

Decision No. C08-1108

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-459ALL

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: October 23, 2008

Adopted Date: October 22, 2008

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding implementing statutory amendments to *ex parte* disclosure requirements under House Bill 08-1227. A copy of the proposed rules is attached to this NOPR.

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 became effective on July 1, 2008.

3. By Decision No. C08-0622, we adopted emergency rules because the Commission's then current rules conflicted with the amendments in the Bill. Also in that decision we recognized that it was clear that the term "adjudicatory proceeding" as used in the Bill does not include rulemaking¹ and pending legislative proposals; however, further definition

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

may be necessary. Therefore, we noted that by separate decision, we would issue a NOPR to invite comment pertaining to the adoption of permanent rules. This NOPR now invites comment to the attached rules. We note that the attached rules in no way are different from the currently effective emergency rules.

4. The Commission is currently gaining experience in the use of a ‘permit, but disclose’ type of proceeding. *See* Docket No. 08I-113EG. We hope to use our knowledge from that proceeding to determine whether further changes to the *ex parte* rules are necessary. If we determine that we can improve the communications process by establishing default guidelines, we will do so in another future rulemaking.

5. The statutory authority for the proposed rules is found in §§ 40-2-108(1), 40-6-122 and 40-6.5-106, C.R.S.

6. 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 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 November 24, 2008. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions, whether oral or written.

7. 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 November 10, 2008 edition of *The Colorado Register*.

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

DATE: December 2, 2008

TIME: 9:00 A.M.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The Administrative Law Judge (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 November 24, 2008.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 22, 2008.**

(SEAL)



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

RONALD J. BINZ

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
ABSENT.

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.

* * *

[indicates unaffected, omitted material]

STANDARDS OF CONDUCT

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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;
- (IV) Communications relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
- (V) Communications relating to a pending non-adjudicatory proceeding.

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