Decision No. C05-1093

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-528ALL

IN THE MATTER OF THE PROPOSED REPEAL AND RE-ENACTMENT OF THE RULES OF PRACTICE AND PROCEDURE, 4 CCR 723-1.

ORDER LIFTING STAY AND ADOPTING RULES

Mailed Date: September 13, 2005
Adopted Date: September 6, 2005

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider lifting our previous stay on Recommended Decision No. R05-0461 (Recommended Decision) and adopt the Commission's Rules of Practice and Procedure found in 4 *Code of Colorado Regulations* (CCR) 723-1. We also consider exceptions to the Recommended Decision filed by Aquila, Inc., doing business as Aquila Networks-WPC (Aquila), Public Service Company of Colorado (Public Service), the Colorado Office of Consumer Counsel (OCC), MCI, Inc. (MCI) and Qwest Corporation (Qwest).

2. By Decision No. C03-1399, issued on December 18, 2003, the Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this rulemaking docket regarding its Rules of Practice and Procedure. The purpose of these dockets[1] is to repeal and reenact with modifications, the current Practice and Procedure Rules and enact a complete replacement set. That NOPR invited interested persons to participate in the rulemaking by

[1] In addition to the repeal and reenactment of these rules, the Commission also issued NOPRs in several other dockets as part of an agency-wide effort to update all of its existing rules.

submitting written comments and providing oral comments at scheduled hearings on this matter.

3. The NOPR further indicated that the proposed rules (attached as Attachment B to the NOPR) incorporate certain provisions of the Commission's existing Rules Regulating the Collection and Disclosure of Personal Information, 4 CCR 723-7 (Privacy Rules). Additionally, the existing Rules Governing Claims of Confidentiality of Information Submitted to the Colorado Public Utilities Commission (Confidentiality Rules) found at 4 CCR 723-16 have been incorporated in their entirety under proposed Rules 1100 through 1102.

4. The overall repeal and reenactment involves an effort by the Commission to revise and recodify the Commission rules currently in effect. The Commission indicated in its NOPR that the proposed repeal and reenactment is intended to update the existing Practice and Procedure Rules; to the extent possible, to adopt rules for those utilities which are consistent with other Commission rules; to improve administration and enforcement of relevant sections of Title 40, C.R.S.; to improve administration of, and proceedings brought pursuant to § 29-20-108, C.R.S.; to eliminate unnecessary or burdensome regulation; to improve the readability of, and ease of referencing to the rules; and overall to improve the Commission's policies and procedures.

5. This rulemaking was part of a comprehensive effort to revise all Commission rules. As such, We found it important to coordinate the instant rulemaking with the other repeal and reenactment rulemaking proceedings.

6. Hearings on the proposed rules were held on March 25 and 26, 2004, August 2 and 3, 2004, November 22 and 23, 2004, and March 18, 2005. Written comments were received from: Aquila; Metro Taxi, Inc.; the Colorado Office of Consumer Counsel (OCC); the Burlington Northern and Santa Fe Railway Company; AT&T Communications of the Mountain States, Inc.

and TCG Colorado (AT&T); Qwest; MCI; Public Service; and the Union Pacific Railroad Company. Staff also provided oral presentations addressing the general procedural background of the proposed rules and identified areas of change between the existing and proposed rules.

7. Subsequent to the March 18, 2005 hearing on the proposed rules, the ALJ issued the Recommended Decision on April 25, 2005. Because the overall objective of this process was to improve consistency between rules, the Commission adopted a new rule numbering convention that uses a four-digit system, with the first digit corresponding to the specific industry. For example, the Practice and Procedure Rules are the 1000 series, the electric and steam rules are the 3000 series, while the natural gas rules are enumerated as the 4000 series.

8. The ALJ noted that the Recommended Decision does not make major changes in the following three areas: First, the Recommended Decision does not make major changes to the Privacy Rules. Despite comment that the Privacy Rules need a major overhaul, the ALJ found that this rulemaking was not sufficiently focused on the Privacy Rules to develop any sort of a record basis to alter the existing rules. As such, changes were minimal.

9. Second, no major changes were made to the Confidentiality Rules in the Recommended Decision. While the ALJ points to several changes that were recommended, he nonetheless found the record insufficient to modify the rules as they exist.

10. Third, no major change was made by the ALJ concerning discovery. Again, while several commentors proposed presumptive limits on discovery, the ALJ found insufficient evidence that the current system creates an unworkable or unreasonable burden. The ALJ found that no sample discovery was put into the record that demonstrated unreasonable deadlines or unreasonable workloads not adequately dealt with by existing procedures.

11. The statutory authority for the rules adopted by this Order is found at §§ 24-4-103, 40-2-108 and 40-3-110, C.R.S.

B. Exceptions

1. Rule 1003. Waivers.

12. Public Service argues that the concept of variance should be retained in the rule, in addition to the concept of waiver. According to Public Service, the concept of variance provides the Commission with flexibility with which to fulfill its constitutional and statutory duties. We agree with Public Service and therefore include the term "variance" along with the term "waiver" in this rule. Therefore, the heading of this rule shall be entitled "Waivers and Variances." Additionally, the term "variance" shall appear in the rule whenever the term "waiver" appears to indicate that a party may either seek a waiver or variance of a Commission rule.

13. Public Service next argues that waivers and variances should be available from tariffs as well as Commission rules. Public Service maintains that no issues of notice arise regarding variance or waiver from tariff provisions because the same notice questions must be addressed in motions and petitions for waiver or variance of Commission rules as in the case of a waiver or variance from tariff provisions. Public Service also posits that, when a waiver or variance comes from a customer, it may be appropriate for the Commission to grant a waiver or variance without a tariff change, assuming that the grant would not also grant unlawful preferences or advantages. We agree with Public Service on this point as well. Therefore, the concept that waivers and variances shall include tariff provisions shall be incorporated into Rule 1003 as indicated in the adopted rules in Attachment A to this Order.

14. Public Service also argues that the sentence in Rule 1003(a) that waivers are generally disfavored should be stricken because the proponent seeking such waiver or variance has the burden of proof that good cause exists to grant such a waiver or variance. We agree and strike the sentence.

15. Proposed Rule 1003(a) provides that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis in making its determination whether to grant a waiver. Public Service suggests that the rule should clarify that these considerations are illustrative and not limiting. We agree with Public Service. That sentence in Rule 1003(a) shall therefore include the language that the Commission, when making its determination to grant a variance, may take into account the considerations listed in the rule, but is not limited to only those considerations.

2. Rule 1004. Definitions

16. Public Service originally took exception to the definition of "affiliate" contained in Rule 1004(c), but subsequently withdrew that exception in favor of the comments offered by Aquila. While not filing exceptions regarding the definition, in its comments, Aquila indicated that the statutory definition of "affiliate" found in § 40-3-104.3(4)(b), C.R.S. should be used. According to Aquila, since the statutory definition is different than the proposed definition in Rule 1004(c), the proposed definition is void pursuant to the Colorado Administrative Procedures Act (CAPA).

17. We disagree with Aquila regarding the use of the statutory definition. Section 40-3-104.3(4)(b) limits the definition of affiliate only for the purposes of subsection 4 of the statute. Therefore, given such limiting language, the definition that appears in Rule 1004(c) is not in conflict with the statutory definition. We also note that Rule 1004 contains a disclaimer in the

preamble that the definitions apply "except where a specific rule or statute provides otherwise." Consequently, when another set of rules, such as electric, gas or telecommunications, contains a definition of "affiliate" that varies from the generic definition found here, the definition found in those specific industry rules will control. As such, we decline to amend the definition of "affiliate."

18. Several parties argue to limit the definition of "customer" found in subparagraph (h) of the rule. MCI argues that the term customer should be limited to actual customers such as those accepted for service. According to MCI, actual customers have rights under tariffs and no-call lists not available to those potential customers merely applying for service. MCI finds that including "potential customers" under the definition of "customer" is confusing.

19. Qwest argues that the definition of customer should match the definition adopted in the telecommunications rulemaking, especially with regard to present (as opposed to future) customers. Qwest puts forth that the rule should read: "'Customer' means a person who is currently receiving a jurisdictional service."

20. According to Aquila, the rules should define customer to include only those utility users within Colorado that receive jurisdictional services. Aquila maintains that the ALJ's definition could be construed to include customers subject to the jurisdiction of regulatory bodies other than the Commission.

21. We agree with the parties in part. The definition of "customer" is found throughout the rules in various contexts. For example, the term "customer" is used in the definitions of "personal information," "refund," and "third party"; in Rule 1101(d) ("Confidentiality"); and numerous times in Privacy Rules 1103 and 1104. In the context of these rules, we find that the term "customer" is not limited to those actually receiving service.

Additionally, to the extent that the substantive rules have a more specific definition of "customer," those rules would control, as discussed *supra*. However, in order to avoid confusion and to clarify the meaning of "customer" here, the definition will include any person who has "… applied for, been accepted for, or is receiving regulated service *in Colorado* from a regulated entity *subject to Commission jurisdiction*" (added language in italics).

22. Public Service and Qwest argue that the definition of "refund" found at subparagraph (y) is misplaced because these rules do not address refunds in any way. According to Public Service and Qwest, issues regarding refunds should be addressed, if at all, in the substantive rules.

23. We disagree with Public Service and Qwest. We note that these rules do in fact address refunds at Rule 1206(g), concerning notice for refund applications. We therefore decline to strike this definition.

24. Aquila asserts that the proposed definition is inconsistent with § 40-6-119, C.R.S. because the definition includes the concept of reparations. Aquila argues that reparations are not refunds. Rather, reparations pursuant to statute compensate customers for charges determined to be excessive for inadequate delivery of product, or for injury. Refunds, on the other hand, are funds paid by a customer to a utility for overcharges, but then returned to the customer. Consequently, Aquila concludes that the definition should strike the term "reparations."

25. We agree with Aquila that "reparations" and "refunds" are legally two different and distinct concepts. Reparations are specifically provided for under statute. Therefore, we remove the reference to the term "reparations" from the definition of "refund" at Rule 1004(y).

26. Aquila also finds fault with the definition of "regulated entity" found at Rule 1004(z). According to Aquila, the proposed term in the definition, "any entity subject to

Commission regulation," is vague and overbroad. Aquila proposed to replace "regulation" with "jurisdiction." Aquila asserts that, while the Commission may wish to regulate an entity not lawfully within its jurisdiction, the attempt to regulate in itself may make the entity a "regulated entity." The test, according to Aquila, is whether public utilities law confers jurisdiction.

27. We find difficulty with the proposal put forth by Aquila to replace the term "regulation" with "jurisdiction." Use of the term "jurisdiction" is problematic because certain parties, when they appear before the Commission as intervenors, are subject to Commission jurisdiction concerning procedural (and in some cases substantive) issues. However, that does not confer regulated entity status upon those parties. We further point out that the intent of the rule is in no way an attempt to bootstrap Commission jurisdiction where none currently exists, as Aquila argues. However, in order to clarify the definition of "regulated entity," we amend the definition to read, "'Regulated entity' means any entity subject to Commission regulation *pursuant to Title 40, C.R.S.*" (added language in italics).

3. Rule 1007. Commission Staff

28. Aquila takes exception to the language contained in subparagraph (a) of the rule. Aquila argues that the proposed rule potentially results in due process and *ex parte* violations. As Aquila interprets the language of the rule, trial advocacy staff should not, in its entry of appearance, have the discretion to list which advisory staff will serve in a docket. Aquila asserts that this will lead to impermissible contacts between the two groups, or have that appearance. It will also have an impact on the ultimate outcome of the proceeding. Aquila also argues that the rule presents a heavy administrative cost on parties making filings in Commission proceedings because Aquila believes each staff member would have to be served a copy of each filing.

29. We find that Aquila reads too much into the rule. The notice of advisory staff provision merely provides a means to include notice to the parties of which advisory staff members are assigned to the matter, if known. Trial staff does not decide who may be advisory staff on any case. However, in order to avoid any confusion, we modify Rule 1007(a) to indicate that Commission Staff's entry of appearance shall specify those Commission Staff members designated to serve as Trial Advocacy Staff in the proceeding. The entry of appearance may list those Staff members serving as Advisory Staff.

4. Rule 1100. Confidentiality

30. Qwest indicates that the headings that originally appeared in the rule, and were subsequently removed, should be restored. According to Qwest, the length of the rule lends itself to headings to serve as a useful navigation tool.

31. While we are in agreement with Qwest's recommendation, we point out that in order to maintain consistency throughout the rules, headings should be placed in all rules. However, due to the statutory rulemaking time limits, headings will be addressed and restored as part of any decision on applications for rehearing, reargument or reconsideration, in order to provide the Commission sufficient time to make such changes.

32. Aquila takes issue with the language contained in proposed Rule 1000(a)(III) and Rule 1101(a)(III). Aquila argues that the rules fail to address and adequately protect highly confidential information. Aquila asserts that the rules should establish clear guidelines for submitting and handling such information in order to prevent inadvertent disclosure. Aquila proposes to add to both 1100(a)(III) and 1101(a)(III) the following language:

> …the regulated entity shall designate such information as highly or extraordinarily confidential. Such… information shall not be available to any requesting parties, except to Commission Staff upon demonstration of its

compelling need and signing of a highly confidential information non-disclosure agreement with consent of regulated entity providing such information.

33. We disagree with the language proposed by Aquila. The current rules already provide parties the means to request highly confidential treatment of filings. Upon motion of a party seeking extraordinary treatment, an ALJ, Hearing Commissioner or the Commission *en banc*, after consideration of the motion, may grant the relief for extraordinary protection requested, or craft protection deemed appropriate under the circumstances. The language proposed by Aquila would create a blanket rule whereby a party may designate information as highly or extraordinarily confidential, allowing only Commission Staff access to such information, and only after a showing of a compelling need and the consent of the entity providing such information. We find such a requirement beyond the intent of the confidentiality rules and overly restrictive in its content. Denying access to information deemed confidential by a regulated entity to all parties to a matter except Staff (and even then it is discretionary with the entity whether Staff may obtain access to the information) is inappropriate and presents due process issues. We are satisfied that the Confidentiality Rules provide the necessary confidentiality protections.

34. Aquila also takes issue with Rule 1100(b) by indicating that the rule fails to require an entity that objects to a claim of confidentiality to state a basis for its challenge. The rule as proposed, according to Aquila, permits the filing of sham challenges and leads to wasteful litigation. Aquila proposes its changes so that the Commission may have the benefit of arguments from both parties regarding a claim of confidentiality.

35. We disagree with Aquila on this point. Revising the language as Aquila proposes would have the effect of inappropriately shifting the burden of proof in confidentiality claims.

We note that the "sham challenges" Aquila complains of have not been a problem encountered by the Commission in the past, and we do not anticipate such problems upon the promulgation of these rules. We therefore deny Aquila's exceptions.

36. Several parties filed exceptions to proposed Rule 1100(b)(VI), which addresses the withdrawal of information from the record after the Commission has determined the information is not confidential. MCI argues that the rule should permit a party to withdraw from the record any information that the Commission has ruled is not confidential without having to file a motion for such removal. MCI maintains that presenting the Order of the Commission denying a request of confidentiality is sufficient. In the alternative, MCI argues that a Commission Order should indicate that the party may withdraw the information upon the effective date of the Order.

37. Qwest indicates that there is a good policy reason to allow automatic withdrawal of the information. Namely, there would be a chilling effect on parties' willingness to share information they believe is confidential. Qwest would change the rule to allow a party to file a notice indicating the specific information to be withdrawn. Qwest believes this notice process would alleviate the ALJ's concerns that confidential information may be intertwined in a filed exhibit.

38. Aquila finds the rule unnecessary and risks the disclosure of information in the event a court finds the Commission erred in its confidentiality interpretation.

39. We disagree with the parties here. We find that an order on a motion to withdraw such information is necessary in order to provide, with exactitude, what information may be withdrawn from the record. Without such a mechanism, we find that the onus would be on administrative staff to make the determination as to the accuracy of the request to withdraw

information from the record. After all, it is administrative staff who serve as the gatekeepers regarding the Commission's files and records. We therefore deny the exceptions and leave the rule as is.

40. MCI argues that Rule 1100(c)(III), regarding the size of envelopes to be used in confidential filings, should permit filing of oversized material without the necessity of requesting a waiver of the proposed rule. MCI proposes including language in the rule that "other appropriately sized sealed containers" may be used in addition to the envelopes listed in the rule.

41. There is a practical aspect to this rule. In order to secure confidential filings in the locking filing cabinet designated for such filings, envelopes must be within the size constraint of 9" x 12" and 10" x 13." It is our understanding that envelopes larger than the designated size will not permit locking of the cabinet doors. Without belaboring this point any further, we find that the size designated in the rule shall be the default envelope size for filing confidential information. However, should a party determine that the confidential filing does not lend itself to be placed in envelopes that size, the party may file for a waiver of the rule to place the information in a container of larger size. The motion for waiver will also serve as notice to administrative staff that accommodations may have to be made to securely store larger confidential filings.

42. Public Service takes exception to the proposed language of Rule 1100(f) regarding the use of confidential information. Public Service argues that the rule should be amended to protect against inadvertent disclosure of confidential information. To accomplish this, Public Service proposes that parties should not be allowed to copy confidential information without express permission; confidential information provided electronically should be

maintained in discreet, password-protected files; and upon completion of proceedings, all parties must completely erase electronic information.

43. Qwest, in its response to Public Service's exceptions, disagrees with Public Service's proposal. Qwest finds Public Service's proposals too constraining. According to Qwest, the non-disclosure agreement already would cover the obligations of the parties. The rules also provide for remedies for disclosure of confidential information. Qwest argues that the Commission should reject Public Service's written-consent-for-copies comment. Further, Qwest argues that if the requirement for password protection is adopted, Commission should ensure it is discretionary for the disclosing party and that failure to password protect is not a waiver of confidentiality.

44. We agree with Qwest on this matter. Not only do we find what Public Service requests too constraining, we also find that it would be difficult to enforce those provisions. We note that Public Service may file for special protection under the confidentiality rules on a case-by-case basis to request any of its enumerated protections. We decline to enumerate those provisions in this rule.

45. Aquila and Public Service take issue with proposed Rules 1100(f), (j) and 1101(c)(V) regarding the retention of confidential documents. Public Service asserts that confidential information retained by Staff or OCC may be subject to inadvertent disclosure. Public Service states that the rule should be amended to require Staff and OCC to develop procedures for assuring that confidentiality is maintained.

46. Aquila argues that, under the proposed rules, the OCC can obtain confidential information in one docket, retain possession thereof, and use it in another docket. According to Aquila, the OCC should not have extraordinary rights to confidential information that other

parties to Commission proceedings do not enjoy. Aquila believes that the rule could result in unfair advantage and potential for abuse. Aquila argues that the rule will spawn expensive litigation concerning whether the information is even usable. Aquila also argues that OCC is a statutory entity and has no constitutional authority, nor does any statute confer upon OCC any special status above other parties regarding intervention or retention of confidential information. *See* §§ 40-6.5-104 and 40-6.5-106, C.R.S. As such, Aquila takes the position that any extraordinary rights afforded OCC should be given by the legislature, not the Commission.

47. We disagree in part with Public Service's and Aquila's exceptions. We point out that, unlike Staff, the OCC must file a motion to maintain confidential information after closure of a docket. Further, such a motion is subject to response filings of affected parties, and the Commission may order adequate safeguards to protect the confidential information. However, in order to assuage any fears Public Service and Aquila harbor regarding this issue, we will include language in the rules that Staff and OCC, when granted the ability to retain confidential information beyond the close of a docket, shall maintain internal procedures to protect the confidentiality of that information.

48. Aquila finds that proposed Rule 1100(g) fails to require that a signatory to a non-disclosure agreement be a party to a proceeding or a duly appointed representative of a party. Without more specific language, Aquila believes that the risk of competitive harm is great if non-parties gain access to confidential information.

49. While we are not in complete agreement with Aquila's claims, we nonetheless find that certain wordsmithing to the language of the rule is necessary. Consequently, we amend Rule 1100(g) to indicate that no access to information under seal shall be allowed until each

person, who is either a party to a matter or an authorized agent of a party, seeking such access signs a nondisclosure agreement on a form approved by the Commission.

5. Rules 1103 and 1104. Personal Information – Collection and Disclosure

50. OCC argues that the Commission should address privacy concerns in this docket or initiate a subsequent rulemaking. The ALJ concluded that, while a thorough review of the privacy rules is necessary, this is not the docket for such a review. The OCC indicates that if the Commission does not initiate a separate docket, it should address OCC's privacy concerns in this docket.

51. OCC takes the position that there is no meaningful correlation between using a customer's Social Security Number (SSN) and the customer's creditworthiness for utility service. Rather, OCC finds that prior payment history is a better indicator of a customer's ability to pay. According to OCC, disclosure of a SSN should not be required. Instead, customers should be permitted to provide other evidence of creditworthiness or to post a deposit. However, if the Commission permits utilities to obtain SSN information, OCC requests that each utility should have tariffed procedures to safeguard the SSN, inform the customer of any SSN use, and provide alternatives to avoid disclosure.

52. Qwest, in its response to OCC's concerns states that it does not appear that information held by utilities is a particular source of identity theft. Consequently, Qwest argues that a separate rulemaking is not necessary. Qwest notes that its current practice is already consistent with the OCC's proposal. That is, a customer is not required to disclose a SSN to obtain service. Therefore, Qwest concludes that the Commission should reject OCC's proposal to open a new docket or to further modify the privacy rules in this docket.

53. We agree with OCC in part. We amend language in these rules to read that a utility may request but may not require an applicant's SSN in evaluating the customer's credit worthiness or in providing service.

54. Qwest and MCI pointed out that the language of Rule 1104(a) defines "third party," not "third person." Consequently, the reference to "third person" in the rule should be changed to "third party." We agree with the parties and change the reference in the rule to "third party."

6. Rule 1105. Prohibited Communications – Generally

55. Public Service takes the position that certain communications listed in Rule 1105(b) should not be excepted from those communications that are prohibited. According to Public Service, the communications listed in (b)(II), (III) and (IV) should be required to be disclosed. These communications include: protests or comments made by any customer of a utility; communications made in educational programs or conferences, or in meetings of an association of regulatory agencies; or communications with or at the request of members of the General Assembly or their staffs relating to legislation, appropriations, budget or oversight matters.

56. We disagree with Public Service. Such a requirement would place an onerous burden on the Commission. We find no reason to require disclosure of communications in the above enumerated instances, unless that communication involved a substantive issue of a pending matter before the Commission. We decline to strike subparagraph (II). However, we clarify subparagraphs (III) and (IV) as indicated in Attachment A to this Order.

7. Rule 1107. Prohibited Communications – Remedies

57. Public Service notes that the remedy contained in Rule 1107(b), stating that the Commission may make an adverse ruling on an issue that is the subject of the prohibited communication, is too harsh. Public Service argues that an adverse ruling generally goes directly to the merits of the issue. As such, Public Service requests that subparagraph (b) be deleted and that subparagraph (a) be amended to enable the Commission to dismiss a proceeding in whole or in part.

58. We agree with Public Service and delete subparagraph (b) and amend subparagraph (a) to enable the Commission to dismiss a proceeding in whole or in part.

8. Rule 1202. Form and Content

59. Public Service requests that the word "filing" be replaced with the word "pleading" in rule 1202(c). We agree and make that change.

60. Rule 1202(f) concerns the time to correct form and manner deficiencies in pleadings. The proposed rule provides that any deficiencies to pleadings or filed testimony must be corrected, when notice is received by the party, within three days of the notification, or the Commission may reject the pleading or testimony. MCI and Qwest argues that the three day timeframe is too restrictive, particularly when the time begins on a Friday. Instead, the parties propose that "days" should be changed to "business days," thus providing three business days to the parties to cure deficiencies.

61. We agree that the timeframe is too restrictive. However, we are attempting to maintain some consistency in the rules with regard to timeframes measured in calendar days rather than business days. Therefore, we will expand the time to cure deficiencies in pleadings and filed testimony in the rule to five days.

9. Rule 1203. Time

62. Qwest proposes that the Commission adopt a three day mailing rule for responding to a pleading or order. Qwest notes that its proposed change would be consistent with the Colorado Rules of Civil Procedure (C.R.C.P.). Qwest also argues that its proposal would eliminate unfairness caused by delays in mailing; would permit a party to avoid the application of this rule by using email, facsimile, or hand delivery; and would allow a receiving party additional time for the pleading to arrive.

63. Aquila maintains that the proposed rule lacks certainty and will lead to confusion over the correct effective date for notices and orders. Aquila points out that the ALJ rejected its proposal that notice or order become effective pursuant to law but not before service upon a party or counsel of record. According to Aquila, case law holds that agency decisions cannot become effective until served on counsel of record. *Cf.* § 40-2-106, C.R.S. Aquila notes that, while the rule is consistent with § 40-6-108(3), it nonetheless fails to require service on counsel.

64. We disagree with Qwest and Aquila that a three day mailing rule should be instituted, or that Commission issued notice or orders become effective only upon service to a party or counsel of record. We find these proposals untenable at best. We would note that, while a three-day mailing rule may be consistent with the C.R.C.P., Qwest fails to take into account that this Commission typically operates under statutorily mandated timelines (unlike most proceedings before civil courts in this state). As such, while a three day mailing rule would be a matter of convenience to parties, it would place an unreasonable burden on this Commission to comply with statutory deadlines.

65. We also note that the Commission is endowed with the statutory authority to set the effective date of its orders. *See*, §§ 40-6-108(3), 40-6-109(4) and 40-6-114(3), C.R.S.

We further find Aquila's argument unavailing that § 40-2-106, C.R.S. requires that Commission decisions cannot be effective until served upon the counsel of record. *Citing, Mountain States Tel. & Tel. Co. v. Dept. of Labor and Employment*, 184 Colo. 334, 520 P.2d 586 (Colo.1974). Nothing in the statute indicates that a Commission decision is not effective until served upon counsel of record. Further, the case cited by Aquila requires only that counsel of record be served with an agency order. Nothing in that decision could be construed to require this Commission to set the effective date as of the date of service upon counsel of record. We additionally note that, under such a process, receipt of service would be virtually impossible to verify. We decline to adopt the recommendations of Qwest and Aquila here.

10. Rule 1204. Filing

66. While no party filed exceptions, we modify the requirement in Rule 1204(a)(II) that the number of copies for filing a complaint, answer, motion, intervention, exceptions, RRR, or any other document shall be an original and six copies to now read that the number of documents shall be an original and seven copies.

67. MCI recommends that Rule 1204(b), pertaining to fax filings, should also permit e-mail filings. MCI proposes language to permit e-mail filings as part of this rule.

68. While we find MCI's recommendation valid and useful, we observe that at the present time, the Commission does not have adequate procedures and safeguards in place to accept electronic filings, even as a substitute for fax filings. However, it is important to note here that the Commission is moving forward with electronic filing capabilities, and will be able to handle such filings at some point in the future. However, in the meantime we deny MCI's exceptions and recommendation for additional language here.

11. Rule 1205. Service

69. Public Service proposes to re-write Rule 1205(a) to eliminate the double negative language relating to service on Commission Advisory Staff. We agree with Public Service and revise the sentence at issue in the rule to remove the double negative.

12. Rule 1206. Notice – Generally

70. As proposed, Rule 1206(a) contains no timeline for the Commission to mail notice of an application or petition to persons who may be affected by the grant or denial of the application or petition. Qwest argues that the current requirement that the Commission must mail notice within five days of the filing should be retained. Qwest maintains that the time in which the Commission must provide notice should be in the rules because notice triggers deadlines such as intervention, and because applicants require certainty in order to calculate proposed effective dates.

71. Aquila also argues that the Commission should maintain some time limit when issuing notices of applications or petitions. Aquila points out that the proposed rule here removes the 15 day limit as provided in the NOPR rules. Further, Aquila argues that the proposed rule would give the Commission an infinite amount of time to issue notice. Aquila takes the position that this would materially impact non-contested and routine applications. While Aquila advocates for a five day period, it indicates that it would also accept 15 days.

72. We agree with parties in part that some time limit is necessary in which the Commission issues notice of applications and petitions. However, we find that the five day period advocated by Aquila and Qwest is inconsistent with other utility timing issues, most notably transportation utilities, which have different time requirements than fixed utilities.

We therefore find that a 15 day time period in which the Commission shall issue notice of applications and petitions is reasonable and will be incorporated into Rule 1206(a).

73. Public Service indicates that Rule 1206(e) provides that a utility filing a tariff change other than one on less than statutory notice (LSN) must provide notice in accordance with § 40-3-104(1), C.R.S. Public Service points out that, in Commission Decision No. C85-1140, the Commission granted Public Service an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(D), C.R.S. when a tariff change will not result in a cost increase to any customer. Public Service requests that the Commission clarify that the reenactment of the Policy and Procedure Rules does not revise or amend that Commission Decision.

74. We agree with Public Service and clarify that this Rule 1206(e) does not revise or amend Commission Decision No. C85-1140.

75. Qwest, Aquila and Public Service take exception to the language of Rule 1206(f)(I), regarding less than statutory notice newspaper notices. Qwest argues that the Commission should clarify that LSN newspaper notices given by the applicant need only be published once, and that such notice only applies to tariff changes that would otherwise require notice pursuant to § 40-3-104, C.R.S. Public Service maintains that the size requirement of newspaper ads in the rule does not perform any useful service. Public Service also points out that its cost of placing these ads is approximately $280,000 per year.

76. Aquila argues that, in rejecting OCC's request for LSN legal notice plus a bill insert, the ALJ compromised by increasing the notice size requirement and requiring publication in a newspaper of general circulation. According to Aquila, the ALJ's intent was to provide less notice for LSN applications; however, the rule fails to do so because proposed Rule 1004(o) has two possible definitions, circulation over 100,000 or circulation over 1,000 in a utility's service

area. Aquila maintains that the rule would require a utility to identify every local newspaper meeting the definition, which would be burdensome and costly. Aquila posits that, if a utility fails to give notice in even one such newspaper, a notice defect would occur. Consequently, Aquila argues that the Commission must clarify the definition to give the utilities a choice of which type of newspaper to publish notice. Aquila also argues that the clarification must specify that 1206(f)(I) provides less notice for LSNs than regular rate cases and therefore is inconsistent with § 40-3-104(e)(2), C.R.S., and so is void. Aquila further argues that the rule applies to all tariff changes, but the statutory publication requirement only applies to changes to a "rate, fare, toll, rental, charge, classification, or service." Therefore, the rule is overbroad. Aquila requests that the Commission clarify that notice is required only once.

77. We agree that the rule should be clarified to indicate that LSN newspaper notice given by the applicant need only be published once. We further clarify that the rule only applies to tariff changes that would otherwise require notice pursuant to § 40-3-104, C.R.S.

78. We disagree with Public Service that size of the notice does not perform any useful service, and therefore we decline to strike the phrase in Rule 1206(f)(I) that provides that the newspaper notice shall be three columns wide and five inches high. However, we determine that such notice is not necessary in any case where the tariff change has no potential to raise rates.

79. While we are not in complete agreement with Aquila's arguments regarding Rule 1206(f), we nonetheless clarify the rule to indicate that a utility filing an application for a tariff change, which potentially results in a rate increase, shall meet the requirements of subparagraph (f). Additionally, we find that subparagraph (f)(I) should read: "Within three days after filing the application, publish *one* notice of the application *in at least one* newspaper of general circulation,

which notice shall be three columns wide and five inches high." (Additions indicated in italics.) We additionally modify the definition of "newspaper of general circulation" in Rule 1004(o) to clarify our intent.

80. Public Service takes issue with proposed Rule 1206(i) that provides that the Commission may require additional notice as it deems appropriate. Public Service objects to the rule because requiring additional notice is inappropriate. Public Service argues that statute controls the form of notice, unless the Commission prescribes a different form of notice pursuant to § 40-3-104(1)(c)(I)(D) C.R.S., or unless the requirements of §40-3-104(2), C.R.S. are met.

81. We do not find Public Service's arguments persuasive. We find that § 40-3-104 includes several references to the Commission's authority to order additional or different notice. As long as the requirement of additional notice is not contrary to statute, we find nothing contrary to statute in the terms of the rule. However, in order to clarify the rule, we add the phrase "as provided pursuant to § 40-3-104, C.R.S." to the end of sentence in Rule 1206(i).

82. Public Service proposes adding two additional subparagraphs to Rule 1206. Proposed subparagraph (l) would provide that a utility shall be permitted to file new tariffs complying with an order of the Commission on not less than one day's notice. Further, the proposed subparagraph would also provide that no additional notice beyond the tariff filing itself would be required. Subparagraph (m) would provide the same terms, but would be applicable to new tariffs filed to update adjustment clauses previously approved by the Commission.

83. We agree to the language proposed by Public Service. However, we find it unnecessary to have two separate subparagraphs. Rather, we include in the provisions of proposed subparagraph (l) that it shall be applicable to new tariffs complying with an order of the

Commission, as well as to new tariffs filed to update adjustment clauses previously approved by the Commission.

13. Rule 1301. Informal Complaints and Mediation

84. Rule 1301(a) deals with the standard for registering an informal complaint. Aquila contends that the rule's arbitrary standard is that any person may register an informal complaint expressing displeasure or dissatisfaction with a regulated entity. Aquila argues that this is no standard at all, which could result in informal complaints being filed on a whim. Rather, Aquila takes the position that the rule should have an objective standard such as probable cause. Additionally, Aquila argues that, because the standard here is vague, it is at odds with the CAPA, which requires a regulation to be clearly stated so its meaning will be understood by any party required to comply with it.

85. We disagree with Aquila's argument. The purpose of the rule is not intended to set a standard. Rather, the rule merely codifies current Commission practice regarding informal complaints, which is to document the informal complaint when received by the Commission Staff. We note that an informal complaint is not subject to the probable cause standard as set forth in criminal matters. The informal complaint process sets out a mediation-like process to assist consumers in addressing complaints against utilities in an informal, non-adjudicatory process. Regarding the understandability of the rule vis-à-vis the CAPA, it is not the utility that has to comply with the rule, but the complainants. Aquila also argues that its Quality of Service Plan (QSP) triggers monetary penalties based on the volume of complaints. The rule, according to Aquila, could have particularly egregious consequences. However, we point out that we decided in the energy rules deliberations that QSP dockets are the appropriate venue to discuss

this issue. We find that revising the rule because of a possible negative impact on a particular QSP is inappropriate. Therefore, we decline to revise the language of Rule 1301(a).

86. Qwest and Pubic Service filed exceptions regarding subparagraph (b)(V), which allows Commission Staff to file formal complaints against a regulated entity. Qwest finds that the process in a Commission initiated action (show cause) against a utility regarding Staff and the Commission to be unclear. According to Qwest, confusion exists regarding whether Staff or the Commission initiates a matter and whether Staff or the Commission prosecutes a matter. Qwest requests that this process be spelled out more clearly. Qwest also argues that the Commission must follow statutory requirements here and the processes should be consistent with the intended functions of each division within the Commission. Qwest proposes that the show-cause letter option outlined in current rule 4 CCR 723-1-73 should be retained.

87. Public Service argues that the ability of Staff to file a formal complaint is not authorized by statute. While § 40-6-108 specifies that parties may file a formal complaint, Staff is not listed among those parties. Public Service notes that Staff may only request the Commission to issue an order of show cause. Consequently, Public Service advocates the deletion of Rule 1301(b)(V).

88. We decline to delete Rule 1301(b)(V) in its entirety. We note that the "show cause" terminology and concept is being replaced through the repeal and reenactment of these rules by a Commission complaint process. Further, Commission Staff is statutorily authorized to bring formal complaints (such as civil penalty complaints) in transportation and gas pipeline safety matters. Therefore, rather than strike the subparagraph, we clarify the language to indicate that Staff may file a formal complaint against a regulated entity "*where specifically permitted by statute*." Additionally, we add new subparagraph (VI) which indicates that Staff may request that

a formal complaint process be opened by the Commission upon its own motion as provided pursuant to § 40-6-108, C.R.S.

89. MCI argues that Rule 1301(c), which addresses the time for a regulated entity to respond to an informal complaint, is unreasonable. MCI asserts that the rule should indicate that Staff cannot shorten the response time to less than five business days.

90. We are not persuaded by MCI's arguments. We find that certain circumstances may dictate that a shorter response time than five business days for the regulated entity to respond may be necessary. For example, a discontinuance of service by a telecommunications provider, or a downed power line would require a significantly shortened response time. We clarify the language of Rule 1301(c) to read: "If Commission staff requires a period *less than five days to respond*, such period shall be reasonable under the circumstances of the informal complaint." (Additional language in italics.)

91. Qwest takes exception to the language of Rule 1301(e) regarding informal complaints. Qwest proposes to change the language of the rule to read: "A person may withdraw an informal complaint or may file a formal complaint at any time."

92. We note that formal complaints are addressed within Rule 1302. Therefore, we revise the language of the rule to remove reference to formal complaints and to read: "A person may withdraw an informal complaint at any time."

14. Rule 1302. Formal Complaints

93. Qwest, Public Service and Aquila filed exceptions regarding the language of subparagraphs (a) and (h) of the rule. The parties agree that the process in a Commission-initiated action against a utility for Staff and the Commission is unclear. The parties further agree that the Commission Director is not empowered to file a formal complaint. Public Service

advocates the deletion of subparagraph (h) in its entirety. Aquila argues that, to ensure that the Commission does not act as both prosecutor and decision-maker, and to eliminate *ex parte* contacts and conflicts of interest, the rule should clarify that it is trial staff that files the complaint and advisory staff has no role in the prosecutorial decision to file the complaint.

94. We agree that the Commission Director may not bring formal complaints. We further agree that subparagraph (h) requires clarification. We therefore revise the language to simply read: "Pursuant to §§ 40-6-108 and 24-4-104(3), C.R.S., the Commission may issue a formal complaint." To the extent Aquila's argument extends to the constitutionality of the statutory authority of the Commission upon its own motion to bring formal complaints, we point out that such an argument is better made to the Colorado General Assembly to change the statute, rather than this rulemaking proceeding. It is not within our province to declare a statute unconstitutional.

95. Aquila also filed exceptions regarding subparagraph (f)(I), which addresses formal complaints and bonding requirements. Aquila argues that the Commission should have discretion to adjust bonding requirements in service discontinuance proceedings. Because many proceedings take longer than expected and involve large amounts of money, Aquila maintains that the rule should give the Commission discretion to impose additional bonding requirements.

96. We disagree with Aquila's suggestion. Rather, we find that an ALJ or the Commission may order the relief Aquila requests as needed, on a case-by-case basis. As such, we find no need for Aquila's proposed language.

15. Rule 1303. Applications

97. Public Service argues that the deeming periods contained in the rule are excessive and may result in an extension of the statutory time frame limits. Public Service determines that

the rule adds an additional 45 to 60 days and, as a result, impairs the ability of utilities to conduct business. According to Public Service, the deeming analysis should not require more than a few days. Additionally, Public Service finds that subparagraph (b)(IV) allows the Commission to dismiss an application on its merits at the initial stages without taking evidence and without allowing the applicant to respond to a motion to dismiss or for summary judgment. According to Public Service, this is a denial of due process.

98. We agree with Public Service that the language of subparagraph (b)(IV) is problematic and raises due process concerns. We therefore revise that subparagraph by adding additional language at the end of the rule that reads: "Nothing in this paragraph (b) shall be construed to prohibit dismissal of an application on its merits, *as provided by law and these rules*." (Added language in italics).

99. We disagree with Public Service that the deeming time periods contained in subparagraph (b)(II) are excessive. We point out that the processes enumerated there are all conducted within the notice period. As for subparagraph (b)(III), we find that several changes are necessary. We eliminate nearly the entirety of that subparagraph as indicated in Attachment A. However, we modify the remainder of the language of the subparagraph to indicate that if the Commission does not issue a determination within 15 days (rather than 10 days) of the expiration of the notice period, the application shall be automatically deemed complete. This change shaves some time off the proposed rule.

100. Aquila argues that Advisory Staff, not Trial Staff, should determine whether an application is complete. Otherwise, Aquila contends that Trial Staff could engage in serious conflicts of interest and make improper *ex parte* contacts. Because Trial Staff may eventually become a party to a matter, Aquila argues that it could use its role in deeming an application

complete to make substantive recommendations to the Commission, or gain a tactical advantage in adjudicated matters.

101. We disagree with Aquila. We note that the Commission can consider any party's argument that an application is complete, and retains ultimate authority in these matters; thus, we deny Aquila's exceptions here.

102. Public Service asserts that subparagraph (c), which addresses waiver of statutory time limits, implies that a waiver of the 120-day limit automatically waives the 210-day limit. According to Public Service, §40-6-109.5, C.R.S. does not imply such a result, and an applicant should be able to waive either or both time limits.

103. We agree with Public Service and revise the language of subparagraph (c) to indicate that waiver may apply to either the 120-day or 210-day time limit or both, at the discretion of the applicant.

16. Rule 1304. Petitions

104. Public Service indicates that an oversight in subparagraph (h) results in the rule failing to refer to "waivers." The rule should refer to both waivers and variances. We agree and include the term "waivers" in the subparagraph.

105. Public Service also indicates that subparagraph (i) should include the ability to request a declaratory order with regard to a tariff. We agree and include tariffs here.

17. Rule 1400. Motions

106. Aquila asserts that, in accelerated complaint proceedings, service of motions should be required by hand delivery, fax, or e-mail where seven days or less service is required. Aquila contends that the US Mail may not arrive in seven days, making it impossible to promptly and adequately respond.

107. We disagree with Aquila's contentions. The relief it addresses may be ordered on a case-by-case basis. However, in order to clarify the intent of the subparagraph, we find that the last sentence shall include the following language: A motion for summary judgment may be made in accordance with rule 56 of the Colorado Rules of Civil Procedure. "*A motion to dismiss may be made in accordance with rule 12 of the Colorado Rules of Civil Procedure"* (additions in italics).

108. Aquila also takes issue with subparagraphs (b) and (d), which address the basis for intervention. According to Aquila, a basis for intervention must be stated with specificity, rather than merely stating the basis for the claimed legally protected right. Aquila goes on to argue that this standard should be applicable for all parties, including Staff.

109. We disagree with Aquila's contention that Staff must specify a basis for its intervention as a matter of rule. We note that Staff already provides such information when it intervenes in a matter. As for other parties wishing to intervene, intervention is a question of standing and of legal interest in the application; it is not a question of the degree of specificity with which the pleading is made. With regard to parties wishing to permissively intervene, we find that paragraph (c) should read as follows:

> A motion to permissively intervene shall state the grounds relied upon for intervention, the claim or defense for which intervention is sought, including the specific interest that justifies intervention, and the nature and quantity of evidence, then known, that will be presented if intervention is granted. *For purposes of this rule, the motion must demonstrate that the subject docket may affect the pecuniary or other tangible interests of the movant (or those it may represent) directly or substantially; subjective interest in a docket is not a sufficient basis to intervene.*

18. Rule 1404. Referral to Hearing Commissioner or Administrative Law Judge

110. The OCC asserts that the first sentence of subparagraph (a) should read, "Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to a *hearing commissioner or* administrative law judge." We agree with the change suggested by OCC.

19. Rule 1405. Discovery and Disclosure of Prefiled Testimony

111. Qwest argues that the rules should limit the number of interrogatories by including the limits set forth in C.R.C.P. Rule 26(b)(2). While not citing specific dockets, Qwest asserts that there were detailed examples of how unlimited discovery can become troublesome and unworkable. Qwest proposes that the Commission should establish limits on discovery or increase the time to respond to discovery.

112. We agree with Qwest in part. We revise the language of subparagraph (b) to indicate that, if the number of propounded interrogatories exceed the amount provided for in C.R.C.P. Rule 26(b)(2), the party upon which the interrogatories are propounded shall have 20 days to object or respond to the interrogatories.

113. Public Service indicates that the rule should not incorporate only the 2004 version of the C.R.C.P. According to Public Service, the rule should be flexible enough to accommodate changes to the C.R.C.P. without the Commission having to conduct a rulemaking every year.

114. We disagree with Public Service. Section 24-2-103(12.5)(c)(I), C.R.S. clearly indicates that the reference to any incorporated material does not include later amendments to, or editions of, the incorporated material. We interpret this to mean that the Commission may not

refer to the C.R.C.P. in generic terms, but must refer to the specific edition. The statute further provides that an agency may not refer to future editions of a resource without a rulemaking.

115. Public Service also argues that the rule goes too far in eliminating C.R.C.P. rule 33(a), which merely authorizes the use of written interrogatories. Public Service urges the Commission to retain C.R.C.P. rule 33(a). Public Service asserts that consistency with the remainder of the discovery rules is still guaranteed through the last sentence of Rule 1405(a)(II). We agree with Public Service and return reference to C.R.C.P. rule 33(a) to the discovery rules at 1405(a).

116. Public Service indicates that the rule need not exclude C.R.C.P. 26.2 because that provision was deleted effective January 1, 2005. Given our finding above regarding the incorporation of a specific edition of external materials, this argument is moot.

117. Aquila argues that discovery response times as proposed in subparagraph (b) are too short. Aquila asserts that response times should be at least 20 days, if not 30 days. Aquila points to the fact that its records are located in Kansas City, Missouri and Omaha, Nebraska as its reason for finding 10 days too short of a response time. Aquila also states that it is time consuming locating knowledgeable personnel, gathering responsive information and documents and compiling responses. Aquila proposes retaining a 10 day response time for accelerated complaint proceedings only. MCI agrees with Aquila that the 10 day response time is too short. MCI also advocates a 20 day response time. Qwest supports MCI and Aquila's proposals to extend response times to discovery requests.

118. We addressed these concerns *supra* with regard to subparagraph (a). We again note that, should discovery requests exceed the amount allowed pursuant to C.R.C.P. rule 26(b)(2), a party may have 20 days to respond or file an objection.

119. Qwest argues that the schedule indicated in proposed subparagraph (d) is only workable if the Commission does not schedule hearings at least 60 days after intervenor testimony is due. Otherwise, Qwest maintains that the applicant lacks adequate time to conduct discovery and settlement discussions. Qwest also argues that the rule should give time frames for rebuttal testimony. Absent a procedural schedule, parties usually present live rebuttal, according to Qwest. Pre-filed rebuttal would reduce the time required for hearing. Qwest goes on to argue that such a provision would also clarify that any applicant is entitled to present rebuttal testimony.

120. We find that the additional time as proposed by Qwest would present a heavy burden on the Commission in meeting its statutory deadlines for issuing orders. We further find that time frames for rebuttal testimony are unnecessary. Procedural orders issued as part of pre-hearing conferences already provide time frames for filing testimony. We further note that the Commission typically allows pre-filed rebuttal testimony. Additionally, automatic rebuttal is not available in all instances, for example, in small cases. We therefore deny Qwest's exceptions.

121. Qwest argues that revising Rule 1405(f) to apply only to rate proceedings results in a lack of a procedural schedule that is applicable to formal complaints (*i.e.*, those that are not accelerated or expedited). Qwest requests that the Commission clarify which procedures apply to formal complaints.

122. We point out that complaint proceedings do not include pre-filed testimony. Procedural issues regarding complaint cases are dealt with in the Order to Satisfy or Answer, or the pre-hearing conference. Therefore, we deny Qwest's exceptions on this matter.

20. Rule 1406. Subpoenas

123. Qwest proposes to include the ALJs on the list to issue subpoenas. We disagree with this proposal. We find the addition unnecessary since the ALJs are already included in the definition of "Commission" at Rule 1004(d).

21. Rule 1407. Stipulations

124. Aquila asserts that Rule 140(b) should specify that only Trial Staff initiates a complaint and enters into a consent stipulation. We agree that the rule should specify that Trial Staff enters into consent stipulations. However, we find it unnecessary that the rule specify only Trial Staff may initiate a complaint.

22. Rule 1408. Settlements

125. Qwest asserts that the rule should allow parties to file settlement agreements under seal. We disagree with this contention. We note that the confidentiality rules already permit the confidential filing of settlement agreements.

23. Rule 1501. Evidence

126. Public Service argues that the rule at subparagraph (c), which allows the taking of administrative notice of matters "within the expertise of the Commission," is unnecessary and ambiguous. Public Service instead proposes replacing that phrase with "matters that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Public Service indicates that this language is in accord with Rule 201 of the Colorado Rules of Evidence.

127. We agree in part with Public Service. We modify subparagraph (c) to indicate that any fact to be noticed shall be specified in the record and "*be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned*."

24. Rule 1502. Interim Orders

128. Qwest asserts that the rule should indicate that all interim orders be immediately appealable by way of exceptions. According to Qwest, the Commission would determine the outcome of exceptions filings by affirming, modifying, setting aside, or declining to consider the exceptions. We disagree with Qwest. We find such a modification to the rule to be overly burdensome, and instead leave it to the discretion of ALJs and the Commission as to when interim orders may be appealed. Certainly, parties have recourse to appeal any interim decision upon the issuance of a Commission Decision allowing for RRR or Recommended Decision by an ALJ allowing for exceptions.

25. Rule 1506. Rehearing, Reargument or Reconsideration

129. Public Service argues that the rule should include, in a new subparagraph (d), a list of the spectrum of remedies that are available to the Commission regarding RRR filings, including:

> Grant the application for the purpose of further considering the application; grant the application in whole or in part without further consideration; deny the application in whole or in part; order oral argument regarding exceptions; set the matter for hearing to take additional evidence or receive additional briefing or written comments, including but not limited to requesting that the parties address specific questions; order any other remedy within the Commission's statutory authority.

We disagree with Public Service. We find the list of remedies advocated by Public Service is unnecessary, as each of the proposed remedies may be requested already, and the proposed list may not be exhaustive. The Commission and the utilities are better served by issuing orders without a rule that artificially limits its options.

130. Aquila proposes to revise Rule 1506(a) to read: Any party may request RRR of any Commission decision or of any recommended decision that becomes a Commission decision

by operation of law." We agree with Aquila and include the phrase "by operation of law" at the end of Rule 1506(a).

131. Aquila also argues that the remainder of subparagraph (a), stating that no party may challenge any finding of fact in RRR when a recommended decision becomes a Commission decision without the filing of exceptions, should be deleted. According to Aquila, the second part of (a) conflicts with §§ 40-6-109(2), 40-6-113(4), and 40-6-114(1), and presents due process problems. Aquila submits that these statutes do not contain the limitation found in the rule. For example, § 40-6-113(4) permits a party ordering a transcript to challenge any findings of fact "in the decision of the commission." Section 40-6-109(2) states that, if a party files no exceptions, the recommended decision becomes "the decision of the commission" by operation of law. Section 40-6-114(1) indicates that any party may file RRR of a decision "by the commission or after a decision recommended by an individual commissioner or [ALJ] has become a decision of the commission… ."

132. We agree with Aquila in part and agree to remove the second sentence in rule 1506 subparagraph (a).

II. LIFTING OF THE STAY AND SETTING EFFECTIVE DATE

133. The Commission issued Decision No. C05-0539 on May 9, 2005 to stay Recommended Decision No. R05-0461. Based on our ruling on the exceptions at today's deliberations, we lift those stays. The rules, as modified by this Order, shall become effective on April 1, 2006.

III. ORDER

A. The Commission Orders That:

1. The stay the Commission placed on the Proposed Rules of Practice and Procedure Found in 4 CCR 723-1 is lifted.

2. The Commission adopts the Rules of Practice and Procedure attached to this Order as Attachment A.

3. The rules shall be effective on April 1, 2006.

4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

5. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. The 20-day time period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

7. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING September 6, 2005.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1
RULES OF PRACTICE AND PROCEDURE

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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. Some other rules have been relocated to these rules. All rules are under consideration.

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 of 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, to all regulated entities, to any person transacting business with the Commission, practicing as an attorney before the Commission, or participating in Commission proceedings as a party or otherwise, or to any person over whom the Commission has jurisdiction, 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. Waivers and Variances.

(a) The Commission has promulgated these rules to ensure orderly and fair treatment of all parties. ~~Therefore, waivers are generally disfavored.~~ The Commission may grant waivers or variances from tariffs, Commission rules, and ~~from~~ substantive requirements contained in Commission decisions and orders for good cause. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate. The Commission will not grant a waiver or variance if the grant would be contrary to statute.

(b) Waiver or variance requests made in an existing docketed proceeding shall be by motion. Waiver or variance requests made outside a docketed proceeding shall be by petition.

(c) All waiver or variance requests shall include:

(I) Citation to the specific paragraph of the rule or order from which the waiver or variance is sought;

(II) A statement of the waiver or 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 waiver or variance, explaining the specific date or event which will terminate it;

(V) A statement whether the waiver or 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) "Accelerated complaint" means a formal complaint filed to resolve a dispute arising out of a telecommunications interconnection agreement, which meets the requirements of paragraph (d) of rule 1302.

(b) "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. An administrative docket excludes applications, rulemaking proceedings, petitions, complaints, suspension proceedings, or any other adjudicatory proceeding.

(c) "Affiliate" of a regulated entity means a subsidiary of a regulated entity, a parent corporation of a regulated entity, a joint venture organized as a separate corporation or a partnership to the extent of the regulated entities involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.

(d) "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.

(e) "Commission advisor" means any member of the Commission's staff serving as advisory staff in a particular proceeding by operation of rule 1007; or any assistant attorney general advising the commissioners, administrative law judges, or advisory staff.

(f) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.

(g) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.

(h) "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.

(i) "Day" means a calendar day.

(j) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

(k) "Docketed proceeding" means any matter to which the Commission assigns a docket number, including without limitation, administrative dockets, application, petition, complaint, rulemaking, or interpretive rulemaking proceedings, or suspended tariffs, price lists, or time schedules.

(l) "Ex parte communication" means any oral or written communication which:

(I) occurs either during the pendency of a docketed proceeding or less than 30 days prior to the commencement of such a 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; and

(III) is made without providing other parties with notice and an opportunity to respond.

(m) "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. "Filing under seal" need not necessarily mean that information is provided in the context of a docketed proceeding, but may mean that information is submitted to the Commission or Commission staff outside the context of a docketed proceeding.

(n) "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.

(o) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.

(p) "OCC" means the Colorado Office of Consumer Counsel.

(q) "Party" means "party" as that term is used in rule 1200.

(r) "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.

(s) "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.

(t) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed orders requested by the Commission to be filed by a party in a docketed proceeding.

(u) "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.

(v) "Price list" means a publication showing rates or classifications collected or enforced, or to be collected or enforced. A price list typically does not contain information duplicated in a tariff.

(w) "Public Records Law" means Colorado's statutory provisions found at §§ 24-72-201 et seq., C.R.S.

(x) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, practice, or contract relating to a fare, toll, rental, or charge.

(y) "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.~~

(z) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.

(aa) "RRR" means rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.

(bb) "Tariff" means a publication showing rates or 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, classifications, or service.

(cc) "Third party" means a person who is neither the customer, a regulated entity, or a regulated entity affiliate.

(dd) "Time schedule" means a document submitted to the Commission by a motor vehicle carrier, as defined in § 40-10-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.

(ee) "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.

(ff) "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.

(gg) "Transportation proceeding" means any proceeding before the Commission involving a transportation carrier.

(hh) "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 be 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 Commission staff and shall be responsible for all Commission 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. Commission Staff.

(a) When Commission staff enters an appearance in any docketed proceeding other than an administrative docket, rulemaking, or interpretive rulemaking, Commission staff's entry of appearance shall specify those Commission staff members ~~serving~~ designated to serve as trial advocacy staff in the proceeding. The entry of appearance may ~~designate with specificity~~ list those Commission staff members serving as advisory staff. Any Commission staff, except the Director, 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 1100-1108. 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.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

1100. Confidentiality

These rules apply to all persons filing information with or seeking information from the Commission. They also apply to the Commission, Director or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or for information under the Public Records Law.

(a) All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this rule. All persons accorded access to such confidential information, shall treat such information as constituting trade secret or confidential information and shall neither use nor disclose such information except for the purpose of the proceeding in which such information is obtained and in accordance with this rule.

(I) A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable law, including §§ 24-72-201 et. seq., C.R.S. If a claim of confidentiality is made in violation of this subparagraph (I), the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including a reasonable attorney's fee.

(II) The Commission's acceptance of information pursuant to a claim of confidentiality shall not be construed to be an agreement or ruling by the Commission that the subject information is, in fact, confidential.

(III) To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in these rules the party shall submit a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief, the specific relief requested, and advise all other parties of the request and the subject matter of the material at issue.

(b) This rule establishes a procedure for the expeditious handling of information that a party claims is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

(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 material non-confidential. This notice shall designate the material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential.

(III) The party claiming confidentiality shall, within ten days of the notice referenced in subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged data is deemed to be confidential. The challenging party shall have ten days to respond to the pleading. In the event the claiming party fails to file an appropriate pleading within ten days, the Commission may enter an order that the challenged material may be used in the public record.

(IV) When the Commission receives a pleading asserting confidentiality by the claiming party regarding any items claimed as proprietary the Commission will enter an order resolving the issue.

(V) In the event the Commission rules in response to a pleading that any information is not confidential and should be removed from the protective requirements of this rule or from the protection of the sealed record, the parties, to enable the claiming party to seek a stay or other relief, shall not disclose the information or use it in the public record for seven days.

(VI) In the event the Commission rules that information previously filed in a proceeding is not confidential, the filing party may, by motion submitted within five days of the ruling regarding confidentiality, request that it be permitted to remove the subject information from the record. Pending the ruling on the motion, all persons accorded access to such information shall continue to treat the information as confidential pursuant to this rule.

(VII) In the absence of new information or a change in circumstances, as determined by the Director of the Commission in responding to a request for Commission records under §§ 24-72-201 et seq., C.R.S., a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under §§ 24-72-201 et seq.

(c) Procedure for filing.

(I) 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 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.

(II) In addition to the copies available for public inspection, the filing party shall file under seal an original and 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.

(III) The eight copies filed under seal shall be submitted in separate, sealed envelopes numbered serially. ~~The~~ Unless the Commission orders otherwise, the envelopes shall be no smaller than 9” by 12”, and no larger than 10” by 13”. The following information shall be written on the outside of each sealed envelope:

(A) the caption "CONFIDENTIAL--SUBMITTED IN DOCKET NO.

(B) the name of the filing party;

(C) date of filing;

(D) description of the information (e.g. testimony or exhibits of _____ (name of witness);

(E) 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

(F) if the party chooses to retrieve the information, in accordance with the statement contained in subparagraph (III)(E), the name and phone number of the person who will retrieve such information.

(d) Confidential information, if filed with the Commission, will be sealed by the Director of the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule. This treatment shall prevail unless the confidential information is released from the restrictions of this rule either through agreement of the parties and publication by the filing party, or ,after opportunity for comment, pursuant to order of the Commission or final order of a court having jurisdiction.

(e) Where feasible, confidential information will be marked as such and delivered to counsel for the parties. Where the material is too voluminous to copy and deliver to counsel, the confidential information shall be made available for inspection and review by counsel and experts, as provided for in paragraph (g) of this rule, at a place and time mutually agreed on by the parties, or at the premises of the providing party, or as directed by the Commission. During the inspection, the parties may take notes on the material or request and receive copies of the documents. All notes taken and copies received of such documents shall be treated as constituting trade secret or confidential information in accordance with this rule.

(f) All confidential information made available by a party shall be given solely to the Commission, its staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. With the exception of Staff, any disclosure of such information to a party's experts or advisors must be authorized by that party's counsel, and must be permitted solely for the purpose of the proceeding in which the information is produced. No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed 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. Any member of the Staff of the Commission may have access to any confidential information made available under the terms of this rule. Neither is Staff limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in this rule or other Commission rule or order, members of Staff shall be subject to all other requirements of this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to use information subject to this rule in a proceeding or for a purpose unrelated to the specific proceeding in which the information was obtained.

(g) No access to information under seal shall be allowed until the person, who is either a party or an authorized agent of a party, and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission. The Nondisclosure Agreement form shall require the persons to whom disclosure is to be made (the signatory) to certify in writing that they have read the protective provisions contained in rules 1100 – 1102 and agree to be bound by the terms of such provisions. The agreement shall contain (1) a listing of the associated docket number; (2) the signatory's full name, title, employer or firm, and business address; (3) the name of the party with whom the signatory is associated; (4) a signature and the date of execution of the agreement; and (5) with the exception of Staff, the signature of the associated party's counsel. The agreement shall be delivered to counsel for the filing party and to the Commission at or before the time of review of the documents. Notwithstanding anything in this rule to the contrary, Commission staff need only sign one nondisclosure agreement annually. Such annual nondisclosure agreement shall permit staff access to all confidential material filed or provided to the Commission. The Commission shall maintain in its files the annual nondisclosure agreements signed by staff and shall make such agreements available for public inspection. All persons, including Staff, who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure in accordance with the purposes and intent of this rule.

(h) Where reference to information subject to this rule is made in pleadings, it shall be by citation of title or exhibit number, 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 and submitted to the Commission under seal.

(i) Appeal. Sealed portions of a record in any proceeding may be forwarded under seal to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations.

(j) Retention of documents.

(I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies required by Staff to carry out its regulatory responsibilities, shall be retrieved by the party or person producing them. If the producing party does not retrieve the documents from the Commission within seven days of notification by the Commission, the documents will be shredded or destroyed. The original shall be maintained by the Commission as part of its archival files. Staff shall take all reasonable precautions to maintain the confidentiality of information subject to this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to retain information subject to this rule for a specified time following conclusion of the proceeding in which such information was obtained. All other parties shall, within seven days of the conclusion of the proceeding in which documents and information subject to this rule were produced, return such documents and information to the party producing them.

(II) In the event Staff intends to use confidential information in a subsequent proceeding, it shall notify, in writing, the party who produced such information of such intended use. This notification shall be made at least ten days prior to submission of the subject information in the subsequent proceeding. Staff's use of confidential information in a subsequent proceeding shall be in accordance with the provisions of this rule.

(III) Staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential information permitted to be retained pursuant to this paragraph (j) or order of the Commission.

(k) Parties retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this rule on the grounds of relevancy or materiality.

(l) Acceptance of information claimed to be confidential by any party shall in no way constitute a waiver of the rights of that party to contest any assertion or finding of trade secret, confidentiality, or privilege, to make a request under the Public Records Law, or to appeal any determination of the Commission.

(m) Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this rule, and compliance with these rules shall not be construed to be a waiver of those rights.

1101. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Docket.

(a) A person filing with the Commission, outside of a formal docket, documents or information claimed to be confidential, including information submitted in electronic form, shall utilize the following procedure:

(I) Non-confidential portions of a document may not be filed under seal. If a document contains both confidential and non-confidential information, the filing person shall specifically identify those portions of the subject document which are not confidential and shall submit to the Commission the required number of the document or report without

including the information claimed to be confidential. The cover page of all copies of the material shall be stamped with the following: "NOTICE OF CONFIDENTIALITY. A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL" and shall include a list of the documents filed under seal. This list shall 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. The non-confidential information will be available to the public immediately. The confidential information shall be filed under seal in accordance with the procedures set forth below. The Commission's acceptance of this information under seal shall not be construed to be an agreement by or ruling of the Commission that the subject information is, in fact, confidential.

(II) The filing party shall file, under seal, the required number of copies of the subject confidential information in accordance with the rules of the Commission, if applicable. 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. Each of the copies shall be submitted in a separate, sealed envelope numbered serially. The following information shall be written on the outside of each sealed envelope:

(A) the caption "CONFIDENTIAL--INFORMATION FILED UNDER SEAL."

(B) the name of the filing party;

(C) date of filing;

(D) description of the information;

(E) the filing party's statement as to whether it prefers to retrieve the information when the information is no longer needed by the Commission, or whether the Commission should destroy the information; and

(F) if the party chooses to retrieve the information, in accordance with the statement contained in subparagraph (II)(E) of this paragraph, the name and phone number of the person who will retrieve such information.

(b) Upon notification from the Commission that the confidential information is no longer needed, the filing person shall make arrangements to retrieve the information. If the information is not retrieved by the filing party within nine days after notification, the Commission will dispose of the information. The Commission may retain the original of a filed document where necessary or required by law.

(c) The OCC may submit a written request for access to Commission records claimed to be confidential by the person providing the information. In such instances, the Director of the Commission shall forthwith notify the person who provided the subject information of the OCC's request. The person who provided the subject information may, within seven days of the Director's notification, submit a written objection to disclosure of the information to the OCC. The Director shall disclose the requested information to the OCC if he determines that the request is reasonably related to the OCC's statutory purpose as set forth in §§ 40-6.5-101 et seq.. However, if the person who provided the subject information notifies the Director, in writing submitted within the seven-day period referenced in this paragraph, that judicial action will be commenced to prevent disclosure to the OCC, the Director shall refrain from disclosing the information to the OCC for an additional seven days to allow the person objecting to disclosure to commence judicial action to prevent such disclosure.

(I) In the event the Director denies an OCC request for access to Commission records, the OCC may file a petition for access to such records with the Commission. Such petition shall be served upon the person who provided the subject information to the Commission.

(II) Disclosure of information claimed to be confidential to the OCC shall be conditioned upon its compliance with the provisions of these rules, including the requirement in paragraph (g) of rule 1100 that it take all reasonable precautions to keep the confidential information secure. Employees and representatives of the OCC shall sign a nondisclosure agreement in substantially the same form as required by paragraph (g) of rule 1100, and shall deliver such agreement to the Director of the Commission and the provider of the information claimed to be confidential, prior to review of the records claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under this rule absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.

(III) The OCC shall not utilize the procedure specified in paragraph (c) of this rule as a substitute for discovery in formal dockets before the Commission.

(IV) This paragraph (c) of this rule shall not authorize the OCC to obtain access to Commission Staff workpapers or workproduct.

(V) All information obtained under this rule shall be returned to the Commission within sixty days after the OCC was provided access to such information. However, the OCC may, upon written request approved by the Director or the Commission, retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.

(VI) The OCC's request for access to Commission records shall be considered in as expeditious a manner as possible given other duties of the Director and the Commission. The time periods set forth in §§ 24-72-201 et seq., C.R.S., shall not apply to requests under paragraph (c) of this rule.

(d) Pursuant to § 24-72-201, C.R.S., information filed with the Commission is public record and presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:

(I) Non-confidential portions of annual reports required under the Commission's rules.

(II) Rates, terms and conditions for regulated services.

(III) Tariffs and price lists.

(IV) Advice letters but not necessarily information filed in support of advice letters.

(V) Aggregate data regarding informal consumer complaint information.

(VI) All compliance filings that the Commission has ordered to be filed as public record.

(VII) Insurance filings of transportation carriers.

(VIII) Unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or order to demonstrate compliance or lack of compliance with Commission rules or orders. Individual customer names, addresses and telephone numbers shall be presumed to be confidential.

(IX) To the extent ordered to be filed as public documents by the Commission, service quality performance reports required by the Commission from utilities regulated under an alternative form of regulation or performance based regulation, with the exception of individual customer names, addresses, and telephone numbers.

(X) Safety inspection reports or information filed with the Commission or compiled by Commission staff pursuant to Commission order or rule.

(XI) Any documents or information that have been previously made public.

(e) A person claiming that any portion of one of the documents listed in paragraph (d) of this rule is confidential shall file the information claimed to be confidential in accordance with the procedures set forth in rules 1100 or 1101(a)-(c). In addition, a person claiming that any portion of one of the above listed documents is confidential shall file a written justification for such a claim at the time of filing of the document.

1102. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential.

(a) When any person makes a request to inspect Commission records which another person has claimed are confidential, the Director of the Commission shall determine whether the records are subject to public inspection pursuant to the provisions of §§ 24-72-201, et seq., C.R.S. ("Public Records Law "). The Director shall utilize procedures as are consistent with the provisions of the Public Records Law. In any event, the Director shall give timely notice of the request for inspection of public records to the person who submitted the documents or information subject to the request and who claims that the records are confidential. The Director shall also provide the person who submitted the information to the Commission an opportunity to submit oral or written comments regarding the public records request.

(b) Upon making a determination as to whether the requested records are subject to public inspection, the Director shall forthwith notify the person objecting to disclosure and the person requesting public inspection of Commission records of that decision.

(c) If the Director determines that the Commission's records are subject to public inspection, the Director, upon written request from the person objecting to such public disclosure, shall refrain from disclosure of the records for seven days to allow the person objecting to such disclosure to commence judicial action to prevent public inspection of the subject records.

(d) The Director's determination as to what level of public inspection should be permitted for specific public records submitted to the Commission shall be made on a case-by-case basis and shall be based on the Public Records Law, § 24-72-201 et seq., C.R.S., and all other applicable law.

1103. Personal Information – Collection.

(a) A utility shall 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. A utility may request, but shall not require, a customer's Social Security Number as a prerequisite to evaluating credit worthiness or providing utility service.

(b) Not later than three months after first billing the customer, a utility shall notify the 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 shall 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 shall:

(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 shall 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 third ~~person~~ party, 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 shall explain the customer's rights under this rule. The requestor shall 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 shall be on official letterhead. In the case of a telephone request, the employee of the regulated entity shall 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 shall 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 proposed tariff, price list, or time schedule;

(III) Communications made in educational programs or conferences, or in meetings of an association of regulatory agencies, except for substantive issues involving pending matters; 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, except for substantive issues involving pending matters.

1106. Prohibited Communications – Disclosure.

(a) Any person communicating with the Commission concerning pending docketed proceedings shall state the party with whom he or she is associated and the number and short title of the docketed proceeding.

(b) Any person, party, commissioner, administrative law judge, or member of Commission staff engaging in prohibited communications shall 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 shall 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, in whole or in part;

~~(b) An adverse ruling on a pending issue that is the subject of the communication, if other parties have been prejudiced;~~

(~~c~~b) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication;

(~~d~~c) A public statement of censure by the Commission; or

(~~e~~d) 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 may not be impartial , the party may file a motion to disqualify the commissioner or administrative law judge. Such motion shall 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 denial of the motion. 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.

1109. – 1199. [Reserved].

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.

(d) Persons participating in certain proceedings, e.g., rulemaking proceedings, are not parties. For ease of reference, such persons shall be referred to as "participants". Participants are generally subject to the same rules regulating conduct, such as rules regarding confidentiality or prohibited communications, as are parties. Where the word "party" appears in a Commission rule, it may be proper to infer that the rule also applies to participants.

1201. Attorneys.

(a) A party or an amicus curiae shall 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.;

(III) a partnership, corporation, association, or any other entity in order to complete forms that do not require any knowledge or skill beyond that possessed by the ordinarily experienced and intelligent layman; or

(IV) a partnership, corporation, association, or any other entity in a proceeding involving the adoption of a rule of future effect where no vested rights of liberty or property are at stake.

(c) No attorney shall appear before the Commission in any docketed proceeding 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, email address, facsimile number, and the attorney's registration number.

(d) An attorney of record wishing to withdraw from a proceeding shall file a notice of withdrawal containing a list of all pending hearing dates. Such notice shall be served in accordance with rule 1205, as well as upon the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise such party of its right to object. Objections to withdrawal of an attorney shall 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 pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed on 8 1/2" x 11" white paper, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and stapled or bound. Page numbers shall 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 shall be 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 shall 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 pleading shall identify the proceeding by caption and docket number, and state the title of the pleading, a clear and concise statement of the authority relied upon, the relief sought, and the name, including trade name, if any, of the party or the party's attorney.

(c) No pleading shall be more than 30 pages in length, excluding attachments.. Attachments shall not be used to evade the page limitation in this rule. The cover sheet, table of contents, certificate of mailing, copies of authorities cited, and copies of a decision that may be the subject matter of the ~~filing~~ pleading shall not be included for calculating the length of the ~~filing~~ pleading.

(d) Written testimony is not subject to paragraphs (c) and (e) of this rule. When written testimony is filed, it shall 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 docket number, 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) Each witness' exhibits shall be numbered sequentially beginning with the witness' initials and followed by the number of the exhibit. For example, the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, or rebuttal.

(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 testimony or exhibit is revised, such as "Exhibit 1-2d Rev." All revisions other than those of a minor nature shall be promptly filed with the Commission and served on all parties.

(e) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, email address, facsimile number, and attorney registration number. A pleading 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 pleading or filed testimony 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~~ five days, the Commission may reject the pleading or testimony. The party filing the pleading or testimony 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.

(c) In computing a period of days, the first day is excluded and the last day is included.

1204. Filing.

(a) Unless an order of the Commission or a specific rule provides otherwise:

(I) Except as provided in subparagraph (III) of this paragraph, a person filing an application, petition, or amendment of either shall file an original and ten copies thereof.

(II) Except as provided in subparagraph (III) of this paragraph, a person filing a complaint, answer, motion, intervention, exceptions, RRR, or any other document shall file an original and ~~six~~ seven copies thereof.

(III) If a proceeding has been referred to a hearing commissioner or administrative law judge, a person filing any document shall file an original and four copies thereof.

(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 or other document, shall also serve a copy, including all supporting attachments or exhibits, upon every other party and amicus curiae in the proceeding, except that the Director shall serve a complaint as provided in rule 1302(g). Such service shall include service upon the Commission's designated trial advocacy and advisory staff. ~~No s~~Service need only be made on advisory staff ~~not~~ explicitly listed in trial advocacy staff's pleadings. Except as provided in rule 1205 (b) and rule 1302(g), service shall 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:

(I) the complainant shall serve the complaint upon the respondent; and

(II) all pleadings and motions shall be served on the same day they are filed by electronic mail and either (i) by hand; or (ii) by overnight delivery. Discovery shall be served the same way as pleadings and motions.

(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 shall 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 brief 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 (b)(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 shall 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 mail notice of any application or petition that does not reasonably specify the information required by subparagraph (b)(III) of

this rule. Nothing in paragraph (a) of this rule shall require the Commission to mail notice of any petition for declaratory order or petition for rulemaking, until the Commission in its discretion opens a docket regarding such a petition.

(d) Unless shortened by Commission order or rule, the intervention period for notice mailed 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) A utility other than a railroad or transportation utility filing an application for a tariff change on less than 30 days notice, which tariff change will potentially result in a rate increase, shall:

(I) Within three days after filing the application, publish one notice of the application in at least one newspaper of general circulation, which notice shall be three columns wide and five inches high.

(II) Ensure that newspaper notice contains:

(A) the name and address of the utility;

(B) a statement that the utility has filed with the Colorado Public Utilities Commission an application to change its tariffs on less than 30 days notice;

(C) a statement explaining the classes or types of tariffs proposed to be changed, and explaining which customers will be affected by the proposed change;

(D) the proposed tariff's effective date;

(E) a statement of the purpose of the application, including an explanation of the changes proposed;

(F) a statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission;

(G) a statement that any person may file with the Commission a written objection to the application, or an intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party;

(H) a statement that any person filing a written objection or an intervention must file the objection or intervention at least one day prior to the proposed effective date; and

(I) that any person may attend the hearing, if any, and may make a statement under oath about the proposed tariff, even if such person has not filed a written objection or intervention.

(g) A utility filing an application to make a refund shall, within three days of filing the application, publish notice of the application in a newspaper of general circulation. The notice must include the following information:

(I) The name and address of the utility.

(II) A statement that the utility has filed an application with the Colorado Public Utilities Commission for approval of its proposed refund plan.

(III) A statement summarizing the amount of the refund, the date for making the refund, the date the refund is anticipated to be completed, the manner in which the refund is proposed to be made.

(IV) A statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission.

(V) A statement that any person may file with the Commission a written objection to the application, or in intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party.

(VI) A statement that written objections and interventions must be filed by the time listed in the notice separately given by the Colorado Public Utilities Commission.

(VII) A statement that any person may attend the hearing, if any, and may make a statement under oath about the application, even if such person has not filed a written objection or intervention.

(h) All persons other than the Commission who are required to provide notice shall, 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.

(i) The Commission may order any applicant or petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.

(j) 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.

(k) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.

(l) Unless the Commission orders otherwise, a utility shall be permitted to file new tariffs complying with an order of the Commission or updating adjustment clauses previously approved by the Commission on not less than one day's notice. No additional notice beyond the tariff filing itself shall be required.

1207. Notice – Transportation Carrier 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.

(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. 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 original 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. 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.

1210. – 1299. [Reserved].

PROCEEDINGS

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 and setting for hearing a proposed tariff, price list, or time schedule;

(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; or

(g) A notice of proposed rulemaking issued by the Commission.

1301. Informal ~~c~~Complaints and Mediation.

(a) An informal complaint is an informal, alternative dispute resolution tool used to avoid the costs associated with litigation. Any person may register an informal complaint with Commission staff, orally or in writing, expressing displeasure or dissatisfaction with a regulated entity.

(b) In responding to or managing an informal complaint, Commission staff may:

(I) Explain to the informal complainant the Commission's jurisdiction or lack thereof;

(II) Forward to the informal complainant relevant informational packets or brochures;

(III) Investigate the informal complaint further;

(IV) Refer the informal complaint to the affected regulated entity for a response;

(V) File a formal complaint against the regulated entity, when specifically permitted by statute;

(VI) Request that the Commission issue a formal complaint as permitted by § 40-6-108, C.R.S.;

(VII) Offer mediation;

(VIII) Provide to the informal complainant information about how to file a formal complaint; or

(~~VIII~~IX) Employ any combination of the above responses or techniques, or respond in any other reasonably appropriate manner.

(c) If Commission staff refers an informal complaint to a regulated entity for a response, the regulated entity shall respond in writing within 14 days of the referral, or such lesser period as Commission staff may require. If Commission staff requires a ~~lesser~~ period less than five days to respond, such period shall be reasonable under the circumstances of the informal complaint.

(d) If Commission staff refers the informal complaint for mediation:

(I) Nothing said or offered during mediation or settlement negotiations may be used in any formal complaint proceeding against the person making the statement or offer.

(II) The mediator shall attempt to resolve the informal complaint within ten days of the mediator's receipt of the mediation request, although the informal complainant and regulated entity may consent to additional time.

(e) A person may withdraw an informal complaint ~~or may file a complaint~~ at any time.

1302. Formal Complaints.

(a) Any person may file a formal complaint at any time. A formal complaint shall set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and, if known, how any statute, rule, tariff, price list, time schedule, order, or agreement is alleged to have been violated. In addition, a formal complaint shall 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 shall 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 factors as equity and fairness may require.

(c) The Commission may expedite a formal 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 formal 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) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, or formal complaints regarding interconnection service quality matters, shall be treated as accelerated complaints 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 formal complaint proceedings, in addition to the provisions of this rule, parties shall comply with the following rules, if applicable: 1205(b); 1308(b); 1308(c); 1400; 1405(b); and 1409(b).

(f) In complaint proceedings where discontinuance of service becomes an issue, the Commission may issue an interim order to a regulated entity requiring it to provide 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 an informal complaint to the Commission, and Commission 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 formal complaint, except as provided in rule 1205(b), the Director shall promptly serve the respondent with the complaint, an order to satisfy the complaint or file an answer, and a notice setting the date, time, and location of the hearing. The order shall require the respondent to satisfy the complaint or file its answer within 20 days of service of the order. If the complaint is an accelerated complaint the Commission shall promptly order the respondent to satisfy or answer within ten days. 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 accelerated complaint may not be continued beyond 60 days after the filing of the complaint.

(h) Pursuant to §§ 40-6-108 and 24-4-104(3), C.R.S., the Commission may issue a formal complaint. ~~Prior to the Director filing a complaint, the Director 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 2002.

(II) Electric and steam matters, as provided in rule 3002.

(III) Gas matters, as provided in rule 4002.

(IV) Water matters, as provided in rule 5002.

(V) Transportation carrier matters, as provided in rule 6002.

(VI) Rail matters, as provided in rule 7002.

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

(I) When the Commission or Commission staff evaluates 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 and its attorney, 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 Commission staff or explaining why it believes no further action is required. The applicant's response, if any, shall be filed no later than ten days after Commission staff's written notification was sent. If the applicant does not respond in the time allotted, the Commission may, after the application's notice period has expired, 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 completeness within ten days of Commission 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 on completeness within ~~ten~~ 15 days of ~~Commission staff's objection~~ the expiration of the application's notice period, 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, as provided by law and these rules.

(c) An applicant may at any time file a waiver of the time limits provided in § 40-6-109.5, C.R.S. Such waiver may apply to either the 120-day or 210-day statutory time limit, or both, at the discretion of the applicant. 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 2003.

(b) Electric and steam matters, as provided in rule 3003.

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

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

(e) Transportation carrier matters, as provided in rule 6003.

(f) Rail matters, as provided in rule 7003.

(g) Petition for rulemaking, as provided in rule 1306.

(h) Petition seeking a waiver or variance of any rule, as provided in rule 1003.

(i) 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 tariff, 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. Rejection or Suspension of Proposed Tariffs, Price Lists, or Time Schedules.

(a) Protests.

(I) Any person may file a written protest against a proposed tariff, price list, or time schedule.

(II) If the Commission suspends and sets a proposed tariff, price list or time schedule for hearing, a person who merely registers a protest shall not be permitted to participate as a

party unless such person has intervened as provided in rule 1401 and paragraph (d) of this rule.

(b) The Commission may, pursuant to § 40-6-111(3), reject any proposed tariff, price list, or time schedule that is not submitted in the form required by statute or the Commission's orders or rules.

(c) 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 shall serve the order setting the hearing upon the regulated entity proposing the tariff, price list, or time schedule.

(d) 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.

(e) 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.

(f) 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 fails to issue a decision on the merits within the suspension period

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, as provided in rule 1503; or exceptions, as provided in rule 1505. No response may be filed to an answer, response, notice of intervention as of right, 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. Any person requesting a waiver or shortening of response time shall certify that he or she has conferred (or reasonably attempted to confer) with all other parties and represent whether the parties concur with such a request.

(b) Except as provided by this paragraph (b), a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or answer a complaint. In accelerated complaint proceedings, the respondent shall file a response within ten days after service of the complaint. A response to a complaint shall 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 shall 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 party 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 party 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 shall 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, shall provide new notice consistent with rule 1206. All applicable timelines run from the date of the most recent amendment or supplement, except that a restrictive amendment shall not change applicable timelines.

(b) A respondent may freely amend or supplement its responsive pleading at any time within 20 days of the filing of its original responsive pleading. Thereafter, the respondent shall 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 an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. An advice letter and tariffs may be withdrawn if they have not yet been suspended and set for hearing. A party may withdraw or dismiss an application, petition, tariff, or advice letter after such respective times 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.

1310. – 1399. [Reserved].

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 14 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. A motion for summary judgment may be made in accordance with rule 56 of the Colorado Rules of Civil Procedure. A motion to dismiss may be made in accordance with rule 12 of the Colorado Rules of Civil Procedure.

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 notice of any docketed proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any docketed 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, shall state the basis for the claimed legally protected right that may be affected by the proceeding.

(c) A motion to permissively intervene shall state the grounds relied upon for intervention, the claim or defense for which intervention is sought, including the specific ~~substantial~~ interest that justifies intervention, and the nature and quantity of evidence, then known, that will be presented if intervention is granted. For purposes of this rule, the motion must demonstrate that the subject docket may affect the pecuniary or other tangible interests of the movant (or those it may represent) directly or substantially; subjective interest in a docket is not a sufficient basis to intervene.

(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.

(e) In transportation carrier application proceedings:

(I) A notice of intervention as of right shall include a copy of the motor vehicle carrier's letter of authority, shall show that the motor vehicle carrier's authority is in good standing, shall identify the specific parts of that authority which are in conflict with the application, and shall explain the consequences to the motor vehicle carrier and the public interest if the application is granted.

(II) 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, but may file a motion to permissively intervene.

(III) A person filing a notice of intervention as of right or motion to permissively intervene in temporary authority application proceedings shall, if applicable, include a description of the services the intervenor is ready, willing, and able to provide, or has provided, to the persons or class of persons supporting the application.

(IV) An intervention, whether permissive or as of right, in temporary authority application proceedings shall not constitute an intervention in a corresponding permanent authority application proceedings, unless the intervention explicitly so states.

(V) For purposes of this paragraph, "motor vehicle carrier" means "motor vehicle carrier" as defined in § 40-10-101(4), C.R.S.

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 or unopposed, if a hearing is not requested or required by law and the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing. A person having knowledge of the stated facts shall, under oath, sign a sworn statement attesting to the facts stated in the application or petition and any attachments and/or exhibits. The sworn statement need not be notarized, but it shall 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) A proceeding will not be considered to be contested or opposed, unless an intervention has been filed that contains a clear statement specifying the grounds therefor.

(c) 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 a hearing commissioner or 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 it to make the initial decision.

1405. Discovery and Disclosure of Prefiled Testimony.

(a) Incorporation by reference, exclusions, and discovery and disclosures generally.

(I) Except as provided in subparagraph (II) of this paragraph, the Commission incorporates by reference rules 26-37 of the Colorado Rules of Civil Procedure, as published in the 2004 edition of the Colorado Revised Statutes. No later amendments to or editions of the incorporated material are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief Administrative Law Judge, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.

(II) The following rules of Chapter 4 of the Colorado Rules of Civil Procedure are not incorporated by reference: 26(a)(1)-(4); 26(b)(2), except as provided in paragraph (b) of this rule; the first two sentences of 26(d); 26.2;~~;~~ 30(a)(2)(A); 30(a)(2)(C); ~~33(a);~~ 33(b)(3); the first two sentences of the second paragraph of 34(b); 35; the time requirement of the second sentence of the second paragraph of 36(a); 37(c); and any reference to a case management order. In addition to the foregoing exclusions, any portion of Chapter 4 of the Colorado Rules of Civil Procedure that is inconsistent with any Commission rule shall also be excluded.

(III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.

(b) A party shall serve discovery responses, and objections if any, within ten days of a request, except that, if propounded discovery exceeds the limits set forth in rule 26(b)(2) of the Colorado Rules of Civil Procedure, a party shall serve such discovery responses and objections within 20 days of the 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 discovery dispute. 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 attorney's 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. Resolution of discovery disputes shall take precedence over other matters. Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery.

(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 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 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 subparts, requests for production of documents, or requests for admission.

(IV) Responses to discovery requests, including any objections, shall be served within seven days of receipt of the request. Any motion to compel shall be filed and served within five days of receipt of any objection, and a response to such a motion shall be filed and served within seven days of receipt of the motion.

(d) In application proceedings set for hearing, unless the Commission orders otherwise, a party shall file and serve its testimony and exhibits as follows:

(I) If the applicant files its testimony and exhibits with its application, then an intervenor shall file its testimony and exhibits within 60 days of the filing of the application.

(II) If the applicant does not file its testimony and exhibits with its application, then:

(A) the applicant shall file its testimony and exhibits within 60 days after filing the application, and

(B) an intervenor shall file its testimony and exhibits within 45 days of the filing of the applicant's testimony and exhibits.

(e) In transportation carrier application proceedings, notwithstanding anything in paragraphs (a), (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 to each party, including all discrete subparts, requests for production of documents, or requests for admission.

(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 rate proceedings set for hearing, the respondent shall file its testimony and exhibits within 30 days of the order setting the matter for hearing. An intervenor shall file its testimony and exhibits within 75 days of the order setting the matter for hearing.

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 Commission trial advocacy staff, a respondent may enter into a consent stipulation with Commission trial advocacy staff. To enter into a consent stipulation, a respondent shall 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.

The Commission encourages settlement of contested proceedings. Any settlement agreement shall 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. The Commission may hold a hearing on the settlement agreement prior to issuing its decision. An agreement that is disapproved shall be privileged and inadmissible as evidence in any Commission proceeding.

1409. Conferences.

(a) After the close of the intervention period, 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 shall 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.

1410. – 1499. [Reserved].

HEARINGS, ORDERS, AND POST-HEARING PROCEDURES

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 hearing 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 to the administrative law judge or hearing commissioner, 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, and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any fact to be so noticed shall be specified in the record, and copies of all documents relating thereto shall 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) 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.

(b) A presiding officer may certify an interim order as immediately appealable via exceptions.

(c) 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.

(d) A party aggrieved by an interim order may file a written motion with the presiding officer entering the order to set aside, modify, or stay the interim order.

1503. Briefs or Statements of Position.

The Commission may at any time during a proceeding order the filing of written briefs or statements of position.

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., and all information set out in § 40-6-113(6), C.R.S.

(b) The Commission may accept comments from the public concerning any proceeding, 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 shall show that the transcript request was filed within seven days of the mailed date of the recommended decision. Parties may file responses to exceptions within 14 days of the service of the exceptions.

(b) A party wishing to file exceptions shall request a transcript within seven days of the mailed date of the recommended decision, unless the party's exceptions dispute only issues of law. The requesting party shall 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 shall 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 by operation of law. ~~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, shall 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 shall show that the transcript request was filed within seven days of the date on which the Commission decision was mailed.

(c) 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 §§ 24-4-106(4), 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.