Decision No. R12-1466

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-500ALL

IN THE MATTER OF THE PROPOSED RULES OF PRACTICE AND PROCEDURE, 4 CODE OF COLORADO REGULATIONS 723-1.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE G. HARRIS ADAMS AMENDING RULES

Mailed Date: December 21, 2012

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I. STATEMENT

1. On May 15, 2012, the Public Utilities Commission issued the Notice of Proposed Rulemaking that commenced this docket. See Decision No. C12-0511. The Commission referred the instant rulemaking proceeding to an administrative law judge (ALJ) and scheduled the first hearing for August 6, 2012 and August 7, 2012. The purpose of this proceeding is to update procedural efficiency; serve the public interest; and make the rules more effective and elegant. The amended rules should provide for clarity, necessity and conciseness and those rules found to be duplicative, inconsistent or unnecessarily burdensome should be repealed.

2. Throughout the proceeding, written comments were filed with the Commission by Atmos Energy Corp; Black Hills/Colorado Electric Utility Company, L.P., and Black Hills Colorado Gas Utility Company, L.P., doing business as Black Hills Energy (Black Hills); BNSF Railway Company; the City and County of Denver; the City of Boulder; the City of Westminster; Colorado Natural Gas, Inc.; Climax Molybdenum Company; the Colorado Office of Consumer Counsel (OCC); the Colorado Solar Energy Industries Association; the Colorado Telecommunications Association, Inc.; Encana Oil & Gas (USA) Inc.; Public Service Company of Colorado (Public Service); Qwest Corporation d.b.a. CenturyLink QC; the Regional Transportation District; Rocky Mountain Natural Gas LLC; Source Gas Distribution, LLC; the Tri-State Generation & Transmission Association, Inc.; and the Union Pacific Railroad Company.

3. Oral and written comments were provided during the scheduled hearings. The ALJ also announced continued hearings to further consider the proposed rules. An additional hearing date of August 29, 2012 was announced during the hearing held on August 6, 2012 and on August 7, 2012, as memorialized in Decision No. R12-0915-I.

4. Oral comments were provided during the next scheduled hearing. The ALJ prepared and distributed redlined modifications to the rules attached to the NOPR (Hearing Exhibit 3) and solicited comment on additional issues. Written comments were requested to be filed by September 17, 2012 and a continued hearing was announced for September 25, 2012, as memorialized in Decision No. R12-1023-I.

5. Oral comments were provided during the next scheduled hearing and a continued hearing was announced for October 26, 2012, as memorialized in Decision No. R12-1212-I. The ALJ also referenced and made available additional redlined modifications to Hearing Exhibit 3 (Hearing Exhibit 4) and solicited additional comment.

6. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDING, DISCUSSION, AND CONCLUSION

7. In Decision No. C12-0511, the Commission described the nature and purpose of proposed modifications. This Recommended Decision will generally focus upon comments and other matters that arose during the course of the proceeding.

8. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended

for adoption. Any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached are not adopted.

9. The undersigned ALJ has reviewed the record in this proceeding to date, including written and oral comments.

10. The proposed rules attached to Decision No. C12-0511 in legislative (i.e., strikeout/underline) format and in final format, were made available through the Commission's Electronic Filings (E-Filings) system. Additionally, comments were solicited through the course of the proceeding regarding other proposed considerations in legislative (i.e., strikeout/underline) format (Hearing Exhibits 3 and 4).

A. Notice

11. Notice of the scope of this proceeding, particularly as it may affect rule 1401, has been challenged. Notice of a proposed rule-making must "provide a description of the subjects and issues involved." § 24-4-103(3)(a), C.R.S.

12. By Decision No. C12-0511, the Commission provided notice of the extraordinary scope of this proceeding to consider modifications to all aspects of the Commission Rules of Practice and Procedure. The notice clearly informed the public that amendments were proposed throughout the existing rules. Interested persons were invited to suggest other changes that will make the subject rules more efficient, effective, and elegant.

13. Several orders have issued in this proceeding and matters have been addressed throughout the public hearings noticed in this proceeding. Additional comment has been sought and addressed regarding alternate versions of proposals.

14. It is found that notice provided in this proceeding meets the requirements of the State Administrative Procedures Act.

B. Discussion of Comments

1. Rule 1001

15. Comment suggests changing all references from "proceeding" to "docket" throughout the rules for consistency. In the development of the Commission's E-Filings System the use of the more generic term, proceeding, was adopted (particularly to encompass advice letter filings). While the undersigned appreciates the commenter's intent to make the references consistent, the term "docket" will be abandoned and the term "proceeding" will be adopted throughout the rules. The chosen term is also consistent with use of proceeding in the State Administrative Procedures Act, defined in §24-4-102(13).

2. Rule 1002

16. Comment suggesting that a general reference to Commission decisions of all types is reasonable and will be adopted. Commission orders are issued in decisions and all decisions are referenced by their decision number. This terminology will be adopted throughout the rules for consistency and clarity.

3. Rule 1003

17. Comment suggests clarifications regarding the time period referenced for effectiveness of a waiver or variance. First, the proposal will be modified to clarify that the 40 day period begins from filing of the request for waiver or variance and ends with the proposed effective date of the wavier or variance. Further, the proposal to require petitioner to address notice periods in rule 1206(a) will be adopted. This requirement ties and clarifies cause required to justify expedited treatment of the petition. Somewhat of a "lesser included offense," the proposal establishes that a petition requiring such expedited treatment must necessarily also provide sufficient cause to modify notice and intervention periods. While failure to comply with

the notice requirement may not result in denial of the request, the rule will make clear that the notice period in rule 1206(a) will otherwise apply to the request.

4. Rule 1004

18. Several commenters advocate defining all types of Commission proceedings. The proposal is reasonable and will be adopted. However, the undersigned is concerned that this is easier said than done. As recognized by the Supreme Court,

> While these APA provisions suggest that agency rule-making functions are clearly distinct from agency adjudicative functions, the experience of agency process has proved to be to the contrary. Agency proceedings often require application of both rule-making and adjudicatory authority because of the nature of the subject matter, the issues to be resolved, or the interests of parties or intervenors. In general, agency proceedings that primarily seek to or in effect determine policies or standards of general applicability are deemed rule-making proceedings. Agency proceedings which affect a specific party and resolve particular issues of disputed fact by applying previously determined rules or policies to the circumstances of the case are deemed adjudicatory proceedings. The determination of whether a particular proceeding constitutes rule-making requires careful analysis of the actual conduct and effect of the proceedings as well as a determination of the purposes for which it was formally instituted.
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> Colorado Office of Consumer Counsel v. Mountain States Tel. & Tel. Co., 816 P.2d 278, 284 (Colo. 1991)(citations omitted).

19. The breadth of Commission jurisdiction creates a challenge to precisely categorize all Commission proceedings. Thus, the adopted definition for each type of proceeding will be modified to accommodate Commission designation as to the type(s) of proceeding, as needed. Notably, the adopted rule does not prohibit the Commission from designating a proceeding to be in the nature of multiple types of proceedings based upon facts and circumstances. The effect thereof can best be addressed by decision on a case by case basis.

5. Rule 1004(e)

20. Several comments address the definition and application of the term Commission advisor. The rule adopted will be addressed here as well as in the discussion of rule 1007 – in the context of other comments. Generally, it should be understood that all Commission staff is available to advise the Commission in every proceeding, unless disqualified (e.g., prior prohibited ex-parte communications). This is the first of many instances addressed herein where proposals must be carefully considered in light of the applicability of these rules across the Commission's jurisdiction. More specific comments regarding Commission staff designation will be address in the discussion of Rules 1007 and 1302.

21. Comment recognizes that rule 1007 introduces the designation of trial staff, rather than rule 1004. Trial staff is juxtaposed against advisory staff, which is defined in rule 1004. A definition of trial staff and advisory staff will be incorporated in rule 1004 for consistency.

22. The term Commission advisory staff will be modified to advisory staff, as applied in rule 1007. The only other reference to the defined term Commission advisor will be modified accordingly. The definition will also be modified to make clear that rule 1007 applies only to Commission staff in adjudicatory proceedings.

6. Rule 1004(l) - formerly

23. Commenters suggest retaining definition of a "docketed proceeding," in part, to identify a universal point in time identifying the commencement of a Commission proceeding. Reference to docket has been abandoned in favor of the general term proceeding. Retention is of a definition of proceeding is not necessary in light of the common meaning of the term and each type of proceeding now being defined.

7. Rule 1004(n) - formerly

24. Some comment concerns elimination of the definition of ex parte communication in rule 1004. This modification is not substantive. The content is integrated in rule 1105.

8. Rule 1004(t)

25. Comment proposed modifying the proposed rule in recognition that the Denver Post is currently the only newspaper in Colorado having a paid Colorado circulation of at least 100,000. Without regard to accuracy of the comment, the proposal will not be adopted to avoid the potential for rulemaking in the event the paper might change its name or other unforeseen circumstances occur.

9. Rule 1004(x)

26. Extensive comment addressed customer data under the Commission's electric rules with personal information defined in rule 1004(x) and applied in rule 1104. Those comments will be discussed and addressed in the context of rule 1104.

10. Rule 1004(y) - formerly

27. The definition of Public Records Law will be deleted because it is unnecessary. Rather than defining Public Records Law as the Colorado Open Records Act (CORA), the act will be referred to directly in context.

11. Rule 1004(ee)

28. Comment was submitted regarding the newly proposed definition of regulated intrastate carrier. Consistent with comments filed, the new definition was not intended to include those exempted from regulation under § 40-10.1-105, C.R.S. The proposed modification will be adopted.

12. Rule 1004(hh)

29. A definition of "signed" will be adopted to clarify and memorialize that, in addition to original signatures, the Commission has agreed to accept electronic filings through the E-Filings System that are electronically signed through the electronic filing process incorporated into that system.

13. Rule 1007

30. Comment proposes specifying that Commission staff designated as trial staff in one proceeding cannot subsequently be designated as advisory staff in a proceeding later consolidated with the original proceeding. The requested modification is unnecessary. Two proceedings, once consolidated, become one proceeding. As to the consolidated proceeding, the rule will operate as intended. If trial staff is a party to one proceeding that is consolidated with a second proceeding, staff remains a party to the consolidated proceeding and designated trial staff would then be designated as trial staff for the consolidated proceeding. The proposal to address proceedings opened "concurrently" will not be adopted because it is overly broad with potential for unanticipated consequences.

31. Extensive comments supporting rule 1007(c) are appreciated. Proposed modifications to the rule are largely intended for clarification and to memorialize current practices. It is noteworthy that there is potential for individual members of the Commission's staff not to be eligible to participate as advisory staff where prohibited communications have occurred as described in rule 1106. In practice and as intended, supervisors within the Commission manage staff members with these limitations in mind. However, under the scope of defined terms, it is permissible for different members of

Commission staff to participate as advisory and trial staff, respectively. The "China wall" is maintained between individual staff members to protect the integrity of differing roles.

32. Significant comment regarding rule 1007 suggests effectively expanding the scope of prohibited communications, particularly in instances of lengthy railroad projects as well as energy proceedings that are serial in nature. Comment points to very few instances that occurred to support concern, as opposed to possible or theoretical concerns.

33. Regarding railroad proceedings, comments address the limited number of Commission staff and the roles required to be performed. Diagnostic teams are utilized to "evaluate the crossing as to its deficiencies and develop judgmental consensus as to the recommended improvements." Hearing Exhibit 1 at 2, *citing* the Railroad-Highway Grade Crossing Handbook issued by the Federal Highway Administration. The diagnostic team is comprised of knowledgeable representatives of the parties in interest in a railroad-highway crossing. The Commission is an interested party representing the public interest in such matters. Best practices include a Commission staff representative playing an active role recommending appropriate safety measures to be implemented at a given crossing.

34. The undersigned, from experience, judged proceedings where all Commission staff members having railroad expertise were designated as trail staff. The Commission could not benefit from the expertise of advisory staff in understanding and analyzing the highly technical and complex evidence presented.

35. In other subject areas, concerns were raised where proceedings are serial in nature. In one proceeding, an individual staff member could theoretically serve as trial staff, appropriately participating in aspects such as discovery and settlement negotiations.

In a subsequent proceeding, concerns were raised with the same individuals serving in an advisory role.

36. Commission rules must be applied in the context of these considerations. To date, the limited number of Commission staff having railroad expertise has resulted in one person participating in the diagnostic process, then leaving the parties to develop positions that are presented substantially later in an application before the Commission. A diagnostic team might meet years in advance of an application being filed with the Commission. Therefore, the same staff member may serve as advisory staff in the eventual Commission proceeding. Also, issues raised as to an individual crossing may have broad applicability to other crossings. Comments demonstrate reasonable concern that the different functions served by Commission staff at different times have chilled Commission participation in the diagnostic process. As a result, commenters suggest that the scope and extent of litigation increases.

37. The Supreme Court applied the State Administrative Act to Commission proceedings in Colorado Energy Advocacy Office v. Public Service Co.: "an agency may not base its decision on ex parte information of which the parties are not given notice and an opportunity to cross-examine or rebut. Decisions in adjudicatory proceedings must be made on a public record to assure that a reviewing court will be able to determine whether there was sufficient evidence to support the agency decision." Colorado Energy Advocacy Office v. Public Service Co., 704 P.2d 298, 303 (Colo. 1985)(citations omitted).

38. Ex parte limitations apply to decision makers for the protection and benefit of these participating in Commission hearings. If an advisor is privy to factual information outside of the record upon which a decision is based concern is limited to appearance so long as prohibited ex parte communications do not occur.

39. While it might be preferable to assure litigants that no Commission staff member would ever advise on matters related to subjects addressed when designated as trial staff, it simply is not practical with limited numbers of staff and in light of the narrow scope of Commission proceedings.

40. Understandable concerns have been raised. Despite solicitation of alternative proposals, the undersigned found no practical solution sufficient to overcome comment concern as well as the Commission's necessary assurance of available Commission advisors. Were advocated positions adopted, the Commission would likely soon be left without eligible advisors in subject matters where an absolute structural separation cannot be maintained.

41. In managing day to day affairs, the Commission takes great care to create a comprehensive record upon which decisions are made as well as to protect against the appearance of impropriety. It will continue to do so. The substantive status quo shall remain.

14. Standards of Conduct , Rules 1100 - 1199

42. Comment proposes moving the first paragraph of rule 1100 to clarify applicability of the statement to a scope broader than rule 1100. The proposal will be adopted.

43. Rule 1100(a) currently introduces available limitations upon use of information; however, the issue was more thoroughly addressed in rule 1100(k). Further, exceptions provided in rule 1100(k) contradicted the general statement in rule 1100(a). Thus, for clarification and consistency, the statement regarding limited use in subsection (a)(I) (e.g., general references) will be stricken. This modification of subsection (a)(I) does not affect the permissible use of information made available pursuant to this rule.

44. Modifications to the Standards of Conduct will be adopted for consistent application in all contexts. Comments addressing applicability of provisions affecting

information in and out of proceedings highlight need for modifications. Due to the current breadth of defined Commission proceedings, it is difficult, but not impossible, to provide examples of confidential information provided outside of a proceeding.

45. The rules will be reorganized such that rule 1100 will address provisions applicable to all information subject to claims of confidentiality. Rule 1101 will be modified to address unique provisions applicable in proceeding. Rule 1102 will address those provisions applicable outside of a proceeding.

46. The rules also establish presumptions regarding information publicly available for inspection based upon application of CORA to Commission proceedings. The unilateral confidentiality claim of a filer (e.g., without Commission determination) is found inadequate to overcome the statutory presumption that information is publicly available. Thus, the rules will no longer permit presumptively public information to be filed subject to a claim of confidentiality. If a person providing information contends the Standards of Conduct otherwise provide inadequate protection, the appropriate relief will be to demonstrate highly confidential protections are necessary to overcome the statutory presumption.

47. Some comment speculated that new provisions regarding treatment of information presumed to be publicly available related to the prior rule 1100(e). That is not the case. Rather, the new rule is intended to decrease the number of improper claims of confidentiality and fulfill statutory responsibilities under CORA. The undersigned agrees that a bare claim of confidentiality is the antithesis presumption of public information. It is illogical that information not be publicly available, despite a presumption that it should be, without a Commission determination.

48. The Commission has a responsibility to the public to ensure transparency of process to the extent feasible and to comply with CORA. Information filed in proceedings subject to confidentiality claims without full compliance with required procedures undermines this effort. Too often overly broad confidentiality claims result from the failure to disclose public portions of documents containing confidential information. In order to provide appropriate protection, while ensuring that appropriate information is open for public inspection, filing procedures will be modified to permit administrative rejection of filings including information provided subject to a claim of confidentiality where a publicly-available filing is not made (e.g., excluding the information claimed to be confidential or highly confidential). See rule 1101(a)(I).

49. Comment suggests that a filer should be able to file a motion requesting confidential protection of information otherwise presumed to be publicly available. However, this is inconsistent with the structure of the rules. No motion is necessary to protect confidential information under Commission rules. Once claimed confidential, the treatment prevails until challenged. If never challenged, information will not be publicly available.

50. Where sufficient grounds can be shown to overcome the statutory presumption of availability, highly confidential protections may be ordered to accommodate extraordinary circumstances. The effect of the adopted rule is to require a Commission determination, upon motion, before information presumed to be available will not in fact be available to the public.

51. Comment questions treatment of confidential information in response to a CORA request that follows the conclusion of a proceeding. Rule 1100(f)(III) provides that a Commission determination of confidentiality will prevail in absence of new information or a change in circumstances. No further modification will be adopted.

15. Rule 1100

52. Comment suggests retention of protections specifically referencing trade secret. The Commission rule governs the use and protection of information submitted subject to the Standards of Conduct. While the definition of trade secret, as provided in the Uniform Trade Secrets Act, may be relevant in determining confidential protections, trade secrets are just one type of information that may be claimed to be confidential. If information is filed subject to a claim that it is a confidential trade secret, and the filer believes the protection afforded confidential information is inadequate to protect such information, then a process is available to request extraordinary protections.

53. Rule 1100(m)(VI) specifies that time periods set forth in CORA are not applicable to requests pursuant to Commission rule. The OCC properly points out that the Commission rule cannot modify statute; however, that is not what the rule does. A request submitted pursuant to CORA would be governed pursuant thereto. Rule 1101(c) effectuates a process for the OCC to obtain information pursuant to Sec. 40-6.5-106 C.R.S. The OCC has not shown that CORA requests must be handled through the identical process. The proposed rule will be adopted.

54. Proposed rule 1100(d) clarifies that the Commission may *sua sponte* initiate an inquiry as to the confidentiality of information provided subject to claim of confidentiality. Comment concerns whether the proposed reference to Commission action is intended to modify procedures to party challenges on a case-by-case basis. It does not. Further, all remaining subparts would not directly apply to a Commission inquiry (i.e., conferral among parties). To address the concern, and clarify the proposal, the Commission-initiated procedural has been moved to its own paragraph, as will those portions applicable to confidentiality determinations by either process.

55. Comments request further clarification of the purpose for *sua sponte* inquiry into the confidentiality claims. Briefly, there is a presumption that Commission records are open to the public. Where the Commission questions confidentiality of information provided subject to a confidentiality claim, but no party challenges the claim, the adopted modification establishes a procedure in rule to appropriately address the claim. Also, the Commission incurs administrative burdens in the management and use of confidential and highly information. Where there is no longer a need to maintain confidentiality of information, such burdens might be lessened or avoided.

56. Comment that the process to challenge a claim of confidentiality should apply to claims regarding highly confidential treatment will not be adopted. Unlike a claim of confidentiality, highly confidential treatment is granted by the Commission upon motion. Thus, a party challenging such treatment should respond to the motion, or seek modification of the decision granting highly confidential protections. In any event, the process in rule 1101(f) is not applicable to highly confidential information.

57. Several comments were received regarding continued use of colored paper for filing of confidential information. The proposed modification was intended to improve quality of imaging of information claimed to be confidential. There is broad support for the use of a lighter color, but still requiring use of a color. Comments convincingly contend that use of colored paper lessens likelihood of inadvertent disclosure. Continuation of a light color strikes a reasonable balance and will improve imaging quality.

16. Rule 1100(g)

58. The OCC proposes that service of an executed nondisclosure agreement upon a party that has filed information subject to a claim of confidentiality should satisfy written notice

requirements of rule 1100(g). This proposal is unchallenged, reasonable, and will be adopted. The very purpose of filing a nondisclosure agreement in a proceeding to which the OCC is a party is to access such information.

17. Rule 1101

59. Significant comment was submitted regarding the proposed requirement of rule 1101(b) to file information for which highly confidential protections are sought. Commenters address the impracticality or impossibility of always complying with the proposed requirement. The Commission has not required filing of the specific information in the past. Information may not be filed in any event (i.e., disclosed in discovery), may not yet exist at the time in interest, or may not yet be available. So long as the subject information sought to be protected can be adequately represented and described, current requirements adequately balance affected interests. Based thereupon the current ability to seek protection based upon a description of information sought to be protected will be maintained, upon the required showing.

60. Comment suggests that verification of factual information supporting a request for highly confidential treatment should be required. Reply comments contend such a requirement has not been shown to be necessary and that the lack of requirement has never caused a problem. The undersigned agrees with the reply comments and the proposal will not be adopted. It is noted that the modification is proposed to the affidavit requirement regarding access to information; however, there is no reason to believe that the custodian of records executing such an affidavit would necessarily have knowledge of the basis upon which confidentiality is determined. Thus, the proposal may well require preparation of a separate affidavit, further increasing burdens without demonstrable benefits. It is also noted that rule 1202(d) applies to the request for relief, minimizing concerns leading to the request for further modification.

61. Another comment suggests limiting the affidavit requirement in rule 1101(b)(VI) regarding access to subject information to only third parties. This comment is rejected as the manner in which information has been protected within an organization may be a relevant consideration in determining appropriate protections.

62. Some comment proposes modification of processes regarding document retention to permit destruction of confidential information, at the **filer's** discretion, rather than requiring retrieval in all circumstances. This proposal is reasonable and will be adopted.

63. Comment suggests that efficiency improves by requiring destruction of confidential information at the conclusion of a proceeding, rather than affording an option to require return of the information in rule 1101(a) and (l). Comments were mixed on the topic. In deference to those controlling information, the filer's preference will prevail. Proposals to the contrary will not be adopted. Confidential information is made available subject to protections. Should a party find the obligation to return the information too burdensome, they need not file a non-disclosure agreement to access the information.

64. Comment also addressed the possibility of confidential documents containing privileged work product (i.e., notes) at the time information is due for return. In response, comment suggested that counsel making notes must make those notes elsewhere. Because the preference of the one providing confidential information is known before the information is made available to anyone else, it is reasonable that appropriate processes be implemented to preserve the confidential information for return.

65. Commenters object to the striking of language requiring internal procedures protecting confidential information. Striking this language was not proposed as a substantive change affecting current processes. It is reasonable to retain the provision. See rule 1101(l)(IV).

18. Rule 1103

66. Comment suggests expanding rule 1103 to address requests for public inspection of highly confidential information. In the past, references to "confidential" have had different meanings based upon context (i.e., in some instances it is a general reference to confidential treatment while in others it references rule 1100 protections without extraordinary protections). For consistency and clarity, the proposed modifications will be adopted. If the Director determines, in response to a request, that new information or a change in circumstance requires disclosure under CORA, the modification will ensure that notice and an opportunity to comment or take action is provided to the original filer.

19. Rule 1104(b)

67. Comments suggest a qualification upon notice regarding availability of personal information required by rule 1104(b). If a company does not retain personal information, there is no benefit to notifying customers of the opportunity to request a copy of the non-existent data. Without making any determination as to the feasibility of providing service without collecting personal information, the proposed qualification will be adopted.

20. Rule 1105

68. Commission rules currently prohibit disclosure of personal information by a utility without prior authorization of the customer, except as specifically permitted otherwise.

69. The Commission must be careful in analogizing essential utility service to other business arrangements generally subject to the Colorado Consumer Protection Act. When a customer generally selects a business with whom to deal among competitive alternatives, the customer chooses to entrust the business with their personal information. Illustratively, a customer might compare the protections of personal information (e.g., privacy policies)

among competitors or choose not to purchase goods or services. Particularly as to utility service, such considerations are not always permitted. Often, the only alternative to providing information is to not have utility service. This is a particularly unacceptable alternative for essential public utility service. Thus, the information provided to obtain service warrants heightened consumer protections when compared to information voluntarily provided to a business chosen by the customer. Only within this foundational context can one compare personal information in public utility hands.

70. Public Service reports social engineering attempts to use email addresses or telephone numbers to reach customers for improper purposes. Analogous to social engineering, are the concepts of predictive analytics and big data. Utilizing multiple sources of information, additional data or information can be derived. A recent example of the application of predictive analytics was reported where a large retailer collected vast amounts of data on customers from multiple internal and external sources. According to the report, a retailer was able to determine that a given customer was pregnant.

71. In the August 2012 issue of PCWorld magazine, an article by Mark Sullivan analyzes "the booming market for your online identity." The article includes quotations of different interests in that marketplace. Among others, Sara Downey, an attorney for online privacy products firm Abine is quoted: "The widespread and largely unregulated collection, sharing, sale, and storage of massive amounts of consumer data are a threat to all of us." On the other hand, Kaliya Hamlin, of Personal Data Ecosystem Consortium is quoted: "We're saying there's a tremendous opportunity for businesses to tap into all that data by doing it in a way that involves and empowers the consumer." A balance must be struck as to use and

protection of customer information. The Commission continues to foster customer use of available information based upon their informed consent.

72. While referenced practices are far beyond the Commission's jurisdiction, the availability of personal information provided to obtain and use service should be protected from disclosure where not otherwise required by law or by the customer's informed consent. The Commission has balanced customer privacy interests with customer interest in permitting sharing of utility information.

(1) Proposed Modifications

73. Substantial comment was submitted regarding the proposal to modify the definition of personal information. Public Service proposes to limit the scope of the definition of personal information by incorporating the definition in the Colorado Consumer Protection Act, unless otherwise required by Commission rule or Colorado law. To accomplish this, they also propose to define account data, a newly established category of information.

74. Public Service maintains that the customer should be the sole source of personal information within the scope of the Colorado Consumer Protection Act because the risk of improper disclosure of such information is greatest. Incorporating the definition of personal information from the Act is argued for consistency because the Act applies to the operation of a public utility. Public Service expresses general concern regarding the cost and burden of responding to demands of legal process requesting personal information and contends that the associated risks justify making the customer the most appropriate source for information, rather than the utility. It is notable that the examples offered have no relation to Commission proceedings.

75. At heart, Public Service proposes a discrete three tier system of information based upon the risk from unintended disclosure: personal information, account data and customer data. However, the protections for account data are separate but very similar to those for customer data defined in the electric rules. Informed customer consent would control, like for customer data. Public Service contends this approach permits interested customers to share information with third parties providing energy efficiency programs or products.

76. Other comments question the adequacy of only defining personal information as the current definition in the Colorado Consumer Protection Act. Illustratively, the definition does not protect customers that are nonresidents of Colorado.

77. The undersigned has several concerns with the proposed modifications. The purpose of the definition appearing in both places differs. The provision was drafted to address security breaches of those entrusted with defined information, as opposed to authorized disclosure of information. The emphasis of comments applying the statutory definition in §6-1-716(d), C.R.S. address the effect of improper disclosure without consent. That is not the complete focus of Commission rules regarding personal information in the hands of a utility.

78. The Commission has acted to permit customers to make use of information regarding usage of public utilities while maintaining appropriate consumer protections. Mere incorporation may lead to unintended consequences because the definition was not drafted in the context of Public Utility Law. Also, §6-1-716 C.R.S. only addresses unauthorized acquisition of limited protected information. Simply put, if a utility posts a customer's social security number on a billboard at that customer's request, §6-1-716(d), C.R.S. has no applicability. It is also notable that only a combination of specified elements in §6-1-716(d) C.R.S. is protected. Where individual elements may be obtained from independent sources,

the intent of the law may be thwarted. While it is undoubtedly true that many states afford similar protections, the undersigned has not been shown uniform applicability to present circumstances. The Commission has broad discretion and authority pursuant to the Colorado Constitution and Public Utility Law. Short of incorporation, a similar provision might be crafted to the extent appropriate. It is preferable to consider the terms in the context of the Commission's jurisdiction.

79. Public Service attempts to differentiate customer personal information that a third party should obtain from the customer directly and that which should appropriately be obtained from the utility. This foundational principle is appealing and protections of personal information will continue.

80. The need to establish a new category of account data has not been shown. While some of the concerns raised are clearly reasonable, insufficient showing has been made to so dramatically change the structure of the Commission's regulation. Adoption of the new category would also require a new redundant process to permit customers to authorize release of the new category of information upon informed consent. It is unlikely that the benefits of establishing a new category would exceed the burdens and potential customer confusion. Conceptually, the undersigned prefers customer release of information upon informed consent to be managed as customer data.

81. The issue regarding personal information is what level of protection should be imposed upon the release of that information in absence of the customer's authorization and consent. At what level should the Commission state that a public utility cannot provide or utilize information about a customer, without consent.

82. Rather than create a new category of information, it was initially intended to clarify the rules by eliminating any potential overlap between personal data and the concept of customer data. In Hearing Exhibit 4, an additive definition of customer data was intended to apply across the Commission's jurisdiction. The approach also narrowed the definition of personal information with a corresponding increase in customer data.

83. Testing hypotheticals against Hearing Exhibit 4 convinces the undersigned that resolving the potential for overlap is unnecessary and likely cannot be eliminated with certainty. Illustratively, the current rules prohibit utilities from making marketing lists of customer names and mailing addresses or customer names and e-mail addresses available for solicitation. Applying the approach in Hearing Exhibit 4, one is left with the impractical result that the name and address of the utility customer on their bill may, or may not, be personal information depending upon whether the customer's name is listed in the telephone directory or is otherwise easily available to the public. Another potential for unavoidable overlap would be a utility using the customer Social Security number as an account number (assuming otherwise permissible). In that scenario, the social security number would be customer data (as an account number) and personal information (as a Social Security number).

84. Further comment made clear that the attempt failed to achieve the desired goal. Based upon the readily available hypothetical overlaps in customer data and personal information in the adopted rule, the stated effort will be abandoned. The definition and protection of personal information will largely remain unaffected. The definition of customer data will not be adopted in the Rules of Practice and Procedure. Rather, the concept will be

developed in subject matter rules based upon unique facts and circumstances applicable.[1] The adopted rules will be modified to reflect that customer data is not defined in the Rules of Practice and Procedure.

85. For information with the scope of the definitions of both personal information and customer data, the customer will be will be able to authorize use of the information as customer data, while the utility must otherwise protect the information as personal information. Customer consent trumps the utility's obligation to the extent authorized. This is also consistent with the definition and consent process for customer data where the public utility has no responsibility for the use of the information after it is disclosed in accordance with the customer's authorization. Implementation of the recommended approach will require modification of the current definition of customer data in the electric rules. Rule 1105(a) will acknowledge that information within the scope of the definition of personal information may ultimately be released in accordance with other Commission rules (e.g., as customer data).

86. Comment proposes expanding Commission-provided forms referenced in rule 1104(c) to encompass the disclosure of personal information upon customer consent. As addressed more thoroughly in the context of the definition of personal information and customer data as well as the discussion of the proposed account data definition, the proposal will not be incorporated. While customers may consent to the disclosure of customer data to others, the utility is no longer the best source as to personal information. The consent process will not be expanded to encompass personal information.

[1] Illustratively, customer data of an electric customer includes information collected from an electric meter. This would have no applicability to customer data of a gas customer.

(2) Real Estate Exception

87. Several commenters address the current "real estate exception" permitting disclosure of historical energy usage information about a requested service address. Reasonable concerns are raised regarding the ability to benchmark buildings and the burden of, and ability to, verify the eligibility of those requesting information (e.g., interest in purchasing a property). Proposals are made to limit the scope of access based upon need. However, other comments address the impractical or burdensome situation utilities would be placed to verify proposed limitations. Public Service generally contends that the release of third party information should be only upon informed consent of the customer. However, this has been a long-standing exception available to those involved in real estate transactions, lease or purchase and no comments have addressed any problems as a result.

88. The Commission recently adopted Rule 3031(b) recognizing a balancing of interest where third parties seek aggregate data regarding electric customers without consent: "The rule requires the disclosure of aggregated data unless the disclosure would compromise the individual customer's privacy or the security of the utility's system." Decision No. C11-1144. The issue was fully reviewed, resulting in the 15/15 threshold of rule 3031(b).

89. Currently, for electric customers, information about customer usage might be disclosed without customer consent when it is personal information or in the form of aggregated data. The real estate exception is more appropriately addressed and coordinated in the context of disclosure of customer data. Because the scope of information is dependent upon the service at issue, permitted disclosure is better addressed in subject matter rules. Further, as addressed above, implementation of the approach addressed above will make clear that information

defined as personal information will not be precluded from disclosure if it also within the definition of customer data.

(3) Exceptions – Permitted disclosure

90. Several commenters seek to address difficulties in administering programs intended to benefit low income customers. Agencies need to access more detailed information regarding the account history. Clarity is sought to permit sharing of this information. The existing provision allowing disclosure to governmental agencies will be expanded to accommodate concerns regarding administration of energy assistance programs.

(4) Contracted Agent

91. Comment proposes incorporating the defined term contracted agent from the electric rules as the concept applies across industries. The proposal is reasonable and will be adopted. The definition will be added to rule 1004(l) and rule 1105 will be modified accordingly. This will also provide consistency in the use of the term across the Commission's jurisdiction without referencing third-party contracts.

92. Some concern is raised as to the need for regulated operating company to share information with parent or service company in the provision of regulated service. The concern is not unique to one company, but reasonable assurance of the protection of customer information by the operating company is paramount. The undersigned agrees with comment that completely exempting a parent or service company undermines the purpose of protections incorporated in the Commission rules.

21. Rule 1200

93. The proposed rules include modifications to the traditional amicus curiae role in Commission proceedings. Because there is a body of law regarding amicus status,

the undersigned is concerned that unnecessary confusion will result from attempting to modify meaning as it applies to Commission proceedings. See e.g., Denver United States Nat'l Bank v. People, 29 Colo. App. 93, 98 (Colo. Ct. App. 1970) citing Eggert v. Pacific States Savings & Loan Co. 57 Cal.App.2d 239, 136 P.2d 822.

94. Comment also addresses the provision explicitly providing that the Commission may permit individual residential, agricultural, or small business customers of a utility to participate as amicus curiae in a proceeding that may impact the customer's rates or service. Discretion remains without regard to the modification and the proposal does not affect the status quo. Rather, the additional provision is more illustrative. Comment raises reasonable concern and the undersigned is inclined away from encouraging individual customers to attempt to obtain amicus status. The proposed addition will not be adopted.

95. The proposal was intended to provide a meaningful opportunity to inform Commission proceedings without becoming party. Additionally, one might participate without requiring representation of counsel. Combined with a more managed approach to permissive intervention, a unique opportunity is presented to improve hearing processes without restricting public input into the development of Commission policy.

96. Rule 1200(c) provides for requesting amicus curiae status. The Commission has applied Colorado Appellate Rule 29, in addition to Commission rules, in considering requests regarding amicus curiae status. "Given the requirements of C.A.R. 29, we find that any party seeking amicus status must file a brief only by leave of the Commission and within the same time constraints as the party it seeks to support." Decision No. C03-0547, issued May 21, 2003, at 3.

97. Amicus curiae status remains permissive and will be decided upon motion. Typically, counsel will be required for a qualified amicus and counsel will be necessary to file the motion requesting that status.

98. Proposals in comment to require filing of amicus briefs when testimony is filed will also not be adopted. As addressed in comment, it is most appropriate that amicus have a full opportunity to consider the evidentiary record before presenting legal argument. However, in briefing, an amicus curiae must file their brief within the same time constraints as the party it seeks to support.

99. The Proposed rules attempted to expand the role of amicus curiae to address issues of academic or policy interest. This broader scope of comment is not traditionally limited to the practice of law and is more in the nature of public comment in Commission proceedings. Rather than modifying traditional amicus practice, the undersigned recommends providing a more integral and structural role for comments.

100. The undersigned considered the role of comment in Commission proceedings in Decision No. R09-0536-I, issued May 18, 2009. The "Commission may accept comments from the public concerning any proceeding, which shall be included in the record." Rule 1504 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1. Public commenters are not parties to the proceeding. Comments are not evidence. Public comments are submitted for the Commission's general information and to encourage the Commission to exercise discretion in the matter at hand.

101. Upon this foundation, rule 1509 will be adopted to expressly provide for new categories of comment to inform the Commission's discretion regarding policy and

academic issues. Traditional amicus status will be retained to present legal argument. The proposal to conform rules regarding amicus status to Commission practice will be adopted.

22. Rule 1201

102. Rule 1201 includes the first reference in the rules to a facsimile number. The proposed rules abandon facsimile filing in favor of the utilization of email for service and the Commission's E-Filing System for filing. The Commission's E-Filing System is similarly available to all, is available anytime, and avoids the administrative burdens of manually tracking and verifying timely submission of original documents. Requirements for facsimile numbers will be abandoned throughout the rules and the Commission will no longer accept filings via facsimile.

103. Comments address proposed rule 1201(b)(II) imposing procedural requirements upon an individual representing the interests of a closely held entity before the Commission. As a general rule all parties and amicus curiae appearing before the Commission are required to be represented by an attorney at law in good standing. Rule 1201(a). Section 13-1-127(2) permits a closely held entity to be represented by an officer under specified circumstances. Rule 1201(b) implements this statutory provision in Commission proceedings. The provision must also be applied in the context of a substantial body of case law and prior Commission practices and decisions.

104. The Commission has long emphasized mandatory representation requirements. It is often found that a filing by a party not meeting the criteria of this rule, or a filing made by non-attorneys on behalf of that party, is void and of no legal effect. See, e.g., Decisions No. C05-1018, Docket No. 04A-524W issued August 30, 2005;

No. C04-1119, Docket No. 04G-101CP issued September 28, 2004; and No. C04-0884, Docket No. 04G-101CP issued August 2, 2004.

105. As a practical application, and to avoid undue burden or expense upon other parties or the Commission, the proposed rule requires an individual representing a closely held entity to demonstrate eligibility at the time their representation begins – at the first appearance.

106. Comments suggest further restriction upon the ability of individuals to represent closely held entities before the Commission in adjudicatory proceedings. However, there has been no showing that such modifications would not be contrary to law. Upon further consideration, the proposed rule also includes documentation not required by §13-1-127 C.R.S., in part. The proposed rule will be further modified to eliminate that requirement.

107. Rule 1201(b)(V) is revised to implement the expanded role of comment and recognizes that representation by counsel is not required to provide such comment.

23. Rule 1202

108. Comment addresses specificity for the calculation of testimony length requiring inclusion of a table of contents. Insufficient need has been shown to support the modification and availability of a table of contents is useful for the Commission and other parties. Thus, the proposal will not be adopted.

24. Rule 1204

109. Comments address the proposed addition to rule 1204(a)(I) requiring electronic filings of executable text-searchable formatted filings. The Commission has a strong incentive to further electronic filings for the benefit of the Commission and those participating in proceedings. However, because executable filings may not be possible in several circumstances, the requirement for executable filings will not be adopted.

110. It is notable that the native document electronically filed is not accessible by anyone other than Commission staff. Others only access a version of the document converted to the Adobe Acrobat format through the electronic filing process. While executable versions are not necessary, they contribute to a foundation and promote efficiency in Commission utilization of the filing. The undersigned is not convinced that the efficiency to be gained or adoption of the alternative proposals will overcome concerns raised. The undersigned also notes that despite adopting the comment, no finding is made whatsoever as to any privilege claims addressed in comment.

111. Further comment suggests eliminating the alternative requirement to file text-searchable formats when possible. A hypothetical scenario is suggested where significant effort could be required to obtain a text-searchable form of a document provided by a third party. Critically, the filing requirement does not require text be created from the native application creating the document. In order to be e-filed, the filer must create or access an electronic version of the document. While filing of pleadings is encouraged in native format, popular word processors are capable of producing pdf-formatted documents and free or low cost software is available to convert documents to pdf format. If text is not available, optical character recognition can be completed prior to filing. Should the filer believe the requirement to be burdensome in a particular circumstance, a waiver of the rule may be sought. While the requirement for an executable version has been deleted, text search ability will be retained.

25. Rule 1205

112. Commenters suggest distinguishing and clarifying service obligations in relation to the Commission's E-Filing System. Participation in the Commission's E-Filings System is voluntary. A required condition of that voluntary participation, memorialized in the attestation

for registration, is the agreement to accept service of process through that system. Service through the Commission's E-Filing System is effective by and through that agreement and would not be effective under current rule but for that agreement. With that foundation, rule 1205(a) establishes the service obligation and memorializes the existence of the agreement for other filers.

113. Comment also suggests excepting e-filings from the requirement to demonstrate proof of service. Because proof of service remains the obligation of the one filing a pleading or other document, the proposed exception will not be adopted. As part of the electronic filing process, a certificate of service is created for every filing. That certificate is electronically attached to the filing and is available for review and verification. The filing party remains responsible for reviewing, verifying, and fulfilling service. Thus, the presumption will remain that a party did not receive service of a filing if they are not included on a certificate of service. The rule will be clarified to integrate certificates of service generated by the Commission's E-Filing System.

114. Rule 1205(f) will retain reference to facsimile as the context refers to the agreement of parties, rather than Commission requirement. Additionally, the requirement for written waiver will be eliminated to conform to current practices among commentors. The form of agreement, for better or worse, will be left to the discretion of parties. The burden to demonstrate service will not be modified or affected.

115. Several comments support service of process via email. The undersigned has reservations with the proposal because of the limited means perceived to demonstrate effectiveness of service when challenged. In light of the strong support and comments regarding practices of the bar, service by email will be permitted for information not subject to protection

under rule 1100 or Commission decision. The default forms of service will include service through the Commission's E-Filing System, traditional means, and via e-mail. However, a process will be made available for opting out of service by e-mail on a proceeding-by-proceeding basis. Any party to a proceeding may file a notice in such proceeding notifying the Commission and all parties that they will not accept service under the Commission rules through e-mail alone.[2]

116. Comment was solicited as to the limitation upon the number of counsel permitted to represent a party in a proceeding. In light of the prevalence of the Commission's e-filing system and the ease of electronic service, the potential for burden to be imposed is minimal. Service requirements will also be streamlined in instances where multiple attorneys represent a party. In light of these considerations, the current limitation of counsel will be omitted.

117. Service requirements will be streamlined where one or more attorneys representing a party are not registered in the Commission's E-Filings System to minimize burdens of service. Finally, where a party is represented by more than one counsel, and at least one of such counsel is registered in the Commission's e-filing system, service will be complete upon the party upon service through the e-filing system. Service by U.S. Mail will not be required for more than one attorney representing a party. Illustratively, the last alternative will avoid a circumstance seen where second-chair counsel do not participate in e-filings, requiring paper service, in addition to first-chair counsel served through the e-filing system.

118. Modifications are also adopted to clarify that service of discovery cannot be complete through the Commission's e-filing system.

[2] Notably, this filing is as to service by e-mail only. Although the Commission's E-Filing System generates an email notification of service, service is completed through the system without regard to the email. Thus, the opt-out provision does not permit opt-out of service through the E-Filing System.

119. One comment sought clarification whether the proposed rules require only use of the certificate of service from the e-filing process. This is specifically not the case. Service is the obligation of the filer. The proposed rule makes clear that the obligation may be met in one or more filed certificates of service (including the E-Filings certificate electronically attached to e-filings).

26. Rule 1206

120. Comment proposes eliminating rule 1206(c)(III) and requiring notice of petitions for declaratory order or rulemaking. While there could be circumstances where the Commission may choose to provide notice of such proceedings, it will not be made a requirement in rule. It has not been shown that notice is required for every petition and the undersigned believes the issue better left to modification on a case-by-case basis. Where the Commission believes it would benefit from providing notice of such actions or that notice is required, the proposed rule does not prohibit if from doing so.

27. Rule 1207

121. Proposed rule 1207 was intended to provide an alternative notice process, by rule, consistent with past approaches approved by the Commission. Statutory notice may always be utilized. It was intended that alternative means could also be identified by rule, while still leaving open the possibility to file an application requesting any other means.

122. Upon further consideration, it is concluded that the attempt to provide a form of alternative notice by rule is contrary to statute and cannot be adopted. Section 40-3-104(2) C.R.S., provides that the "commission, for good cause shown, may allow changes with less notice than is required by subsection (1) of this section by an order specifying the changes so to

be made and the time when they shall take effect and the manner in which they shall be filed and published."

123. The Supreme Court has recognized that "Subsection (2) of section 40-3-104 permits the Commission to expedite the effective date of a proposed tariff 'for good cause shown.'" Colorado Office of Consumer Counsel v. Public Utilities Com., 752 P.2d 1049, 1054 (Colo. 1988). Findings must be supported by competent evidence to support them. Colorado Mun. League v. Public Util. Comm'n., 687 P.2d 416, 419 (Colo. 1984).

124. Despite Commission adoption of "standard" alternative notice (i.e., remedy) to that otherwise required by statute, the Commission cannot determine whether good cause to depart from statutory notice will be shown in the future upon competent evidence. The Legislature maintains a clear preference for statutory notice. A showing upon competent evidence is required to depart from that notice. Based thereupon, proposed modifications to means of alternative notice will not be adopted.

125. In reviewing the proposed notifications, the undersigned found an additional concern with proposed rule 1207(g). The Commission has broad authority to allow changes with less notice than is required by § 40-3-104(1) C.R.S. by an order specifying the changes to be made, the time when they shall take effect, and the manner in which they shall be filed and published. § 40-3-104 C.R.S. While that discretion may be exercised to permit a tariff to go into effect, the undersigned is concerned that redefining the plain meaning of the phrase "one business day's notice" may be misleading as to the deadline to act in regard to compliance filings. Striking the alternative definition is not intended to interfere with when the Commission can permit the tariff to be effective. Rather, if the Commission intends an effective date on a number of hours of notice (e.g., less than a day) it should be so stated.

126. Another practical concern arises with the provision of not less than one day's notice. In the event there are concerns regarding a compliance filing, the Commission must have a minimal opportunity to act to suspend the effective date prior to it going into effect. Thus, the provision will be modified to two days, rather than one.

127. Comment proposes simplification of the rule in making statutory notice references. However, the current proposed rule is intended to emphasize the options available under the statute. No further need for modification is shown.

28. Rule 1210(a)(VI)

128. Comment addresses the calculation of notice time periods under § 40-3-104, C.R.S. It is suggested that the statement requiring expiration of the entire notice period prior to the effective date of the tariff be stricken. The comments provided are inconsistent with the long standing understanding of the undersigned ALJ. Where a period of notice is required, the requirement is not satisfied until the entire period has passed. This is consistent with the provision of the rule that is proposed to be eliminated and § 40-3-104 C.R.S. If a notice period of 30 days is required, anything less than 30 days would not meet the requirement. The operative statutory phrase is "no change shall be made by any public utility in any rate…except **after** thirty days' notice to the commission and the public." § 40-3-104 C.R.S. (emphasis added). Thus, if the tariff cannot become effective until after a notice period of 30 days, the 31st day is the soonest that it may become effective.

29. Rule 1211(a)

129. Comment was solicited of interested persons regarding the scope of permissible changes to be made administratively by Commission staff in the E-Filings System. Specifically, comment was requested as to whether Commission staff should administratively

change pleading title information input during the e-filing process to reflect the content of the title included in the image electronically associated with the filing.

130. Limited comment was received in direct opposition. In soliciting comment, the potential to be misled (intentionally or unintentionally) from differences between the title conveyed in the email notice of service through the E-Filing System (e.g., input in the filing process) and the title stated in the image filed was highlighted. Some comment recommended that Commission staff be permitted to make the modification so long as the filer is notified of the change. On the other hand, concern was raised that the title of a pleading input by a filer taking great care inputting that title should not be changed without notice and consultation.

131. The undersigned opines that Commission staff's modifications are for the purpose of clarification and search ability benefitting all concerned. Having the title in the e-filings system match that intended by the filer, as represented in the image filed, improves search ability of Commission records and avoids unusual references in decisions addressing the filing. Because the current rule states that the title of the pleading in the e-filing system controls over the filed image, the decision referencing the pleading should reflect the e-filing system title. The undersigned has observed several unusual titles that apparently were not intended be the filer (e.g., the name of the file as saved on the filer's computer). The undersigned finds that the benefit of Staff making corrections outweighs the potential harm from staff modifying a title actually intended by the filer. Were the unlikely latter event to occur, a party could contact Commission staff to make further correction or make an appropriate filing (e.g., an amendment).

132. The modification addresses a practical concern. While Commission staff clearly is capable of mistake, as is anyone else, under the proposed modification Commission staff can also correct any mistake brought to their attention. Commission staff has no interest in rewriting

titles other than to reconcile conflicting statements made by the filer in the e-filing process and the image filed by the same person. Administratively modifying the title in the e-filing system is reasonable.

133. The Commission's e-filing system has the capability to email those registered in the e-filing system that are associated with a proceeding. Because correcting the disparate input in the e-filing process mostly changes information input by a registered filer, it is reasonable to notify those registered of the modification to the title. In this way, the filer is informed and the potential for prejudice to others is mitigated because they will be informed of the title change as well. While comment requesting courtesy notification to the filer is reasonable, prior consultation will not be required. Additionally, effectiveness of the changed title will not be conditioned upon the filer receiving notification.

30. Rule 1302 Show Cause

134. Several commenters support clarification of the proposed show cause proceedings in subparagraph h. Some proposals are reasonable and will be adopted to add specificity to the show cause order. Extensive comment was received regarding the burden of proof in show cause proceedings. The adopted rule permits that issue to be addressed in the context of individual proceedings based upon the facts and circumstances on a case-by-case basis.

135. Comments broadly support striking violation of an agreement to support issuance of a show cause order. The historical scope of agreement could encompass a prior agreement with the Commission. Different from an agreement entered by trial staff, a utility can undertake obligations by agreement with the Commission (e.g., burden of proof). In other areas, situations have arisen where the Commission implements federal schemes without a specific determination of Commission jurisdiction. Illustratively, the Commission administers funds under the

Colorado Performance Assurance Plan. While there was no specific determination of Commission jurisdiction in this regard, the plan was implemented pursuant to agreement. Thus, agreements will remain referenced, but will be further qualified as addressed below.

136. Comment characterizes a show cause proceeding solely to be confined within the scope of §40-6-108(1)(a) C.R.S. Because an agreement is not enumerated in the section, it is argued that an agreement with the Commission should be omitted. See §40-6-108(1)(a) C.R.S.

137. Comment also seeks clarification of the role of Commission staff in show cause proceedings.

138. Clearly the Commission's rules cannot expand its jurisdiction. However, there are some agreements within the Commission's jurisdiction. Illustratively, the Commission's rules have long permitted a party to agree to undertake the burden of proof in a proceeding within the scope of the Commission's jurisdiction, the terms and scope of that agreement could be determined by the Commission without necessity of pursing a breach of contract suit in a judicial proceeding.

139. Without determining that an agreement could not be included in rule 1302, a reasonable accommodation in rule for extensive comment regarding the inclusion in the show cause process is to limit the scope to those agreements memorialized, accepted, or approved by the Commission in a decision. Should future circumstances require a jurisdictional determination in the case of an agreement apart from a Commission decision, it can be considered on a case by case basis at the time outside the scope of a show cause proceeding or through waiver or variance.

140. Modifications will also be adopted to identify trial staff and advisory staff in show cause proceedings as early as practicable. If the Commission makes a determination to disclose

a proposed show cause order to a potential respondent, Commission staff designation will be disclosed. Thus, illustratively, it will be clear with whom a potential respondent should deal with once afforded an opportunity to cure. This also more closely aligns the rule with current practices.

141. Concerns are raised regarding rule 1302(h)(I)(a)(iii). It is argued the provision establishes the possibility of a summary proceeding where the respondent has no opportunity to present a defense and that granting relief pursuant thereto conflicts with rule 1302(h)(I)(C)II(C). Comment misconstrues the provision. The provision merely puts all parties on notice that relief may be granted effective at such time.

142. Comment generally requests clarification as to the burden of going forward, referenced in rule 1302(h)(II)(D). This standard has been thoroughly addressed by the Commission and is further addressed in rule 1500 below. No further need for clarification has been shown. The rule does not affect the ultimate burden of proof required. The undersigned reviewed the cases cited (without any explanation of their applicability herein) and finds them unpersuasive.

143. Comment fails to show further modifications to the rule are required.

31. Rule 1303

144. The process of deeming complete for purposes of §40-6-109.5 C.R.S. drew comment seeking more certainty of process for those filing applications with the Commission. First, it is worthy of note and reconsideration that only applications are deemed complete by the Commission.

145. The undersigned sees completeness as an integral part of efficient processing of Commission proceedings. Too quickly deeming an application complete shifts the burden of

determining and understanding the basis and relief requested to the discovery process. The proposed rule conceptually adopts an appropriate balance of party interests and proposals to modify will not be adopted.

146. Applications are deemed complete in accordance with §40-6-109.5 C.R.S., which provides:

> the commission shall issue its decision on such application no later than one hundred twenty days after the application is deemed complete as prescribed by rules promulgated by the commission.
>
> § 40-6-109.5(1) C.R.S.

The rule will be modified to prescribe all conditions for determination of completeness sufficient to commence the applicable statutory period.

147. Comment warns of considered expansion of litigation around this preliminary determination made by the Commission and supports continuation of the Commission staff's role in reviewing and presenting applications. The opportunity for parties to litigate completeness will not be adopted, consistent with comment received. Parties can pursue dismissal on the merits. A necessary consequence of continuing the current process can result in ultimate dismissal on the merits at the end of the proceeding where the shortcoming might have been overcome by early supplementation. The deeming process only determines completeness sufficient to commence the applicable statutory period. The determination is made without prejudice as to the merits of the proceeding, including whether the application, in fact, satisfies any required scope of the proceeding.

148. In response to comment, only modest changes will be made to current processes. However, the requirement will be made clear and explicit that all applications filed must state the

relief requested, identify all applicable requirements of Commission rule and decision, and address each of those respective requirements.

32. Rules 1308 and 1506

149. The circumstances in which some responses are permitted will be clarified and standards heighten above the general "good cause" standard.

150. The undersigned finds it appealing to prohibit filing or a response or reply prior to a Commission decision granting leave to make such filing (where required). Although appealing, comments seeking to prohibit the current practice of simultaneously filing a reply to a motion or request for RRR along with a motion requesting leave to file the reply will not be adopted due to practical concerns with implementation.

151. In light of the short time the Commission has to act on a request for RRR, the undersigned expressed practical timing concern of delaying submission of a response until after leave is granted to make the filing. Additionally, there is no practical way to limit the content of the request for leave to exclude the substance of the response sought to be filed. Finally, it might be that some responsive content may be necessary to meet the burden to obtain leave to file the reply. Comment supports the concerns raised and considers an alternative procedure likely to be unworkable.

33. Rule 1309

152. Comment addresses proposed modifications and requests further clarification that an application or petition may only be amended or withdrawn upon motion within 45 days prior to the commencement of hearing. Further, that an application may not be withdrawn following commencement of hearing. Other comment argues business decisions in the exercise of management discretion may reasonably occur after conclusion of a proceeding and that the

Commission, in most circumstances, cannot force a company to pursue a course of action it no longer wishes to pursue.

153. While there is no express prohibition of dismissal post hearing, the proposed rule adopts an appropriate balance of concerns. The required motion provides an opportunity to address potential for abuse while also permitting reasonable action. As amended, withdrawal or amendment at any time after 45 days prior to the commencement of hearing will be by Commission decision.

34. Rule 1400

154. Several parties commented regarding the conferral requirement suggesting that it should be deleted, clarified, or narrowed.

155. The rules continue to provide for a 14 day response time to motions. Where a movant can ascertain that a motion is unopposed, there is no need to wait 14 days for response time to expire in order to determine a request is unopposed. Thus, conferral has the potential to expedite considerations of unopposed motions.

156. On the other hand, particularly in a proceeding with numerous parties, the obligation to confer can itself become burdensome. Comments illustrate the difficulty that may result from adoption of the proposed rule.

157. Under current rules, counsel sometimes confer and address positions in motions. The undersigned believes that current practices are adequate. A movant is able to determine the cost and benefit on a motion by motion basis. The proposed rule will be made permissive, but will include language to encourage less familiar practitioners to that efficiency may be improved.

35. Rule 1401

158. The heart of Commission proceedings is furtherance of the public interest. The Commission is charged with protecting the interest of the general public from excessive, burdensome rates Public Utilities Com. v. District Court of Denver, 186 Colo. 278, 282 (Colo. 1974). Comment suggests that the Commission needs to reasonably control the increasingly large numbers of permissive intervenors in Commission proceedings and proposes modifications for this purpose. The undersigned agrees with the stated concerns.

159. The Commission thoroughly analyzed current permissive intervention standards in Docket No. 11A-510E. Decision No. C11-1163, issued October 31, 2011. It was concluded that an individual pro se petitioner was not permitted intervention because she failed to show that "(1) her interest in this docket is substantial; and/or (2) this interest would not otherwise be adequately represented by any other party" Decision No. C11-1163, at 2. It was found that the interest as a residential ratepayer was adequately represented by the OCC.

160. The Commission addressed the applicable statutory standard in Decision No. C11-0987 at 4-5, issued September 14, 2011. Further, rule 1401 was analyzed:

> In adopting Rule 1401, the Commission itself noted that the language "alerts parties that they have to do more than demonstrate an academic interest when seeking to intervene. The language makes clear that the burden is upon the party to show that a pecuniary or tangible interest will be substantially affected, while simultaneously ensuring that parties whose interests are not adequately represented can seek to protect those interests in Commission proceedings." Decision No. R11-0848-I at 4, *citing* Decision No. C07-0337 in Docket No. 06R-488ALL (April 27, 2007) at 10. These standards "are consistent with the statute, and the authority of the Commission to 'conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice. '" Decision No. C11-0987 at 6, *quoting* Sec. 40-6-101(1), C.R.S.

The Commission has stated: "We believe a stricter approach to interventions will result in more streamlined and efficient Commission proceedings, which will lead to 'the proper dispatch of

business and the ends of justice.'" Decision No. C11-0987 at 8. Prior attempts have been undertaken to limit permissive intervention based on a general or subjective interest. However, the intent has particularly failed in practice where objections are lacking. Commonly, requests for intervention are supported by the request of a customer or group relying upon utility service that will be affected by a proceeding. Based upon these interests, no opinion is expressed as to the nature or quantity of evidence that will be presented. When uncontested in an adversarial process, intervention is typically permitted. While unopposed interests have not forced determinations on merit, the consequences ultimately fall to ratepayers paying costs of multi-party litigation and Commission operations. In order to improve efficient utilization of resources and mitigate burdens of litigation, the standards for permissive intervention will be revisited.

161. In establishing permissive intervention standards, the Commission must be mindful of the resulting impact from increasing the number of parties upon the efficient administration of proceedings utilizing limited resources, the nature of proceedings, and the likelihood that expanding the number of parties will materially assist the Commission in reaching a just and reasonable result. Illustratively, too low of entry threshold can result in unnecessarily burdensome multi-party litigation. Litigation costs for all parties as well as the Commission may be materially impacted by expanding the discovery process and lengthening hearings. Particularly where duplicate interests advocate redundant or irrelevant positions, Commission proceedings are not furthered and resources are wasted.

162. While identification of a substantial interest is required, the rule will be clarified to require a specific expression of a substantial unique interest within the scope of a proceeding and Commission jurisdiction. Further, it must be shown how that specified interest may be

affected by a proceeding. Finally, it must be shown how that unique interest is not adequately represented by a statutory authority or other party to the proceeding.

163. Section 40-6.5-104 C.R.S. does not limit the right of anyone to petition, make complaint, or otherwise intervene in Commission proceedings. § 40-6.5-104(2) C.R.S. However, "[t]he fact that the statute does not limit the right of any person to petition to intervene in dockets before the Commission does not mean the Commission has no discretion in whether such a petition should be granted." Decision No. C11-1163 at 2-3.

164. The consumer counsel represents the public interest. § 40-6.5-104 C.R.S. Only to the extent consistent with the public interest, the OCC appears before the Commission to represent the specific interests of residential consumers, agricultural consumers, and small business consumers. § 40-6.5-104 C.R.S. The Legislature contemplated potential conflicts among the groups represented by the consumer counsel. The consumer counsel is explicitly authorized to represent inconsistent interests among the various classes of the consumers in a particular matter, represent one of the interests or to represent no interest. § 40-6.5-104(2) C.R.S.

165. Rule 1401(c) will be modified to strengthen requirements of the current rule by providing that, in particular, residential, agricultural or small business consumers must demonstrate that the OCC will not adequately represent the unique interests of the movant. Notably, the modification only affects permissive intervention.

166. Comment expresses concern regarding the required elements of a request for permissive intervention because it may be difficult to determine the evidence that will be offered in support of a claim. It is notable that Staff of the Commission has long been able to express specific concerns in its notice of intervention. It is reasonable to require the same of permissive intervenors. While the undersigned understands it may require a more substantial undertaking to

demonstrate that permissive intervention should be granted, the adopted rule appropriately balances the interests of prospective intervernors with the interests of the other parties and the Commission's management of the proceeding.

167. When a prospective intervenor is concerned that they will be impacted by a proceeding, but they cannot say how they will be impacted, what they have to say about it, or why they should be permitted to pursue a claim, intervention is not appropriate. Permitting intervention without the required showing, results in no bar at all.

168. By narrowing the perspective scope of intervenors, the potential for need to request late intervention could expand. Where an interested person cannot satisfy this standard within the intervention period, the appropriate course is that they not be granted intervention. However, if information satisfying requirements is later discovered, that could not reasonably have been discovered within the intervention period, a request for late intervention is the appropriate procedure to request permissive intervention.

169. Comment raises appropriate concern that requiring specificity in requesting intervention might be used against a party as to the scope of their interest in the proceeding after intervention. While a reasonable concern that is not the intent of requiring specificity in requesting intervention. The issues are apples and oranges. Permissive intervention is solely about whether the Commission should permit the one requesting to be a party to the proceeding. The scope of an intervenor's interests do not determine scope of the proceeding. The request for intervention presents no artificial limitation upon participation as a party.

170. In order to assist the Commission in weighing parties' interests and the representation of those interests, the rule will clarify that requests for permissive intervention will not be decided prior to expiration of the notice period.

171. Although the Commission is acting to streamline litigation process by limiting permissive intervention, the proposed rules notably also expand the opportunity to provide public comment regarding a proceeding, including academic and policy comment. See discussion regarding rules 1200 and 1509.

36. Rule 1405

172. There is a theme in comment of those typically initiating proceedings at the Commission versus those that do not. The former generally seems to support earlier deeming applications complete, shorter notice periods, more limited discovery, and status quo disclosure obligations. The latter has an interest largely in the status quo, particularly regarding discovery in Commission proceedings. Discovery process is subject to abuse on both sides. The balances struck in the current rule largely provide the best opportunity to avoid abuse and facilitate the fact-finding process. The presiding officer in any proceeding is in the best position to exercise discretion and weigh affected discovery interests.

173. The goal of this proceeding must be to establish the appropriate "default" procedures. Where those provisions are adequate, prehearing conferences can more likely be delayed or avoided. Where prehearing conferences are necessary, deadlines may be modified on a case-by-case basis as has occurred in the past. Promotion of efficiency in the discovery process benefits all parties concerned in the exchange of information. However, the undersigned is convinced that increasing the potential for additional process regarding discovery disputes interferes with maximizing the Commission's opportunity and ability to meet the letter and spirit of applicable statutory periods.

174. In many proceedings, the applicable statutory period may be waived. Where waived, a more global view of improving overall efficiency prevails.

175. Arguments were presented based upon comparisons made to civil litigation in courts. However, there are noteworthy distinctions not addressed. Substantial disclosure obligations, not applicable in Commission proceedings, are integral to the discovery process in civil actions. See e.g., Rule 26(a)(1). In Commission proceedings, one must discover the scope of relevant information to the proceeding. Also, civil litigation tends to resolve issues arising between those have some nexus or common experience in fact. In many Commission proceedings, discovery of facts tends to weigh more on the regulated entity because facts related to operating information and experience is within the utility's possession and control.

176. Reference was also made to the Civil Access Pilot Project applied in Douglas and Jefferson Counties. Notably, this project also requires substantial disclosure broader in scope, and more specific and complete, than otherwise required under Rule 26 before a response is due. See Pilot Project Rule 3. None of such aspects apply in Commission proceedings. Disclosure obligations go hand in hand with discovery obligations. Due to the scope and complexity of many Commission proceedings, the undersigned is not inclined to dramatically change the scope of required disclosure in order to attempt further improvement in the discovery process. As suggested in comment, picking and choosing some provisions without others would likely lead to unintended consequences.

177. Comment also addresses modifications to discovery response times. In general terms, subsequent rounds of testimony should generally narrow the scope of the proceeding. Thus, the scope of information subject to discovery should narrow from direct testimony to answer testimony to rebuttal testimony. In proceedings subject to an applicable statutory period, a slight shortening of response times for discovery in establishing a procedural schedule can provide additional time for other phases of the proceeding. After consideration,

seven day response time will be adopted for discovery regarding rebuttal or cross-answer testimony. However, where the applicable where the applicable statutory period is waived, the current 10 day period will be maintained. Where a party contends alterations should be made based upon circumstances in a proceeding, such matters can be addressed on a case-by-case basis.

178. Comment requested narrowing the scope of discovery by limiting the number of permitted interrogatories. The undersigned is concerned that artificially limiting the number of interrogatories will result in incentives to broaden the scope of questions. Rather than imposing limits upon the number of permitted discovery requests, the undersigned recommends adopting presumptions that certain types of interrogatories are overly broad or not reasonably calculated to lead to the discovery of admissible evidence. An appropriate balance is sought by requiring more thoughtful design without imposing artificial limits upon number.

179. Several comments oppose the request to require filing of discovery. Insufficient cause has been shown to dramatically alter the Commission's discovery process. The request to require filing will not be adopted.

180. There was some comment encouraging service requirements for all discovery in proceedings in light of minimal costs of electronic service. While it is not uncommon for parties to request such responses, comment regarding other costs and complications (e.g., volume and confidentiality) convince the undersigned that general service requirements for discovery should not be expanded by rule.

37. Rule 1406

181. Comment proposes to require the filing of a motion requesting issuance of a subpoena. Concern is raised with current ex parte processes where the subpoena issues without

the opposing party having an opportunity to examine whether statutory prerequisites have been met. Comment also contends that a showing should be made that information sought through deposition may not be otherwise obtained before issuance.

182. Statute does not require or contemplate notice of a request for issuance of a subpoena to be provided. The undersigned believes that the current ex parte process best serves the public interest across the Commission's jurisdiction. Particularly because the rules require personal service of a subpoena, there is substantial potential for abuse during the issuance process as well as in the evasion of service. Rule 45(c) C.R.C.P. As provided in statute, a subpoena is issued upon affidavit. Once served, the recipient of the subpoena can challenge the showing by requesting that the subpoena be quashed.

183. Secondly, the request to condition issuance of a subpoena upon a showing inadequacy of other discovery means will not be adopted. Primarily, the statute does not impose such requirement. Additionally, the undersigned views this as an inappropriate intrusion into a litigant's trial advocacy. The proposal restricts appropriate uses of deposition testimony. Illustratively, a party may wish to preserve testimony, evaluate the credibility of the witness, or pursue matters where a witness has provided evasive responses to written discovery.

184. Comments suggesting modification of subpoena processes will not be adopted.

38. Rule 1408

185. Comments request modifications regarding Commission consideration of settlements. It is requested that a deadline for filing settlements (or notice) be established at least seven days prior to hearing. While the intent to encourage efficient resolution of matters and to provide adequate opportunity for review is appreciated, the undersigned finds the proposal impractical as a rule. The possibilities are too broad to impose a seven day deadline.

Administrative efficiency would not permit a comprehensive uncontested settlement agreement to be disregarded because it was reached five days prior to hearing. The undersigned opines that existing procedures are adequate and that reasonable accommodation can be undertaken based upon surrounding facts and circumstance (e.g., delaying or rescheduling the start of hearing).

186. Rule 1408 will be amended to clarify that consideration of settlements upon motion.

187. Comment also addresses the proposed language encouraging disclosure of comprehensive reasoning regarding settlement terms. Comment raises concern if the intent is to obtain evidence regarding a party's rationale for agreement, citing Rule 408 of the Colorado Rules of Evidence. The Commission clearly and definitively encourages parties to resolve their differences. However, the Commission has long made clear its obligation to protect the public interest:

> We reject the notion that the Commission should abstain from modifying settlement agreements for fear of upsetting the balance achieved by the parties. This would be an abdication of our responsibility. The Commission must protect ratepayers, and ensure that rates are just and reasonable. We also seek to ensure that rates are cost based. Were the Commission to accept settlements as unchangeable agreements it would essentially eliminate the public decision making process. Rather than deciding the issues in public, before the Commission, the decision making process would occur behind closed doors in settlement negotiations….
>
> 7. We are cognizant that parties work hard to reach an agreement, but this Commission has and will continue to review each issue in settlement agreements. As part of the terms contained in virtually all settlements filed with the Commission, parties recognize that the Commission has the authority to modify the terms of a settlement, and include provisions for individual parties to withdraw from settlement agreements if they do not like Commission changes. While parties typically request that the Commission approve settlements without modification, the Commission often modifies settled terms as the public interest requires….

> 10. We believe that this Commission has an obligation to review all the terms contained in a settlement agreement to ensure that they comply to the greatest extent possible with applicable regulatory principles, and are just and reasonable. We recognize that any changes may lead to the withdrawal of a party from the settlement. Because the Commission has an obligation to protect ratepayers, and to ensure that rates are just and reasonable it must be free to modify settlement agreements. This does not mean that settlement agreements are in any way discouraged. To the contrary, this Commission adopted virtually all provisions of the settlement submitted by the parties, and commended the parties in settling their divergent positions. Commission initiated changes are an inherent part of the settlement process. Parties are free to withdraw from settlements if Commission modifications are too heavy handed.
>
> 2006 Colo. PUC LEXIS 198, 3-8 (Colo. PUC 2006)

188. While it is understood that various factors affect precise terms of settlement, and that the Commission would not wish to chill efforts to reach settlement, it will be noted that the Commission is not bound by the technical rules of evidence in the conduct of hearings and investigations. Section 40-6-101 C.R.S. Thus, the rules of evidence do not conclusively determine the matter. Those requesting approval of settlement are obliged to demonstrate that the terms are just, reasonable, and warrant Commission approval. The proposed rule makes clear that parties supporting approval of a settlement should be prepared to demonstrate that all terms warrant approval.

189. Comments urge the Commission not to adopt rule 1408(b) as vague, problematic, and unnecessary. With slight modification, proposed rule 1408(b) is relocated from current rule 1407. Because the provision addresses settlement, the undersigned found it more appropriate to be relocated. Based upon comments received, the provision will not be adopted -- effectively removing it from current rule 1407. Consistent with points made in comment, the provision is unnecessary (e.g., encouraging settlement of contested proceedings already includes show cause proceedings).

190. Proposed requirements to admit jurisdiction and waive further proceedings unnecessarily imposes conditions that may discourage partial settlements where otherwise appropriate, contrary to the Commission's express policy. Illustratively, the parties might agree to a partial resolution of differences while preserving procedural steps as to unresolved issues. In such event, the public interest may be served by the parties' partial resolution. Such provisions could be negotiated as part of an agreement or imposed as a condition of approval, where appropriate. They will not be required by rule.

39. Rule 1409

191. Comment requests leave to demonstrate good cause for failing to appear at a scheduled prehearing conference. The proposed modification will not be adopted. The Commission schedules prehearing conferences by decision. All parties are served and are expected to appear and fully participate. It is of practical necessity for the efficient management of proceedings that deadlines be established to govern a proceeding. Thus, conferences are convened to efficiently establish procedures and certainty for all concerned. There is no reason to amend the rule to clarify that the results of the conference (like any other hearing) will not be affected by a party's failure to appear.

40. Rule 1500

192. Historically, show cause proceedings were a creature of the decision creating them. Proposed rule 1500 attempts clarification as to the applicable burden of proof in show cause proceedings. The Commission has long utilized a show cause concept in the furtherance of its duties. See e.g., Decision No. C00-0846, issued August 4, 2000. The Commission initiates a proceeding after determining "sufficient cause exists to hold a hearing to determine the facts, to hear material arguments, to receive evidence and testimony from the Commission staff and

others, and to determine what order or requirement, if any, shall be imposed by the Commission." Decision No. C00-0846 at 2. The Commission then orders the respondent entity subject to its jurisdiction "to show cause why the Commission should not take appropriate action and enter an order or penalty" Decision No. C00-0846 at 3.

193. The Commission's long historical use of the process is more easily found in the context of subsequent judicial proceedings. See e.g., Archibold v. PUC, 933 P.2d 1323, 1325 (Colo. 1997); Public Utilities Com. v. Tucker, 167 Colo. 130, 132 (Colo. 1968); and Westway Motor Freight, Inc. v. Public Utilities Com., 156 Colo. 508 (Colo. 1965). While burden of proof is not expressly addressed as an issue in these judicial proceedings, the historical process is consistent with comments arguing that Staff of the Commission has the ultimate burden of proof.

194. Case No. 5248 arose from the Order to Shown Cause and Notice of Hearing, Decision No. 61199, issued August 15, 1963. In Decision No. 61450, issued September 25, 1963, one cannot determine the presentation of evidence with certainty, but it appears likely that Commission staff first presented evidence.

195. Case No. 5270 arose from the Order to Shown Cause and Notice of Hearing, Decision No. 62278, issued February 7, 1964. It is clear in Decision No. 63185, issued June 29, 1964, that Commission staff first presented its case because a recess was taken prior to the presentation of Respondent's case. Decision No. 63185 at 3.

196. In Decision No. C94-1475, issued November 16, 1994, Commission staff was ordered to disclose witnesses for evidentiary hearing in advance of respondent. The decision also recognized that Commission staff may seek to amend allegations based upon the ongoing nature of the investigation.

197. Because the undersigned anticipates that modifications are proposed to restore processes utilized prior to the recodification in 2003, the jurisdiction of the Commission to assign the burden of proof to a respondent in a show cause proceeding will not be determined herein that might relate to a show cause proceeding. Rather, the rule will be modified to provide an opportunity to streamline procedures based upon the burden of going forward.

198. The burden of proof has been summarized in other Complaint proceedings by analogy to civil cases:

> "In civil cases, the burden of proof is on the plaintiff to prove the elements of the case by a preponderance of the evidence. This burden of proof does not shift during the proceeding, although it may be aided by a presumption or a shift of the burden of going forward with the evidence once the plaintiff has established a prima facie case. "

Decision No. R11-0467 at 20.

199. It is also noteworthy that §40-6-108 C.R.S. is not the sole source of Commission authority. The Commission also has broad authority from other sources, including §§ 40-3-102, 40-3-110, 40-6-106, 40-6-107, and 40-15-107, C.R.S. Based upon facts and circumstances involved, the Commission might also exercise the latter authority in conjunction with a show cause proceeding.

200. Rule 1501(c) addresses the Commission taking administrative notice of matters. A Commission decision initiating a show cause proceeding may take administrative notice of information. If such evidence is sufficient to establish a prima facie case, the burden of going forward may be shifted by order. Implementing this procedure would particularly permit the Commission to improve efficiency of proceedings fundamentally based upon Commission records (i.e., whether an annual report is filed). Notwithstanding such a determination, if made, any respondent would have a full opportunity to contest or refute noticed evidence.

In this manner, uncontested proceedings can be resolved more efficiently while preserving respondents' full opportunity to offer evidence to contest or refute noticed facts prior to Commission adjudication.

41. Rule 1501

201. Without citing any authority, comment contends that due process only permits that administrative notice to be taken upon the request of a party. The undersigned disagrees. The proposed modification will not be accepted.

202. While due process concerns do not require cross examination of the information, there is a right to controvert or dispute the evidence by additional evidence. Thus, the admission of evidence by administrative notice upon request in closing argument cannot be admitted over objection.

203. Several comments address largely logistical concerns regarding the taking of administrative notice under the proposed rule. What if a copy of a document of which notice is taken is not available? If a copy of the source is not provided, what becomes the record on appeal?

204. Comment requests further modifications regarding the procedures affecting administrative notice of evidence. The undersigned appreciates the potential challenge for a party requesting administrative notice of a fact at the last minute. However, parties must anticipate evidence intended to be presented. Where unopposed, accommodations are often made for submission of a late-filed exhibit to address logistical concerns and efficiency. Where opposed, a continuance may be requested or one might request that the specific fact to be noticed be permitted to be specified in advance of providing a complete copy. In any event, administrative notice admits evidence. While the evidentiary ruling must be made by the

presiding officer based upon all surrounding facts and circumstances, the rule will be modified to be less procedurally prescriptive.

205. Comment suggesting a right to late-file a document from which evidence is noticed will not be adopted. No authority has been shown that late filing in all instances would not violate due process protections. Rather than establish such standard in rule, such determinations will be made upon request after consideration of surrounding facts and circumstances. Similarly, the undersigned in concerned that argument for admissibility of a late filed document is not practical in all instances. Illustratively, one might not be able to complete a hearing and discern what would be stricken if not admitted. Finally, it may not be appropriate to require a party to refute facts at hearing that are not in evidence. This non-exhaustive list of concerns leads the undersigned not to adopted further proposed modifications.

206. In any event, the adopted rule must remain consistent with the procedural aspects of taking administrative notice addressed by the Supreme Court. See Geer v. Stathopulos, 135 Colo. 146, 154-156 (Colo. 1957).

42. Rule 1502

207. Comment requests consideration of Colorado Appellate rule 4.2 in modifying rule 1502 in order to limit the scope of interim appeals. The scope of interim relief is indeed an extraordinary remedy and is not proposed to be modified. As has been recognized:

> 7. Interim orders are generally not subject to exceptions. Rule 1502, 4 Code of Colorado Regulations (CCR) 723-1. However, 1502(b) provides that "[a] presiding officer may certify an interim order as immediately appealable via exceptions." Rule 1502(b), 4 CCR 723-1.
>
> 8. In recommending adoption of rule 1502, Judge Ken F. Kirkpatrick summarized:

> It is the current practice of the Commission to entertain appeals of interim [*3] orders on a discretionary basis. The new rule should not encourage the appeal of interim orders, which would unnecessarily involve the Commission in ongoing proceedings that have been referred to ALJs. In addition, appeals of interim orders almost always unavoidably delay a proceeding. Nonetheless, there are certain circumstances where a significant ruling regulating the future course of the proceeding is made and a review would be appropriate. The rules currently have no mechanism for a presiding officer to certify an interim order as immediately appealable. Putting the presiding officer as the gatekeeper for interim order appeals seems to be a reasonable approach for allowing for some necessary interlocutory appeals but not encouraging practices that will result in unnecessary delay.

Decision No. R05-0461 at 18.

208. Denying exceptions to Judge Kirkpatrick's Recommended Decision, the Commission reiterated that it is left to the "discretion of ALJs and the Commission as to when interim orders may be appealed." Decision No. R09-1068-I, issued September 22, 2009, quoting. Decision No. C05-1093 at 36.

209. These considerations remain true. The current rule has proven adequate. Sufficient cause has not been shown to modify the rule.

43. Rule 1509

210. Comment requests that the rule permit parties in a proceeding to respond to all comments filed. The proposal will not be adopted in part and the rule will be clarified as to reliance upon comments filed after the last opportunity to respond. The ability of the public to provide comment to the Commission is more in the nature of the quasi-legislative function the Commission serves in the development, adoption, and implementation of public policy.

211. Comment in this proceeding requests that deadlines be established for filing of academic or policy comments. Clearly, comments are most informative when they are timely for consideration and response, as appropriate. The Commission would strongly encourage the filing of such comments to align with party positions they support.

212. Public comment will continue to be available, as in the past, for individual customers to submit comment. This type of comment will generally be submitted through the Commission's website, systems designed to accept public comment, submission of correspondence, or orally at hearings established for that purpose.

213. Academic and Policy comments will be requested in a newly broadened scope of comment intended to provide opportunity for those seeking to influence Commission consideration in the exercise of discretion.

214. In Colorado Energy Advocacy Office v. Public Service Co., the Supreme Court applied the Commission's authority in the context of an adjudicatory proceeding and the State Administrative Procedures Act. By including comments in the record and providing the opportunity for parties to address them, they will be available for consideration by the Commission in reaching a decision. The interests of parties will also be protected. See Colorado Energy Advocacy Office v. Public Service Co., 704 P.2d 298, 303-304 (Colo. 1985).

215. Any comment thereafter filed in an adjudicatory proceeding is practically too late to have impact and there will be no opportunity for parties to respond. Therefore, the rule will make clear that the Commission will not rely upon comment in adjudicatory proceedings submitted after the latter of the close of the evidentiary record or the latest due date for filing statements of position (e.g., closing briefs).

44. Other Procedural Proposals Affecting Timeliness of Commission Consideration.

216. Several comments suggest proposed modifications affecting timing of issuing a Commission decision.

217. Comment also addressed notification of the Commission action deeming an application complete. The Commission addresses completeness of applications during the Commissioners' weekly meeting. Minute entry is reflected in the Commission's E-Filing System promptly following determination. Where a decision will issue, the matter is addressed during the meeting and the decision issues shortly thereafter. Although some further delay can occur where the Commission will deem complete by decision, one can clearly anticipate such determination based upon publicly available weekly meetings as well as minutes thereof. The notice provided will not be modified further in rule.

218. Comment suggests shortening notice periods for the filing of intervention by right or permissive intervention to 14 days and to shorten the time for Commission staff to intervene the same, or for an additional seven days.

219. Typical notice in Commission proceedings is 30 days. The intervention period will not be shortened less than a typical notice period by rule. However, the amount of additional time available for Commission staff intervention is solely a creature of rule. Thus, the additional time can, and will, be shortened to seven days. See rule 1401(d).

220. A rule will be adopted to establish a shortened response time to exceptions filed in rule 1505(a). As an integral part of ensuring compliance with applicable statutory periods, it is found that the rules should provide more limited response time to filed exceptions in favor of maximizing time available to litigate a proceeding. In administrative proceedings and application proceedings where applicable statutory periods have been waived, the current response period will be retained.

221. Suggestions to eliminate some prefiled testimony may be reasonable. Because there is no deadline for filing specific types of prefiled testimony in rule, these matters can best be addressed on a case by case basis.

222. It is suggested that procedural timelines be affected to lessen timing pressure during the proceeding. Some frankly seem out of the context of these rules and are more appropriately addressed on a case by case basis in specific proceedings. Illustratively, it is suggested that the Commission issue more initial Commission decisions to circumvent the exception process. The scope and manner of referral are clearly matters within the Commission discretion and will not be addressed further in rule.

223. Some comment requests modification or time periods specified in statute. Such proposals will not, and cannot, be adopted.

A. Conclusion

224. Attachment A of this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

225. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

226. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

II. ORDER

A. The Commission Orders That:

1. The Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1, contained in redline and strikeout format attached to this Recommended Decision as Attachment A are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-1

PART 1
RULES OF PRACTICE AND PROCEDURE

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

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

The statutory authority for these rules is found in §§ 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109(5), 40-6-109.5, 40-6-114(1), and 40-6-122(4), 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 Rules of Practice and Procedure ~~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~~ and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and ~~orders~~ decisions 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~~persons. The Commission may,for good cause shown, grant waivers or variances from tariffs, Commission rules, and 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~~n~~~~docketed~~ active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.

(c) All waiver or variance requests shall include:

(I) ~~C~~citation to the specific paragraph of the rule or ~~order~~ decision from which the waiver or variance is sought;

(II) ~~A~~a statement of the waiver or variance requested;

(III) ~~A~~a statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request.

(IV) ~~A~~a statement regarding the duration of the requested waiver or variance, explaining the specific date or event ~~which~~ that will terminate it;

(V) ~~A~~a statement whether the waiver or variance, if granted, would be full or partial; and

(VI) ~~A~~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 that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, ~~which~~ and that meets the requirements of paragraph (d) of rule 1302.

(b) "Administrative ~~docket~~proceeding" means a non-adjudicatory ~~docket~~proceeding 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, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any

proceeding designated by the Commission as an administrative proceeding. ~~An administrative docket excludes applications, rulemaking proceedings, petitions, complaints, suspension proceedings, or any other adjudicatory proceeding.~~

(c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.

(~~c~~d) "Advice letter" means the introductory letter to a formal proposal by ~~the~~ a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by ~~Rule~~ paragraph 1210(c).

(e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the commissioners, administrative law judges, or advisory staff.

(~~d~~f) "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~~ entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.

(g) "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2011 edition of the Colorado Revised Statutes.[1] 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.

(~~e~~h) "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing commissioner, or an administrative law judge, as the context requires.

~~(f) "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~~.

(i) "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.

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[1] All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

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

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

(l) "Contracted agent" means any third-party that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).

(~~i~~m) "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.

(n) [Reserved].

(~~j~~o) "Day" means a calendar day.

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

~~(l) "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.~~

(~~m~~q) "E-Filings System" means the ~~web~~Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in ~~docketed~~ Commission proceedings.

~~(n) "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.~~

~~(o) "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.~~

(~~p~~r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the ~~witnesses~~ persons a party intends to call as a witness ~~to the stand~~ in a hearing.

(s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.

(~~q~~t) "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.

(~~r~~u) "OCC" means the Colorado Office of Consumer Counsel.

(~~s~~v) "Party" means "party" as that term is ~~used~~ defined in rule 1200.

(~~t~~w) "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.

(~~u~~x) "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~~the following information when not publicly available or lawfully available to the general public from federal, state, or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing, or widely distributed media:

(I) customer's name only in combination with any one or more other enumerated data elements that relate to such customer;

(II) social security or tax identification number;

(III) driver's license number or identification card number;

(IV) credit card, debit card,other account number used for payment;

(V) any required security code, access code, or password that would permit access to the customer's utility account; and

(VI) other individually identifiable information in the utility's possession or control (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information).

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

(~~w~~z) "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.

(~~x~~aa) "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.

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

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

(~~aa~~cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.

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

(ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.

(~~cc~~ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.

(gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding.

(hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.

(~~dd~~ii) "Tariff" means a ~~publication~~ schedule that is filed with ~~and maintained by~~ the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, ~~together~~ and/or~~with all~~ rules, regulations, terms, and conditions, ~~which~~ that in any manner affect or relate to rates, classifications, or service.

(~~ee~~jj) "Third party" means a person who is ~~neither~~ not the customer, a regulated entity, ~~n~~or a ~~regulated entity affiliate~~ contracted agent.

(~~ff~~kk) "Time schedule" means a document that is submitted to the Commission by a ~~motor vehicle~~common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.

~~(gg) "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., a mover as defined in § 40-14-102(9), 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.~~

~~(hh) "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.~~

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

(ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007.

(~~jj~~mm) "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~~ weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

(c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. Party, stakeholder or other public comments concerning a particular matter on the agenda are not permitted at regular weekly meetings.

(~~c~~d) 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 for a future meeting.

(~~d~~e) 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~~ shall serve as custodian of the Commission's records.

1007. Commission Staff.

(a) When Commission staff intervenes in any adjudicatory ~~docketed~~ proceeding ~~other than an administrative docket, rulemaking, or interpretive rulemaking,~~ the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial ~~advocacy~~ staff and as advisory staff.

(b) Trial ~~advocacy~~ staff ~~shall~~, for purposes of the particular proceeding, shall be considered a party for purposes of rules 1100-1108. Once a member of Commission staff has been designated as trial ~~advocacy~~ staff in a proceeding, ~~said~~ that staff member shall not function in any advisory capacity with respect to that proceeding. Advisory staff ~~shall be~~is available to provide advice and recommendations to the Commission, and shall be considered the Commission for purposes of rules 1100-1108.

(c) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

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

1100. Confidentiality.

~~These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the 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 requests 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, or produced in response to audit conducted by the Commission or ~~its~~ Commission ~~Staff~~staff, 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~~these standards of conduct. All persons ~~accorded~~ afforded 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~~these standards of conduct.

(~~I~~b) 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~~,~~ (1) not presumed to be open for inspection, and (2) is, in fact, confidential under applicable law, including ~~§§ 24-72-201 et seq., C.R.S.~~Colorado Open Records Act. If a claim of confidentiality is made in violation of this subparagraph (~~I~~b), 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 reasonable attorney's fees.

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

(d) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.

(e) Persons shall make only general references to information claimed to be confidential or highly confidential in their public testimony and exhibits, in other public filings, and in oral presentations other than those made on a confidential or highly confidential record.

(f) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.

(I) ~~(V)~~ In the event the Commission rules ~~in response to a pleading~~ that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such 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~~any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the informationshall continue to treat the information as subject to the protection requested by the provider of the information.

(II) ~~(VI)~~ In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality~~in a proceeding~~ is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, ~~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.P~~pending the ruling on the motion, all persons ~~accorded~~afforded access to such information shall continue to treat the information as confidential pursuant to ~~this rule~~these standards of conduct.

(III) ~~(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.~~the Colorado Open Records Act, 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~~the Colorado Open Records Act.

(g) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of

these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.

(h) The Commission and its staff shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commission staff member executes shall include a provision that requires the individual staff member to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commission staff member to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements signed by Commission staff and shall make such agreements available for public inspection.

(i) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.

(j) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.

(k) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; or to appeal any determination of the Commission.

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

(m) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.

(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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.

(II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (i) 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 (i) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.

(III) The OCC shall not use the procedure specified in this paragraph (m) as a substitute for discovery in Commission proceedings.

(IV) This paragraph (m) shall not authorize the OCC to obtain access to Commission staff work papers or work product.

(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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.

(VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (m).

(n) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is 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) 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 motor carriers;

(VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and

(XI) any document or information that has been previously made public.

~~(III) If a party believes that information requires extraordinary protection beyond that provided for in these rules, then the party shall submit a motion seeking such extraordinary protection. The motion shall include a description and/or representative sample of the information for which extraordinary protection is sought, shall state the specific relief requested and the grounds for seeking the relief, and shall advise all other parties of the request and the subject matter of the material at issue. The motion shall include a showing that the information for which extraordinary protection is sought is highly confidential; that the protection afforded by the Commission's rules governing confidentiality provide insufficient protection for the highly confidential information; and that, if adopted, the extraordinary protections proposed by the movant will afford sufficient protection for the highly confidential information. The motion shall be accompanied by the specific form of nondisclosure agreement requested by the party. The party seeking extraordinary protection for information shall comply with rule 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter an order requiring the filing of additional information, including the filing of a complete version of the information for which extraordinary protection is sought. The party seeking extraordinary protection for information shall bear the burden of proof to establish the~~

need for extraordinary protection. The Commission will consider *in camera* the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter an order granting the motion and ordering the extraordinary protection which the Commission, in the exercise of its discretion, deems appropriate; may enter an order denying the motion; or may enter any other appropriate order. Information which is subject to extraordinary protection and which is provided in response to discovery or in response to Staff audit shall not be filed with the Commission. Unless the Commission orders otherwise, a complete version of the document which contains the information which is subject to extraordinary protection shall be filed with the Commission as soon as any one of the following conditions applies: (A) the information is used to support a motion, (B) the information is filed as an exhibit to prefiled testimony, (C) the information is prefiled as an exhibit to be offered at hearing, or (D) the information is offered as an exhibit at hearing. Unless a filing is made through the E-Filings System or the Commission orders otherwise, an original and seven copies of the complete version of the document which contains the information which is subject to extraordinary protection shall be filed. The information shall be filed in accordance with the procedures established in paragraph (c) of this rule. Unless otherwise ordered by the Commission, its Staff shall have access to all information filed under this subparagraph (III) by virtue of the annual nondisclosure agreement executed under paragraph (g) of this rule.
The party seeking extraordinary protection shall submit an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain undisclosed, if known.

(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 or requesting extraordinary protection by the claiming party regarding any items claimed as proprietary, the Commission will enter an order resolving the issue. Such resolution shall apply in all future proceedings before the Commission as to the specific information for which

~~confidentiality or extraordinary protection was asserted, unless otherwise ordered by the Commission.~~

1101. Procedures Relating to Confidential Information Filed with the Commission in a Proceeding.

(~~c~~a) Procedure for filing information claimed to be confidential or highly confidential in a proceeding.

(I) A party submitting to the Commission information claimed to be confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules~~Commission's Rules of Practice and Procedure~~ and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The ~~cover~~ first page ~~of each copy of the document filed in the public record~~ shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents ~~which~~ that are filed under seal. ~~Parties shall make only general references to information claimed to be confidential in their testimony and exhibits, in other filings, and in oral presentations~~Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.

(II) Unless filed through the E-Filings System, ~~or the Commission orders otherwise,~~ in addition to the copies available for public inspection, the ~~filing party~~person filing shall file under seal an original and ~~seven~~ three copies of the pages on which the information is claimed to be confidential. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on ~~microfilmable~~lightly colored paper ~~(i.e., pastel or white and not dark colored paper such as goldenrod)~~. ~~The documents~~ Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the ~~documents~~ pages of the document be separated from the envelope, it ~~is~~ will be clear that the ~~documents~~ information on the page of the document is~~are~~ claimed to be confidential or highly confidential.

(III) Unless filed through the E-Filings System, ~~or the Commission orders otherwise,~~ the original and ~~seven~~ three copies of the pages containing confidential or highly confidential information shall be filed under seal ~~shall be submitted~~ in separate, sealed envelopes numbered serially. ~~Unless the Commission orders otherwise,~~ T~~t~~he 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 and ~~docket~~ proceeding number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN ~~DOCKET~~ PROCEEDING NO. _____" or "HIGHLY CONFIDENTIAL – SUBMITTED IN PROCEEDING NO. _____", as applicable;

(B) the name of the filing party;

(C) the date of filing;

(D) a description of the information (e.g., testimony or exhibits of _____ (name of witness), statement of position, motion);

(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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.

(b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the party must file a motion requesting highly confidential protection. The motion:

(I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;

(II) shall state the specific relief requested and the grounds for seeking the relief;

(III) shall advise all other parties of the request and the subject matter of the information at issue;

(IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provide insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;

(V) shall be accompanied by a specific form of nondisclosure agreement requested;

(VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and

(VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (h), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

(c) If a person believes that information presumed to be open for public inspection as contained inparagraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.

(d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.

(e) Information which is subject to highly confidential protection and that is provided in response to discovery or in response to Commission staff audit shall not be filed with the Commission. Unless the Commission orders otherwise, a complete version of the document that contains the information which is subject to highly confidential protection shall be filed with the Commission as soon as any one of the following applies:

(I) the information is used to support a motion;

(II) the information is filed as an exhibit to prefiled testimony;

(III) the information is prefiled as an exhibit to be offered at hearing; or

(IV) the information is offered as an exhibit at hearing.

(f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

(I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.

(III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.

~~(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. Nothing in this rule shall require the Commission to provide information filed under seal to any person other than its staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of this rule and acquire the information filed under seal from the filing party. Service of confidential material shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial and advisory staff. The OCC will provide written notification to a filing party if it obtains access to the filing party's confidential information from the Commission.~~

(~~e~~g) 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~~i) 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, unless the Commission orders otherwise, the parties may take notes ~~on the material~~about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting ~~trade secret or~~ confidential information in accordance with ~~this rule~~these standards of conduct.

(~~f~~h) All confidential information made available by a party shall be given solely to the Commission, ~~its~~ Commission 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 Commission ~~S~~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 staff may have access to any confidential information made available under the terms of ~~this rule~~these standards of conduct. ~~Neither is~~ Commission ~~S~~staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in ~~this rule~~these standards of conduct or other Commission rule or ~~order~~decision, ~~members of~~Commission~~S~~staff shall be subject to all other requirements of ~~this rule~~standards of conduct. Upon motion approved by the Commission, the ~~Colorado Office of Consumer Counsel~~OCC 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~~i) No person shall have 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, serves the nondisclosure agreement on the party filing the confidential information, and files the ~~signs a~~ nondisclosure agreement ~~on a form approved by~~ with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1102 and agrees to be

bound by the terms of those provisions. The agreement shall contain (1) the caption and ~~docket~~ proceeding number of the associated ~~docket~~proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) ~~with the exception of Staff,~~ the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing ~~party~~ person and shall be filed with the Commission at or before the time of review of the documents.

~~Notwithstanding anything in this rule to the contrary, each member of Commission Staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement which each Staff member executes shall include a provision which requires Staff to maintain and to treat information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule in accordance with the order granting extraordinary protection. Signing such an annual nondisclosure agreement shall permit a Staff member to have access to all confidential material filed with or provided to the Commission and to have access to all information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule. 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 purpose and intent of this rule. All persons, including Staff, who are afforded access to information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule shall maintain and shall treat that information in accordance with the protections specified in the order.~~

(~~h~~i) 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 shall be submitted to the Commission under seal in accordance with these rules.

(~~i~~k) ~~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~~l) Retention of documents.

(I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies ~~required~~ retained by Commission ~~S~~staff ~~to carry out its regulatory responsibilities,~~ shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission ~~S~~staff shall take all reasonable precautions to maintain the confidentiality of information subject to ~~this rule~~these standards of conduct.

(II) Upon motion approved by the Commission, the ~~Colorado Office of Consumer Counsel~~OCC 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~~these standards of conduct were produced, return such documents and information to the ~~party~~ person ~~producing~~ providing~~them~~ the information.

(III) In the event Commission ~~S~~staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the ~~party~~ person 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. Commission ~~S~~staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of ~~this rule~~these standards of conduct.

(IV~~II~~) Commission ~~S~~staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to ~~this paragraph (j)~~these standards of conduct 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.~~

110~~1~~2. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal ~~Docket~~Proceeding.

(a) A person ~~filing with the Commission,~~ providing any document or information outside of a ~~formal docket~~proceeding~~, documents or information~~that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall ~~utilize~~ use 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~~ that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover identifying the person providing the information, the documents provided, and the confidential portions identified by page number. ~~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 with page numbers that are~~ 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 is not, and 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~~ lightly-colored 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~~filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the ~~filing party~~filer within seven days after notification, the Commission will shred or destroy 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.~~

110~~2~~3. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential.

(a) When any person makes a request to inspect Commission records ~~which~~ that another person has claimed are confidential or is subject to highly confidential protection, the Director ~~of the Commission~~ shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act, ~~§§ 24-72-201, et seq., C.R.S. ("Public Records Law ")~~. The Director shall ~~utilize~~ use procedures ~~as~~ that are consistent with the provisions of the ~~Public Records Law~~Colorado Open Records Act. 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 or is subject

to highly confidential protection. 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~~Colorado Open Records Act~~, § 24-72-201 et seq., C.R.S.,~~ and all other applicable law.

1103~~3~~4. Personal Information – Collection.

(a) A utility shall collect only that personal information, including information regarding credit worthiness, ~~which~~ that 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 to providing utility service.

(b) If a utility collects personal information concerning a customer, then n~~N~~ot later than three months after first billing the customer, the ~~a~~ utility shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the utility holds concerning that customer, including a true copy ~~thereof~~of that information. 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) ~~V~~verify and correct any portion of a record ~~which~~ that is not accurate, timely, or complete, and inform the customer in writing of the corrections; or

(II) ~~i~~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~~ that 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.

11045. Personal Information– Disclosure.

(a) ~~A utility may not disclose a customer's personal information to any third 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.~~A utility may only disclose personal information in compliance with Colorado law, federal law, or as otherwise permitted by Commission rule.

(b) Requests must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she properly represents a governmental agency and is authorized to request the personal information.

~~(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.~~

(c) [Reserved].

(d) A utility may disclose information regarding monthly gas, steam, an electric customer charges and general usage for up to twenty-four months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, and history of energy assistance payments in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), and any other affiliated agencies using the information to provide energy assistance to Colorado customers, provided that EOC, LEAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of

their application process notice to the applicant for assistance that his or her utility may disclose certain account data information to facilitate the energy assistance application process.

(e) A utility may disclose personal information to a contracted third party to assist in the provision of regulated utility services, provided, however, that the third party contract contains the following minimum requirements:

(I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the utility internally to protect personal information.

(II) The contracted agent shall use personal information, only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without first obtaining the customer's consent is prohibited.

(III) The contracted agent shall destroy or return to the utility all personal information that is no longer necessary for the purpose for which it was transferred.

(IV) The contracted agent shall execute a non-disclosure agreement with the utility.

(f) The utility shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

110~~5~~6. Prohibited Communications – Generally.

~~(a) Except as provided in paragraph (b) of this rule, e~~Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members ~~that are not specifically assigned as trial advocacy or advisory staff~~ shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

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

(b) occurs between any advisory staff, commissioner, or administrative law judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party; and

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

~~(b) Prohibited communications do not include:~~

~~(I) Procedural, scheduling, status inquiries, E-Filings System support, 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;~~

~~(IV) Communications relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or~~

~~(V) Communications relating to a pending non-adjudicatory proceeding.~~

110~~6~~7. Prohibited Communications – Disclosure.

(a) Any person communicating with ~~the~~ any advisory staff, Commissioner, or Administrative Law Judge~~Commission~~ concerning a pending adjudicatory ~~docketed~~ proceeding~~s~~ 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) ~~T~~the name and ~~docket~~ number of the proceeding;

(II) ~~A~~a summary of the matters discussed;

(III) ~~T~~the persons involved and their relationship, if any, to the parties;

(IV) ~~T~~the date, time, and place of the communication and the circumstances under which it was made; and

(V) ~~A~~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.~~

110~~7~~8. 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; this includes ~~including~~, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own ~~initiative~~ motion or upon the motion of a party, order any of the following remedial measures:

(a) ~~D~~dismissal of the proceeding, in whole or in part;

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

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

(d) ~~S~~such alternative or additional sanctions as may be appropriate under the circumstances.

1108~~8~~9. 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 a 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 ~~up~~on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

(a) Prohibited communications do not include:

(I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;

(IV) communications relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or

(V) communications relating to a pending administrative proceeding or rulemaking proceeding.

(b) Every Commissioner and administrative law judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.

(I) All disclosures shall include:

(A) the date, time, and place of the communication;

(B) the names of the persons present;

(C) the interested persons' affiliations.

(D) the subject matter of the communication;

(E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and

(F) the signature of Commissioner or administrative law judge to certify that the disclosure is complete and accurate.

(II) The Director shall ensure the completeness of all disclosures.

(III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.

(IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

(a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.

(b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding to which the presentation is associated.

(c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:

(I) the date, time, and place of the meeting;

(II) a list of all individuals in attendance;

(III) the affiliations of all individuals in attendance;

(IV) a summary description of the presentation; and

(V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

11~~09~~12. – 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~~ decision 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 by Commission decision.

(b) Persons participating ~~merely~~ solely through public, academic, or policy comments ~~or testimony shall not be deemed~~are not parties.

(c) A non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument may be useful to the Commission. An amicus curiae is not a party, and may present a legal argument within the same time constraints as the party it seeks to support~~only~~, as permitted by the Commission. The arguments of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae may be accepted or declined at the Commission's discretion. Unless ordered otherwise, any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 ~~S~~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~~subject to and in accordance with § 13-1-127, C.R.S.~~,~~ after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;

(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~~.~~; or

(V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments. However, in no event shall a non-attorney representative take actions that constitute the practice of law.

(c) No attorney shall appear before the Commission in any ~~docketed~~ proceeding until the attorney has entered an appearance by filing an ~~E~~entry of ~~A~~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, e-mail address, ~~facsimile number,~~ and the attorney's registration number.

(d) An attorney of record ~~wishing~~ who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include ~~containing~~ a list of all pending hearing and procedural dates and~~. Such notice~~ shall be served in accordance with rule 1205, ~~as well as upon~~and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise ~~such~~ the party represented 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 a~~n order~~ decision 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 or electronically formatted on 8 1/2" x 11" white ~~paper~~pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be ~~stapled or~~ bound with removable bindings. 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~~ the filed testimony 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) Titles and captions.

(I) The title of an application or petition proceeding shall contain the name of the applicant or petitioner, describe the authority or ~~Order~~ decision being sought from the Commission with sufficient specificity to distinguish the application or petition from other proceedings, and briefly describe the subject matter of the proceeding. If the application or petition relates to a previous proceeding, the title of the application or petition shall identify the previous proceeding by ~~docket~~ proceeding number.

(II) Every pleading shall contain a caption ~~identifying~~ that identifies the proceeding by title~~,~~ and~~docket~~ proceeding number, ~~and~~ that contains the heading "Before the Public Utilities Commission of the State of Colorado," and ~~stating~~ that states the title of the pleading.

(III) Every pleading shall include 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 pleading shall not be included for calculating the length of the pleading.

(d) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, 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, telephone number, and e-mail address. 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.

(~~d~~e) Written testimony is not subject to paragraphs (c) and (~~e~~d) 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, beginning with "1" on each page.

(II) The cover sheet for written testimony shall contain the ~~docket~~proceeding number, the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, the date on which the testimony is filed, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.

(III) Except as required by subparagraph (IV), 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) Exhibits accompanying written testimony and submitted through the E-Filings System shall be numbered in sequence and separately ~~attached~~ uploaded as secondary documents to the primary written testimony.

(V) Each witness' exhibits shall be numbered sequentially beginning with the witness' initials and followed by the number of the exhibit. For example, exhibits to the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, cross-answer, ~~or~~ rebuttal, surrebuttal or other testimony.

(VI) 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 ~~a~~Arabic numeral as the original with a hyphenated designation that the testimony or exhibit is revised, such as "Exhibit JQP-1-2d Rev." All revisions other than those of a minor nature shall be ~~promptly~~ filed promptly with the Commission and served on all parties. Such filed revisions of testimony and/or exhibits shall include a cover page that contains a list of the revisions made, as well as a complete copy, not just individual pages, of the testimony and/or exhibits revised.

~~(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) When the E-Filings System is used to ~~simultaneously~~ file multiple documents as a single filing (e.g., an application with a related motion, a motion with exhibits, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separately ~~attached~~uploaded.

(g) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion with exhibits, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separated through the use of slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.

(b) Unless an ~~order~~ decision 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) Except in the calculation of notice, a calculation of ~~In computing~~ a period of days~~,~~ shall ~~the first day is~~ exclude~~d~~ the first day and include the last day ~~is included~~. In calculating the period of notice in days, neither the date on which the notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.[2]

1204. Filing.

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

(I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format.

(II) Filings made in paper copy shall include an original and three copies.~~:~~

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

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

~~(C) 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.~~

(III) Unless filing through the E-Filings System, ~~A~~a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual

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[2] For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

report through the E-Filings System, the report shall be uploaded to the system in an executable format.

(b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, 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.~~ Although the Commission's E-Filings System ~~will~~ is generally ~~be~~ available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.

(c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed ~~thereto~~.

1205. Service.

(a) A person filing any pleading or other document~~,~~ shall ~~also~~ serve a copy, including all supporting attachments or exhibits, ~~up~~on 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 assigned trial staff ~~advocacy~~ and advisory staff. Except as provided in rule 1205(~~b~~c) 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, ~~electronic mail,~~ or is registered in the Commission's E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

(b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial ~~advocacy~~ staff, ~~and~~ advisory staff, and registered users of the system.

(~~b~~c) 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 either (i) by ~~electronic~~ e-mail and by hand; (ii) by ~~electronic~~ e-mail and overnight delivery, or (iii) through the Commission's E-Filings System. Discovery shall be accomplished pursuant to ~~paragraph~~ rule 1405~~(c)~~.

(~~c~~d) 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 who is not registered in the E-Filings System represents a party, service is complete upon service to one of

those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the Commission's E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only. ~~shall be made upon not more than two attorneys of record designated by the party.~~

(~~d~~e) Proof of service of a filing shall be demonstrated through one or more ~~a~~ certificates of service~~, attached to the~~identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the Commission's E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any ~~filed document that does not contain~~filing for which there is no ~~a~~ certificate of service demonstrating service upon ~~, that omits from the certificate of service~~an amicus curiae, a pro se party, or ~~that omits from the certificate of service~~ a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.

(f) All interrogatories, requests for production, and requests or admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission 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~~ provide 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. Unless a mailed notice is required by Commission decision or specific rule, ~~T~~the Commission shall give notice of applications or petitions to all persons through the E-Filings System. ~~The Commission need not mail notice of applications or petitions to any person registered in the E-Filings System,~~

(b) The notice required by paragraph (a) of this rule shall state the following:

(I) ~~T~~the name and address of the applicant or petitioner~~.~~;

(II) ~~T~~the caption and ~~docket~~proceeding number of the proceeding~~.~~;

(III) ~~T~~the date the application or petition was filed~~.~~;

(IV) ~~A~~a brief description of the purpose and scope of the application or petition~~.~~;

(V) ~~W~~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.;

(VI) ~~T~~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~~.~~;

(VII) ~~T~~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)(VI) of this rule~~.~~;

(VIII) ~~T~~a statement 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~~ and contests or opposes the application or petition~~.~~; and

(IX) a statement ~~T~~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 provide notice of:

(I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;

(II) a restrictive amendment of any pleading;

(III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a ~~docket~~proceeding regarding such a petition; ~~or~~

(IV) a ~~transportation~~ regulated intrastate carrier application that does not include the requisite filing fee~~.~~; or

(V) a regulated intrastate carrier application for emergency temporary authority.

(d) Unless shortened by Commission ~~order~~ decision 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~~that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.

(e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings though the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

(~~e~~a) A ~~U~~utility~~ies~~, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with ~~rule 1210(b)(II)~~ the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.

(b) A utility may also file an application for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(D), 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 Commission action on the application; and~~

~~(I) a statement 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~~c) A utility ~~filing~~ that files 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~~ shall include the following information:

(I) ~~T~~the name and address of the utility~~.~~;

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

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

(IV) ~~A~~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~~a statement that any person may file with the Commission a written objection to the application, or ~~in intervention~~may file to intervene 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~~.~~; and

(VI) ~~A~~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~~d) 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~~e) The Commission may order an~~y~~ applicant or a 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~~f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.

(~~l~~g) Unless the Commission orders otherwise, a utility shall be permitted to file ~~new~~ tariffs complying with a~~n order~~ decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than ~~one~~ two business day~~'~~s~~'~~ notice. ~~Any filing made on one business day's notice shall be filed by noon in order to become effective on the next business day.~~ 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 provide 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~~ authorizes 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. Tariffs and Advice Letters.

(a) General.

(I) All utilities, unless specifically exempted by the Commission, shall have current tariffs for all jurisdictional services on file with the Commission.

(II) ~~Public inspection.~~ The utility shall have its current tariff available for public inspection at its principal place of business during normal business hours. The utility may post its tariffs on its website.

(III) ~~Filing and number of copies.~~

~~(A)~~ The utility shall file with the Commission an advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony and exhibits. Unless ~~a~~ such filing is made through the E-Filings System~~, or as otherwise ordered by the Commission,the utility shall file with the Commission~~the original and three copies must be filed.~~:~~

~~(i) An original and three copies of the advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony and exhibits; and~~

~~(ii) Seven additional copies of the advice letter.~~

~~(B) Other than where a utility files to establish a new tariff, if a filing is made pursuant to a specific Commission decision, the utility shall either file an original and three copies of each tariff page and each advice letter or shall file through the E-Filings System, in which case no paper copies shall be filed, unless otherwise ordered by the Commission.~~

(IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.

(V) ~~Notice.~~ The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.

(VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).

(VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.

(VIII) Hearing and ~~S~~suspension~~ and hearing~~. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ~~setting the matter for hearing upon reasonable notice~~ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed~~ing~~ 90 days.

(b) Tariffs.

(I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:

(A) ~~A~~a title page including:

(i) ~~T~~the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and

(ii) ~~A~~a general statement of the services to which the tariff applies~~.~~;

(B) ~~A~~a table of contents~~.~~;

(C) ~~A~~an explanation of the tariff's paragraph numbering sequence~~.~~;

(D) ~~A~~a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, ~~which~~ that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

(E) ~~A~~a list of all abbreviations and definitions used in the tariff~~.~~;

(F) ~~I~~identification of the utility's types of service and service territory, as applicable, to which the tariff applies~~.~~;

(G) ~~P~~provisions regarding the following, as applicable~~:~~;

(i) ~~L~~line extensions;

(ii) ~~C~~customer deposits;

(iii) ~~R~~return check charges consistent with § 13-21-109, C.R.S.;

(iv) ~~D~~disconnection, discontinuance, and restoration of service;

(v) ~~B~~billing and payments;

(vi) ~~L~~liability limitations;

(vii) ~~L~~late payment charges; and

(viii) ~~C~~customer and utility responsibilities, obligations, duties, and rights~~.~~; and

(H) ~~T~~the following information, on each tariff page:

(i) ~~U~~utility's name;

(ii) ~~T~~the tariff number ("Colorado PUC No. ___"), running consecutively for each subsequent tariff filing;

(iii) ~~I~~if applicable, the number of the tariff being canceled ("Cancels PUC No. ___");

(iv) ~~T~~the tariff title, which identifies the types of services included in the tariff;

(v) ~~T~~the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the cancel~~l~~ed page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");

(vi) ~~R~~relevant section or heading captions;

(vii) ~~A~~an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and

(viii) ~~T~~the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

~~(II) Notice of tariff filings. Any utility filing a tariff, other than one requesting less than statutory notice, shall provide notice in accordance with § 40-3-104(1), C.R.S. Except as~~

~~otherwise permitted by law, a utility filing a tariff shall do so on not less than 30 days notice to the Commission and the public.~~

(c) Advice letters.

(I) Filing with tariff. A utility shall file an advice letter with each tariff filing.

(II) The advice letter shall include:

(A) ~~T~~the utility's name, trade name, if any, and address;

(B) ~~T~~the sequentially numbered identification of the advice letter;

(C) ~~A~~an identification of the corresponding tariff number;

(D) ~~A~~an identification of the corresponding Commission ~~docket~~proceeding number and decision number, if applicable;

(E) ~~A~~a brief description of the tariff or tariff changes, which at a minimum shall include:

(i) affected classes of service;

(ii) affected classes of customers;

(iii) whether the tariff contains an increase in rates, a decrease in rates, or both;

(iv) whether the tariff changes terms or conditions; and

(v) whether the tariff makes textual changes;

(F) ~~A~~an identification of tariff page numbers included in the filing;

(G) ~~I~~if applicable, a listing of revised page numbers and/or canceled page numbers;

(H) ~~T~~the tariff's or tariff page's proposed effective date;

(I) ~~T~~the name, telephone number, ~~facsimile number,~~ and e-mail address of the person to contact regarding the filing; and

(J) ~~T~~the signature of the ~~authorized~~ agent of the utility authorized to file the advice letter.

(III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.

(IV) The advice letter shall be filed in the prescribed form as available from the Commission ~~or its website~~.

1211. ~~Additional~~ E-Filings System ~~Implementation~~.

~~This rule applies to consequences of implementing the Commission's E-Filing System:~~

(a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission personnel will actively monitor and correct the following information input during the electronic filing process through the Commission's E-Filings System: typographical errors, document title, the document to which a filing is responsive ~~to,~~ and the document type. When making any change to a document title in the Commission's E-Filings System, staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change.

(b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the ~~filing party~~person on behalf of whom the filing was made, proceeding ~~title~~ caption for new proceedings, filing date, proceeding number, ~~document title,~~ claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with ~~section~~ paragraph(d) below.

(c) Inconsistencies between electronic filing information and documents filed electronically. ~~To avoid prejudice to recipients of information through the E-Filing System information d~~Documents electronically attached to or associated with the filing must be consistent with information input in the E-Filings System. ~~To the extent of any conflict between information input in the e-filing process other than the document to which a filing is responsive to and document type on the one hand and documents electronically attached or associated with the filing on the other hand,~~ Except as provided in paragraphs (a) and (b), the information input in the e-filing process shall prevail.

(d) Procedure for ~~E~~expedited ~~R~~relief. In addition to other relief available, the following expedited relief is available when a filer ~~incurs~~ experiencestechnical difficulties while using or attempting to make a filing through the ~~Commission's~~ E-Filings System:

(I) Within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, ~~such~~ thefiler may file a statement containing, without limitation:

(A) a description of the difficulty or error;

(B) an identification of all proceedings affected by the difficulty or error;

(C) an identification of all electronic filings affected by the difficulty or error;

(D) a description of all actions taken to notify those affected by the difficulty or error;

(E) ~~a statement~~a verif~~ying~~ication that the filer undertook reasonable effort to notify those affected by the difficulty or error; and

(F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should ~~not~~ be administratively stricken from the unintended or improper proceeding.

(II) Without regard to the proceeding in which difficulty was ~~incurred~~ experiencedor the erroneous e-filing was made, the filer's statement ~~described herein~~ shall be filed in the proceeding in which the filing was originally intended or attempted to be filed.

(III) A copy of the correct filing shall be filed with the statement.

(~~a~~IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.

(~~b~~V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission personnel will administratively strike any original erroneous filing giving rise to the filing of the statement described ~~herein~~in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

(a) ~~A~~a complaint, by ~~the Commission or~~ any interested person, or a show cause proceeding, including a proceeding for civil penalties, as provided by rule 1302;

(b) ~~A~~an application, as provided by rule 1303;

(c) ~~A~~a petition, as provided by rule 1304;

(d) ~~A~~an ~~order~~ decision suspending and setting for hearing a proposed tariff, price list, or time schedule;

(e) ~~A~~an appeal of an emergency ~~order~~ decision in a pipeline safety matter concerning public safety, health, or welfare;

(f) ~~A~~an ~~order~~ decision opening an administrative ~~docket~~ proceeding under rule 1307; ~~or~~

(g) ~~A~~a notice of proposed rulemaking issued by the Commission~~;~~ or

(h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

1301. Informal 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,orally or in writing, 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) ~~E~~explain to the informal complainant the Commission's jurisdiction or lack thereof;

(II) ~~F~~forward to the informal complainant relevant informational packets or brochures;

(III) ~~i~~investigate the informal complaint~~ further~~;

(IV) ~~R~~refer the informal complaint to the affected regulated entity for a response;

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

(VI) ~~R~~request that the Commission issue an order to~~formal complaint~~show cause;~~ as permitted by § 40-6-108, C.R.S.;~~

(VII) ~~O~~offer mediation;

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

(IX) ~~E~~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 may only require~~s~~ a response period less than five days~~ to respond,~~ if such period ~~shall be~~is reasonable under the circumstances of the informal complaint.

(d) If the informal complainant and the regulated entity agree, Commission staff may refer an informal complaint for mediation. 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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

(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~~decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, ~~if~~ as applicable:

(I) ~~A~~a complaint ~~which~~ that 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~~a complaint ~~claiming~~ that claims 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.; and

(III) ~~A~~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, when provided by law. In that regard, ~~In a contested proceeding~~ the Commission ~~may impose a civil penalty, when provided by law, after~~ will consider~~ing~~ any evidence concerning some or all of the following factors:

(I) ~~T~~the nature, circumstances, and gravity of the violation;

(II) ~~T~~the degree of the respondent's culpability;

(III) ~~T~~the respondent's history of prior offenses;

(IV) ~~T~~the respondent's ability to pay;

(V) ~~A~~any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;

(VI) ~~T~~the effect on the respondent's ability to continue in business;

(VII) ~~T~~the size of the respondent's business ~~of the respondent~~; and

(VIII) ~~S~~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~~decision that:

(I) ~~setting forth~~establishes the expedited schedule, including hearing dates; and

(II) detail~~sing~~ the limits, if any, that the Commission, in its discretion, places on discovery.

(d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, ~~or~~ and 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 non-confidential 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 that 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~~ serves a copy of the complaint by hand-delivery or through the E-Filings System 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~~d); 1308(~~c~~e); 1400; 1405(~~c~~i); and 1409(b).

(f) In complaint proceedings where discontinuance of service becomes an issue, the Commission may issue an interim ~~order~~ decision to a regulated entity requiring it to provide service pending a hearing:

(I) ~~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, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;

(II) ~~I~~if the customer has previously made an informal complaint to the Commission, and Commission staff investigation indicates probable success of the customer; or

(III) ~~U~~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. Except in the case of an accelerated complaint, ~~T~~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 shall require 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) Show cause proceedings. ~~Pursuant to §§ 40-6-108 and 24-4-104(3), C.R.S., T~~the Commission may issue a decision ordering a regulated entity to show cause alleging that a regulated has violated a statute, rule, tariff, price list, time schedule, agreement accepted or approved by Commission decision, or decision and to make any appropriate order or requirement. The show cause decision shall issue ~~formal complaint~~ through the following process~~:~~.

(I) Proposed decision ordering a regulated entity to show cause.

(A) When ~~trial advocacy~~Commission staff intends to ~~bring~~ request an order to show cause ~~formal complaint~~ against any regulated entity, the ~~trial advocacy~~ staff shall first prepare a ~~draft of the~~ proposed ~~formal complaint~~ decision. The proposed ~~formal complaint~~decision shall set forth sufficient facts and information to ~~adequately~~ advise the respondent of the relief sought and how any statute, rule, tariff, price list, time schedule, ~~order~~decision, or agreement accepted or approved by Commission decision is alleged to have been violated. The proposed decision shall contain the following information, at a minimum:

(i) a clear statement of the facts and law which are the bases for the issuance of the decision;

(ii) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, suspend, annul, limit, or modify any authority granted by the Commission;

(iii) a notice to the respondent that any rates collected that are found to be unlawful are subject to refund; and

(iv) a statement that any relief sought may be granted as of the date of the notice of the issuance of an order to show cause.

(B) ~~Trial advocacy~~Commission staff shall submit the proposed ~~formal complaint~~ decision ordering a regulated entity to show cause to the Commission at its regular ~~W~~weekly ~~M~~meeting for approval to advise the regulated entity of the proposed ~~formal complaint~~proceeding ~~pursuant to § 24-4-104(3), C.R.S~~. The Commission shall decide whether to give the regulated entity notice of the content of the proposed decision based on the supporting information presented. If the Commission decides to give notice, then the proposed decision presented by Commission staff shall be served on the regulated entity and shall be attached to a notice of proposed order to show cause over the Director's signature. The

regulated entity shall have ~~30~~ 20 days to cure or satisfy the allegations set forth in the notice of proposed ~~formal complaint~~show cause.

(C) A notice of proposed decision shall identify those Commission staff members assigned by the Director or the Director's designee to service as trial staff and as advisory staff should the proposed show cause proceed to hearing.

(~~II~~D) ~~Should the regulated entity fail to satisfy or cure the allegations set forth in the notice of proposed formal complaint, or fail to request an extension of time to satisfy or cure, within the 30-day period,~~ After the 20 days to cure or satisfy have expired, ~~trial advocacy~~Commission staff shall ~~submit the~~present the proposed ~~formal complaint~~decision ordering the regulated entity to show cause, along with any responses from the regulated entity, at a meeting of the Commission ~~to the Commission~~ for a determination on whether ~~the formal complaint should be issued~~to adopt the decision. If the Commission determines that ~~the proposed formal complaint fails to satisfy the standards for issuing such complaint pursuant to~~ the information available, including the proposed decision ordering the regulated entity to show cause and the regulated entity's response, if any, does not support issuance of the decision to show cause in accordance with the standards found in §§ 40-6-108 and 24-4-104(3), C.R.S., if applicable, and Commission rules, the Commission shall ~~reject~~ not adopt ~~the issuance of the formal complaint~~the decision and the matter will be closed.

(II) Decision ordering a regulated entity to show cause.

(A) If the Commission determines that the information available, including the proposed ~~formal complaint~~decision and the regulated entity's response, if any, ~~satisfies those statutory standards~~ demonstrates good cause for further proceeding, the Commission shall, upon its own motion~~, pursuant to § 40-6-108(1), C.R.S.~~, open a show cause proceeding and issue ~~the formal complaint~~a decision ordering a regulated entity to show cause and providing notice of hearing.

(B) The decision shall join trial staff and the regulated entity as parties to the proceeding.

(C) The Commission may take administrative notice of evidence in a decision ordering a regulated entity to show cause in accordance with rule 1501(c). Based thereupon, the decision may include a finding that a prima facie case has been shown and shift the burden of going forward as to how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.

(~~III~~D) Upon issuance of the decision, the ~~formal complaint~~show cause proceeding will be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.

(E) A decision ordering a regulated entity to show cause shall be served in the same manner as a formal complaint, including an order requiring the respondent to satisfy the complaint or file its answer within 20 days of service of the order.

(F) Except as to a finding regarding a prima facie showing, if applicable, a Commission determination to open a proceeding and to issue a decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.

(i) Notwithstanding the requirements of paragraph (h), when the Commission finds either that a regulated entity has engaged in a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may institute expedited and/or summary ~~formal complaint~~proceedings for suspension or revocation of authority subject to and in accordance with~~under~~ § 24-4-104(3) and (4), C.R.S.

1303. Applications.

(a) An application may be made as follows:

(I) ~~T~~telecommunications matters, as provided in rule 2002~~.~~;

(II) ~~E~~electric matters, as provided in rule 3002~~.~~;

(III) ~~G~~gas matters, as provided in rule 4002~~.~~;

(IV) ~~W~~water, including combined water and sewer, matters, as provided in rule 5002;~~.~~

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

(VI) ~~R~~rail matters, as provided in rule 7002~~.~~; or

(VII) ~~S~~steam matters, as provided in rule 8002.

(b) All applications must state the relief requested,identify all applicable requirements of Commission rule and decision, and address each of those respective requirements.

(c) ~~An application shall be deemed complete as follows:~~Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.:

(I) ~~When t~~The Commission ~~or Commission staff evaluates an application to~~shall determine whether an application meets the application requirements prescribed by Commission ruleand decision This~~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.~~ determination is not, and shall not be taken or assumed to be, a decision on the merits.

(II) Commission staff shall evaluate the application during its notice period and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney~~, by mail, electronic mail, facsimile, or through the E-Filings System,~~ written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving ~~such~~ the 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, deem the application incomplete, dismiss the application without prejudice, and close the~~docket~~ proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.

(III) If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete, the application shall be automatically deemed complete. At any time, the Commission may, by ~~order~~ decision or by minute entry, 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.

(d~~c~~) At any time, ~~A~~an applicant may ~~at any time~~ waive ~~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) ~~T~~telecommunications matters, as provided in rule 2003~~.~~;

(b) ~~E~~electric matters, as provided in rule 3003~~.~~;

(c) ~~G~~gas matters, as provided in rule 4003~~.~~;

(d) ~~W~~water, including combined water and sewer, matters, as provided in rule 5003~~.~~;

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

(f) ~~R~~rail matters, as provided in rule 7003~~.~~;

(g) ~~P~~petition for rulemaking, as provided in rule 1306~~.~~;

(h) ~~P~~petition seeking a waiver or variance of any rule, as provided in rule 1003~~.~~; or

(i) ~~P~~petition seeking a declaratory order.

(I) A person may file a petition for a declaratory order either ~~in~~ as an original proceeding or in 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~~ that 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 format required by statute or the Commission's orders or rules.

(c) The Commission may ~~suspend and~~ set for hearing, or may assign the matter to an administrative law judge to set for hearing, any proposed tariff, price list, or time schedule, to investigate and determine its propriety. Such a~~n order~~ decision~~shall~~ thereby suspends the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111 (a) and (b). ~~The Commission shall~~Any ~~serve the order~~ decisionsetting the hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.

(d) Any person wishing to participate as a party in any hearing~~s~~ 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 is a party and does not need ~~not~~ to 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 period of time not to exceed 90 days.

(f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period.~~:~~ If ~~(I)~~ ~~_____~~the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when ~~it~~ the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.~~; or~~

~~(II) the Commission fails to issue a decision on the merits within the suspension period.~~

1306. Rulemaking Proceedings.

(a) Rulemaking proceedings generally. 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~~ A rulemaking ~~dockets~~proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.

(b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission may issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requestedand the Commission consents in writing to a modified notice period. When the notice period has expired, the Commission will set a schedule to receive comments on the petition from interested participants. The Commission may allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative ~~Dockets~~Proceedings.

The Commission may open an administrative ~~docket~~ proceeding on its own motion at any time. Administrative ~~dockets~~ proceedings 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~~ or petition, ~~as part~~to the extent included in a notice of ~~an~~ intervention or motion for permissive intervention; a complaint, or counterclaim ororder to show cause, as provided in this rule and ~~rule~~ paragraphs 1302(g) and (h); 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.

(b) No response may be filed to an answer, response, or notice, except upon motion ~~of intervention as of right, notice, or request for RRR~~.Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.

(c) ~~Notwithstanding the provisions in this paragraph (a), t~~The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion ~~and may act immediately~~ upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.~~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 shall represent whether the parties concur with such a request.~~

(~~b~~d) Except ~~as provided by this paragraph (b)~~in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an accelerated complaint proceeding~~s~~, the respondent shall file a

response within ten days after service of the order to satisfy or answer 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~~e) of this rule.

(~~c~~e) A respondent may file a motion to dismiss a complaint or counterclaim within 14 days of service~~;~~ except in an accelerated complaint proceeding~~s~~, in which case 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~~ decision 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~~and no claim need 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. Unless the Commission shortens the response time, ~~A party may respond within 14 days of being served with a~~rule 1400 governs response time to a motion to dismiss. Any motion to dismiss shall be determined before hearing unless the Commission orders that it be deferred ~~until hearing~~.

(~~d~~f) If a party fails to ~~timely~~ file timely 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 i~~In complaint proceedings or after the close of the intervention and notice period, if any, 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~~the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a

motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.

(e) A party may withdraw a~~A~~n advice letter and tariffs ~~may be withdrawn~~ prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter.~~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 by the withdrawal.

1310. Information Regarding Regulated Entities.

(a) A regulated entity may maintain information regarding the regulated entity in a~~n~~miscellaneous administrative ~~docket~~ proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such ~~miscellaneous docket~~an administrative proceeding, ~~if~~ provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in a~~n~~miscellaneous ~~docket~~administrative proceeding, the following information may be filed:

(I) ~~A~~a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);

(II) ~~I~~if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;

(III) ~~T~~the name, business address, and title of each officer, director, and partner;

(IV) ~~T~~the names and addresses of affiliated companies that conduct business with the regulated entity; and

(V) ~~T~~the name and address of the regulated entity's Colorado agent for service of process.

(b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

1400. Motions.

(a) Except for oral 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. Moving counsel is encouraged to confer with all parties to report when the requested relief is unopposed.

(b) Except in an accelerated complaint proceeding, ~~T~~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.

(c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.

(d) The Commission may deem a ~~F~~failure to file a response ~~may be deemed~~as a confession of the motion.

(e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:

(I) a material misrepresentation of a fact;

(II) accident or surprise, which ordinary prudence could not have guarded against;

(III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or

(IV) an incorrect statement or error of law.

(f) 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. If the relief sought by the motion has been agreed to by all parties or is not opposed, the moving counsel may so state in the motion.

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 intervene by permission within 30 days of notice of any ~~docketed~~ administrative or adjudicatory 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. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. ~~However,~~ T ~~t~~he Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.

(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. No decision shall be entered permitting intervention in response to a notice of intervention as of right.

(c) A motion to permissively intervene shall state the specific grounds relied upon for intervention~~;~~, the claim or defense within the scope of the Commission's jurisdiction ~~for which intervention is sought~~on which the requested intervention is based, including the specific interest that justifies intervention~~;~~;why the filer contends they are in the best position to represent that interest, and the

nature and quantity of evidence anticipated ~~, then known, that will~~ to be presented if intervention is granted. ~~For purposes of this rule,~~ T~~t~~he motion must demonstrate that the subject ~~docket~~proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented ~~in the docket; subjective interest in a docket is not a sufficient basis to intervene~~. If a motion to permissively intervene is filed in a natural gas, electric or telephone proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must demonstrate that the unique interest of the individual is not adequately represented by the OCC. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

(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~~ seven days after the time otherwise specified by paragraph (a) of this rule.

(e) ~~In t~~Transportation -regulated intrastate carrier application proceedings~~:~~.

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

(II) A ~~motor vehicle~~common 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 or a request to intervene in a corresponding permanent authority application proceeding~~s, 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.

Either on its own motion or on the motion of a party, ~~T~~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 determine any application or petition without a hearing and without further notice, upon either its own initiative or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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 ~~therefore~~on which the proceeding is contested or opposed.

(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 2005 edition of the Colorado Revised Statutes.[3] 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library~~.

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[3] ~~Link to DISCLOSURE AND DISCOVERY Rules 26-37 C.R.C.P, (2005) on the COPUC website: www.dora.state.co.us/puc/rules/2005CRCP26-37IncorporatedByReference.pdf~~

(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); 30(a)(2)(A); 30(a)(2)(C); 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) In application proceedings subject to the applicable statutory period for the Commission to issue a decision, ~~A~~a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.~~However, if the total discovery propounded by a party exceeds the limits established in rule 26(b)(2) of the Colorado Rules of Civil Procedure, the responding party shall, with respect to the discovery that exceeds those limits, serve its discovery responses, and objections if any, within 20 days of the request.~~

(c) In application proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses and objections, if any, within 10 days from service of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.

(d) In proceedings where prefiled testimony and exhibits is filed, the last day to propound written discovery directed solely to direct testimony and exhibits shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony and exhibits shall be the deadline for filing rebuttal and cross-answer testimony and the last day to propound discovery solely directed to rebuttal and cross-rebuttal testimony shall be five business days before the first day of hearing.

(e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.

(f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than four years prior to the filing of the application are presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.

(~~e~~g) 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.

(~~d~~h) Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery, as an exhibit to prefiledtestimony, as a prefiled exhibit, as an exhibit offered at hearing, or as an impeachment exhibit. No discovery, discovery responses, or objections to discovery shall be submitted to or served through the Commission's E-Filings System. Rule 1205(f) addresses service with respect to discovery.

(~~e~~i) 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~~Discovery may commence with the filing of the complaint. Unless the Commission orders otherwise, ~~T~~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~~j) In application proceedings and all rate proceedings set for hearing ~~set for hearing~~, ~~unless the Commission orders otherwise,~~ all party~~y~~ies shall file and serve ~~its~~ their testimony and exhibits as ~~follows:~~ordered by the Commission.

~~(I) If the applicant files its testimony and exhibits with its application, then an intervenor shall file its testimony and exhibits within 90 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~~k) In ~~transportation~~ regulated intrastate carrier application proceedings, notwithstanding anything in ~~paragraphs (a), (b), (c), or (d) of~~ this rule to the contrary, and unless the Commission orders otherwise:

(I) If an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.

(II) Each intervenor in ~~transportation~~ a regulated intrastate carrier application proceeding~~s~~ 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.

(a) Incorporation by reference and exceptions.

(I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure~~, as published in the 2005 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library~~.

(II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word "court" in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word "court" in the incorporated material shall be deemed to mean the Commission or the Director.

(b) Upon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue a subpoena or a subpoena ducestecum 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)~~ The Commission encourages parties to ~~Parties may~~ offer into evidence a written stipulation resolving ~~as to~~ any fact or matter ~~in issue~~ of substance or procedure that is at issue. 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 of, 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 pursuant to rule 1302(h), 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; shall 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 orderapproving, 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 shall be filed ~~with the Commission~~along with a motion requesting relief with regard thereto. The Commission ~~, which~~ shall enter a decision approving or disapproving ~~it~~the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the ~~settlement agreement~~ motion 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, establish a procedural schedule, 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. The Commission will issue a written ~~by~~ notice establishing the date, time, and place ~~thereof~~of the pre-hearing conference. 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.

The burden of proof and the burden of going forward shall be on the party that is the proponent of the decision, ~~U~~unless previously agreed to or assumed by a party or in the case of the suspension of a proposed tariff, price list, or time schedule., ~~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 If previously agreed or assumed, or 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 not be bound by the technical rules of evidence. Nonetheless, ~~The Commission shall,~~ to the extent practical, the Commission shall 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, t~~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~~,~~;of state and federal constitutions, statutes, rules, and regulations~~,~~;of tariffs, price lists, time

schedules, rate schedules, and annual reports~~,~~; of documents in its files~~,~~; of matters of common knowledge, 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~~Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If during hearing, the person requesting administrative notice shall provide to the Commission and to the parties a complete copy of the document that contains the fact to be noticed, unless otherwise ordered. Every party shall ~~be afforded an~~have the opportunity on the record and by evidence, to controvert evidence admitted by~~the fact to be so noticed~~ administrative notice.

1502. Interim ~~Orders~~Decisions.

(a) Interim decisions are issued after the Commission sets a tariff for hearing or a proceeding is opened by Commission decision or otherwise, other than a decision that may become a decision of the Commission.

(b) Interim ~~orders~~ decisionsshall not be subject to exceptions or applications for RRR, except that any ~~party~~ person aggrieved may challenge the matters determined in an interim ~~order~~ decisionin ~~such party's~~ exceptions to a recommended decision or in an ~~such party's request~~ application for RRR of a Commission decision.

(~~b~~c) Any person aggrieved by an interim decision may file a written motion with the presiding officer entering the decision to set aside, modify, or stay the interim decision.

(d) The Commission or ~~A~~ presiding officer may certify any interim ~~order~~ decisionas immediately appealable~~via exceptions~~ through the filing of a motion subject to review by the Commission en banc. Such motion shall be filed pursuant to rule 1400 and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX]."

~~(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 a~~At any time during a proceeding, the Commission may 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~~b) Before an appeal has been taken to district court, ~~T~~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 a Commission decision has been entered, or by the Commission on its own motion.~~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. In administrative proceedings and application proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, ~~P~~parties may file responses to exceptions within 14 days ~~of the~~ following service of the exceptions. In all other proceedings, parties may file responses to exceptions within seven days following 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 files an appropriate motion ~~objects~~ and the Commission by ~~order~~ decision 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 file an application for~~request~~ RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.

(b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues

material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.

(c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the expiration of the waiver or shortening of response time.

(~~b~~d) An~~request~~ application for RRR, or a motion for an extension of time in which to file such an~~request~~application, shall be filed within 20 days after the date of the Commission decision~~a decision of the Commission~~, or after the date on which 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~~e) An~~request~~ application for RRR does not stay the Commission's decision unless ~~it is specifically~~the Commission orders a stay ~~so ordered~~. If the Commission does not act upon an~~request~~ application for RRR within 30 days of its filing, ~~it~~ the application 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, rule,~~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.

1509. Public, Academic, or Policy Comments.

(a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.

(b) Parties and amici curiae to a proceeding may not comment in the same proceeding; they are not considered part of the public for comment purposes. Rather than submitting comment, parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.

(c) The Commission will not rely upon commentssubmitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position (e.g. closing briefs).

15~~09~~10. – 1999. [Reserved].

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