(Decision No. C93-1651)

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 PROCEDURE, 4 CCR 723-1.	DOCKET NO. 93R-681 COMMISSION ORDER DENYING APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION

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Mailed Date: December 31, 1993
Adopted Date: December 29, 1993
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STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

The Commission issued Decision No. C93-1457 on November 9, 1993, adopting emergency rules in order to comply with § 40-6-109.5, C.R.S. (1993). In Decision No. C93-1457, the Commission ordered that the emergency rules are to be effective on December 10, 1993. The rules were published in the Colorado Code of Regulations on December 10, 1993.

On December 14, 1993, Richard J. Bara, Attorney at Law filed an application for rehearing, reargument, or reconsideration. Mr. Bara alleges that he has standing to file an application for rehearing, reargument, or reconsideration because he represents several clients in applications before the Public Utilities Commission and thus he is a "person affected" within the purview of § 40-6-109, C.R.S.

Mr. Bara, in his application for rehearing, reargument, or reconsideration argues that Emergency Rules 71 and 77 are arbitrary and capricious because they needlessly set the hearing date along with the notice and force an Applicant to wait until the close of the intervention period before it can commence discovery. Moreover, the Applicant is required to serve its witness list and exhibits ten days after the close of the notice period, before Applicant can benefit from the information it receives through discovery of Intervenors. Mr. Bara also states that Rules 71 and 77 lack fundamental fairness because the time frame set for discovery is so short that it will not be possible for litigants to adhere to such in matters litigated before the Commission.

The Commission finds and concludes that Mr. Bara has sufficient standing to file an application for rehearing, reargument, or reconsideration. However, the Commission further finds that newly enacted § 40-6-109.5, C.R.S. (1993), requires the Commission to issue its decision on all applications, filed after July 1, 1993, within certain time periods. The Commission further finds that § 40-6-109.5, C.R.S., is overriding State policy in application matters filed with the Commission after July 1, 1993. Accordingly, the Commission finds that Mr. Bara's application for rehearing, reargument, or reconsideration fails to set forth good cause and will be denied.

The Commission also points out that this proceeding pertains to emergency rules, and that a permanent rulemaking on these rules is now in process before the Commission. The Commission finds that the matters here raised can be better addressed and considered in the permanent rulemaking proceeding on the instant matters.

THEREFORE THE COMMISSION ORDERS THAT:

1. The application for rehearing, reargument, or reconsideration, filed on December 14, 1993, by Richard J. Bara, in this Docket No. 93R-681, is denied.

2. 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 December 29, 1993.

SEAL

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT E. TEMMER

VINCENT MAJKOWSKI

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
ABSENT BUT CONCURRING.

MRH:srs