

Decision No. C08-0622

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-243ALL

IN THE MATTER OF THE EMERGENCY RULES IMPLEMENTING STATUTORY AMENDMENTS TO EX PARTE DISCLOSURE REQUIREMENTS UNDER HOUSE BILL 08-1227.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: June 19, 2008
Adopted Date: June 19, 2008

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules implementing statutory amendments to *ex parte* disclosure requirements under House Bill 08-1227.

2. House Bill 08-1227 (the Bill) amended, *inter alia*, §§ 40-6-122 and 40-6.5-106, C.R.S. These statutory sections generally pertain to *ex parte* communications with the Commission. The Bill amends the statutory sections by limiting certain provisions to adjudicatory proceedings. The bill becomes effective on July 1, 2008.

3. Because the Commission's current rules conflict with the amendments in the Bill, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the emergency rules appended to this Decision as Attachment A.

4. We take this action in accordance with the provisions of §§ 40-2-108(2) and 24-4-103(6), C.R.S.

5. We find that adoption of the emergency rules is imperative and necessary to implement the requirements of the Bill. Compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to public interest.

6. The rules attached to this order shall be effective on July 1, 2008, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

7. While it is clear that the term “adjudicatory proceeding” as used in the Bill does not include rulemaking¹ and pending legislative proposals, further definition may be necessary. Therefore, the Commission will, by separate decision, issue a Notice of Proposed Rulemaking (NOPR) to invite comment pertaining to the adoption of permanent rules. The NOPR will, among other things, invite comment regarding whether and to what extent the rules should define a non-adjudicatory proceeding, require disclosures,² and/or require Commission decisions to order procedural safeguards.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. The attached rules shall be effective on July 1, 2008.

3. This Order is effective upon its Mailed Date.

¹ By extension, rulemaking would include pre-rulemaking activities such as investigatory dockets.

² The Federal Communications Commission uses a “permit but disclose” approach to *ex parte* presentations that may also be useful in proceedings before the Colorado Public Utilities Commission.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 19, 2008.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1

RULES OF PRACTICE AND PROCEDURE

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)~~, and 40-6-122(4), C.R.S.

* * *

[indicates unaffected, omitted material]

STANDARDS OF CONDUCT

* * *

1105. Prohibited Communications – Generally.

- (a) Except as provided in paragraph (b) of this rule, ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members that are not specifically assigned as trial advocacy or advisory staff shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly.
- (b) Notwithstanding the provisions of paragraph (a) of this rule, prohibited communications do not include:
 - (l) Procedural, scheduling, or status inquiries, or requests for information that have no bearing on the merits, substance, or outcome of the proceeding;

- (II) Protests or comments made by any customer of a utility, concerning any proposed tariff, price list, or time schedule;
- (III) Communications made in educational programs or conferences, or in meetings of an association of regulatory agencies, except for substantive issues involving pending matters; ~~or~~
- (IV) Communications ~~with or at the request of members of the General Assembly or their staffs~~ relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; ~~;~~ or
- (V) Communications relating to a pending non-adjudicatory proceeding.

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