

## DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

## RULES REGULATING WATER, AND COMBINED WATER AND SEWER UTILITIES

### 4 CCR 723-5

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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

The basis and purpose of these rules is to generally set forth rules describing the service to be provided by jurisdictional water utilities and jurisdictional combined water and sewer utilities to their customers. The rules address a wide variety of subject areas including, but not limited to application requirements, operating authorities, facility requirements, cost allocation and assignment, simplified regulatory treatment, service interruption, meter testing and accuracy, customer information, customer deposits, rate schedules filings and tariffs, discontinuance of service, water quality, and water pressure.

The statutory authority for these rules can be found at §§ 40 2 108, 40 3 102, 40 3 103, 40 3 104.4, 40 4 101, 40 4 108, 40 4 109, 40-7-113.5, and 40-7-116.5, C.R.S.

#### **GENERAL PROVISIONS**

##### **5000. Scope and Applicability.**

Absent a specific statute, rule or Commission order which provides otherwise, all rules in this Part 5, the "5000" series, shall apply to all jurisdictional water utilities and combined water and sewer utilities and to all Commission proceedings and operations concerning water service and combined water and sewer service.

##### **5001. Definitions.**

The following definitions apply throughout this Part 5, except where a specific rule or statute provides otherwise:

- (a) "Affiliate" of a public utility means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, a subsidiary of a parent corporation of a public utility or where the public utility or the parent corporation has a controlling interest over an entity.
- (b) "Basis point" means one-hundredth of a percentage point (100 basis points = 1 percent).
- (c) "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.
- (d) "Distribution Line Extension" means any construction of distribution facilities (excluding meters and meter installation facilities) necessary to supply service to one or more additional customers.

- (e) “Local office” means any Colorado office operated by a utility at which persons may make requests to establish or discontinue utility service. If the utility does not operate any office in Colorado, “local office” means any office operated by a utility at which persons may make requests to establish or discontinue utility service in Colorado.
- (f) “Master water meter operator” means a person who:
  - (I) purchases utility service from a utility for the purpose of delivering that service to end users whose aggregate usage is to be measured by a composite measurement device;
  - (II) does not charge end users for any costs in addition to the actual cost billed to such person for utility service, including without limitation, costs of construction, maintenance, financing, administration, metering, or billing for the distribution system owned or leased by such person;
  - (III) if billing end users separately, does not bill the end users, in the aggregate, more than the amount billed to such person for utility service; and
  - (IV) if billing end users separately, passes on to the end users any refunds, rebates, rate reductions, or similar adjustments such person receives for utility service.
  - (V) In addition, a person who manages or acts as a landlord of mobile home parks under the jurisdiction of the Department of Local Affairs and the Mobile Home Park Act Dispute Resolution and Enforcement Program may be a master water meter operator.
- (g) “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.
- (h) “Principal place of business” means the place, in or out of the state of Colorado, where the executive or managing principals that directly oversee the utility’s operations in Colorado are located.
- (i) “Service Line Extension” means any construction of distribution facilities (including meters and meter installation facilities) necessary to supply service to a single customer household or a single multi-unit dwelling.
- (j) “Utility” means any public utility as defined in § 40-1-103(1)(a), C.R.S., providing water or combined water and sewer to customers in the state of Colorado.
- (k) “Utility service” or “service” means a service offering of a public utility, which service offering is regulated by the Commission.

**5002. Applications.**

- (a) Any person may seek Commission action regarding any of the following matters through the filing of an appropriate application:
  - (I) for the issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 5100;
  - (II) for the issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 5101;
  - (III) for the issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 5102;

- (IV) for the amendment of a certificate of public convenience and necessity to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 5103;
  - (V) to 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 5104;
  - (VI) to amend a tariff on less than statutory notice, as provided in rule 5109;
  - (VII) for simplified regulatory treatment, for modification of simplified regulatory treatment, for continuation of simplified regulatory treatment, or for termination of simplified regulatory treatment, as provided in rule 5112;
  - (VIII) for approval of meter and equipment testing practices, as provided in rule 5303;
  - (IX) for approval of meter sampling program, as provided in rule 5304;
  - (X) for approval of refund plan, as provided in rule 5410;
  - (XI) for approval of an emergency notification plan, as provided in rule 5411; and
  - (XII) for 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.
- (b) In addition to the requirements of specific rules, all applications shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
- (I) the name and address of the applying utility;
  - (II) the name(s) under which the applying utility is, or will be, providing service in Colorado;
  - (III) the name, address, telephone number, and e-mail address of the applying utility's representative to whom all inquiries concerning the application should be made;
  - (IV) a statement that the applying utility agrees to answer all questions propounded by the Commission or its Staff concerning the application;
  - (V) a statement that the applying utility shall permit the Commission or any member of its Staff to inspect the applying utility's books and records as part of the investigation into the application;
  - (VI) a statement that the applying utility understands that, if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted pursuant to the application may be revoked upon Commission order;
  - (VII) in lieu of the separate statements required by subparagraphs (b)(IV) through (VI) of this rule, a utility may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(IV) through (VI) of this rule;
  - (VIII) a statement describing the applying utility's existing operations and general service area in Colorado;

- (IX) for applications listed in subparagraphs (a)(I), (II), (III), (V), and (VI) of this rule, a copy of the applying utility's or parent company's and consolidated subsidiaries' most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows that provide Colorado specific financial information;
- (X) a statement indicating the town or city, and any alternative town or city, in which the applying utility prefers any hearing be held;
- (XI) acknowledgment that, by signing the application, the applying utility understands that:
  - (A) the filing of the application does not by itself constitute approval of the application;
  - (B) if the application is granted, the applying utility shall not commence the requested action until the applying utility complies with applicable Commission rules and any conditions established by Commission order granting the application;
  - (C) if a hearing is held, the applying utility must present evidence at the hearing to establish its qualifications to undertake, and its right to undertake, the requested action; and
  - (D) in lieu of the statements contained in subparagraphs (b)(XI)(A) through (C) of this rule, an applying utility may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(XI)(A) through (C) of this rule.
- (XII) An attestation which is made under penalty of perjury; which is signed by an officer, a partner, an owner, an employee of, an agent for, or an attorney for the applying utility, as appropriate, who is authorized to act on behalf of the applying utility; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant.
- (c) In addition to the requirements of specific rules, all applications shall include the information listed in subparagraphs (a)(I) through (V) of rule 1310. Applying utilities may either include the information in the application itself or incorporate the information by reference to the miscellaneous proceeding created under rule 1310.
- (d) Customer notice. Except as required or permitted by § 40-3-104, C.R.S., if the applicant is required by statute, Commission rule, or order to provide notice to its customers of the application, the applicant shall, after filing an application with the Commission, cause to have published notice using the following methods:
  - (I) if the applicant has a public website, the applicant shall immediately post notice of the filing on its public website, which posting must be conspicuously displayed on the website for at least 30 days;
  - (II) within seven days after filing an application with the Commission, cause to have published notice of the filing of the application in each newspaper of general circulation in the service area impacted by the application. The applicant shall file proof of such customer notice in the proceeding noticed within 14 days of the publication in the newspaper. Failure to provide such notice or failure to provide the Commission with proof of notice may cause the Commission to not deem the application complete; and
  - (III) such other notice method as deemed appropriate by the Commission.
- (e) All forms of customer notice pursuant to paragraph (d) shall include the following:

- (I) the title "Notice of Application by [Name of the Utility] for [Purpose of Application]";
- (II) state that [Name of Utility] has applied to the Colorado Public Utilities Commission for approval to [Purpose of Application]. If the utility commonly uses another name when conducting business with its customers, the "also known as" name should also be identified in the notice to customers;
- (III) provide a brief description of the proposal and the scope of the proposal, including an explanation of the possible impact upon persons receiving the notice;
- (IV) identify which customer class(es) will be affected and the monthly customer rate impact by customer class, if customer rates are affected by the application;
- (V) identify the application's proposed effective date;
- (VI) identify that the application was filed on less than statutory notice or if the applicant requests an expedited Commission decision, as applicable;
- (VII) state that the filing is available for inspection in each local office of the applicant and at the Colorado Public Utilities Commission;
- (VIII) identify the proceeding number, if known at the time the customer notice is provided;
- (IX) state that any person may file written comment(s) or objection(s) concerning the application with the Commission. As part of this statement, the notice shall identify both the address and e-mail address of the Commission and shall state that the Commission will consider all written comments and objections submitted prior to the evidentiary hearing on the application;
- (X) state that if a person desires to participate as a party in any proceeding before the Commission regarding the filing, such person shall file an intervention in accordance with the rule 1401 of the Commission's Rules of Practice and Procedure or any applicable Commission order;
- (XI) state that the Commission may hold a public hearing in addition to an evidentiary hearing on the application and that if such a hearing is held members of the public may attend and make statements even if they did not file comments, objections or an intervention. Identify that if the application is uncontested or unopposed, the Commission may determine the matter without a hearing and without further notice; and
- (XII) state that any person desiring information regarding if and when hearings may be held shall submit a written request to the Commission or, alternatively, shall contact the External Affairs section of the Commission at its local or toll-free phone number. Such statement shall also identify both the local and toll-free phone numbers of the Commission's External Affairs section.

**5003. [Reserved].**

**5004. Disputes and Informal Complaints.**

- (a) For purposes of this rule, "dispute" means a concern, difficulty, or problem which needs resolution and which a customer or a person applying for service brings directly to the attention of the utility without the involvement of Staff or the Commission.

- (b) A dispute may be initiated orally or in writing. Using the procedures found in rule 1301, a utility shall conduct a full and prompt investigation of all disputes concerning utility service.
- (c) In accordance with the procedures in rule 1301, each utility shall conduct a full and prompt investigation of all informal complaints concerning utility service.
- (d) A utility shall comply with all rules regarding the timelines for responding to informal complaints.
- (e) If a current customer, or an applicant for service that is not a current customer, is dissatisfied with the utility's proposed adjustment or disposition of a dispute, the utility shall inform the person, customer, or applicant for service of the right to make an informal complaint to the External Affairs section of the Commission and shall provide to the person, customer or applicant for service the address and toll free number of the Commission's External Affairs section.
- (f) Each utility shall keep a record of each informal complaint and of each dispute. The record shall show the name and address of the initiating customer or person applying for service, the date and character of the issue, and the adjustment or disposition made. This record shall be open at all times to inspection by the person who initiated the informal complaint or dispute, by the Commission, and by Commission staff.

**5005. Records.**

- (a) Except as a specific rule may require, every utility shall maintain for a period of not less than three years and shall make available for public inspection at its principal place of business during regular business hours, the following:
  - (I) records concerning disputes and informal complaints, which records are created pursuant to rule 5004;
  - (II) instrumentation records, which records are created pursuant to rule 5201;
  - (III) purity and pressure records required under rule 5202, for at least two years, except as may be required for longer periods by applicable federal, state, county, or municipal statutes, codes, regulations, or rules;
  - (IV) the results of all tests made by the Water Quality Control Division of the Colorado Department of Public Health and Environment (CDPHE), indicating when, where, and by whom each test was conducted;
  - (V) the results of all tests required by the Water Quality Control Division of CDPHE, indicating when, where, and by whom each test was conducted;
  - (VI) all records made with respect to meter testing equipment and facilities, meter testing upon request, and records of meter tests under rules 5303, 5305, and 5306;
  - (VII) all customer billing records, which records are created pursuant to paragraph 5401(a);
  - (VIII) all customer deposits, which records are created pursuant to rule 5403; and
  - (IX) records concerning compliance or non-compliance with applicable standards and requirements, which records are required to be maintained pursuant to paragraph 5005(e).

- (b) A utility shall maintain at each of its local offices and at its principal place of business all tariffs filed with the Commission and applying to Colorado rate areas. If the utility maintains a website, it shall also maintain its current and complete tariffs on its website.
- (c) Each utility shall maintain its books of account and records in accordance with Generally Accepted Accounting Principles (GAAP). A utility must maintain its books of account and records separately from those of its affiliates.
- (d) Each utility shall preserve its records as follows:
  - (I) all General and Subsidiary Ledgers shall be retained for ten years; and
  - (II) all Continuing Property Records shall be retained for the longer of 25 years or the life of the plant.
- (e) Each utility shall maintain records demonstrating its compliance or non-compliance with all applicable quality, purity, monitoring, testing, and record-keeping standards and requirements of:
  - (I) the federal Clean Water Act and the rules and regulations promulgated thereunder;
  - (II) the federal Safe Drinking Water Act, and the rules and regulations promulgated thereunder;
  - (III) the drinking water regulations promulgated by the Water Quality Control Division of CDPHE; and
  - (IV) the effluent limits established in the utility's Colorado Discharge Permit System permit issued by Water Quality Control Division of CDPHE.

**5006. Reports.**

Each utility shall provide the following reports to the Commission.

- (a) On or before April 30 of each year, an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed and supplied by the Commission; shall properly complete the forms; shall ensure the forms are verified and signed by a person authorized to act on behalf of the utility; and shall file the required number of copies pursuant to subparagraph 1204(a)(IV) of the Commission's Rules of Practice and Procedure. If the Commission grants the utility an extension of time to file the annual report, the utility nevertheless shall file with the Commission, on or before April 30, the utility's total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year.
- (b) If a certified public accountant prepares an annual report for a utility, the utility shall file a copy of the report with the Commission within 30 days after publication.
- (c) On or before April 30 of each year, and as part of the report required by paragraph (a) of this rule, a small, privately owned company that has been granted simplified regulatory treatment shall file a report with the Commission detailing the information required by paragraph 5112(d).
- (d) All reports and supporting documentation concerning simplified regulatory treatment, as required by rule 5112.
- (e) All reports and substantiating documentation concerning incidents resulting in death, serious injury, or serious property damage, as required by rule 5204.

- (f) Such special reports as the Commission may require.

**5007 - 5008. [Reserved].**

**CIVIL PENALTIES**

**5009. Definitions.**

The following definitions apply to rules 5009, 5010, and 5420 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.

**5010. Regulated Water and Water and Sewer 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.

**5011. – 5099. [Reserved].**

**OPERATING AUTHORITY**

**5100. Certificate of Public Convenience and Necessity for a Franchise.**

- (a) A utility seeking authority to provide service pursuant to a franchise shall file an application pursuant to this rule. When a utility enters into a franchise agreement with a municipality for the first time, it shall obtain authority from the Commission pursuant to § 40-5-102, C.R.S. prior to providing service under that initial franchise agreement. A utility maintains the right and obligation to serve a municipality within its service territory after the expiration of any franchise agreement.
- (b) An application for certificate of public convenience and necessity to exercise franchise rights shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) the information required in paragraphs 5002(b) and (c);
  - (II) a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application;
  - (III) a statement describing the franchise rights proposed to be exercised. The statement shall include a description of the type of utility service to be rendered and a description of the area sought to be served, together with a map of the area;
  - (IV) a certified copy of the franchise ordinance; proof of publication, adoption, and acceptance by the applicant; a statement as to the number of customers served or to be served and the population of the city or town; and any other pertinent information;
  - (V) a statement describing in detail the extent to which the applicant is affiliated with any other company which holds authority duplicating in any respect the authority sought;
  - (VI) a feasibility study for areas previously not served by the applicant, which study shall at least include estimated investment, income, and expense. The applicant may request that the most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows be submitted in lieu of a feasibility study; and
  - (VII) a statement of the names of public utilities and other entities of like character providing similar service in or near the area involved in the application.

**5101. Certificate of Public Convenience and Necessity for Service Territory.**

- (a) A utility seeking authority to provide service in a new service territory shall file an application pursuant to this rule. A utility cannot provide service to a new geographic area without authority from the Commission, unless the utility extends its facilities and service:

- (I) within a city and county or city or town with which the utility has lawfully commenced operations;
  - (II) into territory contiguous to the utility's facility, line, plant, or system that is not served by a public utility providing the same commodity or service; or
  - (III) within or to territory already served by the utility and the extension is necessary in the ordinary course of business.
- (b) An application for certificate of public convenience and necessity to provide service in a new territory shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) the information required in paragraphs 5002(b) and (c);
  - (II) a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application;
  - (III) a description of the type of utility service to be rendered and a description of the area sought to be served;
  - (IV) a map showing the specific geographic area that the applicant proposes to serve. If the applicant intends to phase in service in the territory over time, specific areas and proposed in-service dates shall be included. The map shall describe the geographic areas in section, township, and range convention;
  - (V) a statement describing in detail the extent to which the applicant is affiliated with any other company which holds authority duplicating in any respect the territory sought;
  - (VI) a statement of the names of public utilities and other entities of like character providing similar service in or near the area involved in the application; and
  - (VII) a feasibility study for the proposed area to be served, which shall at least include estimated investment, income, and expense. An applicant may request that the most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows be submitted in lieu of a feasibility study.

**5102. Certificate of Public Convenience and Necessity for Facilities.**

- (a) A utility seeking authority to construct and to operate a facility or an extension of a facility pursuant to § 40-5-101, C.R.S., shall file an application pursuant to this rule. The utility need not apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is in the ordinary course of business. The utility shall apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is not in the ordinary course of business.
- (b) An application for certificate of public convenience and necessity to construct and to operate facilities or an extension of a facility pursuant to § 40-5-101, C.R.S., shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) the information required in paragraphs 5002(b) and (c);
  - (II) a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application;

- (III) a description of the proposed facilities to be constructed;
- (IV) estimated cost of the proposed facilities to be constructed;
- (V) anticipated construction start date, construction period, and in-service date;
- (VI) a map showing the general area or actual locations where facilities will be constructed, population centers, major highways, county and state and boundaries; and
- (VII) a statement that the applicant understands it must present evidence at the hearing to show its qualifications to conduct the utility operations proposed in the application.

**5103. Certificate Amendments for Changes in Service, Changes in Service Territory, or Changes in Facilities.**

- (a) A utility seeking authority to do the following shall file an application pursuant to this rule: amend a certificate of public convenience and necessity to extend, to restrict, to curtail, or to abandon or to discontinue without equivalent replacement, any service, service area, or facility. A utility shall not extend, restrict, curtail, or abandon or discontinue without equivalent replacement, any service, service area, or facility not in the ordinary course of business without authority from the Commission.
- (b) An application to amend a certificate of public convenience and necessity to extend, to restrict, to curtail, or to abandon or to discontinue without equivalent replacement, any service, service area, or facility shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) all information required in paragraphs 5002(b) and 5002(c);
  - (II) if the application for amendment pertains to a certificate of public convenience and necessity for facilities, all of the information required in rule 5102;
  - (III) if the application for amendment pertains to a certificate of public convenience and necessity for franchise rights, all of the information required in rule 5100;
  - (IV) if the application for amendment pertains to a certificate of public convenience and necessity for service territory, all of the information required in rule 5101; and
  - (V) if the application for amendment pertains to a service, the application shall include:
    - (A) the requested effective date for the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement, of the service; and
    - (B) a description of the extension, restriction, curtailment, or abandonment or discontinuance without equivalent replacement, sought. This shall include maps, as applicable. This shall also include a description of the applying utility's existing operations and general service area.

- (c) Customer notice of application. In addition to complying with the notice requirements of paragraph 5002(d), a utility applying to curtail, to restrict, or to abandon or to discontinue without equivalent replacement, a service shall prepare a written additional customer notice that complies with subparagraphs 5002(d)(I) - (XII). Within ten days after the date of filing the application, the utility shall mail or deliver the additional written customer notice to each of the applying utility's affected customers. The additional written customer notice shall include a statement that details, and explains the impact on customers of, the requested curtailment, restriction, or abandonment or discontinuance without equivalent replacement.
- (d) If no customers will be affected by the grant of the application, the notice shall meet the requirements of subparagraphs 5002(d)(I) - (XII) and shall be mailed to the Board of County Commissioners of each affected county and to the mayor of each affected city, town, or municipality.

**5104. Transfers, Controlling Interest, and Mergers.**

- (a) A utility seeking authority to do any of the following shall file an application pursuant to this rule: transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in a utility, whether the transfer of control is affected by the transfer of assets, by the transfer of stock by a merger or by other form of business combination, or transfer assets subject to the jurisdiction of the Commission outside the normal course of business. A utility cannot transfer a certificate of public convenience and necessity, transfer or obtain a controlling interest in any utility, transfer assets outside the normal course of business or transfer stock, or merge with another entity without authority from the Commission.
- (b) An application to transfer a certificate of public convenience and necessity, to transfer or obtain a controlling interest in a utility, or to transfer assets subject to the jurisdiction of the Commission shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) the information required in paragraphs 5002(b) and 5002(c), as pertinent to each party to the transaction;
  - (II) a statement showing accounting entries, under GAAP, any plant acquisition adjustment, gain, or loss proposed on the books by each party before and after the transaction which is the subject of the application;
  - (III) copies of any agreement for merger, sales agreement, or contract of sale pertinent to the transaction which is the subject of the application;
  - (IV) facts showing that the transaction which is the subject of the application is not contrary to the public interest;
  - (V) an evaluation of the benefits and detriments to the customers of each party and to all other persons who will be affected by the transaction which is the subject of the application; and
  - (VI) a comparison of the kinds and costs of service rendered before and after the transaction which is the subject of the application.
- (c) An application to transfer a certificate of public convenience and necessity, an application to transfer assets subject to the jurisdiction of the Commission, or an application to transfer or obtain control of the utility may be made by joint or separate application of the transferor and the transferee.

- (d) When control of a utility is transferred to another entity, or the utility's name is changed, the utility which will afterwards operate under the certificate of public convenience and necessity shall file with the Commission a tariff adoption notice, shall post the tariff adoption notice in a prominent public place in each local office and principal place of business of the utility, and shall have the tariff adoption notice available for public inspection at each local office and principal place of business. Adoption notice forms are available from the Commission. The tariff adoption notice shall contain all of the following information:
- (I) the name, phone number, and complete address of the adopting utility;
  - (II) the name of the previous utility;
  - (III) the number of the tariff adopted and the description or title of the tariff adopted;
  - (IV) the number of the tariff after adoption and the description or title of the tariff after adoption; and
  - (V) unless otherwise requested by the applying utility in its application, a statement that the adopting utility is adopting as its own all rates, rules, terms, conditions, agreements, concurrences, instruments, and all other provisions that have been filed or adopted by the previous utility.

**5105. - 5107. [Reserved].**

**5108. Tariffs.**

- (a) General.
- (I) A utility shall keep on file with the Commission the following documents pertaining to retail water service or combined retail water and sewer service: its current Colorado tariffs, forms of contracts, and water or combined water and sewer service agreements. 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.
  - (II) All tariffs shall comply with rule 1210 of the Commission's Rules of Practice and Procedure.
- (b) Filing and contents of tariff.
- (I) In addition to the requirements and contents in rule 1210 of the Commission's Rules of Practice and Procedure, the following shall be included in a utility's tariff, as applicable:
    - (A) information regarding any tariff provisions that specifically allocate the cost of service connections, other than meters, between the utility and the customer, pursuant to paragraph 5209(d);
    - (B) information regarding its meter testing equipment and facilities, scheduled meter testing, meter testing records, fees for meter testing upon request, and meter reading, pursuant to rules 5303, 5304, 5305, and 5309;
    - (C) information regarding its benefit of service transfer policies, pursuant to paragraph 5401(c);
    - (D) information regarding its installment payment plans and other plans, pursuant to rule 5404;

- (E) information regarding collection fees or miscellaneous service charges, pursuant to subparagraphs 5403(c)(VI) and (VIII);
- (F) information regarding after-hours restoration fees, pursuant to paragraph 5409(b); and
- (G) all other rules, regulations, and policies covering the relations of customer and utility.

**5109. 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 processes to seek to add a new tariff or to change an existing tariff:
  - (I) The utility may file the proposed 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 a proposed tariff on less than 30-days' notice, in accordance with § 40-3-104(2), C.R.S, 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 5002(b) and 5002(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.
  - (III) To comply with an order of the Commission, the utility may file a tariff by advice letter to be effective on not less than two business days' notice, pursuant to paragraph 1207(g) of the Commission's Rules of Practice and Procedure. No additional notice beyond the tariff filing itself shall be required.

**5110. 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 subparagraph 5002(d)(I) – (XII).

**5111. Master Water Meter Operator.**

Master water meter operators are exempt from Commission regulation of rates under Articles 1 to 7 of Title 40, C.R.S., and need not file any tariff with the Commission. Master water meter operators shall use a methodology that is reasonable, equitable, and consistent for billing end users for any type of water usage.

**5112. Simplified Regulatory Treatment.**

- (a) Definitions. In addition to the definitions generally applicable to water or combined water and sewer utilities, the following definitions apply only in the context of this rule.
  - (I) “Customer” means any person or group of persons receiving or contracting for water service or combined water and sewer service from any utility for domestic use, for commercial use, for industrial use, or for wholesale distribution.

When determining the number of customers that a utility serves, multi-residential units, multi-commercial units, and wholesale purchasers of water supplying water service to multiple end-users are customers. In addition, each singular unit or end-user within a multi-residential unit or multi-commercial unit is a customer. Finally, each singular unit or end-user that receives water from a wholesale purchaser from the utility is a customer.
  - (II) “Small, privately owned water company” means a utility that is owned by one or more persons, that provides water service or combined water and sewer service, and that serves fewer than one thousand five hundred customers. “Small privately owned water company” does not include any utility owned or operated by any political subdivision of the state; a special district; or any municipal, quasi-municipal, or public corporation organized pursuant to Colorado law.
  - (III) A water company registered as a nonprofit organization under section 501 (c) of the federal “Internal Revenue Code of 1986”, as amended, 26 U.S.C. sec. 501 (c), is exempt from regulation under the “Public Utilities Law”, articles 1 to 7 of this title 40.
- (b) Simplified regulatory treatment. Five options are available for small, privately owned water companies seeking simplified regulatory treatment. These options are as follows:
  - (I) Annual Rate Adjustment Option, as described in subparagraph 5112(e)(I);
  - (II) Resource Cost Pass-Through Option, as described in subparagraph 5112(e)(II);
  - (III) Operating Ratio Method Option, as described in subparagraph 5112(e)(III);
  - (IV) Major Capital Improvements Reserve Option, as described in subparagraph 5112(e)(IV); and
  - (V) Company Specific, Customized Option, as described in subparagraph 5112(e)(V).
- (c) Procedures. The simplified regulatory treatment shall be implemented in the following manner.
  - (I) The small, privately owned water company shall file an application with the Commission requesting one or more of the options identified above. The application shall be filed in accordance with Commission Rules of Practice and Procedure, 4 CCR 723-1.

- (II) Contents of application. An application for simplified regulatory treatment shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (A) all information required in paragraphs 5002(b) and 5002(c);
  - (B) the requirements of the applicable option, if any, as provided by paragraph (e) of this rule; and
  - (C) an explanation of how approval of the application will balance reasonable regulatory oversight with the benefits and costs of regulation, while continuing to consider the public interest, the applicant's quality of service, the applicant's financial condition, and just and reasonable rates.
- (III) Notice of application to customers. Within five days of the filing of the application, the applicant shall provide notice to its customers of the filing of the application. Such notice shall be given as follows:
  - (A) at the applicant's local business office, the applicant shall keep open for public inspection a copy of the application filed with the Commission; and
  - (B) within three days of filing the application with the Commission, the applicant either shall cause notice of the application to be published in each newspaper having general circulation in each county in which the applicant provides service or shall provide notice to all its customers by bill insert or direct mail.
    - (i) Either form of notice shall meet the requirements of subparagraphs 5002(d)(I) – (XII).
    - (ii) If the applicant elects to provide notice through bill inserts or direct mail to its customers, the applicant shall also work with each aggregate water service provider in its service area to ensure notice is provided to end-use customers served by the aggregate arrangement.
- (IV) In a proceeding to review an application for simplified regulatory treatment, there is a rebuttable presumption that each of the options listed in subparagraphs 5112(b)(I) through (b)(IV) is a reasonable method of simplified regulatory treatment for an applicant that is a small, privately owned water company. The presumption may be rebutted by data or evidence, or both, that demonstrate that the requested option is not reasonable for the applicant.
- (V) In a proceeding to review an application for simplified regulatory treatment, there is no rebuttable presumption for a small, privately owned water company seeking a Company Specific, Customized Option pursuant to subparagraph 5112(b)(V). The applicant shall have the burden of proving that the Company Specific, Customized Option proposed by the company is reasonable for the applicant and its customers and that the requested option is not discriminatory.
- (VI) A small, privately owned water company is prohibited from participating, at the same time, in both the Annual Rate Adjustment Option and the Resource Cost Pass-Through Option.

- (VII) A small, privately owned water company that has been granted simplified regulatory treatment may file an application to change to an alternative simplified regulatory treatment at any time. The application shall request authorization to terminate the existing simplified regulatory treatment and shall request a new simplified regulatory treatment. With respect to the new form of simplified regulatory treatment sought, the application shall contain the information required by subparagraph (c)(II) of this rule. In addition, the applicant shall provide notice of the application as required by subparagraph (c)(III) of this rule.
- (VIII) A small, privately owned water company may file an application to terminate an existing simplified regulatory treatment and to return to traditional rate base regulation at any time. The application shall comply with the requirements of paragraph (g) of this rule. In addition, the applicant shall provide notice of the application as required by subparagraph (c)(III) of this rule. The Commission may set the application for hearing, and existing rates for services may be adjusted. At the conclusion of such a proceeding and upon the filing of appropriate tariffs, the rates, terms, and conditions established in the proceeding will replace the rates and conditions developed under the company's existing simplified regulatory treatment plan.
- (IX) A small, privately owned water company shall not be permitted to terminate participation in one or more simplified regulatory treatment options for the purpose of avoiding a potential decrease in rates to its customers.
- (X) Nothing in these rules shall limit a customer's right to file a complaint against a small, privately owned water company. Nothing in these rules shall prohibit or restrict the Commission from initiating an investigation or complaint proceeding against a small, privately owned water company.
- (d) Reporting requirements. As part of its annual report to the Commission, each small, privately owned water company that has been granted simplified regulatory treatment shall provide a count of all customers served by the utility. To comply with this requirement, the utility shall require multi-residential entities, multi-commercial entities, and wholesale purchasers of water supplying water service to multiple end-users, annually to furnish the utility with a count of the number of singular units receiving water services directly or indirectly from such entities. In the event the small, privately owned water company fails to obtain annually or fails to submit annually the customer count information to the Commission, the Commission may revoke or may deny simplified regulatory treatment for that company.
- (e) Simplified regulatory treatment options. The Commission may grant a small, privately owned water company the authority to participate in any of the following simplified regulatory treatment options:
  - (I) Annual Rate Adjustment Option. If it desires to participate in this option, a small, privately owned water company shall file an application for authorization to use the Commission-determined annual rate adjustment. If the Commission grants the application, then the small, privately owned water company shall use the following process to adjust rates on an annual basis:
    - (A) On or before March 31 of each year, by letter, the Commission shall inform all participants in the Annual Rate Adjustment Option of the rate adjustment to be effective May 1 of that year. As prescribed by subparagraph (e)(I)(B) of this rule, the percentage adjustment shall be determined using the following figures:

- (i) the annual percent change in the United States Gross Domestic Product Chain-Type Price Index (GDPPI) as published by the United States Department of Commerce, Bureau of Economic Analysis, and as published in the Economic Report of the President; and
  - (ii) an appropriate measure of productivity, specifically the “Private and Non-Farm Business Multifactor Productivity Percentage Change” (PNFBMPP) as published by the Bureau of Labor Statistics, and as published in The Economic Report of the President.
- (B) The percentage adjustment formula is:  
  
$$\text{Price Adjustment} = \text{GDPPI} - \text{PNFBMPP}$$
- (C) On or before April 15 of each year, each small, privately owned water company participating in the Annual Rate Adjustment Option shall file an advice letter and accompanying tariff sheets with the Commission to implement the rate change effective May 1.
- (II) Resource Cost Pass-through Option. If it desires to participate in this option, a small, privately owned water company shall file an application for authorization to pass-through price changes (increases and decreases) relating to the acquisition cost for wholesale water from a local municipality, other governmental entity, or other source as approved by the Commission. The small, privately owned water company may include in its application a request for Commission approval to include other utility expenditures ordered by a governmental entity. (Examples of such other expenditures include, but are not limited to, changes in water augmentation assessments and changes in costs associated with compliance with provisions of the Safe Drinking Water Act of 1974.) Following Commission approval to participate in the Resource Cost Pass-through Option, the small, privately owned water company shall timely inform the Commission of all increases or decreases in the cost of water and shall file an advice letter to implement all resulting changes in customer rates within 30 days of the effective date of the price change for wholesale water.
- (III) Operating Ratio Methodology Option. If it desires to participate in this option, a small, privately owned water company shall file an application for authorization to use an operating ratio methodology in determining the appropriate rates to be charged by the small, privately owned water company. An operating ratio methodology for setting rates differs from a traditional rate base methodology and may be an acceptable tool in evaluating rates when little or no rate base exists.
- (IV) Reserve Account for Major Capital Improvements Option. If it desires to participate in this option, a small, privately owned water company shall file an application for authorization to establish a reserve account to fund future major capital expenditures and to implement a monthly surcharge to fund a reserve account for future capital improvement expenditures. In filing an application to initiate this option or to amend any provisions of this option, the small, privately owned water company shall clearly identify both the proposed method for collecting funds to be contributed to the reserve account and the expected use of such funds.

- (A) The Commission must approve both the specific level of funds to be collected and the specific method for collecting money for the reserve account for major capital improvements. Accordingly, in its application, the applicant shall submit sufficient financial information for the Commission to review the company's proposed capital improvement needs and shall explain the merits of its funding methodology. The small, privately owned water company that seeks authorization to implement the Reserve Account for Major Capital Improvements Option shall have the burden of establishing that actual or proposed expenditures are reasonable and in the public interest.
- (B) Funds in the reserve account shall be kept in a separate interest-bearing cash account. Interest accrued shall be credited to the reserve account and shall become part of the corpus of the reserve account. Funds from the account shall not be used for any purpose other than those permitted under this option and authorized by the Commission. Disbursements from the fund shall be restricted to the uses specifically approved by the Commission.
- (C) The small, privately owned water company shall report all disbursements from the reserve account by written notice to the Commission and to other persons as the Commission may direct. Disbursements from the reserve account that are found by the Commission to have been made improperly, or to have been made in violation of any statute, regulation, or order of the Commission, shall be returned to the account or refunded to ratepayers as the Commission may direct.
- (D) Plant capitalized by means of the reserve account shall be accounted for as a contribution in aid of construction.
- (V) Company Specific, Customized Option. If it desires to participate in this option, a small, privately owned water company shall file an application for authorization to implement a company specific, customized regulatory plan. The Commission will consider the merits of all specific options presented and will determine, in its discretion, whether some or all of the provisions are consistent with the objectives of these rules.
  - (A) In a proceeding on an application filed under this option, the small, privately owned water company shall bear the burden of proving that:
    - (i) the provisions of the proposed company specific, customized regulatory treatment appropriately balance reasonable regulatory oversight with the benefits and costs of regulation;
    - (ii) the proposed provisions are not discriminatory; and
    - (iii) implementing the proposed company specific, customized regulatory treatment is in the public interest, improves the quality of water service or combined water and sewer service to customers, is financially compensatory, and promotes the development and maintenance of just and reasonable rates.
  - (B) Under this option, the small, privately owned water company must maintain accounting records to provide sufficient financial information for the Commission to assess the merits of the proposed company specific, customized regulatory treatment and its projected impact on the company.

- (f) Transitional provisions. When the number of customers served by the utility, as reported in its annual report to the Commission, reaches or exceeds 1,500, the utility no longer meets the definition of small, privately owned water utility and is no longer eligible for simplified regulatory treatment. Within 30 days of filing the annual report that shows that it has 1,500 or more customers, a utility shall file with the Commission one of the following:
  - (I) an application that contains a proposed transitional regulatory plan to move the utility from simplified regulatory treatment to rate of return regulation. The application shall comply with paragraph (g) of this rule; or
  - (II) an application for authorization to continue its existing simplified regulatory treatment plan. The application shall comply with paragraph (h) of this rule. The Commission, in its discretion, may permit a utility whose customer count exceeds the established limit to its existing simplified regulatory treatment plan.
- (g) An application for authority to move from simplified regulatory treatment to rate of return regulation shall include, in the following order, the following information either in the application or in the appropriately identified attached exhibits:
  - (I) all the information required by paragraphs 5002(b) and 5002(c);
  - (II) the reasons for the move to rate of return regulation;
  - (III) a statement of the rates to be charged following the return to rate of return regulation; and
  - (IV) the information (including customer notice) required by rule 5110.
- (h) An application filed pursuant to subparagraph (f)(II) of this rule shall include, in the following order, the following information either in the application or in the appropriately identified attached exhibits:
  - (I) all the information required by paragraphs 5002(b) and 5002(c);
  - (II) a statement of each of the utility's reasons for seeking to retain its existing simplified regulatory treatment plan;
  - (III) for each stated reason, a statement of the facts (not conclusory statements) relied upon by the utility to support the stated reason;
  - (IV) a reference (by proceeding number, decision number, and date) to the Commission decision that authorized the utility to participate in the simplified regulatory treatment that the utility seeks to continue; and
  - (V) an explanation of how approval of the application will balance reasonable regulatory oversight with the benefits and costs of regulation, while continuing to consider the public interest, the applicant's quality of service, the applicant's financial condition, and just and reasonable rates.

**5113. - 5199. [Reserved].**

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**FACILITIES**

**5200. Construction, Installation, Maintenance, and Operation.**

The plant, equipment, and facilities of a utility shall be constructed, installed, inspected, maintained, and operated in accordance with accepted engineering practice in the water and sewer industries to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.

**5201. Instrumentation.**

Each utility shall install such indicating instruments or meters as may be necessary to obtain records of the water flow volume(s) of its plants. Each utility purchasing water shall install such instruments or meters as may be necessary to furnish the Commission with full information related to the purchases, including purchase dates, sources, volumes, and unit costs. Each utility shall keep a record of its periodic readings of such instruments.

**5202. Purity and Pressure.**

- (a) Each utility supplying water for domestic, commercial, or industrial purposes shall ensure that all water intended for human consumption and general household purposes is free from disease producing organisms, bacteria, and injurious chemical and physical substances, and is agreeable to sight and smell.
- (b) Each utility supplying water for domestic, commercial, or industrial purposes shall maintain a steady pressure, not at any time falling below the adequate minimum for domestic service. Each utility furnishing fire hydrant service must be able to supply added service to local fire fighting equipment and facilities in accordance with the best standard practice. A utility shall maintain pressure and keep records as required by the Water Quality Control Division of CDPHE or county or municipal codes or ordinances.
- (c) A utility providing combined water and sewer service shall comply with the effluent limits outlined in the utility's Colorado Discharge Permit System permit issued by the Water Quality Control Division of CDPHE.

**5203. Interruptions of Service.**

- (a) Each utility shall keep a record of every service interruption (including, without limitation, forced outages caused by events outside of the utility's control, scheduled outages, or sustained outages) which occurs on its entire system or on a major division of its system. The record shall include at least a statement of the time, the duration, and the cause of any service interruption.
- (b) The records of service interruptions and a statement of the utility's operating schedules shall be open at all times to the inspection of the duly authorized representatives of the Commission. The utility shall retain these records for five years.
- (c) Not later than 30 days following the beginning of each service interruption, utilities shall file with the Commission into the proceeding opened for such purpose a report of each interruption of service lasting longer than 24 hours.
- (d) During times of threatened or actual water shortage a utility shall equitably apportion its available water supply among its customers with due regard to public health and safety and provide notice thereof to customers. Not later than 30 days following the date of the notice, utilities shall file with the Commission a copy of such notice.
- (e) If a utility must restrict water distribution, it shall, except in emergencies:

- (I) give advance written notice to the Commission, as prescribed by paragraph (d) of this rule; and
  - (II) give advance written notice to the utility's customers, as prescribed by paragraph (d) of this rule.
- (f) The notice contemplated by paragraph (c) of this rule shall contain the following information:
  - (I) the reason for the restriction;
  - (II) the nature and extent of the restriction, including outdoor use, use by certain classes of customers, and similar matters;
  - (III) the date such restriction is to go into effect; and
  - (IV) the probable date of termination of such restriction.

**5204. Incidents Resulting in Death, Serious Injury or Significant Property Damage.**

- (a) Each utility shall inform the Commission of all incidents which occur in connection with the operation of its property, facilities, or service that result in death, serious injury, or significant property damage within two hours of learning of the incident.
- (b) Within 30 calendar days of the incident, the utility shall submit a written report to the Director of the Commission. The report shall contain at least the following information:
  - (I) date, time, place, and location of the incident;
  - (II) type of incident;
  - (III) names of all persons involved; and
  - (IV) nature and extent of injury and damage.
- (c) If the utility conducts an internal investigation of an incident referred to in paragraph (a) above, the utility shall make its report available to the Commission upon request by the Commission. The utility may provide subparagraphs (b)(III) and (b)(IV) of this report on a confidential basis under seal.

**5205. - 5208. [Reserved].**

**5209. Service Connections.**

- (a) Upon application of a bona fide applicant for service, the utility shall furnish, install, and maintain service pipe of suitable capacity, including the curb cock and curb box required, from its water main to the property line and, for combined water and sewer providers, from its sewer main to the property line.
- (b) Except as provided in paragraphs (c) and (d) of this rule, service connections shall be furnished, installed, and maintained at the expense of the utility.
- (c) All meters used in connection with metered service shall be furnished, installed, and maintained at the expense of the utility, unless the Commission grants special authority to the contrary for good cause.

- (d) The utility may seek approval of tariff provisions that specifically allocate the cost of service connections, other than meters, between the utility and the customer. Such tariff proposals shall specify the terms and conditions that initiate such cost allocation. The utility shall account for all such funds received from customers as a contribution in aid of construction.
- (e) All facilities furnished or installed at the expense of the utility shall remain the utility's property and may be removed by the utility at any time after discontinuance of service.

**5210. Line Extension.**

- (a) Each utility shall have tariffs which set out its line extension policies, procedures, and conditions.
- (b) Specific tariff provisions for making service connections, for transmission line extensions, and for distribution line extensions shall include:
  - (I) service connections and distribution line extensions by customer class and the appropriate terms and conditions under which those connections and extensions will be made;
  - (II) provisions requiring the utility to provide to a customer or to a potential customer, upon request, service connection information necessary to allow the customer's or potential customer's facilities to be connected to the utility's system;
  - (III) provisions requiring the utility to exercise due diligence in providing the customer or potential customer with an estimate of the anticipated cost of a connection or extension;
  - (IV) provisions addressing steps to ameliorate the rate and service impact upon existing customers, including equitably allowing future customers to share costs incurred by the initial or existing customers served by a connection or extension (as, for example, by including a refund of customer connection or extension payments when appropriate); and
  - (V) a description of specific customer categories (such as permanent, indeterminate, and temporary) within each customer class.

**5211. – 5299. [Reserved].**

**METERS**

**5300. Service Meters and Related Equipment.**

- (a) All meters used in connection with water metered service for billing purposes shall be furnished, installed, and maintained at the expense of the utility.
- (b) All equipment, devices, or facilities furnished at the expense of the utility or for which the utility bears the expense of maintenance and renewal, including service meters, shall remain the property of the utility and may be removed by it at any time after discontinuance of service.
- (c) Each service meter shall clearly indicate the units of service in cubic feet or gallons for which charge is made to the customer. In cases where the register reading of a meter must be multiplied by a constant to obtain the units consumed, such constant shall be clearly marked on the meter.

**5301. Location of Service Meters.**

As of the time of meter installation, meters shall be located in conformity with the utility's tariffs and in accordance with:

- (a) applicable local building codes; and
- (b) applicable meter placement standards.

**5302. [Reserved].**

**5303. Meter Testing Equipment and Facilities.**

- (a) Each utility furnishing metered water service shall, unless specifically exempted by the Commission, provide such meter laboratory, standard meters, instruments, and other equipment and facilities as may be necessary to make the tests required by these rules. Such equipment and facilities shall be acceptable to the Commission and shall be available at all reasonable times for inspection by the Commission's authorized representatives.
- (b) Each utility shall make such tests as are prescribed under these rules with such frequency, in such manner, and at such places as may be approved by this Commission. Each utility shall file an application for approval of such testing practices. The application shall include:
  - (I) the information required by paragraphs 5002(b) and 5002(c);
  - (II) a description of the test methods employed and the frequency of tests or observations for determining volume of water consumed;
  - (III) a description of meter testing equipment, including methods employed to ascertain and maintain accuracy of all testing equipment;
  - (IV) rules covering testing and adjustment of service meters when installed and periodic tests after installation; and
  - (V) supporting information and justification for the items listed in subparagraphs (I) through (IV) of this paragraph.
- (c) Revisions to any portion of an approved application identified in paragraph (b) of this rule shall only be accomplished by the filing and approval of a new application.
- (d) If the utility does not have suitable means for testing, the utility must have a certificate from the meter manufacturer showing that each meter has been tested for accuracy.
- (e) The utility shall keep records of certification and calibrations for all testing equipment required by this rule for the life of the equipment.
- (f) In its tariff, each utility shall include a description of its meter testing equipment and of the methods employed to ascertain and maintain accuracy of all testing equipment.
- (g) For those paragraphs of this rule which require a utility to maintain facilities and equipment, a utility may meet those requirements by having the facilities and equipment readily available (as, for example and without limitation, by contracting with a testing facility). A utility which uses this paragraph of the rule is responsible for its compliance with the provisions of this entire rule.

- (h) For those paragraphs of this rule which require a utility to test or to maintain equipment, a utility may meet those requirements by having the equipment tested by a third party (as, for example and without limitation, an independent testing facility). A utility which uses this paragraph of the rule is responsible for its compliance with the provisions of this entire rule.

**5304. Scheduled Meter Testing.**

- (a) Each utility shall test or shall arrange for testing of service meters in accordance with the schedule in this rule or in accordance with a sampling program approved by the Commission. The utility shall file an application to request approval of such sampling programs.
- (b) Every service meter must be tested and adjusted either before installation or no later than 60 days thereafter.
- (c) Every service meter must be periodically tested as shown below:
  - (I) meter size of 1/2 or 5/8 inch, every ten years;
  - (II) meter size of 3/4 inch, every eight years;
  - (III) meter size of 1 inch, every six years; and
  - (IV) meter size of 1 1/2 inch and above, every four years.
- (d) In its tariff, each utility shall include a description of the utility's practices concerning:
  - (I) testing and adjustment of service meters at installation;
  - (II) periodic testing after installation; and
  - (III) certification and calibration of meters.
- (e) If a utility chooses to use a sampling program, a utility shall file an application to request approval of such sampling program. The application shall include:
  - (I) the information required by paragraphs 5002(b) and 5002(c);
  - (II) a description of the sampling program which the utility wishes to use. This description shall include, at a minimum the following:
    - (A) the type(s) of meters subject to the sampling plan;
    - (B) the frequency of testing;
    - (C) the procedures to be used for the sampling;
    - (D) the reference standard to be used for testing;
    - (E) the accuracy of the testing and of the sampling plan; and
  - (III) An explanation of the reason(s) for the requested sampling program.
  - (IV) An analysis which demonstrates that, with respect to assuring the accuracy of the service meters tested, the requested sampling program is at least as effective as the schedule in this rule.

- (f) Revisions to any portion of a sampling program approved pursuant to paragraph (e) of this rule shall be accomplished by the filing of, and Commission approval of, a new application.

**5305. Meter Testing Upon Request.**

- (a) Each utility furnishing metered water service shall make a test of the accuracy of any water service meter upon request of a customer. The test shall be conducted free of charge if the meter has not been tested within the previous 12 months and the customer agrees to accept the results of the test for the purposes of any dispute or informal complaint regarding the meter's accuracy; otherwise, the utility may charge a fee for performing the test. The utility shall provide a written report of the test results to the customer and maintain a copy on file for at least two years.
- (b) Should a customer request and receive a meter test as prescribed in paragraph 5305(a) and continue to dispute the accuracy of a meter, upon written request by a customer the utility shall make the disputed meter available for independent testing by a qualified meter testing facility of the customer's choosing. The customer is not entitled to take physical possession of the disputed meter. To be a qualified meter testing facility, the testing facility must be capable of testing the meter to meet all meter standards and requirements required by these rules.
- (c) This rule applies only when there is disagreement between the customer and the utility regarding the accuracy of the meter. If, upon completion of an independent test as prescribed in paragraph 5305(b), the disputed meter is found to be accurate within the limits of rule 5302, the customer shall bear all costs associated with conducting the test. If, upon completion of an independent test as prescribed in paragraph 5305(b), the disputed meter is found to be inaccurate beyond the limits prescribed in rule 5302, the utility shall bear all costs associated with conducting the test.
- (d) A utility shall identify in its tariff the rates, terms, and conditions for all fees associated with customer-requested meter testing conducted within 12 months of a prior test.

**5306. Records of Tests and Meters.**

- (a) A utility shall maintain a record for each meter owned or used by the utility, showing the date of purchase, manufacturer's serial number, record of the present location, and date and results of the last test performed by the utility, which record shall be retained for the life of the meter plus 30 months.
- (b) Whenever a meter is tested either on request or upon complaint, the test record shall include the information necessary for identifying the meter, the reason for making the test, the reading of the meter if removed from service, the result of the test, together with all data taken at the time of the test in a sufficiently complete form to permit the convenient checking of the methods employed and the calculations made. Such record shall be retained for at least two years.

**5307 - 5308. [Reserved].**

**5309. Meter Reading.**

- (a) Upon the customer's request, the utility shall provide written documentation identifying the date of the most recent reading of the customer's meter, and the total usage expressed in gallons or other unit of service recorded. On request, a utility supplying metered service shall explain to a customer its method of reading meters.
- (b) A utility shall include in its tariff a clear statement describing when meters will be read by the utility and the circumstances, if any, under which the customer must read the meter and submit the data to the utility. This statement shall specify in detail the procedure that the customer must follow and shall specify all conditions that apply to each class of service.

- (c) Absent good cause, a utility shall read a meter monthly. For good cause shown, a utility shall read a meter at least once every six months.

**5310. - 5399. [Reserved].**

**BILLING AND SERVICE**

**5400. Applicability.**

Rules 5400 through 5410 apply to residential customers and to commercial customers served by a utility's rates or tariffs. In its tariffs, a utility may elect to apply the same or different terms and conditions of service to other customer classes

**5401. Billing Information and Procedures.**

- (a) All bills issued to customers for metered service furnished shall show:
- (I) the dates and meter readings, if applicable, beginning and ending the period during which service was rendered;
  - (II) an appropriate rate or rate code identification;
  - (III) net amount due for regulated charges;
  - (IV) the date by which payment is due, which shall not be earlier than 15 days after the mailing or the hand-delivery of the bill;
  - (V) a distinct marking to identify an estimated bill;
  - (VI) the total amount of all payments or other credits made to the customer's account during the billing period;
  - (VII) any past due amount. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges;
  - (VIII) any transferred amount or balance from any account other than the customer's current account; and
  - (IX) all other essential facts upon which the bill is based, including factors and constants, as applicable.
- (b) A utility that bills for unregulated services or goods shall allocate partial payments first to regulated charges and then to unregulated charges or non-tariffed charges and to the oldest balance due separately within each category.
- (c) A utility that transfers to a customer a balance from the account of a person other than that customer shall have in its tariff the utility's benefit of service transfer policies and criteria. The tariff shall contain an explanation of the process by which the utility will verify, prior to billing a customer under the benefit of service tariff, that the person to be billed in fact received the benefit of service.
- (d) A utility may transfer a prior unpaid debt to a customer's bill if the prior bill was in the name of the customer and the utility has informed the customer of the transferred amount and of the source of the unpaid debt (for example, and without limitation, the address of the premises to which service was provided and the period during which service was provided).

- (e) If it is offered in a tariff, upon request from a customer and where it is technically feasible, a utility may have the option to provide electronic billing (e-billing), in lieu of a typed or machine-printed bill, to the requesting customer. If a utility offers the option of e-billing, the following shall apply:
  - (I) the utility shall obtain the affirmative consent of a customer to accept such a method of billing in lieu of printed bills;
  - (II) the utility shall not charge a fee for billing through the e-billing option;
  - (III) the utility shall not charge a fee based on customer payment options that is different from the fee charged for the use of the same customer payment options by customers who receive printed bills; and
  - (IV) a bill issued electronically shall contain the same disclosures and Commission-required information as those contained in the printed bill provided to other customers.
- (f) A utility may accept electronic payments and collect any merchant fees associated with electronic payments. However, if electronic payments are accepted, the utility shall take reasonable steps to protect private customer information.

**5402. Adjustments for Meter and Billing Errors.**

- (a) A utility shall adjust customer charges for water incorrectly metered or billed as follows:
  - (I) When, upon any meter accuracy test, a meter is found to be running slow in excess of error tolerance levels allowed under rule 5302, the utility may charge for one-half of the weighted average error for the period dating from the discovery of the meter error back to the previous meter test, with such period not to exceed six months.
  - (II) When, upon any meter accuracy test, a meter is found to be running fast in excess of error tolerance levels allowed under rule 5302, the utility shall refund one-half of the weighted average error for the period dating from the discovery of the meter error back to the previous meter test, with such period not to exceed two years.
  - (III) When a meter does not register, registers intermittently, or partially registers for any period, the utility may estimate, using the method stated in its tariff, a charge for the water used based on amounts metered to the customer over similar periods in previous years. The period for which the utility charges the estimated amount shall not exceed six months.
  - (IV) In the event of under-billings not provided for in subparagraphs (I) or (III) of this rule (such as an incorrect multiplier, register, or billing error), the utility may charge for the period during which the under-billing occurred, with such period not to exceed six months.
  - (V) In the event of over-billings not provided for in subparagraph (II) of this rule, the utility shall refund for the period during which the over-billing occurred, with such period not to exceed two years.
- (b) The periods set out in paragraph (a) of this rule shall commence on the date on which either (1) the customer notifies the utility or the utility notifies the customer of a meter or billing error, or (2) the customer informs the utility of a billing or metering error dispute or makes an informal complaint to the External Affairs section of the Commission.

- (c) In the event of an over-billing, the customer may elect to receive the refund as a credit to future billings or as a one-time payment. If the customer elects a one-time payment, the utility shall make the refund within 30 days. Such over-billings shall not be subject to interest.
- (d) In the event of under-billing, the customer may elect to enter into a payment arrangement on the under-billed amount. The payment arrangement shall be equal in length to the length of time during which the under-billing lasted. Such under-billings shall not be subject to interest.

**5403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.**

- (a) A utility shall process an application for utility service which is made either orally or in writing and shall apply nondiscriminatory criteria with respect to the requirement of a cash deposit prior to commencement of service.
- (b) If billing records are available for a customer who has received service from the utility, the utility shall not require that person to make new or additional cash deposits to guarantee payment of current bills unless the records indicate recent or substantial delinquencies. All customers shall be treated without undue discrimination with respect to cash deposit requirements, pursuant to the utility's tariff.
- (c) A utility shall not require a cash deposit from an applicant for service who provides written documentation of a 12 consecutive month good credit history from the utility from which that person received similar service. For purposes of this paragraph, the 12 consecutive months must have ended no earlier than 60 days prior to the date of the application for service.
- (d) If a utility uses credit scoring to determine whether to require a cash deposit from an applicant for service or a customer, the utility shall have a tariff which describes, for each scoring model that it uses, the credit scoring evaluation criteria and the credit score limit which triggers a cash deposit requirement.
- (e) All utilities requiring deposits shall offer customers at least one non-cash alternative that does not require the use of the customer's social security number, in lieu of a cash deposit.
- (f) If a utility uses credit scoring, prior payment history with the utility, or customer-provided prior payment history with a like utility as a criterion for establishing the need for a cash deposit, the utility shall include in its tariff the specific evaluation criteria which trigger the need for a cash deposit.
- (g) If a utility denies an application for service or requires a cash deposit as a condition of providing service, the utility immediately shall inform the applicant for service of the decision and shall provide, within three business days, a written explanation to the applicant for service stating the reasons the application for service has been denied or a cash deposit is required.
- (h) No utility shall require any security other than either a cash deposit to secure payment for utility services or a third-party guarantee of payment in lieu of a cash deposit. In no event shall the furnishing of utility services or extension of utility facilities, or any indebtedness in connection therewith, result in a lien, mortgage, or other security interest in any real or personal property of the customer unless such indebtedness has been reduced to a judgment. Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariff, may require a cash deposit or a new third party guarantor.

- (i) A cash deposit shall not exceed an amount equal to an estimated 90 days' bill of the customer, except in the case of a customer whose bills are payable in advance of service, in which case the cash deposit shall not exceed an estimated 60 days' bill of the customer. The cash deposit may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities, as provided in the extension policy in the utility's tariff.
- (j) A utility receiving cash deposits shall maintain records showing:
  - (I) the name of each customer making a cash deposit;
  - (II) the amount and date of the cash deposit;
  - (III) each transaction, such as the payment of interest or interest credited, concerning the cash deposit;
  - (IV) each premise where the customer receives service from the utility while the cash deposit is retained by the utility; and
  - (V) if the cash deposit was returned to the customer, the date on which the cash deposit was returned to the customer.
- (k) A utility shall state in its tariff its customer deposit policy for establishing or maintaining service. The tariff shall state the circumstances under which a cash deposit will be required and the circumstances under which it will be returned.
- (l) Each utility shall issue a receipt to every customer from whom a cash deposit is received. No utility shall refuse to return a cash deposit or any balance to which a customer may be entitled solely on the basis that the customer is unable to produce a receipt.
- (m) The payment of a cash deposit shall not relieve any customer from the obligation to pay current bills as they become due. A utility is not required to apply any cash deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.
- (n) A utility shall pay simple interest on a cash deposit at the percentage rate per annum as calculated by the Commission and in the manner provided in this paragraph.
  - (I) At the request of the customer, the interest shall be paid to the customer either on the return of the cash deposit or annually. The simple interest on a cash deposit shall be earned from the date the cash deposit is received by the utility to the date the customer is paid. At the option of the utility, interest payments may be paid directly to the customer or by a credit to the customer's account.

- (II) The simple interest to be paid on a cash deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent per annum, as quoted for one-year United States Treasury constant maturities, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, the Commission shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. The Commission shall issue an order to each utility stating the rate of interest to be paid on cash deposits during the next calendar year. Annually following receipt of the Commission's order, if necessary, each utility shall file by advice letter or application, as appropriate, a revised tariff, effective the first day of January of the following year, or on an alternative date set by the Commission, containing the new rate of interest to be paid upon customers' cash deposits, except when there is no change in the rate of interest to be paid on such deposits.
- (o) A utility shall have tariffs concerning third-party guarantee arrangements and, pursuant to the tariff, shall offer the option of a third party guarantee arrangement for use in lieu of a cash deposit. The following requirements shall apply to third-party guarantee arrangements.
  - (I) An applicant for service or a customer may elect to use a third-party guarantor in lieu of paying a cash deposit.
  - (II) The third-party guarantee form, signed by both the third-party guarantor and the applicant for service or the customer, shall be provided to the utility.
  - (III) The utility may refuse to accept a third-party guarantee if the guarantor is not a customer in good standing at the time of the guarantee.
  - (IV) The amount guaranteed shall not exceed the amount which the applicant for service or the customer would have been required to provide as a cash deposit.
  - (V) The guarantee shall remain in effect until the earlier of the following occurs: it is terminated in writing by the guarantor; if the guarantor was a customer at the time of undertaking the guarantee, the guarantor is no longer a customer of the utility; or the customer has established a satisfactory payment record, as defined in the utility's tariff, for 12 consecutive months.
  - (VI) Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariff, may require a cash deposit or a new third party guarantor.

**5404. Installment Payments.**

- (a) In its tariff, a utility shall have a budget or level payment plan available for its customers.
- (b) In its tariff, a utility shall have an installment payment plan which permits a customer to make installment payments if one of the following situations applies.

- (I) The plan is to pay regulated charges from past billing periods and the past due amount arises solely from events under the utility's control (such as, without limitation, meter malfunctions, billing errors, utility meter reading errors, or failures to read the meter, except where the customer refuses to read the meter and it is not readily accessible to the utility). A utility shall advise a customer who is eligible for this type of plan of the customer's eligibility. At the request of the customer and at the customer's discretion, an installment payment plan under this subparagraph shall extend over a period equal in length to that during which the errors were accumulated and shall not include interest.
  - (II) The customer pays at least ten percent of the amount shown on the notice of discontinuance for regulated charges and enters into an installment payment plan on or before the expiration date of the notice of discontinuance.
  - (III) The customer pays at least ten percent of any regulated charges amount more than 30 days past due and enters into an installment payment plan on or before the last day covered by a medical certification. A customer who has entered into and failed to abide by an installment payment plan prior to receiving a medical certification shall pay all amounts that were due for regulated charges up to the date on which the customer presented a medical certification which meets the requirements of subparagraph 5407(e)(IV) and then may resume the installment payment plan.
  - (IV) If service has been disconnected, the customer pays at least any collection and reconnection charges and enters into an installment payment plan. This subparagraph shall not apply if service was discontinued because the customer breached a prior payment arrangement.
- (c) Installment payment plans shall include the following amounts that are applicable at the time the customer requests a payment arrangement.
- (I) The unpaid remainder of amounts due for regulated charges shown on the notice of discontinuance.
  - (II) Any amounts due for regulated charges not included in the amount shown on the notice of discontinuance which have since become more than 30 days past due.
  - (III) All current regulated charges contained in any bill which is past due but is less than 30 days past the due date.
  - (IV) Any new regulated charges contained in any bill which has been issued but is not past due.
  - (V) Any regulated charges which the customer has incurred since the issuance of the most recent monthly bill.
  - (VI) Any collection fees as provided for in the utility's tariff, whether such fees have appeared on a regular monthly bill.
  - (VII) Any deposit, whether already billed, billed in part, or required by the utility's tariff, due for discontinuance or delinquency or to establish initial credit, other than a cash deposit required as a condition of initiating service.
  - (VIII) Any other regulated charges or fees provided in the utility's tariff (including without limitation miscellaneous service charges, investigative charges, and checks returned for insufficient funds charges), whether they have appeared on a regular monthly bill.

- (d) Within seven calendar days of entering into a payment arrangement with a customer, a utility shall provide the customer with a copy of this rule and a statement describing the payment arrangement. The statement describing the payment arrangement shall include the following:
  - (I) the terms of the payment plan; and
  - (II) a description of the steps which the utility will take if the customer does not abide by payment plan.
- (e) Except as provided in subparagraph (b)(I) of this rule, an installment payment plan shall consist, at a minimum, of equal monthly installments for a term selected by the customer but not to exceed six months. In the alternative, the customer may choose a modified budget billing, level payment, or similar tariff payment arrangement in which the total due shall be added to the preceding year's total billing to the customer's premises, modified for any base rate or cost adjustment changes. The resulting amount shall be divided and billed in 11 equal monthly budget billing payments, followed by a settlement billing in the twelfth month, or shall follow other payment-setting practices consistent with the tariff plan available.
- (f) For an installment payment plan entered into pursuant to this rule, the first monthly installment payment, and with the new charges (unless the new charges have been made part of the arrangement amount) shall be due on a date which is not earlier than the next regularly scheduled due date of the customer who is entering into the installment payment plan. Succeeding installment payments, together with the new charges, shall be due in accordance with the due date established in the installment payment plan. Any payment not made on the due date established in the installment payment plan shall be considered in default. Any new charges that are not paid by the due date shall be considered past due, excluding those circumstances covered in subparagraph (b)(I) of this rule.
- (g) This rule shall not be construed to prevent a utility from offering any other installment payment plan terms to avoid discontinuance or terms for restoration of service, provided the terms are at least as favorable to the customer as the terms set out in this rule.

**5405. 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 using a method (such as, without limitation, bill inserts or periodic direct mail) that will assure receipt by each customer.
- (c) Upon request, a utility must provide the following information to a customer:
  - (I) a clear and concise summary of the existing rate schedule applicable to each major class of customers for which there is a separate rate;
  - (II) an identification of each class whose rates are not summarized;
  - (III) a clear and concise explanation of the existing rate schedule 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;
  - (IV) a clear and concise statement of the customer's actual consumption for each billing period during the prior year, unless such consumption data are not reasonably ascertainable by the utility; and

- (V) any other information and assistance as may be reasonably necessary to enable the customer to secure safe and efficient service.

**5406. Duty to Inform Meter Customers of Increased Use**

- (a) A utility shall inform meter customers of substantial increases in water usage between billing cycles.
  - (I) Utilities that use individual customer meters shall inform a customer who has a greater than 100 percent increase in usage from the prior billing cycle or from the corresponding billing cycle the prior year, through the customer's billing statement and also through the issuance of a separate notification to the customer.
  - (II) Utilities that use master water meters shall inform a master water meter operator who has a greater than 20 percent increase in usage from the prior billing cycle or from the corresponding billing cycle the prior year, through the customer's billing statement and also through the issuance of a separate notification to the customer.
- (b) The separate notification required by this rule shall be sent prior to the start of the billing cycle following the one during which the meter was read when the threshold was met. The notification shall be emailed to customers for whom the utility has e-mail addresses as well as be sent by mail or communicated by telephone.

**5407. Discontinuance of Service.**

- (a) A utility shall not discontinue the service of a customer for any reason other than the following:
  - (I) nonpayment of regulated charges;
  - (II) fraud or subterfuge;
  - (III) service diversion;
  - (IV) equipment tampering;
  - (V) safety concerns;
  - (VI) exigent circumstances;
  - (VII) discontinuance ordered by any appropriate governmental authority; or
  - (VIII) properly discontinued service being restored by someone other than the utility when the original cause for proper discontinuance has not been cured.
- (b) A utility shall not discontinue service for nonpayment of any of the following:
  - (I) any amount which has not appeared on a regular monthly bill or which is not past due. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges;
  - (II) any past due amount that is less than \$50;

- (III) any amount due on another account now or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred either to an account which is for the same class of service or to an account which the customer has agreed will secure the other account. Any amount so transferred shall be considered due on the regular due date of the bill on which it first appears and shall be subject to notice of discontinuance as if it had been billed for the first time;
  - (IV) any amount due on an account on which the customer is or was neither the customer of record nor a guarantor, or any amount due from a previous occupant of the premises. This subparagraph does not apply if the customer is or was obtaining service through fraud or subterfuge or if paragraph 5401(c) applies;
  - (V) any amount due on any account for which the present customer is or was the customer of record if another person established the account through fraud or subterfuge and without the customer's knowledge or consent;
  - (VI) any delinquent amount, unless the utility can supply billing records from the time the delinquency occurred;
  - (VII) any debt except that incurred for service rendered by the utility in Colorado;
  - (VIII) any unregulated charge; or
  - (IX) any amount that is the subject of a pending dispute or informal complaint under rule 5004.
- (c) If the utility discovers any connection or device installed on the customer's premises which would prevent the meter from registering the actual amount of water used, the utility shall do one of the following:
- (I) remove or correct such devices or connections. If the utility takes this action, it shall leave at the premises a written notice which advises the customer of the violation, of the steps taken by the utility to correct it, and of the utility's ability to bill the customer for any estimated water consumption not properly registered. This notice shall be left at the time the removal or correction occurs; or
  - (II) provide the customer with written notice that the device or connection must be removed or corrected within 15 days and that the customer may be billed for any estimated water consumption not properly registered. If the utility elects to take this action and the device or connection is not removed or corrected within the 15 days permitted, then within seven calendar days from the expiration of the 15 days, the utility shall remove or correct the device or connection pursuant to subparagraph (c)(I) of this rule.
- (d) If a utility discovers evidence that any utility-owned equipment has been tampered with or that service has been diverted, the utility shall provide the customer with written notice of the discovery. The written notice shall inform the customer of the steps the utility will take to determine whether non-registration of water consumption has or will occur and shall inform the customer that the customer may be billed for any estimated water consumption not properly registered. The utility shall mail or hand-deliver the written notice within three calendar days of making the discovery of tampering or service diversion.
- (e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met:

- (I) if a customer at any time tenders full payment in accordance with the terms and conditions of the notice of discontinuance to a utility employee authorized to receive payment, including any employee dispatched to discontinue service. Payment of a charge for a service call shall not be required to avoid discontinuance;
- (II) if a customer pays, on or before the expiration date of the notice of discontinuance, at least one-tenth of the amount shown on the notice and enters into an installment payment plan with the utility, as provided in rule 5404; or
- (III) if it is outside the hours of 8:00 a.m. and 4:00 p.m.; it is between 12 Noon on Friday and 8 a.m. the following Monday; between 12 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday; or between 12 Noon on the day prior to and 8:00 a.m. on the day following any day during which the utility's local office is not open.
- (IV) Medical emergencies.
  - (A) A utility shall postpone discontinuance of service to a residential customer for 90 days from the date of a medical certificate issued by a Colorado-licensed physician or health care practitioner acting under a physician's authority which evidences that discontinuance of service will aggravate an existing medical emergency or create a medical emergency for the customer or a permanent resident of the customer's household. A customer may invoke this subparagraph (IV)(A) only once in any twelve consecutive months.
  - (B) As a condition of obtaining a new installment payment plan on or before the last day covered by a medical certificate, a customer who had already entered into a payment arrangement but had broken the arrangement prior to seeking a medical certification, may be required to pay all amounts that were due up to the date of the original medical certificate as a condition of obtaining a new payment arrangement. At no time shall a payment from the customer be required as a condition of honoring a medical certificate.
  - (C) The certificate of medical emergency shall be in writing, sent to the utility from the office of a licensed physician, and clearly show the name of the customer or individual whose illness is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical emergency. Such certification shall be incontestable by the utility as to the medical judgment, although the utility may use reasonable means to verify the authenticity of such certification.
  - (D) A utility may accept oral notification from the office of a licensed physician, or health care practitioner licensed to prescribe and treat patients, but the issued medical certificate must be received by the utility within ten days following such oral notification.

**5408. Notice of Discontinuance.**

- (a) Except as provided in paragraphs (g) and (h) of this rule, prior to discontinuing service, a utility shall provide a customer, and any third party the customer has designated in writing or electronically, by first class mail or by hand-delivery, written notice of discontinuance of service at least 15 days in advance of any proposed discontinuance of service.

- (b) The written notice of discontinuance under paragraph (a) shall be conspicuous and in easily understood language, and the heading shall contain, in bold font and capital letters, the following warning:

THIS IS A FINAL NOTICE OF DISCONTINUANCE OF UTILITY SERVICE AND  
CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS AND  
REMEDIES. YOU MUST ACT PROMPTLY TO AVOID UTILITY SHUT OFF.

- (c) The body of the notice of discontinuance under paragraph (a) of this rule shall advise the customer of the following:
- (I) the reason for the discontinuance of service and of the particular rule (if any) which has been violated;
  - (II) the amount past due for utility service, deposits, or other regulated charges, if any;
  - (III) the date by which an installment payment plan must be entered into or full payment must be received in order to avoid discontinuance of service;
  - (IV) how and where the customer can pay or enter into an installment payment plan prior to the discontinuance of service;
  - (V) that the customer may avoid discontinuance of service by entering into an installment payment plan with the utility pursuant to rule 5404 and the utility's applicable tariff;
  - (VI) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency;
  - (VII) that the customer has the right to dispute the discontinuance directly with the utility by contacting the utility, and how to contact the utility toll-free from within the utility's service area;
  - (VIII) that the customer has the right to make an informal complaint to the External Affairs section of the Commission in writing, by telephone, or in person, along with the Commission's address and local and toll-free telephone number;
  - (IX) that the customer has the right to file a formal complaint, in writing, with the Commission pursuant to rule 1302 and that this formal complaint process may involve a formal hearing;
  - (X) that in conjunction with the filing of a formal complaint, the customer has a right to file a motion for a Commission order ordering the utility not to disconnect service pending the outcome of the formal complaint process and that the Commission may grant the motion upon such terms as it deems reasonable, including but not limited to the posting of a cash deposit or bond with the utility or timely payment of all undisputed regulated charges;
  - (XI) that if service is discontinued for non-payment, the customer may be required, as a condition of restoring service, to pay reconnection and collection charges in accordance with the utility's tariff; and
  - (XII) that qualified low-income customers may be able to obtain financial assistance to assist with the payment of the utility bill and that more detailed information on that assistance may be obtained by calling the utility toll-free. The utility shall state its toll-free telephone number.

- (d) A discontinuance notice shall be printed in English and a specific language or languages other than English where the utility's service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information.
- (e) A utility shall explain and shall offer the terms of an installment payment plan to each customer who contacts the utility in response to a notice of discontinuance of service.
- (f) If the utility attempts to notify the customer in person but fails to do so, it shall leave written notice of the attempted contact and its purpose.
- (g) If a customer has entered into an installment payment plan and has defaulted or allowed a new bill to remain unpaid past its due date, a utility shall provide, by first class mail or by hand-delivery, a written notice to the customer. The notice shall contain:
  - (I) a heading as follows: NOTICE OF BROKEN ARRANGEMENT;
  - (II) statements that advise the customer:
    - (A) that the utility may discontinue service if it does not receive the monthly installment payment within ten days after the notice is mailed or hand-delivered;
    - (B) that the utility may discontinue service if it does not receive payment for the current bill within 30 days after its due date;
    - (C) that, if service is discontinued, the utility may refuse to restore service until the customer pays all amounts for regulated service more than 30 days past due and any collection or reconnection charges; and
    - (D) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency.
- (h) A utility is not required to provide notice under this rule if one of the following applies:
  - (I) the situation involves safety concerns or exigent circumstances;
  - (II) discontinuance is ordered by any appropriate governmental authority;
  - (III) either paragraph 5407(c) or paragraph 5407(d) applies; or
  - (IV) service, having been already properly discontinued, has been restored by someone other than the utility and the original cause for discontinuance has not been cured.
- (i) Where a utility knows that the service to be discontinued is used by customers in multi-unit dwellings, in places of business, or in a cluster of dwellings or places of business and the utility service is recorded on a single meter used either directly or indirectly by more than one unit, the utility shall issue notice as required in paragraphs (a) and (b) of this rule, except that:
  - (I) the notice period shall be 30 days;
  - (II) such notice may include the current bill;

- (III) the utility shall provide written notice to each individual unit, stating that a notice of discontinuance has been sent to the party responsible for the payment of utility bills for the unit and that the occupants of the units may avoid discontinuance by paying the next new bill in full within 30 days of its issuance and successive new bills within 30 days of issuance; and
- (IV) the utility shall post the notice in at least one of the common areas of the affected location.

**5409. Restoration of Service.**

- (a) Unless prevented from doing so by safety concerns or exigent circumstances, a utility shall restore, without additional fee or charge, any discontinued service which was not properly discontinued or restored as provided in rules 5407, 5408, and 5409.
- (b) A utility shall restore service if the customer does any of the following:
  - (I) pays in full the amount for regulated charges shown on the notice and any deposit and/or fees as may be specifically required by the utility's tariff in the event of discontinuance of service;
  - (II) pays any reconnection and collection charges specifically required by the utility's tariff, enters into an installment payment plan, and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an arrangement;
  - (III) presents a medical certification, as provided in subparagraph 5407(e)(IV); or
  - (IV) demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.
- (c) Unless prevented by safety concerns or exigent circumstances, a utility shall restore service to a customer who has completed an action in paragraph (b) within 24 hours (excluding weekends and holidays) of the time that the customer completes an action in paragraph (b), or within 12 hours of the time that the customer completes an action in paragraph (b) if the customer pays applicable after-hours charges and fees established in tariffs. The utility must exercise its best efforts to restore service for customers meeting requirements of paragraph (b) on the same day of a service discontinuance.
- (d) The utility must resolve doubts as to whether a customer has met the requirements for service restoration under paragraph (b) in favor of restoration.

**5410. Refund Plans.**

- (a) If it seeks to refund monies, a utility shall file an application for Commission approval of a refund plan.
- (b) The application for approval of a refund plan shall include, in the following order, the following information either in the application or in the appropriately identified attached exhibits:
  - (I) all the information required by paragraphs 5002(b) and 5002(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 interest rate for customer deposits in the applying utility's currently effective 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, 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, a copy of the order;
- (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 GAAP; and
- (VIII) a statement that, if the application is granted, the applying utility will file an affidavit establishing that the refund has been made in accordance with the Commission's decision.

**5411. Emergencies – Public Notification Plans.**

- (a) Every utility shall have in effect a Commission-approved emergency notification plan detailing how the utility will inform its customers and the community of emergency enforcement actions and/or corrective measures required by CDPHE.
- (b) To obtain Commission approval of an emergency notification plan and to obtain Commission approval of a modified or amended emergency notification plan, a utility shall file an application.
- (c) The application for approval of an emergency notification plan shall include, in the following order, the following information either in the application or in the appropriately identified attached exhibits:
  - (I) all the information required by paragraphs 5002(b) and 5002(c); and
  - (II) a detailed description of the proposed emergency notification plan, including (but not limited to) the type of utility service involved, the service area involved, the classes of customers to which the emergency notification will be given, and the means to be used to provide emergency notification to each customer class.
- (d) The application for approval of an amended or modified emergency notification plan shall include, in the following order, the following information either in the application or in the appropriately identified attached exhibits:
  - (I) all the information required by paragraphs 5002(b) and 5002(c);
  - (II) a detailed description of each proposed amendment or modification to the utility's existing emergency notification plan, including (but not limited to) the type of utility service involved, the service area involved, the classes of customers to which the emergency notification will be given, and the means of emergency notification to be used for each customer class;

- (III) for each proposed amendment or modification, a statement of the facts (not conclusory statements) that support the proposed amendment or modification; and
- (IV) a reference (by proceeding number, decision number, and date) to the Commission decision that approved the utility's existing emergency notification plan.

**5412. –5419. [Reserved].**

**5420. Regulated Water and Water and Sewer Utility Rule Violations, Civil Enforcement, and Civil Penalties.**

An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.

<b>Citation</b>	<b>Description</b>	<b>Maximum Penalty Per Violation</b>
	Article 1-7 of Title 40, C.R.S.	\$2000
	Commission Order	\$2000
Rule 5005	Records and Record Retention	\$2000
Rule 5100	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	\$2000
Rule 5101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service territory	\$2000
Rule 5102(a)	Obtaining a Certificate of Public Convenience and Necessity for facilities	\$2000
Rule 5103(a),(c),(d)	Amending a Certificate of Public Necessity for changes in service territory or facilities	\$2000
Rule 5108	Keeping a Current Tariff on File with the Commission	\$2000
Rule 5109	Filing a New or Changed Tariff with the Commission	\$2000
Rule 5110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 5112(d),(f)	Simplified Regulatory Treatment	\$2000
Rule 5200	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 5204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	\$2000
Rule 5210	Line Extensions	\$2000
Rule 5303(a)-(f)	Meter Testing	\$2000
Rule 5306	Record Retention of Tests and Meters	\$2000
Rule 5309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 5401	Billing Information, Procedures, and Requirements	\$2000
Rule 5411(a),(b)	Emergencies – Public Notification Plans	\$2000

<b>Citation</b>	<b>Description</b>	<b>Maximum Penalty Per Violation</b>
Rule 5004(b)-(f)	Disputes and Informal Complaints	\$1000
Rule 5202	Maintaining Appropriate Purity and Pressure Standards	\$1000
Rule 5203	Trouble Report Response, Interruptions and Curtailments of Service	\$1000
Rule 5405	Provision of Service, Rate, and Usage Information to Customers	\$1000

<b>Citation</b>	<b>Description</b>	<b>Maximum Penalty Per Violation</b>
Rule 5403	Applications for Service, Customer Deposits, and Third Party Guarantees	\$500

<b>Citation</b>	<b>Description</b>	<b>Maximum Penalty Per Violation</b>
Rule 5006	Annual Reporting Requirements	\$100
Rule 5304	Scheduled Meter Testing	\$100
Rule 5305	Meter Testing Upon Request	\$100
Rule 5402(a),(c),(d)	Meter and Billing Error Adjustments	\$100
Rule 5404(a)-(f)	Availability of Installation Payments to Customers	\$100
Rule 5407	Discontinuance of Service	\$100
Rule 5408(a)-(g);(i)	Notice of Discontinuation of Service	\$100
Rule 5409	Restoration of Service	\$100

**5421. - 5999. [Reserved].**

## **GLOSSARY OF ACRONYMS**

CCR -	Colorado Code of Regulations
CDPHE -	Colorado Department of Public Health and the Environment
CFR -	Code of Federal Regulations
CPCN -	Certificate of Public Convenience and Necessity
CRCP -	Colorado Rules of Civil Procedure
C.R.S. -	Colorado Revised Statutes
e-mail -	Electronic mail
GAAP -	Generally Accepted Accounting Principles

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**Editor's Notes**

**History**

Entire rule eff. 08/01/2007.

Sections SB&P, 5000-5001, 5002.(a), (a)(VII), (a)(XI - XII); 5005-5009, 5103, 5108, 5112-5199, 5200-5202, 5209, 5310-5399, 5401, 5403, 5407, 5411-5999 eff. 03/02/2010.

Sections SB&P, 5009, 5010, 5420 eff. 09/14/2010.

Section 5008.(c) eff. 04/30/2019.

Entire rule eff. 09/30/2022.