

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**PART 1
RULES REGULATING PRACTICE AND PROCEDURE**

4 CCR 723-1

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to advise the public, regulated entities, attorneys, and any other person of the Commission's rules of practice and procedure. These rules of practice and procedure are promulgated in order to properly administer and enforce the provisions of Title 40 of the Colorado Revised Statutes and in order to regulate proceedings before the Commission.

The statutory authority for these rules is found in §§ 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109(5), 40-6-109.5, and 40-6-114(1), C.R.S.

GENERAL PROVISIONS

1000. Citation. The Commission's rules, when referred to generically, may be cited as the "Public Utilities Commission Rules." This Part 1, Rules 1000 - 1999, may be cited as the "Rules Regulating Practice and Procedure."

1001. Scope and Applicability. All rules in this Part 1, the "1000" series, and Title 40 of the Colorado Revised Statutes shall apply to all Commission proceedings and all regulated entities, unless a specific statute or rule provides otherwise. Where not otherwise inconsistent with Title 40 or these rules, the Commission, a hearing commissioner, or an administrative law judge may seek guidance from or employ the Colorado Rules of Civil Procedure.

1002. Construction. All rules and orders of the Commission shall be construed in accordance with the principles set forth in §§ 2-4-101 through 114, C.R.S., inclusive.

1003. Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all parties. Therefore, variances are generally disfavored. However, the Commission may permit variances from substantive rules if it concludes that strict compliance is impossible, impracticable, or unreasonable. The Commission may permit variances from procedural rules for good cause. The Commission may subject any variance granted to such terms and conditions as it may deem appropriate.
- (b) Variance requests made in an existing docketed proceeding shall be by motion. Variance requests made outside a docketed proceeding shall be by petition.
- (c) All variance requests must include:
 - (I) Citation to the specific paragraph of the rule or order from which the variance is sought;
 - (II) A statement of the variance requested;
 - (III) A statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request.
 - (IV) A statement regarding the duration of the requested variance, explaining the specific date or event which will terminate it;
 - (V) A statement whether the variance, if granted, would be full or partial; and
 - (VI) Any other information required by rule.

1004. Definitions. The following definitions apply to all Commission rules, except where a specific rule or statute provides otherwise:

- (a) "Administrative docket" means a docket regarding any matter the Commission wishes to investigate, any matter concerning the administration of programs or functions committed to the

Commission, any matter concerning general Commission policy, or any miscellaneous matter.

- (b) "Affiliate" means a subsidiary, a parent corporation, a subsidiary of a parent corporation, a joint venture to the extent of the regulated entity's involvement with the joint venture, or any other entity directly or indirectly controlling the voting of stock, unless the context requires otherwise.
- (c) "Commission" means the Public Utilities Commission, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing commissioner, or an administrative law judge, as the context requires.
- (d) "Commission advisor" means any member of the Commission's staff designated as advisory staff; or any assistant attorney general advising the Commissioners, administrative law judges, or advisory staff.
- (e) "Customer" means any person who has applied for, been accepted for, or is receiving service from a regulated entity for consumptive commercial, domestic, or industrial use, or is receiving service at a wholesale rate for ultimate distribution to another customer, including a master meter operator and an end-user of a master meter operator.
- (f) "Day" means a calendar day.
- (g) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.
- (h) "Docket" means the official record of a proceeding commenced before the Commission.
- (i) "Ex parte communication" means any oral or written communication which:
 - (I) occurs in a docketed proceeding;
 - (II) occurs between any commission advisor, commissioner, or administrative law judge, on the one hand, and, on the other hand, any person, including Commission trial advocacy staff, related to, acting as, or acting on behalf of a party;
 - (III) occurs during the pendency of the proceeding or less than 30 days prior to the commencement of the proceeding; and
 - (IV) is made without providing other parties with notice and an opportunity to respond.
- (j) "Filing under seal" means the process of filing information with the Commission in a sealed, specially marked envelope to indicate

that the filing party claims that the information is confidential.

- (k) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the witnesses a party intends to call to the stand in a hearing.
- (l) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or having a paid circulation of at least 1,000 in the area where the members of the public affected by the matter of which notice is given are located.
- (m) "OCC" means the Colorado Office of Consumer Counsel.
- (n) "Party" means "party" as that term is used in Rule 1200.
- (o) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.
- (p) "Personal information" means any individually identifiable information obtained by a regulated entity from a customer, from which judgments can be made regarding the customer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information does not include: a customer's telephone number if it is published in a current telephone directory or is scheduled to be published in the next telephone directory; information necessary for the billing and collection of amounts owed to a public utility or to a provider of service using the facilities of a public utility; or Standard Industrial Code information used for purposes of directory publishing.
- (q) "Presiding officer" means an administrative law judge, a hearing commissioner, the chairman of the Commission, or any Commissioner other than the chairman conducting a Commission hearing, as applicable.
- (r) "Price list" means a publication showing rates, fares, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced. A price list typically does not contain information duplicated in a tariff.
- (s) "Public Records Law" means Colorado's statutory provisions found at §§ 24-72-201 *et seq.*, C.R.S.
- (t) "Rate" includes any fare, toll, rental, or charge. .
- (u) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges required to be returned to

customers. "Refund" includes reparations under § 40-6-119, C.R.S.

- (v) "Regulated entity" means any entity subject to Commission regulation.
- (w) "RRR" means rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (x) "Tariff" means a publication showing rates, fares, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced; combined with all rules, regulations, terms, and conditions, which in any manner affect or relate to rates, fares, tolls, rentals, charges, classifications, or service.
- (y) "Transportation carrier" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., a contract carrier as defined in § 40-11-101(3), C.R.S., an interstate carrier as defined in §§ 40-10-120 and 40-11-115, C.R.S., a towing carrier as defined in § 40-13-101(3), C.R.S., or a motor vehicle carrier exempt from regulation as a utility as defined in § 40-16-101(4), C.R.S., when subject to regulation.
- (z) "Transportation utility" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., or a contract carrier as defined in § 40-11-101(3), C.R.S.
- (aa) "Transportation proceeding" means any proceeding before the Commission involving a transportation carrier.
- (bb) "Utility" means a public utility as defined in § 40-1-103, C.R.S.

1005. Meetings.

- (a) The Commission may designate a day and time for its regular open meetings, and may hold other meetings from time to time. The Commission shall comply with the requirements of the Colorado Open Meetings Law, §§ 24-6-401 and 402, C.R.S.
- (b) The Commission shall prepare an agenda for each upcoming meeting. The agenda shall be posted in a prominent public area at its offices at a reasonable time prior to the meeting, and made available to the general public.
- (c) The Commission has discretion regarding the order of business at each meeting, and may consider emergency matters not shown on the agenda when appropriate. Any matter tabled or not considered shall be continued on the agenda for a future meeting.
- (d) Upon affirmative vote of two commissioners, the Commission may hold an executive session as provided in § 24-6-402, C.R.S.

1006. Director. The Director shall be the appointing authority for the staff and shall be responsible for all staff functions, including providing and receiving all notices and service required of or by the Commission, and serving as custodian of the Commission's records.

1007. Staff.

- (a) When Commission staff enters an appearance in any docketed proceeding other than an administrative docket, rulemaking, or interpretive rulemaking, staff's entry of appearance shall specify those Commission staff members serving as trial advocacy staff in the proceeding. The entry of appearance may designate with specificity those staff members serving as advisory staff. Any staff not specifically designated as trial advocacy staff shall be deemed advisory staff.
- (b) Trial advocacy staff shall, for purposes of the particular proceeding, be considered a party for purposes of rules 1100-1109. Once a member of Commission staff has been designated as trial advocacy staff, said staff member shall not function in any advisory capacity. Advisory staff shall be available to provide advice and recommendations to the Commission, and shall be considered the Commission for purposes of rules 1100-1108.

STANDARDS OF CONDUCT

1100. Confidentiality - Generally. The following provisions are generally applicable concerning confidential information filed with or submitted to the Commission:

- (a) **Presumption and Public Inspection.** Any information, including computer files or other electronic media, filed with the Commission or provided to the Commission or its staff through discovery, including any information filed or provided by a regulated entity in accordance with a Commission order or rule, is presumed to be a public record within the meaning of Colorado's Public Records Law. Public records are open to public inspection by any person at any reasonable time, pursuant to the provisions of the Public Records Law. Information determined by the Commission or its Director to be confidential shall not be available for public inspection.
- (b) Except as may be superseded by applicable statute or court order, "confidential information" includes, without limitation, information concerning any of the following:
 - (I) A trade secret, meaning a secret, commercially valuable plan, formula, process, or device which is used for the making, preparing, compounding, or processing of trade commodities or the provision of services and which is the end product of either innovation or substantial effort.

- (II) Commercial or financial information that is likely to cause substantial harm to a person's competitive position if disclosed. Competitive harm does not mean such injury as might flow from customer or employee disgruntlement or from embarrassing publicity.
 - (III) Information, disclosure of which would likely impair the Commission's future ability to gain necessary information, which may include any information gained through investigations or audits of regulated entities by Commission staff.
 - (IV) Information protected by a privilege recognized under state or federal law.
 - (V) Personal information as defined in rule 1004.
 - (VI) Any other information protected from disclosure by applicable law, including, without limitation, the provisions of Colorado's Open Records Act, Article 72 of Title 24, C.R.S.
- (c) Sanctions. A claim of confidentiality constitutes a representation to the Commission that the claiming person has a reasonable and good faith belief that the subject information is, in fact, confidential under applicable law. The Commission may impose an appropriate sanction upon any person claiming confidentiality in violation of this paragraph (c). Sanctions may include but are not limited to orders to pay another person reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.
- (d) Commission and Director not Bound. The Commission's acceptance of information filed under seal shall not be construed to be an agreement by, finding of, or ruling of the Commission or its Director that the subject information is, in fact, confidential.
- (e) Extraordinary Protection. To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in these rules, the party may submit a motion or petition seeking such extraordinary protection. The motion or petition shall state the grounds for seeking the relief, the specific relief requested, and advise any other party of the request and the subject matter of the material at issue.
- (f) Procedure for Filing under Seal.
- (I) A person filing with the Commission information under seal shall ensure that all pages and copies thereof are clearly marked as "CONFIDENTIAL" and are on white or pastel microfilmable paper, not on dark colored paper such as goldenrod.

- (II) Such person shall submit the original and each copy in a separate, serially numbered, sealed envelope, with the following information written on the outside of each envelope:
- (A) The statement: "CONFIDENTIAL--INFORMATION FILED UNDER SEAL."
 - (B) An indication whether the envelope contains the original or a copy of the information.
 - (C) The name of the person and/or party filing the information.
 - (D) An indication of the docket number, if any, under which the information is submitted.
 - (E) A description of the nature of the information, reasonably sufficient for purposes of identification.
 - (F) A statement indicating whether the person filing the information prefers to retrieve the information when the information is no longer needed by the Commission, or whether the Commission should destroy the information. If retrieval is preferred, the statement shall indicate the name and phone number of the person who is authorized to retrieve the information.
- (III) If the information is filed in a docketed proceeding, the person filing the information shall also file a notice in the public record indicating that certain information has been filed under seal. The person filing the information shall ensure the notice includes a list reasonably describing the information filed under seal. Except as provided in subparagraph (f)(IV) of this rule, the filing party shall serve the notice upon all other parties.
- (IV) Unless the Commission orders otherwise, the requirements in subparagraph (f)(III) of this rule regarding service of notice on other parties do not apply to rulemaking proceedings, interpretive rulemaking proceedings, or administrative dockets.
- (g) Non-Confidential Portions. A person filing information containing both confidential and non-confidential portions shall file all non-confidential portions in the public record. If a portion is to be filed under seal, such person shall indicate on the first page of the non-confidential portion, and all copies thereof, the following:
- (I) The statement: "NOTICE--A PORTION OF THIS MATERIAL HAS BEEN FILED UNDER SEAL."

- (II) A list reasonably describing the nature of the portions filed under seal.
- (h) Segregation of Files. The Director of the Commission shall segregate information filed under seal from other records retained by the Commission. Such segregation shall be adequate to reasonably prevent access by any person not bound by the terms of these rules. This treatment shall prevail unless the information is released from the restrictions of these rules through agreement of the parties, publication by the filing party, or a finding of the Director of the Commission in responding to a public records request, an order of the Commission, or a final order of a court having jurisdiction, that the information is subject to public inspection.
- (i) Protection and Nondisclosure of Information Filed under Seal. Any person, including Commission staff, who is afforded access to any information under seal, shall treat such information as if it is actually confidential and shall take all reasonable precautions to keep the information secure. If a person is afforded access to information filed under seal in conjunction with a docketed proceeding, such person shall neither use nor disclose the information except for purposes of such proceeding.
- (j) References to Information Filed under Seal. In order to ensure non-disclosure, persons making public reference to information filed under seal shall make only general references to such information. Where reference to such information is made in pleadings, briefs, arguments, or motions, it shall be by citation only, or by some other description that will not disclose the information. Any further use of or substantive references to such information shall be placed in a separate section of the pleading, brief, argument, or motion, and submitted to the Commission under seal.
- (k) Access by Commission staff. Prior to gaining access to information under seal, Commission staff shall sign a nondisclosure agreement in substantially the same form required by Rule 1101(c), and deliver the completed agreement to the Director of the Commission and the person providing the subject information.
- (l) Access by the OCC.
- (I) The Director of the OCC may submit a written request to the Director of the Commission for access to information filed under seal. In such instances, the Director of the Commission shall forthwith notify the person who provided the subject information. The Director of the Commission shall disclose the information to the OCC if the Director of the Commission determines that the request is reasonably related to the OCC's statutory purpose as set forth in §§ 40-6.5-101 *et seq.*, C.R.S. However, the person who provided the subject information may, within five days of

the notification given by the Director of the Commission, submit a written objection to disclosure or notify the Director of the Commission that judicial action will be commenced to prevent disclosure. If the Director of the Commission is notified that the filing party will commence judicial action, the Director of the Commission shall refrain from disclosing the information for an additional five days. In the event the Director of the Commission denies the OCC request for access, the OCC may file a petition for access with the Commission; such petition shall be served upon the person who provided the subject information.

- (II) The OCC's request for access to Commission records shall be considered in as expeditious a manner as possible given other duties of the Commission and its Director. The time periods set forth in the Public Records Law shall not apply to requests under this paragraph (1).
 - (III) Prior to gaining access to information under seal, employees and representatives of the OCC shall: sign a nondisclosure agreement in substantially the same form required by Rule 1101(c), and deliver the completed agreement to the Director of the Commission and the person providing the subject information.
 - (IV) The OCC shall return to the Commission all information obtained under this paragraph (1) within 60 days after the OCC was provided access to the information. However, the OCC may, upon written request approved by the Commission or its Director, retain the information for an additional specified period of time. The OCC shall serve a copy of the written request upon the person who provided the information, and that person may submit an objection to the request.
 - (V) The OCC shall not utilize the procedure specified in this paragraph (1) as a substitute for discovery.
 - (VI) This paragraph (1) shall not authorize the OCC to obtain access to Commission Staff workpapers or workproduct.
- (m) Retrieval. Upon notification from the Commission that the information filed under seal is no longer needed, or upon the conclusion of docketed proceedings, the person filing information under seal shall make arrangements to retrieve the information. If such person does not retrieve the information within ten days after notification or the conclusion of proceedings, the Commission shall destroy the information. The Commission may, however, retain the original information and any necessary copies thereof as part of its archival files, when required by law, or when otherwise required by the Commission or its staff to carry out any regulatory responsibilities.

1101. Confidentiality – Docketed Proceedings.

- (a) The additional provisions of this rule control only in docketed proceedings.
- (b) Number of Copies. Unless otherwise required, a party filing information under seal shall file an original and four copies of such information.
- (c) Nondisclosure Agreement. Commission staff shall not permit access to information filed under seal until the person to whom disclosure is to be made (the "signatory") signs a nondisclosure agreement. The nondisclosure agreement shall be completed on forms available from the Commission. The nondisclosure agreement shall require the signatory to certify in writing that the signatory has read and agrees to be bound by the Commission's rules regarding confidentiality. The nondisclosure agreement shall contain the signatory's full name, business address, employer, name of the party with whom the signatory is associated, and, with the exception of Commission staff, the signature of that party's counsel. At or before the time the signatory is permitted to gain access to the information, counsel for the party associated with the signatory must ensure that the nondisclosure agreement has been delivered to counsel for the party filing under seal and that the nondisclosure agreement has been filed with the Commission.
- (d) Delivery of Documentation. A party filing information under seal in connection with docketed proceedings shall also deliver such information only to other parties' counsel that have filed and served a nondisclosure agreement pursuant to these rules. Any information so delivered shall be conspicuously marked as "CONFIDENTIAL". Where the material is too voluminous to copy and deliver to counsel, the filing party shall make the information available for inspection and review by counsel and experts that have signed and filed and served a nondisclosure agreement pursuant to these rules; the place for such inspection and review shall be at the premises of the providing party, unless the parties agree or the Commission orders otherwise. During the inspection, counsel and experts may take notes on the information or request and receive copies of the information; however, counsel and experts shall treat all notes taken and copies received of such information as confidential, and shall neither use nor disclose such information except for the purpose of the proceeding in which such notes or copies are obtained.
- (e) Persons Entitled to Review. With the exception of disclosure to Commission staff, any disclosure of information under seal to a party's experts or advisors must be authorized by that party's counsel. No expert or advisor shall be an officer, director, or employee concerned with marketing or strategic planning of competitive products or services of the party, any subsidiary of the party, or any party affiliate. Information filed under seal shall not be disclosed by any person to individual members of a

trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information.

- (f) Access and Use by Commission Staff. Any member of Commission staff, provided such staff member files and serves a nondisclosure agreement, may have access to information filed under seal in any docketed proceeding, including rulemaking proceedings, interpretive rulemaking proceedings, and administrative dockets. Commission staff is not limited to using such information only in the specific proceeding in which the information was originally obtained. However, Commission staff shall be subject to all other requirements of these rules, unless the Commission orders otherwise. In the event Commission staff intends to use information filed under seal in a proceeding subsequent to the proceeding in which the information was originally filed, staff shall give written notice of staff's intended use to the party who produced the information. This notification shall be made at least ten days prior to submission of the information in subsequent proceedings.
- (g) Access and Use by the OCC. Upon petition or motion approved by the Commission, the OCC may be permitted to use information filed under seal:
 - (I) for purposes unrelated to the specific docketed proceeding in which the OCC originally obtained the information; or
 - (II) in a docketed proceeding other than the specific proceeding in which the OCC originally obtained the information.
- (h) Challenge to Confidentiality.
 - (I) A party seeking to challenge a claim of confidentiality shall first contact counsel for the providing party and attempt to resolve any differences by stipulation.
 - (II) In the event the parties cannot agree as to the character of the information challenged, any party challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems the information non-confidential. This notice shall designate the information challenged in a manner that will specifically isolate the challenged information from other information claimed as confidential.
 - (III) The party claiming confidentiality may, within ten days of the notice referenced in subparagraph (h)(II), file a motion requesting a finding of confidentiality and stating the grounds upon which the challenged information is considered confidential. The challenging party shall have ten days to respond to the motion. The Commission shall thereafter enter an order resolving the matter; the

Commission may enter such an order immediately if the claiming party fails to file its motion within ten days.

- (IV) In the event the Commission rules that any information is not confidential and orders that such information be removed from protection:
- (A) The Commission, for an additional five days after the order, shall not permit any person to have access to the information, except pursuant to a nondisclosure agreement. This five-day period will enable the claiming party to seek a stay or other relief. No person previously accorded access to the information shall disclose the information or use it in the public record until after the five-day period has expired.
 - (B) The party claiming confidentiality may, by motion submitted within five days of the Commission's ruling and order, request that it be permitted to remove the subject information from the record. Pending a ruling on such a motion, no person previously accorded access to the information shall disclose the information or use it in the public record.
- (i) Reservation of Rights. Parties retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters pertaining to information filed under seal on the grounds of relevancy or materiality.
- (j) Returning Information Filed Under Seal. Within seven days of the conclusion of a proceeding, all parties shall return information filed under seal in that proceeding to the party producing the information. However, upon motion approved by the Commission, the OCC may be permitted to retain such information for a specified time following the conclusion of the proceeding.
- (k) Non-Waiver. A party does not, by merely gaining access to information filed under seal, waive any right to contest an assertion of confidentiality, to make a request under the Public Records Law, or to appeal any determination of the Commission.
- (l) Rights and Remedies. Any person or party to a docketed proceeding retains all rights and remedies existing at civil or criminal law for breach of the Commission's rules regarding confidentiality; compliance with these rules shall not be construed to be a waiver of those rights or remedies.
- (m) Appeal. On appeal, the Commission may forward under seal, to any court of competent jurisdiction, the sealed portions of the record of that proceeding.

1102. Confidentiality – Public Records Requests.

- (a) Requests, Notice, and Opportunity to Respond. When any person makes a request under the Public Records Law to inspect information filed under seal, the Director of the Commission shall determine whether the information is subject to public inspection. The Director shall give timely notice of the request to the person who submitted the subject information, and shall also provide such person an opportunity to submit oral or written comments regarding the request.
- (b) Determination. In making the determination whether information filed under seal is subject to public inspection, the Director shall employ these rules, the provisions of the Public Records Law, and all other applicable law. The Director shall make the determination on a case-by-case basis and shall not utilize procedures that are inconsistent with the Public Records Law. In the absence of new information or a change in circumstances, as determined by the Director, a Commission ruling regarding confidentiality of specific information shall also constitute a ruling on the confidentiality of such information for purposes of an open records request under the Public Records Law. After making a determination on the matter, the Director shall forthwith notify the person making the request and the person objecting to disclosure of such determination.
- (c) Information Determined to be Subject to Public Inspection. If the Director determines that the information filed under seal is subject to public inspection, the Director, upon written request from the person objecting to disclosure, shall refrain from disclosure for five days to allow the person objecting to such disclosure to commence judicial action.

1103. Personal Information – Collection.

- (a) A utility may collect only that personal information, including information regarding credit worthiness, which is necessary to provide, bill, and collect for services. Information regarding credit worthiness may include, but is not limited to: the customer's employer; the employer's phone number; the customer's landlord's name, address, and phone number; and the customer's previous utility supplier.
- (b) Not later than three months after first billing the customer, a utility shall notify the customer, other than a non-presubscribed interexchange customer, in writing of his or her right to request any or all personal information the utility holds concerning that customer, including a true copy thereof. Upon such request and upon verification of the customer's identity, the utility shall provide the requested information, and must take all necessary steps to explain the information to the customer.

- (c) A customer may request in writing an amendment of the personal information held by a utility. Within 30 days of the request, the utility must:
 - (I) Verify and correct any portion of a record which is not accurate, timely, or complete, and inform the customer in writing of the corrections; or
 - (II) Inform the customer in writing of its refusal to amend the record in accordance with the request, give a reason for the refusal, clearly note any portion of the record which is disputed, and include in its records the customer's concise statement of disagreement. The utility must also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

1104. Personal Information - Disclosure.

- (a) A utility may not disclose a customer's personal information to any other person, unless the request is either signed by the customer, or is supported by a disclosure form signed by the customer authorizing disclosure to the particular requestor.
- (b) Notwithstanding paragraph (a) of this rule, a utility may disclose personal information in response to warrants, subpoenas duces tecum, court orders, requests from emergency service providers, or as authorized by § 16-15.5-102, C.R.S. A utility may also disclose information regarding a customer's typical or estimated average monthly gas, steam or electric bill, if such information is requested by a licensed real estate broker or others with similar purchase or sale interests in the customer's property.
- (c) A utility shall provide any person requesting personal information with a form with which the customer may authorize disclosure. The form must explain the customer's rights under this rule. The requestor must obtain customer authorization for each request, unless the customer has authorized the release of all personal information at any time.
- (d) A utility may disclose personal information requested by a federal, state, or local governmental agency including, but not limited to: the Commission; state and local departments of social services; and federal, state, and local law enforcement agencies. Written requests must be on official letterhead. In the case of a telephone request, the employee of the regulated entity must verify the caller's identity by obtaining the caller's office telephone number and returning the call, unless the employee knows the caller is an authorized governmental representative. A person requesting information in person must demonstrate that he or she properly represents a governmental agency.

1105. Prohibited Communications - Generally.

- (a) Except as provided in paragraph (b) of this rule, ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited.
- (b) Notwithstanding the provisions of paragraph (a) of this rule, prohibited communications do not include:
 - (I) Procedural, scheduling, or status inquiries, or requests for information that have no bearing on the merits, substance, or outcome of the proceeding;
 - (II) Protests or comments made by any customer of a utility, concerning any request made by a utility for proposed changes in rates;
 - (III) Communications made in educational programs or conferences, or in meetings of an association of regulatory agencies; or
 - (IV) Communications with or at the request of members of the General Assembly or their staffs relating to legislation, appropriations, budget, or oversight matters.

1106. Prohibited Communications - Disclosure.

- (a) Any person communicating with the Commission concerning pending proceedings must state the party with whom he or she is associated, the name, address, and number shown on the certificate, permit, registration, or other authority, if applicable, and the docket number and short title of the matter.
- (b) Any person, party, commissioner, administrative law judge, or member of Commission staff engaging in prohibited ex parte communication must forthwith serve a notice on all parties describing:
 - (I) The name and docket number of the proceeding;
 - (II) A summary of the matters discussed;
 - (III) The persons involved and their relationship, if any, to the parties;
 - (IV) The date, time, and place of the communication and the circumstances under which it was made; and
 - (V) Any other relevant information concerning the communication.
- (c) Every commissioner and administrative law judge must further comply with the disclosure requirements of § 40-6-122, C.R.S.

1107. Prohibited Communications - Remedies. Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond including, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own initiative or upon the motion of a party, order any of the following remedial measures:

- (a) Dismissal of the proceeding;
- (b) An adverse ruling on a pending issue that is the subject of the communication, if other parties have been prejudiced;
- (c) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication;
- (d) A public statement of censure by the Commission;
- (e) Such alternative or additional sanctions as may be appropriate under the circumstances.

1108. Disqualification of Commissioner or Administrative Law Judge.

- (a) Whenever any party has a good faith belief that a commissioner or administrative law judge has engaged in a prohibited communication or whose impartiality may reasonably be questioned, the party may file a motion to disqualify the commissioner or administrative law judge. Such motion must be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the commissioner or administrative law judge shall rule upon the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the matter. All commissioners may fully participate in such review.
- (b) If at any time a commissioner or administrative law judge believes that his or her impartiality may reasonably be questioned, the commissioner or administrative law judge shall withdraw, as provided in § 40-6-124, C.R.S.

FORMALITIES

1200. Parties, Amicus Curiae, Non-Parties.

- (a) Parties shall include any person who:
 - (I) initiates action through the filing of a complaint, application, or petition, except petitions for rulemaking;
 - (II) appeals an emergency order in a pipeline safety matter concerning public safety, health, or welfare;

- (III) has filed a tariff, price list, or time schedule, which tariff, price list, or time schedule the Commission has suspended and set for hearing;
 - (IV) is served as a respondent under rule 1302;
 - (V) intervenes as of right or is granted permissive intervention under rule 1401; or
 - (VI) is joined as a party to any Commission proceeding.
- (b) Persons participating merely through comments or testimony shall not be deemed parties.
 - (c) A non-party who desires to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. An amicus curiae is not a party, and may present legal argument only, as permitted by the Commission.

1201. Attorneys.

- (a) A party or an amicus curiae must be represented by an attorney at law, currently in good standing before the Colorado Supreme Court or the highest tribunal of another State as authorized in Rule 221.1, C.R.C.P.
- (b) Notwithstanding paragraph (a) of this rule, an individual may represent:
 - (I) his or her own interests;
 - (II) the interests of a closely held entity, as provided in § 13-1-127, C.R.S.; or
 - (III) the interests of another person where no legal principle is involved and the amount at issue in the proceeding is insufficient to warrant the employment of an attorney.
- (c) Any party may appoint an agent to make filings, accept service, or otherwise represent them, by filing a power of attorney with the Commission. Any party appointing such an agent is responsible for the acts of its agent.
- (d) No attorney shall appear in any matter before the Commission until the attorney has entered an appearance by filing an Entry of Appearance, signing a pleading, or stating the entry of appearance for the record. An entry of appearance shall state the identity of the party for whom the appearance is made, the attorney's office address, the attorney's telephone number, and the attorney's registration number.

- (e) An attorney of record wishing to withdraw from a proceeding must file a notice of withdrawal containing a list of all pending hearing dates. Such notice must be served in accordance with rule 1205, as well as upon the party represented by the withdrawing attorney. The withdrawing attorney must specifically advise the party of its right to object. Objections to withdrawal of an attorney must be filed within ten days of the filing of the notice. If any objection is made, no substitution or withdrawal shall occur without an order of the Commission.

1202. Form and Content.

- (a) Unless the Commission orders otherwise, every filing must comply with the following requirements: Filings other than pre-printed forms and annual reports must be printed on one side of the sheet only, on 8 1/2" x 11" white bond paper, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and stapled in the upper left corner. Page numbers must be in the bottom center of each page excluding the cover page, except that for written testimony page numbers may be included in a header. The text must be no more than ten characters to the inch, at least 12-point type, and double spaced, except for indented quotations and footnotes which may be single-spaced. If filed testimony exceeds 20 pages and deals with more than one subject, it must contain a table of contents. The Commission may waive any of these requirements for a party not represented by counsel in accordance with rule 1201(b).
- (b) Every filing must identify the proceeding by caption and docket number, and state the title of the filing, a clear and concise statement of the matters relied upon, the relief sought, and the name, including trade name, if any, of the party or the party's attorney.
- (c) No filing shall be more than 30 pages in length, including attachments, except where the attachments are required by a rule or where otherwise ordered by the Commission. The cover sheet, table of contents, certificate of mailing, copies of authorities cited, and copies of a decision which may be the subject matter of the filing shall not be included for calculating the length of the filing.
- (d) Written testimony is not subject to paragraphs (c) and (e) of this rule. When written testimony is filed, it must meet the following requirements:
 - (I) Each line shall be serially numbered in the left margin.
 - (II) The cover sheet for written testimony shall contain the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.

- (III) Exhibits accompanying written testimony shall be numbered in sequence and shall be physically contained in the same document as the testimony, except where exhibits exceed 30 pages in length. Exhibits over 30 pages shall be bound and separated from filed testimony.
 - (IV) A separate set of arabic-numbered exhibits shall be included, designating exhibits of each witness regardless of whether the exhibit is appended to, or related to direct, answer, cross-answer, rebuttal, surrebuttal, or other designated testimony.
 - (V) The Commission may permit minor revisions to written testimony and exhibits by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony or exhibits using the same arabic numeral as the original with a hyphenated designation that the exhibit is revised, such as "Exhibit 1-2d Rev." All revisions other than those of a minor nature must be promptly filed with the Commission and served on all parties.
- (e) Every filing of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, and attorney registration number. A filing of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state the person's title, address, and telephone number. The signature of an attorney or party certifies that the signatory has read the filing; that to the best of the signatory's knowledge, information, and belief there are good grounds to support it; and that it is not interposed for any improper purpose, such as to harass, delay, or increase the cost of the litigation.
- (f) If a filing is inconsistent with this rule, the Director or the Director's designee shall forthwith notify the filer. If the deficiency is not corrected within three days, the Director or the designee may reject the filing. The filer may appeal to the Commission within five days of such rejection. The Commission may impose sanctions for violations of this rule, including an order to pay reasonable attorney's fees and expenses attributable to the violation.

1203. Time.

- (a) When the day for the performance of any act under these rules, the effective date of any decision or order, or the day upon which a document must be filed, falls on a Saturday, Sunday, legal holiday, or any other day when the Commission's office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.

- (b) Unless an order of the Commission or a specific rule provides otherwise, the date shown in the certificate of service, or the mailed date on Commission decisions or notices, shall be used in calculating relevant deadlines.

1204. Filing.

- (a) Unless an order of the Commission or a specific rule provides otherwise:
 - (I) A party must file with the Commission an original and ten copies of every pleading or amendment thereto. For purposes of this rule, pleadings include complaints, applications, petitions, or any other document that commences a Commission proceeding; for purposes of this rule, pleadings do not include exceptions or RRR. If the matter is referred to a hearing commissioner or administrative law judge, the number of copies shall be reduced to five.
 - (II) A party must file an original and five copies of every document other than a pleading or amendment thereto.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. the following business day. If the Commission receives a document via fax, it will be considered filed as of the date and time of the fax if the original and requisite numbers of copies are filed within one business day of the date of the fax.

1205. Service.

- (a) A person filing any pleading, brief, motion, or other document, must also serve a copy, including all supporting attachments or exhibits, upon every other party and amicus curiae in the proceeding, except that Commission staff shall serve a complaint and order to satisfy or answer. Such service shall include service upon the Commission's trial advocacy and advisory staff, except that no service need be made on advisory staff not explicitly listed in staff's pleadings or entries of appearance. Service must be made by hand or through mailing on the same day the document is filed, unless a party expressly agrees by a signed waiver to accept service via fax or electronic mail.
- (b) In accelerated complaint proceedings, all pleadings and motions must be served by hand on the same day they are filed.
- (c) Service upon a private corporation, partnership, or unincorporated association may be made by delivering a copy to one or more of the officers, partners, associates, managers, or designated agents thereof. When an attorney represents a party,

service shall be made upon the attorney, unless the Commission orders service upon the party. If more than one attorney represents a party, service shall be made upon not more than two attorneys of record designated by the party.

- (d) Proof of service must be demonstrated through a certificate of service, attached to the document served. For any filed document that does not contain a certificate of service, that omits from the certificate of service a *pro se* party, or that omits from the certificate of service a party's counsel of record, the Commission will presume that the document has not been served on omitted parties or counsel of record. This presumption may be overcome by evidence of proper service.

1206. Notice - Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, mail notice of the application or petition to any person who in the opinion of the Commission may be affected by the grant or denial of the application or petition.
- (b) The notice required by paragraph (a) of this rule shall state the following:
 - (I) The caption and docket number of the proceeding.
 - (II) The date the application or petition was filed.
 - (III) A description of the purpose and scope of the application or petition.
 - (IV) Whether the applicant has filed testimony and exhibits and is seeking a Commission decision within 120 days, or has waived the time limits under § 40-6-109.5, C.R.S.
 - (V) The date by which any objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document must be filed.
 - (VI) The date by which Commission staff must file any objection, notice of intervention, testimony, exhibit, or any other document, if different from the date(s) fixed in subparagraph (a)(V) of this rule.
 - (VII) That the Commission may consider the application or petition without a hearing if:
 - (A) no notice of intervention as of right or motion to permissively intervene is timely filed, or

(B) no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the application or petition.

(VIII) That any person who files an objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document must do so in accordance with the instructions set forth in the notice; and that the Commission may dismiss or strike any such document not filed in accordance with the instructions set forth in the notice.

- (c) Nothing in paragraph (a) of this rule shall require the Commission to publish or mail notice of any application or petition that does not reasonably specify the information required by subparagraph (b)(III) of this rule.
- (d) Unless shortened by Commission order or rule, the intervention period for notice mailed and published by the Commission shall expire 30 days after the mailing date. The Commission shall re-notice any application or petition which, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) Any utility filing a tariff change other than one requesting less than statutory notice shall provide notice in accordance with § 40-3-104(1), C.R.S.
- (f) All persons other than the Commission who are required to provide notice must, within 15 days of providing notice, file an affidavit with the Commission stating the date notice was completed and the method used to provide it, accompanied by a copy of the notice or notices provided.
- (g) The Commission may order any applicant or petitioner to provide such additional notice as the Commission deems appropriate.
- (h) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide notice of any notice of proposed rulemaking to: each regulated entity that may be affected; each person who previously notified the Commission in writing that he or she desires notice of proposed rulemaking proceedings; and any other person who in the opinion of the Commission may be interested in or affected by the proceedings.
- (i) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.

1207. Notice - Transportation Proceedings. In addition to the requirements of Rule 1206, the following notice requirements apply to proceedings involving transportation carriers:

- (a) The Commission shall not notice applications for emergency temporary authority. The Commission shall notice applications for temporary authority, with the intervention period for such notice expiring after five days of the mailing of the notice.
- (b) For purposes Rule 1206(a), the Commission shall mail notice of any application involving a transportation carrier to all motor vehicle carriers, as defined in § 40-10-104(a), C.R.S.

1208. Adoptions and Adoption Notices.

- (a) Generally:
 - (I) When the Commission approves the transfer of control of one utility to another utility, or when a utility's name changes, the utility which will afterwards operate under the certificate shall file with the Commission an adoption notice, in a form available from the Commission. The adoption notice shall also adopt tariffs and price lists if applicable. The utility shall also post the adoption notice in a prominent public place in each business office of the utility, and shall make the adoption notice available for public inspection at each office.
- (b) Transportation utilities:
 - (I) When the Commission approves the transfer of control of one transportation utility to another transportation utility (whether on a permanent, temporary, or emergency temporary basis), or when a transportation utility's name changes, the transportation utility which will afterwards operate under the certificate or permit shall file with the Commission an adoption notice, in a form available from the Commission. The adoption notice shall also adopt tariffs and time schedules if applicable. The transportation utility shall also post the adoption notice in a prominent public place in each terminal facility and office of the transportation utility, and shall make the adoption notice available for public inspection at each terminal and office.
 - (II) If temporary or emergency temporary authority to assume operating control is not made permanent, the original transportation utility shall file an adoption notice reassuming permanent operating control. The temporary or emergency temporary authority reassumed expires on the effective date of the adoption notice.

1209. Payments. The Commission shall accept payments in United States currency, check, or money order. The Commission may, in its discretion, accept payments made by credit card, debit card, or electronic funds transfer.

PLEADINGS

1300. Commencement of Proceedings. Proceedings before the Commission may be commenced only through one of the following:

- (a) A complaint, by the Commission or any interested person, including a proceeding for civil penalties, as provided by Rule 1302;
- (b) An application, as provided by Rule 1303;
- (c) A petition, as provided by Rule 1304;
- (d) An order suspending a proposed tariff, price list, or time schedule, and setting the matter for hearing;
- (e) An appeal of an emergency order in a pipeline safety matter concerning public safety, health, or welfare;
- (f) An order opening an administrative docket under Rule 1307 relating to investigations, administration of programs or functions, or other miscellaneous matters; or
- (g) A notice of proposed rulemaking issued by the Commission.

1301. Grievances and Mediation.

- (a) A grievance is an informal, alternative dispute resolution tool used to avoid the costs associated with litigation. Any person may register a grievance with Commission staff, orally or in writing, expressing displeasure or dissatisfaction with a regulated entity.
- (b) In responding to or managing a grievance, Commission staff may:
 - (I) Explain to the grievant the Commission's jurisdiction or lack thereof;
 - (II) Forward to the grievant relevant informational packets or brochures;
 - (III) Investigate the matter further;
 - (IV) Refer the grievance to the affected regulated entity for a response;
 - (V) File a complaint against the regulated entity;
 - (VI) Refer the grievance for mediation;
 - (VII) Recommend that the grievant consider filing a complaint; or

- (VIII) Employ any combination of the above responses or techniques, or respond in any other reasonably appropriate manner.
- (c) If the staff refers a grievance to a regulated entity for a response, the regulated entity must respond in writing within 14 days of the referral, or such lesser period as the staff may require. If the staff requires a lesser period, such period shall be reasonable under the circumstances of the grievance.
- (d) If Commission staff refers the matter for mediation:
- (I) Nothing said or offered during mediation or settlement negotiations may be used in any complaint proceeding against the person making the statement or offer.
- (II) The mediator shall attempt to resolve the grievance within ten days of the mediator's receipt of the mediation request, although the grievant and regulated entity may consent to additional time.
- (e) A person may withdraw a grievance or may file a complaint at any time.

1302. Complaints.

- (a) Any person may file a complaint at any time. A complaint must set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and, if applicable, how any statute, rule, tariff, price list, time schedule, order, or agreement is alleged to have been violated. In addition, a complaint must meet the following requirements, if applicable:
- (I) A complaint which seeks to modify, limit, suspend, annul, or revoke a certificate, permit, registration, license or other authority must be signed and sworn by the complainant.
- (II) A complaint claiming unreasonable rates or charges of any gas, electric, water, or telephone public utility shall comply with the provisions of § 40-6-108(1)(b), C.R.S.
- (III) A complaint against a cooperative electric association shall comply with the provisions of § 40-9.5-106, C.R.S., if applicable.
- (b) The Commission may impose a civil penalty, where provided by law, after considering evidence concerning the following factors:
- (I) The nature, circumstances, and gravity of the violation;
- (II) The degree of the respondent's culpability;

- (III) The respondent's history of prior offenses;
 - (IV) The respondent's ability to pay;
 - (V) Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
 - (VI) The effect on the respondent's ability to continue in business;
 - (VII) The size of the business of the respondent; and
 - (VIII) Such other matters as equity and fairness may require.
- (c) The Commission may expedite a complaint proceeding on its own motion or upon the motion of a party if such motion shows good cause or the consent of all the parties. If the Commission expedites a complaint, it shall enter a procedural order:
- (I) setting forth the expedited schedule; and
 - (II) detailing the limits the Commission, in its discretion, places on discovery.
- (d) Complaints to enforce a telecommunication provider's interconnection duties or obligations, or complaints regarding interconnection service quality matters, shall receive accelerated treatment if:
- (I) At least ten days prior to filing the complaint, the complainant has personally served upon the respondent written notice of intent to file an accelerated complaint, together with identification of the provision of any applicable law or agreement that the complainant contends is not being complied with, and a description of the facts demonstrating any alleged violation of any applicable law or agreement.
 - (II) The complainant has attached to the complaint copies of all relevant nonconfidential documents, including correspondence and work papers.
 - (III) The complaint includes a certification that any and all methods of dispute resolution established in any applicable agreement, including escalation to higher levels of management within the parties' organizations, have been exhausted.
 - (IV) The complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to

resolve the disagreement, and despite those negotiations the parties failed to resolve the issue.

- (V) The complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above.
 - (VI) On the same day as the complaint is filed with the Commission, the complainant served a copy of the complaint by hand-delivery during normal business hours on the person designated by the respondent to receive service of process.
- (e) In accelerated complaint proceedings, in addition to the provisions of this rule, parties must comply with the following rules, if applicable: 1205(b); 1308(b); 1308(c); 1400; 1405(b); and 1409(b).
- (f) The Commission may issue an interim order to a regulated entity to not discontinue service pending a hearing:
- (I) If the customer has posted a deposit or bond with the regulated entity equal to the amount in dispute or as otherwise prescribed by the Commission;
 - (II) If the customer has previously made a grievance to the Commission, and staff investigation indicates probable success of the customer; or
 - (III) Upon such other good cause as the Commission may deem appropriate.
- (g) Upon the filing of any complaint, the Commission shall promptly order the respondent to satisfy the complaint or file an answer within 20 days, and shall give notice of the date, time, and location of the hearing. If the complaint is accelerated the Commission shall promptly order the respondent to satisfy or answer within ten days, and shall give notice of the date, time, and location of the hearing. For accelerated complaints, the Commission shall set the hearing to occur within 45 days of the filing of the complaint. Unless all parties agree otherwise or the Commission finds exceptional circumstances warrant, a hearing on an expedited complaint may not be continued beyond 60 days after the filing of the complaint.
- (h) Except as provided in paragraph (i) of this rule, prior to filing a complaint the Commission may give a potential respondent:
- (I) notice in writing of facts or conduct complained of;
 - (II) a reasonable opportunity to submit to the Commission written data, views, or arguments with respect to such facts or conduct; and

(III) except in cases of willful and deliberate violation or of substantial danger to public health and safety, a reasonable opportunity to comply with all lawful requirements.

(i) Notwithstanding the provisions of paragraph (h) of this rule, the Commission shall comply with § 24-4-104(3), C.R.S., as applicable.

1303. Applications.

(a) An application may be made as follows:

(I) Telecommunications matters, as provided in rule 2003.

(II) Electric matters, as provided in rule 3003.

(III) Gas matters, as provided in rule 4003.

(IV) Water matters, as provided in rule 5003.

(V) Steam matters, as provided in rules 6003.

(VI) Transportation carrier matters, as provided in rule 7003.

(VII) Rail matters, as provided in rule 8003.

(b) Except as provided in paragraph (c) of this rule, an application shall be deemed complete as follows:

(I) When the Commission or its staff evaluate an application to determine completeness, the evaluation shall consider only whether the applicant has provided the information required by the Commission's rules or order, or whether the application adequately identifies the relief the applicant requests and supports the request with adequate types of information. The evaluation shall not consider the application's substantive merit or lack thereof.

(II) Not more than ten days after the filing of an application, Commission staff may send the applicant, by mail, electronic mail, or facsimile, written notification concerning any specific deficiencies of the application. Upon receiving such notification, the applicant may file a response either curing all the deficiencies noted by staff or explaining why it believes no further action is required. The applicant's response, if any, must be filed no later than ten days after staff's written notification was sent. If the applicant does not respond in the time allotted, the Commission may dismiss the application without prejudice and close the docket.

(III) Commission staff has initial responsibility for determining completeness of an application. If, within 15 days after an application's notice period expires, Commission staff makes no objection before the Commission regarding an application's completeness, the application shall be automatically deemed complete without the need for formal action by the Commission. If, within 15 days after an application's notice period expires, Commission staff objects before the Commission regarding an application's completeness, the Commission shall issue a determination on the matter within ten days of staff's objection. The Commission may dismiss an application determined to be incomplete or may issue any other appropriate order. If the Commission does not issue a determination within ten days of staff's objection, the application shall be automatically deemed complete. At any time, the Commission may by order deem an application complete.

(IV) Nothing in this paragraph (b) shall be construed to prohibit dismissal of an application on its merits.

- (c) Rail applications shall be deemed complete on the date of mailing of the Commission decision deeming the application complete.
- (d) An applicant may at any time file a waiver of the time limits provided in § 40-6-109.5, C.R.S. If an application is a joint application, a waiver filed by any one of the applicants shall be effective for all applicants.

1304. Petitions. A petition may be made as follows:

- (a) Telecommunications matters, as provided in rule 2004.
- (b) Electric matters, as provided in rule 3004.
- (c) Gas matters, as provided in rule 4004.
- (d) Water matters, as provided in rule 5004.
- (e) Steam matters, as provided in rules 6004.
- (f) Transportation carrier matters, as provided in rule 7004.
- (g) Rail matters, as provided in rule 8004.
- (h) Petition for Rulemaking, as provided in rule 1306.
- (i) Petition seeking a variance of any rule, as provided in rule 1003.
- (j) Petition seeking a declaratory order.

- (I) A person may file a petition for a declaratory order either in an original or a pending proceeding.
- (II) The Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty affecting a petitioner with regard to any statutory provision or Commission rule, regulation, or order.
- (III) At its discretion, the Commission may grant, deny, or dismiss any petition seeking a declaratory order.

1305. Suspension of Proposed Tariffs, Price Lists, or Time Schedules.

- (a) Protests.
 - (I) Any person may register a written protest against a proposed tariff, price list, or time schedule:
 - (A) at any time during the notice period, or
 - (B) prior to the commencement of Commission hearings on the matter, if any.
 - (II) However, except as provided in paragraph (c) of this rule, no person who merely registers a protest shall be permitted to participate as a party in any hearings the Commission may hold on the matter.
- (b) The Commission may suspend and set for hearing any proposed tariff, price list, or time schedule, to investigate and determine its propriety. Such an order shall suspend the proposed tariff, price list, or time schedule pending a decision by the Commission. The Commission must serve the order setting the hearing upon the regulated entity.
- (c) Any person wishing to participate as a party in any hearings the Commission may hold on a suspended tariff, price list, or time schedule, must file a notice of intervention as of right or motion to permissively intervene as provided in Rule 1401. The person filing the suspended tariff, price list, or time schedule need not file an intervention.
- (d) A suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, price list, or time schedule unless the Commission, by separate decision, extends the suspension for an additional 90 days.
- (e) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless:
 - (I) the Commission orders a change to be made, the time when it shall take effect, and the manner in which it shall be filed and published; or

(II) the Commission takes no action within the 120- or 210-day suspension period, as applicable.

1306. Rulemaking. Either upon its own initiative or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. Such dockets shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.

1307. Administrative Dockets. The Commission may open an administrative docket on its own motion at any time. Administrative dockets shall be governed by such specific procedures as the Commission may order.

1308. Responses: Generally - Complaints.

- (a) A response may only be filed to: an application, as part of an intervention; a petition, as part of an intervention; a complaint, as provided in this rule and Rule 1302(g); a motion, as provided in Rule 1400; a brief or statement of position, within 14 days of the date shown on the certificate of mailing; or exceptions, within 14 days of the date shown on the certificate of mailing. No response may be filed to an answer, response, intervention, notice, or request for RRR. Notwithstanding the provisions in this paragraph (a), the Commission may waive response time and may act immediately upon a finding that time is of the essence.
- (b) Except as provided by this paragraph (b), a party named as a respondent must file a response within 20 days of being served with an order to satisfy or answer a complaint. In accelerated complaint proceedings, the respondent must file a response within ten days after service of the complaint. A response to a complaint must admit or deny with particularity each allegation of the complaint, and shall separately state and number each affirmative defense. Where a complaint is filed by a regulated entity, the respondent may assert a counterclaim in its response. A counterclaim must be answered within 20 days and is subject to a motion to dismiss as a complaint under paragraph (c) of this rule.
- (c) A respondent may file a motion to dismiss a complaint or counterclaim within 14 days of service; except in accelerated complaint proceedings, in which the respondent shall file any motion to dismiss with the respondent's answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after an order denying the motion to dismiss. A motion to dismiss may be made on any of the following grounds: lack of jurisdiction over the subject matter or the person; insufficiency of process or service of process; lack of standing; insufficiency of signatures; or failure to state a claim upon which relief can be granted. No motion need be entertained regarding misjoinder of claims or misjoinder or nonjoinder of parties, nor must any claim be dismissed because of the absence of direct damage to a party.

No defense is waived by being joined with one or more other defenses in a motion to dismiss. A party may respond within 14 days of being served with a motion to dismiss. Any motion to dismiss shall be determined before hearing unless the Commission orders that it be deferred until hearing.

- (d) If a respondent fails to timely file a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the respondent to have admitted such allegation or to have waived such affirmative defense, and the Commission may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may freely amend or supplement its pleading at any time during the intervention and notice period, if any. Thereafter, or in complaint proceedings, the commencing party must obtain leave of the Commission to amend or supplement. Except in complaint proceedings, whenever a commencing party amends or supplements a pleading, other than through a restrictive amendment, it, or the Commission, as applicable, must provide new notice consistent with rule 1206. All applicable timelines run from the date of the most recent amendment or supplement.
- (b) A respondent may freely amend or supplement its pleading at any time within 20 days of the filing of its original responsive pleading. Thereafter, the respondent must obtain leave of the Commission to amend or supplement.
- (c) Any motion to amend or supplement a pleading that is filed more than 20 days before the first day of a hearing shall be ruled upon before the hearing.
- (d) A party may withdraw a pleading upon notification to the Commission and all parties prior to 30 days before the first day of hearing. A party may withdraw or dismiss a pleading after such time only upon motion granted by the Commission. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced.

PRE-HEARING PROCEDURE

1400. Motions. Except for motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. The responding party shall have ten days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. In accelerated complaint

proceedings, responses to motions shall be due within seven days of the date of service of the motion. Failure to file a response may be deemed a confession of the motion. A movant may not file a reply to a response unless the Commission orders otherwise.

1401. Intervention.

- (a) Except as provided by paragraph (d) of this rule, any person may file a notice of intervention as of right or a motion to permissively intervene within 30 days of the commencement of the proceeding, unless the Commission's notice or a specific rule provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements.
- (b) A notice of intervention as of right, unless filed by Commission staff, must state the basis for the claimed legally protected right which may be affected by the proceeding. In transportation application proceedings, the petition must show that the petitioner's authority is in good standing, and identify the specific parts of that authority which are in conflict with the application and the consequences to the movant and the public interest if the application is granted. A motor vehicle carrier holding either temporary or suspended authority in conflict with the authority sought in the application shall not have standing to intervene as of right.
- (c) A motion to permissively intervene must state the grounds relied upon for intervention, the claim or defense for which intervention is sought, including the specific substantial interest which justifies intervention, and the nature and quantity of evidence, then known, that will be presented if intervention is granted.
- (d) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within ten days after the time otherwise specified by paragraph (a) of this rule.

1402. Consolidation. The Commission may, upon its own initiative or upon the motion of a party, consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced.

1403. Uncontested (Modified) Proceedings.

- (a) The Commission may, without a hearing and without further notice, upon either its own initiative or upon the motion of a party, determine any application or petition which is uncontested and unopposed, if a hearing is not requested and the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and exhibits. A person having

knowledge of the stated facts shall, under oath, sign the sworn statement, attachments, and exhibits. The sworn statement need not be notarized, but it must contain language indicating that the signatory is affirming that the statements are true and correct to the best of the signatory's knowledge and belief.

- (b) An intervention will not be deemed to be a contest or an opposition, unless it contains a clear statement specifying the grounds therefor. If all parties withdraw their interventions before completion of a hearing, the matter may be determined as an uncontested proceeding.

1404. Referral to Hearing Commissioner or Administrative Law Judge.

- (a) Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to an administrative law judge. A referral to a hearing commissioner or administrative law judge shall encompass all issues of fact and law concerning the matter unless the Commission specifies otherwise in a written order.
- (b) For matters referred to an administrative law judge or hearing commissioner, the Commission may omit the recommended decision if the Commission specifically finds and directs upon the record that due and timely execution of the Commission's functions imperatively and unavoidably requires referral for an initial decision.

1405. Discovery.

- (a) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure govern discovery, except for the following: 26(a)(1)-(4); 26(b)(2); the first two sentences of 26(d); 30(a)(2)(C); 26.2; 26.3; 33(a); 33(b)(3); and 37(c).
- (b) In complaint proceedings, unless the Commission orders otherwise:
 - (I) Within ten days of the filing of the answer, the complainant shall file and serve a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
 - (II) Within ten days of service of the complainant's list of witnesses and copies of exhibits, the respondent shall file and serve a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
- (c) In accelerated complaint proceedings, unless the Commission orders otherwise:

- (I) Within ten days of the filing of the answer, the complainant shall file and serve by hand on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
 - (II) Within ten days of service of the complainant's list of witnesses and copies of exhibits, the respondent shall file and serve by hand on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
 - (III) All other discovery shall commence by hand delivery within 15 days of the filing of the complaint. The following rules shall apply:
 - (A) Each party shall be limited to taking not more than two depositions.
 - (B) Each party shall be limited to a total of not more than 20 interrogatories, including all discrete parts or requests for production of documents.
 - (IV) Responses to discovery requests, including any objections, shall be filed and served by hand delivery within seven days of receipt of the request. Any motion to compel must be filed and served by hand within five days of receipt of any objection, and a response to such a motion must be filed and served by hand within seven days of receipt of the motion.
- (d) In application proceedings set for hearing, an applicant must file and serve its testimony and exhibits not later than 15 days after the application is deemed complete; each intervenor must file and serve its testimony and exhibits not later than ten days before the first day of hearing. If the setting for hearing is such that compliance with this rule is impractical or impossible, the Commission shall permit a reasonable time for compliance.
- (e) In transportation proceedings, notwithstanding anything in paragraphs (a), (b), (c), or (d) of this rule to the contrary, and unless the Commission orders otherwise:
- (I) If an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.
 - (II) Each intervenor in transportation application proceedings shall file and serve its list of witnesses and copies of its exhibits. If the applicant has filed its testimony or

a detailed summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than ten days after the conclusion of the notice period. If the applicant has not filed its testimony or a detailed summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than 20 days after the notice period has expired.

- (III) No depositions may be taken.
 - (IV) Parties shall be limited to a single set of not more than 20 interrogatories, including all discrete parts or requests for production of documents.
 - (V) Data requests for documents or tangible things shall not exceed a total of six months of the 12-month period immediately preceding the commencement of the proceeding.
 - (VI) Any person adversely affected by a failure of another party to provide discovery may file a motion to compel discovery, a motion to dismiss, or a motion in limine.
- (f) In all matters other than application, transportation, complaint, or accelerated complaint proceedings, unless a specific statute, rule, or order provides otherwise, the commencing party shall file and serve its testimony and exhibits no later than 40 days before the first day of hearing, and all other parties shall file and serve testimony and exhibits no later than 20 days before the first day of hearing.
- (g) A party must either provide requested discovery or file a written objection within ten days of a request. The Commission will entertain motions to compel or for protective orders only after the movant has made a good faith effort to resolve the matter. The Commission discourages discovery disputes, and will sanction parties and attorneys that do not cooperate in good faith. Such sanctions may include, but are not limited to, payment of an opposing party's costs, expenses, and attorneys fees attributable to a lack of good faith, dismissal of a party, disallowance of exhibits or witness testimony, or such other and further relief as the Commission may deem appropriate.

1406. Subpoenas. Upon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue a subpoena or a subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing, consistent with § 40-6-103(1), C.R.S.

1407. Stipulations.

- (a) Parties may offer into evidence a written stipulation as to any fact or matter in issue of substance or procedure. An oral stipulation may be made on the record, but the Commission may require that the stipulation be reduced to writing, signed by the parties or their attorneys, and filed with the Commission. The Commission may approve, recommend modification as a condition of approval, or disapprove of any stipulation offered into evidence or on the record.
- (b) In complaint proceedings initiated by the Commission or its staff, a respondent may enter into a consent stipulation with Commission staff. To enter into a consent stipulation, a respondent must admit all jurisdictional facts; expressly waive further procedural steps, including a hearing and judicial review; acknowledge that the complaint may be used to construe the terms of the consent stipulation; and agree to the required actions and timelines contained in the stipulation. The Commission shall enter an order approving, recommending modification as a condition of approval, or disapproving of any consent stipulation.

1408. Settlements.

- (a) A respondent may submit an offer of compromise of any proposed civil penalty. If an offer of compromise is accepted, the respondent will be notified in writing that the acceptance is in full settlement of the proposed civil penalty. If an offer of compromise is rejected, it shall be returned to the respondent with written notification.
- (b) Any settlement agreement must be reduced to writing and filed with the Commission, which shall enter a decision approving or disapproving it, or recommend a modification as a condition for approval. An agreement which is disapproved shall be privileged and inadmissible as evidence in any Commission proceeding.

1409. Conferences.

- (a) The Commission may hold a pre-hearing conference to expedite the hearing, resolve procedural issues, or address any other preliminary matter. Parties and their representatives must be prepared to discuss all procedural and substantive issues.
- (b) In accelerated complaint proceedings, the Commission shall set a pre-hearing conference for not later than five days prior to hearing by notice establishing the date, time, and place thereof. At the conference, in addition to resolving any other preliminary matters, the presiding officer shall determine whether a hearing is necessary or whether the complaint can be determined on the face of the pleadings and supporting affidavits. If no hearing

is necessary, the presiding officer shall issue an appropriate order.

HEARINGS AND ORDERS

1500. Burden of Proof. Unless previously agreed to or assumed by a party, the burden of proof and the burden of going forward shall be on the party that is the proponent of the order. The proponent of the order is that party commencing a proceeding, except that in the case of suspension of a proposed tariff, price list, or time schedule, the regulated entity shall bear the burden.

1501. Evidence.

- (a) The Commission shall, to the extent practical, conform to the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts. Unless the context otherwise requires, wherever the word "court", "judge", or "jury" appears in the rules of evidence, it shall mean the Commission, a hearings commissioner, or an administrative law judge. However, the Commission shall not be bound by the technical rules of evidence. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. Specifically, the Commission may receive and consider evidence not admissible under the rules of evidence, if the evidence possesses reliable probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (b) A party sponsoring an exhibit shall furnish a copy to each commissioner or the administrative law judge, and to each party present at the hearing. If exhibits have been filed and served prior to the hearing, the sponsoring party need only provide one copy for the record and one copy for each commissioner or the administrative law judge. The Commission may limit the number of copies to be furnished where reproduction is burdensome.
- (c) The Commission may take administrative notice of general or undisputed technical or scientific facts, state and federal constitutions, statutes, rules, regulations, tariffs, price lists, time schedules, rate schedules, annual reports, documents in its files, matters of common knowledge, and matters within the expertise of the Commission. Any fact to be so noticed must be specified in the record, and copies of all documents relating thereto must be provided to all parties and the Commission, unless they are readily available from the parties, or they are voluminous. Every party shall be afforded an opportunity to controvert the fact to be so noticed.

1502. Interim Orders.

- (a) The Commission, a hearing commissioner, or an administrative law judge may issue an interim order at any time before entering a decision or recommended decision.
- (b) Interim orders shall not be subject to exceptions or RRR, except that any party may challenge the matters determined in an interim order in such party's exceptions to a recommended decision or in such party's request for RRR of a Commission decision.
- (c) A presiding officer may certify an interim order as immediately appealable via exceptions. However, orders concerning final judgment as to any party, as for example the denial of an intervention, shall be by decision or recommended decision, rather than by interim order.

1503. Briefs or Statements of Position.

- (a) Except in transportation proceedings, parties shall submit briefs or statements of position within ten days after the conclusion of the hearing, unless the Commission orders otherwise.
- (b) In transportation proceedings, parties shall only file briefs or statements of position upon order of the Commission.

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S.
- (b) The Commission may accept written comments from the public concerning any matter, which shall be included in the record.
- (c) The record may be reopened for good cause shown by the hearing commissioner or administrative law judge, or on motion of a party before a recommended decision has been entered, or by the Commission or on motion of a party before an appeal has been taken to district court.

1505. Exceptions.

- (a) A recommended decision becomes the Commission's decision unless, within 20 days or such additional time as the Commission may allow, any party files exceptions to the recommended decision or the Commission orders the recommended decision to be stayed. A stay of a recommended decision does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended decision is stayed until the Commission rules upon them. A motion for an extension of time to file exceptions based upon the unavailability of a transcript must show that the

transcript request was filed within five days of the recommended decision.

- (b) A party wishing to file exceptions must request a transcript within five days of the recommended decision, unless the party's exceptions dispute only issues of law. The requesting party must bear the cost of the preparation of the transcript, unless the party objects and the Commission by order equitably apportions the cost among the parties.
- (c) The Commission may, upon its own initiative or upon the motion of a party, order oral argument regarding exceptions. A motion for oral argument must be conspicuously incorporated into the document in which exceptions are filed. The Commission shall set the time allotted for argument and may terminate argument whenever, in its judgment, further argument is unnecessary. The party filing exceptions is entitled to open and conclude the argument. If more than one party has filed exceptions, the Commission shall determine the order of argument. Arguments will be limited to issues raised in the exceptions, unless the Commission orders otherwise. If a party fails to appear to present argument, the Commission may hear the arguments of other parties. The Commission shall have oral arguments recorded for inclusion in the record.

1506. Rehearing, Reargument, or Reconsideration.

- (a) Any party may request RRR of any Commission decision or of any recommended decision that becomes a Commission decision. Where a recommended decision becomes a Commission decision without the filing of exceptions, no party may challenge any finding of fact in its request for RRR.
- (b) A request for RRR, or a motion for an extension of time in which to file such a request, must be filed within 20 days after a decision of the Commission, or after a recommended decision by a hearing commissioner or an administrative law judge has become the decision of the Commission. A motion for extension of time based upon the unavailability of a transcript must show that the transcript request was filed within five days of the date on which the Commission decision was mailed.
- (c) No response may be filed to a request for RRR. A request for RRR does not stay the Commission's decision unless it is specifically so ordered. If the Commission does not act upon a request for RRR within 30 days of its filing, it is denied and the Commission's decision shall be final.

1507. Judicial Review. Any party may seek judicial review of any Commission decision in accordance with applicable law, including §§ 40-6-115 or 40-10-105(4), C.R.S., as applicable.

1508. Enforcement Actions. Whenever it appears that a person has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any Commission order or statute or law affecting public utilities, the Commission may direct the Attorney General to bring an action in an appropriate court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and monetary penalties as provided in Article 7 of Title 40, C.R.S.