

Decision No. C03-1399

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

DOCKET NO. 03R-528ALL

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IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF THE RULES  
OF PRACTICE AND PROCEDURE, 4 CCR 723-1.

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**NOTICE OF PROPOSED RULEMAKING**

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Mailed Date: December 18, 2003

Adopted Date: December 17, 2003

**I. BY THE COMMISSION:**

**A. Statement**

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding its Rules of Practice and Procedure. The intent of the proposed rules is to repeal and reenact the rules found at 4 *Code of Colorado Regulations* (CCR) 723-1.

2. The proposed repeal and reenactment will update the existing Practice and Procedure rules to improve administration and enforcement of the provisions of Title 40 of the Colorado Revised Statutes and to improve the regulation of proceedings before the Commission. A copy of the proposed rules is attached to this notice of proposed rulemaking. All rules are under consideration for amendment in this proceeding.

3. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109(5), and 40-6-114(1), C.R.S.

4. An Administrative Law Judge (ALJ) for the Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ

deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before hearing, the Commission requests that such comments be filed no later than March 15, 2004. The Commission requests that interested persons submitting comments do so both in paper and electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions.

5. Because the proposed rules will result in the repeal of the Commission's existing Rules of Practice and Procedure, 4 CCR 723-1, interested persons may also submit comments regarding whether specific provisions in the presently existing rules should be retained in the reenacted rules.

6. The proposed rules attached to this Decision (*i.e.*, proposed Rules 1004(s), 1103, and 1104) incorporate certain provisions of the Commission's existing Rules Regulating the Collection and Disclosure of Personal Information, 4 CCR 723-7 (Privacy Rules). Some of the provisions in the current Privacy Rules apply to all regulated utilities; some of the provisions in those rules apply only to telecommunications service providers. To the extent provisions in the Privacy Rules now apply to all utilities generally, the Commission proposes to repeal those rules in this docket. Other rulemakings concurrent with this one may address privacy concerns unique to other areas.

7. The Commission previously commenced a rulemaking to repeal and reenact the Rules of Practice and Procedure in Docket No. 02R-041ALL. Several hearings were held and many comments and proposals submitted before that proceeding was terminated. The Commission has not evaluated the proposals nor come to any final conclusion on any of those

submittals; otherwise this proceeding would be meaningless. Therefore the Commission will use the draft proposal submitted and circulated by Staff during the last proceeding as the starting point in this proceeding. This was circulated May 8, 2002 under a cover letter from Staff member Dino Ioannides. There are some changes to that draft, however. Although the attachment to this order is not in redline form, a redline version showing the changes from the version that was circulated on May 8, 2002 can be found on the Commission's website at [www.dora.state.co.us/puc/rulemaking/compareNOPR\\_5-8-2002PnPRules.pdf](http://www.dora.state.co.us/puc/rulemaking/compareNOPR_5-8-2002PnPRules.pdf).

8. One major change is that the existing Confidentiality Rules found at 4 CCR 723-16 have been incorporated in their entirety into proposed Rules 1100 through 1102. The previous proposal, which would have altered those rules, has been deleted. One minor change mandates a uniform envelope size. The proposed repeal of the Commission's Confidentiality Rules as separate rules is an implicit part of this notice of proposed rulemaking.

9. The other significant change is to Rule 1302(h), where the wording has been changed to allow the Director to file a complaint, formerly called a show cause, without first seeking Commission authorization. The Director would also give any prior notice needed. This is a departure from current practice.

10. Several minor changes to the May 8, 2003 version have been incorporated into the attached proposed rules. The definitions of "affiliate" and "customer" have been reworded in Rules 1004(b) and (h). A new term, "control," has been defined in Rule 1004(g). The term "variance" has been changed in Rule 1003 in favor of the more familiar term "waiver." The term "grievance" has been abandoned in favor of the phrase "informal complaint" in Rules 1301 and 1302. "Formal complaint" replaces "complaint" in those same rules where necessary to

distinguish from an informal complaint. Rule 1302(f) has been changed to avoid awkward language and to allow for the possibility of restarting service pending resolution of a proceeding. The ten-day advance filing requirement for protests contained in Rule 1305 has been deleted. The time for filing interventions in temporary authority applications will appear in the notice of the application, and not in Rule 1305.

11. There were many other proposals from interested persons in the previous proceeding, such as comments urging changes to the discovery rules. The Commission invites interested persons to resubmit any and all comments from the previous proceeding, as it does not plan to incorporate the record of that proceeding into this one. Notwithstanding this NOPR, we note that the parties now have an opportunity to suggest changes to the rules governing regulated utilities. The Commission will consider any suggestions as to how our rules may be made more efficient, rational, or meaningful. We recognize that regulation imposes costs, and therefore, we note that suggestions, as to which rules are not necessary or are unduly burdensome, will be fully considered by the Commission.

12. Coordination of this rulemaking with other planned rulemaking proceedings for Electric, Telecommunications, Transportation, Gas, Railroads, and Water is a sizeable undertaking. Because of the need to coordinate all efforts, the Commission finds that hearings in this matter should consider: (a) coordination of efforts among the various other ongoing or planned rulemaking proceedings; and (b) whether future hearing dates should be set for that purpose.

**II. ORDER**

**A. The Commission Orders That:**

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the January 12, 2004 edition of *The Colorado Register*.

2. A hearing on the proposed rules and related matters shall be held before an Administrative Law Judge as follows:

DATES: March 25 and 26, 2004  
TIME: 9:00 a.m.  
PLACE: Commission Hearing Room A  
Office Level 2 (OL2)  
Logan Tower  
1580 Logan Street  
Denver, Colorado

At the times set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary. At the hearings referenced above, the Administrative Law Judge may set further hearing dates to continue the discussion and comment.

3. Interested persons may file written comments in this matter before the hearing. The Commission requests that such prefiled comments be submitted in both paper and electronic format no later than March 15, 2004. The Commission will consider all submissions, whether oral or written.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 17, 2003.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith**  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

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**POLLY PAGE**

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**JIM DYER**

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Commissioners

~~THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO  
  
RULES OF PRACTICE AND PROCEDURE  
  
4 CCR 723-1~~

~~BASIS, PURPOSE, AND STATUTORY AUTHORITY.~~

~~The basis and purpose of these rules is to advise the public, entities regulated by the Commission, attorneys who practice before the Commission, and any other person of the rules of practice and procedure which the Commission has established in order to regulate public utilities and other entities over which the Commission has jurisdiction. These rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law, and there are no duplicating or overlapping rules.~~

~~The statutory authority for these rules is §§ 40-2-108 and 40-3-110, C.R.S.~~

~~RULE (4 CCR) 723-1-1. SCOPE OF RULES.~~

~~(a) Purpose. These rules govern the practice and procedure before the Public Utilities Commission of the State of Colorado.~~

~~(b) Authority. These rules are promulgated under §§ 40-2-108, 40-6-101(1), and Article 4 of Title 24, C.R.S. If there is a conflict between these rules and The Colorado Revised Statutes, then the Colorado Revised statutes shall control, unless the Colorado Revised Statutes otherwise provide.~~

~~(c) Other Rules Applicable. In addition to these rules, all public utilities under the jurisdiction of the Commission are governed by substantive rules and regulations applying to each~~

~~class of utilities and special rules or regulations relating to particular subjects, all of which are found in Volume 4, Code of Colorado Regulations, Section 723, (4 CCR 723).~~

[Omitted Material: All the current Rules of Practice and Procedure, 4 CCR 723-1, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current Rules of Practice and Procedure are omitted.]



~~THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO  
RULES RELATING TO THE CLAIM OF CONFIDENTIALITY  
OF INFORMATION SUBMITTED TO  
THE COLORADO PUBLIC UTILITIES COMMISSION  
4 CODE OF COLORADO REGULATIONS (CCR) 723-16~~

~~BASIS, PURPOSE, AND STATUTORY AUTHORITY.~~

~~These rules are issued under the authority of §§ 40-2-108, 40-3-102, and 40-15-107, C.R.S. They establish procedures consistent with the mandate of § 24-72-201, C.R.S., that all public records shall be open for inspection by any person at reasonable times, subject to restrictions specifically provided by law. The rules establish the procedures to be used by: (1) a party, in a formal docket, filing information with the Commission that the party claims is confidential and therefore should not be subject to public inspection; (2) a person, outside of an open formal Commission docket, filing information with the Commission that the person claims is confidential and therefore should not be subject to public inspection; and (3) the Director, in responding to requests to inspect information under Colorado's Public Records Law, §§ 24-72-201 et seq., C.R.S.~~

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~~BASIS, PURPOSE, AND STATUTORY AUTHORITY.~~

~~RULE (4 CCR) 723-16-1. APPLICABILITY.~~

~~RULE (4 CCR) 723-16-2. DEFINITIONS.~~

~~RULE (4 CCR) 723-16-3. PROCEDURES RELATING TO INFORMATION PRODUCED IN A FORMAL COMMISSION DOCKET.~~

~~RULE (4 CCR) 723-16-4. PROCEDURES RELATING TO CONFIDENTIAL INFORMATION SUBMITTED TO THE COMMISSION OUTSIDE OF A FORMAL DOCKET.~~

~~RULE (4 CCR) 723-16-5. INFORMATION PRESUMED TO BE SUBJECT TO PUBLIC INSPECTION.~~

~~RULE (4 CCR) 723-16-6. PROCEDURES CONCERNING REQUESTS FOR PUBLIC INSPECTION OF INFORMATION CLAIMED TO BE CONFIDENTIAL.~~

~~RULE (4 CCR) 723-16-7. CRITERIA FOR DETERMINING WHETHER INSPECTION SHOULD BE GRANTED FOR INFORMATION CLAIMED TO BE CONFIDENTIAL.~~

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~~RULE (4 CCR) 723-16-1. APPLICABILITY.~~

~~These rules apply to all persons filing information with or seeking information from the Commission. They also apply to the Commission, Director or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or for information under the Public Records Law.~~

[Omitted Material: All the current RULES RELATING TO THE CLAIM OF CONFIDENTIALITY OF INFORMATION SUBMITTED TO THE COLORADO PUBLIC UTILITIES COMMISSION, 4 CCR 723-16, are proposed to be repealed and reenacted. Therefore, all the remaining pages of the current rules are omitted.]

# COLORADO DEPARTMENT OF REGULATORY AGENCIES

## Public Utilities Commission

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

#### PART 1 RULES REGULATING PRACTICE AND PROCEDURE

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**BASIS, PURPOSE, AND STATUTORY AUTHORITY.**

The basis and purpose of these rules is to advise the public, regulated entities, attorneys, and any other person of the Commission's rules of practice and procedure. These rules of practice and procedure are promulgated in order to properly administer and enforce the provisions of Title 40 of the Colorado Revised Statutes and in order to regulate proceedings before the Commission. Some other rules have been relocated to these rules. All rules are under consideration.

The statutory authority for these rules is found in §§ 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109(5), 40-6-109.5, and 40-6-114(1), C.R.S.

**GENERAL PROVISIONS**

**1000. Citation.**

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

**1001. Scope and Applicability.**

All rules in this Part 1, the "1000" series, and Title 40 of the Colorado Revised Statutes shall apply to all Commission proceedings, to all regulated entities, to any person transacting business with the Commission, practicing as an attorney before the Commission, or participating in Commission proceedings as a party or otherwise, or to any person over whom the Commission has jurisdiction, unless a specific statute or rule

provides otherwise. Where not otherwise inconsistent with Title 40 or these rules, the Commission, a hearing commissioner, or an administrative law judge may seek guidance from or employ the Colorado Rules of Civil Procedure.

**1002. Construction.**

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

**1003. Waivers.**

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all parties. Therefore, waivers are generally disfavored. However, the Commission may permit waivers from substantive rules if it concludes that strict compliance is impossible, impracticable, or unreasonable. The Commission may permit waivers from procedural rules for good cause. The Commission may subject any waiver granted to such terms and conditions as it may deem appropriate. The Commission will not grant a waiver if the grant would be contrary to law.
- (b) Waiver requests made in an existing docketed proceeding shall be by motion. Waiver requests made outside a docketed proceeding shall be by petition.
- (c) All waiver requests shall include:
  - (I) Citation to the specific paragraph of the rule or order from which the waiver is sought;
  - (II) A statement of the waiver requested;
  - (III) A statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request.
  - (IV) A statement regarding the duration of the requested waiver, explaining the specific date or event which will terminate it;
  - (V) A statement whether the waiver, if granted, would be full or partial; and
  - (VI) Any other information required by rule.

**1004. Definitions.**

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

- (a) "Administrative docket" means a docket regarding any matter the Commission wishes to investigate, any matter concerning the administration of programs or

functions committed to the Commission, any matter concerning general Commission policy, or any miscellaneous matter.

- (b) "Affiliate" or "Affiliated companies" means companies that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the accounting company. See also Control.
- (c) "Commission" means the Public Utilities Commission, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing commissioner, or an administrative law judge, as the context requires.
- (d) "Commission advisor" means any member of the Commission's staff serving as advisory staff in a particular proceeding by operation of rule 1007; or any assistant attorney general advising the commissioners, administrative law judges, or advisory staff.
- (e) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (f) "Consumer Counsel" means the head of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (g) "Control" (including the terms "controlling," "controlled by," and "under common control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stock-holders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.
- (h) "Customer" means any person who has applied for, been accepted for, or is receiving service from a regulated entity.
- (i) "Day" means a calendar day.
- (j) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.
- (k) "Docketed proceeding" means any matter to which the Commission assigns a docket number, including without limitation, administrative dockets, application, petition, complaint, rulemaking, or interpretive rulemaking proceedings, or suspended tariffs, price lists, or time schedules.
- (l) "Ex parte communication" means any oral or written communication which:
  - (I) occurs either during the pendency of a docketed proceeding or less than 30 days prior to the commencement of such a proceeding;

- (II) occurs between any Commission advisor, commissioner, or administrative law judge, on the one hand, and, on the other hand, any person, including Commission trial advocacy staff, related to, acting as, or acting on behalf of a party; and
  - (III) is made without providing other parties with notice and an opportunity to respond.
- (m) "Filing under seal" means the process of filing information with the Commission in a sealed, specially marked envelope to indicate that the filing party claims that the information is confidential. "Filing under seal" need not necessarily mean that information is provided in the context of a docketed proceeding, but may mean that information is submitted to the Commission or Commission staff outside the context of a docketed proceeding.
  - (n) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the witnesses a party intends to call to the stand in a hearing.
  - (o) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or having a paid circulation of at least 1,000 in the area where the members of the public affected by the matter of which notice is given are located.
  - (p) "OCC" means the Colorado Office of Consumer Counsel.
  - (q) "Party" means "party" as that term is used in rule 1200.
  - (r) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.
  - (s) "Personal information" means any individually identifiable information obtained by a regulated entity from a customer, from which judgments can be made regarding the customer's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information does not include: a customer's telephone number if it is published in a current telephone directory or is scheduled to be published in the next telephone directory; information necessary for the billing and collection of amounts owed to a public utility or to a provider of service using the facilities of a public utility; or Standard Industrial Code information used for purposes of directory publishing.
  - (t) "Presiding officer" means an administrative law judge, a hearing commissioner, the chairman of the Commission, or any commissioner other than the chairman conducting a Commission hearing, as applicable.
  - (u) "Price list" means a publication showing rates or classifications collected or enforced, or to be collected or enforced. A price list typically does not contain information duplicated in a tariff.



- (v) "Public Records Law" means Colorado's statutory provisions found at §§ 24-72-201 *et seq.*, C.R.S.
- (w) "Rate" includes any fare, toll, rental, or charge.
- (x) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges required to be returned to customers. "Refund" includes reparations under § 40-6-119, C.R.S.
- (y) "Regulated entity" means any entity subject to Commission regulation.
- (z) "RRR" means rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (aa) "Tariff" means a publication showing rates or classifications collected or enforced, or to be collected or enforced; combined with all rules, regulations, terms, and conditions, which in any manner affect or relate to rates, classifications, or service.
- (bb) "Time schedule" means a document submitted to the Commission by a motor vehicle carrier, as defined in § 40-10-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (cc) "Transportation carrier" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., a contract carrier as defined in § 40-11-101(3), C.R.S., an interstate carrier as defined in §§ 40-10-120 and 40-11-115, C.R.S., a towing carrier as defined in § 40-13-101(3), C.R.S., or a motor vehicle carrier exempt from regulation as a utility as defined in § 40-16-101(4), C.R.S., when subject to regulation.
- (dd) "Transportation utility" means a motor vehicle carrier as defined in § 40-10-101(4), C.R.S., or a contract carrier as defined in § 40-11-101(3), C.R.S.
- (ee) "Transportation proceeding" means any proceeding before the Commission involving a transportation carrier.
- (ff) "Utility" means a public utility as defined in § 40-1-103, C.R.S.

**1005. Meetings.**

- (a) The Commission may designate a day and time for its regular open meetings, and may hold other meetings from time to time. The Commission shall comply with the requirements of the Colorado Open Meetings Law, §§ 24-6-401 and 402, C.R.S.
- (b) The Commission shall prepare an agenda for each upcoming meeting. The agenda shall be posted in a prominent public area at its offices at a reasonable time prior to the meeting and be made available to the general public.

- (c) The Commission has discretion regarding the order of business at each meeting, and may consider emergency matters not shown on the agenda when appropriate. Any matter tabled or not considered shall be continued on the agenda for a future meeting.
- (d) Upon affirmative vote of two commissioners, the Commission may hold an executive session as provided in § 24-6-402, C.R.S.

**1006. Director.**

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

**1007. Commission Staff.**

- (a) When Commission staff enters an appearance in any docketed proceeding other than an administrative docket, rulemaking, or interpretive rulemaking, Commission staff's entry of appearance shall specify those Commission staff members serving as trial advocacy staff in the proceeding. The entry of appearance may designate with specificity those Commission staff members serving as advisory staff. Any Commission staff not specifically designated as trial advocacy staff shall be deemed advisory staff.
- (b) Trial advocacy staff shall, for purposes of the particular proceeding, be considered a party for purposes of rules 1100-1108. Once a member of Commission staff has been designated as trial advocacy staff, said staff member shall not function in any advisory capacity. Advisory staff shall be available to provide advice and recommendations to the Commission, and shall be considered the Commission for purposes of rules 1100-1108.

1008-1099 [Reserved]

**STANDARDS OF CONDUCT**

**1100. Confidentiality**

These rules apply to all persons filing information with or seeking information from the Commission. They also apply to the Commission, Director or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or for information under the Public Records Law.

- (a) Confidential Information. All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for

information, subpoenas, depositions, or other modes of discovery, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this Rule 1100. All persons accorded access to such confidential information, shall treat such information as constituting trade secret or confidential information and shall neither use nor disclose such information except for the purpose of the proceeding in which such information is obtained and in accordance with this Rule 1100.

- (I) A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable law, including §§ 24-72-201 et. seq., C.R.S. If a claim of confidentiality is made in violation of this Rule 1100(A)(I), the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including a reasonable attorney's fee.
  - (II) The Commission's acceptance of information pursuant to a claim of confidentiality shall not be construed to be an agreement or ruling by the Commission that the subject information is, in fact, confidential.
  - (III) To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in these rules the party shall submit a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief, the specific relief requested, and advise all other parties of the request and the subject matter of the material at issue.
- (b) Challenge to Confidentiality. This Rule 1100 establishes a procedure for the expeditious handling of information that a party claims is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
- (I) A party seeking to challenge a claim of confidentiality shall first contact counsel for the providing party and attempt to resolve any differences by stipulation.
  - (II) In the event the parties cannot agree as to the character of the information challenged, any party challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems material non-confidential. This notice shall designate the material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential.
  - (III) The party claiming confidentiality shall, within ten days of the notice referenced in Rule 1100(b)(II), file an appropriate pleading stating

grounds upon which the challenged data is deemed to be confidential. The challenging party shall have ten days to respond to the pleading. In the event the claiming party fails to file an appropriate pleading within ten days, the Commission may enter an order that the challenged material may be used in the public record.

- (IV) When the Commission receives a pleading asserting confidentiality by the claiming party regarding any items claimed as proprietary the Commission will enter an order resolving the issue.
  - (V) In the event the Commission rules in response to a pleading that any information is not confidential and should be removed from the protective requirements of this rule or from the protection of the sealed record, the parties, to enable the claiming party to seek a stay or other relief, shall not disclose the information or use it in the public record for five business days.
  - (VI) In the event the Commission rules that information previously filed in a proceeding is not confidential, the filing party may, by motion submitted within five days of the ruling regarding confidentiality, request that it be permitted to remove the subject information from the record. Pending the ruling on the motion, all persons accorded access to such information shall continue to treat the information as confidential pursuant to this Rule 1100.
  - (VII) In the absence of new information or a change in circumstances, as determined by the Director of the Commission in responding to a request for Commission records under §§ 24-72-201 et seq., C.R.S., a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under §§ 24-72-201 et seq.
- (c) Procedure for Filing "Confidential" Information "Under Seal".
- (I) A party submitting information claimed to be confidential to the Commission shall file, as part of the public record (i.e. not under seal), the required number of copies of its testimony and/or exhibits, according to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, without including the information claimed to be confidential. The first page of each of these copies shall be stamped: "NOTICE of CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." A cover page on each copy shall include a list of the documents filed under seal and indicate the nature of the documents, so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. Otherwise, parties shall

make only general references to information claimed to be confidential in their testimony and exhibits.

- (II) In addition to the copies available for public inspection, the filing party shall file under seal an original and five copies of the information claimed to be confidential. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod.
- (III) The six copies filed under seal shall be submitted in separate, sealed, 10" X 13" envelopes numbered serially. The following information shall be written on the outside of each sealed envelope:
  - (A) the caption "CONFIDENTIAL--SUBMITTED IN DOCKET NO.
  - (B) the name of the filing party;
  - (C) date of filing;
  - (D) description of the information (e.g. testimony or exhibits of \_\_\_\_\_ (name of witness);
  - (E) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions, or whether the Commission should destroy the information by shredding; and
  - (F) if the party chooses to retrieve the information, in accordance with the statement contained in Rule 1100(c)(III)(E), the name and phone number of the person who will retrieve such information.
- (d) Segregation of Files. Confidential information, if filed with the Commission, will be sealed by the Director of the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Rule 1100. This treatment shall prevail unless the confidential information is released from the restrictions of this rule either through agreement of the parties and publication by the filing party, or ,after opportunity for comment, pursuant to order of the Commission or final order of a court having jurisdiction.
- (e) Delivery of Documentation. Where feasible, confidential information will be marked as such and delivered to counsel for the parties. Where the material is too voluminous to copy and deliver to counsel, the confidential information shall be made available for inspection and review by counsel and experts, as provided for in Rule 1100(g), at a place and time mutually agreed on by the parties, or at the premises of the providing party, or as directed by the Commission. During the inspection, the parties may take notes on the material or request and receive

copies of the documents. All notes taken and copies received of such documents shall be treated as constituting trade secret or confidential information in accordance with this Rule 1100.

- (f) **Use of Confidential Information and Persons Entitled to Review.** All confidential information made available by a party shall be given solely to the Commission, its staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. With the exception of Staff, any disclosure of such information to a party's experts or advisors must be authorized by that party's counsel, and must be permitted solely for the purpose of the proceeding in which the information is produced. No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed to individual members of a trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information. Any member of the Staff of the Commission may have access to any confidential information made available under the terms of this rule. Neither is Staff limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in this Rule 1100 or other Commission rule or order, members of Staff shall be subject to all other requirements of this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to use information subject to this Rule 1100 in a proceeding or for a purpose unrelated to the specific proceeding in which the information was obtained.
- (g) **Nondisclosure Agreement.** No access to information under seal shall be allowed until the person seeking such access signs a nondisclosure agreement in the form that is attached and incorporated as Attachment 1. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to certify in writing that they have read this Rule 1100 and agree to be bound by the terms of the Rule. The agreement shall contain the signatory's full name, business address, and employer, the name of the party with whom the signatory is associated, and, with the exception of Staff, the signature of that party's counsel. The agreement shall be delivered to counsel for the filing party and to the Commission at or before the time of review of the documents. All persons, including Staff, who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure in accordance with the purposes and intent of this Rule 1100.
- (h) **Use in Pleading.** Where reference to information subject to this Rule 1100 is made in pleadings, briefs, arguments, or motions, it shall be by citation of title or exhibit number, or by some other description that will not disclose the

information. Any further use of or substantive references to such information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal.

- (i) Appeal. Sealed portions of a record in any proceeding may be forwarded under seal to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations.
- (j) Retention of Documents. At the conclusion of the proceedings, all documents and information subject to this Rule 1100, except the original and copies required by Staff to carry out its regulatory responsibilities, shall be retrieved by the party or person producing them. If the producing party does not retrieve the documents from the Commission within seven days of notification by the Commission, the documents will be shredded or destroyed. The original shall be maintained by the Commission as part of its archival files. Staff shall take all reasonable precautions to maintain the confidentiality of information subject to this Rule 1100. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to retain information subject to this Rule 1100 for a specified time following conclusion of the proceeding in which such information was obtained. All other parties shall, within seven days of the conclusion of the proceeding in which documents and information subject to this Rule 3 were produced, return such documents and information to the party producing them.
  - (I) In the event Staff intends to use confidential information in a subsequent proceeding, it shall notify, in writing, the party who produced such information of such intended use. This notification shall be made at least ten days prior to submission of the subject information in the subsequent proceeding. Staff's use of confidential information in a subsequent proceeding shall be in accordance with the provisions of this Rule 1100.
- (k) Reservation of Rights. Parties retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Rule 1100 on the grounds of relevancy or materiality.
- (l) Non-Waiver. Acceptance of information claimed to be confidential by any party shall in no way constitute a waiver of the rights of that party to contest any assertion or finding of trade secret, confidentiality, or privilege, to make a request under the Public Records Law, or to appeal any determination of the Commission.
- (m) Remedies. Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this Rule 1100, and compliance with these rules shall not be construed to be a waiver of those rights.

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

- (a) Procedures For Filing, Under Seal, Confidential Information Outside Of A Formal Docket. A person filing with the Commission, outside of a formal docket, documents or information claimed to be confidential, including information submitted in electronic form, shall utilize the following procedure:
- (I) Non-confidential portions. Non-confidential portions of a document may not be filed under seal. If a document contains both confidential and non-confidential information, the filing person shall specifically identify those portions of the subject document which are not confidential and shall submit to the Commission the required number of the document or report without including the information claimed to be confidential. The cover page of all copies of the material shall be stamped with the following: "NOTICE OF CONFIDENTIALITY. A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL" and shall include a list of the documents filed under seal. This list shall indicate the nature of the documents so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. The non-confidential information will be available to the public immediately. The confidential information shall be filed under seal in accordance with the procedures set forth below. The Commission's acceptance of this information under seal shall not be construed to be an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
  - (II) Information Claimed To Be Confidential. The filing party shall file, under seal, the required number of copies of the subject confidential information in accordance with the rules of the Commission, if applicable. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod. Each of the copies shall be submitted in a separate, sealed envelope numbered serially. The following information shall be written on the outside of each sealed envelope:
    - (A) the caption "CONFIDENTIAL--INFORMATION FILED UNDER SEAL."
    - (B) the name of the filing party;
    - (C) date of filing;
    - (D) description of the information;



- (E) the filing party's statement as to whether it prefers to retrieve the information when the information is no longer needed by the Commission, or whether the Commission should destroy the information; and
  - (F) if the party chooses to retrieve the information, in accordance with the statement contained in Rule 1101(a)(II)(E), the name and phone number of the person who will retrieve such information.
- (b) Retrieval of Information Under Seal. Upon notification from the Commission that the confidential information is no longer needed, the filing person shall make arrangements to retrieve the information. If the information is not retrieved by the filing party within seven (7) business days after notification, the Commission will dispose of the information. The Commission may retain the original of a filed document where necessary or required by law.
- (c) The Director of the Colorado Office of Consumer Counsel ("OCC") may submit a written request for access to Commission records claimed to be confidential by the person providing the information. In such instances, the Director of the Commission shall forthwith notify the person who provided the subject information of the OCC's request. The person who provided the subject information may, within five business days of the Director's notification, submit a written objection to disclosure of the information to the OCC. The Director shall disclose the requested information to the OCC if he determines that the request is reasonably related to the OCC's statutory purpose as set forth in §§ 40-6.5-101 et seq.. However, if the person who provided the subject information notifies the Director, in writing submitted within the five-day period referenced in this rule, that judicial action will be commenced to prevent disclosure to the OCC, the Director shall refrain from disclosing the information to the OCC for an additional five business days to allow the person objecting to disclosure to commence judicial action to prevent such disclosure.
  - (I) In the event the Director denies an OCC request for access to Commission records, the OCC may file a petition for access to such records with the Commission. Such petition shall be served upon the person who provided the subject information to the Commission.
  - (II) Disclosure of information claimed to be confidential to the OCC shall be conditioned upon its compliance with the provisions of these rules, including the requirement in Rule 1100(g) that it take all reasonable precautions to keep the confidential information secure. Employees and representatives of the OCC shall sign a nondisclosure agreement in substantially the same form as Attachment 1 to these rules, and shall deliver such agreement to the Director of the Commission and the provider of the information claimed to be confidential, prior to review of the records claimed to be confidential. Employees and representatives of

the OCC shall not disclose information obtained under this rule absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.

- (III) The OCC shall not utilize the procedure specified in this Rule 1101(c) as a substitute for discovery in formal dockets before the Commission.
  - (IV) This Rule 1101(c) shall not authorize the OCC to obtain access to Commission Staff workpapers or workproduct.
  - (V) All information obtained under this rule shall be returned to the Commission within sixty days after the OCC was provided access to such information. However, the OCC may, upon written request approved by the Director or the Commission, retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
  - (VI) The OCC's request for access to Commission records shall be considered in as expeditious a manner as possible given other duties of the Director and the Commission. The time periods set forth in §§ 24-72-201 et seq. shall not apply to requests under this Rule 1101(c).
- (d) Information Presumed To Be Public. Pursuant to § 24-72-201, C.R.S., information filed with the Commission is public record and presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:
- (I) Annual reports required under the Commission's Rules.
  - (II) Rates, terms and conditions for regulated services.
  - (III) Tariffs and price lists.
  - (IV) Advice letters but not necessarily information filed in support of advice letters such as supporting information required by the Rules Regulating Costing and Pricing
  - (V) Aggregate data regarding informal consumer complaint information.
  - (VI) All compliance filings that the Commission has ordered to be filed as public record.
  - (VII) Insurance filings of transportation carriers.
  - (VIII) Unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or order to demonstrate

compliance or lack of compliance with Commission rules or orders, including but not limited to, the Rules Regulating Telecommunications Service Providers and Telephone Utilities, Electric Utilities, Gas Utilities, and Rules Prescribing the Provision of Emergency 911 Services. Individual customer names, addresses and telephone numbers shall be presumed to be confidential.

- (IX) To the extent ordered to be filed as public documents by the Commission, service quality performance reports required by the Commission from utilities regulated under an alternative form of regulation or performance based regulation, with the exception of individual customer names, addresses, and telephone numbers.
  - (X) Safety inspection reports or information filed with the Commission or compiled by Commission staff pursuant to Commission order or rule, including but not limited to Rules Relating to Gas Pipeline Safety and Safety Rules and Regulations for Common Carriers.
  - (XI) Any documents or information that have been previously made public.
- (e) Rebutting Presumption of Public Inspection of Information. A person claiming that any portion of one of the documents listed in Rule 1101(d) is confidential shall file the information claimed to be confidential in accordance with the procedures set forth in Rules 1100 or 1101(a)-(c). In addition, a person claiming that any portion of one of the above listed documents is confidential shall file a written justification for such a claim at the time of filing of the document.

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

- (a) When any person makes a request to inspect Commission records which another person has claimed are confidential, the Director of the Commission shall determine whether the records are subject to public inspection pursuant to the provisions of §§ 24-72-201, et seq., C.R.S. ("Public Records Law "). The Director shall utilize procedures as are consistent with the provisions of the Public Records Law. In any event, the Director shall give timely notice of the request for inspection of public records to the person who submitted the documents or information subject to the request and who claims that the records are confidential. The Director shall also provide the person who submitted the information to the Commission an opportunity to submit oral or written comments regarding the public records request.
- (b) Upon making a determination as to whether the requested records are subject to public inspection, the Director shall forthwith notify the person objecting to disclosure and the person requesting public inspection of Commission records of that decision.

- (c) If the Director determines that the Commission's records are subject to public inspection, the Director, upon written request from the person objecting to such public disclosure, shall refrain from disclosure of the records for five (5) business days to allow the person objecting to such disclosure to commence judicial action to prevent public inspection of the subject records.
- (d) CRITERIA FOR DETERMINING WHETHER INSPECTION SHOULD BE GRANTED FOR INFORMATION CLAIMED TO BE CONFIDENTIAL. The Director's determination as to what level of public inspection should be permitted for specific public records submitted to the Commission shall be made on a case-by-case basis and shall be based on the Public Records Law, 24-72-201 et seq., C.R.S., and all other applicable law.

**1103. Personal Information – Collection.**

- (a) A utility shall collect only that personal information, including information regarding credit worthiness, which is necessary to provide, bill, and collect for services. Information regarding credit worthiness may include, but is not limited to: the customer's employer; the employer's phone number; the customer's landlord's name, address, and phone number; and the customer's previous utility supplier.
- (b) Not later than three months after first billing the customer, a utility shall notify the customer, other than a non-presubscribed interexchange customer, in writing of his or her right to request any or all personal information the utility holds concerning that customer, including a true copy thereof. Upon such request and upon verification of the customer's identity, the utility shall provide the requested information and shall take all necessary steps to explain the information to the customer.
- (c) A customer may request in writing an amendment of the personal information held by a utility. Within 30 days of the request, the utility shall:
  - (I) Verify and correct any portion of a record which is not accurate, timely, or complete, and inform the customer in writing of the corrections; or
  - (II) Inform the customer in writing of its refusal to amend the record in accordance with the request, give a reason for the refusal, clearly note any portion of the record which is disputed, and include in its records the customer's concise statement of disagreement. The utility shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

**1104. Personal Information – Disclosure.**

- (a) A utility may not disclose a customer's personal information to any other person, unless the request is either signed by the customer, or is supported by a disclosure form signed by the customer authorizing disclosure to the particular requestor.

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

**1105. Prohibited Communications – Generally.**

- (a) Except as provided in paragraph (b) of this rule, ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited.
- (b) Notwithstanding the provisions of paragraph (a) of this rule, prohibited communications do not include:
  - (I) Procedural, scheduling, or status inquiries, or requests for information that have no bearing on the merits, substance, or outcome of the proceeding;
  - (II) Protests or comments made by any customer of a utility, concerning any proposed tariff, price list, or time schedule;
  - (III) Communications made in educational programs or conferences, or in meetings of an association of regulatory agencies; or
  - (IV) Communications with or at the request of members of the General Assembly or their staffs relating to legislation, appropriations, budget, or oversight matters.

**1106. Prohibited Communications – Disclosure.**

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

**1107. Prohibited Communications - Remedies.**

- (a) Upon determining that a party has engaged in prohibited communication, the Commission shall ensure that all parties have the opportunity to respond including, if necessary, calling witnesses and cross-examining witnesses. In addition, the Commission may, upon its own initiative or upon the motion of a party, order any of the following remedial measures:
  - (b) Dismissal of the proceeding;
  - (c) An adverse ruling on a pending issue that is the subject of the communication, if other parties have been prejudiced;
  - (d) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication;
  - (e) A public statement of censure by the Commission; or
  - (f) Such alternative or additional sanctions as may be appropriate under the circumstances.

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

- (a) Whenever any party has a good faith belief that a commissioner or administrative law judge has engaged in a prohibited communication or whose impartiality may reasonably be questioned, the party may file a motion to disqualify the

commissioner or administrative law judge. Such motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the commissioner or administrative law judge shall rule upon the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All commissioners may fully participate in such review.

- (b) If at any time a commissioner or administrative law judge believes that his or her impartiality may reasonably be questioned, the commissioner or administrative law judge shall withdraw, as provided in § 40-6-124, C.R.S.

1109-1199 [Reserved]

## FORMALITIES

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

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

Where the word "party" appears in a Commission rule, it may be proper to infer that the rule also applies to participants.

**1201. Attorneys.**

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



**1202. Form and Content.**

- (a) Unless the Commission orders otherwise, every filing shall comply with the following requirements: Filings other than pre-printed forms and annual reports shall be printed on one side of the sheet only, on 8 1/2" x 11" white bond paper, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and stapled in the upper left corner. Page numbers shall be in the bottom center of each page excluding the cover page, except that for written testimony page numbers may be included in a header. The text shall be no more than ten characters to the inch, at least 12-point type, and double spaced, except for indented quotations and footnotes which may be single-spaced. If filed testimony exceeds 20 pages and deals with more than one subject, it shall contain a table of contents. The Commission may waive any of these requirements for a party not represented by counsel in accordance with rule 1201(b).
- (b) Every filing shall identify the proceeding by caption and docket number, and state the title of the filing, a clear and concise statement of the authority relied upon, the relief sought, and the name, including trade name, if any, of the party or the party's attorney.
- (c) No filing shall be more than 30 pages in length, including attachments, except where the attachments are required by a rule or where otherwise ordered by the Commission. The cover sheet, table of contents, certificate of mailing, copies of authorities cited, and copies of a decision which may be the subject matter of the filing shall not be included for calculating the length of the filing.
- (d) Written testimony is not subject to paragraphs (c) and (e) of this rule. When written testimony is filed, it shall meet the following requirements:
  - (I) Each line shall be serially numbered in the left margin.
  - (II) The cover sheet for written testimony shall contain the docket number, the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.
  - (III) Exhibits accompanying written testimony shall be numbered in sequence and shall be physically contained in the same document as the testimony, except where exhibits exceed 30 pages in length. Exhibits over 30 pages shall be bound and separated from filed testimony.
  - (IV) A separate set of arabic-numbered exhibits shall be included, designating exhibits of each witness regardless of whether the exhibit is appended to, or related to direct, answer, cross-answer, rebuttal, surrebuttal, or other designated testimony. For example, if a witness provides direct and rebuttal testimony for a party, and the direct testimony is accompanied by ten exhibits, and the rebuttal testimony is accompanied by five exhibits,

the exhibits accompanying the direct testimony shall be serially numbered 1 through 10, and the exhibits accompanying the rebuttal testimony shall be serially numbered 11 through 15.

- (V) The Commission may permit minor revisions to written testimony and exhibits by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony or exhibits using the same arabic numeral as the original with a hyphenated designation that the testimony or exhibit is revised, such as "Exhibit 1-2d Rev." All revisions other than those of a minor nature shall be promptly filed with the Commission and served on all parties.
- (e) Every filing of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, and attorney registration number. A filing of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state the person's title, address, and telephone number. The signature of an attorney or party certifies that the signatory has read the filing; that to the best of the signatory's knowledge, information, and belief there are good grounds to support it; and that it is not interposed for any improper purpose, such as to harass, delay, or increase the cost of the litigation.
- (f) If a filing is inconsistent with this rule, the Director or the Director's designee shall forthwith notify the filer. If the deficiency is not corrected within three days, the Director or the designee may reject the filing. The filer may appeal to the Commission within five days of such rejection. The Commission may impose sanctions for violations of this rule, including an order to pay reasonable attorney's fees and expenses attributable to the violation.

**1203. Time.**

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

**1204. Filing.**

- (a) Unless an order of the Commission or a specific rule provides otherwise:

- (I) Except as provided in subparagraph (III) of this paragraph, a person filing an application, petition, or amendment of either shall file an original and ten copies thereof.
- (II) Except as provided in subparagraph (III) of this paragraph, a person filing a (III) complaint, answer, motion, intervention, exceptions, RRR, or any other (IV) document shall file an original and six copies thereof.
- (V) If a proceeding has been referred to a hearing commissioner or administrative law judge, a person filing any document shall file an original and four copies thereof.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. the following business day. If the Commission receives a document via fax, it will be considered filed as of the date and time of the fax if the original and requisite numbers of copies are filed within one business day of the date of the fax.

**1205. Service.**

- (a) A person filing any pleading, brief, motion, or other document, shall also serve a copy, including all supporting attachments or exhibits, upon every other party and amicus curiae in the proceeding, except that the Director shall serve a complaint as provided in rule 1302(g). Such service shall include service upon the Commission's trial advocacy and advisory staff, except that no service need be made on advisory staff not explicitly listed in trial advocacy staff's pleadings or entries of appearance. Except as provided in rule 1302(g), service shall be made by hand or through mailing on the same day the document is filed, unless a party expressly agrees by a signed waiver to accept service via fax or electronic mail.
- (b) In accelerated complaint proceedings:
  - (I) the complainant shall serve the complaint upon the respondent; and
  - (II) all pleadings and motions shall be served by hand on the same day they are filed.
- (c) Service upon a private corporation, partnership, or unincorporated association may be made by delivering a copy to one or more of the officers, partners, associates, managers, or designated agents thereof. When an attorney represents a party, service shall be made upon the attorney, unless the Commission orders service upon the party. If more than one attorney represents a party, service shall be made upon not more than two attorneys of record designated by the party.

- (d) Proof of service shall be demonstrated through a certificate of service, attached to the document served. For any filed document that does not contain a certificate of service, that omits from the certificate of service a *pro se* party, or that omits from the certificate of service a party's counsel of record, the Commission will presume that the document has not been served on omitted parties or counsel of record. This presumption may be overcome by evidence of proper service.

**1206. Notice – Generally.**

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, mail notice of the application or petition to any person who in the opinion of the Commission may be affected by the grant or denial of the application or petition.
- (b) The notice required by paragraph (a) of this rule shall state the following:
  - (I) The caption and docket number of the proceeding.
  - (II) The date the application or petition was filed.
  - (III) A brief description of the purpose and scope of the application or petition.
  - (IV) Whether the applicant has filed testimony and exhibits and is seeking a Commission decision within 120 days, or has waived the time limits under § 40-6-109.5, C.R.S.
  - (V) The date by which any objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document must be filed.
  - (VI) The date by which Commission staff must file any objection, notice of intervention, testimony, exhibit, or any other document, if different from the date(s) fixed in subparagraph (b)(V) of this rule.
  - (VII) That the Commission may consider the application or petition without a hearing if:
    - (A) no notice of intervention as of right or motion to permissively intervene is timely filed, or
    - (B) no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the application or petition.
  - (VIII) That any person who files an objection, notice of intervention as of right, motion to permissively intervene, testimony, exhibit, or any other document shall do so in accordance with the instructions set forth in the notice; and that the Commission may dismiss or strike any such document not filed in accordance with the instructions set forth in the notice.

- (c) Nothing in paragraph (a) of this rule shall require the Commission to mail notice of any application or petition that does not reasonably specify the information required by subparagraph (b)(III) of this rule. Nothing in paragraph (a) of this rule shall require the Commission to mail notice of any petition for declaratory order or petition for rulemaking, until the Commission in its discretion opens a docket regarding such a petition.
- (d) Unless shortened by Commission order or rule, the intervention period for notice mailed by the Commission shall expire 30 days after the mailing date. The Commission shall re-notice any application or petition which, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) Any utility filing a tariff change other than one requesting less than statutory notice shall provide notice in accordance with § 40-3-104(1), C.R.S.
- (f) A utility other than a railroad or transportation utility filing an application for a tariff change on less than 30 days notice shall:
  - (I) Within three days after filing the application, publish the application in a newspaper of general circulation.
  - (II) Ensure that newspaper notice contains:
    - (A) the name and address of the utility;
    - (B) a statement that the utility has filed with the Colorado Public Utilities Commission an application to change its tariffs on less than 30 days notice;
    - (C) a statement explaining the classes or types of tariffs proposed to be changed, and explaining which customers will be affected by the proposed change;
    - (D) the proposed tariff's effective date;
    - (E) a statement of the purpose of the application, including an explanation of the changes proposed;
    - (F) a statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission;
    - (G) a statement that any person may file with the Commission a written objection to the application, or an intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party;

- (H) a statement that any person filing a written objection or an intervention must file the objection or intervention at least one day prior to the proposed effective date; and
  - (I) that any person may attend the hearing, if any, and may make a statement under oath about the proposed tariff, even if such person has not filed a written objection or intervention.
- (g) A utility filing an application to make a refund shall, within three days of filing the application, publish notice of the application in a newspaper of general circulation. The notice must include the following information:
  - (I) The name and address of the utility.
  - (II) A statement that the utility has filed an application with the Colorado Public Utilities Commission for approval of its proposed refund plan.
  - (III) A statement summarizing the amount of the refund, the date for making the refund, the date the refund is anticipated to be completed, the manner in which the refund is proposed to be made.
  - (IV) A statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission.
  - (V) A statement that any person may file with the Commission a written objection to the application, or in intervention to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party.
  - (VI) A statement that written objections and interventions must be filed by the time listed in the notice separately given by the Colorado Public Utilities Commission.
  - (VII) A statement that any person may attend the hearing, if any, and may make a statement under oath about the application, even if such person has not filed a written objection or intervention.
- (h) All persons other than the Commission who are required to provide notice shall, within 15 days of providing notice, file an affidavit with the Commission stating the date notice was completed and the method used to provide it, accompanied by a copy of the notice or notices provided.
- (i) The Commission may order any applicant or petitioner to provide such additional notice as the Commission deems appropriate.
- (j) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide notice of any notice of proposed rulemaking to: each regulated entity that may be affected; each person who previously notified the Commission in writing that he or she desires notice of proposed rulemaking proceedings; and any other person

who in the opinion of the Commission may be interested in or affected by the proceedings.

- (k) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.

#### **1207. Notice – Transportation Proceedings.**

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

- (a) The Commission shall not notice applications for emergency temporary authority.
- (b) The Commission shall notice applications for temporary authority, with the intervention period for such notice expiring after five days of the mailing of the notice.
- (c) For purposes rule 1206(b), the Commission shall mail notice of any application involving a transportation carrier to all motor vehicle carriers, as defined in § 40-10-104(a), C.R.S.

#### **1208. Adoptions and Adoption Notices.**

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

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

**1209. Payments.**

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

1210-1299 [Reserved]

**PROCEEDINGS**

**1300. Commencement of Proceedings.**

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

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

**1301. Informal complaints and Mediation.**

- (a) An informal complaint is an informal, alternative dispute resolution tool used to avoid the costs associated with litigation. Any person may register an informal complaint with Commission staff, orally or in writing, expressing displeasure or dissatisfaction with a regulated entity.
- (b) In responding to or managing an informal complaint, Commission staff may:
  - (I) Explain to the informal complainant the Commission's jurisdiction or lack thereof;



- (II) Forward to the informal complainant relevant informational packets or brochures;
  - (III) Investigate the informal complaint further;
  - (IV) Refer the informal complaint to the affected regulated entity for a response;
  - (V) File a formal complaint against the regulated entity;
  - (VI) Refer the informal complaint for mediation;
  - (VII) Recommend that the informal complainant consider filing a formal complaint; or
  - (VIII) Employ any combination of the above responses or techniques, or respond in any other reasonably appropriate manner.
- (c) If Commission staff refers an informal complaint to a regulated entity for a response, the regulated entity shall respond in writing within 14 days of the referral, or such lesser period as Commission staff may require. If Commission staff requires a lesser period, such period shall be reasonable under the circumstances of the informal complaint.
- (d) If Commission staff refers the informal complaint for mediation:
- (I) Nothing said or offered during mediation or settlement negotiations may be used in any formal complaint proceeding against the person making the statement or offer.
  - (II) The mediator shall attempt to resolve the informal complaint within ten days of the mediator's receipt of the mediation request, although the informal complainant and regulated entity may consent to additional time.
- (e) A person may withdraw an informal complaint or may file a complaint at any time.

**1302. Formal Complaints.**

- (a) Any person may file a formal complaint at any time. A formal complaint shall set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and, if known, how any statute, rule, tariff, price list, time schedule, order, or agreement is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, if applicable:
- (I) A complaint which seeks to modify, limit, suspend, annul, or revoke a certificate, permit, registration, license or other authority shall be signed and sworn by the complainant.

- (II) A complaint claiming unreasonable rates or charges of any gas, electric, water, or telephone public utility shall comply with the provisions of § 40-6-108(1)(b), C.R.S.
- (III) A complaint against a cooperative electric association shall comply with the provisions of § 40-9.5-106, C.R.S., if applicable.
- (b) The Commission may impose a civil penalty, where provided by law, after considering evidence concerning the following factors:
  - (I) The nature, circumstances, and gravity of the violation;
  - (II) The degree of the respondent's culpability;
  - (III) The respondent's history of prior offenses;
  - (IV) The respondent's ability to pay;
  - (V) Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
  - (VI) The effect on the respondent's ability to continue in business;
  - (VII) The size of the business of the respondent; and
  - (VIII) Such other factors as equity and fairness may require.
- (c) The Commission may expedite a formal complaint proceeding on its own motion or upon the motion of a party if such motion shows good cause or the consent of all the parties. If the Commission expedites a formal complaint, it shall enter a procedural order:
  - (I) setting forth the expedited schedule; and
  - (II) detailing the limits the Commission, in its discretion, places on discovery.
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, or formal complaints regarding interconnection service quality matters, shall receive accelerated treatment if:
  - (I) At least ten days prior to filing the complaint, the complainant has personally served upon the respondent written notice of intent to file an accelerated complaint, together with identification of the provision of any applicable law or agreement that the complainant contends is not being complied with, and a description of the facts demonstrating any alleged violation of any applicable law or agreement.

- (II) The complainant has attached to the complaint copies of all relevant nonconfidential documents, including correspondence and work papers.
  - (III) The complaint includes a certification that any and all methods of dispute resolution established in any applicable agreement, including escalation to higher levels of management within the parties' organizations, have been exhausted.
  - (IV) The complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to resolve the disagreement, and despite those negotiations the parties failed to resolve the issue.
  - (V) The complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above.
  - (VI) On the same day as the complaint is filed with the Commission, the complainant served a copy of the complaint by hand-delivery during normal business hours on the person designated by the respondent to receive service of process.
- (e) In accelerated formal complaint proceedings, in addition to the provisions of this rule, parties shall comply with the following rules, if applicable: 1205(b); 1308(b); 1308(c); 1400; 1405(b); and 1409(b).
  - (f) In complaint proceedings where discontinuance of service becomes an issue, the Commission may issue an interim order to a regulated entity requiring it to provide service pending a hearing:
    - (I) If the customer has posted a deposit or bond with the regulated entity equal to the amount in dispute or as otherwise prescribed by the Commission;
    - (II) If the customer has previously made a informal complaint to the Commission, and Commission staff investigation indicates probable success of the customer; or
    - (III) Upon such other good cause as the Commission may deem appropriate.
  - (g) Upon the filing of any formal complaint, except as provided in rule 1205(b), the Director shall promptly serve the respondent with the complaint, an order to satisfy the complaint or file an answer, and a notice setting the date, time, and location of the hearing. The order shall require the respondent to satisfy the complaint or file its answer within 20 days of service of the order. If the complaint is an accelerated complaint the Commission shall promptly order the respondent to satisfy or answer within ten days. For accelerated complaints, the Commission shall set the hearing to occur within 45 days of the filing of the complaint. Unless all parties agree otherwise or the Commission finds

exceptional circumstances warrant, a hearing on an accelerated complaint may not be continued beyond 60 days after the filing of the complaint.

- (h) Except as provided in paragraph (i) of this rule, prior to the Director filing a complaint the Director may give a potential respondent:
  - (I) notice in writing of facts or conduct complained of;
  - (II) a reasonable opportunity to submit to the Commission written data, views, or arguments with respect to such facts or conduct; and
  - (III) except in cases of willful and deliberate violation or of substantial danger to public health and safety, a reasonable opportunity to comply with all lawful requirements.
- (i) Notwithstanding the provisions of paragraph (h) of this rule, the Director shall comply with § 24-4-104(3), C.R.S., as applicable.

### **1303. Applications.**

- (a) An application may be made as follows:
  - (I) Telecommunications matters, as provided in rule 2002.
  - (II) Electric and steam matters, as provided in rule 3002.
  - (III) Gas matters, as provided in rule 4002.
  - (IV) Water matters, as provided in rule 5002.
  - (V) Transportation carrier matters, as provided in rule 7002.
  - (VI) Rail matters, as provided in rule 8002.
- (b) Except as provided in paragraph (c) of this rule, an application shall be deemed complete as follows:
  - (I) When the Commission or Commission staff evaluates an application to determine completeness, the evaluation shall consider only whether the applicant has provided the information required by the Commission's rules or order, or whether the application adequately identifies the relief the applicant requests and supports the request with adequate types of information. The evaluation shall not consider the application's substantive merit or lack thereof.
  - (II) Not more than ten days after the filing of an application, Commission staff may send the applicant, by mail, electronic mail, or facsimile, written notification concerning any specific deficiencies of the application. Upon receiving such notification, the applicant may file a response either curing

all the deficiencies noted by Commission staff or explaining why it believes no further action is required. The applicant's response, if any, shall be filed no later than ten days after Commission staff's written notification was sent. If the applicant does not respond in the time allotted, the Commission may, after the application's notice period has expired, dismiss the application without prejudice and close the docket.

- (III) Commission staff has initial responsibility for determining completeness of an application. If, within 15 days after an application's notice period expires, Commission staff makes no objection before the Commission regarding an application's completeness, the application shall be automatically deemed complete without the need for formal action by the Commission. If, within 15 days after an application's notice period expires, Commission staff objects before the Commission regarding an application's completeness, the Commission shall issue a determination on completeness within ten days of Commission staff's objection. The Commission may dismiss an application determined to be incomplete or may issue any other appropriate order. If the Commission does not issue a determination within ten days of Commission staff's objection, the application shall be automatically deemed complete. At any time, the Commission may by order deem an application complete.
- (IV) Nothing in this paragraph (b) shall be construed to prohibit dismissal of an application on its merits.
- (c) Rail applications shall be deemed complete on the date of mailing of the Commission decision deeming the application complete.
- (d) An applicant may at any time file a waiver of the time limits provided in § 40-6-109.5, C.R.S. If an application is a joint application, a waiver filed by any one of the applicants shall be effective for all applicants.

**1304. Petitions.**

- (a) A petition may be made as follows:
- (b) Telecommunications matters, as provided in rule 2003.
- (c) Electric and steam matters, as provided in rule 3003.
- (d) Gas matters, as provided in rule 4003.
- (e) Water matters, as provided in rule 5003.
- (f) Transportation carrier matters, as provided in rule 7003.
- (g) Rail matters, as provided in rule 8003.
- (h) Petition for Rulemaking, as provided in rule 1306.

- (i) Petition seeking a variance of any rule, as provided in rule 1003.
- (j) Petition seeking a declaratory order.
  - (I) A person may file a petition for a declaratory order either in an original or a pending proceeding.
  - (II) The Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty affecting a petitioner with regard to any statutory provision or Commission rule, regulation, or order.
  - (III) At its discretion, the Commission may grant, deny, or dismiss any petition seeking a declaratory order.

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

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

- (I) the Commission orders a change to be made, the time when it shall take effect, and the manner in which it shall be filed and published;
- (II) the Commission takes no action within the 120- or 210-day suspension period, as applicable; or
- (III) the Commission fails to approve or suspend the tariff, price list, or time schedule before the tariff, price list, or time schedule's effective date.

### **1306. Rulemaking.**

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

### **1307. Administrative Dockets.**

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

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

- (a) A response may only be filed to: an application, as part of an intervention; a petition, as part of an intervention; a complaint, as provided in this rule and rule 1302(g); a motion, as provided in rule 1400; a brief or statement of position, within 14 days of the date shown on the certificate of mailing; or exceptions, within 14 days of the date shown on the certificate of mailing. No response may be filed to an answer, response, notice of intervention as of right, notice, or request for RRR. Notwithstanding the provisions in this paragraph (a), the Commission may waive response time and may act immediately upon a finding that time is of the essence.
- (b) Except as provided by this paragraph (b), a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or answer a complaint. In accelerated complaint proceedings, the respondent shall file a response within ten days after service of the complaint. A response to a complaint shall admit or deny with particularity each allegation of the complaint, and shall separately state and number each affirmative defense. Where a complaint is filed by a regulated entity, the respondent may assert a counterclaim in its response. A counterclaim shall be answered within 20 days and is subject to a motion to dismiss as a complaint under paragraph (c) of this rule.
- (c) A respondent may file a motion to dismiss a complaint or counterclaim within 14 days of service; except in accelerated complaint proceedings, in which the respondent shall file any motion to dismiss with the respondent's answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the

complaint or counterclaim until 14 days after an order denying the motion to dismiss. A motion to dismiss may be made on any of the following grounds: lack of jurisdiction over the subject matter or the person; insufficiency of process or service of process; lack of standing; insufficiency of signatures; or failure to state a claim upon which relief can be granted. No motion need be entertained regarding misjoinder of claims or misjoinder or nonjoinder of parties, nor must any claim be dismissed because of the absence of direct damage to a party. No defense is waived by being joined with one or more other defenses in a motion to dismiss. A party may respond within 14 days of being served with a motion to dismiss. Any motion to dismiss shall be determined before hearing unless the Commission orders that it be deferred until hearing.

- (d) If a respondent fails to timely file a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the respondent to have admitted such allegation or to have waived such affirmative defense, and the Commission may grant any or all of the relief requested.

**1309. Amendment or Withdrawal.**

- (a) Except in complaint proceedings, a party commencing an action may freely amend or supplement its pleading at any time during the intervention and notice period, if any. Thereafter, or in complaint proceedings, the commencing party shall obtain leave of the Commission to amend or supplement. Except in complaint proceedings, whenever a commencing party amends or supplements a pleading, other than through a restrictive amendment, it, or the Commission, as applicable, shall provide new notice consistent with rule 1206. All applicable timelines run from the date of the most recent amendment or supplement, except that a restrictive amendment shall not change applicable timelines.
- (b) A respondent may freely amend or supplement its pleading at any time within 20 days of the filing of its original responsive pleading. Thereafter, the respondent shall obtain leave of the Commission to amend or supplement.
- (c) Any motion to amend or supplement a pleading that is filed more than 20 days before the first day of a hearing shall be ruled upon before the hearing.
- (d) A party may withdraw a pleading upon notification to the Commission and all parties prior to 30 days before the first day of hearing. A party may withdraw or dismiss a pleading after such time only upon motion granted by the Commission. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced.

1310-1399 [Reserved]



## **PRE-HEARING PROCEDURE**

### **1400. Motions.**

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

### **1401. Intervention.**

- (a) Except as provided by paragraph (d) of this rule, any person may file a notice of intervention as of right or a motion to permissively intervene within 30 days of notice of any docketed proceeding, unless the Commission's notice or a specific rule provides otherwise. The Commission shall not enter a final decision in any docketed proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements.
- (b) A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right which may be affected by the proceeding.
- (c) A motion to permissively intervene shall state the grounds relied upon for intervention, the claim or defense for which intervention is sought, including the specific substantial interest which justifies intervention, and the nature and quantity of evidence, then known, that will be presented if intervention is granted.
- (d) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within ten days after the time otherwise specified by paragraph (a) of this rule.
- (e) In transportation application proceedings:
  - (I) A notice of intervention as of right shall include a copy of the motor vehicle carrier's letter of authority, shall show that the motor vehicle carrier's authority is in good standing, shall identify the specific parts of that authority which are in conflict with the application, and shall explain the consequences to the motor vehicle carrier and the public interest if the application is granted.

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

**1402. Consolidation.**

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

**1403. Uncontested (Modified) Proceedings.**

- (a) The Commission may, without a hearing and without further notice, upon either its own initiative or upon the motion of a party, determine any application or petition which is uncontested and unopposed, if a hearing is not requested and the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and exhibits. A person having knowledge of the stated facts shall, under oath, sign the sworn statement, attachments, and exhibits. The sworn statement need not be notarized, but it shall contain language indicating that the signatory is affirming that the statements are true and correct to the best of the signatory's knowledge and belief.
- (b) An intervention will not be deemed to be a contest or an opposition, unless it contains a clear statement specifying the grounds therefore. If all parties withdraw their interventions before completion of a hearing, the matter may be determined as an uncontested proceeding.

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

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

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

**1405. Discovery and Disclosures.**

- (a) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure govern discovery, except for the following: 16; 16.2; 26(a)(1)-(4); 26(b)(2); the first two sentences of 26(d); 26.2; 26.3; 30(a)(2)(A); 30(a)(2)(C); the first two sentences of the second paragraph of 34(b); 33(a); 33(b)(3); 35; the time requirement of the second sentence of the second paragraph of 36(a); 37(c); and any reference to a case management order. In addition to the foregoing exceptions, any portion of any Colorado Rule of Civil Procedure relating to discovery that is inconsistent with any Commission rule shall also be excepted.
- (b) In accelerated complaint proceedings, unless the Commission orders otherwise:
  - (I) Within ten days of the filing of the answer, the complainant shall file and serve by hand on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
  - (II) Within ten days of service of the complainant's list of witnesses and copies of exhibits, the respondent shall file and serve by hand on all other parties a list of witnesses, together with a brief summary of the testimony of each witness, and copies of all exhibits it intends to offer into evidence.
  - (III) All other discovery shall commence by hand delivery within 15 days of the filing of the complaint. The following rules shall apply:
    - (A) Each party shall be limited to taking not more than two depositions.
    - (B) Each party shall be limited to a total of not more than 20 interrogatories, including all discrete subparts, requests for production of documents, or requests for admission.
  - (IV) Responses to discovery requests, including any objections, shall be filed and served by hand delivery within seven days of receipt of the request. Any motion to compel shall be filed and served by hand within five days of receipt of any objection, and a response to such a motion shall be filed and served by hand within seven days of receipt of the motion.
- (c) In application proceedings set for hearing, unless the Commission orders otherwise, an applicant shall file and serve its testimony and exhibits not later than 15 days after the application is deemed complete; each intervenor shall file

and serve its testimony and exhibits not later than ten days before the first day of hearing. If the setting for hearing is such that compliance with this rule is impractical or impossible, the Commission shall permit a reasonable time for compliance.

- (d) In transportation proceedings, notwithstanding anything in paragraphs (a), (b), or (c) of this rule to the contrary, and unless the Commission orders otherwise:
  - (I) If an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.
  - (II) Each intervenor in transportation application proceedings shall file and serve its list of witnesses and copies of its exhibits. If the applicant has filed its testimony or a detailed summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than ten days after the conclusion of the notice period. If the applicant has not filed its testimony or a detailed summary of testimony, and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits not later than 20 days after the notice period has expired.
  - (III) No depositions may be taken.
  - (IV) Parties shall be limited to a single set of not more than 20 interrogatories, including all discrete subparts, requests for production of documents, or requests for admission.
  - (V) Data requests for documents or tangible things shall not exceed a total of six months of the 12-month period immediately preceding the commencement of the proceeding.
  - (VI) Any person adversely affected by a failure of another party to provide discovery may file a motion to compel discovery, a motion to dismiss, or a motion in limine.
- (e) In all matters other than application, transportation, complaint, or accelerated complaint proceedings, unless a specific statute, rule, or order provides otherwise, the commencing party shall file and serve its testimony and exhibits no later than 40 days before the first day of hearing, and all other parties shall file and serve testimony and exhibits no later than 20 days before the first day of hearing.
- (f) A party shall either serve requested discovery or file a written objection within ten days of a request. The Commission will entertain motions to compel or for protective orders only after the movant has made a good faith effort to resolve the discovery dispute. The Commission discourages discovery disputes, and will

sanction parties and attorneys that do not cooperate in good faith. Such sanctions may include, but are not limited to, payment of an opposing party's costs, expenses, and attorney's fees attributable to a lack of good faith, dismissal of a party, disallowance of exhibits or witness testimony, or such other and further relief as the Commission may deem appropriate. Resolution of discovery disputes shall take precedence over other matters.

**1406. Subpoenas.**

Upon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue a subpoena or a subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing, consistent with § 40-6-103(1), C.R.S.

**1407. Stipulations.**

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

**1408. Settlements.**

- (a) A respondent may submit to Commission trial advocacy staff an offer of compromise of any proposed civil penalty. If Commission trial advocacy staff accepts an offer of compromise, the parties shall reduce the compromise agreement to writing and shall file the agreement and a joint motion for acceptance of the agreement.
- (b) Any settlement agreement shall be reduced to writing and filed with the Commission, which shall enter a decision approving or disapproving it, or recommend a modification as a condition for approval. An agreement that is disapproved shall be privileged and inadmissible as evidence in any Commission proceeding.

**1409. Conferences.**

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

1410-1499 [Reserved]

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

**1500. Burden of Proof.**

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

**1501. Evidence.**

- (a) The Commission shall, to the extent practical, conform to the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts. Unless the context otherwise requires, wherever the word "court", "judge", or "jury" appears in the rules of evidence, it shall mean the Commission, a hearing commissioner, or an administrative law judge. However, the Commission shall not be bound by the technical rules of evidence. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. Specifically, the Commission may receive and consider evidence not admissible under the rules of evidence, if the evidence possesses reliable probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (b) A party sponsoring an exhibit shall furnish a copy to each commissioner or to the administrative law judge or hearing commissioner, and to each party present at the hearing. If exhibits have been filed and served prior to the hearing, the sponsoring party need only provide one copy for the record and one copy for each commissioner or the administrative law judge. The Commission may limit the number of copies to be furnished where reproduction is burdensome.

- (c) The Commission may take administrative notice of general or undisputed technical or scientific facts, state and federal constitutions, statutes, rules, regulations, tariffs, price lists, time schedules, rate schedules, annual reports, documents in its files, matters of common knowledge, and matters within the expertise of the Commission. Any fact to be so noticed shall be specified in the record, and copies of all documents relating thereto shall be provided to all parties and the Commission, unless they are readily available from the parties, or they are voluminous. Every party shall be afforded an opportunity to controvert the fact to be so noticed.

**1502. Interim Orders.**

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

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

At the conclusion of any proceeding, the Commission may order the filing of written briefs or statements of position.

**1504. Record.**

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

**1505. Exceptions.**

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

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

- (a) Any party may request RRR of any Commission decision or of any recommended decision that becomes a Commission decision. Where a recommended decision becomes a Commission decision without the filing of exceptions, no party may challenge any finding of fact in its request for RRR.
- (b) A request for RRR, or a motion for an extension of time in which to file such a request, shall be filed within 20 days after a decision of the Commission, or after a recommended decision by a hearing commissioner or an administrative law judge has become the decision of the Commission. A motion for extension of time based upon the unavailability of a transcript shall show that the transcript request was filed within five days of the date on which the Commission decision was mailed.



- (c) No response may be filed to a request for RRR. A request for RRR does not stay the Commission's decision unless it is specifically so ordered. If the Commission does not act upon a request for RRR within 30 days of its filing, it is denied and the Commission's decision shall be final.

**1507. Judicial Review.**

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

**1508. Enforcement Actions.**

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

**Attachment 1**

ATTACHMENT 1

NONDISCLOSURE AGREEMENT  
RELATING TO CONFIDENTIAL DOCKETED INFORMATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. \_\_\_\_\_

[DOCKET CAPTION]

NONDISCLOSURE AGREEMENT

I HEREBY STATE THAT I HAVE READ THE PROTECTIVE PROVISIONS RELATING TO CONFIDENTIAL INFORMATION CONTAINED IN RULES 4 CCR 723-\_\_\_\_ THROUGH \_\_\_\_ AND AGREE TO BE BOUND BY THE TERMS OF THOSE PROTECTIVE PROVISIONS WITH RESPECT TO ALL EVIDENCE AND INFORMATION PRODUCED OR ARISING IN THE COURSE OF THIS DOCKET NO. .

\_\_\_\_\_  
NAME

\_\_\_\_\_  
Title

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

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Party in Case

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Date

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Signature

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Signature of Counsel

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