

(Decision No. C93-1457)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF EMERGENCY RULES)  
GOVERNING PROCEDURES UNDER )  
§ 40-6-109.5, C.R.S. (1993), AND)  
OTHER RELATED RULE CHANGES, )  
PERTAINING TO RULES 50, 51, 55, )  
56, 57, 58, 70, 71, 77, 92; )  
AND NEW RULES 68, 69, AND 70, )  
COLORADO PUBLIC UTILITIES )  
COMMISSION, RULES OF PRACTICE )  
AND PROCEDURE, 4 CCR 723-1. )

DOCKET NO. 93R-681

ORDER ADOPTING  
EMERGENCY RULES

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Mailed Date: November 24, 1993  
Adopted Date: November 9, 1993  
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STATEMENT

BY THE COMMISSION:

At the November 9, 1993, Commission Special Open Meeting, Commission Staff presented a review of rules pertaining to applications filed with the Commission and of current procedures concerning the processing of those applications. A statute mandates that, absent waiver by the Applicant, the Commission deems an application complete and then issues its decision on an application within specified timeframes after the application is deemed complete. The statute further requires that the application be deemed complete in accordance with prescribed rules promulgated by the Commission, § 40-6-109.5, C.R.S. (1993). Our rules governing applications (generally, Rules 50 to 59 of the Rules of Practice and Procedure, 4 CCR 723-1) were adopted before the enactment of § 40-6-109.5, C.R.S. The existing application rules specify the content of applications filed with the Commission and the information to be filed with applications.

In their presentation at the Special Open Meeting, Staff members raised the serious issues that the Commission's existing rules do not address the procedure by which the Commission will deem an application complete and that the Commission's existing procedural rules have timeframes that potentially conflict with those of the statute or that might result in the Commission's inability to meet the statutory timeframes. Staff also discussed the interrelationship of § 40-6-109.5, C.R.S., with other statutory provisions containing specified timeframes (See, e.g., § 40-6-109(2), C.R.S., concerning exceptions to initial decisions; § 40-6-114, C.R.S., concerning applications for rehearing, reargument, or reconsideration).

Specifically, with respect to the absence of a procedure, Staff stated that the statute was amended in 1993 to add § 40-6-109.5, C.R.S.; that § 40-6-109.5, C.R.S., requires the Commission to issue its decision on an application within a specified time after the application is deemed complete; that applications have been filed, and continue to be filed, with the Commission since the enactment of § 40-6-109.5, C.R.S.; and that the absence of a specific procedure for deeming an application complete has hampered processing of the filed applications. Further, Staff explained that the absence of specific procedures has created uncertainty about when an application is deemed complete under the statute, about who is authorized to deem an application complete, and about how an application is deemed complete. It is this uncertainty which, in turn, has hampered the processing of applications. Finally, Staff explained that the current rules governing applications do not address the procedural issues created by recently-enacted § 40-6-109.5, C.R.S. As a result, the Commission has had to waive its existing rules and to proceed on a case-by-case basis.

With respect to the issue of timeframes, Staff stated that a review of the Commission's Rules of Practice and Procedure revealed that a number of the procedural rules contain timeframes that cannot be reconciled easily with the statutorily-imposed deadline for a Commission decision on an application. For example, Rule 77 governing discovery contains timeframes which conflict with the statutory requirement that the Commission issue a decision within 120 or 210 days from the date an application is deemed complete. Similarly, the timeframes in Rule 92 pertaining to exceptions to recommended decisions need to be adjusted to comport with the statutory requirements. Further, the rules contain no limitation or restriction on rescheduling hearing dates or otherwise enlarging time during the hearing and review process; this could result in our being unable to meet the statutory deadlines.

Staff urged us to set specific limits and procedures as quickly as possible to inform all parties and potential parties of the statutory requirements, of the statutory timeframes, and of the resulting regulatory changes. Staff stated that the Rules of Practice and Procedure need to be amended immediately to assure that the Commission can meet its statutory obligations while providing notice and reasonable opportunity to be heard to parties in the application dockets.

We find that the addition of § 40-6-109.5, C.R.S., has fundamentally changed the way in which we consider and process applications. Further, this change is a pervasive one that requires considerable adjusting of, and possible restructuring of, our existing rules and procedures. In particular, our existing rules on applications and our existing rules governing hearings and pre- and post-hearing processes are insufficient and inadequate in light of the newly-enacted statutory provision.

In order to address this problem, we now determine that immediate adoption of the attached emergency rules is imperatively necessary to permit the Commission to comply with a state law. We find that compliance with rulemaking notice and comment requirements as set forth in the Administrative Procedure Act, § 24-4-103, C.R.S., would be contrary to the public interest in that failure to amend existing rules and to add new rules governing the process by which applications are deemed complete could result in the Commission's failure to meet the statutorily-imposed deadlines. Further, emergency rules that are immediately effective will serve the public interest in that they will provide guidelines for, and guidelines to, the Commission, Commission Staff, and members of the public while the Commission proceeds with the permanent rulemaking necessary to implement the statute.

The attached emergency rules address the issues identified by Staff and the Commission by creating three new procedural rules: Rule 69, which governs processing railroad applications; Rule 70, which governs processing fixed utilities applications; and Rule 71, which governs processing transportation utilities applications. In addition, Rules 77 and 92 are amended to align them with the statutory requirement that the Commission issue its decision within specified timeframes. Further, Rules 50, 51, 55, 56, 57, and 58 are amended to reference the procedural requirements of Rules 69, 70, and 71 and to make it clear that the Commission will reject an application that does not meet the requirements of the applicable rule. Finally, existing Rule 70 regarding nomenclature is renumbered as Rule 68 to allow for new Rules 69 and 70 and is reworded to reflect current Commission practice.

It is our belief that these new rules and changes to existing rules will further serve the public interest by encouraging applicants to file complete and detailed information in support of applications. This, in turn, should permit all interested parties to have an opportunity to present their views to us and should also allow us to give applications thorough and thoughtful review and consideration within the statutory timeframes.

For these reasons, we determine that the attached emergency rules should be adopted immediately and without notice. The attached emergency rules are to become effective on December 10, 1993, and are to be in effect for 90 days following that date. We will initiate proceedings to adopt permanent rules to replace the attached emergency rules within this 90-day period.

The statutory authority for the attached emergency rules is found at §§ 40-2-108, 40-3-102, and 40-6-109.5, C.R.S. (1993).

THEREFORE THE COMMISSION ORDERS THAT:

1. The emergency rules attached to this Order are hereby adopted to be effective on December 10, 1993. Such rules shall be

in effect for 90 days from December 10, 1993, or until replaced by permanent rules, whichever period is less.

2. Within 20 days following adoption, the attached emergency rules and this Decision shall be filed with the Secretary of State along with the Attorney General's opinion regarding the legality of the rules.

3. The adopted emergency rules (attached) shall also be filed with the Office of Legislative Legal Services within 20 days following the Attorney General's opinion regarding the legality of the emergency rules.

4. The 20-day time period provided for by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration begins on the first day after the mailing or serving of this Decision and Order.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING November 9, 1993.



ATTEST: A TRUE COPY

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT E. TEMMER

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CHRISTINE E. M. ALVAREZ

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VINCENT MAJKOWSKI

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Commissioners

MRH:srs

4 CCR 723-1, RULE 50 add  
Revised 11/18/93 MJF/jb

RULE 50

(o) APPLICATION DEEMED COMPLETE. The commission shall deem all applications complete in accordance with the procedural requirements of rule 50.

(p) FAILURE TO PROVIDE REQUIRED INFORMATION. In the absence of unusual or extraordinary circumstances, the commission will both reject an application that does not meet the requirements of this rule and close the docket pertaining to the application.

CCR 4 723-1, Rule 51  
revised 11/18/93 MJF/jb

RULE 51

Applications to Construct, Alter or Abolish Railroad  
Crossings, or for the Installation or Modification of  
Signal Lights or Other Protective Devices - Notice

1 (a) Definitions. As used in this Rule:

2 (1) Utility Crossing means the point at which the  
3 tracks or other facilities of any public utility may be  
4 constructed across the tracks or other facilities of any  
5 other public utility at grade, or above or below grade, or  
6 at the same or different levels.

7 (2) Railroad Crossing means the point at which the  
8 tracks or other facilities of any railroad corporation,  
9 railroad, or street railway may be constructed across the  
10 tracks or other facilities of any other railroad  
11 corporation, railroad, or street railway.

12 (3) Railroad-highway crossing means:

13 (A) The point at which the tracks or other  
14 facilities of any railroad corporation, railroad, or  
15 street railway may be constructed across any public  
16 highway at grade, or above or below grade; or

17 (B) The point at which private tracks, over which  
18 any railroad corporation, railroad, or street railway  
19 may operate, may be constructed across any public  
20 highway at grade, or above or below grade.

(4) Highway-Railroad crossing means:

(A) The point at which any public highway may be constructed across the tracks or other facilities of any railroad corporation, railroad, or street railway, at grade, or above or below grade, or

(B) The point at which any public highway may be constructed across private tracks, over which any railroad corporation, railroad, or street railway may operate, at grade or above or below grade.

(b) Contents of Application - Generally. When an application is filed with the Commission to construct, alter or abolish a utility crossing, a railroad-highway crossing, a railroad crossing, or a highway-railroad crossing, or for authority to install or modify signal lights or protective devices, the applicant; in addition to complying with the provisions of Rule 22, shall submit the following information, to the extent applicable, either in the application or in appropriately identified attached exhibits:

(1) The applicant's name and complete address (street, city, state, and zip code), If the applicant is a corporation, a statement of that fact; the name of the state in which it is incorporated; and the location of its principal office, if any, in this state. If the applicant is a partnership, the names and addresses of all general and limited partners shall be listed.

(2) The name and address of applicant's representative, if any, to whom all inquiries should be made.

(3) A detailed statement as to the nature, character, and need for the construction, alteration or abolition. or for the installation or modification, of signal lights or other protective devices, for which approval is sought.

(4) A map of suitable scale, preferably of not less than 100 feet to the inch, accurately portraying the location of all tracks, buildings, structures, property lines, streets and roads in the vicinity of the proposed or existing crossing that is the subject of the application.

(5) A profile map showing grade lines and proposed grade lines of approaches on the public roads, highways or streets railroads. or street railways that may be affected by the proposed or existing railroad-highway crossing, or railroad crossing that is the subject of the application.

(6) The names of public utilities, municipalities, corporations and adjacent property owners that may be interested in or affected by the application.

(7) If the crossing is at grade, a statement showing why a separation of grades is not practicable under the circumstances.

(c) Applications for Utility, Railroad, Railroad-Highway, Highway-Railroad Crossings. In addition to complying with the provisions of Rule 51(b). applications to construct, alter or



abolish a utility, railroad. railroad-highway or highway-railroad crossing shall include the following information:

(1) A statement that the proposed crossing, installation, or modification of signal lights or protective devices will be constructed or installed in accordance with Commission specifications.

(2) A statement of the number, character, and speed of trains and vehicles passing the crossing each day, and all projections, if any, of increases or decreases.

(3) A statement of the actual or estimated expense of the proposed construction, alteration. abolition, signal installation or modification, and how applicant proposes to provide for the expense, with the proposed apportionment of the expense between or among the parties in interest. If an agreement has been signed by the parties in interest as to the apportionment of expense, a copy of the agreement shall be included.

(4) A statement of the estimated date for start of the construction, alteration, abolition, signal installation or modification, completion of the project, and commencement of operation of the crossing.

(5) Where the application is for the installation or modification of signal lights or protective devices at a crossing, a statement describing the type of signals or devices applicant proposes to install. Reference may be

made to recommended standards on railway-highway grade crossing protection as published in the bulletin of the Association of American Railroads or the Manual on Uniform Traffic Control Devices, Part 8, entitled "Traffic Control Systems for Highway-Railroad Grade Crossings."

(6) If the application is for authority to construct, alter, or abolish a railroad-highway or highway-railroad crossing, a copy of the franchise or appropriate portion, or the permit, ordinance or other authority obtained from the appropriate municipality, county or state agency which authorizes the railroad or street railway company to cross the highway or street, or authorizes the appropriate municipality, county or state agency to cross the tracks.

(d) Applications for Railroad Crossings. In addition to complying with the provisions of Rule 51(b), an application to construct, alter or abolish a railroad crossing shall include the following:

(1) A copy of the agreement between the railroad corporation, railroad, or street railway companies, which covers the construction, operation, and maintenance of the crossing.

(2) A detailed description of the installation and operation of any lights, block, interlocking, or other system of signaling proposed to be constructed at the crossing.

(3) A statement of the operating rules and procedures that will govern the movement of trains over the crossing.

(e) Who May Apply.

(1) An application for authority to construct a crossing, railroad, or street railway track across a highway, street or other public roadway, or across the tracks of another railroad corporation, railroad, or street railway company; may be made by the railroad or street railway company or other person, firm, or corporation which will own the tracks proposed to be constructed.

(2) An application for authority to construct a highway, street or other public roadway across the tracks of a railroad corporation, railroad, or street railway company may be made by the appropriate municipality, county, or state agency.

(3) An application for authority to alter or abolish a railroad-highway or highway-railroad crossing may be made by the appropriate railroad corporation, railroad, or street railway company or the municipality, county or state agency.

(4) An application for authority to install or modify signal lights or other protective devices may be made by the railroad corporation, railroad, or street railway company or the municipality, county or state agency.

(f) Notice.

(1) The Commission shall give notice under Rule 63(f) and (g) of the filing of any application under this Rule. In addition to the requirements of Rule 63(f) and (g), where the application is for authority to install or modify signal lights or other protective devices under § 40-4-106(2)(b), C.R.S., the notice shall state that the question of how the costs will be borne and paid will be considered at and determined as a result of the hearing for which the notice is given.

(2) If an application is to close a crossing, the applicant shall give notice by posting notice of the closing on both sides of the trackage of the crossing proposed to be closed. The notice, at a minimum, shall state that an application to close the crossing has been filed with the Colorado Public Utilities Commission. the current correct address of the Commission, the date the closing is requested, a sufficient description of the crossing so as to identify it, that parties have the right to file written interventions or objections, and the place and last date for filing interventions or objections.

(3) The posted notice to close a crossing shall be printed on a substantial placard, no less than 18" x 24". The title: Notice of Proposed Closing of This Crossing shall be printed in letters no less than one inch. The other information printed on the notice

shall be in letters no smaller than one half inch. The background of the notices shall be white and the letters black. The notices shall be posted so as to be clearly visible from a distance of no less than 100 feet from the notice, and shall not be posted so as to obstruct the vision of motorists or trains at the crossing.

(g) Noncontested or Unopposed Applications. An application under this Rule only becomes contested if intervention is had or permitted. A noncontested or unopposed application under this Rule may be processed without formal hearing under Rule 24, other than an application under § 40-4-106(2)(b), C.R.S.

(h) Application deemed complete. The Commission shall deem the application complete in accordance with the procedural requirements of Rule 69.

(i) Failure to provide required information. In the absence of unusual or extraordinary circumstances, the Commission will both reject an application that does not meet the requirements of this Rule and close the docket pertaining to that application.

SOURCE: Prior Appendix H, Part V.

4 CCR 723-1, RULE 55  
Revised 11/18/93 MJF/jb

RULE 55

Applications by Fixed Utilities for Issuance, Extension or  
Transfer of Certificates of Public Convenience and Necessity,  
Including Authority to Exercise Franchise Rights, Asset  
Transfer, Stock Transfer, or Merger - Notice

1           (a) Applicability. This Rule applies to all fixed  
2 utilities as defined in Rule 4(b)(5).

3           (b) Procedure. Any fixed utility applying for the  
4 issuance, extension or transfer of a certificate of public  
5 convenience and necessity, including authority for approval of  
6 the exercise off franchise rights, to obtain controlling  
7 interest in any utility, or asset transfer, stock transfer, or  
8 merger shall proceed as set forth in this Rule.

9           (c) Contents of Application. When a fixed utility  
10 proposes to obtain, extend or transfer a certificate of public  
11 convenience and necessity, including authority to exercise  
12 franchise rights, or to obtain controlling interest in any  
13 utility. or an asset transfer stock transfer, or merger, it  
14 shall file an application with the Commission for that  
15 authority. The application shall comply with all other  
16 applicable provisions of these Rules, and shall contain the  
17 following applicable information, either in the application or  
18 in appropriately identified attached exhibits:

19               (1) Applicant's name and complete address (street,  
20 city, state, and zip code), and the name under which the

1 operation shall be conducted.

2 (A) If the applicant is a corporation, a  
3 statement of that fact; the name of the state in which it  
4 is incorporated; the location of its principal office, if  
5 any, in this state; the names of its directors, officers,  
6 and Colorado agent for service; and a copy of its  
7 Articles of Incorporation or Charter;

8 (B) If the applicant is an out-of-state  
9 corporation, a copy of the authority qualifying it to do  
0 business in Colorado shall either accompany the  
1 application or be filed with the Commission as soon on as  
2 possible after the filing of the application. The  
3 application will not be granted until applicant's  
4 authority qualifying it to do business in the state of  
5 Colorado is filed;

6 (C) If the applicant is a partnership, the  
7 names and addresses of all general and limited partners.

8 (2) The name and address of applicant's  
9 representative, if any, to whom all inquiries should be made.

10 (3) A statement describing the authority sought, or  
11 franchise rights proposed to be exercised. The statement  
12 shall include a description of the type of utility service to  
13 be rendered and a description of the area sought to be served,  
14 together with a map of the area. The statement also shall  
15 include a description of applicant's existing operations and  
16 general service area.

7           (4) Statements describing in detail the extent the  
18 applicant is affiliated with any other company and the extent  
19 the applicant, or any person affiliated with applicant, holds  
50 authority duplicating in any respect the authority sought.

51           (5) A copy of a feasibility study for areas  
52 previously not served, which shall at least include estimated  
53 investment, income and expense. An applicant may request that  
54 balance sheets, income statements, and statements of retained  
55 earnings be submitted in lieu of a feasibility study.

56           (6) A copy of a proposed tariff showing the  
57 proposed rates, rules and regulations.

58           (7) A copy of the most recent balance sheet  
59 available for a period ending not earlier than six months  
60 before the date of the filing of the application.

61           (8) A statement of income and of retained earnings  
62 for the same time period as the balance sheet referred to in  
63 Rule 55(c)(7).

64           (9) A statement of the names of public utilities  
65 and other entities of like character providing similar service  
66 in or near the area involved in the application.

67           (10) A statement that evidence will be presented at  
68 the hearing to show the qualifications of applicant to conduct  
69 the utility operations proposed in the application.

70           (11) Where the application is for the issuance  
71 or-extension of a certificate, including authority to exercise  
72 franchise rights, a statement of the facts (not conclusory  
73 statements) relied upon by the applicant to show that the



4 public convenience and necessity require the granting of the  
5 application.

6 (12) Where the application is for the approval of  
7 the transfer of a certificate, which includes obtaining  
8 controlling interest in any utility, or an asset transfer,  
9 stock transfer, or merger, a statement of the facts (not  
10 conclusory statements) relied upon by the applicant to show  
11 that the transfer is not contrary to the public interest,  
12 along with a statement that evidence will be presented at any  
13 hearing on the application to establish the facts.

14 (13) An application to transfer a certificate may be  
15 made by joint or separate applications of the transferor and  
16 the transferee. The application shall include:

17 (A) The information required by Rule 55(c);

18 (B) A statement showing accounting entries,  
19 under the Commission's Prescribed Uniform System of  
20 Accounts, including any plant acquisition adjustment,  
21 gain or loss, proposed on the books by each party before  
22 and after the proposed transfer;

23 (C) Copies of any sales agreement or contract  
24 of sale and all documents pertaining to the transfer;

25 (D) Facts showing that the transfer is not  
26 contrary to the public interest, and an evaluation of the  
27 benefits and detriments, if any, to the customers of each  
28 party and to all other persons who will be affected by  
29 the transfer; and

30 (E) A comparison of the kinds and costs of

service rendered before and after the proposed transfer.

(14) Where the application is to exercise franchise rights, a certified copy of the franchise ordinance, proof of publication, adoption and acceptance by applicant, and a statement as to the number of customers served or to be served and the population of the city or town, and any other pertinent information.

(15) A statement indicating, if the application is assigned for hearing by the Commission, the town or city where the applicant prefers the hearing to be held and any alternative choice.

(16) A statement indicating that the applicant understands that the mere filing of the application does not, by itself, constitute authority to operate.

(17) A statement that if the authority is granted, applicant will file necessary tariffs and will operate in accordance with all applicable Commission Rules and Regulations.

(d) Notice. The Commission shall give notice of the filing of an application to issue, extend or transfer a certificate of public convenience and necessity under Rules 23(a) and (g).

(1) The applicant shall publish notice of the filing of the application to exercise rights or privileges under a franchise, within 3 days after its filing, in a newspaper having general circulation as defined in Rule

4(b)(10), or in one or more local newspapers as defined in Rule 4(b)(8).

(2) The form of notice of an application to exercise rights or privileges under a franchise shall be as in Form X.

(e) Application deemed complete. The Commission shall deem the application complete in accordance with the procedural requirements of Rule 70.

(f) Failure to provide required information. In the absence of unusual or extraordinary circumstances, the Commission will both reject an application that does not meet the requirements of this Rule and close the docket pertaining to that application.

4 CCR 723-1, RULE 56  
Revised 11/18/93 MJF/jb

RULE 56

Securities Applications by Gas and Electric Utilities - Notice

1       (a) Applicability. Rule 56 applies to each gas and  
2 electric public utility which derives more than five percent of  
3 its consolidated gross revenues in the State of Colorado as a  
4 public utility, or which derives a lesser percentage of its  
5 revenues are realized by supplying an amount of energy which  
6 equal five percent or more of this state's consumption. Any gas  
7 or electric public utility which does not meet the above  
8 criteria need not file a security application under this Rule.

9       (b) Definition. Security means any stock, bond, note, or  
10 other evidence of indebtedness with a maturity date of more than  
11 12 months (other than stocks) after the date of issuance, the  
12 proceeds which are proposed to be used for the following  
13 purposes: The acquisition of property; the construction,  
14 completion, extension or improvement of facilities; the  
15 improvement or maintenance of service; the discharge or lawful  
16 refunding of obligations; the reimbursement of monies actually  
17 expended for these purposes from income, or from any other  
18 monies in the treasury not secured by or obtained from the  
19 issuance of securities within five years before the filing of an  
20 application with the Commission for the required authorization;  
21 or any other purpose authorized by the Commission.

22       (c) Securities Applications - Generally. Any gas or  
23 electric utility proposing to issue, renew, extend, assume or

4 guarantee any security, as defined above, or to create any lien  
5 on its property within the state of Colorado, shall proceed as  
6 follows:

7 (1) No security shall be used to refund in whole or  
8 in part any bond, note, or other evidence of indebtedness having  
9 a maturity date more than 12 months after the date of issuance  
10 unless an application is filed with and approved by the  
11 Commission. Any security issued, renewed, extended, assumed or  
12 guaranteed without Commission approval shall be void.

13 (2) When a utility proposes to issue, renew, extend,  
14 assume or guarantee a security, or to create a lien on its  
15 property situated in Colorado, it shall file an application with  
16 the Commission for authority to do so. The application shall  
17 contain all the data, information, and material listed in Rule  
18 56(d).

19 (3) Within 3 days after the filing of an application  
20 to issue, renew, extend, assume, or guarantee a security, or to  
21 create a lien on property in Colorado, the utility shall publish  
22 notice of the filing of the application in a newspaper of  
23 general circulation as defined in Rule 4(b)(10), or in one or  
24 more local newspapers as defined in Rule 4(b)(8).

25 (4) Notice shall be as in Form X.

26 (5) The utility shall file with the Commission a copy  
27 of the published notice and an affidavit of publication  
28 contemporaneously with the filing of the application.

29 (d) Contents of Application. When a gas or electric  
30 utility proposes to issue, assume or guarantee a security, or to

create a lien on its property situated within the State of Colorado, it shall file with the Commission an application seeking that authority. The application shall contain the following information, to the extent applicable, either in the application or in appropriately identified attached exhibits:

(1) The name and complete address (street, city state, and zip code) of the applicant, including trade name if any.

(A) If the applicant is a corporation, a statement of that fact; the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; and the names of its directors, officers and Colorado agent for service; and a copy of its Articles of Incorporation or Charter.

(B) If the applicant is an out-of-state corporation, a copy of the authority qualifying it to do business in Colorado either shall accompany the application or be filed as soon as possible. The application will not be granted until applicant's authority qualifying it to do business in Colorado is filed.

(C) If the applicant is a partnership, the names and addresses of all partners shall be shown on the application.

(2) The name and address of applicant's representative, if any, to whom all inquiries shall be made.

(3) A statement describing in detail the extent to which applicant is affiliated with any other company. For

purposes of this paragraph, affiliation means any financial interest of the applicant in any other company.

(4) A statement of applicant's existing operations and general service area.

(5) A statement describing the classes and amounts of capital stock authorized by applicant's articles of incorporation, and the amount by each class of capital stock outstanding on the date of the balance sheet referred to in Rule 56(d)(10).

(6) A statement describing each long-term indebtedness outstanding on the date of the balance sheet referred to in Rule 56(d)(10), and a brief summary of the principal provisions of the indentures, deeds of trust, or other instruments under which each indebtedness was issued.

(7) A statement describing each short-term indebtedness outstanding on the date of the balance sheet referred to in Rule 56(d)(10).

(8) A statement of the amount of interest charges incurred during the 12-month period included in the income and retained earnings statements referred to in Rule 56(d)(11).

(9) A statement of the amount and rate of dividends declared and paid, or amount and year of capital credits assigned and capital credits refunded, during the last four calendar years including the present year to the date of the balance sheet referred to in Rule 56(d)(10).

(10) The most recent balance sheet available that ends with a reporting period that is no older than six months before

the date of the filing of the application.

(11) Statements of income, retained earnings, and sources and applications of funds for the 12-month period ending not later than six months before the date of the filing of the application.

(12) A detailed statement of all uses, including construction, to which the funds will be or have been applied, and a concise statement of the need for the funds.

(13) A statement of whether the proposed issue of securities strengthens, weakens, or does not change the applicant's financial status.

(14) A statement describing the type and amount of securities to be issued, the anticipated interest rate or dividend rate, redemption or sinking fund provisions if any, and all other important provisions.

(15) A copy of the registration statement, related forms, and preliminary prospectus, when available, filed with the Securities and Exchange Commission relating to the proposed issuance.

(e) Disposition of Application. All applications filed under this Rule shall be given priority on the docket and shall be disposed of promptly, within 30 days after the application is filed unless a continuance for good cause is granted. When the application is continued beyond 30 days after it is filed, the Commission shall enter an order granting the continuance and stating fully the facts necessitating the continuance.

(f) Issuance of Written Order. The Commission, with or



2 without hearing, and on notice under Rule 56(c), (3), (4), and  
3 (5) shall enter its written order approving the application and  
4 authorizing the proposed securities transaction unless the  
5 Commission finds that the transaction is inconsistent with the  
6 public interest or that the purpose is not permitted or is  
7 inconsistent with the provisions of § 40-1-104, C.R.S., et seq.

8 (g) Application deemed complete. The Commission shall  
9 deem the application complete in accordance with the procedural  
0 requirements of Rule 70.

1 (h) Failure to provide required information. In the  
2 absence of unusual or extraordinary circumstances, the  
3 Commission will both reject an application that does not meet  
4 the requirements of this Rule and close the docket pertaining to  
5 that application.

4 CCR 723-1, RULE 57  
Revised 11/18/93 MJF/jb

RULE 57

**Applications by Fixed Utilities to Change, Abandon,  
Discontinue or Curtail any Service, or to Abandon or Discontinue  
any Facility - Notice**

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1           (a) Application to be Filed with the Commission. When a  
2 fixed utility proposes to change, abandon, discontinue or  
3 curtail any service, or to abandon or discontinue the use of any  
4 facility without equivalent replacement, it shall file with the  
5 Commission, at least 30 days before the effective date of the  
6 proposed change, abandonment, discontinuance, or curtailment, an  
7 application containing a complete explanation of the proposed  
8 change, abandonment, discontinuance or curtailment.

9           (b) Notice to Customers. In addition to filing an  
10 application with the Commission, the utility shall prepare a  
11 written notice stating the proposed change, abandonment,  
12 discontinuance or curtailment, and its proposed effective date,  
13 and shall mail or deliver the notice at least 30 days before the  
14 effective date of the proposed change to each of the utility's  
15 affected customers or subscribers. If no customers are being  
16 served by the service or facility, or in the case of telegraph  
17 companies, the notice shall be mailed to the Board of County  
18 Commissioners of each affected county, and to the Mayor of each  
19 affected city, town or municipality.

20           (c) Form of Notice. The notice required in Rule 57(b)  
21 shall be as in Form Y.

22           (d) Proof of Public Notice. Within 15 days before the

3 date of the proposed change, abandonment, discontinuance or  
4 curtailment, the utility shall file with the Commission a  
5 written affidavit stating its compliance with Rule 57(b). The  
6 affidavit shall state the date notice was completed and the  
7 method used to give notice. A copy of the notice shall  
8 accompany the affidavit.

9 (e) Noncontested or Unopposed Applications. An  
0 application under this Rule only becomes contested if  
1 intervention under these Rules is had or granted by the  
2 Commission. A noncontested or unopposed application to change,  
3 abandon, discontinue, or curtail any service, or to abandon or  
4 discontinue the use of any facility may be processed under Rule  
5 245 without a formal hearing.

6 (f) Hearing on Applications.

7 (1) If the Commission receives an intervention of  
8 right, or grants a petition for permissive intervention to  
9 an application at least 10 days before the date of the  
10 proposed change, abandonment, discontinuance, or  
11 curtailment, the Commission shall set the application for  
12 hearing, unless the intervention or petition is stricken,  
13 dismissed, or denied.

14 (2) The Commission may set the application for  
15 hearing on its own motion whether or not any intervention  
16 or petition to intervene is received.

17 (3) For good cause shown, the Commission, may waive  
18 the deadline for interventions or petitions to intervene.

9           (g) Commission Approval. No proposed change, abandonment,  
0 discontinuance, or curtailment shall be effective until the  
1 Commission order approving it, with or without formal hearing,  
2 has been entered.

3           (h) Application deemed complete. The Commission shall  
4 deem the application complete in accordance with the procedural  
5 requirements of Rule 70.

6           (i) Failure to provide required information. In the  
7 absence of unusual or extraordinary circumstances, the  
8 Commission will both reject an application that does not meet  
9 the requirements of this Rule and close the docket pertaining to  
10 that application.

4 CCR 723-1, RULE 58  
Revised 11/18/93 MJF/jb

RULE 58

Applications by Fixed Utilities to Make Refunds - Notice

1           (a) Applicability. This Rule applies to all fixed  
2 utilities as defined in Rule 4(b)(5).

3           (b) Procedure. Any fixed utility proposing, or required  
4 by Commission order to make a refund, shall file an application  
5 for Commission approval of a plan of refund as set forth in this  
6 Rule.

7           (c) Contents of Application. An application for approval  
8 of a plan of refund shall contain, as a minimum, the following  
9 information, to the extent applicable, either in the application  
0 or in attached appropriately identified exhibits:

1               (1) The name and complete address (street, city,  
2 state and zip code) of applicant.

3               (2) The name and address of the applicant's  
4 representative, if any, to whom all inquiries should be made.

5               (3) A copy of a detailed description of the proposed  
6 refund plan. The plan shall include a description of the type  
7 of utility service that has been provided and that is involved  
8 in the refund plan. The plan also shall include the dollar  
9 amount of the proposed refund, the date applicant proposes to  
0 start making the refund (which shall not be fewer than 60 days  
1 after the filing of the application), the date by which the  
2 applicant proposes to complete the refund, and the means by  
3 which the refund is proposed to be made. The plan also shall

4 identify the service area involved. The interest rate on the  
5 refund shall be the current interest rate in the applicant's  
6 customer deposits tariff.

7 (4) A statement describing in detail the extent to  
8 which applicant is affiliated with any other company involved in  
9 the refund plan. For purposes of this paragraph, affiliation  
10 means any financial interest of the applicant in any other  
11 company involved in the refund plan.

12 (5) A reference by docket number, decision number and  
13 date of any Commission decision requiring the refund or, if the  
14 refund is to be made because of receipt of monies by the  
15 applicant under the order of another state or federal agency, a  
16 copy of the order.

17 (6) If the applicant proposes to refund less than all  
18 of the monies received as described in Rule 58(c)(5), a detailed  
19 statement justifying the proposed refund of a lesser amount,  
20 with a copy of applicant's most recent balance sheet, dated not  
21 earlier than three months before the date of the filing of the  
22 application, with a copy of an income statement and a retained  
23 earnings as of the date of the balance sheet.

24 (7) A statement showing accounting entries under the  
25 Uniform System of Accounts.

26 (8) A statement indicating, if the Commission assigns  
27 the application for hearing, the town or city where the  
28 applicant prefers the hearing to be held and any alternate  
29 choice.

30 (9) A statement that if the application is granted,

applicant will file an affidavit with the Commission establishing that the refund has been made in accordance with the Commission decision.

(d) Notice. The Commission shall give notice of the filing of an application to make a refund, as provided in Rules 63(e) and (g). Within 3 days after an application to make a refund is filed, the applicant shall publish notice of the filing of the application in a newspaper having general circulation as defined in Rule 4(b)(10), or in one or more local newspapers as defined in Rule 4(b)(8).

(e) Commission Refund Policy Statement. The Commission will issue, from time to time, a policy statement which will set forth the requirements that each refund must meet. Any utility which files an application to make a refund shall follow the current Commission policy on refunds, a copy of which may be obtained by written request of the Commission ~~secretary~~ Director.

(f) Form of Notice. Notice of application to make refund shall be as in Form Z.

(g) Application deemed complete. The Commission shall deem the application complete in accordance with the procedural requirements of Rule 70.

(h) Failure to provide required information. In the absence of unusual or extraordinary circumstances, the Commission will both reject an application that does not meet the requirements of this Rule and close the docket pertaining to that application.

4 CCR 723-1, Rule 70 now 68  
revised 10/27/93jb

RULE 70 68

Nomenclature

When a proceeding is started, the Commission Secretary  
Director shall assign a number to it. The parties shall place the  
assigned number on all subsequent pleadings, briefs, and other  
documents filed in the proceeding. Proceedings before the  
Commission shall be entitled ~~Applications, Cases, Investigation and~~  
~~Suspense Dockets, Investigations, or Miscellaneous Dockets.~~



4 CCR 723-1, Rule 70 now 68  
revised 10/27/93jb

RULE 70 68

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~~Suspense Dockets, Investigations, or Miscellaneous Dockets.~~

4 CCR 723-1, Rule 69  
revised 11/18/93 MJF/jb

RULE 69

APPLICATIONS - RAILROAD - NOTICE

1 (a) GENERALLY. WHEN AN APPLICATION IS FILED, INCLUDING  
2 AN APPLICATION FILED UNDER RULE 51, AND A DOCKET NUMBER IS  
3 ASSIGNED TO IT, THE COMMISSION DIRECTOR, WITHIN 30 DAYS OF THE  
4 FILING, SHALL ISSUE AND MAIL A NOTICE OF THE FILING.

5 THE APPLICATION IS DEEMED COMPLETE ON THE DATE OF MAILING  
6 OF THE COMMISSION DECISION DEEMING THE APPLICATION COMPLETE.  
7 THE COMMISSION SHALL CONSIDER WHETHER OR NOT THE APPLICATION  
8 IS DEEMED COMPLETE AFTER THE APPLICANT FILES ALL REQUIRED  
9 FINAL PLANS, FINAL SPECIFICATIONS, AND AGREEMENTS. IF, AT THE  
10 TIME THE COMMISSION REVIEWS THE APPLICATION, THE APPLICATION  
11 DOES NOT MEET THE REQUIREMENTS OF RULE 51, THE COMMISSION WILL  
12 BOTH REJECT THE APPLICATION ABSENT UNUSUAL OR EXTRAORDINARY  
13 CIRCUMSTANCES AND CLOSE THE DOCKET.

14 (b) WAIVER. WITH THE APPLICATION, BEFORE THE  
15 APPLICATION IS DEEMED COMPLETE, OR AT ANY TIME WITHIN 210 DAYS  
16 AFTER AN APPLICATION IS DEEMED COMPLETE, THE APPLICANT MAY  
17 FILE A WRITTEN WAIVER OF THE TIME LIMITS CONTAINED IN § 40-6-  
18 109.5, C.R.S. IF AN APPLICATION IS A JOINT APPLICATION, ANY  
19 ONE OF THE APPLICANTS MAY FILE A WRITTEN WAIVER OF THE TIME  
20 LIMITS CONTAINED IN § 40-6-109.5, C.R.S. UPON FILING OF THE  
21 WRITTEN WAIVER, THE COMMISSION IS NOT BOUND BY THE TIME LIMITS  
22 CONTAINED IN § 40-6-109.5, C.R.S.

23 (c) CONTENTS OF NOTICE. THE COMMISSION DIRECTOR SHALL

ISSUE A NOTICE OF THE FILING OF THE APPLICATION. THE NOTICE  
SHALL CONTAIN:

(1) THE CAPTION AND DOCKET NUMBER OF THE  
PROCEEDING;

(2) THE DATE BY WHICH ANY NOTICE OF INTERVENTION OR  
PETITION TO INTERVENE MUST BE FILED. THE DATE ORDINARILY WILL  
BE 30 DAYS AFTER THE MAILING OF THE NOTICE. UNLESS OTHERWISE  
ORDERED BY THE COMMISSION UPON A FINDING OF GOOD CAUSE, THE  
TIME PERIOD FOR INTERVENTION SHALL NOT BE LESS THAN 10 DAYS OR  
MORE THAN 30 DAYS AFTER THE MAILING OF THE NOTICE. AS A  
MATTER OF RIGHT, STAFF MAY INTERVENE UP TO 10 DAYS AFTER THE  
APPLICATION IS DEEMED COMPLETE;

(3) A STATEMENT THAT THE PROCEEDING MAY BE  
CONSIDERED BY THE COMMISSION WITHOUT A HEARING IF THE  
APPLICATION IS DEEMED COMPLETE AND NO NOTICE OF INTERVENTION  
OR PETITION TO INTERVENE WHICH OPPOSES THE APPLICATION IS  
TIMELY FILED;

(4) IF THE APPLICANT DID NOT FILE ITS TESTIMONY, OR  
A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS  
WITH THE APPLICATION, A STATEMENT THAT THE APPLICANT IS  
REQUIRED TO FILE ITS LIST OF WITNESSES AND COPIES OF ITS  
EXHIBITS NOT LATER THAN 10 DAYS AFTER THE APPLICATION IS  
DEEMED COMPLETE. THE APPLICANT SHALL FILE WITH THE COMMISSION  
AN ORIGINAL AND THREE COPIES OF ITS LIST OF WITNESSES AND AN  
ORIGINAL AND THREE COPIES OF EACH OF ITS EXHIBITS AND SHALL  
SERVE EACH PARTY AND STAFF WITH ITS LIST OF WITNESSES AND  
COPIES OF ITS EXHIBITS;

5 (5) A STATEMENT REQUIRING EACH INTERVENOR TO FILE  
AND TO SERVE ITS LIST OF WITNESSES AND COPIES OF ITS EXHIBITS  
NOT LATER THAN 15 DAYS PRIOR TO THE FIRST DAY OF THE HEARING  
ON THE APPLICATION. EACH INTERVENOR SHALL FILE WITH THE  
6 COMMISSION AN ORIGINAL AND THREE COPIES OF ITS LIST OF  
7 WITNESSES AND AN ORIGINAL AND THREE COPIES OF EACH OF ITS  
8 EXHIBITS AND SHALL SERVE EACH PARTY AND STAFF WITH ITS LIST OF  
9 WITNESSES AND COPIES OF ITS EXHIBITS;

9 (6) A STATEMENT THAT, UPON OBJECTION BY A PARTY, NO  
0 WITNESS WILL BE PERMITTED TO TESTIFY AND NO EXHIBIT WILL BE  
1 RECEIVED IN EVIDENCE, EXCEPT IN REBUTTAL, UNLESS FILED AND  
2 SERVED AS PROVIDED IN THE NOTICE;

3 (7) A STATEMENT THAT, IF A PARTY DOES NOT MEET THE  
4 REQUIREMENTS OF THE NOTICE, THE COMMISSION MAY DISMISS THE  
5 APPLICATION OR AN INTERVENTION UPON MOTION FILED BY ANY OTHER  
6 PARTY, OR UPON THE COMMISSION'S OWN MOTION, UNLESS GOOD CAUSE  
7 FOR THE FAILURE TO MEET THE REQUIREMENTS IS SHOWN;

8 (8) A STATEMENT THAT NO MOTION FOR CONTINUANCE OF  
9 THE HEARING DATE WILL BE GRANTED EXCEPT AS STATED IN THIS  
10 RULE;

11 (9) A STATEMENT THAT, IF A HEARING IS REQUIRED, THE  
12 COMMISSION WILL NOTIFY THE PARTIES OF THE HEARING DATE, TIME,  
13 AND LOCATION;

14 (10) A STATEMENT THAT, AT THE TIME OF THE NOTICE,  
15 THE COMMISSION HAS NOT DEEMED THE APPLICATION COMPLETE WITHIN  
16 THE MEANING OF § 40-6-109.5., C.R.S.;

17 (11) ANY OTHER STATEMENT REQUIRED BY OR DEEMED

3 APPROPRIATE BY THE COMMISSION.

4 (d) CHANGE IN HEARING DATE - USUAL COURSE. UNLESS  
5 EXTRAORDINARY CONDITIONS EXIST (Rule 69(e)), A PARTY SEEKING  
6 A CHANGE OF HEARING DATE SHALL FILE A MOTION TO CHANGE THE  
7 HEARING DATE. IN THE MOTION, THE MOVING PARTY SHALL PROVIDE  
8 AVAILABLE DATES. THE AVAILABLE DATES MUST BE BOTH AVAILABLE  
9 ON THE COMMISSION CALENDAR AND ACCEPTABLE TO ALL PARTIES. IF  
10 AGREEMENT CANNOT BE REACHED, THE MOTION TO CHANGE THE HEARING  
11 DATE SHALL CONTAIN AVAILABLE DATES ON THE COMMISSION CALENDAR  
12 AND ALL AVAILABLE DATES FOR ALL PARTIES. THE COMMISSION MAY  
13 CHANGE THE HEARING DATE PURSUANT TO THE MOTION PROVIDED THE  
14 NEW HEARING DATE IS NO MORE THAN 45 DAYS FROM THE DATE THE  
15 APPLICATION IS DEEMED COMPLETE.

16 (e) CHANGE IN HEARING DATE - EXTRAORDINARY CONDITIONS.  
17 THE COMMISSION MAY CONSIDER A REQUEST TO CONTINUE A HEARING  
18 DATE TO A DATE THAT IS LATER THAN 45 DAYS FROM THE DATE THE  
19 APPLICATION IS DEEMED COMPLETE. A PARTY SEEKING TO CONTINUE  
20 A HEARING DATE UNDER THIS PROVISION MUST FILE A MOTION FOR  
21 CONTINUANCE. THE MOTION MUST STATE THE EXTRAORDINARY  
22 CONDITIONS THAT MAKE THE REQUEST NECESSARY AND MUST REQUEST  
23 ISSUANCE OF NOTICE AND A HEARING AT WHICH THE MOVING PARTY  
24 WILL HAVE THE BURDEN OF PROVING THE EXISTENCE OF THE STATED  
25 EXTRAORDINARY CONDITIONS. IF THE COMMISSION DETERMINES THAT  
26 EXTRAORDINARY CONDITIONS EXIST, THE COMMISSION MAY RESCHEDULE  
27 THE HEARING TO A LATER DATE. HOWEVER, UNDER NO CIRCUMSTANCES  
28 WILL THE COMMISSION GRANT A HEARING MORE THAN 30 DAYS LATER  
29 THAN THE HEARING DATE ORIGINALLY SET. IN ANY APPLICATION

5 DOCKET, THE COMMISSION WILL NOT ENTERTAIN ANY MOTION FOR  
6 CONTINUANCE WHICH, IF GRANTED, WILL CAUSE THE COMMISSION TO  
7 EXCEED THE STATUTORY DEADLINE.

4 CCR 723-1 RULE 70  
Revised 11/18/93 MJF/jb

RULE 70

APPLICATIONS - FIXED UTILITIES - NOTICE

(A) GENERALLY. WHEN AN APPLICATION IS FILED AND A DOCKET NUMBER IS ASSIGNED TO IT, THE COMMISSION DIRECTOR, WITHIN 20 DAYS OF THE FILING, SHALL ISSUE AND MAIL A NOTICE OF THE FILING UNDER RULE 63.

NO LATER THAN 10 DAYS AFTER EXPIRATION OF THE NOTICE PERIOD, THE COMMISSION STAFF SHALL DETERMINE IF THE APPLICATION MEETS THE REQUIREMENTS OF RULES 55 THROUGH 58. IF THE APPLICATION MEETS THE REQUIREMENTS AND THE NOTICE PERIOD HAS EXPIRED, THE APPLICATION WILL BE PLACED ON THE COMMISSION AGENDA FOR CONSIDERATION AT THE NEXT OPEN MEETING.

IF THE APPLICATION DOES NOT MEET THE REQUIREMENTS OF RULES 55 THROUGH 58, STAFF SHALL PROMPTLY NOTIFY THE APPLICANT OF THE INFORMATION OR DOCUMENTATION NECESSARY TO MEET THE REQUIREMENTS. STAFF SHALL SET A TIME WITHIN WHICH THE APPLICANT MUST SUPPLY THE REQUIRED INFORMATION OR DOCUMENTATION.

WITHIN 20 DAYS OF THE RECEIPT OF THE REQUIRED INFORMATION OR DOCUMENTATION OR, IF THE APPLICANT DOES NOT PROVIDE THE REQUIRED INFORMATION OR DOCUMENTATION, WITHIN 20 DAYS AFTER EXPIRATION OF THE TIME SET BY STAFF, STAFF SHALL REVIEW THE APPLICATION TO DETERMINE IF IT MEETS THE REQUIREMENTS OF RULES 55 THROUGH 58. WHETHER OR NOT THE REQUIRED INFORMATION AND DOCUMENTATION ARE SUPPLIED, STAFF WILL PLACE THE APPLICATION ON

3 THE COMMISSION AGENDA FOR CONSIDERATION AT THE NEXT OPEN  
4 MEETING AFTER THE STAFF REVIEW.

5 THE COMMISSION SHALL REVIEW THE SUBMITTED APPLICATION AND  
6 SUPPORTING INFORMATION AND DOCUMENTATION. IF IT DETERMINES THAT  
7 THE APPLICATION IS COMPLETE, THE COMMISSION SHALL ISSUE A  
8 DECISION CONTAINING THAT DETERMINATION. THE APPLICATION IS  
9 DEEMED COMPLETE ON THE DATE OF MAILING OF THAT COMMISSION  
10 DECISION. IF THE APPLICATION DOES NOT MEET THE REQUIREMENTS OF  
11 RULES 55 THROUGH 58, THE COMMISSION WILL BOTH REJECT THE  
12 APPLICATION ABSENT UNUSUAL OR EXTRAORDINARY CIRCUMSTANCES AND  
13 CLOSE THE DOCKET.

14 (B) CONTENTS OF NOTICE. THE COMMISSION DIRECTOR SHALL  
15 ISSUE A NOTICE OF THE FILING OF THE APPLICATION. THE NOTICE  
16 SHALL CONTAIN:

17 (1) THE CAPTION AND DOCKET NUMBER OF THE PROCEEDING.

18 (2) THE DATE BY WHICH ANY NOTICE OF INTERVENTION OR  
19 PETITION TO INTERVENE MUST BE FILED. THE DATE ORDINARILY WILL BE  
20 30 DAYS AFTER THE MAILING OF THE NOTICE. UNLESS OTHERWISE  
21 ORDERED BY THE COMMISSION UPON A FINDING OF GOOD CAUSE, THE TIME  
22 PERIOD FOR INTERVENTION SHALL NOT BE LESS THAN 10 DAYS OR MORE  
23 THAN 30 DAYS AFTER THE MAILING OF THE NOTICE. AS A MATTER OF  
24 RIGHT, STAFF MAY INTERVENE UP TO 10 DAYS AFTER THE DATE THE  
25 APPLICATION IS DEEMED COMPLETE.

26 (3) A STATEMENT THAT THE PROCEEDING MAY BE CONSIDERED  
27 BY THE COMMISSION WITHOUT A HEARING IF THE APPLICATION IS DEEMED  
28 COMPLETE AND NO NOTICE OF INTERVENTION OR PETITION TO INTERVENE  
29 IS TIMELY FILED.



(4) IF THE APPLICANT DID NOT FILE ITS TESTIMONY, OR A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS WITH ITS APPLICATION, A STATEMENT THAT THE APPLICANT IS REQUIRED TO FILE ITS TESTIMONY, OR A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS NOT LATER THAN 10 DAYS AFTER THE DATE THE APPLICATION IS DEEMED COMPLETE. THE APPLICANT SHALL FILE AND SERVE ITS TESTIMONY, OR A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS IN ACCORDANCE WITH RULE 22(F) IF THE COMMISSION STAFF IS NOT A PARTY OR IN ACCORDANCE WITH RULE 7(B) (5) IF THE COMMISSION STAFF IS A PARTY.

(5) A STATEMENT REQUIRING EACH INTERVENOR TO FILE AND TO SERVE ITS TESTIMONY, OR A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS NOT LATER THAN 20 DAYS BEFORE THE FIRST DAY OF THE HEARING. EACH INTERVENOR SHALL FILE AND SERVE ITS TESTIMONY, OR A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS IN ACCORDANCE WITH RULE 22(F) IF THE COMMISSION STAFF IS NOT A PARTY OR IN ACCORDANCE WITH RULE 7(B) (5) IF THE COMMISSION STAFF IS A PARTY.

(6) A STATEMENT THAT NO WITNESS WILL BE PERMITTED TO TESTIFY AND NO EXHIBIT WILL BE RECEIVED IN EVIDENCE, EXCEPT IN REBUTTAL, UNLESS FILED AND SERVED AS PROVIDED IN THE NOTICE.

(7) A STATEMENT THAT, IF A PARTY DOES NOT MEET THE REQUIREMENTS OF THE NOTICE, THE COMMISSION MAY DISMISS THE APPLICATION OR AN INTERVENTION UPON MOTION FILED BY ANY OTHER PARTY, OR UPON THE COMMISSION'S OWN MOTION, UNLESS GOOD CAUSE FOR THE FAILURE TO MEET THE REQUIREMENTS IS SHOWN.

(8) A STATEMENT THAT NO MOTION FOR CONTINUANCE OF THE

HEARING DATE WILL BE GRANTED EXCEPT UPON A FINDING OF  
EXTRAORDINARY CONDITIONS.

(9) A STATEMENT THAT THE COMMISSION WILL NOTIFY THE  
PARTIES OF THE HEARING DATE, TIME, AND LOCATION.

(10) A STATEMENT THAT, AT THE TIME OF THE NOTICE, THE  
COMMISSION HAS NOT DEEMED THE APPLICATION COMPLETE WITHIN THE  
MEANING OF § 40-6-109.5, C.R.S.

(11) ANY OTHER STATEMENT REQUIRED BY OR DEEMED AP-  
PROPRIATE BY THE COMMISSION.

(C) CHANGE IN HEARING DATE - USUAL COURSE. UNLESS  
EXTRAORDINARY CONDITIONS EXIST (RULE 70(D)), A PARTY SEEKING A  
CHANGE OF HEARING DATE SHALL FILE A MOTION TO ACCELERATE. IN  
THE MOTION, THE PARTY FILING THE MOTION SHALL PROVIDE AVAILABLE  
DATES EARLIER THAN THE SCHEDULED HEARING DATE. THE AVAILABLE  
DATES MUST BE BOTH AVAILABLE ON THE COMMISSION CALENDAR AND  
ACCEPTABLE TO ALL PARTIES. IF AGREEMENT CANNOT BE REACHED, THE  
MOTION TO ACCELERATE SHALL CONTAIN AVAILABLE DATES ON THE  
COMMISSION CALENDAR AND ALL AVAILABLE DATES FOR ALL PARTIES.

(D) CHANGE IN HEARING DATE - EXTRAORDINARY CONDITIONS.  
THE COMMISSION MAY CONSIDER A REQUEST TO CONTINUE A HEARING DATE  
TO A LATER DATE. A PARTY SEEKING TO CONTINUE A HEARING MUST  
FILE A MOTION FOR CONTINUANCE. THAT MOTION MUST STATE THE  
EXTRAORDINARY CONDITIONS THAT MAKE THE REQUEST NECESSARY AND  
MUST REQUEST ISSUANCE OF NOTICE AND A HEARING AT WHICH THE  
MOVING PARTY WILL HAVE THE BURDEN OF PROVING THE EXISTENCE OF  
THE STATED EXTRAORDINARY CONDITIONS. IF, AFTER HEARING, THE  
COMMISSION DETERMINES THAT EXTRAORDINARY CONDITIONS EXIST, THE

COMMISSION MAY RESCHEDULE THE HEARING TO A LATER DATE. HOWEVER, UNDER NO CIRCUMSTANCES WILL THE COMMISSION GRANT A HEARING DATE MORE THAN 30 DAYS LATER THAN THE HEARING DATE ORIGINALLY SET. IN ANY APPLICATION DOCKET, THE COMMISSION WILL NOT ENTERTAIN ANY MOTION FOR CONTINUANCE WHICH, IF GRANTED, WILL CAUSE THE COMMISSION TO EXCEED THE STATUTORY DEADLINE.

(E) WAIVER. WITH THE APPLICATION, BEFORE THE APPLICATION IS DEEMED COMPLETE, OR AT ANY TIME WITHIN 210 DAYS AFTER AN APPLICATION IS DEEMED COMPLETE, THE APPLICANT MAY FILE A WRITTEN WAIVER OF THE TIME LIMITS CONTAINED IN § 40-6-109.5, C.R.S. IF AN APPLICATION IS A JOINT APPLICATION, ANY ONE OF THE APPLICANTS MAY FILE A WRITTEN WAIVER OF THE TIME LIMITS CONTAINED IN § 40-6-109.5, C.R.S. UPON FILING OF THE WRITTEN WAIVER, THE COMMISSION IS NOT BOUND BY THE TIME LIMITS CONTAINED IN § 40-6-109.5, C.R.S.

4 CCR 723-1, RULE 71, Emergency

RULE 71

TRANSPORTATION - UTILITIES - NOTICE

(A) GENERALLY. WHEN AN APPLICATION IS RECEIVED, THE COMMISSION STAFF, WITHIN FIVE WORKING DAYS, SHALL DETERMINE IF IT MEETS THE REQUIREMENTS OF RULE 50. IF THE APPLICATION MEETS THE REQUIREMENTS OF RULE 50, THE COMMISSION DIRECTOR SHALL ISSUE AND MAIL A NOTICE OF THE FILING UNDER RULE 63 AND A NOTICE OF HEARING DATE.

IF THE APPLICATION DOES NOT MEET THE REQUIREMENTS OF RULE 50, STAFF SHALL PROMPTLY NOTIFY THE APPLICANT OF THE INFORMATION OR DOCUMENTATION NECESSARY TO MEET THE REQUIREMENTS. STAFF SHALL SET A TIME WITHIN WHICH THE APPLICANT MUST SUPPLY THE REQUIRED INFORMATION OR DOCUMENTATION. WITHIN FIVE WORKING DAYS OF RECEIPT OF THE REQUIRED INFORMATION OR DOCUMENTATION, STAFF SHALL REVIEW THE APPLICATION TO DETERMINE IF IT MEETS THE REQUIREMENTS OF RULE 50. WITHIN 20 DAYS OF RECEIVING THE REQUIRED INFORMATION OR DOCUMENTATION, THE COMMISSION DIRECTOR SHALL ISSUE AND MAIL A NOTICE OF THE FILING UNDER RULE 63 AND A NOTICE OF HEARING DATE.

AT THE CONCLUSION OF THE NOTICE PERIOD, THE COMMISSION SHALL DETERMINE WHETHER OR NOT THE APPLICATION IS COMPLETE. THE APPLICATION IS DEEMED COMPLETE ON THE DATE OF MAILING OF THE COMMISSION NOTICE CONTAINING THE DETERMINATION THAT THE APPLICATION IS COMPLETE. THE COMMISSION SHALL MAIL ITS NOTICE WITHIN 14 DAYS AFTER THE CONCLUSION OF THE NOTICE PERIOD. IF THE APPLICATION DOES NOT MEET THE REQUIREMENTS OF RULE 50, THE

COMMISSION WILL REJECT THE APPLICATION ABSENT UNUSUAL OR  
EXTRAORDINARY CIRCUMSTANCES AND CLOSE THE DOCKET.

(B) CONTENTS OF NOTICE. THE COMMISSION DIRECTOR SHALL  
ISSUE A NOTICE OF THE FILING OF THE APPLICATION. THE NOTICE SHALL  
CONTAIN:

(1) THE CAPTION AND DOCKET NUMBER OF THE  
PROCEEDING.

(2) THE DATE BY WHICH ANY NOTICE OF INTERVENTION  
OR PETITION TO INTERVENE MUST BE FILED. THE DATE ORDINARILY WILL  
BE 30 DAYS AFTER THE MAILING OF THE NOTICE. AS A MATTER OF RIGHT,  
STAFF MAY INTERVENE UP TO 10 DAYS AFTER THE DATE THE APPLICATION IS  
DEEMED COMPLETE.

(A) UNLESS OTHERWISE ORDERED BY THE COMMISSION  
UPON A FINDING OF GOOD CAUSE, THE TIME PERIOD FOR INTERVENTION  
SHALL NOT BE LESS THAN 10 DAYS OR MORE THAN 30 DAYS AFTER THE  
MAILING OF THE NOTICE.

(B) FOR AN APPLICATION FOR TEMPORARY  
AUTHORITY, THE DATE FOR INTERVENTION SHALL ORDINARILY BE FIVE DAYS  
AFTER THE MAILING OF THE NOTICE.

(3) A STATEMENT THAT THE PROCEEDING MAY BE  
CONSIDERED BY THE COMMISSION WITHOUT A HEARING IF THE APPLICATION  
IS DEEMED COMPLETE AND NO NOTICE OF INTERVENTION OR PETITION TO  
INTERVENE IS TIMELY FILED.

(4) IF THE APPLICANT DID NOT FILE ITS TESTIMONY, OR  
A DETAILED SUMMARY OF TESTIMONY, AND COPIES OF ITS EXHIBITS WITH  
ITS APPLICATION, A STATEMENT THAT THE APPLICANT IS REQUIRED TO FILE

ITS LIST OF WITNESSES AND COPIES OF ITS EXHIBITS WITHIN 10 DAYS  
AFTER THE CONCLUSION OF THE NOTICE PERIOD. THE APPLICANT SHALL  
FILE AND SERVE ITS LIST OF WITNESSES AND COPIES OF ITS EXHIBITS IN  
ACCORDANCE WITH RULE 22(F) IF THE COMMISSION STAFF IS NOT A PARTY  
OR IN ACCORDANCE WITH RULE 7(B) (5) IF THE COMMISSION STAFF IS A  
PARTY.

(5) A STATEMENT THAT EACH INTERVENOR IS REQUIRED TO  
FILE AND TO SERVE ITS LIST OF WITNESSES AND COPIES OF ITS EXHIBITS.  
THE NOTICE SHALL CONTAIN ONE OF THE FOLLOWING TIME PERIODS:

(A) WHEN THE APPLICANT FILED ITS TESTIMONY AND  
COPIES OF ITS EXHIBITS WITH ITS APPLICATION, EACH INTERVENOR SHALL  
FILE ITS LIST OF WITNESSES AND COPIES OF ITS EXHIBITS NOT LATER  
THAN 10 DAYS AFTER THE CONCLUSION OF THE NOTICE PERIOD.

(B) WHEN THE APPLICANT DID NOT FILE ITS  
TESTIMONY AND COPIES OF ITS EXHIBITS WITH ITS APPLICATION, EACH  
INTERVENOR SHALL FILE ITS LIST OF WITNESSES AND COPIES OF ITS  
EXHIBITS NOT LATER THAN 20 DAYS AFTER THE NOTICE PERIOD HAS  
EXPIRED.

EACH INTERVENOR SHALL FILE AND SERVE ITS LIST OF WITNESSES AND  
COPIES OF ITS EXHIBITS IN ACCORDANCE WITH RULE 22(F) IF THE  
COMMISSION STAFF IS NOT A PARTY OR IN ACCORDANCE WITH RULE 7(B) (5)  
IF THE COMMISSION STAFF IS A PARTY.

(6) A STATEMENT THAT NO WITNESS WILL BE PERMITTED  
TO TESTIFY AND NO EXHIBIT WILL BE RECEIVED IN EVIDENCE, EXCEPT IN  
REBUTTAL, UNLESS FILED AND SERVED AS PROVIDED IN THE NOTICE.

(7) A STATEMENT THAT, IF A PARTY DOES NOT MEET THE

REQUIREMENTS OF THE NOTICE, THE COMMISSION MAY DISMISS THE APPLICATION OR AN INTERVENTION UPON MOTION FILED BY ANY OTHER PARTY, OR UPON THE COMMISSION'S OWN MOTION, UNLESS GOOD CAUSE FOR THE FAILURE TO MEET THE REQUIREMENTS IS SHOWN.

(8) A STATEMENT THAT NO MOTION FOR CONTINUANCE OF THE HEARING DATE WILL BE GRANTED EXCEPT UPON A FINDING OF EXTRAORDINARY CONDITIONS.

(9) A STATEMENT THAT THE COMMISSION WILL NOTIFY THE PARTIES OF THE TIME AND LOCATION FOR THE HEARING.

(10) A STATEMENT THAT, AT THE TIME OF THE NOTICE, THE COMMISSION HAS NOT DEEMED THE APPLICATION COMPLETE WITHIN THE MEANING OF 40-6-109.5, C.R.S.

(11) ANY OTHER STATEMENT REQUIRED BY OR DEEMED APPROPRIATE BY THE COMMISSION.

(C) CHANGE IN HEARING DATE - USUAL COURSE. UNLESS EXTRAORDINARY CONDITIONS EXIST (RULE 71(E)), A PARTY SEEKING A CHANGE OF HEARING DATE SHALL FILE A MOTION TO ACCELERATE. IN THE MOTION, THE PARTY FILING THE MOTION SHALL PROVIDE AVAILABLE DATES EARLIER THAN THE SCHEDULED HEARING DATES. THE AVAILABLE DATES MUST BE BOTH AVAILABLE ON THE COMMISSION CALENDAR AND ACCEPTABLE TO ALL PARTIES. IF AGREEMENT CANNOT BE REACHED, THE MOTION TO ACCELERATE SHALL CONTAIN AVAILABLE DATES ON THE COMMISSION CALENDAR AND ALL AVAILABLE DATES FOR ALL PARTIES.

(D) CHANGE IN HEARING DATE - EXTRAORDINARY CONDITIONS. THE COMMISSION MAY CONSIDER A REQUEST TO CONTINUE A HEARING DATE TO A LATER DATE. A PARTY SEEKING TO CONTINUE A

3 HEARING MUST FILE A MOTION FOR CONTINUANCE. THAT MOTION MUST STATE  
4 THE EXTRAORDINARY CONDITIONS THAT MAKE THE REQUEST NECESSARY AND  
5 MUST REQUEST ISSUANCE OF NOTICE AND A HEARING AT WHICH THE MOVING  
6 PARTY WILL HAVE THE BURDEN OF PROVING THE EXISTENCE OF THE STATED  
7 EXTRAORDINARY CONDITIONS. IF, AFTER HEARING, THE COMMISSION  
8 DETERMINES THAT EXTRAORDINARY CONDITIONS EXIST, THE COMMISSION MAY  
9 RESCHEDULE THE HEARING TO A LATER DATE. HOWEVER, UNDER NO  
10 CIRCUMSTANCES WILL THE COMMISSION GRANT A HEARING DATE MORE THAN 30  
11 DAYS LATER THAN THE HEARING DATE ORIGINALLY SET. IN ANY  
12 APPLICATION DOCKET, THE COMMISSION WILL NOT ENTERTAIN ANY MOTION  
13 FOR CONTINUANCE WHICH, IF GRANTED, WILL CAUSE THE COMMISSION TO  
14 EXCEED THE STATUTORY DEADLINE.

15 (E) WAIVER. WITH THE APPLICATION, BEFORE THE  
16 APPLICATION IS DEEMED COMPLETE, OR AT ANY TIME WITHIN 210 DAYS  
17 AFTER AN APPLICATION IS DEEMED COMPLETE, THE APPLICANT MAY FILE A  
18 WRITTEN WAIVER OF THE TIME LIMITS CONTAINED IN § 40-6-109.5, C.R.S.  
19 IF AN APPLICATION IS A JOINT APPLICATION, ANY ONE OF THE APPLICANTS  
20 MAY FILE A WRITTEN WAIVER OF THE TIME LIMITS CONTAINED IN  
21 § 40-6-109.5, C.R.S. UPON FILING OF THE WRITTEN WAIVER, THE  
22 COMMISSION IS NOT BOUND BY THE TIME LIMITS CONTAINED IN  
23 § 40-6-109.5, C.R.S.



4 CCR 723-1, RULE 77  
Revised 11/18/93 MJF/jb

RULE 77

Discovery - Time - Procedure

(a) Time for Discovery. ~~Parties~~Any party may  
propound~~commence~~ formal discovery ~~within 30 days after the close of~~  
~~the period for~~upon filing its notice of intervention, or upon the  
granting of its petition for leave to intervene, unless the  
Commission establishes a different period in the notice of  
application. If the party does not need to file a notice of  
intervention (for example, an applicant), the party may commence  
formal discovery at any time after the intervention period is over.

(b) Procedure for Discovery.

(1) Unless otherwise ordered, depositions and discovery  
procedures provided in Rules 26 through 37 of the Colorado Rules of  
Civil Procedure shall be applied to Commission proceedings, other  
than rulemaking proceedings; ~~except, responses to discovery shall~~  
~~be served within 10 days of service of the discovery request.~~ When  
reference is made in the Colorado Rules of Civil Procedure to a  
Court order, it shall mean an order of the Commission, a hearings  
commissioner, or ~~hearings examiner~~an administrative law judge. No  
deposition or discovery shall be permitted except by a party.

(2) Unless otherwise ordered, discovery requests,  
interrogatories, responses to discovery requests, dispositions,  
documents provided in response to interrogatories, requests for  
production or inspection, or requests for admissions, shall not be  
filed with the Commission, but shall be maintained by the parties.

(3) A party must object to discovery within 5 working days of the date of receipt of the discovery.

(4) After making a good faith effort to resolve any discovery dispute, the party seeking the discovery may file a motion to compel discovery. This motion must be filed within 10 working days of the receipt of the objection.

(5) Resolution of discovery disputes will take precedence over other matters.

~~(3)~~ (6) Discovery materials shall be filed in connection with discovery motions, when pertinent and material to the proceeding, and when used in a hearing.

(Decision No. C93-1457-E)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF EMERGENCY RULES )  
GOVERNING PROCEDURES UNDER § 40- )  
6-109.5, C.R.S. (1993), AND OTHER )  
RELATED RULE CHANGES, PERTAINING )  
TO RULES 50, 51, 55, 56, 57, 58, )  
70, 71, 77, 92; AND NEW RULES 68, )  
69, AND 70, COLORADO PUBLIC )  
UTILITIES COMMISSION, RULES OF )  
PRACTICE AND PROCEDURE, 4 CCR )  
723-1. )

DOCKET NO. 93R-681

ERRATA NOTICE

Decision No. C93-1457  
(Adopted Date: November 9, 1993)

Delete Pages 47 through 52 of the 55 pages of the Appendix to  
Decision No. C93-1457, which inadvertently repeated Rule 71.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

BRUCE N. SMITH

Director

Dated at Denver, Colorado this  
6th day of January, 1994.