

MEMORANDUM

To: Commissioners, Advisors, Staff, and Interested Persons

From: John J. Smith, Commission Counsel

Re: **Potential actions to be taken by the Commission regarding ARSD 20:10:26:04(6)**

At its regular meeting on April 15, 2014, the Commission held a discussion on whether changes should be made to the sentence in ARSD 20:10:26:04(6) requiring building owners or developers to give notice to the Commission of the exception from the master metering prohibition set forth in subdivision (6) or whether an administrative order should be issued that would define the process that the Commission will follow in response to the receipt of such a notice. This memorandum sets forth drafts of such a rule change or administrative ordering clause.

Option 1 – Rule Amendment

20:10:26:04. Individual metering -- When not required. Individual meters are not required and no variance need be requested under the following circumstances:

(6) For multiple-occupancy buildings which have central heating or cooling systems, central ventilating systems, or central water heating systems. However, the applicant shall notify the commission so it may determine whether the applicant's system falls within this exception or whether the applicant is required to file an application for a variance. Upon receipt of such notice, the executive director shall cause copies of the notice to be promptly provided to each commissioner and applicable staff. If within five business days following the commission's receipt of the notice, the executive director or a commissioner does not cause a docket to be opened for the purpose of determining whether the applicant's system falls within this exception, the building shall be deemed to fall within the exception.

If a building does not fall within one of the exceptions listed in this section or does fall within one of the subdivisions of § 20:10:26:03, the applicant may file an application for a variance with the commission consistent with this chapter.

Option 2 – Administrative Order Clause

Upon receipt of a notice under ARSD 20:10:26:04(6), the executive director is directed to have copies of the notice promptly provided to each commissioner and applicable staff. The executive director shall direct applicable staff to immediately review the notice and make a determination of whether the system falls within the exception set forth in ARSD 20:10:26:04(6). If the executive director determines after staff's review that there is an issue as to whether the applicant's system falls within this exception, the executive director shall cause a docket to be

opened within five business days following receipt of the notice for the purpose of investigating and determining the applicability of the exception. If within five business days following the commission's receipt of the notice, the executive director or a commissioner does not cause a docket to be opened for the purpose of determining whether the applicant's system falls within this exception, the building shall be deemed to fall within the exception.