

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 09R-697ALL

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RULES RE: ELECTRONIC FILING (E-FILING) WITH THE COMMISSION.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
AMENDING RULES**

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Mailed Date: December 11, 2009

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**I. STATEMENT**

1. On September 30, 2009, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding, Decision No. C09-1091. The purpose of this proceeding is to revise the current practice and procedure rules to permit the Commission to utilize electronic, rather than paper, as an alternative means to accomplish many functions. The rules were proposed on September 30, 2009.

2. The Commission referred the instant rulemaking proceeding to an administrative law judge, and scheduled the first hearing for November 10, 2009. *See* Decision No. C09-1091.

3. Considering the limited scope of the instant NOPR, the Commission requested that interested persons limit their comments to the proposed rule changes only. To the extent that comments were submitted beyond such scope, or are not specifically addressed herein, they have been considered and will not be addressed further.

4. Written comments were filed with the Commission in advance of hearing by Black Hills/Colorado Electric Utility Company, L.P., and Black Hills Colorado Gas Utility Company, L.P., doing business as Black Hills Energy (Black Hills); Public Service Company of Colorado (Public Service); Qwest Corporation (Qwest); the Colorado Office of Consumer Counsel (OCC); the Colorado Limousine Association; and approximately 20 individuals.

5. The first hearing was held as scheduled on November 10, 2009. Oral and written comments were provided at hearing by Davis Graham & Stubbs, LLC (DG&S); Public Service; the OCC; and Staff of the Commission (Staff).

6. Mr. Rob Allen of the Department of Regulatory Agencies' Information Technology Services, was the lead author of information responsive to technical matters raised in pre-filed written comments. *See* Hearing Exhibit 1. At the commencement of the hearing, Hearing Exhibit 1 was distributed to those in attendance. Mr. Allen was then available for clarification.

7. Mr. Dino Ioannides, of Staff, made a presentation to address the scope of the proceeding, introduced modifications in the proposed rules, and address pre-filed written comments. Mr. Ioannides was also then available to address clarifying questions.

8. Pursuant to § 40-6-109, C.R.S., the record of this proceeding and a written recommended decision are transmitted to the Commission.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109.5, 40-6-122(4), C.R.S.

### **A. Introduction of Rule Modification**

10. The proposed rules commence with the premise that the Commission's E-Filings System will enable the Commission to conduct much of its business electronically. Such uses include: distribution of the Commission's meeting agendas (Rule 1005(b)); service of filings and pleadings on registered filers (Rule 1205(a)); distribution of Commission notices associated with applications and petitions (Rule 1206(a)); and transmission of deficiency letters (Rule 1303(b)(II)).

11. Rule 1004(m) introduces the E-Filings System and defines it as "the web based process authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in docketed proceedings." Other

proposed uses include: distribution of the Commission's meeting agendas (Rule 1005(b)); service of filings and pleadings on registered filers (Rule 1205(a)); distribution of Commission notices associated with applications and petitions (Rule 1206(a)); and transmission of deficiency letters (Rule 1303(b)(II)).

12. The proposed rules specify the mechanics associated with e-filing (*see e.g.*, Rule 1202).

13. Proposed Rule 1204(d) retains the close of business day filing time deadline of 5:00 p.m., even though the E-Filings System generally will be operational 24 hours a day, 7 days a week.

14. The E-Filings System has been developed with security protections such that it is capable of accepting confidential documents. It can also distribute electronically filed material to the Commissioners and the Administrative Law Judges as well as serve it on Commission trial and advisory staff. This system design supports the e-filing of confidential material and therefore the Commission proposes to amend Rule 1100 to reflect the capabilities of the E-Filings System.

15. Minor wording changes and clarifications are made in various places in the rules in light of the proposed amendments related to e-filings (*see e.g.*, Rule 1405). In addition, the Commission has made modest amendments to Rules 1105 and 1206(c)(IV) to reflect changes in Commission practices since the last proceeding in which these rules were at issue.

16. Staff presented some additional amendments during hearing that were largely of a technical or clarifying nature.

**B. Black Hills**

17. Black Hills submitted prefiled written comments.

18. Proposed Rule 1204(d) retains the close of business day filing time deadline of 5:00 p.m. Black Hills requests that the deadline for electronic filings be moved from 5:00 p.m. to 11:59 p.m. for electronic filings.

19. No rule change is proposed; however, Black Hills requests that the Commission encourage parties to a proceeding to permit documents filed through its Electronic Filing System to be text searchable and selectable for all reviewers.

20. Black Hills seeks clarification of the scope of the term “multiple documents” in Rule 1202(f). The rule is specific in requiring the filing of testimony separate from exhibits. In those circumstances, the rule states that the testimony must be uploaded as a separate document from the exhibits (and each exhibit is a separate document). Black Hills Energy requests that the Commission clarify the intent of the proposed rule as it relates to applications, advice letters, and filings other than testimony and exhibits. In other words, does the rule require separate document files and uploading, or can a PDF with consolidated documents be filed electronically?

21. Black Hills seeks clarification as to whether the verification of testimony and applications, or a separate affidavit such as an affidavit in support of a motion for highly confidential protective order, must be filed as a separate document. In some cases, the verification is the last page in a document. Will the Commission accept an electronic signature? Will it accept a PDF of the original signature as the “original” signature? If so, is that signature in compliance with the rules of evidence (“best evidence requirements”) in Colorado?

**C. Public Service Company of Colorado**

22. Public Service supports implementation of the e-filing system to foster faster and more efficient docket processing.

23. Public Service is concerned with the security of the e-filing system and the safe handling of confidential and highly confidential information. Based upon concerns raised, Public Service requests any requirement to file confidential or highly confidential information be removed from the rules. At most, Public Service contends the filing of confidential information should be limited to the owner of the information. In any event, Public Service states that it does not consent to any other party with access to Public Service's confidential or highly confidential information, electing to file our sensitive information electronically.

24. If filing of confidential information is permitted, Public Service requests that the Commission clarify its rules regarding retention of such information and demarcation of confidentiality as to e-filings.

25. Public Service next requests that the Commission establish a process for how system failure and unavailability should be handled as well as relief as to late filings due to technical difficulties.

26. Public Service requests that the Commission address maintenance of service lists and electronic certificates of process in its proposed Rules. As part thereof, Public Service suggests the Commission should maintain accurate and updated service lists for all proceedings.

27. Public Service raises concerns about upload speed, naming of filings, and stamping of Advice Letters and tariffs.

28. Public Service understands that service is effectuated through the filing system. However, it is suggested that further clarification be given that service is in fact through the system, rather than receipt of an e-mail notification of filing.

29. Public Service disagrees with the proposed modification of the filing deadline rule and continuation of the deemed filing date based upon the Commission's business hours.

Ms. Kim pointed out that 5:00 p.m. approximates the close of business for parties in addition to the Commission and that receipt of timely notice can critically impact the ability to respond. At 5:00 p.m., companies are generally fully staffed to process and review filings for immediate necessary action. In order to ensure most expeditious service of documents for which responses must be prepared, Public Service advocates continuing the 5:00 p.m. filing deadline.

30. Public Service also suggests that the proposed limitation of document size to five MB be rejected. Ms. Kim contends that attempts are already made to compress documents. Imposing such a restriction would unnecessarily require additional administrative burden to divide the filing into multiple components.

31. Clarification is requested regarding filing multiple documents in one filing.

32. Public Service comments on the extremely long amount of time necessary for documents to upload. Public Service has experienced extremely poor performance in the test environment. Recently, administrative personnel attempted to electronically file Public Service's testimony in a proceeding. After 1 hour and 15 minutes, filing the testimony and exhibits of 11 witnesses was not complete. With six additional witnesses to add at that point, it was estimated to take an additional 45 minutes to complete the filing. The filer gave up. Therefore, Public Service requests that multiple documents be allowed in one upload and that the Commission pursue improvements in the speed of uploading.

33. Public Service agrees with the OCC that a process needs to be available to deal with technical difficulties and automatic service of process. Public Service requests that any extensions of time granted related to technical difficulties mirror the length of the technical delay, rather than limiting relief delays longer than 24 hours.

34. Public Service requests that the Commission provide a certificate of service for all parties in a proceeding without regard to whether they are registered in the e-filing system. This is encouraged as the best means to ensure service upon all parties.

**D. Qwest Corporation**

35. Qwest prefiled comments generally supporting efforts to maximize use of electronic filing and eliminate unnecessary and redundant paper copies and filings. Qwest has some concern regarding the ability and capacity of the E-filings system to maintain and protect the confidentiality of confidential materials.

**E. Davis, Graham & Stubbs, LLC**

36. Ms. Judy Matlock appeared and provided oral and written comments on behalf of Davis, Graham & Stubbs, LLC

37. Ms. Matlock first addressed the agreement to accept service through the E-Filings System in Rule 1205(a). She described an experience where receipt of email notification of service was inexplicably delayed approximately five days. *See* Hearing Exhibit 2. Concerns were raised as to the impact thereof. Where delays occur, she suggests those affected must be able to obtain additional time to prepare any response.

38. Ms. Matlock raises this concern in light of the waiver of service to registered users by other means for e-filed documents. She questions what relief will be available if receipt of email notifications is delayed.

39. Ms. Matlock next addressed unexpected and unanticipated delays experienced in the filing process. During an attempt to e-file a filing characterized as “very short,” speed was found to be very slow.

40. Ms. Matlock frankly commented that she has made filings to the e-filing system on behalf of clients that have not registered and authorized her to make filings on their behalf. She commented that the system is allowing her to make those filings, and that perhaps the intended limitation is not effective. Ms. Matlock also described the practical circumstance of a client electing to intervene in a proceeding at the last minute. She anticipates particular difficulties in requiring a new client to register for the system and authorize the filing.

41. Addressing other comments and presentations, Ms. Matlock raised a concern about the proposed prohibition of paper copies of e-filings. Illustratively, she reiterated an experience with the test e-filings environment. Difficulties were incurred while attempting to e-file rebuttal testimony in a proceeding at approximately 3:30 p.m. on November 9, 2009. At the same time, she had to arrange for a messenger to deliver the filing in paper pursuant to current rules.

42. Where a filer plans an electronic filing, but the system is down, what happens? It may not even be possible to timely request an enlargement of time, depending upon present circumstances (*e.g.*, too late in the day when the problem is discovered or the filer is out of town). Does the filer bare the risk of system unavailability? In light of the unknown risk, she finds it likely that paper filings would be utilized to mitigate risks of an untimely filing for reasons beyond the filer's control.

43. Rather than encouraging participation, Ms. Matlock contends that putting the risk of using the system upon the filer will only discourage use and participation.

44. Ms. Matlock supports the OCC's notion of a rule to afford relief if one legitimately experiences difficulty with the system. She supports a mechanism in the rules to

afford relief without having been deemed to miss the deadline. She suggests that the filing of an affidavit might be appropriate for granting of relief.

45. Ms. Matlock suggests that additional help information be publicly available without registration and/or log in. Also, the attestation obligations should be clarified and reiterated. She notes that help is currently only available after having completed the log in process.

46. Ms. Matlock requests clarification of whether an attorney can register on behalf of itself and its client.<sup>1</sup> Requirements for independent client registration might make it impossible for attorneys on short notice to use the e-filing system behalf of new clients. DG&S recommends that for parties who must be represented by attorneys to participate in a Commission matter, the attorney should be able to register itself and its client to receive all notices, pleadings, orders, etc.

#### **F. Colorado Office of Consumer Counsel**

47. The OCC offers comments intended to promote efficiency of the filing process. Initially, the OCC proposes a means to remedy difficulties incurred in the filing process itself. The OCC modeled a proposal based upon the Colorado Rules of Civil Procedure (C.R.C.P.). Illustratively, Mr. Bunker described a scenario where a party might plan to make electronic filing in a large proceeding. During the filing process, it may be determined that it is not possible to complete the e-filing and still generate the required number of paper filings. When difficulties are incurred, through no fault of the filer, timely filing may not be possible. The OCC proposes a remedy to avoid harm in such circumstances.

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<sup>1</sup> While beyond the scope of rules, this will be addressed further. Because of the obligations and responsibilities undertaken, the Commission will only provide company registration codes to the respective company. Thereafter, the use and protection of the code is each company's responsibility.

48. As to the service of process through the filing systems, the OCC raises concerns that the filing party will not be aware as to which parties have registered for the filing system and those who have not. The party may not discover until the last moment that numerous paper copies must be prepared. Mr. Bunker contends that the certificate is not connected to those registered for the file system. It is suggested that disclosure of an e-mail address be provided for additional means of service. It is not clear which parties will be available for service through the e-filing system.<sup>2</sup> It is contended a case certificate of service should be prepared based upon registrations and unregistered participants.

**G. Discussion of Comments**

49. The Commission anticipates substantial benefit accruing from the e-filings system for all participants in Commission proceedings. Anyone will be able to eliminate paper filings and have prompt and equal access to Commission records and filings. The system will generally be available 24 hours per day. Thus, the Commission encourages the broadest adoption and participation.

50. This proceeding amends the Commission's Rules of Practice and Procedure to authorize electronic filings with the Commission through its website. The Commission has developed an e-filing application that is currently available through its website for testing and demonstration purposes.

51. The precise application implemented is in the nature of a software application that may be modified overtime without need for rulemaking proceedings. Thus, this rulemaking does

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<sup>2</sup> Although not addressed in the rule, the Commission is undergoing efforts to make a tool available for filers to review the current certificate of service template (including method of service) in a proceeding aside from initiating the filing process. In the meantime, a preview of a certificate of service is available in the filing process before completion of a filing.

not, and is not intended, to approve a specific software application. Rather, the rules will reflect only the minimum modifications necessary to implement electronic filings.

52. Some comments regarding the current application, while understandable and helpful for further development, reminds one of the distinction in the rulemaking process authorizing implementation versus specific aspects of the implementation. Some commenter experiences highlight the need for specificity and/or accommodation in the Commission's rules. In other instances concerns go more to further development of the e-filing system.

53. Voluntary participation is the bedrock foundation for the Commission's E-Filing system. Use of the system is through the agreement entered into through registration, attestations, and filing. Specific terms of agreement are not mandated in the rules. Rather, the agreement is memorialized in the attestation creating an account as well as making subsequent filings.

#### **1. Scope of Service**

54. The Commission is explicitly authorizing implementation of an e-filing system that will provide for initiation of new proceedings in addition to proceedings initiated through paper filings.

55. It is intended and anticipated that the Commission will also benefit from the e-filings system. When serving Commission orders in new or existing proceedings, the Commission will rely upon service of registered participants through the e-filings system.

56. Comments of attorneys received during the development process indicated resistance to client obligations other than on a proceeding by proceeding basis. Specific concerns addressed any requirement to accept service on behalf of clients in matters other than those in which they are representing the client.

57. Thus, the system implemented has some aspects that are proceeding specific and others that are not. A primary goal of the implementation encourages client participation and acceptance of service of process through the system. Through broad participation of parties, it is hoped that traditional methods of service will become the exception, not the rule.

58. Through the resulting mechanism, filers registering for the e-filings system must agree to acceptance of service of process in all (*i.e.*, past, present, and future) Commission proceedings (analogous to both Rules 4 and 5, C.R.C.P.) through the e-filing system. Filers can also provide standing authorization (but not obligation) for counsel (and individuals where counsel is not required) to make filings on their behalf. Attorneys continue to enter appearances in individual proceedings and can e-file such based upon pre-existing standing authority to act on behalf of the client.

## **2. Effectuation of Service**

59. A commenter expressed concern regarding the delay in receiving e-mail notification of service in one instance testing the e-filing system. The concerns provide a good example why the current terms of agreement memorialized by the application require filers to monitor activity on their account and acknowledge that service is complete through the system without regard to delivery of e-mail notifications. Because various e-mail servers used by filers are beyond the Commission's control and not of acceptable reliability, the service upon registered filers is and must be completed within the Commission's application. Although email notifications are available as a tool, they cannot be relied upon exclusively. Under terms of agreement in the current application, similar to comparable e-filing systems, filers are responsible for monitoring activity on their account (*i.e.*, service).

60. After orally addressing the comment during hearing, it was suggested that this aspect of the current application be made clear to end users because this obligation was not fully understood despite experience with the system. It was offered that others might not be clear as to the responsibility to monitor e-filings. Although this aspect of the agreement is not necessary to be provided for in rule, attention is brought to the matter for the benefit of all concerned.

### **3. Duplicate Copies of Filings**

61. Concerns were raised regarding the prohibition of filing duplicate paper copies of e-filings.

62. Service of electronic filings internal to the Commission is now an automated part of the filing process.<sup>3</sup> Once an e-filing is completed, the system distributes the filing to assigned Commission personnel within minutes. Paper filings are thus duplicative and increase the Commission's burden to process both the electronic and paper filing. Rather than increasing efficiency, the amount of filings processed could theoretically double. In order to avoid duplicative filings and the coincident burden, duplicate paper copies of e-filings will be prohibited under the rules, except as may be otherwise ordered in a particular proceeding.

### **4. Composition of Pleadings**

63. Separating documents into individual computer files and uploading them as secondary documents in the filing process largely addresses how the filing appears to the Commission, other parties, and the public. In order for the contents of a filing to be immediately clear, each secondary document is separately identified as part of the filing. Illustratively, the e-filing system makes a certificate of service available to the filing parties. A filer may choose to

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<sup>3</sup> NOTE: This does NOT modify the manner in which paper filings must be served by the filing party.

supplement such service through an additional uploaded certificate. While inclusion of a certificate of service as part of a primary document is technically feasible (*e.g.*, part of a motion), it is much more clear and more readily identified as a separately uploaded secondary attachment to the primary document.

64. Rule 1202(f) attempts to bridge the submission of multiple electronic computer files representing multiple documents that become one filing with the Commission. The rule attempts to clarify for parties one filing can be comprised of multiple documents (*e.g.*, a motion, an exhibit, a certificate of service). While these may be separated as three documents, they can technically be combined into one, two, or three (or more) computer files. The rule requires that the documents be segregated as separate computer files for uploading and is further clarified in the rules adopted. In the filing process, the primary document is specified and each uploaded computer file is separately identified as part of the combined filing (*e.g.*, document titles). Separate document files should be uploaded, rather than a compilation of multiple documents.

## **5. Technical Difficulties**

65. During the hearing, a commenter questioned whether the filer bares the risk of system failure or unavailability, comparable to facsimile filing availability under current rules.

66. It is undeniable and unmistakable that issues will arise during the implementation process. Faced with the option of delaying implementation until perfection or implementing an imperfect system so that users gain immediate incremental benefits, the only practical alternative is the latter.

67. Recognizing these realities, the risk of abuse must be carefully weighed against the necessary burden to obtain relief from systematic failure or difficulty with the system through

no fault of the filer. It is intended that efficiency be improved for all concerned, not to create duplicity of effort.

68. Stating principles are easy. Application may be hard. In the perfect balance, one logging into the e-filings system at 4:58 p.m. to submit a filing due at 5:00 p.m. should not be rewarded relief. On the other hand, one logging in to the system in reasonably sufficient time under the circumstances to submit a filing (*e.g.*, considering the size of the filing), but unable to timely submit the filing due to unforeseeable difficulties, should be assured that relief will be available. To have otherwise would require a duplicity of efforts until one method is complete. Further, considering that manual means must be completed sooner, it is less likely that filers will maintain duplicative effort over time.<sup>4</sup>

69. Particularly during transition, extraordinary relief should be afforded to provide support for using the system and allow reasonable reliance thereupon.<sup>5</sup> While the Commission might defer such matters for presentation on a case-by-case basis, the perils of uncertainty for practitioners warrant availability of safe harbors for a period of time during implementation.

70. A request for enlargement of time must be timely filed in absence of excusable neglect. Rule 6(b) C.R.C.P. A practitioner might find themselves relying upon the E-filing system but discovering that timely filing is not possible. Further, it is possible that it may be too late upon discovery to request an enlargement of time.

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<sup>4</sup> Notably, for those outside of the Denver Metropolitan area, the point of decision may even be the latest mail pickup a day or two before the filing deadline.

<sup>5</sup> While not provided for in the rule, the current application includes a mechanism to notify filers in advance of system unavailability. It is not anticipated that system maintenance will ever be performed during the Commission's business hours.

71. Several commenters support relief in the event difficulties are incurred. Some request a low barrier to the granting of relief. The OCC proposed a rule of this nature. It was offered that a rule might automatically provide for an extension of time.

72. Weighing the foregoing considerations, procedures affording expedited relief will be made available during the transition process.

73. In any event, if any party is prejudiced by participation in the e-filing system, a motion for appropriate relief under the circumstances may be filed. Rule 1003, 4 CCR 723-1 remains available to parties harmed to obtain relief upon good cause shown. Illustratively, comparable to Rule 121-26 C.R.C.P., good cause for relief may be shown upon satisfactory proof that e-filing of a document was not completed because of: (1) an error in the transmission of the document to the E-Filing System that was unknown to the sending party; (2) a failure of the E-Filing System to process the e-filing when filed; or (3) other technical problems experienced by the filer or E-Filing System. Any request for waiver or variance might request permission to file a document *nunc pro tunc* to the date it was first attempted to be filed electronically.

#### **6. Accuracy of E-Filed Inputs**

74. During the hearing there was discussion regarding the scope of information input by the filer during the filing process, the accuracy thereof, and the effects of inaccuracies. During the filing process, the filer indicates or inputs: party making a filing, filing date, proceeding number or title for new proceedings, pleading responding to (in existing proceedings), document title, document type, claimed confidentiality, and service recipients (in new proceedings). Some aspects are more ministerial, some apply more discretion, and some are more substantive.

75. Ministerial and discretionary acts primarily affect Commission recordkeeping and search ability of information. For example, a typographical error in a document title, selecting the wrong document type, or selecting the document to which one is responding. While more information is being input by the filer, recordkeeping inputs will be monitored and can be corrected or modified (upon request or observation) by Commission personnel in administering the filing the system. Particularly as to some discretionary aspects, the application of categorizations has as much historical basis as any other. Staff review and modification ensures consistency of information.

76. Illustratively, an order ruling on a motion is organized on an equal hierarchical level and answer testimony is organized on an equal hierarchal level to the direct testimony to which it responds. Based upon the foregoing considerations, filers will not be bound to inaccuracies arising from good faith efforts through the filing process and Staff will actively monitor and correct the following information input in the e-filing process: document to which a filing is responsive to, and document type.

77. By design, other aspects potentially have more substantive impact: filing date, proceeding title for new proceedings, proceeding number, document title, confidentiality, and service recipients (in new proceedings). These matters affect the substance of the filing and are more likely to mislead a recipient relying upon information provided by the system.

78. Illustratively, if a filer selects the wrong year for a filing date in the future, the filing will not in fact be made, neither the Commission nor any other party will be aware of the intended filing, and no one will be notified of the filing. If a filing is made in an incorrect proceeding, service through the e-filings system will be made upon the parties to the unintended proceeding and Commission personnel and parties to the intended proceeding will not be aware

of the intended filing. If an e-filed document is titled as a non-disclosure certificate, but the attached pleading is a motion to dismiss a proceeding, service recipients may reasonably rely upon the title of the pleading. Further, the e-filing certificate of service would indicate the improper title and no e-filing certificate would reflect service of the pleading incorrectly attached. If a document is claimed to be non-confidential at filing, but is later claimed to be confidential, parties served with the e-filing will not have any subsequent notice through the e-filing system of the confidentiality claim. Finally, someone omitted from the e-filed certificate of service will not be served with the pleading intended. In each of these instances there is a substantive impact upon the filing or service.

79. To avoid prejudice to recipients of information through the e-filing system, information input for an e-filing shall prevail for this category of inputs in the event of any conflict with documents electronically attached or associated with the filing. Inaccuracies as to such matters must be made corrected and remedied by the filer.

80. The final category of input, the name of the filing party, potentially has substantive impact (party perception of friend or foe or unintended party appearance) and impacts the Commission policy to encourage broad participation.

81. Historically, an isolated event has been reported where counsel made a filing on behalf of a client without authorization. While primarily an ethics matter, the counsel entered an appearance on behalf of the client. More importantly, for all (including the Commission) to benefit from the e-filing system, broad participation maximizes availability of electronic service. Without agreeing to accept service electronically themselves, clients (even through counsel) will not be able to make e-filings. But for mandating client participation, there would be a lesser incentive for clients to participate themselves. Thus, to avoid potential prejudice and further the

policy effort to broaden participation, the filing party selected in the e-filing process will prevail in the event of any conflict with documents electronically attached or associated with the filing. Any inaccuracies as to such matters must be corrected and remedied by the one making the filing.<sup>6</sup>

82. In the long run, it is anticipated that matters requiring filer action to correct would be presented by motion to the presiding officer in the proceeding. However, an alternative expedited procedure should be available particularly during system implementation to encourage broad-based participation and to address practical concerns raised during hearing.

### **7. Expedited Relief**

83. It is unmistakable, that there will be transitional issues in implementing the filing system. Filers will certainly incur technical difficulties and make mistakes that can only be corrected through required filer action. There will be educational concerns as practitioners before this Commission gain experience with the system. There will be internal concerns to the Commission with new routing and assignment functions. There will be technical issues with the application itself. Commenters have already experienced problems as to system speed and functionality during testing.

84. The undersigned is convinced that no level of practical testing in a test environment will fully indicate how the system will perform under the burdens of actual proceedings and filing deadlines. While this is a permanent rulemaking, it is found necessary to

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<sup>6</sup> The specific example during hearing will be impacted by this determination. If an attorney e-filed a pleading to intervene in a proceeding on their own behalf (as opposed to their client pursuant to authorization through the e-filing system), but attached an electronic copy of a pleading intending to intervene on behalf of a client, the information input in the e-filing process will prevail to the extent of conflict in the information attached to the e-filing. The pleading will be construed on behalf of the attorney personally and the intended client will not have requested intervention.

adopt measures to practically manage the transition process while earning the trust of filers. It is anticipated that the Commission will issue another rulemaking proceeding in the coming months. The Commission may choose to revisit this balance at that time.

85. While there is clearly concern for potential long-term abuse of more lenient processes, the immediate need to assure participants that they will not be prejudiced from their participation and implementation of the system is supreme.

86. In order to expedite resolution and mitigate harm, a filing signed under obligations generally applicable to Commission filing will be deemed adequate. No separate affidavit will be required.

87. Based upon the foregoing concerns and comments, Rule 1211 shall be adopted to read as follows:

#### 1211. Additional E-Filing System Implementation

This rule applies to consequences of implementing the Commission's E-Filing System:

(a) Corrections or other modifications primarily affecting Commission recordkeeping and search ability of information. Upon request or observation, Commission personnel will actively monitor and correct the following information input during the electronic filing process through the Commission's E-Filing System: document to which a filing is responsive to, and document type.

(b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filing System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the filing party, proceeding title for new proceedings, filing date, proceeding number, document title, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with section (d) below.

(c) Inconsistencies between electronic filing information and documents filed electronically. To avoid prejudice to recipients of information through the E-Filing System information documents electronically attached or associated with the filing must be consistent with information input in the E-Filing System. To the extent of any conflict between information input in the e-filing process other than the document to which a filing is responsive to and document type on the one

hand and documents electronically attached or associated with the filing on the other hand, the information input in the e-filing process shall prevail.

(d) Procedure for Expedited Relief. In addition to other relief available, the following expedited relief is available when a filer incurs technical difficulties while using or attempting to make a filing through the Commission's E-Filing System:

(I) Within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, such filer may file a statement containing, without limitation:

(A) a description of the difficulty or error;

(B) all proceedings affected by the difficulty or error;

(C) all electronic filings affected by the difficulty or error;

(D) all actions taken to inform those affected by the difficulty or error;

(E) a statement verifying that the filer undertook reasonable effort to notify those affected by the difficulty or error; and

(F) if the e-filing was filed in an unintended proceeding, a statement whether the filing should **not** be administratively stricken from the unintended or improper proceeding.

(II) Without regard to the proceeding in which difficulty was incurred or the erroneous e-filing was made, the statement described herein shall be filed in the proceeding in which the filing was originally intended or attempted to be filed.

(III) A copy of the correct filing shall be filed with the statement.

(e) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically.

(f) Unless requested otherwise pursuant to the statement filed in compliance with this rule, Commission personnel will administratively strike any original erroneous filing giving rise to the filing of the statement described herein.

## 8. Commission Notices

88. Pursuant to § 40-6-108(2)(a), C.R.S., the Commission gives notice of all applications, petitions, and orders instituting investigations or inquiries to all persons, firms, or corporations who, in the opinion of the Commission, are interested in, or who would be affected

by, the granting or denial of any such application, petition, or other proceeding. In the past, notice has primarily been given by maintaining lists of interested parties requesting notice for various matters. Over time, many of these lists have become burdensome, unruly, and obsolete in part, resulting in wasted costs and undeliverable notices (paper and electronic).

89. The Commission's E-Filing System allows for different levels of users. Those interested in making filings with the Commission must register and agree to participate in the system including such matters as the agreement to accept service of process through the system. Additionally, those having interests in Commission proceedings that do not wish to file electronically may register to be notified of various matters and to easily access information regarding Commission activities.<sup>7</sup> Utilizing either form of registration, interested persons can readily access Commission notices and be informed of notices on an ongoing basis. The system is available on the Internet as well as via kiosks that are publicly available at the Commission's offices.

90. Rules 1005(b) and 1206(a) address an evolution in the manner the Commission provides notices.

91. In the opinion of the Commission those in the public having an interest in, or affected by, Commission proceedings can reasonably use publicly available resources free of charge (or otherwise) to access or receive notification of Commission proceedings in which they have an interest. The Commission further opines that those interested in, or affected by, Commission proceedings will utilize such resources to access notices provided. Rule 1206(a) is further modified to clarify the effect of providing notices through the E-Filing System to

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<sup>7</sup> "Non-Filer" registration in the current application.

interested persons as well as to affected persons registered to make filings through the E-Filing System.

92. Based upon the foregoing findings, the Commission will entirely transition to notifications of interested persons as provided in Rules 1005(b) and 1206 in lieu of any different means utilized in the past. The notification lists previously maintained will be eliminated. Managing the transition, the Commission has been notifying those on past lists that the manner of receiving notices will be changing.

93. Based upon the foregoing findings, the Commission will transition, in part, to notifications of affected persons as provided in Rule 1206 in lieu of any different means utilized in the past. Anyone registered in the E-Filings System to make filings with the Commission necessarily agrees to accept service of process through the E-Filings System. Thus, for all persons, firms, or corporations registered to make filings through the E-Filing System who, in the opinion of the Commission, would be affected by the granting or denial of any application, petition, or other proceeding, notice of all applications, petitions, and orders instituting investigations or inquiries shall be given by service through the Commission's E-Filing System.

94. The amendment will have **no** affect upon the manner in which notice is provided to persons, firms, or corporations **not** registered to make filings through the E-Filing System who, in the opinion of the Commission, would be **affected** by the granting or denial of any application, petition, or other proceeding.

## 9. Other Comments

95. The proposed modification to filing time in Rule 1204(d) will not be accepted. Primarily, the E-Filing System is intended to put all parties on even ground. By maintaining the same rule for paper and electronic filings, this goal is maintained. Further, responsive comments

are compelling as to the potential impact upon the Commission and other parties responding to filings.

96. The E-Filing system is intended and designed for the electronic filing of native documents in text-searchable format. In the current application, the original electronic file uploaded in the filing process is not available to anyone outside the Commission. Rather, the document is converted into a PDF format and the newly created document is available through e-filings. Uploading native documents will enhance the filer experience because documents are typically smaller. Uploading text-searchable documents will assist the Commission as well as other parties working with the filings.

97. Black Hills addressed some evidentiary matters regarding electronic filings. In implementing e-filings, the Commission agrees to accept electronic signatures for e-filings through the E-Filing System.<sup>8</sup> Documents within a filing requiring a signature may also be submitted with a signature other than the filer (*e.g.*, verification on the last page of an application). Alternatively, the executed verification could be prepared as a separate document. The commenter then inquires whether such a document complies with the rules of evidence. Notably, the authorization of the E-Filing System is not determinative of evidentiary matters before the Commission or any other presiding officer.

98. In an uncontested proceeding, the Commission may accept e-filings as evidence without the necessity of a formal oral hearing, § 40-6-109(5), C.R.S. This determination remains in the discretion of the Commission, individual commissioner, or administrative law judge. As to a contested proceeding, admissibility is determined when offered into evidence. As with any

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<sup>8</sup> See § 24-71.3-101 *et. Seq.*, C.R.S., and § 24-71-101, C.R.S.

other evidence, challenges to admissibility (*e.g.*, authenticity) may be raised. Admissibility would then be decided by the Commission, individual commissioner, or administrative law judge.

99. Hearing Exhibit 1 describes the substantial measures taken to ensure protection of confidential information filed with the Commission. The Commission is satisfied that the system designed and implemented by the State of Colorado is secure and protects the confidentiality of information claimed to be confidential in the e-filing process. Confidential information may not be served through the E-Filings System. Other than the filer, no one outside of the Commission can access confidential information through the Commission's E-Filing System.

100. Public Service requests clarification as to retention of and demarcation of confidential e-filings. Retention of confidential information is not affected by e-filing confidential information. Information e-filed subject to a claim of confidentiality is protected pursuant to Commission rules. Retention of e-filed confidential information is identical to confidential information filed on paper. As to demarcation in the E-Filing System, a filing is demarcated as confidential by the filer making the claim of confidentiality and such demarcation remains in accordance with Commission rules.

101. More than one party suggests the Commission take responsibility to maintain an accurate and complete service list. The Commission anticipates using and relying upon service through the E-Filing System and makes sure certificates of service are made available to filers as a tool. However, service remains the obligation of the one filing a pleading and the authorization of the E-Filing System will not affect that responsibility.

102. Perhaps of particular benefit during transitioning to use of e-filings in a proceeding, it is noteworthy that there is no requirement for one certificate of service to be

associated with any pleading. The Commission anticipates transitioning certificates in existing proceedings for use in the E-Filings System. However, if a party elects to e-file a pleading and someone is omitted from the certificate, a supplemental certificate of service should be included as a secondary document in the filing.

#### **H. Conclusion**

103. Attachment A of this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

104. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

105. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. The rules regarding electronic filing with the Commission in redline and strikeout format attached to this Recommended Decision as Attachment A are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own

motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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

G. HARRIS ADAMS

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Administrative Law Judge

# COLORADO DEPARTMENT OF REGULATORY AGENCIES

## Public Utilities Commission

### 4 CODE OF COLORADO REGULATIONS (CCR) 723-1

#### PART 1 RULES OF PRACTICE AND PROCEDURE

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## **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.

## **GENERAL PROVISIONS**

### **1000. Citation.**

The Commission's rules, when referred to generically, may be cited as the "Public Utilities Commission Rules." This Part 1, rules 1000 – 1999, may be cited as the "Rules of Practice and Procedure."

### **1001. Scope and Applicability.**

All rules in this Part 1, the "1000" series, and Title 40 of the Colorado Revised Statutes shall apply to all Commission proceedings, to all regulated entities, to any person transacting business with the Commission, practicing as an attorney before the Commission, or participating in Commission proceedings as a party or otherwise, or to any person over whom the Commission has jurisdiction, unless a specific statute or rule provides otherwise. Where not otherwise inconsistent with Title 40 or these rules, the Commission, a hearing commissioner, or an administrative law judge may seek guidance from or employ the Colorado Rules of Civil Procedure.

### **1002. Construction.**

All rules and orders of the Commission shall be construed in accordance with the principles set forth in §§ 2-4-101 through 114, C.R.S., inclusive.

**1003. Waivers and Variances.**

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all parties. The Commission may grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions and orders for good cause. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate. The Commission will not grant a waiver or variance if the grant would be contrary to statute.
- (b) Waiver or variance requests made in an existing docketed proceeding shall be by motion. Waiver or variance requests made outside a docketed proceeding shall be by petition.
- (c) All waiver or variance requests shall include:
  - (I) Citation to the specific paragraph of the rule or order from which the waiver or variance is sought;
  - (II) A statement of the waiver or variance requested;
  - (III) A statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request.
  - (IV) A statement regarding the duration of the requested waiver or variance, explaining the specific date or event which will terminate it;
  - (V) A statement whether the waiver or variance, if granted, would be full or partial; and
  - (VI) Any other information required by rule.

**1004. Definitions.**

The following definitions apply to all Commission rules, except where a specific rule or statute provides otherwise:

- (a) "Accelerated complaint" means a formal complaint filed to resolve a dispute arising out of a telecommunications interconnection agreement, which meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative docket" means a docket regarding any matter the Commission wishes to investigate, any matter concerning the administration of programs or functions committed to the Commission, any matter concerning general Commission policy, or any miscellaneous matter. An administrative docket excludes applications, rulemaking proceedings, petitions, complaints, suspension proceedings, or any other adjudicatory proceeding.
- (c) "Advice letter" means the introductory letter to a formal proposal by the utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff

pages to the Commission for inclusion in its effective tariff and provides the information required by Rule 1210(c).

- (d) "Affiliate" of a regulated entity means a subsidiary of a regulated entity, a parent corporation of a regulated entity, a joint venture organized as a separate corporation or a partnership to the extent of the regulated entities involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (e) "Commission" means the Public Utilities Commission, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing commissioner, or an administrative law judge, as the context requires.
- (f) "Commission advisor" means any member of the Commission's staff serving as advisory staff in a particular proceeding by operation of rule 1007; or any assistant attorney general advising the commissioners, administrative law judges, or advisory staff.
- (g) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (h) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (i) "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- (j) "Day" means a calendar day.
- (k) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.
- (l) "Docketed proceeding" means any matter to which the Commission assigns a docket number, including without limitation, administrative dockets, application, petition, complaint, rulemaking, or interpretive rulemaking proceedings, or suspended tariffs, price lists, or time schedules.
- (m) "E-Filings System" means the web-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in docketed proceedings.
- (nn) "Ex parte communication" means any oral or written communication which:
  - (I) occurs either during the pendency of a docketed proceeding or less than 30 days prior to the commencement of such a proceeding;
  - (II) occurs between any Commission advisor, commissioner, or administrative law judge, on the one hand, and, on the other hand, any person, including Commission trial advocacy staff, related to, acting as, or acting on behalf of a party; and
  - (III) is made without providing other parties with notice and an opportunity to respond.
- (oo) "Filing under seal" means the process of filing information with the Commission in a sealed, specially marked envelope to indicate that the filing party claims that the information is

confidential. "Filing under seal" need not necessarily mean that information is provided in the context of a docketed proceeding, but may mean that information is submitted to the Commission or Commission staff outside the context of a docketed proceeding.

- (~~ep~~) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the witnesses a party intends to call to the stand in a hearing.
- (~~pg~~) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper having a paid circulation of at least 1,000 in the area where the members of the public affected by the matter of which notice is given are located.
- (~~qr~~) "OCC" means the Colorado Office of Consumer Counsel.
- (~~fs~~) "Party" means "party" as that term is used in rule 1200.
- (~~st~~) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.
- (~~tu~~) "Personal information" means any individually identifiable information obtained by a regulated entity from a customer, from which judgments can be made regarding the customer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information does not include: a customer's telephone number if it is published in a current telephone directory or is scheduled to be published in the next telephone directory; information necessary for the billing and collection of amounts owed to a public utility or to a provider of service using the facilities of a public utility; or Standard Industrial Code information used for purposes of directory publishing.
- (~~tv~~) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed orders requested by the Commission to be filed by a party in a docketed proceeding.
- (~~vw~~) "Presiding officer" means an administrative law judge, a hearing commissioner, the chairman of the Commission, or any commissioner other than the chairman conducting a Commission hearing, as applicable.
- (~~wx~~) "Price list" means a publication showing rates or classifications collected or enforced, or to be collected or enforced. A price list typically does not contain information duplicated in a tariff.
- (~~xy~~) "Public Records Law" means Colorado's statutory provisions found at §§ 24-72-201 et seq., C.R.S.
- (~~yz~~) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (~~zaa~~) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges required to be returned to customers.

- (~~aabb~~) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (~~bccd~~) "RRR" means rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (~~eedd~~) "Tariff" means a publication filed with and maintained by the Commission showing all rates and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, terms, and conditions, which in any manner affect or relate to rates, classifications, or service.
- (~~deee~~) "Third party" means a person who is neither the customer, a regulated entity, nor a regulated entity affiliate.
- (~~eeff~~) "Time schedule" means a document submitted to the Commission by a motor vehicle carrier, as defined in § 40-10-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (~~#ggg~~) "Transportation carrier" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., a contract carrier as defined in § 40-11-101(3), C.R.S., an interstate carrier as defined in §§ 40-10-120 and 40-11-115, C.R.S., a towing carrier as defined in § 40-13-101(3), C.R.S., a mover as defined in § 40-14-102(9), or a motor vehicle carrier exempt from regulation as a utility as defined in § 40-16-101(4), C.R.S., when subject to regulation.
- (~~eggh~~) "Transportation utility" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., or a contract carrier as defined in § 40-11-101(3), C.R.S.
- (~~hhii~~) "Transportation proceeding" means any proceeding before the Commission involving a transportation carrier.
- (~~hijj~~) "Utility" means a public utility as defined in § 40-1-103, C.R.S.

**1005. Meetings.**

- (a) The Commission may designate a day and time for its regular open meetings, and may hold other meetings from time to time. The Commission shall comply with the requirements of the Colorado Open Meetings Law, §§ 24-6-401 and 402, C.R.S.
- (b) The Commission shall prepare an agenda for each upcoming meeting. The agenda shall be posted in the E-Filings System and in a prominent public area available in paper copy at its offices at a reasonable time prior to the meeting ~~and be made available to the general public.~~
- (c) The Commission has discretion regarding the order of business at each meeting, and may consider emergency matters not shown on the agenda when appropriate. Any matter tabled or not considered shall be continued for a future meeting.
- (d) Upon affirmative vote of two commissioners, the Commission may hold an executive session as provided in § 24-6-402, C.R.S.

**1006. Director.**

The Director shall be the appointing authority for the Commission staff and shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission, and serving as custodian of the Commission's records.

**1007. Commission Staff.**

- (a) When Commission staff intervenes in any docketed proceeding other than an administrative docket, rulemaking, or interpretive rulemaking, the entry of appearance by staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial advocacy and advisory staff.
- (b) Trial advocacy staff shall, for purposes of the particular proceeding, be considered a party for purposes of rules 1100-1108. Once a member of Commission staff has been designated as trial advocacy staff, said staff member shall not function in any advisory capacity. Advisory staff shall be available to provide advice and recommendations to the Commission, and shall be considered the Commission for purposes of rules 1100-1108.

**1008. – 1099. [Reserved].**

**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 [a filing is made through the E-Filings System](#) or 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.

- (b) This rule establishes a procedure for the expeditious handling of information that a party claims is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
- (I) A party seeking to challenge a claim of confidentiality shall first contact counsel for the providing party and attempt to resolve any differences by stipulation.
  - (II) In the event the parties cannot agree as to the character of the information challenged, any party challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems material non-confidential. This notice shall designate the material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential.
  - (III) The party claiming confidentiality shall, within ten days of the notice referenced in subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged data is deemed to be confidential. The challenging party shall have ten days to respond to the pleading. In the event the claiming party fails to file an appropriate pleading within ten days, the Commission may enter an order that the challenged material may be used in the public record.
  - (IV) When the Commission receives a pleading asserting confidentiality or requesting extraordinary protection by the claiming party regarding any items claimed as proprietary, the Commission will enter an order resolving the issue. Such resolution shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or extraordinary protection was asserted, unless otherwise ordered by the Commission.
  - (V) In the event the Commission rules in response to a pleading that any information is not confidential and should be removed from the protective requirements of this rule or from the protection of the sealed record, the parties, to enable the claiming party to seek a stay or other relief, shall not disclose the information or use it in the public record for seven days.
  - (VI) In the event the Commission rules that information previously filed in a proceeding is not confidential, the filing party may, by motion submitted within five days of the ruling regarding confidentiality, request that it be permitted to remove the subject information from the record. Pending the ruling on the motion, all persons accorded access to such information shall continue to treat the information as confidential pursuant to this rule.
  - (VII) In the absence of new information or a change in circumstances, as determined by the Director of the Commission in responding to a request for Commission records under §§ 24-72-201 et seq., C.R.S., a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under §§ 24-72-201 et seq.

(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) Unless filed through the E-Filings System, or the Commission orders otherwise, 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) Unless filed through the E-Filings System, or the Commission orders otherwise, 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.

- (d) Confidential information, if filed with the Commission, will be sealed by the Director of the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule. This treatment shall prevail unless the confidential information is released from the restrictions of this rule either through agreement of the parties and publication by the filing party, or, after opportunity for comment, pursuant to order of the Commission or final order of a court having jurisdiction. Nothing in this rule shall require the Commission to provide information filed under seal to any person other than its staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of this rule and acquire the information filed under seal from the filing party. Service of confidential material shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial and advisory staff. The OCC will provide written notification to a filing party if it obtains access to the filing party's confidential information from the Commission.
- (e) Where feasible, confidential information will be marked as such and delivered to counsel for the parties. Where the material is too voluminous to copy and deliver to counsel, the confidential information shall be made available for inspection and review by counsel and experts, as provided for in paragraph (g) of this rule, at a place and time mutually agreed on by the parties, or at the premises of the providing party, or as directed by the Commission. During the inspection, the parties may take notes on the material or request and receive copies of the documents. All notes taken and copies received of such documents shall be treated as constituting trade secret or confidential information in accordance with this rule.
- (f) All confidential information made available by a party shall be given solely to the Commission, its staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. With the exception of Staff, any disclosure of such information to a party's experts or advisors must be authorized by that party's counsel, and must be permitted solely for the purpose of the proceeding in which the information is produced. No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed to individual members of a trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information. Any member of the Staff of the Commission may have access to any confidential information made available under the terms of this rule. Neither is Staff limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in this rule or other Commission rule or order, members of Staff shall be subject to all other requirements of this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to use information subject to this rule in a proceeding or for a purpose unrelated to the specific proceeding in which the information was obtained.
- (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.

- (h) Where reference to information subject to this rule is made in pleadings, it shall be by citation of title or exhibit number, or by some other description that will not disclose the information. Any further use of or substantive references to such information shall be placed in a separate section of the pleading and submitted to the Commission under seal.
- (i) Appeal. Sealed portions of a record in any proceeding may be forwarded under seal to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations.
- (j) Retention of documents.
  - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies required by Staff to carry out its regulatory responsibilities, shall be retrieved by the party or person producing them. If the producing party does not retrieve the documents from the Commission within seven days of notification by the Commission, the documents will be shredded or destroyed. The original shall be maintained by the Commission as part of its archival files. Staff shall take all reasonable precautions to maintain the confidentiality of information subject to this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to retain information subject to this rule for a specified time following conclusion of the proceeding in which such information was obtained. All other parties shall, within seven days of the conclusion of the proceeding in which documents and information subject to this rule were produced, return such documents and information to the party producing them.
  - (II) In the event Staff intends to use confidential information in a subsequent proceeding, it shall notify, in writing, the party who produced such information of such intended use. This notification shall be made at least ten days prior to submission of the subject information in the subsequent proceeding. Staff's use of confidential information in a subsequent proceeding shall be in accordance with the provisions of this rule.

- (III) Staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential information permitted to be retained pursuant to this paragraph (j) or order of the Commission.
- (k) Parties retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this rule on the grounds of relevancy or materiality.
- (l) Acceptance of information claimed to be confidential by any party shall in no way constitute a waiver of the rights of that party to contest any assertion or finding of trade secret, confidentiality, or privilege, to make a request under the Public Records Law, or to appeal any determination of the Commission.
- (m) Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this rule, and compliance with these rules shall not be construed to be a waiver of those rights.

**1101. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Docket.**

- (a) A person filing with the Commission, outside of a formal docket, documents or information claimed to be confidential, including information submitted in an electronic format at on a physical medium such as CD, DVD or flash disk, shall utilize the following procedure:
  - (I) Non-confidential portions of a document may not be filed under seal. If a document contains both confidential and non-confidential information, the filing person shall specifically identify those portions of the subject document which are not confidential and shall submit to the Commission the required number of the document or report without including the information claimed to be confidential. The cover page of all copies of the material shall be stamped with the following: "NOTICE OF CONFIDENTIALITY. A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL" and shall include a list of the documents filed under seal. This list shall 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. The non-confidential information will be available to the public immediately. The confidential information shall be filed under seal in accordance with the procedures set forth below. The Commission's acceptance of this information under seal shall not be construed to be an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
  - (II) The filing party shall file, under seal, the required number of copies of the subject confidential information in accordance with the rules of the Commission, if applicable. 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. Each of the copies shall be submitted in a separate, sealed envelope numbered serially. The following information shall be written on the outside of each sealed envelope:
    - (A) the caption "CONFIDENTIAL--INFORMATION FILED UNDER SEAL."

- (B) the name of the filing party;
  - (C) date of filing;
  - (D) description of the information;
  - (E) the filing party's statement as to whether it prefers to retrieve the information when the information is no longer needed by the Commission, or whether the Commission should destroy the information; and
  - (F) if the party chooses to retrieve the information, in accordance with the statement contained in subparagraph (II)(E) of this paragraph, the name and phone number of the person who will retrieve such information.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filing person shall make arrangements to retrieve the information. If the information is not retrieved by the filing party within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.
- (c) The OCC may submit a written request for access to Commission records claimed to be confidential by the person providing the information. In such instances, the Director of the Commission shall forthwith notify the person who provided the subject information of the OCC's request. The person who provided the subject information may, within seven days of the Director's notification, submit a written objection to disclosure of the information to the OCC. The Director shall disclose the requested information to the OCC if he determines that the request is reasonably related to the OCC's statutory purpose as set forth in §§ 40-6.5-101 et seq. However, if the person who provided the subject information notifies the Director, in writing submitted within the seven-day period referenced in this paragraph, that judicial action will be commenced to prevent disclosure to the OCC, the Director shall refrain from disclosing the information to the OCC for an additional seven days to allow the person objecting to disclosure to commence judicial action to prevent such disclosure.
- (I) In the event the Director denies an OCC request for access to Commission records, the OCC may file a petition for access to such records with the Commission. Such petition shall be served upon the person who provided the subject information to the Commission.
  - (II) Disclosure of information claimed to be confidential to the OCC shall be conditioned upon its compliance with the provisions of these rules, including the requirement in paragraph (g) of rule 1100 that it take all reasonable precautions to keep the confidential information secure. Employees and representatives of the OCC shall sign a nondisclosure agreement in substantially the same form as required by paragraph (g) of rule 1100, and shall deliver such agreement to the Director of the Commission and the provider of the information claimed to be confidential, prior to review of the records claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under this rule absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.

- (III) The OCC shall not utilize the procedure specified in paragraph (c) of this rule as a substitute for discovery in formal dockets before the Commission.
  - (IV) This paragraph (c) of this rule shall not authorize the OCC to obtain access to Commission Staff workpapers or workproduct.
  - (V) All information obtained under this rule shall be returned to the Commission within sixty days after the OCC was provided access to such information. However, the OCC may, upon written request approved by the Director or the Commission, retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
  - (VI) The OCC's request for access to Commission records shall be considered in as expeditious a manner as possible given other duties of the Director and the Commission. The time periods set forth in §§ 24-72-201 et seq., C.R.S., shall not apply to requests under paragraph (c) of this rule.
- (d) Pursuant to § 24-72-201, C.R.S., information filed with the Commission is public record and presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:
- (I) Non-confidential portions of annual reports required under the Commission's rules.
  - (II) Rates, terms and conditions for regulated services.
  - (III) Tariffs and price lists.
  - (IV) Advice letters but not necessarily information filed in support of advice letters.
  - (V) Aggregate data regarding informal consumer complaint information.
  - (VI) All compliance filings that the Commission has ordered to be filed as public record.
  - (VII) Insurance filings of transportation carriers.
  - (VIII) Unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or order to demonstrate compliance or lack of compliance with Commission rules or orders. Individual customer names, addresses and telephone numbers shall be presumed to be confidential.
  - (IX) To the extent ordered to be filed as public documents by the Commission, service quality performance reports required by the Commission from utilities regulated under an alternative form of regulation or performance based regulation, with the exception of individual customer names, addresses, and telephone numbers.
  - (X) Safety inspection reports or information filed with the Commission or compiled by Commission staff pursuant to Commission order or rule.

(XI) Any documents or information that have been previously made public.

- (e) A person claiming that any portion of one of the documents listed in paragraph (d) of this rule is confidential shall file the information claimed to be confidential in accordance with the procedures set forth in rules 1100 or 1101(a)-(c). In addition, a person claiming that any portion of one of the above listed documents is confidential shall file a written justification for such a claim at the time of filing of the document.

**1102. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential.**

- (a) When any person makes a request to inspect Commission records which another person has claimed are confidential, the Director of the Commission shall determine whether the records are subject to public inspection pursuant to the provisions of §§ 24-72-201, et seq., C.R.S. ("Public Records Law "). The Director shall utilize procedures as are consistent with the provisions of the Public Records Law. In any event, the Director shall give timely notice of the request for inspection of public records to the person who submitted the documents or information subject to the request and who claims that the records are confidential. The Director shall also provide the person who submitted the information to the Commission an opportunity to submit oral or written comments regarding the public records request.
- (b) Upon making a determination as to whether the requested records are subject to public inspection, the Director shall forthwith notify the person objecting to disclosure and the person requesting public inspection of Commission records of that decision.
- (c) If the Director determines that the Commission's records are subject to public inspection, the Director, upon written request from the person objecting to such public disclosure, shall refrain from disclosure of the records for seven days to allow the person objecting to such disclosure to commence judicial action to prevent public inspection of the subject records.
- (d) The Director's determination as to what level of public inspection should be permitted for specific public records submitted to the Commission shall be made on a case-by-case basis and shall be based on the Public Records Law, § 24-72-201 et seq., C.R.S., and all other applicable law.

**1103. Personal Information – Collection.**

- (a) A utility shall collect only that personal information, including information regarding credit worthiness, which is necessary to provide, bill, and collect for services. Information regarding credit worthiness may include, but is not limited to: the customer's employer; the employer's phone number; the customer's landlord's name, address, and phone number; and the customer's previous utility supplier. A utility may request, but shall not require, a customer's Social Security Number as a prerequisite to evaluating credit worthiness or providing utility service.
- (b) Not later than three months after first billing the customer, a utility shall notify the customer, in writing of his or her right to request any or all personal information the utility holds concerning that customer, including a true copy thereof. Upon such request and upon verification of the customer's identity, the utility shall provide the requested information and shall take all necessary steps to explain the information to the customer.

- (c) A customer may request in writing an amendment of the personal information held by a utility. Within 30 days of the request, the utility shall:
- (I) Verify and correct any portion of a record which is not accurate, timely, or complete, and inform the customer in writing of the corrections; or
  - (II) Inform the customer in writing of its refusal to amend the record in accordance with the request, give a reason for the refusal, clearly note any portion of the record which is disputed, and include in its records the customer's concise statement of disagreement. The utility shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

**1104. Personal Information – Disclosure.**

- (a) A utility may not disclose a customer's personal information to any third party, unless the request is either signed by the customer, or is supported by a disclosure form signed by the customer authorizing disclosure to the particular requestor.
- (b) Notwithstanding paragraph (a) of this rule, a utility may disclose personal information in response to warrants, subpoenas duces tecum, court orders, requests from emergency service providers, or as authorized by § 16-15.5-102, C.R.S. A utility may also disclose information regarding a customer's typical or estimated average monthly gas, steam or electric bill, if such information is requested by a licensed real estate broker or others with similar purchase or sale interests in the customer's property.
- (c) A utility shall provide any person requesting personal information with a form with which the customer may authorize disclosure. The form shall explain the customer's rights under this rule. The requestor shall obtain customer authorization for each request, unless the customer has authorized the release of all personal information at any time.
- (d) A utility may disclose personal information requested by a federal, state, or local governmental agency including, but not limited to: the Commission; state and local departments of social services; and federal, state, and local law enforcement agencies. Written requests shall be on official letterhead. In the case of a telephone request, the employee of the regulated entity shall verify the caller's identity by obtaining the caller's office telephone number and returning the call, unless the employee knows the caller is an authorized governmental representative. A person requesting information in person shall demonstrate that he or she properly represents a governmental agency.

**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, p~~Prohibited communications do not include:

- (I) Procedural, scheduling, ~~or~~ status inquiries, [E-Filings System support](#), 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.

**1106. Prohibited Communications – Disclosure.**

- (a) Any person communicating with the Commission concerning pending docketed proceedings shall state the party with whom he or she is associated and the number and short title of the docketed proceeding.
- (b) Any person, party, commissioner, administrative law judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
  - (I) The name and docket number of the proceeding;
  - (II) A summary of the matters discussed;
  - (III) The persons involved and their relationship, if any, to the parties;
  - (IV) The date, time, and place of the communication and the circumstances under which it was made; and
  - (V) Any other relevant information concerning the communication.
- (c) Every commissioner and administrative law judge shall further comply with the disclosure requirements of § 40-6-122, C.R.S.

**1107. Prohibited Communications - Remedies.**

Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond including, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own initiative or upon the motion of a party, order any of the following remedial measures:

- (a) Dismissal of the proceeding, in whole or in part;
- (b) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication;

- (c) A public statement of censure by the Commission; or
- (d) Such alternative or additional sanctions as may be appropriate under the circumstances.

**1108. Disqualification of Commissioner or Administrative Law Judge.**

- (a) Whenever any party has a good faith belief that a commissioner or administrative law judge has engaged in a prohibited communication or may not be impartial, the party may file a motion to disqualify the commissioner or administrative law judge. Such motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the commissioner or administrative law judge shall rule upon the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All commissioners may fully participate in such review.
- (b) If at any time a commissioner or administrative law judge believes that his or her impartiality may reasonably be questioned, the commissioner or administrative law judge shall withdraw, as provided in § 40-6-124, C.R.S.

**1109. – 1199. [Reserved].**

**FORMALITIES**

**1200. Parties, Amicus Curiae, Non-Parties.**

- (a) Parties shall include any person who:
  - (I) initiates action through the filing of a complaint, application, or petition, except petitions for rulemaking;
  - (II) appeals an emergency order in a pipeline safety matter concerning public safety, health, or welfare;
  - (III) has filed a tariff, price list, or time schedule, which tariff, price list, or time schedule the Commission has suspended and set for hearing;
  - (IV) is served as a respondent under rule 1302;
  - (V) intervenes as of right or is granted permissive intervention under rule 1401; or
  - (VI) is joined as a party to any Commission proceeding.
- (b) Persons participating merely through comments or testimony shall not be deemed parties.
- (c) A non-party who desires to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. An amicus curiae is not a party, and may present legal argument only, as permitted by the Commission.

- (d) Persons participating in certain proceedings, e.g., rulemaking proceedings, are not parties. For ease of reference, such persons shall be referred to as "participants". Participants are generally subject to the same rules regulating conduct, such as rules regarding confidentiality or prohibited communications, as are parties. Where the word "party" appears in a Commission rule, it may be proper to infer that the rule also applies to participants.

**1201. Attorneys.**

- (a) A party or an amicus curiae shall be represented by an attorney at law, currently in good standing before the Colorado Supreme Court or the highest tribunal of another State as authorized in rule 221.1, C.R.C.P.
- (b) Notwithstanding paragraph (a) of this rule, an individual may represent:
- (I) his or her own interests;
  - (II) the interests of a closely held entity, as provided in § 13-1-127, C.R.S.;
  - (III) a partnership, corporation, association, or any other entity in order to complete forms that do not require any knowledge or skill beyond that possessed by the ordinarily experienced and intelligent layman; or
  - (IV) a partnership, corporation, association, or any other entity in a proceeding involving the adoption of a rule of future effect where no vested rights of liberty or property are at stake.
- (c) No attorney shall appear before the Commission in any docketed proceeding until the attorney has entered an appearance by filing an Entry of Appearance, signing a pleading, or stating the entry of appearance for the record. An entry of appearance shall state the identity of the party for whom the appearance is made, the attorney's office address, the attorney's telephone number, email address, facsimile number, and the attorney's registration number.
- (d) An attorney of record wishing to withdraw from a proceeding shall file a notice of withdrawal containing a list of all pending hearing dates. Such notice shall be served in accordance with rule 1205, as well as upon the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise such party of its right to object. Objections to withdrawal of an attorney shall be filed within ten days of the filing of the notice. If any objection is made, no substitution or withdrawal shall occur without an order of the Commission.

**1202. Form and Content.**

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white paper, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and stapled or bound. Page numbers shall be in the bottom center of each page excluding the cover page, except that for written testimony page numbers may be included in a header. The text shall be at least 12-point type, and double spaced, except for indented quotations and footnotes which may be single-spaced. If filed testimony exceeds 20 pages and deals with more than one subject, it shall contain a table of contents. The

Commission may waive any of these requirements for a party not represented by counsel in accordance with rule 1201(b).

- (b) Titles and captions.
- (I) The title of an application or petition proceeding shall contain the name of the applicant or petitioner, describe the authority or Order being sought from the Commission with sufficient specificity to distinguish the application or petition from other proceedings, and briefly describe the subject matter of the proceeding. If the application or petition relates to a previous proceeding, the title of the application or petition shall identify the previous proceeding by docket number.
  - (II) Every pleading shall contain a caption identifying the proceeding by title, docket number, and the heading "Before the Public Utilities Commission of the State of Colorado," and stating the title of the pleading. Every pleading shall include a clear and concise statement of the authority relied upon, the relief sought, and the name, including trade name, if any, of the party or the party's attorney.
- (c) No pleading shall be more than 30 pages in length, excluding attachments. Attachments shall not be used to evade the page limitation in this rule. The cover sheet, table of contents, certificate of mailing, copies of authorities cited, and copies of a decision that may be the subject matter of the pleading shall not be included for calculating the length of the pleading.
- (d) Written testimony is not subject to paragraphs (c) and (e) of this rule. When written testimony is filed, it shall meet the following requirements:
- (I) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
  - (II) The cover sheet for written testimony shall contain the docket number, the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.
  - (III) Except as required by subparagraph (IV), Exhibits accompanying written testimony shall be numbered in sequence and shall be physically contained in the same document as the testimony, except where exhibits exceed 30 pages in length. Exhibits over 30 pages shall be bound and separated from filed testimony.
  - (IV) Exhibits accompanying written testimony and submitted through the E-Filings System shall be numbered in sequence and separately attached as secondary documents to the primary written testimony.
  - (IV) Each witness' exhibits shall be numbered sequentially beginning with the witness' initials and followed by the number of the exhibit. For example, the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, or rebuttal.
  - (V) The Commission may permit minor revisions to written testimony and exhibits by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony or exhibits using the same arabic numeral as the original with a

hyphenated designation that the testimony or exhibit is revised, such as "Exhibit 1-2d Rev." All revisions other than those of a minor nature shall be promptly filed with the Commission and served on all parties.

- (e) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, email address, facsimile number, and attorney registration number. A pleading of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state the person's title, address, and telephone number. The signature of an attorney or party certifies that the signatory has read the filing; that to the best of the signatory's knowledge, information, and belief there are good grounds to support it; and that it is not interposed for any improper purpose, such as to harass, delay, or increase the cost of the litigation.
- (f) ~~If a pleading or filed testimony is inconsistent with this rule, the Director or the Director's designee shall forthwith notify the filer. If the deficiency is not corrected within five days, the Commission may reject the pleading or testimony. The party filing the pleading or testimony may appeal to the Commission within five days of such rejection. The Commission may impose sanctions for violations of this rule, including an order to pay reasonable attorney's fees and expenses attributable to the violation. When the E-Filings System is used to simultaneously file multiple documents as a single filing (e.g. an application with a related motion, a motion with exhibits, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separately attached.~~

**1203. Time.**

- (a) When the day for the performance of any act under these rules, the effective date of any decision or order, or the day upon which a document must be filed, falls on a Saturday, Sunday, legal holiday, or any other day when the Commission's office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.
- (b) Unless an order of the Commission or a specific rule provides otherwise, the date shown in the certificate of service, or the mailed date on Commission decisions or notices, shall be used in calculating relevant deadlines.
- (c) In computing a period of days, the first day is excluded and the last day is included.

**1204. Filing.**

- (a) Unless an order of the Commission or a specific rule provides otherwise:
  - (I) Paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System.
  - (II) Filings made in paper copy:
    - (A) Except as provided in subparagraph (II)(C) of this paragraph, a person filing an application, petition, or amendment of either shall file an original and ten copies thereof.

- (~~HB~~) Except as provided in subparagraphs (III)(~~C~~) ~~or (IV)~~ of this paragraph, a person filing a complaint, answer, motion, intervention, exceptions, RRR, or any other document shall file an original and seven copies thereof.
- (~~HC~~) If a proceeding has been referred to a hearing commissioner or administrative law judge, a person filing any document shall file an original and four copies thereof.
- (~~IVIII~~) A person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. the following business day. If the Commission receives a document via fax, it will be considered filed as of the date and time of the fax if the original and requisite numbers of copies are filed within one business day of the date of the fax. Although the Commission's E-Filings System will generally be available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed thereto.

**1205. Service.**

- (a) A person filing any pleading or other document, shall also serve a copy, including all supporting attachments or exhibits, upon every other party and amicus curiae in the proceeding, except that the Director shall serve a complaint as provided in rule 1302(g). Such service shall include service upon the Commission's assigned trial advocacy and advisory staff. Except as provided in rule 1205-(b) and rule 1302(g), service shall be made by hand or through mailing on the same day the document is filed, unless a party expressly agrees by a signed waiver to accept service via fax, ~~or~~ electronic mail, or the Commission's E-Filings System. All registered filers in the E-Filings System have expressly signed a waiver to accept service through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial advocacy and advisory staff.
- (b) In accelerated complaint proceedings:
- (I) the complainant shall serve the complaint upon the respondent; and
- (II) all pleadings and motions shall be served on the same day they are filed ~~by electronic mail and~~ either (i) by electronic mail and by hand; ~~or~~ (ii) by electronic mail and overnight delivery, ~~or (iii) through the Commission's E-Filings System. Discovery shall be served the same way as pleadings and motions.~~ Discovery shall be accomplished pursuant to paragraph 1405(c).

- (c) Service upon a private corporation, partnership, or unincorporated association may be made by delivering a copy to one or more of the officers, partners, associates, managers, or designated agents thereof. When an attorney represents a party, service shall be made upon the attorney, unless the Commission orders service upon the party. If more than one attorney represents a party, service shall be made upon not more than two attorneys of record designated by the party.
- (d) Proof of service shall be demonstrated through a certificate of service, attached to the document served. For any filed document that does not contain a certificate of service, that omits from the certificate of service a pro se party, or that omits from the certificate of service a party's counsel of record, the Commission will presume that the document has not been served on omitted parties or counsel of record. This presumption may be overcome by evidence of proper service.

**1206. Notice – Generally.**

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, mail notice of the application or petition to any person who in the opinion of the Commission may be affected by the grant or denial of the application or petition. In lieu of mailing notice, the Commission may provide notice of filings to all persons, firms, or corporations who, in the opinion of the Commission, are interested in such notices, by making them available through the E-Filings System. In lieu of mailing notice, the Commission may provide notice of filings to all persons, firms, or corporations registered to make filings through the E-Filing System who, in the opinion of the Commission, are affected by such notices, by service through the Commission's E-Filing System.
- (b) The notice required by paragraph (a) of this rule shall state the following:
  - (I) The name and address of the applicant or petitioner.
  - (II) The caption and docket number of the proceeding.
  - (III) The date the application or petition was filed.
  - (IV) A brief description of the purpose and scope of the application or petition.
  - (V) Whether the applicant has filed testimony and exhibits and is seeking a Commission decision within 120 days, or has waived the time limits under § 40-6-109.5, C.R.S.
  - (VI) The date by which any objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document must be filed.
  - (VII) The date by which Commission staff must file any objection, notice of intervention, testimony, exhibit, or any other document, if different from the date(s) fixed in subparagraph (b)(VI) of this rule.
  - (VIII) That the Commission may consider the application or petition without a hearing if:
    - (A) no notice of intervention as of right or motion to permissively intervene is timely filed, or

- (B) no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the application or petition.
- (IX) That any person who files an objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document shall do so in accordance with the instructions set forth in the notice; and that the Commission may dismiss or strike any such document not filed in accordance with the instructions set forth in the notice.
- (c) Nothing in paragraph (a) of this rule shall require the Commission to ~~mail~~ provide notice of:
- (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
  - (II) a restrictive amendment of any pleading; ~~or~~
  - (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a docket regarding such a petition; or
  - (IV) a transportation application that does not include the requisite filing fee.
- (d) Unless shortened by Commission order or rule, the intervention period for notice mailed by the Commission shall expire 30 days after the mailing date. The Commission shall re-notice any application or petition which, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) Utilities filing tariffs shall provide notice in accordance with rule 1210(b)(II).
- (f) A utility other than a railroad or transportation utility filing an application for a tariff change on less than 30 days notice, which tariff change will potentially result in a rate increase, shall:
- (I) Within three days after filing the application, publish one notice of the application in at least one newspaper of general circulation, which notice shall be three columns wide and five inches high.
  - (II) Ensure that newspaper notice contains:
    - (A) the name and address of the utility;
    - (B) a statement that the utility has filed with the Colorado Public Utilities Commission an application to change its tariffs on less than 30 days notice;
    - (C) a statement explaining the classes or types of tariffs proposed to be changed, and explaining which customers will be affected by the proposed change;
    - (D) the proposed tariff's effective date;
    - (E) a statement of the purpose of the application, including an explanation of the changes proposed;

- (F) a statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission;
  - (G) a statement that any person may file with the Commission a written objection to the application, or an intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party;
  - (H) a statement that any person filing a written objection or an intervention must file the objection or intervention at least one day prior to Commission action on the application; and
  - (I) a statement that any person may attend the hearing, if any, and may make a statement under oath about the proposed tariff, even if such person has not filed a written objection or intervention.
- (g) A utility filing an application to make a refund shall, within three days of filing the application, publish notice of the application in a newspaper of general circulation. The notice must include the following information:
- (I) The name and address of the utility.
  - (II) A statement that the utility has filed an application with the Colorado Public Utilities Commission for approval of its proposed refund plan.
  - (III) A statement summarizing the amount of the refund, the date for making the refund, the date the refund is anticipated to be completed, the manner in which the refund is proposed to be made.
  - (IV) A statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission.
  - (V) A statement that any person may file with the Commission a written objection to the application, or in intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party.
  - (VI) A statement that written objections and interventions must be filed by the time listed in the notice separately given by the Colorado Public Utilities Commission.
  - (VII) A statement that any person may attend the hearing, if any, and may make a statement under oath about the application, even if such person has not filed a written objection or intervention.
- (h) All persons other than the Commission who are required to provide notice shall, within 15 days of providing notice, file an affidavit with the Commission stating the date notice was completed and the method used to provide it, accompanied by a copy of the notice or notices provided.
- (i) The Commission may order any applicant or petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.

- (j) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide notice of any notice of proposed rulemaking to: each regulated entity that may be affected; each person who previously notified the Commission in writing that he or she desires notice of proposed rulemaking proceedings; and any other person who in the opinion of the Commission may be interested in or affected by the proceedings.
- (k) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (l) Unless the Commission orders otherwise, a utility shall be permitted to file new tariffs complying with an order of the Commission or updating adjustment clauses previously approved by the Commission on not less than one business day's notice. Any filing made on one business day's notice shall be filed by noon in order to become effective on the next business day. No additional notice beyond the tariff filing itself shall be required.

**1207. Notice – Transportation Carrier Proceedings.**

In addition to the requirements of rule 1206, the following notice requirements apply to proceedings involving transportation carriers:

- (a) The Commission shall not notice applications for emergency temporary authority.
- (b) For purposes rule 1206(a), the Commission shall ~~mail~~ provide notice of any application involving a transportation carrier to all motor vehicle carriers, as defined in § 40-10-104(a), C.R.S.

**1208. Adoptions and Adoption Notices.**

- (a) Generally. When the Commission approves the transfer of control of one utility to another utility, or when a utility's name changes, the utility which will afterwards operate under the certificate shall file with the Commission an adoption notice, in a form available from the Commission. The adoption notice shall also adopt tariffs and price lists if applicable. The utility shall also post the adoption notice in a prominent public place in each business office of the utility, and shall make the adoption notice available for public inspection at each office.
- (b) Transportation utilities:
  - (I) When the Commission approves the transfer of control of one transportation utility to another transportation utility (whether on a permanent, temporary, or emergency temporary basis), or when a transportation utility's name changes, the transportation utility which will afterwards operate under the certificate or permit shall file with the Commission an adoption notice, in a form available from the Commission. The adoption notice shall also adopt tariffs and time schedules if applicable. The transportation utility shall also post the adoption notice in a prominent public place in each terminal facility and office of the transportation utility, and shall make the adoption notice available for public inspection at each terminal and office.
  - (II) If temporary or emergency temporary authority to assume operating control is not made permanent, the original transportation utility shall file an adoption notice reassuming permanent operating control. The original transportation utility shall also post the

adoption notice in a prominent public place in each terminal facility and office of the transportation utility, and shall make the adoption notice available for public inspection at each terminal and office. The temporary or emergency temporary authority reassumed expires on the effective date of the adoption notice.

#### **1209. Payments.**

The Commission shall accept payments in United States currency, check, or money order. The Commission may, in its discretion, accept payments made by credit card, debit card, or electronic funds transfer.

#### **1210. Tariffs and Advice Letters.**

(a) General.

- (I) All utilities, unless specifically exempted by the Commission, shall have current tariffs for all jurisdictional services on file with the Commission.
- (II) Public inspection. The utility shall have its current tariff available for public inspection at its principal place of business during normal business hours. The utility may post its tariffs on its website.
- (III) Filing and number of copies.
  - (A) Unless a filing is made through the E-Filings System or as otherwise ordered by the Commission, the utility shall file with the Commission:
    - (i) An original and three copies of the advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony and exhibits; and
    - (ii) Seven additional copies of the advice letter.
  - (B) Other than where a utility files to establish a new tariff, if a filing is made pursuant to a specific Commission decision, the utility shall either file an original and three copies of each tariff page and each advice letter or shall file through the E-Filings System, in which case no paper copies shall be filed, unless otherwise ordered by the Commission.
- (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website.
- (V) Notice. Commission will provide notice by electronic posting in the E-Filing System on its website within seven days of the receipt of an advice letter and tariff.
- (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff.

- (VII) Suspension and hearing. When a utility files a tariff, the Commission may suspend the tariff's effective date by setting the matter for hearing upon reasonable notice. Pending hearing and decision, the tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not exceeding 90 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
    - (A) A title page including:
      - (i) The utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
      - (ii) A general statement of the services to which the tariff applies.
    - (B) A table of contents.
    - (C) An explanation of the tariff's paragraph numbering sequence.

- (D) A list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, which does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) A list of all abbreviations and definitions used in the tariff.
- (F) Identification of the utility's types of service and service territory, as applicable, to which the tariff applies.
- (G) Provisions regarding the following, as applicable:
- (i) Line extensions;
  - (ii) Customer deposits;
  - (iii) Return check charges consistent with § 13-21-109, C.R.S.;
  - (iv) Disconnection, discontinuance, and restoration of service;
  - (v) Billing and payments;
  - (vi) Liability limitations;
  - (vii) Late payment charges; and

- (viii) Customer and utility responsibilities, obligations, duties, and rights.
- (H) The following information, on each tariff page:
  - (i) Utility's name;
  - (ii) The tariff number ("Colorado PUC No. \_\_\_\_"), running consecutively for each subsequent tariff filing;
  - (iii) If applicable, the number of the tariff being canceled ("Cancels PUC No. \_\_\_\_");
  - (iv) The tariff title, which identifies the types of services included in the tariff;
  - (v) The tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the cancelled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
  - (vi) Relevant section or heading captions;
  - (vii) An identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
  - (viii) The tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.
- (II) Notice of tariff filings. Any utility filing a tariff, other than one requesting less than statutory notice, shall provide notice in accordance with § 40-3-104(1), C.R.S. Except as otherwise permitted by law, a utility filing a tariff shall do so on not less than 30-days notice to the Commission and the public.
- (c) Advice letters.
  - (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
  - (II) The advice letter shall include:
    - (A) The utility's name, trade name, and address;
    - (B) The sequentially numbered identification of the advice letter;
    - (C) An identification of the corresponding tariff number;
    - (D) An identification of the corresponding Commission docket number and decision number, if applicable;
    - (E) A brief description of the tariff or tariff changes, which at a minimum shall include:

- (i) affected classes of service;
  - (ii) affected classes of customers;
  - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
  - (iv) whether the tariff changes terms or conditions; and
  - (v) whether the tariff makes textual changes;
- (F) An identification of tariff page numbers included in the filing;
- (G) If applicable, a listing of revised page numbers and/or canceled page numbers;
- (H) The tariff's or tariff page's proposed effective date;
- (I) The name, telephone number, facsimile number, and e-mail address of the person to contact regarding the filing; and
- (J) The signature of the authorized agent of the utility.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission or its website.

**1211. Additional E-Filing System Implementation.**

This rule applies to consequences of implementing the Commission's E-Filing System:

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and search ability of information. Upon request or observation, Commission personnel will actively monitor and correct the following information input during the electronic filing process through the Commission's E-Filing System: document to which a filing is responsive to, and document type.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filing System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the filing party, proceeding title for new proceedings, filing date, proceeding number, document title, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with section (d) below.
- (c) Inconsistencies between electronic filing information and documents filed electronically. To avoid prejudice to recipients of information through the E-Filing System information documents electronically attached or associated with the filing must be consistent with information input in the E-Filing System. To the extent of any conflict between information input in the e-filing process

other than the document to which a filing is responsive to and document type on the one hand and documents electronically attached or associated with the filing on the other hand, the information input in the e-filing process shall prevail.

(d) Procedure for Expedited Relief. In addition to other relief available, the following expedited relief is available when a filer incurs technical difficulties while using or attempting to make a filing through the Commission's E-Filing System:

(I) Within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, such filer may file a statement containing, without limitation:

(A) a description of the difficulty or error;

(B) all proceedings affected by the difficulty or error;

(C) all electronic filings affected by the difficulty or error;

(D) all actions taken to inform those affected by the difficulty or error;

(E) a statement verifying that the filer undertook reasonable effort to notify those affected by the difficulty or error; and

(F) if the e-filing was filed in an unintended proceeding, a statement whether the filing should not be administratively stricken from the unintended or improper proceeding.

(II) Without regard to the proceeding in which difficulty was incurred or the erroneous e-filing was made, the statement described herein shall be filed in the proceeding in which the filing was originally intended or attempted to be filed.

(III) A copy of the correct filing shall be filed with the statement.

(e) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically.

(f) Unless requested otherwise pursuant to the statement filed in compliance with this rule, Commission personnel will administratively strike any original erroneous filing giving rise to the filing of the statement described herein.

1212– 1299. [Reserved].

## PROCEEDINGS

### 1300. Commencement of Proceedings.

Proceedings before the Commission may be commenced only through one of the following:

- (a) A complaint, by the Commission or any interested person, including a proceeding for civil penalties, as provided by rule 1302;
- (b) An application, as provided by rule 1303;
- (c) A petition, as provided by rule 1304;
- (d) An order suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) An appeal of an emergency order in a pipeline safety matter concerning public safety, health, or welfare;
- (f) An order opening an administrative docket under rule 1307; or
- (g) A notice of proposed rulemaking issued by the Commission.

### 1301. Informal Complaints and Mediation.

- (a) An informal complaint is an informal, alternative dispute resolution tool used to avoid the costs associated with litigation. Any person may register an informal complaint with Commission staff, orally or in writing, expressing displeasure or dissatisfaction with a regulated entity.
- (b) In responding to or managing an informal complaint, Commission staff may:
  - (I) Explain to the informal complainant the Commission's jurisdiction or lack thereof;
  - (II) Forward to the informal complainant relevant informational packets or brochures;
  - (III) Investigate the informal complaint further;
  - (IV) Refer the informal complaint to the affected regulated entity for a response;
  - (V) File a formal complaint against the regulated entity, when specifically permitted by statute;
  - (VI) Request that the Commission issue a formal complaint as permitted by § 40-6-108, C.R.S.;

- (VII) Offer mediation;
  - (VIII) Provide to the informal complainant information about how to file a formal complaint; or
  - (IX) Employ any combination of the above responses or techniques, or respond in any other reasonably appropriate manner.
- (c) If Commission staff refers an informal complaint to a regulated entity for a response, the regulated entity shall respond in writing within 14 days of the referral, or such lesser period as Commission staff may require. If Commission staff requires a period less than five days to respond, such period shall be reasonable under the circumstances of the informal complaint.
- (d) If Commission staff refers the informal complaint for mediation:
- (I) Nothing said or offered during mediation or settlement negotiations may be used in any formal complaint proceeding against the person making the statement or offer.
  - (II) The mediator shall attempt to resolve the informal complaint within ten days of the mediator's receipt of the mediation request, although the informal complainant and regulated entity may consent to additional time.
- (e) A person may withdraw an informal complaint at any time.

**1302. Formal Complaints.**

- (a) Any person may file a formal complaint at any time. A formal complaint shall set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and, if known, how any statute, rule, tariff, price list, time schedule, order, or agreement is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, if applicable:
- (I) A complaint which seeks to modify, limit, suspend, annul, or revoke a certificate, permit, registration, license or other authority shall be signed and sworn by the complainant.
  - (II) A complaint claiming unreasonable rates or charges of any gas, electric, water, or telephone public utility shall comply with the provisions of § 40-6-108(1)(b), C.R.S.
  - (III) A complaint against a cooperative electric association shall comply with the provisions of § 40-9.5-106, C.R.S., if applicable.
- (b) The Commission may impose a civil penalty, when provided by law. In a contested proceeding the Commission may impose a civil penalty, when provided by law, after considering evidence concerning some or all of the following factors:
- (I) The nature, circumstances, and gravity of the violation;
  - (II) The degree of the respondent's culpability;
  - (III) The respondent's history of prior offenses;

- (IV) The respondent's ability to pay;
  - (V) Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
  - (VI) The effect on the respondent's ability to continue in business;
  - (VII) The size of the business of the respondent; and
  - (VIII) Such other factors as equity and fairness may require.
- (c) The Commission may expedite a formal complaint proceeding on its own motion or upon the motion of a party if such motion shows good cause or the consent of all the parties. If the Commission expedites a formal complaint, it shall enter a procedural order:
- (I) setting forth the expedited schedule; and
  - (II) detailing the limits the Commission, in its discretion, places on discovery.
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, or formal complaints regarding interconnection service quality matters, shall be treated as accelerated complaints if:
- (I) At least ten days prior to filing the complaint, the complainant has personally served upon the respondent written notice of intent to file an accelerated complaint, together with identification of the provision of any applicable law or agreement that the complainant contends is not being complied with, and a description of the facts demonstrating any alleged violation of any applicable law or agreement.
  - (II) The complainant has attached to the complaint copies of all relevant nonconfidential documents, including correspondence and work papers.
  - (III) The complaint includes a certification that any and all methods of dispute resolution established in any applicable agreement, including escalation to higher levels of management within the parties' organizations, have been exhausted.
  - (IV) The complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to resolve the disagreement, and despite those negotiations the parties failed to resolve the issue.
  - (V) The complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above.
  - (VI) On the same day as the complaint is filed with the Commission, the complainant served a copy of the complaint by hand-delivery or through the E-Filings System during normal business hours on the person designated by the respondent to receive service of process.

- (e) In accelerated formal complaint proceedings, in addition to the provisions of this rule, parties shall comply with the following rules, if applicable: 1205(b); 1308(b); 1308(c); 1400; 1405(c); and 1409(b).
- (f) In complaint proceedings where discontinuance of service becomes an issue, the Commission may issue an interim order to a regulated entity requiring it to provide service pending a hearing:
  - (I) If the customer has posted a deposit or bond with the regulated entity equal to the amount in dispute or as otherwise prescribed by the Commission, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
  - (II) If the customer has previously made an informal complaint to the Commission, and Commission staff investigation indicates probable success of the customer; or
  - (III) Upon such other good cause as the Commission may deem appropriate.
- (g) Upon the filing of any formal complaint, except as provided in rule 1205(b), the Director shall promptly serve the respondent with the complaint, an order to satisfy the complaint or file an answer, and a notice setting the date, time, and location of the hearing. The order shall require the respondent to satisfy the complaint or file its answer within 20 days of service of the order. If the complaint is an accelerated complaint the Commission shall promptly order the respondent to satisfy or answer within ten days. For accelerated complaints, the Commission shall set the hearing to occur within 45 days of the filing of the complaint. Unless all parties agree otherwise or the Commission finds exceptional circumstances warrant, a hearing on an accelerated complaint may not be continued beyond 60 days after the filing of the complaint.
- (h) Pursuant to §§ 40-6-108 and 24-4-104(3), C.R.S., the Commission may issue a formal complaint through the following process:
  - (I) When trial advocacy staff intends to bring a formal complaint against any regulated entity, the trial advocacy staff shall prepare a draft of the proposed formal complaint. The proposed formal complaint shall set forth sufficient facts and information to adequately advise the respondent of the relief sought and how any statute, rule, tariff, price list, time schedule, order, or agreement is alleged to have been violated. Trial advocacy staff shall submit the proposed formal complaint to the Commission at its regular Weekly Meeting for approval to advise the regulated entity of the proposed formal complaint pursuant to § 24-4-104(3), C.R.S. The regulated entity shall have 30 days to cure or satisfy the allegations set forth in the notice of proposed formal complaint.
  - (II) Should the regulated entity fail to satisfy or cure the allegations set forth in the notice of proposed formal complaint, or fail to request an extension of time to satisfy or cure, within the 30 day period, trial advocacy staff shall submit the proposed formal complaint, along with any responses from the regulated entity, to the Commission for a determination on whether the formal complaint should be issued. If the Commission determines that the proposed formal complaint fails to satisfy the standards for issuing such complaint pursuant to §§ 40-6-108 and 24-4-104(3), C.R.S., and Commission rules, the Commission shall reject the issuance of the formal complaint. If the Commission determines that the proposed formal complaint satisfies those statutory standards, the

Commission shall, upon its own motion, pursuant to § 40-6-108(1), C.R.S., issue the formal complaint.

- (III) Upon issuance, the formal complaint will be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.
- (i) Notwithstanding the requirements of paragraph (h), when the Commission finds either that a regulated entity has engaged in a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may institute expedited and/or summary formal complaint proceedings under § 24-4-104(3) and (4), C.R.S.

**1303. Applications.**

- (a) An application may be made as follows:
  - (I) Telecommunications matters, as provided in rule 2002.
  - (II) Electric matters, as provided in rule 3002.
  - (III) Gas matters, as provided in rule 4002.
  - (IV) Water matters, as provided in rule 5002.
  - (V) Transportation carrier matters, as provided in rule 6002.
  - (VI) Rail matters, as provided in rule 7002.
  - (VII) Steam matters, as provided in rule 8002.
- (b) An application shall be deemed complete as follows:
  - (I) When the Commission or Commission staff evaluates an application to determine completeness, the evaluation shall consider only whether the applicant has provided the information required by the Commission's rules or order, or whether the application adequately identifies the relief the applicant requests and supports the request with adequate types of information. The evaluation shall not consider the application's substantive merit or lack thereof.
  - (II) Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney, by mail, electronic mail, ~~or~~ facsimile, or through the E-Filings System, written notification concerning any specific deficiencies of the application. Upon receiving such notification, the applicant may file a response either curing all the deficiencies noted by Commission staff or explaining why it believes no further action is required. The applicant's response, if any, shall be filed no later than ten days after Commission staff's written notification was sent. If the applicant does not respond in the time allotted, the Commission may, after the application's notice period has expired, dismiss the application without prejudice and close the docket.

- (III) If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, the application shall be automatically deemed complete. At any time, the Commission may by order deem an application complete.
  - (IV) Nothing in this paragraph (b) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (c) An applicant may at any time file a waiver of the time limits provided in § 40-6-109.5, C.R.S. Such waiver may apply to either the 120-day or 210-day statutory time limit, or both, at the discretion of the applicant. If an application is a joint application, a waiver filed by any one of the applicants shall be effective for all applicants.

**1304. Petitions.**

A petition may be made as follows:

- (a) Telecommunications matters, as provided in rule 2003.
- (b) Electric matters, as provided in rule 3003.
- (c) Gas matters, as provided in rule 4003.
- (d) Water matters, as provided in rule 5003.
- (e) Transportation carrier matters, as provided in rule 6003.
- (f) Rail matters, as provided in rule 7003.
- (g) Petition for rulemaking, as provided in rule 1306.
- (h) Petition seeking a waiver or variance of any rule, as provided in rule 1003.
- (i) Petition seeking a declaratory order.
  - (I) A person may file a petition for a declaratory order either in an original or a pending proceeding.
  - (II) The Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty affecting a petitioner with regard to any tariff, statutory provision, or Commission rule, regulation, or order.
  - (III) At its discretion, the Commission may grant, deny, or dismiss any petition seeking a declaratory order.

**1305. Rejection or Suspension of Proposed Tariffs, Price Lists, or Time Schedules.**

- (a) Protests.
  - (I) Any person may file a written protest against a proposed tariff, price list, or time schedule.
  - (II) If the Commission suspends and sets a proposed tariff, price list or time schedule for hearing, a person who merely registers a protest shall not be permitted to participate as a party unless such person has intervened as provided in rule 1401 and paragraph (d) of this rule.
- (b) The Commission may, pursuant to § 40-6-111(3), reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.
- (c) The Commission may suspend and set for hearing any proposed tariff, price list, or time schedule, to investigate and determine its propriety. Such an order shall suspend the proposed tariff, price list, or time schedule pending a decision by the Commission. The Commission shall serve the order setting the hearing upon the regulated entity proposing the tariff, price list, or time schedule.
- (d) Any person wishing to participate as a party in any hearings the Commission may hold on a suspended tariff, price list, or time schedule, must file a notice of intervention as of right or motion to permissively intervene as provided in rule 1401. The person filing the suspended tariff, price list, or time schedule need not file an intervention.
- (e) A suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, price list, or time schedule unless the Commission, by separate decision, extends the suspension for an additional 90 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless:
  - (I) the Commission orders a change to be made, the time when it shall take effect, and the manner in which it shall be filed and published; or
  - (II) the Commission fails to issue a decision on the merits within the suspension period.

**1306. Rulemaking.**

Either upon its own initiative or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. Such dockets shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.

**1307. Administrative Dockets.**

The Commission may open an administrative docket on its own motion at any time. Administrative dockets shall be governed by such specific procedures as the Commission may order.

**1308. Responses: Generally – Complaints.**

- (a) A response may only be filed to: an application, as part of an intervention; a petition, as part of an intervention; a complaint, as provided in this rule and rule 1302(g); a motion, as provided in rule 1400; a brief or statement of position, as provided in rule 1503; or exceptions, as provided in rule 1505. No response may be filed to an answer, response, notice of intervention as of right, notice, or request for RRR. Notwithstanding the provisions in this paragraph (a), the Commission may waive response time and may act immediately upon a finding that time is of the essence. Any person requesting a waiver or shortening of response time shall certify that he or she has conferred (or reasonably attempted to confer) with all other parties and represent whether the parties concur with such a request.
- (b) Except as provided by this paragraph (b), a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or answer the complaint. In accelerated complaint proceedings, the respondent shall file a response within ten days after service of the order to satisfy or answer the complaint. A response to a complaint shall admit or deny with particularity each allegation of the complaint, and shall separately state and number each affirmative defense. Where a complaint is filed by a regulated entity, the respondent may assert a counterclaim in its response. A counterclaim shall be answered within 20 days and is subject to a motion to dismiss as a complaint under paragraph (c) of this rule.
- (c) A respondent may file a motion to dismiss a complaint or counterclaim within 14 days of service; except in accelerated complaint proceedings, in which the respondent shall file any motion to dismiss with the respondent's answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after an order denying the motion to dismiss. A motion to dismiss may be made on any of the following grounds: lack of jurisdiction over the subject matter or the person; insufficiency of process or service of process; lack of standing; insufficiency of signatures; or failure to state a claim upon which relief can be granted. No motion need be entertained regarding misjoinder of claims or misjoinder or nonjoinder of parties, nor must any claim be dismissed because of the absence of direct damage to a party. No defense is waived by being joined with one or more other defenses in a motion to dismiss. A party may respond within 14 days of being served with a motion to dismiss. Any motion to dismiss shall be determined before hearing unless the Commission orders that it be deferred until hearing.
- (d) If a party fails to timely file a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the party to have admitted such allegation or to have waived such affirmative defense, and the Commission may grant any or all of the relief requested.

**1309. Amendment or Withdrawal.**

- (a) Except in complaint proceedings, a party commencing an action may freely amend or supplement its pleading at any time during the intervention and notice period, if any. Thereafter, or in complaint proceedings, the commencing party shall obtain leave of the Commission to amend or supplement. Except in complaint proceedings, whenever a commencing party amends or supplements a pleading, other than through a restrictive amendment, it, or the Commission, as applicable, shall provide new notice consistent with rule 1206. All applicable timelines run from

the date of the most recent amendment or supplement, except that a restrictive amendment shall not change applicable timelines.

- (b) A respondent may freely amend or supplement its responsive pleading at any time within 20 days of the filing of its original responsive pleading. Thereafter, the respondent shall obtain leave of the Commission to amend or supplement.
- (c) Any motion to amend or supplement a pleading that is filed more than 20 days before the first day of a hearing shall be ruled upon before the hearing.
- (d) A party may withdraw an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. An advice letter and tariffs may be withdrawn if they have not yet been suspended and set for hearing. A party may withdraw or dismiss an application, petition, tariff, or advice letter after such respective times only upon motion granted by the Commission. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced.

#### **1310. Information Regarding Regulated Entities.**

- (a) A regulated entity may maintain information regarding the regulated entity in a miscellaneous docket created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such miscellaneous docket, if the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the information was last filed with the Commission. If a regulated entity chooses to maintain information in a miscellaneous docket, the following information may be filed:
  - (I) A copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
  - (II) If the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
  - (III) The name, business address, and title of each officer, director, and partner;
  - (IV) The names and addresses of affiliated companies that conduct business with the regulated entity; and
  - (V) The name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

**1311. – 1399. [Reserved].**

## **PRE-HEARING PROCEDURE**

### **1400. Motions.**

Except for motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. The responding party shall have 14 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion. Failure to file a response may be deemed a confession of the motion. A movant may not file a reply to a response unless the Commission orders otherwise. A motion for summary judgment may be made in accordance with rule 56 of the Colorado Rules of Civil Procedure. A motion to dismiss may be made in accordance with rule 12 of the Colorado Rules of Civil Procedure.

### **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 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.
- (b) A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding.
- (c) A motion to permissively intervene shall state the grounds relied upon for intervention, the claim or defense for which intervention is sought, including the specific interest that justifies intervention, and the nature and quantity of evidence, then known, that will be presented if intervention is granted. For purposes of this rule, the motion must demonstrate that the subject docket may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented in the docket; subjective interest in a docket is not a sufficient basis to intervene.
- (d) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within ten days after the time otherwise specified by paragraph (a) of this rule.
- (e) In transportation carrier application proceedings:
  - (I) A notice of intervention as of right shall include a copy of the motor vehicle carrier's letter of authority, shall show that the motor vehicle carrier's authority is in good standing, shall identify the specific parts of that authority which are in conflict with the application, and

shall explain the consequences to the motor vehicle carrier and the public interest if the application is granted.

- (II) A motor vehicle carrier holding either temporary or suspended authority in conflict with the authority sought in the application shall not have standing to intervene as of right, but may file a motion to permissively intervene.
- (III) A person filing a notice of intervention as of right or motion to permissively intervene in temporary authority application proceedings shall, if applicable, include a description of the services the intervenor is ready, willing, and able to provide, or has provided, to the persons or class of persons supporting the application.
- (IV) An intervention, whether permissive or as of right, in temporary authority application proceedings shall not constitute an intervention in a corresponding permanent authority application proceedings, unless the intervention explicitly so states.
- (V) For purposes of this paragraph, "motor vehicle carrier" means "motor vehicle carrier" as defined in § 40-10-101(4), C.R.S.

#### **1402. Consolidation.**

The Commission may, upon its own initiative or upon the motion of a party, consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced.

#### **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, 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.
- (c) If all parties withdraw their interventions before completion of a hearing, the matter may be determined as an uncontested proceeding.

#### **1404. Referral to Hearing Commissioner or Administrative Law Judge.**

- (a) Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to a hearing commissioner or an administrative law judge. A referral to a hearing commissioner or administrative law judge shall encompass all issues of fact and law concerning the matter unless the Commission specifies otherwise in a written order.

- (b) For matters referred to an administrative law judge or hearing commissioner, the Commission may omit the recommended decision if the Commission specifically finds and directs upon the record that due and timely execution of the Commission's functions imperatively and unavoidably requires it to make the initial decision.

**1405. Discovery and Disclosure of Prefiled Testimony.**

- (a) Incorporation by reference, exclusions, and discovery and disclosures generally.
- (I) Except as provided in subparagraph (II) of this paragraph, the Commission incorporates by reference rules 26-37 of the Colorado Rules of Civil Procedure, as published in the 2005 edition of the Colorado Revised Statutes. No later amendments to or editions of the incorporated material are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief Administrative Law Judge, Colorado Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- (II) The following rules of Chapter 4 of the Colorado Rules of Civil Procedure are not incorporated by reference: 26(a)(1)-(4); 26(b)(2), except as provided in paragraph (b) of this rule; the first two sentences of 26(d); 30(a)(2)(A); 30(a)(2)(C); 33(b)(3); the first two sentences of the second paragraph of 34(b); 35; the time requirement of the second sentence of the second paragraph of 36(a); 37(c); and any reference to a case management order. In addition to the foregoing exclusions, any portion of Chapter 4 of the Colorado Rules of Civil Procedure that is inconsistent with any Commission rule shall also be excluded.
- (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) A party shall serve discovery responses, and objections if any, within ten days of a request. However, if the total discovery propounded by a party exceeds the limits established in rule 26(b)(2) of the Colorado Rules of Civil Procedure, the responding party shall, with respect to the discovery that exceeds those limits, serve its discovery responses, and objections if any, within 20 days of the request. The Commission will entertain motions to compel or for protective orders only after the movant has made a good faith effort to resolve the discovery dispute. The Commission discourages discovery disputes, and will sanction parties and attorneys that do not cooperate in good faith. Such sanctions may include, but are not limited to, payment of an opposing party's costs, expenses, and attorney's fees attributable to a lack of good faith, dismissal of a party, disallowance of exhibits or witness testimony, or such other and further relief as the Commission may deem appropriate. Resolution of discovery disputes shall take precedence over other matters. Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery, as an exhibit to prefiled testimony, as a prefiled exhibit, or as an impeachment exhibit. No discovery, discovery responses, or objections to discovery shall be submitted to or served through the Commission's E-Filings System.

- (c) In accelerated complaint proceedings, unless the Commission orders otherwise:
- (I) Within ten days of the filing of the answer, the complainant shall file and serve on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
  - (II) Within ten days of service of the complainant's list of witnesses and copies of exhibits, the respondent shall file and serve on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
  - (III) All other discovery shall commence by hand delivery within 15 days of the filing of the complaint. The following rules shall apply:
    - (A) Each party shall be limited to taking not more than two depositions.
    - (B) Each party shall be limited to a total of not more than 20 interrogatories, including all discrete subparts, requests for production of documents, or requests for admission.
  - (IV) Responses to discovery requests, including any objections, shall be served within seven days of receipt of the request. Any motion to compel shall be filed and served within five days of receipt of any objection, and a response to such a motion shall be filed and served within seven days of receipt of the motion.
- (d) In application proceedings set for hearing, unless the Commission orders otherwise, a party shall file and serve its testimony and exhibits as follows:
- (I) If the applicant files its testimony and exhibits with its application, then an intervenor shall file its testimony and exhibits within 90 days of the filing of the application.
  - (II) If the applicant does not file its testimony and exhibits with its application, then:
    - (A) the applicant shall file its testimony and exhibits within 60 days after filing the application, and
    - (B) an intervenor shall file its testimony and exhibits within 45 days of the filing of the applicant's testimony and exhibits.
- (e) In transportation carrier application proceedings, notwithstanding anything in paragraphs (a), (b), (c), or (d) of this rule to the contrary, and unless the Commission orders otherwise:
- (I) If an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.
  - (II) Each intervenor in transportation application proceedings shall file and serve its list of witnesses and copies of its exhibits. If the applicant has filed its testimony or a detailed

summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than ten days after the conclusion of the notice period. If the applicant has not filed its testimony or a detailed summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than 20 days after the notice period has expired.

- (III) No depositions may be taken.
  - (IV) Parties shall be limited to a single set of not more than 20 interrogatories to each party, including all discrete subparts, requests for production of documents, or requests for admission.
  - (V) Data requests for documents or tangible things shall not exceed a total of six months of the 12-month period immediately preceding the commencement of the proceeding.
  - (VI) Any person adversely affected by a failure of another party to provide discovery may file a motion to compel discovery, a motion to dismiss, or a motion in limine.
- (f) In all rate proceedings set for hearing, the respondent shall file its testimony and exhibits within 30 days of the order setting the matter for hearing. An intervenor shall file its testimony and exhibits within 75 days of the order setting the matter for hearing.

**1406. Subpoenas.**

- (a) Incorporation by reference and exceptions.
  - (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as published in the 2005 edition of the Colorado Revised Statutes. No later amendments to or editions of the incorporated material are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief Administrative Law Judge, Colorado Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
  - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) Upon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue a subpoena or a subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing, consistent with § 40-6-103(1), C.R.S.

**1407. Stipulations.**

- (a) Parties may offer into evidence a written stipulation as to any fact or matter in issue of substance or procedure. An oral stipulation may be made on the record, but the Commission may require that the stipulation be reduced to writing, signed by the parties or their attorneys, and filed with the Commission. The Commission may approve, recommend modification as a condition of approval, or disapprove of any stipulation offered into evidence or on the record.
- (b) In complaint proceedings initiated by the Commission or Commission trial advocacy staff pursuant to rule 1302(h), a respondent may enter into a consent stipulation with Commission trial advocacy staff. To enter into a consent stipulation, a respondent shall admit all jurisdictional facts; expressly waive further procedural steps, including a hearing and judicial review; acknowledge that the complaint may be used to construe the terms of the consent stipulation; and agree to the required actions and timelines contained in the stipulation. The Commission shall enter an order approving, recommending modification as a condition of approval, or disapproving of any consent stipulation.

**1408. Settlements.**

The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and filed with the Commission, which shall enter a decision approving or disapproving it, or recommend a modification as a condition for approval. The Commission may hold a hearing on the settlement agreement prior to issuing its decision. An agreement that is disapproved shall be privileged and inadmissible as evidence in any Commission proceeding.

**1409. Conferences.**

- (a) After the close of the intervention period, the Commission may hold a pre-hearing conference to expedite the hearing, resolve procedural issues, or address any other preliminary matter. Parties and their representatives shall be prepared to discuss all procedural and substantive issues.
- (b) In accelerated complaint proceedings, the Commission shall set a pre-hearing conference for not later than five days prior to hearing by notice establishing the date, time, and place thereof. At the conference, in addition to resolving any other preliminary matters, the presiding officer shall determine whether a hearing is necessary or whether the complaint can be determined on the face of the pleadings and supporting affidavits. If no hearing is necessary, the presiding officer shall issue an appropriate order.

**1410. – 1499. [Reserved].**

**HEARINGS, ORDERS, AND POST-HEARING PROCEDURES**

**1500. Burden of Proof.**

Unless previously agreed to or assumed by a party, the burden of proof and the burden of going forward shall be on the party that is the proponent of the order. The proponent of the order is that party commencing a proceeding, except that in the case of suspension of a proposed tariff, price list, or time schedule, the regulated entity shall bear the burden.

**1501. Evidence.**

- (a) The Commission shall, to the extent practical, conform to the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts. Unless the context otherwise requires, wherever the word "court", "judge", or "jury" appears in the rules of evidence, it shall mean the Commission, a hearing commissioner, or an administrative law judge. However, the Commission shall not be bound by the technical rules of evidence. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. Specifically, the Commission may receive and consider evidence not admissible under the rules of evidence, if the evidence possesses reliable probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (b) A party sponsoring an exhibit shall furnish a copy to each commissioner or to the administrative law judge or hearing commissioner, and to each party present at the hearing. If exhibits have been filed and served prior to the hearing, the sponsoring party need only provide one copy for the record and one copy for each commissioner or the administrative law judge. The Commission may limit the number of copies to be furnished where reproduction is burdensome.
- (c) The Commission may take administrative notice of general or undisputed technical or scientific facts, state and federal constitutions, statutes, rules, regulations, tariffs, price lists, time schedules, rate schedules, annual reports, documents in its files, matters of common knowledge, matters within the expertise of the Commission, and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any fact to be so noticed shall be specified in the record, and copies of all documents relating thereto shall be provided to all parties and the Commission, unless they are readily available from the parties, or they are voluminous. Every party shall be afforded an opportunity to controvert the fact to be so noticed.

**1502. Interim Orders.**

- (a) Interim orders shall not be subject to exceptions or RRR, except that any party may challenge the matters determined in an interim order in such party's exceptions to a recommended decision or in such party's request for RRR of a Commission decision.
- (b) A presiding officer may certify an interim order as immediately appealable via exceptions.
- (c) Orders concerning final judgment as to any party, as for example the denial of an intervention, shall be by decision or recommended decision, rather than by interim order.
- (d) A party aggrieved by an interim order may file a written motion with the presiding officer entering the order to set aside, modify, or stay the interim order.

**1503. Briefs or Statements of Position.**

The Commission may at any time during a proceeding order the filing of written briefs or statements of position.

**1504. Record.**

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) The Commission may accept comments from the public concerning any proceeding, which shall be included in the record.
- (c) The record may be reopened for good cause shown by the hearing commissioner or administrative law judge, or on motion of a party before a recommended decision has been entered, or by the Commission or on motion of a party before an appeal has been taken to district court.

**1505. Exceptions.**

- (a) A recommended decision becomes the Commission's decision unless, within 20 days or such additional time as the Commission may allow, any party files exceptions to the recommended decision or the Commission orders the recommended decision to be stayed. A stay of a recommended decision does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended decision is stayed until the Commission rules upon them. A motion for an extension of time to file exceptions based upon the unavailability of a transcript shall show that the transcript request was filed within seven days of the mailed date of the recommended decision. Parties may file responses to exceptions within 14 days of the service of the exceptions.
- (b) A party wishing to file exceptions shall request a transcript within seven days of the mailed date of the recommended decision, unless the party's exceptions dispute only issues of law. The requesting party shall bear the cost of the preparation of the transcript, unless the party objects and the Commission by order equitably apportions the cost among the parties.
- (c) The Commission may, upon its own initiative or upon the motion of a party, order oral argument regarding exceptions. A motion for oral argument shall be conspicuously incorporated into the document in which exceptions are filed. The Commission shall set the time allotted for argument and may terminate argument whenever, in its judgment, further argument is unnecessary. The party filing exceptions is entitled to open and conclude the argument. If more than one party has filed exceptions, the Commission shall determine the order of argument. Arguments will be limited to issues raised in the exceptions, unless the Commission orders otherwise. If a party fails to appear to present argument, the Commission may hear the arguments of other parties. The Commission shall have oral arguments recorded for inclusion in the record.

**1506. Rehearing, Reargument, or Reconsideration.**

- (a) Any party may request RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) A request for RRR, or a motion for an extension of time in which to file such a request, shall be filed within 20 days after a decision of the Commission, or after a recommended decision by a hearing commissioner or an administrative law judge has become the decision of the Commission. A motion for extension of time based upon the unavailability of a transcript shall

show that the transcript request was filed within seven days of the date on which the Commission decision was mailed.

- (c) A request for RRR does not stay the Commission's decision unless it is specifically so ordered. If the Commission does not act upon a request for RRR within 30 days of its filing, it is denied and the Commission's decision shall be final.

**1507. Judicial Review.**

Any party may seek judicial review of any Commission decision in accordance with applicable law, including §§ 24-4-106(4), 40-6-115, or 40-10-105(4), C.R.S., as applicable.

**1508. Enforcement Actions.**

Whenever it appears that a person has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any Commission order or statute or law affecting public utilities, the Commission may direct the Attorney General to bring an action in an appropriate court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and monetary penalties as provided in Article 7 of Title 40, C.R.S.

**1509. – 1999. [Reserved].**