

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0139W

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING WATER, AND COMBINED WATER AND SEWER UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-5.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: April 11, 2022
Adopted Date: March 30, 2022

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Background.....	3
C.	Proposed Amendments.....	4
1.	Master Water Meter Operators.....	4
2.	DOLA Mobile Home Park Dispute Resolution Program.....	5
3.	Customer Notice.....	5
4.	Accounting Standards	6
5.	Removal of American Water Works Association Standards	7
6.	Simplified Regulatory Treatment for Non-Profit Entities.....	8
7.	Billing Information and Procedures	8
8.	Duty to Inform Meter Customers of Increased Use	9
9.	Interruptions of Service	9
10.	Disconnection Procedures	10
11.	Miscellaneous Updates.....	11
II.	ORDER.....	11
A.	The Commission Orders That:	11
B.	ADOPTED IN COMMISSIONERS’ WEEKLY MEETING March 30, 2022.....	13

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Commission’s Rules Regulating Water, and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* (CCR) 723-5 (Water and Water and Sewer Combined Utilities Rules).

2. The Commission has statutory authority for these proposed rule changes under §§ 40-3-104.4, 40-4-108, and 40-3-104, C.R.S.

3. The basis and purpose of this proposed rulemaking is to incorporate statutory changes, remove references to outdated standards, and ensure consistency and usability among the various provisions of Commission Rules. The Commission recognizes the need for rules that are clear, concise, and accessible to the Commission-regulated utilities and provide a framework for utilities to provide safe and reliable services at just and reasonable rates. Currently, all the water and water and sewer combined utilities the Commission regulates meet the threshold for simplified regulatory treatment under § 40-3-104.4, C.R.S. Many of the standards cited in the current rules are no longer accessible or difficult to find. The Commission proposes within this NOPR, an updated framework for accounting systems, water waste, and protection of customer information.

4. The proposed changes to the Water and Water and Sewer Combined Utilities Rules are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format (Attachment A) and final format (Attachment B). The Commission includes in Attachments A and B to this Decision, additional sections of the Water Rules that may require modification as part of the Commission’s

implementation of the requirements in Senate Bill (SB) 21-272 related to disproportionately impacted communities and income qualified customers. Although no specific modifications to these other rules are proposed, these sections of the rules are included in Attachments A and B to preserve the ability to modify these rules, as necessary, during this rulemaking.

5. The Commission recognizes the infrequency of updates to Water and Water and Sewer Combined Utilities Rules and the nature of the small customer base of Commission regulated utilities. As such, the Commission strongly encourages all regulated water utilities to make reasonable efforts to notify their customers of this rulemaking and how to participate in the proceeding.¹

B. Background

6. The Commission most recently updated these rules in February 2009.² In House Bill 08-1227, the Colorado Legislature granted the Commission authority to regulate utilities that provide combined water and sewer services. The last time the Water and Water and Sewer Combined Utilities Rules were modified was in Proceeding No. 09R-0130W. Prior to Proceeding No. 09R-130W, the Commission last modified the rules regulating water utilities in September 2006.³

¹ The Commission provides the following suggested language for inclusion in a bill onsert or email:

“Colorado’s rules on water utility regulation are changing. You can help regulators shape them—get involved, share your comments, and participate in the public rulemaking through Zoom or the phone at 303-894-2000, Public Comments can also be filed with the Commission here:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>”

“Las reglas de Colorado sobre la regulación de los servicios públicos de agua están cambiando. Puede ayudar a los reguladores a darles forma: involúcrese, comparta sus comentarios y participe en la reglamentación pública a través de Zoom o por teléfono al 303-894-2001Los comentarios públicos también se pueden presentar ante la Comisión aquí <https://www.dora.state.co.us/pls/efi/EFI.homepage>”

² See Proceeding No. 09R-130W

³ See Proceeding No. 06R-501W.

7. The Commission issues this NOPR in part to better reflect certain recent legislative changes, including, SB19-236 (updating utility notice requirements for changes in rates) and SB18-134 (clarifying obligations for 501(c)(3) non-profit organizations which function as water utilities).

8. Commission Staff contacted all regulated utilities via email to solicit feedback on the current rules and any considered rule changes prior to issuing this NOPR.

C. Proposed Amendments

1. Master Water Meter Operators

9. Among other updates and revisions, the Commission seeks to provide a more uniform use of terms throughout Commission rules. In particular, the Commission updates the definition of an Aggregate Water Service Provider to more closely match the Master Meter Operator provision of other utility rules, notably electric and gas utilities (4 CCR 723-3, Rules Regulating Electric Utilities and 723-4, Rules Regulating Gas Utilities, respectively).

10. Proposed Rule 5001(b) changes the term “Aggregate Water Service Provider” to “Master Water Meter Operator” for consistency throughout the Commission’s Rules. Proposed Rule 5001(b) also references the specific requirements for Master Water Meter Operators operating in mobile home parks under the jurisdiction of the Department of Local Affairs (DOLA) found in 8 CCR 1302-15.

11. Proposed Rule 5111 also updates the term to “Master Water Meter Operator.”

2. DOLA Mobile Home Park Dispute Resolution Program

12. Additionally, the Commission solicits input reference from stakeholders regarding any needed modification to the Water and Water and Sewer Combined Utilities Rules in light of DOLA's 2020 implementation of the Mobile Home Park dispute resolution program.⁴

13. The Commission proposes adding a reference to those Master Water Meter Operators operating in mobile home parks under the jurisdiction of DOLA found in 8 CCR 1302-15. However, the Commission welcomes any input from interested parties regarding proposed revisions to the Commission's rules to reflect DOLA's specific role in dispute resolution for master meter operators in mobile home parks, specifically Rule 5111.

3. Customer Notice

14. The Commission updates Rules 5002 and 5109 to reflect recent changes to § 40-3-104(c)(I), C.R.S., regarding the manner in which a utility must notify customers of an application pending before the Commission.

15. Rule 5002(d) requires a person or utility that has filed an application with the Commission pursuant to 5002(a), to post notice to customers on its website for at least 30 days. Utilities may otherwise put notice in a newspaper of general circulation within 7 days of filing of an application and update the Commission with proof of customer notice within 14 days, or otherwise risk the Commission deeming its application incomplete or use other forms of notice deemed appropriate by the Commission.

16. Rule 5109 also clarifies the filing and notice requirements for new or changed tariffs of Commission regulated utilities in accordance with § 40-3-104(c)(I), C.R.S.

⁴ The DOLA rules can be found at 8 CCR 1302-15: Mobile Home Park Act Dispute Resolution & Enforcement Program.

4. Accounting Standards

17. The Commission proposes updates to the accounting methodology which utilities must use for various records and applications. Switching to Generally Accepted Accounting Principles (GAAP) provides the same benefits of transparency and accuracy while providing a more appropriate regulatory burden and aligns more consistently with current industry practice. In conjunction, the Commission proposes removing references to the 1996 editions of the Uniform System of Accounts for Class A, B, and C Water Utilities, and the Uniform System of Accounts for Class A, B, and C Wastewater Utilities, published by the National Association of Regulatory Utility Commissioners which are outdated and unavailable.

18. The Commission seeks to change the references to Uniform System of Accounts accounting standards in Rules 5005, 5008, 5104, and 5410. Rules 5005, 5008, 5104, and 5410 now require utilities to maintain accounting records in accordance with GAAP, a change from the previous requirement that records be maintained using the Uniform System of Accounts for Water Utilities.

19. Proposed Rule 5005(c) requires a utility to maintain its books of accounts and records in accordance with GAAP.

20. Proposed Rule 5008 removes incorporation by reference of the 1996 editions of the Uniform System of Accounts for Class A, B, and C Water Utilities, and the Uniform System of Accounts for Class A, B, and C Wastewater Utilities, published by the National Association of Regulatory Utility Commissioners.

21. Rule 5104 addresses the contents of an application to transfer a certificate of public convenience and necessity, controlling interest in a utility, or to transfer assets subject to

the jurisdiction of the Commission (Transfer Application). Among other information, a Transfer Application must now include a statement showing accounting entries utilizing GAAP.

22. Rule 5410 addresses the requirements for an application for approval of a refund plan. Among other information, an application for approval of a refund plan must now include a statement showing accounting entries utilizing GAAP.

5. Removal of American Water Works Association Standards

23. The Commission removes the definition of American Water Works Association (AWWA) throughout the Water and Water and Sewer Combined Utilities Rules. These standards are no longer accessible to the utilities the Commission regulates, and the Commission puts forth a set of rules that accomplishes similar goals but provides a more reasonable regulatory burden for regulated utilities.

24. Proposed rules remove the definition of AWWA in 5001, and references to the AWWA in Rules 5005, 5008, 5202, 5301, 5302, 5303, and 5304.

25. Rule 5005(a)(III) removes reference to AWWA standards for purity and pressure records kept by a utility.

26. Rule 5005(e)(V) removes reference to AWWA water treatment standards with regard to compliance records kept by a utility.

27. Rule 5008(b) removes incorporation by reference to American Water Works Association Standards, Volume 5, Number 1, revised as of April 1, 2002.

28. Rule 5202(b) removes reference to AWWA standards regarding pressure and record keeping.

29. Rule 5301 removes reference to AWWA meter placement standards.

30. Rule 5302 is deleted in its entirety and reserved.

31. Rule 5303 describes the requirements for an application with the Commission for meter testing methodologies used by Commission regulated utilities. Proposed Rules 5303(b)(IV) and Rule 5303(d) remove references to applicable AWWA standards.

32. Rule 5304 establishes requirements related to scheduled meter testing. Proposed changes to Rules 5304(b) and (c) remove references to applicable AWWA standards.

6. Simplified Regulatory Treatment for Non-Profit Entities

33. The Commission updates the Water and Water and Sewer Combined Utilities Rules to reflect that 501(c)(3) non-profit organizations which function as water utilities receive simplified regulatory treatment pursuant to § 40-3-104.4, C.R.S.

34. Proposed Rule 5112 incorporates the exemption found in § 40-3-104.4, C.R.S., that exempts water companies registered as a 501(c) nonprofit organization from Commission jurisdiction.

7. Billing Information and Procedures

35. The Commission seeks to provide an updated framework for electronic payments, customer security, and electronic billing.

36. Proposed changes to Rule 5401(a)(VIII) removes the requirement that customer bills identify unregulated charges.

37. Rule 5401(f) allows utilities to collect electronic payments and any affiliated electronic payments. If a utility takes electronic payments, it shall take reasonable steps to protect private customer information.

8. Duty to Inform Meter Customers of Increased Use

38. The future sustainability of water for regulated utility customers in the state is of great concern to the Commission and water conservation is a priority for the agencies of the State of Colorado.⁵ Proposed Rule 5406 incorporates concepts on conserving resources, making customers aware of when their usage has increased significantly compared to historical benchmarks, and may allow for expedited replacement of meters and discovery and repair of distribution system leaks. The Commission proposes to reduce water waste by establishing a duty to notify meter customers who see large usage jumps between billing cycles.

39. Proposed Rule 5406 imposes a duty on utilities to inform customers of substantial increases in water usage between billing cycles. A customer that has a greater than 100 percent increase in usage from the prior billing cycle shall be noted in the customer's billing statement and via a separate notification through mail, electronically, or via telephone.

9. Interruptions of Service

40. Proposed changes to Rule 5203 clarify the manner in which and situations when a utility must inform the Commission of an interruption in service. A utility shall inform the Commission of interruptions lasting longer than 24 hours and in situations where the water distributing is restricted due to shortage. Notice should be via electronic or written form and should contain the reason for the restriction, the nature and extent of the restriction, including outdoor use, use by certain classes of customers and similar matters, the date such restriction is to go into effect, and the probable date of termination of such restriction.

⁵ See, for example, "2020 Drought Plan Guidance" issued by the Colorado Water Conservation Board for Water System Operators, available here:

<https://dnrweblink.state.co.us/CWCB/0/edoc/213920/2020DroughtPlanGuidance.pdf>.

This includes mitigation and response strategies on page 24, which include water distribution system audits and repairing leaks in the water distribution system, as well as replacing inaccurate meters.

10. Disconnection Procedures

41. The Commission proposes updates to the rules regarding discontinuation of service found in Rules 5407 through 5409. While § 40-3-103.6, C.R.S., applies only to gas and electric utilities, some of the standards developed and adopted in Proceeding No. 20R-0349EG are relevant and provide clarity for water utilities as well.

42. The Commission specifically welcomes and solicits comments regarding the extent to which and how best to incorporate the policies of § 40-3-103.6, C.R.S., regarding disconnection for non-payment. The proposed rules are intended to incorporate these policies into the Water and Water and Sewer Combined Utilities Rules in a manner that acknowledges the simplified regulatory treatment and smaller nature of water utilities, but also provides an adequate level of consumer protection.

43. Rule 5407(b)(II) prevents disconnection for non-payment of past due amounts totaling less than \$50 and Rule 5407(b)(IX) prevents disconnection for non-payment of any amount which is the subject of a pending dispute or informal complaint under Rule 5004.

44. Rule 5407(e) prevents disconnection of customers outside the business hours of 8:00 a.m. and 4:00 p.m.

45. Rule 5407(e)(IV)(A) postpones discontinuance of service for residential customers experiencing a medical emergency to 90 days (previously 60 days with the ability to receive a single 30-day extension). Rule 5407(e)(IV)(D) allows utilities to accept notification from a customer experiencing a medical emergency via a call from a health care practitioner. The utility must receive a written medical certificate within ten days when this occurs.

46. Rule 5408 is updated to better conform with the corresponding rules for gas and electric utilities.

47. Rule 5409 is updated to better conform with the corresponding rules for gas and electric utilities.

11. Miscellaneous Updates

48. The Commission seeks to universally remove the word “docket” and replace it with “proceeding” in uniformity with other Commission rules. This change is for consistency among the set of Commission rules and presents no substantiative difference.

49. The Commission seeks to make minor grammatical and ordering edits throughout the proposed Water and Water and Sewer Combined Utilities Rules. Among other updates, the Commission abbreviates Colorado Department of Public Health and Environment as CDPHE universally throughout.

50. The Commission proposes to “reserve” Rule 5008 because the proposed rules no longer incorporate any outside materials by reference.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the April 25, 2022 edition of *The Colorado Register*.

2. The updated proposed rules in legislative and final formats can be found at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0139W

3. This matter is referred to an Administrative Law Judge for issuance of a recommended decision.

4. A hearing on the proposed rules and related matters shall be held as follows:

DATE: Tuesday, May 17, 2022

TIME: 11:30 a.m. until not later than 5:00 p.m.

PLACE: In person:
Commission Hearing Room
1560 Broadway, 2nd Floor Denver, Colorado

And by video conference: using Zoom at a link in the calendar of events on the Commission's website, available at:
<https://puc.colorado.gov/>.

5. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral presentation unnecessary.

6. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than April 22, 2022, and any pre-filed comments responsive to the initial comments be submitted no later than May 6, 2022. The Commission will consider all submissions, whether oral or written. The Commission prefers comments be filed into this Proceeding using the Commission's E-Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 30, 2022.**

(S E A L)]



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

Commissioners

COMMISSIONER MEGAN M. GILMAN ABSENT.