

## **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.**

The Rules of Practice and Procedure 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 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 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 persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. 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.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an 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) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
  - (II) a statement of the waiver or variance requested;
  - (III) a statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request.
  - (IV) a statement regarding the duration of the requested waiver or variance, explaining the specific date or event that will terminate it;
  - (V) a statement whether the waiver or variance, if granted, would be full or partial; and
  - (VI) any other information required by rule.

#### **1004. Definitions.**

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

- (a) "Accelerated telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory 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, 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.
- (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.
- (d) "Advice letter" means the introductory letter to a formal proposal by 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 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. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.
- (h) "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.<sup>1</sup> 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.
- (i) "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.
- (j) "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- (k) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (l) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (m) "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- (n) "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.
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

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<sup>1</sup> All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the 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 Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (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.
- (x) "Personal information" means the following:
  - (I) social security or tax identification number;
  - (II) driver's license number or identification card number;
  - (III) credit card, debit card, other account number used for payment;
  - (IV) any required security code, access code, or password that would permit access to the customer's account;
  - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
  - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly 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.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner conducting a Commission hearing, as applicable.
- (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.

- (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.
- (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.
- (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.
- (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. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (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.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a 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.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (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 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. The Commissioners will allow for public comment at each regular weekly meeting. However, party, stakeholder or other public comments concerning a particular matter on the agenda or any matter pending before the Commission are not permitted at regular weekly meetings.
- (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.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

**1007. Commission Staff.**

- (a) When Commission staff intervenes in any adjudicatory proceeding 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 staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (d) 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. 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.

**1100. Confidentiality.**

- (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 Commission 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 these standards of conduct. All persons afforded access to confidential information shall treat such information as confidential and shall neither use nor disclose such information except in accordance with these standards of conduct.
- (b) 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, subject to restrictions specifically provided by law, 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.

- (c) 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 not presumed to be open for inspection, and is, in fact, confidential under applicable law, including the Colorado Open Records Act. If a claim of confidentiality is made in violation of this paragraph (c), 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.
- (d) 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 determination by the Commission that the subject information is, in fact, confidential.
- (e) 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.
- (f) Persons shall make only general references to information claimed to be confidential or highly confidential in their public testimony, including attachments, in other public filings, and in oral presentations other than those made on a confidential or highly confidential record.
- (g) 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) In the event the Commission rules 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 shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or 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, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
  - (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality 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, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
  - (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under 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 the Colorado Open Records Act.



- (h) 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.
- (i) The Commission, Commission staff, Commission advisory counsel, and Commission staff counsel 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 the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual 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 Commissioner, Commission counsel, and Commission staff members 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 and shall make such agreements available for public inspection.
- (j) 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.
- (k) 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.
- (l) 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.

- (m) 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.
- (n) 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 (j) 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 (j) 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 (n) as a substitute for discovery in Commission proceedings.
  - (IV) This paragraph (n) 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 (n).

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

- (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 or highly 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 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 first page 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 that are filed under seal. 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, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (III) Unless filed through the E-Filings System, the original and three copies of the pages containing confidential or highly confidential information shall be filed under seal in separate, sealed envelopes numbered serially. The envelopes shall be no smaller than 9" by 12" and no larger than 10" by 13". The following information shall be written on the outside of each sealed envelope:
- (A) the caption and proceeding number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN 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, including attachments 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 person 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 provides 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 (a), 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 in paragraph (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 attachment included in 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.
- (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 paragraphs (h) and (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 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 confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the 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.

- (i) No person shall have access to information under seal 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 nondisclosure agreement 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 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated 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) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.
- (j) 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.
- (k) 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.
- (l) Retention of documents.
  - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff 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 staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
  - (II) Upon motion approved by the Commission, the 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 these standards of conduct were produced, return such documents and information to the person providing the information.

- (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the 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 staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
- (IV) Commission 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 these standards of conduct or order of the Commission.

**1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.**

- (a) A person providing any document or information outside of a proceeding 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 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 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 which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the 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 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.

**1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.**

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request

for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are 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 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

**1104. Personal Information – Collection.**

- (a) A regulated entity shall collect only that personal information, including information regarding credit worthiness 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 regulated service supplier. A regulated entity may request, but shall not require, a customer's Social Security Number as a prerequisite to evaluating credit worthiness or to providing regulated service.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
  - (I) verify and correct any portion of a record that is not accurate, timely, or complete, and inform the customer in writing of the corrections; or
  - (II) inform the customer in writing of its refusal to amend the record in accordance with the request, give a reason for the refusal, clearly note any portion of the record that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.



**1105. Personal Information– Disclosure.**

- (a) A utility may only disclose personal information as permitted by Commission rule or as compelled by state or federal law.
- (b) Requests to disclose personal information 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. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. 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 is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to thirty-six 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, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, 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 information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the 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 regulated entity 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 the regulated entity first obtaining the customer's consent is prohibited.
  - (III) The contracted agent shall destroy or return to the regulated entity 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 regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity 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.

**1106. Prohibited Communications – Generally.**

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members 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 during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (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, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

**1107. Prohibited Communications – Disclosure.**

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
  - (I) the name and number of the proceeding;
  - (II) a summary of the matters discussed;
  - (III) the persons involved and their relationship, if any, to the parties;
  - (IV) the date, time, and place of the communication and the circumstances under which it was made; and
  - (V) any other relevant information concerning the communication.

**1108. 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, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

**1109. 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 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 pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
  - (V) communications relating to a pending administrative 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 the 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 with 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.

**1112. – 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 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 solely through public, academic, or policy comments 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 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 status may be accepted or declined at the Commission's discretion. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.
- (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 confidentiality as are parties.

### **1201. Attorneys.**

- (a) A party or an amicus curiae shall be represented by an attorney at law, currently in good standing before the Colorado Supreme Court or the highest tribunal of another state as authorized in rule 205.4, C.R.C.P.

- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
- (I) his or her own interests;
  - (II) the interests of a closely held entity, 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;
  - (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, pursuant to rule 1509. 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 proceeding until the attorney has entered an appearance by filing an entry of appearance, signing a pleading, or stating the entry of appearance for the record. An entry of appearance shall state the identity of the party for whom the appearance is made, the attorney's office address, the attorney's telephone number, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise 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 decision of the Commission.

**1202. Form and Content of Pleadings.**

- (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 pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be 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, the filed testimony shall contain a table of contents.
- (b) Captions and titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and shall contain the name of the applicant or petitioner, describe the authority or

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 caption of the application or petition proceeding shall identify the previous proceeding by proceeding number.

- (II) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
  - (III) The title of a pleading shall include a heading "Before the Public Utilities Commission of the State of Colorado" and a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (c) 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.
- (d) 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.
- (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, 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.
- (f) Written testimony is not subject to paragraphs (d) and (e) of this rule. When written testimony is filed, it shall meet the following requirements.
- (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
  - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
  - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
  - (IV) The cover sheet for written testimony shall contain the 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.
  - (V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered

sequentially using the witness' initials followed by the number of the attachment. For example, attachments 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 other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.

- (VI) Attachments included with written testimony and submitted through the E-Filings System shall be numbered in sequence and separately uploaded as secondary documents to the primary written testimony.
- (VII) The Commission may permit minor revisions to written testimony and attachments by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony and attachments using the same Arabic numeral as the original with a hyphenated designation that the testimony is revised, such as "Attachment JQP-1, 2d Rev." All revisions other than those of a minor nature shall be filed promptly with the Commission and served on all parties. Such filed revisions of testimony and/or attachments 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 attachments revised.
- (VIII) All written testimony shall include a signed affidavit from the witness.
- (g) When the E-Filings System is used to file multiple documents as a single filing (e.g., an application with a related motion, a motion with attachments, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separately uploaded.
- (h) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank 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 a 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 a period of days shall exclude the first day and include the last day. 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.<sup>2</sup>

**1204. Filing.**

- (a) Unless a 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 when possible.
  - (II) When filing through the E-Filings System, the filing party must enter the title of a filing in title case format, i.e., the first letter of each word is capitalized, except for certain small words such as articles and short prepositions.
  - (III) Filings made in paper copy shall include an original and three copies.
  - (IV) Unless filing through the E-Filings System, 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 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. Although the Commission's E-Filings System is generally 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.

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<sup>2</sup> 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.

**1205. Service.**

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, 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 and advisory staff. Except as provided in rule 1205(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, or is registered in the 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 staff, advisory staff, and registered users of the system.
- (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 by e-mail and by hand; by e-mail and overnight delivery, or through the E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the E-Filings System, service upon the party is complete upon service to the attorney of record. 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 E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or 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 for 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, 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, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (b) The notice required by paragraph (a) of this rule shall state the following:
  - (I) the name and address of the applicant or petitioner;
  - (II) the caption and proceeding number of the proceeding;
  - (III) the date the application or petition was filed;
  - (IV) a brief description of the purpose and scope of the application or petition;
  - (V) whether the applicant has filed testimony and is seeking a Commission decision within 120 days, or has waived the time limits under § 40-6-109.5, C.R.S.;
  - (VI) the date by which any objection, notice of intervention as of right, motion to permissively intervene, testimony or any other document must be filed;
  - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, or any other document, if different from the date(s) fixed in subparagraph (b)(VI) of this rule;
  - (VIII) 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 and contests or opposes the application or petition; and
  - (IX) a statement that any person who files an objection, notice of intervention as of right, motion to permissively intervene, testimony, 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 proceeding regarding such a petition;
  - (IV) a 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 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 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 through 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.**

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with 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 a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(E), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility 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 shall include the following information:
- (I) the name and address of the utility;
  - (II) a statement that the utility has filed an application with the Colorado Public Utilities Commission for approval of its proposed refund plan;
  - (III) a statement summarizing the amount of the refund, the date for making the refund, the date the refund is anticipated to be completed, and the manner in which the refund is proposed to be made;
  - (IV) a statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission;
  - (V) a statement that any person may file with the Commission a written objection to the application, or 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 statement that written objections and interventions must be filed by the time listed in the notice separately given by the Colorado Public Utilities Commission.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number and date). No additional notice shall be required.

**1208. Adoptions and Adoption Notices.**

- (a) When the Commission 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) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

**1209. [Reserved].**

**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) The utility shall have its current tariff available for public inspection at its principal place of business during normal business hours. The utility shall post its tariffs on its website.
  - (III) The utility shall file with the Commission an advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

- (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) 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 suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by 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 130 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 title page including:
      - (i) 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 general statement of the services to which the tariff applies;
    - (B) a table of contents;
    - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) 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, 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 list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
  - (ii) customer deposits;
  - (iii) return check charges consistent with § 13-21-109, C.R.S.;
  - (iv) disconnection, discontinuance, and restoration of service;
  - (v) billing and payments;
  - (vi) liability limitations;
  - (vii) late payment charges; and
  - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
  - (ii) the tariff number ("Colorado PUC No. \_\_\_\_"), running consecutively for each subsequent tariff filing;
  - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. \_\_\_\_");
  - (iv) the tariff title, which identifies the types of services included in the tariff;
  - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
  - (vi) relevant section or heading captions;
  - (vii) 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) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(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) the utility's name, trade name, if any, and address;
  - (B) the sequentially numbered identification of the advice letter;
  - (C) an identification of the corresponding tariff number;
  - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
  - (E) 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) an identification of tariff page numbers included in the filing;
  - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
  - (H) the tariff's or tariff page's proposed effective date;
  - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
  - (J) the signature of the 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.

**1211. E-Filings System.**

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the E-Filings System: typographical errors, document title and the document type. When making a change to a document in the E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (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 person on behalf of whom the filing was made, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process and documents electronically attached or associated with the filing, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
  - (I) within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer 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 verification 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 be administratively stricken from the unintended or improper proceeding.
- (II) The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
  - (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
  - (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.
  - (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission staff will administratively strike any original erroneous filing giving rise to the filing of the statement described 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 complaint, by any interested person, or a show cause proceeding, including a proceeding for civil penalties, as provided by rule 1302;
- (b) an application, as provided by rule 1303;
- (c) a petition, as provided by rule 1304;
- (d) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) 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 expressing displeasure or dissatisfaction with a regulated entity.
- (b) In responding to or managing an informal complaint, Commission staff may:
  - (I) explain to the informal complainant the Commission's jurisdiction or lack thereof;
  - (II) forward to the informal complainant relevant informational packets or brochures;
  - (III) investigate the informal complaint;
  - (IV) refer the informal complaint to the affected regulated entity for a response;
  - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
  - (VI) request that the Commission issue an order to show cause;
  - (VII) offer mediation;
  - (VIII) provide to the informal complainant information about how to file a formal complaint; or
  - (IX) employ any combination of the above responses or techniques, or respond in any other reasonably appropriate manner.
- (c) If Commission staff refers an informal complaint to a regulated entity for a response, the regulated entity shall respond in writing within 14 days of the referral, or such lesser period as Commission staff may require. Commission staff may only require a response period less than five days if such period 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; and
  - (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, 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, as applicable:

- (I) a complaint 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 complaint 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 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. The Commission will consider any evidence concerning some or all of the following factors:
- (I) the nature, circumstances, and gravity of the violation;
  - (II) the degree of the respondent's culpability;
  - (III) the respondent's history of prior offenses;
  - (IV) the respondent's ability to pay;
  - (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
  - (VI) the effect on the respondent's ability to continue in business;
  - (VII) the size of the respondent's business; and
  - (VIII) such other factors as equity and fairness may require.
- (c) The Commission may expedite a formal complaint proceeding on its own motion or upon the motion of a party if such motion shows good cause or the consent of all the parties, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates;
  - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; and
  - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection 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; and
  - (VI) on the same day as the complaint is filed with the Commission, the complainant 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 complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision to a regulated entity requiring it to provide service pending a hearing:
- (I) if the customer has posted a deposit or bond with the regulated entity equal to the amount in dispute or as otherwise prescribed by interim decision, 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) if the customer has previously made an informal complaint to the Commission, and Commission staff investigation indicates probable success of the customer; or
  - (III) upon such other good cause as the Commission may deem appropriate.
- (f) Upon the filing of any formal complaint, except as provided in rule 1205(c), 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, 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 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.
- (g) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. The show cause decision shall issue on the Commission's own motion or through the following process.

- (I) Affidavit and proposed order to show cause.
- (A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. The affidavit shall contain the following information, at a minimum:
- (i) the name and address of the party that is the subject of the proposed order to show cause;
  - (ii) the name and address of the party that is proposing the order to show cause;
  - (iii) a clear statement of the facts and law which form the basis alleged for the issuance of the decision;
  - (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, limit, or modify any authority granted by the Commission; and
  - (v) any supporting documents that will support the request for issuance of an order to show cause.
- (B) The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed through the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.
- (C) The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.
- (D) Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.
- (E) A determination to issue an interim 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.
- (F) If the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall

be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.

**1303. Applications.**

- (a) An application may be made as follows:
  - (I) telecommunications matters, as provided in rule 2002;
  - (II) electric matters, as provided in rule 3002;
  - (III) gas matters, as provided in rule 4002;
  - (IV) water, including combined water and sewer, matters, as provided in rule 5002;
  - (V) motor carrier matters, as provided in rule 6002;
  - (VI) rail matters, as provided in rule 7002; or
  - (VII) steam matters, as provided in rule 8002.
- (b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.
- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.
  - (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
  - (II) Commission staff shall evaluate the application 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 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 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 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 finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the

time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.

- (IV) 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 or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
  - (V) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive the time limits provided in § 40-6-109.5, C.R.S. If an application is a joint application, a waiver filed by any one of the applicants shall be effective for all applicants.

**1304. Petitions.**

A petition may be made as follows:

- (a) telecommunications matters, as provided in rule 2003;
- (b) motor carrier matters, as provided in rule 6003;
- (c) rail matters, as provided in rule 7003;
- (d) petition for rulemaking, as provided in rule 1306;
- (e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or
- (f) petition seeking a declaratory order.
  - (I) A person may file a petition for a declaratory order either 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 and prior to issuing notice, the Commission may dismiss or otherwise not accept any petition seeking a declaratory order.

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

- (a) Protests.
  - (I) During the initial notice period, any person may file a written protest against a proposed tariff, price list, or time schedule.



- (II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then intervenes as provided in rule 1401 and paragraph (d) of this rule.
- (b) The Commission may, pursuant to § 40-6-111(3), C.R.S., 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 determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a 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 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need 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 130 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 the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when 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.

**1306. Rulemaking Proceedings.**

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking 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, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. If the Commission accepts the petition, it may set a schedule to receive comments on the petition from interested participants. The Commission may also 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 Proceedings.**

The Commission may open an administrative proceeding on its own motion at any time. Administrative 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. 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) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion 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.
- (d) Except 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, 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 (e) of this rule.
- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. No motion need be entertained regarding misjoinder of claims or misjoinder or nonjoinder of parties, 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, rule 1400 governs response time to a motion to dismiss.
- (f) If a party fails to 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 may grant any or all of the relief requested.

**1309. Amendment or Withdrawal.**

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. 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, 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 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 an advice letter and tariffs 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. 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 an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, 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 an administrative proceeding, the following information may be filed:
  - (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
  - (II) 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) the name, business address, and title of each officer, director, and partner;
  - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and

- (V) 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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
  - (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
  - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for \_\_\_\_\_."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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 failure to file a response 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 filed in accordance with rule 56 of the Colorado Rules of Civil Procedure.

**1401. Intervention.**

- (a) Except as provided by paragraph (d) of this rule, any person may file a notice of intervention as of right or a motion to intervene by permission within 30 days of notice of any 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 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. The 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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened 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 on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject 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. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- (e) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- (f) Transportation regulated intrastate carrier application proceedings.
  - (l) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must

explain the consequences to the common carrier and the public interest if the application is granted.

- (II) A 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.

**1402. Consolidation.**

Either on its own motion or on the motion of a party, the Commission may 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 motion 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.
- (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 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, Administrative Law Judge, or Transportation Staff.**

- (a) All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or the Commission specifies otherwise in a written order.

- (d) 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

**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.
  - (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); 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 advice letter and application proceedings subject to an applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony shall be the deadline for filing rebuttal and cross-answer testimony and the last day to propound discovery solely directed to rebuttal and cross-answer 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 ten 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 to lead to discovery of admissible evidence 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.

- (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 witness testimony, or such other and further relief as the Commission may deem appropriate. Resolution of discovery disputes shall take precedence over other matters.
- (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 attachment to prefiled testimony, 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. Paragraph 1205(f) addresses service with respect to discovery.
- (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) Discovery may commence with the filing of the complaint. Unless the Commission orders otherwise, the following shall apply:
    - (A) each party shall be limited to taking not more than two depositions; and
    - (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.
- (j) In complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.



- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

**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.
  - (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 duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing, consistent with § 40-6-103(1), C.R.S.

**1407. Stipulations.**

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter 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 any stipulation offered into evidence or on the record.

**1408. Settlements.**

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving 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 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 notice establishing the date, time, and place 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 initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. The proponent of the order is that party commencing a proceeding, except that in the case of suspension of a proposed tariff, price list, or time schedule, the regulated entity shall bear the burden of proof.

**1501. Evidence.**

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any

Commission order, decision, rule, or regulation. 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 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 a complete copy of the document is unreasonably voluminous, then the party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

**1502. Interim 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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant aggrieved may challenge the matters determined in an interim decision in exceptions to a recommended decision or in an application for RRR of a Commission decision. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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, hearing Commissioner or Administrative Law Judge may certify any interim decision as immediately appealable 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-I]."
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

**1503. Briefs or Statements of Position.**

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) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

**1505. Exceptions.**

- (a) A recommended decision becomes the Commission's decision unless, within 20 days or such additional time as the Commission may allow, any party files exceptions to the recommended decision or the Commission orders the recommended decision to be stayed. A stay of a recommended decision does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended decision is stayed until the Commission rules upon them. A motion for an extension of time to file exceptions based upon the unavailability of a transcript shall show that the transcript request was filed within seven days of the mailed date of the recommended decision. Parties may file responses to exceptions within 14 days 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 and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 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 grant of the waiver or the expiration of the shortened of response time.
- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, 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 § 40-6-115, C.R.S.

**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, 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 provide public comment in that proceeding; they are not considered part of the public for comment purposes. 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 comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

**1510. – 1999. [Reserved].**