the transaction involves a service provided by the utility pursuant to tariff, the value of the transaction shall be at the tariff rate, or
  - (II) if the transaction involves a service or function that is not provided pursuant to a tariff, the value of the transaction shall be at cost.
- (i) If the utility offers a service that is a combination of regulated and non-regulated activities (i.e., a bundled service), the utility shall assign and/or allocate costs to the regulated and non-regulated activities separately.
- (j) A utility may classify incidental activities as regulated activities. If an incidental activity is classified as a regulated activity, the utility shall clearly identify the activity as an incidental activity, and account for the revenues, expenses, assets, liabilities and rate base items as if that activity were a regulated activity.

- (k) To the extent possible, all assigned and allocated costs between regulated and non-regulated activities should have an audit trail which is traceable on the books and records of the applicable regulated utility to the applicable accounts pursuant to the Federal Energy Regulatory Commission Uniform System of Accounts.
- (l) In a rate proceeding involving the calculation of revenue requirements, a complaint proceeding where cost assignments or allocations are at issue, or a proceeding where CAAM approval is sought, the utility or any party may advocate a cost allocation principle other than that already in use, if the Commission has already approved the principle for that cost. The party requesting the alternative approach shall have the burden of proving the need for an alternative principle and why the particular principle is appropriate for the particular cost.

**4503. Cost Assignment and Allocation Manuals.**

- (a) Each utility shall maintain on file with the Commission an approved indexed cost assignment and allocation manual which describes and explains the calculation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and rate base cost components assigned or allocated to Colorado jurisdictional activities. It includes the calculation methods to segregate and account for costs between and among jurisdictions, between regulated and non-regulated activities, and between and among utility divisions.
  - (I) A listing of all regulated or non-regulated divisions of the Colorado utility together with an identification of the regulated or non-regulated activities conducted by each.
  - (II) A listing of all regulated or non-regulated affiliates of the Colorado utility together with an identification of which affiliates allocate or assign costs to and from the Colorado utility.
  - (III) A listing and description of each regulated and non-regulated activity offered by the Colorado utility. The Colorado utility shall provide a description in sufficient detail to identify the types of costs associated with the activity and shall identify how the activity is offered to the public and identify whether the Colorado utility provides the activity in more than one state. If an activity is offered subject to tariff, the Colorado utility may identify the tariff and the tariff section that describes the service offering in lieu of providing a service description.
  - (IV) A listing of the revenues, expenses, assets, liabilities and rate base items by Uniform System of Accounts account number that the utility proposes to include in its revenue requirement for Colorado jurisdictional activities including those items that are partially allocated to Colorado as well as those items that are exclusively assigned to Colorado.
  - (V) A detailed description showing how the revenues, expenses, assets, liabilities and rate base items by account and sub-account are assigned and/or allocated to the Colorado utility's non-regulated activities, along with a description of the methods used to perform the assignment and allocations.
  - (VI) A description of each transaction between the Colorado utility and a non-regulated activity which occurred since the Colorado utility's prior CAAM was filed and, for each
- (b) Each utility shall include the following information in its CAAM.

transaction, a statement as to whether, for this Commission's jurisdictional cost assignment and allocation purposes, the value of the transactions is at cost or market as applicable.

- (VII) A description of the basis for how the assignment or allocation is made.
  - (VIII) If the utility believes that specific cost assignments or allocations are under the jurisdiction of another authority, the utility shall so state in its CAAM and give a written description of the prescribed methods. Nothing herein shall be construed to be a delegation of this Commission's ratemaking authority related to those assignments or allocations.
  - (IX) Any additional information specifically required by Commission order.
- (c) A utility may treat certain transactions as confidential pursuant to the Commission rules on confidentially.
  - (d) Following the initial approval of its CAAM, the utility shall file an updated CAAM in each rate case proceeding where revenue requirements are determined or every five years following approval of the CAAM then in effect, whichever is earlier.
  - (e) The utility may, at its discretion, file an application seeking Commission approval of updates to its CAAM at any time.
  - (f) Whenever a utility files for approval of an update to its CAAM as a result of paragraph (d) or (e) above, the utility shall also simultaneously file a FDC study reflecting the results of the cost allocation methods in its updated manual.
  - (g) Each utility shall maintain all records and supporting documentation concerning its CAAMs for so long as such manual is in effect or are subject to a complaint or any active proceeding involving cost allocation before the Commission for as long as such proceeding may be open.

**4504. Fully Distributed Cost Study.**

- (a) The utility shall submit its fully distributed cost study in both electronic and paper format simultaneously with filing its CAAM for all Colorado divisions and activities.
- (b) The utility shall prepare a FDC study that identifies all the non-regulated activities provided by each division in Colorado. The FDC study shall show the revenues, expenses assets, liabilities and rate base items assigned and allocated to each non-regulated activity. If the utility has more than one division (e.g., gas, electric, thermal or non-utility) in Colorado, the FDC study shall include a summary of all assigned and allocated costs by division.
- (c) In preparation of its FDC study, the utility shall complete an analysis of each non-regulated activity to identify the costs that are associated with and/or should be charged to each non-regulated activity to ensure each non-regulated activity is assigned and allocated the appropriate amount of revenues, expenses, assets, liabilities and rate base items.

- (d) If the CAAM is filed in connection with a rate case, the FDC study shall be based on the same test year used in the utility’s rate case filing. The utility’s FDC study shall include revenues, expenses, assets, liabilities and rate base items in order for the Commission to determine if all appropriate revenues, expenses, assets, liabilities and rate base items have been appropriately assigned and allocated, and to determine the utility’s compliance with the principles established in rule 4502. For each assignment and allocation the utility shall:
- (I) identify the revenues, expenses, assets, liabilities and rate base items by account number, sub-account number and account description; and
  - (II) for each account in (I) above, identify the assignment and allocation method used to assign and allocate costs in sufficient detail to verify the assignment and allocation method used to assign and allocate costs to Colorado divisions and activities is accurate and consistent with the utility’s CAAM methodology and reference the CAAM section that describes the allocation; and
  - (III) provide the test year dollar itemized amounts of revenues, expenses, assets, liabilities, and rate base assigned and allocated to each Colorado division and non-regulated activity; the itemized amounts assigned and allocated to the Colorado utility for regulated activities; the itemized amounts assigned and allocated to the Colorado utility for Colorado non-regulated activities; and the itemized amounts assigned and allocated to other jurisdictions.
- (e) Each utility shall maintain all records and supporting documentation concerning its FDC study for so long as such study is in effect or are subject to a complaint or a proceeding before the Commission.

**4505. Disclosure of Non-regulated Goods and Services.**

Whenever a Colorado utility engages in the provision or marketing of non-regulated goods or services in Colorado that are not subject to Commission regulation, and the Colorado utility’s name or logo is used in connection with the provision of such non-regulated goods and services in Colorado, there must be conspicuous, clear, and concise disclosure to prospective customers that such non-regulated goods and services are not regulated by the Commission. Such disclosure to prospective customers in Colorado shall be included in all Colorado advertising or marketing materials, proposals, contracts, and bills for non-regulated goods and services, regardless of whether the Colorado utility provides such non-regulated goods or services in Colorado directly or through a division or affiliate.

**4506. – 4524. [Reserved].**

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[indicates omission of unaffected rules]