

Decision No. C09-0054

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-027ALL

IN THE MATTER OF THE EMERGENCY RULES IMPLEMENTING EX PARTE
DISCLOSURE REQUIREMENTS.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: January 21, 2009

Adopted Date: January 14, 2009

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules to continue the ex parte disclosure requirements under House Bill 08-1227 and originally adopted by Decision No. C08-0622 in Docket No. 08R-243ALL.

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 amended the statutory sections by limiting certain provisions to adjudicatory proceedings. By Decision No. C08-0622, we amended our then current rules because they conflicted with the amendments in the Bill. The emergency rules became effective on July 1, 2008 and will expire on January 27, 2009.

3. By Decision No. C08-1108, we issued a Notice of Proposed Rulemaking to codify the ex parte rules on a permanent basis. The Administrative Law Judge assigned to that matter issued Decision No. R08-1297 on December 19, 2008. Those permanent rules will not be

effective until, at the earliest, March 1, 2009. Therefore, we find it necessary to re-issue emergency rules to ensure consistency in our rules.

4. 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. 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 avoid a gap in our rules. 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 the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

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 the mailed date of this Decision.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 14, 2009.**

(SEAL)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

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, 40-6-114(1), and 40-6-122(4), C.R.S.

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[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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