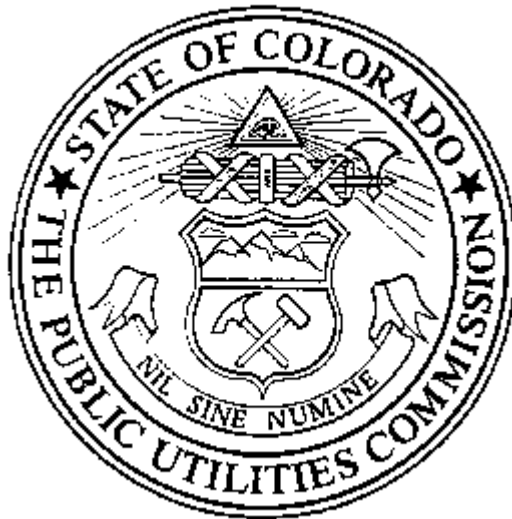


# **REPORT CONCERNING VOLUNTARY UNBUNDLING OF NATURAL GAS SERVICE IN COLORADO**

**December 1, 2000**



**BY THE  
COLORADO PUBLIC UTILITIES COMMISSION**

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**TABLE OF CONTENTS**

<b>I. INTRODUCTION .....</b>	<b>1</b>
Background.....	1
Reporting Requirements.....	1
<b>II. IMPLEMENTATION ISSUES .....</b>	<b>2</b>
Commission Actions .....	2
<b>A. Natural Gas Unbundling in Other States .....</b>	<b>3</b>
<b>B. Summary of Commissioners’ Information Meeting .....</b>	<b>3</b>
<b>C. Written Responses From Industry Stakeholders .....</b>	<b>4</b>
Status of Gas Unbundling.....	4
Suggestions for Further Legislation.....	4
Consumer Protection Rulemaking .....	5
<b>D. Implementation Issue Recommendations.....</b>	<b>5</b>
<b>III. FIXED UTILITY FUND ISSUES.....</b>	<b>6</b>
<b>APPENDICES.....</b>	<b>7</b>

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I. INTRODUCTION

Background

SB99-153, codified as § 40-2-122, Colorado Revised Statutes (C.R.S.), allows natural gas utilities to file voluntary plans for unbundling the sale of natural gas to residential customers, subject to the approval of the Colorado Public Utilities Commission (PUC or Commission). Natural gas delivery by regulated utilities would continue to be regulated by the Commission.

Reporting Requirements

SB99-153 requires the PUC to report to the Colorado general assembly by December 1, 2000 as follows:

On or before December 1, 2000, the Commission shall report to the general assembly on voluntary plans filed and actions taken by natural gas public utilities pursuant to this section and may make recommendations for legislation to further the provision of natural gas to customers by competitive suppliers. Such recommendations may include, but are not limited to, Commission authority to mandate the filing of competitive supply plans. In addition, the Commission shall report on whether it will initiate a rule-making proceeding to provide for consistent consumer protection mechanisms for all natural gas customers for those issues addressed in subparagraph (IX) of paragraph (c) of subsection (3) of this section and requirements, terms, and conditions of gas supply service.

In addition, regarding a comprehensive solution for PUC and Colorado Office of Consumer Council (OCC) funding, § 40-2-122(10) states:

The general assembly determines that a new funding formula should be devised to adequately fund the commission's and office of consumer counsel's administrative expenses. On or before December 1, 2000, the commission and the office of consumer counsel shall recommend to the general assembly those

legislative changes needed to develop appropriate funding mechanisms for the public utilities commission and the office of consumer counsel. This provision is intended to provide a comprehensive replacement for the funding method contained in the utility plan under subparagraph (XI) of paragraph (c) of subsection (3) of this section.

We have broken these reporting requirements into two general areas:

- ◆ **Implementation Issues:** Requires the Colorado PUC to report on the status of gas utility unbundling, actions taken by utilities in response to this legislation, and raises specific questions concerning the need for further legislative actions and Commission rulemaking concerning consumer protection issues [§ 40-2-122(9)]. This report, along with attached Appendices 1 through 3 constitute the PUC's response to the implementation issues raised by § 40-2-122(9).
- ◆ **Fixed Utility Fund Issues.** Requires the Colorado PUC and the OCC to provide recommendations for comprehensive changes to the fixed utility fund [§ 40-2-122(10)]. The PUC and the OCC have investigated the issues and have compiled a report that is attached as Appendix 4.

## II. IMPLEMENTATION ISSUES

### Commission Actions

In order to address the implementation issues raised in SB99-153, the Commission took the following actions:

1. During the summer and fall of 2000 the Commission researched gas unbundling activities in other states.
2. The Commission, in conjunction with the OCC, held a Commissioners' Information Meeting on July 20, 2000 with utilities and other interested parties concerning the implementation of natural gas unbundling in Colorado.
3. On September 7, 2000, the Commission sent letters to jurisdictional gas utilities and other industry stakeholders soliciting input on the implementation issues.

The Implementation Issues section of this report is organized as follows. The next section contains a brief summary of the status of natural gas unbundling programs in other states. This is followed by a summary of the July 20, 2000 Commission information meeting. The third section summarizes the stakeholder letters and responses. The final section of the report provides the Commission's recommendations concerning the implementation issues.

## A. Natural Gas Unbundling in Other States

State Legislatures, State Commissions and utilities are implementing programs to allow residential natural gas users to select their gas suppliers. Four states (New Mexico, New Jersey, New York, and West Virginia) allow all customers to select their natural gas suppliers. Seven states have begun to implement statewide programs while eleven states have partial or pilot unbundling programs in place.

Consumer reaction to these choice programs has been mixed. In some states, such as Nebraska and Wyoming, programs are structured so that all eligible residential and commercial customers choose their suppliers, while in New Mexico and West Virginia virtually no eligible customers have chosen alternative suppliers. The most far-reaching unbundling program exists in Georgia where all residential customers of Atlanta Gas Light Company (more than 80 percent of the residential gas customers in the state) have elected to purchase their gas from marketers, and the utility no longer provides traditional sales gas service.

As of March 2000, 2.6 million residential customers in the United States are participating in gas unbundling programs. The states with the most participating customers are Georgia, 1,370,000; Ohio, 572,000; and Michigan, 207,000.

Appendix 3 provides a more complete discussion of the different state competitive residential gas initiatives. This data is based on the latest information available from the Energy Information Administration of the U. S. Department of Energy.

## B. Summary of Commissioners' Information Meeting

Staff of the Commission, in conjunction with the OCC, arranged for a Commissioners' Information Meeting to be held on July 20, 2000. In this meeting jurisdictional gas utilities first provided comments about retail gas service unbundling. Utilities generally presented information about the pros, cons, barriers, and timing requirements related to unbundling their distribution services under SB99-153. These discussions were consistent with the written utility responses outlined below, and attached as Appendix 2. Commissioners and other stakeholders were also provided an opportunity to ask questions about the information presented by each utility.

Barbara Alexander, a consultant retained by the OCC, then provided a discussion of consumer issues as related to competitive supply programs. Ms. Alexander has experience with many electric and gas competition initiatives throughout the nation, and provided a detailed discussion of consumer issues that will be impacted by competitive retail supply programs. Questions and answers were again entertained. A copy of Barbara Alexander's presentation hand-out and the meeting attendance list are provided as Appendix 1.

## C. Written Responses From Industry Stakeholders

On September 7, 2000, the Commission sent letters to jurisdictional gas utilities requesting that they provide information about their intentions to file unbundling plans with the Commission. All eight jurisdictional gas utilities provided a response. The Commission also sent letters to stakeholders that had shown interest in gas unbundling in the past, and five stakeholders responded. Copies of the Commission's letters and the stakeholders' responses are attached as Appendix 2. A summary of the responses follows.

### Status of Gas Unbundling

At the time that this report was compiled, no utilities have submitted natural gas unbundling plans to the Commission under this legislation. In our September 7, 2000 letter, the Commission first asked whether utilities intend to file a voluntary plan pursuant to this statute, and if so, when. No utilities provided a specific date for the filing of unbundling plans. Public Service Company of Colorado indicated that it is not planning to file a plan in 2001, but stated that it intends to file after electricity unbundling is complete in Texas and New Mexico. Kinder Morgan, Inc. indicated that it is interested in filing a plan, but has not yet determined a date. All other utilities generally indicated that current circumstances do not warrant gas unbundling.

Finally, the Commission asked those utilities that do not intend to file a voluntary plan to indicate the reasons that they don't intend to file. Utilities cited several reasons for not filing voluntary unbundling plans. These impediments generally included the high cost to implement the program, concerns about competitive supplier participation, and lack of customer desire for gas unbundling.

### Suggestions for Further Legislation

The second and third questions relate to Commission recommendations for legislation to further competition and Commission authority to mandate the filing of competitive supply plans. The Commission asked utilities and interested parties for any recommendations in this area.

No utility or other stakeholder indicated that further legislation is warranted at this time. Several respondents pointed out that SB99-153 represented a compromise in which all parties agreed to a voluntary plan framework with an opt-out provision for the utilities if the Commission made changes not acceptable to utilities. All utilities and other stakeholders generally indicated that the voluntary nature of the legislation would not allow or warrant mandatory Commission authority.

## Consumer Protection Rulemaking

The final implementation issue concerns whether the Commission should initiate a consumer protection rulemaking proceeding. The Commission also asked utilities and interested parties for recommendations in this area.

The OCC and low-/fixed-income groups strongly support Commission rulemaking for these areas. These groups believe that the context of this rulemaking is independent of the plans being submitted by individual utilities. Consumer protection mechanisms should be the same for all suppliers; and a rulemaking proceeding is appropriate. In addition, the OCC points out that such an approach would result in the same licensing and consumer protection in all Colorado service territories, thus increasing the likelihood of suppliers entering the gas supply market. The low-income organizations point out that establishing such rules will reduce the uncertainty associated with unbundling, thus encouraging utilities to file plans.

Utility and remaining stakeholder responses vary from strong opposition to “not opposed.” Public Service Company of Colorado states that it would not be administratively efficient to undertake rulemaking at this time, and such a rulemaking should be deferred until there is a real customer choice proposal on the table. One of the smaller gas utilities requested that the Commission not establish standards that would place a disproportionate cost and burden on smaller utilities. Kinder Morgan suggested a “working committee” rather than a rulemaking to establish customer protection measures.

### D. Implementation Issue Recommendations

The first implementation requirement in § 40-2-122(9) states: “the Commission shall report to the general assembly on voluntary plans filed and actions taken by natural gas utilities pursuant to this section...”

At the time that this report was compiled, no utilities have submitted natural gas unbundling plans to the Commission under this legislation. In answer to a Commission request, no utilities provided a specific date for the filing of unbundling plans. Two utilities, Public Service Company of Colorado and Kinder Morgan, Inc., stated that they intend to file plans in the future.

The second implementation issue provides that the Commission “may make recommendations for legislation to further the provision of natural gas to customers by competitive suppliers.” The third implementation issue raises a similar concern, “commission authority to mandate the filing of competitive supply plans.”

In response to our request, no utility or other stakeholder indicated that further legislation is warranted at this time. Further, all utilities and other stakeholders generally indicated that the voluntary nature of the legislation would not allow or warrant mandatory Commission authority. The Commission agrees that information from utilities and interested parties in Colorado or from other states does not support further legislation or the movement to mandatory natural gas

unbundling at this time. It should be pointed out that under the configuration of SB99-153, gas unbundling will not occur until it is in the interests of the utilities. If the legislature believes that this voluntary framework is no longer appropriate, a substantial effort will likely be required to develop new legislation that is acceptable to all stakeholders.

The final implementation issue concerns whether the Commission should “initiate a rule-making proceeding to provide for consistent consumer protection mechanisms for all natural gas customers for those issues addressed in subparagraph (IX) of paragraph (c) of subsection (3) of this section and requirements, terms, and conditions of gas supply service.”

The Commission believes that it may be premature to engage in a rulemaking at this point, and would prefer to initiate rulemaking after the specific intentions of the utilities are established to a greater level of certainty. This would allow the Commission and parties to enter a rulemaking when the issues are better defined.

### III. FIXED UTILITY FUND ISSUES

With respect to fixed utility funding issues, § 40-2-122(10) requires a joint report by the PUC and the OCC. For the convenience of the reader, we have included this joint report as Appendix 4.

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**APPENDICES**

- Appendix 1: Copies of the agenda, handouts, and attendee list for the July 20, 2000 Commissioner Information Meeting.
- Appendix 2: Copies of the Commission letter asking for utility and stakeholder comment and the responses received by the Commission.
- Appendix 3: Copy of the research performed by Adam Peters, Intern with the CPUC for the summer of 2000.
- Appendix 4: Joint Report to the General Assembly by the Colorado Public Utilities Commission And the Office of Consumer Counsel Concerning Funding Under § 40-2-122, Natural Gas Unbundling.