

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 1000 through 1099]

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, the Director, or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or requests for information under the Public Records Law.

- (a) All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or produced in response to audit conducted by the Commission or its Staff, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this rule. 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.
- (l) 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 (l), the Commission may

impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.

- (II) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a ruling by the Commission that the subject information is, in fact, confidential.
- (III) If a party believes that information requires extraordinary protection beyond that provided for in these rules, then the party shall submit a motion seeking such extraordinary protection. The motion shall include a description and/or representative sample of the information for which extraordinary protection is sought, shall state the specific relief requested and the grounds for seeking the relief, and shall advise all other parties of the request and the subject matter of the material at issue. The motion shall include a showing that the information for which extraordinary protection is sought is highly confidential; that the protection afforded by the Commission's rules governing confidentiality provide insufficient protection for the highly confidential information; and that, if adopted, the extraordinary protections proposed by the movant will afford sufficient protection for the highly confidential information. The motion shall be accompanied by the specific form of nondisclosure agreement requested by the party. The party seeking extraordinary protection for information shall comply with rule 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter an order requiring the filing of additional information, including the filing of a complete version of the information for which extraordinary protection is sought. The party seeking extraordinary protection for information shall bear the burden of proof to establish the need for extraordinary protection. The Commission will consider *in camera* the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter an order granting the motion and ordering the extraordinary protection which the Commission, in the exercise of its discretion, deems appropriate; may enter an order denying the motion; or may enter any other appropriate order. Information which is subject to extraordinary protection and which is provided in response to discovery or in response to Staff audit shall not be filed with the Commission. Unless the Commission orders otherwise, a complete version of the document which contains the information which is subject to extraordinary protection shall be filed with the Commission as soon as any one of the following conditions applies: (A) the information is used to support a motion, (B) the information is filed as an exhibit to prefiled testimony, (C) the information is prefiled as an exhibit to be offered at hearing, or (D) the information is offered as an exhibit at hearing. Unless the Commission orders otherwise, an original and seven copies of the complete version of the document which contains the information which is subject to extraordinary protection shall be filed. The information shall be filed in accordance with the procedures established in paragraph (c) of this rule. Unless otherwise ordered by the Commission, its Staff shall have access to all information filed under this subparagraph (III) by virtue of the annual nondisclosure agreement executed under paragraph (g) of this rule. The party seeking extraordinary protection shall submit an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain undisclosed, if known.

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[signifies omission of unaffected rule 1100(b)]

(c) Procedure for filing.

- (I) A party submitting to the Commission information claimed to be confidential shall file, as part of the public record (*i.e.*, not under seal), the required number of copies of its filing, according to the Commission's Rules of Practice and Procedure and without including the information claimed to be confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The cover page of each copy of the document filed in the public record shall list each document filed under seal, shall list each page number of each document on which confidential material is found, and shall indicate the nature of the documents which are filed under seal. Parties shall make only general references to information claimed to be confidential in their testimony and exhibits, in other filings, and in oral presentations.
- (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 (*i.e.*, pastel or white and not dark colored paper such as goldenrod). The documents containing information claimed to be confidential shall be clearly marked so that, should the documents be separated from the envelope, it is clear that the documents are claimed to be confidential.
- (III) The 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 and docket number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN DOCKET NO. _____"
 - (B) the name of the filing party;
 - (C) the date of filing;
 - (D) a description of the information (*e.g.*, testimony or exhibits of _____ (name of witness), statement of position, motion);
 - (E) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions or it prefers to have the Commission 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.

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[signifies omission of unaffected rules 1100(d) through (f)]

- (g) No access to information under seal shall be allowed until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1102 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and docket number of the associated docket; (2) the signatory's full name, title, employer or firm, and business address; (3) the name of the party with whom the signatory is associated; (4) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) with the exception of Staff, the signature of the associated party's counsel. The agreement shall be delivered to counsel for the filing party and shall be filed with the Commission at or before the time of review of the documents. Notwithstanding anything in this rule to the contrary, each member of Commission Staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement which each Staff member executes shall include a provision which requires Staff to maintain and to treat information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule in accordance with the order granting extraordinary protection. Signing such an annual nondisclosure agreement shall permit a Staff member to have access to all confidential material filed with or provided to the Commission and to have access to all information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule. The Commission shall maintain in its files the annual nondisclosure agreements signed by Staff and shall make such agreements available for public inspection. All persons, including Staff, who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of this rule. All persons, including Staff, who are afforded access to information to which the Commission has granted extraordinary protection pursuant to subparagraph (a)(III) of this rule shall maintain and shall treat that information in accordance with the protections specified in the order.

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[signifies omission of unaffected rules 1100(h) through 1399]

PRE-HEARING PROCEDURE

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[signifies omission of unaffected rule 1400]

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 by permission 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. 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 and must explicitly request a hearing. However, the Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.

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[signifies omission of unaffected rules 1401(b) through 1402]

1403. Uncontested (Modified) Proceedings.

- (a) The Commission may determine any application or petition without a hearing and without further notice, upon either its own initiative or upon the motion of a party, ~~determine any application or petition which~~ if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing. A person having knowledge of the stated facts shall, under oath, sign a sworn statement attesting to the facts stated in the application or petition and any attachments and/or exhibits. The sworn statement need not be notarized, but it shall contain language indicating that the signatory is affirming that the statements are true and correct to the best of the signatory's knowledge and belief.
- (b) A proceeding will not be considered to be contested or opposed, unless an intervention has been filed that contains a clear statement specifying the grounds therefore~~e~~.
- (c) If all parties withdraw their interventions before completion of a hearing, the matter may be determined as an uncontested proceeding.

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[signifies omission of unaffected rules 1404 through 1999]