

Decision No. C04-1305

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-570ALL

IN THE MATTER OF EMERGENCY RULES RELATING TO THE CLAIM OF
CONFIDENTIALITY OF INFORMATION SUBMITTED TO THE COLORADO PUBLIC
UTILITIES COMMISSION.

ORDER ADOPTING EMERGENCY RULES

Mailed Date: November 3, 2004

Adopted Date: November 3, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency amendments to the rules entitled Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* (CCR) 723-16-3.4.2 and 723-16-3.4.3. For the reasons set forth in this decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the amended rules appended to this Order as Attachment A. We take this action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. Generally, the purpose of the amended rules adopted by this order is to set the procedure for filing the number of copies of confidential information to be filed under seal by the filing party. These rules are enacted within the authority granted to the Commission by § 40-3-102, C.R.S.

3. Therefore, with these emergency rule amendments, we adopt such amended rules as are necessary for the expeditious administration of the filing of confidential under seal.

4. Specifically, Rule 16-3.4.2 shall be changed to establish the number of copies of information claimed to be confidential that the filing party shall file under seal from an original and four copies to an original and seven copies.

5. Rule 16-3.4.3 shall be changed from the five copies filed under seal shall be submitted in separate sealed envelopes numbered serially to state the original and seven copies filed under seal shall be submitted in separate sealed 10" x 13" envelopes numbered serially.

6. We adopt the attached rules as emergency rules in accordance with the provisions of § 24-4-103(6), C.R.S. We find that immediate adoption of the rules is necessary to allow Commission Staff the ability to timely review documents filed with the Commission under seal. Further, compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

7. As grounds for these findings, we state: It is necessary to adopt these emergency rules to ensure that an adequate number of copies of confidential information filed under seal is available to insure the timely review and analysis of such information by the Commission and its Staff and Advisors.

8. Failure to adopt these rules on an emergency basis would delay action on this matter for several months, until the completion of Commission's rules recodification project. Several high profile and complex dockets are currently before the Commission in which confidential information is expected to be filed under seal. Additionally, other confidential filings are expected to be filed in the immediate future. Commission Staff requires access to these confidentially filed documents in a timely manner in order to evaluate their contents and provide appropriate advice to the Commission. Under current Rules 723-16-3.4.2 and 3.4.3, the timely provision of such advice could be adversely affected.

9. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-101, 40-4-101 and 24-4-103(6), C.R.S. the rules attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 3, 2004.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

723-16-3.4 Procedure for Filing “Confidential” Information “Under Seal”.

723-16-3.4.1 A party submitting information claimed to be confidential to the Commission shall file, as part of the public record (*i.e.* not under seal), the required number of copies of its testimony and/or exhibits, according to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, without including the information claimed to be confidential. The first page of each of these copies shall be stamped: "NOTICE of CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." A cover page on each copy shall include a list of the documents filed under seal and indicate the nature of the documents, so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. Otherwise, parties shall make only general references to information claimed to be confidential in their testimony and exhibits.

723-16-3.4.2 In addition to the copies available for public inspection, the filing party shall file under seal an original and ~~four~~seven copies of the information claimed to be confidential. All pages and copies of the information claimed to be confidential shall be clearly marked as “confidential” and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod.

723-16-3.4.3 The ~~original and seven~~original and seven copies filed under seal shall be submitted in separate sealed 10" x 13" envelopes numbered serially. The following information shall be written on the outside of each sealed envelope:

- (1) the caption "CONFIDENTIAL--SUBMITTED IN DOCKET NO. _____."
- (2) the name of the filing party;
- (3) date of filing;
- (4) description of the information (*e.g.* testimony or exhibits of _____ (name of witness));
- (5) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions, or whether the Commission should destroy the information by shredding; and
- (6) if the party chooses to retrieve the information, in accordance with the statement contained in Rule 3.4.3(5), the name and phone number of the person who will retrieve such information.