

(Decision No. C94-546)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE PROPOSED RULEMAKING REGARD-)	
ING RULES 50, 51, 55, 56,)	DOCKET NO. 93R-690
57, 58, 68, 69, 70, 71, 77, AND)	
92, COLORADO PUBLIC UTILITIES)	COMMISSION ORDER
COMMISSION, RULES OF PRACTICE)	
AND PROCEDURE, 4 CCR 723-1.)	

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Mailed Date: May 6, 1994
Adopted Date: April 29, 1994
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STATEMENT OF THE CASE

BY THE COMMISSION:

By Decision No. C93-1498, issued November 30, 1993, the Commission established Docket No. 93R-690 and gave Notice of Proposed Rulemaking regarding Rules 50, 51, 55 through 58, 68 through 71, 77, and 92 of the Colorado Public Utilities Commission Rules of Practice and Procedure, 4 CCR 723-1. The purpose of the proposed rules was to reflect certain changes, and to enable the Commission to meet the time limitations for the issuance of decisions in application proceedings before the Commission imposed by § 40-6-109.5, C.R.S. (1993).

The Notice of Proposed Rulemaking was directed to be filed with the Secretary of State for publication in the December 10, 1993, edition of The Colorado Register. At the time of filing with the Secretary of State, notice was also filed with the Office of Regulatory Reform.

The proposed rules include new proposed Rules 68 and 69 and a revised Rule 70. Proposed Revised Rule 68 on nomenclature was previously Rule 70. Rule 69 deals with railroad applications and provides procedures to determine whether they are deemed complete. Proposed Revised Rule 70 establishes time limits for decisions on applications.

By Decision No. C93-1498, hearing on proposed rules and related matters was set for February 4, 1994. Hearing times were 9 a.m. to 11 p.m. pertaining to fixed utility issues, 11 a.m. to 12 noon pertaining to safety and railroad issues, and 1 p.m. to 3 p.m. on transportation issues. Hearing location was the Commission Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado.

Hearing commenced as scheduled, and comments were made by parties' counsel and Staff of the Public Utilities Commission. At the conclusion of hearing, the parties were given until February 14, 1994, to make additional comments, and the matter was taken under advisement.

Because of the time limitations on Emergency Rule, the Commission, in accordance with § 40-6-109(6), C.R.S. (1993), issues this initial Commission decision.

DISCUSSION

Rule 50 of the Commission's Rules of Practice and Procedure addresses applications by transportation utilities. The only modifications proposed in this proceeding are the addition of paragraph (o) which state a need for the Commission to deem an application complete and paragraph (p) which addresses Commission action for failure to provide any additional required information. These paragraphs should be adopted as proposed in the Notice of Proposed Rulemaking.

Rule 51 of the Commission's Rules of Practice and Procedure addresses applications to construct, alter, or abolish railroad crossings, or for the installation or modification of signal lights, or other protective devices. With the exception of minor modifications proposed by Staff of the Public Utilities Commission, which should be accepted by the Commission, Rule 51 should be adopted as proposed in the Notice of Proposed Rulemaking.

Rules 55 through 58 establish the information required by the Commission when certain types of applications are filed on behalf of fixed utilities. The Commission may wish to review these rules in the future to require more detail to facilitate Commission procedures on deeming applications complete. The changes proposed in this Notice of Proposed Rulemaking are minimal and provide for the need to deem an application complete. Minor modifications have been proposed by Staff and these rules should be adopted with those modifications.

Rule 68 is a renumbered previous rule without change. Rule 69 describes how the Commission will deem a railroad application complete and sets forth Commission procedures which will follow the filing of an application. Rule 69 should be adopted as set forth in the Notice of Proposed Rulemaking.

Rules 70 and 71 focus on the notice content of applications filed by fixed utilities and transportation utilities. These rules include the Commission procedure for deeming an application complete.

Rule 70 addresses the notice of fixed utility applications. Utilities generally sought rule modification which would accelerate

the date for deeming an application complete. These recommendations have varied from the day the application was filed to the day the application came off notice. There is little question that the purpose of the statute is to expedite hearing on applications and provide a Commission decision at the earliest possible date. Each party to a proceeding seeks to use for itself as much of the allotted time as possible. It is important that the application process from filing through hearing and Commission decision be conducted in an orderly manner to provide sufficient evidence for a ruling on an application which would best meet the public need. When an application is filed, the Staff of the Public Utilities Commission must review the application, assess the issues to be addressed in that application, and evaluate whether or not those issues will be properly presented during hearing.

The intent and purpose of legislation is to obtain a Commission decision as rapidly and efficiently as possible after the filing of an application. A major change which should be made in Rule 70 regarding Notice of Fixed Utility Applications should be a provision that the application shall be deemed complete at a certain time even if no action is taken by the Commission. This provision has been made in the final paragraph of Rule 70(a). Other modifications in dates and times have been made to more efficiently process applications.

Certain modifications should be made to Rule 71 regarding Notice of Transportation Utilities which provide different treatment to applications filed pursuant to § 40-6-109.5(1), C.R.S., and those filed pursuant to § 40-6-109.5(2), C.R.S. Certain filing dates have been extended to more effectively provide for hearing on transportation applications.

Changes proposed in Rule 77 regarding discovery were of concern to parties and counsel for both fixed and transportation utilities. Many suggestions were made in an attempt to extend and expand the discovery time and procedure. Such time extensions, however, are contrary to the purpose and intent of the statute setting time constraints on proceedings before the Commission. Minor modifications have been made to Rule 77. However, the rule as set forth in this decision and order should be adopted and a review of Rule 77 should be initiated in the future. It may be necessary to bifurcate Rule 77 and treat discovery procedures for transportation utilities differently than discovery procedures in fixed utility matters. Additionally, proposed Rule 77 addresses discovery on all proceedings before the Commission. Further review may be required to determine whether or not applications, complaints, or other proceedings before the Commission should be given different discovery treatment.

Rule 92 addresses Exceptions and Applications for Rehearing, Reargument, or Reconsideration. Comments received primarily objected to the procedure which follows the statutory provisions

regarding time requirements for filing a transcript and exceptions to a recommended decision. The rule as set forth should be adopted in order that the Commission may adhere to the time requirements now imposed by the Legislature in § 40-6-109.5, C.R.S.

The Commission finds that Rules 50, 51, 55 through 58, 68 through 71, 77, and 92 of the Colorado Public Utilities Commission Rules of Practice and Procedure found at 4 CCR 723-1 as set forth in Appendix A to this decision should be adopted by the Commission as rule modifications. All modifications are clear, simple, and can be understood by persons expected to comply with the same. They do not conflict with any provisions of law and are enacted in compliance with the statutory authority cited.

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

THEREFORE THE COMMISSION ORDERS THAT:

1. The modification of Rules 50, 51, 55 through 58, 68 through 71, 77, and 92 of Colorado Public Utilities Commission Rules of Practice and Procedure, 4 CCR 723-1, attached to this Decision as the Appendix are adopted as modifications to the Commission's Rules of Practice and Procedure.

2. Modifications found in the Appendix to this Decision shall be effective 20 days after publication by the 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 the Appendix 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 modifications of rules found in the Appendix 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 rule modifications found in the Appendix 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. The 20-day time period provided for by § 40-6-114(1), C.R.S. (1993), 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 SPECIAL OPEN MEETING April 29, 1994.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

ATTEST: A TRUE COPY

CHAIRMAN ROBERT E. TEMMER RESIGNED
EFFECTIVE MARCH 1, 1994

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

Bruce N. Smith
Director

JBS:srs

Rule 50(o) - (p)

(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.

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SOURCE: Prior Rule 13; and prior Appendix H, Part II.
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RULE 51

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

(a) Definitions. As used in this Rule:

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

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

(3) Railroad-highway crossing means:

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

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

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4 CCR 723-1

Rule 51(a)(4) - (b)(1)

(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.

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Rule 51(b)(2) - (5)

(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.

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4 CCR 723-1

Rule 51(b)(6) - (c)(2)

(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.

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Rule 51(c)(3) - (5)

(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."

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4 CCR 723-1

Rule 51(c)(6) - (d)(1)

(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.

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Rule 51(d)(2) - (e)(3)

(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.

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4 CCR 723-1

Rule 51(e) (4) - (f) (2)

(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.

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Rule 51(f)(3) - (g)

(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.

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Rule 51(h) - (i)

(h) Application Deemed Complete. The Commission shall deem all applications 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.

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SOURCE: Prior Appendix H, Part V.

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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

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

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

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

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Rule 55(c)(1)-(2)

(1) Applicant's name and complete address (street, city, state, and zip code), and the name under which the operation shall be conducted.

(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 this state; 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 shall either accompany the application or be filed with the Commission as soon as possible after the filing of the application. The application will not be granted until applicant's authority qualifying it to do business in the state of Colorado is filed;

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

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

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Rule 55(c)(3) - (5)

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

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

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

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Rule 55(c)(6) - (11)

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

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

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

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

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

(11) Where the application is for the issuance or extension of a certificate, including authority to exercise franchise rights, a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application.

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Rule 55(c)(12) - (13)(B)

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

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

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

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

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Rule 55(c) (13) (C) - (15)

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

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

(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.

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Rule 55(c)(16) - (d)(2)

(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.

(18) An affidavit signed by an officer, partner or owner, as appropriate, authorized to act on behalf of the utility, stating that the contents of the application and supporting documentation are true, accurate and correct.

(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 63(a) and (g).

(1) The applicant shall publish notice of the filing of the application to exercise rights or privileges under a franchise, within three 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.

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Rule 55(e) - (f)

(e) Application Deemed Complete or Incomplete. The Commission shall deem all applications complete or incomplete in accordance with the procedural requirements of Rule 70.

(f) Failure to Provide Required Information. If an application does not meet the requirements of this Rule 55 and the applicant does not adequately supplement the application as required pursuant to Rule 70, the Commission will both reject the application and close the docket pertaining to that application, in the absence of unusual or extraordinary circumstances.

SOURCE: Prior Rule 18. Part II; prior Appendix H, Part IV.A.

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RULE 56

Securities Applications by Gas and Electric Utilities - Notice

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

(b) Definition. Security means any stock, bond, note, or other evidence of indebtedness with a maturity date of more than 12 months (other than stocks) after the date of issuance, the proceeds which are proposed to be used for the following purposes: The acquisition of property; the construction, completion, extension, or improvement of facilities; the improvement or maintenance of service; the discharge or lawful refunding of obligations: the reimbursement of monies actually expended for these purposes from income, or from any other monies in the treasury not secured by or obtained from

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Rule 56(b) - (c) (2)

the issuance of securities within five years before the filing of an application with the Commission for the required authorization; or any other purpose authorized by the Commission.

(c) Securities Applications - Generally. Any gas or electric utility proposing to issue, renew, extend, assume or guarantee any security, as defined above, or to create any lien on its property within the state of Colorado, shall proceed as follows:

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

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

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Rule 56(c)(3) - (d)

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

(4) Notice shall be as in Form X.

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

(d) Contents of Application. When a gas or electric 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:

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Rule 56(d)(1) - (C)

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

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Rule 56(d)(2)-(7)

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

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Rule 56(d) (8) - (13)

(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 a 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.

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Rule 56(d)(14) - (17)

(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.

(16) A copy of the resolution of the applicant's board of directors approving the issuance, renewal, extension, assumption or guarantee of the securities, together with copies of the proposed indenture requirements, the mortgage note, the amendment to amending loan contract, the contract for sale of securities; and all other pertinent documents.

(17) A statement of capital structure (showing common equity, long-term debt and preferred stock if any) on the date of the balance sheet referred to in Rule 56(d)(10), and pro forma capital structure on the same date giving effect to the issuance of the proposed securities. Debt and equity percentages to total capitalization, actual and pro forma, shall be shown.

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Rule 56(d)(18) - (e)

(18) A statement of the estimated cost of financing.

(19) A statement that notice of the filing of the application will be published 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).

(20) An affidavit signed by an officer, partner or owner, as appropriate, authorized to act on behalf of the utility, stating that the contents of the application and supporting documentation are true, accurate and correct.

(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 an 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.

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Rule 56(f) - (h)

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

(g) Application Deemed Complete or Incomplete. The Commission shall deem all applications complete or incomplete in accordance with the procedural requirements of Rule 70.

(h) Failure to Provide Required Information. If an application does not meet the requirements of this Rule 56 and the applicant does not adequately supplement the application as required pursuant to Rule 70, the Commission will both reject the application and close the docket pertaining to that application, in the absence of unusual or extraordinary circumstances.

SOURCE: Prior Rule 18, Part II; prior Appendix H. Part IV.B.

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RULE 57

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

(a) Application to be Filed with the Commission. When a fixed utility proposes to change, abandon, discontinue or curtail any service, or to abandon or discontinue the use of any facility without equivalent replacement, it shall file with the Commission, at least 30 days before the effective date of the proposed change, abandonment, discontinuance, or curtailment, an application containing a complete explanation of the proposed change, abandonment, discontinuance or curtailment. The application shall contain an affidavit signed by an officer, partner or owner, as appropriate, authorized to act on behalf of the utility, stating that the contents of the application and supporting documentation are true, accurate and correct.

(b) Notice to Customers. In addition to filing an application with the Commission, the utility shall prepare a written notice stating the proposed change, abandonment, discontinuance or curtailment, and its proposed effective date, and shall mail or deliver the notice at least 30 days before the effective date of the proposed change to each of

Rule 57(b) - (e)

the utility's affected customers or subscribers. If no customers are being served by the service or facility, or in the case of telegraph companies, the notice shall be mailed to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town or municipality.

(c) Form of Notice. The notice required in Rule 17(b) shall be as in Form Y.

(d) Proof of Public Notice. Within 15 days before the date of the proposed change, abandonment, discontinuance or curtailment, the utility shall file with the Commission a written affidavit stating its compliance with Rule 57(b). The affidavit shall state the date notice was completed and the method used to give notice. A copy of the notice shall accompany the affidavit.

(e) Noncontested or Unopposed Applications. An application under this Rule only becomes contested if intervention under these Rules is had or granted by the Commission. A noncontested or unopposed application to change, abandon, discontinue, or curtail any service, or to abandon or discontinue the use of any facility may be processed under Rule 24 without a formal hearing.

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Rule 57(f)(1) - (3)

(f) Hearing on Applications.

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

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

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

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Rule 57(g) - (i)

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

(h) Application Deemed Complete or Incomplete. The Commission shall deem all applications complete or incomplete in accordance with the procedural requirements of Rule 70.

(i) Failure to Provide Required Information. If an application does not meet the requirements of this Rule 57 and the applicant does not adequately supplement the application as required pursuant to Rule 70, the Commission will both reject the application and close the docket pertaining to that application, in the absence of unusual or extraordinary circumstances.

SOURCE: Prior Rule 26.

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RULE 58

Applications by Fixed Utilities to Make Refunds - Notice

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

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

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

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

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

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Rule 58(c)(3) - (5)

(3) A copy or a detailed description of the proposed refund plan. The plan shall include a description of the type of utility service that has been provided and that is involved in the refund plan. The plan also shall include the dollar amount of the proposed refund, the date applicant proposes to start making the refund (which shall not be fewer than 60 days after the filing of the application), the date by which the applicant proposes to complete the refund, and the means by which the refund is proposed to be made. The plan also shall identify the service area involved. The interest rate on the refund shall be the current interest rate in the applicant's customer deposits tariffs.

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

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

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Rule 58(c)(6) - (10)

(6) If the applicant proposes to refund less than all of the justifying the proposed refund of a lesser amount, with a copy of applicant's most recent balance sheet, dated not earlier than three months before the date of the filing of the application, with a copy of an income statement and a retained earnings as of the date of the balance sheet.

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

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

(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.

(10) An affidavit signed by an officer, partner or owner, as appropriate, authorized to act on behalf of the utility, stating that the contents of the application and supporting documentation are true, accurate and correct.

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Rule 58(d) - (e)

(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 three 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 Director.

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Rule 58(f) - (h)

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

(g) Application Deemed Complete or Incomplete. The Commission shall deem all applications complete or incomplete in accordance with the procedural requirements of Rule 70.

(h) Failure to Provide Required Information. If an application does not meet the requirements of this Rule 58 and the applicant does not adequately supplement the application as required pursuant to Rule 70, the Commission will both reject the application and close the docket pertaining to that application, in the absence of unusual or extraordinary circumstances.

SOURCE: New.

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Rule 68

Rule 68

Nomenclature

When a proceeding is started, the Commission 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 Dockets.

SOURCE; Prior Rules 5.B and C.

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Rule 69(a) - (b)

RULE 69

APPLICATIONS - RAILROAD - NOTICE

(a) GENERALLY. When an application is filed, including an application filed under Rule 51, and a docket number is assigned to it, the Commission Director, within 30 days of the filing, shall issue and mail a notice of the filing.

The application is deemed complete on the date of mailing of the Commission decision deeming the application complete. The Commission shall consider whether or not the application is deemed complete after the applicant files all required final plans, final specifications, and agreements. If, at the time the Commission reviews the application, the application does not meet the requirements of Rule 51, the Commission will both reject the application absent unusual or extraordinary circumstances and close the docket.

(b) 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 s 40-6-109.5, C.R.S. Upon filing of the written waiver, the Commission is not bound by the time limits contained in s 40-6-109.5, C.R.S.

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Rule 69(c)(1) - (4)

(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 to 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

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Rule 69(c)(4) - (7)

deemed complete. The applicant shall file with the Commissionan 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) 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 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;

(6) A statement that, upon objection by a party, 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;

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Rule 69(c)(8) - (d)

(8) A statement that no motion for continuance of the hearing date will be granted except as stated in this rule;

(9) A statement that, if a hearing is required, 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 appropriate by the Commission.

(d) CHANGE IN HEARING DATE - USUAL COURSE. Unless extraordinary conditions exist (Rule 69(e)), a party seeking a change of hearing date shall file a motion to change the hearing date. In the motion, the moving party shall provide available 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 change the hearing date shall contain available dates on the Commission calendar and all available dates for all parties. The Commission may change the hearing date pursuant to the motion provided the new hearing date is no more than 45 days from the date the application is deemed complete.

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Rule 69(e)

(e) CHANGE IN HEARING DATE - EXTRAORDINARY CONDITIONS.

The Commission may consider a request to continue a hearing date to a date that is later than 45 days from the date the application is deemed complete. A party seeking to continue a hearing date under this provision must file a motion for continuance. The 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 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 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.

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Rule 70(a)

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 5 working days of the filing, shall issue and mail a notice of the filing under Rule 63.

During 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 give written notification to the applicant of the information or documentation necessary to meet the requirements. Once the required information is provided and the notice period has expired, the application will be placed on the Commission agenda for consideration at the next open meeting.

If the applicant does not provide the required information or documentation, within 10 days after being so

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Rule 70(a)

advised by Staff, or if the applicant believes the additional information is not required and so advises Staff in writing, setting forth the grounds for its belief, Staff will place the application on the Commission agenda for consideration at the next open meeting after the 10-day response time and after the notice period have expired.

The Commission shall review the submitted application and supporting information and documentation, and the applicant's statement, if any. If it determines that the application is complete, the Commission shall issue a decision containing that determination. The application is deemed complete on the date of mailing of that Commission decision. If the Commission determines that the application is not complete, the Commission will both reject the application absent unusual or extraordinary circumstances and close the docket.

If the Commission fails to mail its decision on the status of an application by the fifteenth day following the expiration of the notice period or fifteen days after the application was last supplemented, or the receipt of applicants's advise that no additional information or documentation is necessary, whichever date is later, the application shall be deemed complete as of the fifteenth day.

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Rule 70(b)(1) - (5)

(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 the application was filed.
- (3) A statement concerning whether the applicant has pre-filed testimony and exhibits and is seeking a Commission decision within 120 days.
- (4) A statement concerning whether the applicant has waived the time-limits for processing the application under § 40-6-109.5, C.R.S. (1993).
- (5) 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 date the application is deemed complete.

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Rule 70(b)(6) - (8)

(6) 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.

(7) 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 15 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

(8) 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 10 days before the first day of the hearing. Applications shall be set not sooner than 45 days nor more than 70 days after the date the application was deemed complete. 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.

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Rule 70(b)(9) - (c)

(9) 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.

(10) 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 cause for the failure to meet the requirements is shown.

(11) A statement that no motion for continuance of the hearing date will be granted except upon a finding of extraordinary conditions.

(12) A statement that the commission will notify the parties of the hearing date, time, and location.

(13) 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. (1993).

(14) Any other statement required by or deemed appropriate 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

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Rule 70(c) - (d)

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 if the Commission cannot meet the statutory requirements of § 40-6-109.5 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.

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Rule 70(e)

(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. (1993). 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. (1993). Upon filing of the written waiver, the Commission is not bound by the time limits contained in s 40-6-109.5, C.R.S. (1993).

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Rule 71(a)

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 within 20 days of receipt of application 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. If the application is noncontested and the Commission handles the application on modified procedure, the Commission order granting the application will deem the application complete. If the application is contested, the Commission will send a notice deeming the application complete. Contested

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Rule 71(a) - (b) (2) (A)

applications are deemed complete on the date the Commission mails the notice deeming the application complete. This notice may be done by written Commission order, by minute order, or by notice signed by the Director of the agency. The Commission shall make its determination on deeming applications complete within 14 days after the conclusion of the notice period for applications filed pursuant to § 40-6-109.5(1), C.R.S. (1993), and within 21 days after the conclusion of the notice period for applications filed pursuant to § 40-6-109.5(2), C.R.S. (1993). 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.

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Rule 71(b) (2) (B) - (5) (A)

(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.

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Rule 71(b)(5)(B) - (7)

(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.

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Rule 71(b)(8) - (c)

(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. (1993).

(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.

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Rule 71(d) - (e)

(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. (1993). 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. (1993). Upon filing of the written waiver, the Commission is not bound by the time limits contained in § 40-6-109.5, C.R.S. (1993).

SOURCE: New

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RULE 77

Discovery - Time - Procedure

(a) Time for Discovery. Any party may commence formal discovery upon any other party at any time.

(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 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, depositions, 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.

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Rule 77(b) (3) - (6)

(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.

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

SOURCE: Prior Rule 14.M in part; new in part.

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Rule 92(a)(1) - (2)

RULE 92

Exceptions - Applications for Rehearing,
Reargument or Reconsideration

(a) General. Exceptions to a recommended decision of a hearings commissioner or an administrative law judge and applications for rehearing, reargument or reconsideration shall conform to Rule 22, shall be governed by §§ 40-6-109, 40-6-113, and 40-6-114, C.R.S., and shall be filed within the time periods set forth in Rule 92(b).

(1) Where exceptions to a recommended decision are not filed, an application for rehearing, reargument or reconsideration may be filed after the recommended decision has become the decision of the Commission, but in that case no party may seek to amend, modify, annul, or reverse basic findings of fact made in the recommended decision.

(2) If a motion for an extension of time to file exceptions to a recommended decision is timely filed, the recommended decision shall be stayed until the Commission acts on the motion. If the Commission grants the motion and extends the time for the filing of exceptions, the recommended decision shall be stayed until the Commission rules on the exceptions, if exceptions are filed within the extended time period.

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Rule 92(a)(3) - (4)

(3) The recommended decision of a hearings commissioner or an administrative law judge shall become a Commission decision by operation of law:

(A) If exceptions are not filed to a recommended decision within the 20-day period allowed by § 40-6-109(2), C.R.S., or within any extended period; or

(B) If the recommended decision is not stayed within the 20-day period allowed by § 40-6-109(2), C.R.S., or is not stayed within any extended period for filing exceptions; or

(C) If a motion for an extension of time to file exceptions has not been timely filed.

(4) If a recommended decision becomes a commission decision, the Director shall, upon request and payment of the statutory fee, certify that the recommended decision has become the decision of the Commission on a date certain.

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Rule 92(b)

(b) Time. Exceptions shall be filed within 20 days after the Commission serves the recommended decision by mail, or in any period of time extended by Commission order, upon a party's motion for extension. Initial motions for extension of time to file exceptions shall be filed in the original 20-day period for exceptions, to be timely. The Commission's mailing certificate shall be prima facie evidence of service. Parties shall cause transcripts to be prepared and filed on or before the time exceptions or applications for rehearing, reargument, or reconsideration are due to be filed with the Commission. Motions for extensions of time to file the transcript and exceptions or applications for rehearings, reargument, or reconsideration shall require a hearing pursuant to § 40-6-109.5 (4), C.R.S. (1993), to determine whether additional time for the issuance of the Commission's final decision is required, unless the applicant waives all such time limits pursuant to § 40-6-109.5(3), C.R.S. (1993). The Commission shall not grant motions for extensions of time unless the movant establishes that the request for preparation of transcript was filed with the Commission within 5 working days after the mailing of the recommended or Commission decisions.

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Rule 92(b)(1) - (2)

(1) Where the Commission stays a recommended decision within 20 days after service, or stays a recommended decision in any extended period of time, the stay does not of itself extend the period for the filing of exceptions or for the filing of a motion for an extension of time to file exceptions.

(2) Applications for rehearing, reargument, or reconsideration, to be timely, shall be filed within 20 days after a decision has been made by the Commission, or after a decision recommended by a hearings commissioner or an administrative law judge has become the decision of the Commission. Applications for rehearing, reargument, or reconsideration filed after the above 20-day period will not be considered unless a motion for an extension of time has been filed within the original 20-day period, and is ultimately granted.

SOURCE; Prior Rule 15.

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