

(Decision No. C94-376)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED)
MODIFICATION TO RULE 18 OF THE)
RULES REGULATING THE SERVICE OF) DOCKET NO. 94R-152E
ELECTRIC UTILITIES,
4 CCR 723-3.

NOTICE OF PROPOSED RULEMAKING

- - - - -
Mailed Date: March 30, 1994
Adopted Date: March 16, 1994
- - - - -

BY THE COMMISSION:

The Colorado Public Utilities Commission hereby gives notice of proposed rulemaking concerning Rule 18 of the rules regulating the service of electric utilities, 4 CCR 723-3. The intent of the proposed rules is to specify the current edition of the National Safety Code as the minimum standard of accepted good engineering practice, to change the reference in the rule from Executive Secretary to Director, and to make a number of syntax changes. A copy of the proposed rules is included as part of the attached Decision No. R93-1194. The statutory authority for the proposed rules is found at §§ 40-2-108 and 40-3-102, C.R.S.

The Commission will conduct a hearing before an administrative law judge on the proposed rules and related issues beginning at 9 a.m., May 16, 1994. The hearing will be conducted in a Commission hearing room, Office Level (OL) 2, 1580 Logan Street,

Denver, Colorado. Interested persons may submit written comments on the rules at that time, or may file written comments before the hearing in this Docket No. 94R-152E. All submissions will be considered by the Commission.

The Commission previously conducted a rulemaking proceeding concerning the attached proposed rules. This proceeding was denominated Docket No. 93R-351E. An Administrative Law Judge for the Commission entered Decision No. R93-1194 recommending adoption of certain rules attached to the decision. See attachment. Since no exceptions were filed to the recommended decision, that recommendation became the decision of the Commission by operation of law pursuant to §§ 40-6-109(2) and 40-6-114, C.R.S. In accordance with the rulemaking requirements set forth in § 24-4-103 C.R.S., the Commission was required to obtain an opinion of the Attorney General regarding the legality of the proposed rules and to file copies of the rules with the office of the Secretary of State. Due to administrative error, the opinion was not obtained nor was the filing made. Therefore, the Commission is initiating the present proceeding. The attached proposed rules are those recommended for adoption in Recommended Decision No. R93-1194. The Commission, in the present proceeding, will take administrative notice of the record established in Docket No. 93R-351E.

Section 24-4-103(4)(a), C.R.S., provides that an agency may deem oral comments at the rulemaking hearing unnecessary. Since

the Commission has already conducted a hearing on the proposed rules, the Commission now determines that oral comments on the proposals here are unnecessary. Therefore, the scheduled public hearing in this matter will be limited to presentation of written data, views, or arguments. As noted above, interested persons need not attend the public hearing, but may submit written comments in this docket on or before the date for the scheduled hearing.

THEREFORE THE COMMISSION ORDERS THAT:

1. This Notice of Proposed Rulemaking shall be filed with the Secretary of State for publication in the April 10, 1994 copy of *The Colorado Register*. At the time of filing with the Secretary of State, this notice shall also be filed with the Office of Regulatory Reform.

2. Hearing before an administrative law judge on the proposed rules and related matters shall be held beginning at:

DATE: May 16, 1994

TIME: 9 am

PLACE: Commission Hearing Room, Office Level (OL) 2
1580 Logan Street, Denver, Colorado

At the time set for hearing, interested persons may submit written comments. The Commission deems oral comments unnecessary consistent with the above discussion. Interested persons may also submit written comments in this docket on or before the time

scheduled for public hearing in this matter. All submissions will be considered.

3. The Commission hereby takes administrative notice of the record established in Docket No. 93R-351E.

This order is effective upon its Mailed Date.

ADOPTED IN SPECIAL OPEN MEETING ON March 16, 1994.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

CHAIRMAN ROBERT E. TEMMER RESIGNED
EFFECTIVE MARCH 1, 1994

(Decision No. R93-1194)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

PROPOSED MODIFICATION TO RULE 18)	DOCKET NO. 93R-351E
OF THE RULES REGULATING THE)	
SERVICE OF ELECTRIC UTILITIES.)	RECOMMENDED DECISION OF
)	ADMINISTRATIVE LAW JUDGE
)	JOHN B. STUELPNAGEL

- - - - -
Mailed Date: October 1, 1993
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STATEMENT

By Decision No. C93-819, issued July 16, 1993, the Commission established Docket No. 93R-351E and gave Notice of Proposed Rulemaking regarding Rule 18 of the Rules Regulating the Service of Electric Utilities. The purpose of the proposed modifications is to specify the current edition of the National Safety Code as the minimum standard of accepted good engineering practice, to change the reference in the rule from Executive Secretary to Director, and to make a number of syntax changes.

The Notice of Proposed Rulemaking was directed to be filed with the Secretary of State for publication in the August 10, 1993 copy of The Colorado Register. At the time of filing with the Secretary of State, notice was also directed to be filed with the Office of Regulatory Reform. There were no requests for a regulatory analysis of these rules. Hearing on the proposed rule modifications was set for September 15, 1993, at 9:00 a.m. in Commission Hearing Room B, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado. Hearing commenced September 15, 1993, and there were no additions, corrections, or further modifications proposed.

The statutory authority for Rule 18 of the Rules Regulating the Service of Electric Utilities is §§ 24-4-103 and 40-2-108, C.R.S.

The Commission finds that Rule 18 of the Rules Regulating the Service of Electric Utilities as found in Appendix A to this decision should be adopted by the Commission as a rule modification, and Rule 18 found at 4 CCR 723-3 should be modified as set forth in Appendix A. This modification is clear, simple, and can be understood by the persons expected to comply with it, does not conflict with any provision of law, and is enacted in compliance with the statutory authority cited.

This rule modification should be submitted to the Office of the Attorney General for its opinion for legality and constitutionality as required by statute.

Pursuant to the provisions of § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding and recommends the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. The modification of Rule 18 of the Rules Regulating the Service of Electric Utilities, attached to this Decision as Appendix A, is adopted as a modification to the Rules Regulating the Service of Electric Utilities.

2. This modification found in Appendix A to this Decision shall be effective 20 days after publication by Secretary of State.

3. An opinion of the Attorney General of the State of Colorado shall be properly sought regarding the constitutionality and legality of modifications to rules found in Appendix A to this Decision.

4. The Commission Director shall file with the Office of the Secretary of State of Colorado, for publication in The Colorado Register, a copy of the modification of the rules found in Appendix A adopted by this Decision, and when obtained, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules.

5. The rules modifications found at Appendix A should be submitted by the Commission's Director to the appropriate committee of reference of the Colorado General Assembly, if the General Assembly is in session at the time this Order becomes effective, or to the Committee on Legal Services, if the General Assembly is not in session, for its opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. 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.

7. 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.

8. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN B. STUELPNAGEL

Administrative Law Judge

JBS:srs

MODIFICATIONS
TO EXISTING RULE 18
OF THE
RULES REGULATING THE SERVICE
OF ELECTRIC UTILITIES

BASIS, PURPOSE AND STATUTORY AUTHORITY

The basis and purpose of the proposed modifications to existing Rule 18 of the Rules Regulating the Service of Electric Utilities are: (1) to specify the current edition of the National Electric Safety Code as the minimum standard of accepted good engineering practice; (2) to change the title of the Executive Secretary to Director in paragraph (b) of the rule; and (3) to make changes in syntax at a number of places. The statutory authority for these modifications is § 40-2-108 C.R.S.

RULE 18

Construction Requirement

(a) The electric plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished and the safety of persons and property.

- (1) The utility shall use as a minimum standard of accepted good engineering practice the ~~current~~ 1993 edition of the National Electrical Safety Code **PUBLISHED BY THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS ON** ~~dated September 26, 1983~~ **AUGUST 3, 1992** ~~published by the Institute of Electrical and Electronics Engineers, Inc.~~ and endorsed by THE American National Standards Institute (ANSI), for all electric plant construction or installation commenced on or after ~~September 26, 1983~~ **AUGUST 3, 1992**. This rule does not include later amendments to or **LATER** editions of the National Electrical Safety Code.

- (2) With regard to electric plant constructed or installed prior to ~~September 26, 1993~~ **AUGUST 3, 1992**, the minimum standard of accepted good engineering practice shall be the edition of the National Electrical Safety Code in effect at the time of commencing construction or installation of the electric plant.
- (3) Any electric plant of the utility that is constructed, installed, maintained and operated in accordance with the National Electrical Safety Code in effect at the time of its construction or installation shall be presumed to comply with accepted good engineering practice in the electric industry and the provisions of this rule.

(b) Certified copies of the complete text of the National Electrical Safety Code shall be maintained by the Public Utilities Commission, which copies shall be available for public inspection during regular business days and hours. Certified copies of the National Electrical Safety Code shall be provided at cost upon request. The ~~Executive Secretary~~ **DIRECTOR** of the Public Utilities Commission, Second Floor, 1580 Logan Street, Denver, CO 80203, will provide information regarding how the National Electrical Safety Code may be obtained or examined.

(c) Distribution facilities are those lines designed to be operated at the utility's normal distribution voltage in the area, or lower, and substations constructed under existing lines, regardless of voltage. Extensions of distribution facilities (lines and substations) shall be deemed to occur in the ordinary course of business of utilities, and shall not require a certificate of public convenience and necessity.

(d) Transmission facilities are those lines designed and operating at **VOLTAGE LEVELS** above the utility's normal voltage for distribution facilities in the area, or higher, and related substation facilities.

- (1) Each Colorado electric utility shall file annually, no later than April 30 of each year, the information required by Section (f) of this rule, pertaining to any proposed new construction or extensions of transmission facilities for the next three calendar years.
- (2) **THE** Staff of the Commission shall review the data filed by utilities pursuant to Subsection (d)(1) of this rule and make recommendations to the Commission within the

time PERIOD as set forth in Subsection (d)(3). The Commission will designate those transmission projects FOR which the utility is not required to obtain a certificate of public convenience and necessity, or FOR WHICH IT MUST file an application for a certificate of public convenience and necessity or FOR a formal determination that no such certificate is required. within the time periods as set forth in subsection (d)(3) and (4).

- (3) For new construction or the extension of transmission projects, the construction of which are to begin in the next calendar year, THE Staff shall make its recommendations within 30 days of April 30 of the year the data is filed. The Commission shall issue its decision on whether a certificate is not required, or whether an application for a certificate or formal determination that no certificate is required, within 60 days of April 30 of the calendar year such data is filed.
- (4) For new construction or the extension of transmission projects, the construction of which are to begin in the second and third calendar year subsequent to the filing of annual data, THE Staff shall make its recommendations within 120 days of April 30 of the year such data is filed. The Commission shall issue its decision on whether a certificate is not required, or whether an application for a certificate or formal determination that no certificate is required, within 60 days of THE Staff's recommendation.

(e) Each Colorado electric utility shall annually file, no later than April 30 of each calendar year for the next three subsequent calendar years, the information required by Section (f) of this rule concerning any new construction or extensions which will result in an increase in generating capacity for the utility of ten ~~(10)~~ megawatts or more.

- (1) THE Staff of the Commission shall review the data filed by utilities pursuant to Section (e) of this rule and make recommendations as set forth in Subsection (e)(2). The Commission will designate those generation projects which do not require a certificate of public convenience and necessity, and those generation projects FOR which the utility shall file an application for a certificate

of public convenience and necessity or a formal determination that no such certificate is required.

- (2) For any new construction or extension which will result in an increase in generating capacity for the utility of ten megawatts or more, the construction of which is to begin in the next calendar year, the Staff shall make its recommendations within 30 days of April 30 of the year the data is filed. The Commission shall issue its decision on whether a certificate is not required, or whether an application for a certificate or a formal determination that no certificate is required within 60 days of April 30 of the calendar year in which the data is filed.
- (3) For any new construction or extension which will result in an increase in generating capacity for the utility of ten megawatts or more, the construction of which is to begin in the second or third calendar year subsequent to the year the data is filed, ~~THE~~ Staff shall make its recommendations within 120 days of April 30 of the year such data is filed. The Commission shall issue its decision on whether a certificate is not required, or whether an application shall be filed by the utility seeking a certificate or formal determination that no certificate is required, within 60 days of ~~THE~~ Staff's recommendation.
- (4) Any extension of generation capacity which will result in an increase in generating capacity for the utility of less than ten ~~(10)~~ megawatts is deemed to be in the ordinary course of its business ~~for a utility~~ and shall not require a certificate of public convenience and necessity.
- (5) Generating plant remodeling and the installation of any equipment or building space required for pollution control systems shall be deemed to occur in the ordinary course of its business for a utility, and shall not require a certificate of public convenience and necessity.

(f) Each electric public utility, whether or not each such utility is deregulated pursuant to C.R.S. 1973, 40-9.5-101, et seq., shall submit to the Commission, no later than April 30 of

each year, a schedule of its proposed new construction or extensions for the next three subsequent calendar years pertaining to generation and transmission facilities as described in Sections (d) and (e) of this rule. For each such project, each utility shall set forth the following:

1. Name of project
2. The function of the project
3. The estimated cost of the project
4. The manner in which the project is expected to be financed.
5. The projected date for the start of construction of the project.
6. The estimated date of completion of each project.
7. The estimated date of commencement of operation of each project.
8. The proposed general location

(g) The information and data filed by each utility pursuant to Section (f) of this rule shall be public information, available for inspection at the offices of the Commission, during regular business days and hours.

- (1) The Commission will give notice of the filing of such data to all those, who in the opinion of the Commission, are interested persons, firms, or corporations.
- (2) Any interested person, firm, or corporation may file comments in regard to the projects identified by the data filed with the Commission, pursuant to Section (f) of this rule, within fifteen (15) days of the filing of such data. The Commission will consider such comments in determining which projects do not require a certificate of public convenience and necessity, or which **FOR WHICH** projects the utility will be required to file an application for a certificate of public convenience

Docket No. 93R-351E
Decision No. R93-1194
October 1, 1993
Page 6 of 6 Pages

and necessity, or a formal determination that such a certificate is not required.

(h) No utility may commence new construction or an extension of either transmission or generation facilities or projects as described in Sections (d) and (e) of this rule until they are notified by the Commission that such facilities or projects do not require a certificate of public convenience and necessity, or until such a final certificate is issued by the Commission.