

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-325ALL

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 30, 2007

Adopted Date: August 28, 2007

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding proposed Rules of Practice and Procedure. A copy of the proposed rules is attached to this NOPR.

2. The basis and purpose of the proposed rules is generally to administer and enforce the provisions of Title 40, C.R.S., and to regulate proceedings before the Commission. In particular, the basis and purpose of the proposed rules is to regulate the manner in which highly confidential material is provided to and managed by the Commission, and to codify existing practice with regard to interventions.

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

4. This NOPR proposes to modify Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1100(a)(III). The proposed rule generally (a) increases the required number of filing copies for the description and/or representative sample of the information for which

extraordinary protection is sought; (b) specifies that the Commission may enter an order either requiring additional information or requiring a party to file an original and an appropriate number of copies of the complete version of the information for which extraordinary protection is sought; and (c) clarifies that, unless otherwise ordered by the Commission, its staff shall have access to all information for which extraordinary protection is sought by virtue of the execution of staff's annual nondisclosure agreement.

5. This NOPR proposes to modify Rule 4 CCR 723-1-1100(c)(III) by making a non-substantive clarification.

6. This NOPR proposes to modify Rule 4 CCR 723-1-1401(a) by clarifying that the Commission may consider any application or petition without a hearing if no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the application or petition. *See also* Rule 4 CCR 723-1-1206(b)(VIII)(B).

7. An Administrative Law Judge (ALJ) will conduct a hearing on the proposed rules and related issues at the below-stated time and place. Interested persons may submit written comments on the proposed rules, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than September 21, 2007. Reply comments should be submitted by October 1, 2007. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic format. The submission of electronic comments shall, if submitted, be by floppy disk, compact disk (CD), or email to puc@dora.state.co.us.

The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions, whether oral or written.

8. In submitting comments or replies, interested persons are invited to suggest changes that will make the subject rules more efficient, rational, or meaningful. We recognize that regulation imposes costs; therefore, suggestions concerning rules that may be unnecessary or unduly burdensome will be fully considered by the Commission.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the September 10, 2007, edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: October 5, 2007
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

3. The ALJ may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary. Interested persons may file written comments in this matter before hearing. The Commission prefers that such pre-filed comments be submitted in both paper and, when possible, electronic format no later than September 21, 2007. The submission of electronic comments shall, if

submitted, be by floppy disk, compact disk (CD), or email to puc@dora.state.co.us. Reply comments should be submitted by October 1, 2007.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 28, 2007.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

POLLY PAGE

CARL MILLER

Commissioners

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, and 40-6-114(1), C.R.S.

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[signifies omission of unaffected rules]

STANDARDS OF CONDUCT

1100. Confidentiality

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

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

- (I) A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable law, including §§ 24-72-201 et. seq., C.R.S. If a claim of confidentiality is made in violation of this subparagraph (I), the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including a reasonable attorney's fee.
- (II) The Commission's acceptance of information pursuant to a claim of confidentiality shall not be construed to be an agreement or ruling by the Commission that the subject information is, in fact, confidential.
- (III) To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in these rules the party shall submit a motion seeking such extraordinary protection. The motion shall include a description and/or representative sample of the information for which extraordinary protection is sought and shall state the grounds for seeking the relief, the specific relief requested, and advise all other parties of the request and the subject matter of the material at issue. The motion shall also be accompanied by the specific form of nondisclosure agreement requested by the party. ~~Notwithstanding anything to the contrary in subparagraphs (c)(II) and (III) of this rule, the party shall file only an original and one copy of the description and/or representative sample of the information for which extraordinary protection is sought.~~ The party shall comply with rule 1204(a) in filing the motion. The Commission will evaluate the motion and the description and/or representative sample *in camera*. The Commission may enter an order either requiring additional information, or disposing of the motion and requiring the party to file a complete version and an appropriate number of copies of the information for which extraordinary protection is sought (the default number of copies is seven). In ordering the number of copies to be filed, the Commission will consider the needs of its commissioners, administrative law judges, and trial, advisory, and administrative staff. Unless otherwise ordered by the Commission, its staff shall have access to all information filed under this subparagraph (III) by virtue of the annual nondisclosure agreement executed under paragraph (g) of this rule.

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[signifies omission of unaffected rules]

(c) Procedure for filing.

- (I) A party submitting information claimed to be confidential to the Commission shall file, as part of the public record (i.e. not under seal), the required number of copies of its testimony and/or exhibits, according to the Commission's Rules of Practice and Procedure without including the information claimed to be confidential. The first page of each of these copies shall be stamped: "NOTICE of CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." A cover page on each copy shall include a list of the documents filed under seal and indicate the nature of the documents, so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. Otherwise, parties shall make only general references to information claimed to be confidential in their testimony and exhibits.
- (II) In addition to the copies available for public inspection, the filing party shall file under seal an original and seven copies of the information claimed to be confidential. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod.
- (III) The ~~eight original and seven~~ copies filed under seal shall be submitted in separate, sealed envelopes numbered serially. Unless the Commission orders otherwise, the envelopes shall be no smaller than 9" by 12", and no larger than 10" by 13". The following information shall be written on the outside of each sealed envelope:
 - (A) the caption "CONFIDENTIAL--SUBMITTED IN DOCKET NO.
 - (B) the name of the filing party;
 - (C) date of filing;
 - (D) description of the information (e.g. testimony or exhibits of _____ (name of witness);
 - (E) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions, or whether the Commission should destroy the information by shredding; and
 - (F) if the party chooses to retrieve the information, in accordance with the statement contained in subparagraph (III)(E), the name and phone number of the person who will retrieve such information.

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[signifies omission of unaffected rules]

PRE-HEARING PROCEDURE

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[signifies omission of unaffected rules]

1401. Intervention.

- (a) Except as provided by paragraph (d) of this rule, any person may file a notice of intervention as of right or a motion to permissively intervene within 30 days of notice of any docketed proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any docketed proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. The Commission may consider any application or petition without a hearing if no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the application or petition.

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[signifies omission of unaffected rules]