

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-528ALL

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
REPEALING AND ADOPTING RULES**

Mailed Date: April 25, 2005

TABLE OF CONTENTS

I. <u>STATEMENT</u>	2
II. <u>DISCUSSION</u>	3
A. Rule 1001.....	5
B. Rule 1003, Waivers	5
C. Rule 1004, Definitions.....	6
D. Rule1007, Commission Staff.....	7
E. Rule 1100, Confidentiality	7
F. Rule 1103, Personal Information-Collection.....	8
G. Rule 1108, Disqualification of Commissioner or Administrative Law Judge	8
H. Rule 1201, Attorneys.....	8
I. Rule 1202, Form and Content	8
J. Rule 1203, Time	9
K. Rule 1204, Filing	9
L. Rule 1205, Service.....	10
M. Rule 1206, Notice-Generally	10
N. Rule 1301, Informal Complaints and Mediation	13
O. Rule 1302, Formal Complaints.....	13
P. Rule 1303, Applications	14

Q. Rule 1305, Rejection or Suspension of Proposed Tariffs, Price Lists, or Time Schedules 14

R. Rule 1308, Responses: Generally-Complaints14

S. Rule 1309, Amendment of Withdrawal.....14

T. Rule 1403, Uncontested (Modified) Proceedings15

U. Rule 1404 Referral to Hearing Commissioner or Administrative Law Judge.15

V. Rule 1405, Discovery and Disclosures of Prefiled Testimony.....15

W. Rule 1408, Settlements17

X. Rule 1501, Evidence.....17

Y. Rule 1502, Interim Orders18

Z. Rule 1503, Briefs and Statement of Position.....18

AA. Rule 1504, Record18

BB. Rule 1505, Exceptions.....18

CC. Rule 1506, Rehearing, Reargument, or Reconsideration19

DD. Rule 1507, Judicial Review19

EE. Attachment 119

III. ORDER.....19

 A. The Commission Orders That:19

I. STATEMENT

1. This proceeding was instituted by the issuance of Decision No. C03-1399, December 18, 2003.

2. By that decision the Commission gave notice of a proposed rulemaking regarding its Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The intent of this proceeding is to repeal the existing rules and enact a complete replacement set.

3. That notice clarified that the proposed rules incorporate certain provisions of the Commission’s existing Rules Regulating the Collection and Disclosure of Personal Information, 4 CCR 723-7 (Privacy Rules). Also, the existing Rules Governing Claims of Confidentiality of

Information Submitted to the Colorado Public Utilities Commission (Confidentiality Rules) found at 4 CCR 723-16 have been incorporated in their entirety under the proposed Rules 1100 through 1102.

4. The Commission also specifically noted that it would consider any suggestions as to how any of the rules may be made more efficient, rational, or meaningful.

5. Finally, that order set the matter for hearing for March 25 and 26, 2004, at 9:00 a.m. in a Commission hearing room in Denver, Colorado. Hearings were held on those dates, and also on August 2 and 3, 2004, November 22 and 23, 2004, and March 18, 2005. Several interested persons filed comments and also provided oral comments. Written comments were received from Metro Taxi, Inc.; the Colorado Office of Consumer Counsel (OCC); the Burlington Northern and Santa Fe Railway Company; AT&T Communications of the Mountain States, Inc. and TCG Colorado; Qwest Corporation; WorldCom, Inc.; Public Service Company of Colorado (Public Service); Aquila, Inc. (Aquila); and the Union Pacific Railroad Company.

6. In accordance with § 40-6-109, C.R.S., the undersigned Administrative Law Judge (ALJ) now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. DISCUSSION

7. Rulemaking is a quasi-legislative function. Rulemakings encompass a range of determinations, with one end of the continuum having regulations based purely on policy considerations and the other end of the continuum having regulations the need for which may turn upon proof of discrete facts. *Citizens for Free Enterprise v. Department of Revenue*, 649 P.2d 1054 (Colo. 1982). Most rulemakings in the procedural arena would fall towards the policy end of the continuum.

8. There are several major changes that this order does not make. First, it does not make major changes to the Privacy Rules.¹ The comments in this rulemaking made clear that the Privacy Rules need a major overhaul, particularly in light of today's epidemic of identity theft. However, this rulemaking was not sufficiently focused on the Privacy Rules to develop any sort of a record basis to alter the existing rules. Therefore changes to them are minimal.

9. The second major change that is not made in this proceeding is any major change to the Confidentiality Rules. Several significant changes were suggested, including changing the burden of proof when a claim of confidentiality is challenged; allowing OCC greater or less access to certain materials; and not allowing Commission Staff (Staff) and OCC to maintain certain materials after the close of the proceeding. The record contains few if any comments detailing actual problems with the Confidentiality Rules. Some commenters expressed concern about possible adverse consequences should certain circumstances come to pass, but it was primarily conjecture and not based on actual experience. Again there was just insufficient basis to modify the rules as they exist.

10. The third major area in which no major change is being proposed is that of discovery. While several commenters proposed presumptive limits on discovery, there was insufficient evidence that the current system creates an unworkable or unreasonable burden. No sample discovery was put into the record that demonstrated unreasonable deadlines or unreasonable workloads not adequately dealt with by existing procedures. While there was a common refrain from some utility commenters that discovery was too onerous and response

¹ There will be changes made in the telecommunications rules relating to the applicability of the Privacy Rules to telecommunications providers. Those rules will address any conflict with the FCC's rules on Customer Proprietary Network Information (CPNI).

times are too short, there were no concrete examples of any unreasonable discovery proffered. Thus there is no basis upon which to make major discovery changes.

11. There are a myriad of changes that have been made to the rules as noticed. Most of these were minor and uncontested and not all will be discussed in the body of this decision. They are contained in the proposed rules attached to this decision. In addition, a copy of the proposed rules as originally proposed compared to those proposed for adoption by this decision, in legislative format (*i.e.*, track changes showing) is posted on the Commission's website.

12. There are a number of changes made that were contested by various commenters. Most of these will be discussed in this decision.

A. Rule 1001

13. There is no change to this rule from the rule as proposed. However, it is important to emphasize that Rule 1001 establishes the Rules of Practice and Procedure as default procedures. However, other substantive rules may contain different procedural requirements. For example, the Railroad Rules contain specific requirements for notices in various types of railroad applications. Also, the Telecommunications Rules contain provisions on personal information and CPNI, as noted in Footnote 1.

B. Rule 1003, Waivers

14. Rule 1003(a) has been substantially rewritten. There is only one waiver standard for both substantive and procedural rules. An additional sentence, which was contained in Exhibit 1, and approved of by several commenters, has been added to further flesh out the good cause standard. In addition, the rule has been clarified to note that the Commission may grant waivers from substantive requirements contained in Commission decisions and orders, which is the current practice. However, the proposal that the provision apply to tariffs is not adopted.

The need for such a waiver was not established, given that there are already expedited means of amending tariffs. In addition, significant questions concerning notice were not answered satisfactorily in the record.

C. Rule 1004, Definitions

15. Several definitions had been modified. The definition of “accelerated complaint” has been added since the concept is discussed and the term used throughout the rules.

16. The definition of “affiliate” has been substantially changed. The proposed definition was based on the ability of another company to control a company, and the definition of control contained in the Rules of Practice and Procedure was somewhat ambiguous. The definition has been changed to essentially the currently existing definition, which is also found in § 40-3-104.3(4), C.R.S. The phrase “public utility” has been changed to “regulated entity” but otherwise the definition is the same. The related definition of “control” has been deleted. The word “fellow” has been added to make clear that the rule covers sister corporations, *i.e.*, an affiliate is not only a parent corporation or a subsidiary, but also a fellow subsidiary of a parent corporation.

17. The definition of “personal information” has not been changed to specifically exclude CPNI as defined by the Federal Communications Commission (FCC). This issue is dealt with in the Telecommunications Rules.

18. A definition of “pleadings” has been added to distinguish between pleadings, which are filings made in docketed proceedings, as opposed to other types of filings made by regulated entities with the Commission.

19. The definition of “rate” has been modified to more clearly track statutory provisions² and accepted practice.

20. A definition of “third party” has been added to ensure that the Privacy Rules closely track the existing Privacy Rules and are not broadened in this proceeding.

D. Rule 1007, Commission Staff

21. Rule 1007(a) now indicates that the Director is neither advisory nor trial staff by default. This recognizes the unique role of the Director.

E. Rule 1100, Confidentiality

22. Several commenters suggested that parties submitting confidential information be permitted to automatically withdraw the information, after an adverse ruling concerning confidentiality, rather than seek its return by motion. The commenters did not establish a good policy reason for changing the rule. In addition, good reasons exist to leave the rule as is. For example, it is important to determine if non-confidential and confidential material have been intertwined in the exhibit, and a precise determination of what could be removed from the record would require Commission consideration.

23. There was some concern also expressed by commenters that the Director, not necessarily an attorney, should not be making determinations of confidentiality. The Director has the advice and counsel of the office of the Attorney General, and this assures adequate compliance with the law.

24. A provision has been added to Rule 1100(g) that requires Staff to annually execute a nondisclosure agreement that would cover all proceedings, doing away with the requirement that Staff file such an agreement for each and every proceeding.

² See, e.g., §§ 40-3-103 and 104, C.R.S.

F. Rule 1103, Personal Information-Collection

25. The phrase “other than a non-presubscribed interexchange customer” is deleted.

This is to insure that the telecommunications rules exclusions are fully effective.

G. Rule 1108, Disqualification of Commissioner or Administrative Law Judge

26. A slight wording change has been made here only to correct an awkward construction. No substantive change is intended.

H. Rule 1201, Attorneys

27. Rule 1201(b) has been substantially rewritten in response to several decisions by the Commission discussing attorney representation. *See* Decisions Nos. C04-0884, C04-1119, and C04-1126. In those decisions the Commission announced its interpretation of the law that is at odds with the proposed rulemaking. The Commission’s interpretation is based upon statutory construction and therefore is not subject to being changed by rules.

28. Rule 1201(c) has been deleted. This provision, which refers to the Commission’s practice of allowing utilities to execute powers of attorney to designate agents for the purposes of filing tariffs and advice letters, is confusing when it appears in a rule relating to attorneys at law. Therefore it is deleted. The subject of non-attorney agents making tariff filings should be treated in other substantive rules.

I. Rule 1202, Form and Content

29. The proposed rule as noticed was confusing, as it attempted to combine pleadings in docketed proceedings with other types of filings, such as annual reports and different compliance filings. The rule has been clarified to cover only pleadings and filed testimony. Several changes have been made, such as the deletion of the bond paper requirement, the size limitation to text of no more than ten characters to the inch, and mandatory stapling. (This will

allow binding of testimony.) In addition, the existing limitation of 30 pages including attachments has been modified in recognition of the fact that many attachments to a pleading are lengthy and cannot be reduced. Therefore the page limit no longer includes attachments. This is a significant change the Commission will monitor closely. Should the Commission feel it is becoming inundated, of course, it can resume the old practice by rulemaking or by an order in a specific proceeding.

30. A numbering system that had been proposed for filed testimony has been dropped in favor of a more descriptive proposal from one of the commenters. This is found in Rule 1202(d)(IV).

J. Rule 1203, Time

31. The ALJ declines the suggestion to adopt a rule analogous to C.R.C.P. 6(a), which provides for three additional days to do an act after service by mail.

32. Certain commenters also seek a clarification of Rule 1203(c)'s applicability to tariff filings. However, a rulemaking proceeding deals with the general promulgation of the rules, and individual circumstances and applications of rules by necessity will be dealt with in individual circumstances.

K. Rule 1204, Filing

33. Several parties have suggested that the Commission should enter the world of electronic filing. The Commission sees great benefit to such a system. Nonetheless, at this point in time the infrastructure does not exist to incorporate these suggestions. Hopefully, in the not too distant future, the Commission will make significant progress in this area.

34. Some renumbering of Rule 1204 was done to correct a typographical error in the proposed rules.

L. Rule 1205, Service

35. Rule 1205(b)(2) as originally proposed, relating to accelerated complaints, required service of all pleadings by hand on the same day they were filed. The rule has been rewritten to require same day service by electronic mail and a choice of either service by hand or service by overnight delivery. This is more workable, particularly for parties not present or resident in the Denver metropolitan area.

M. Rule 1206, Notice-Generally

36. Rule 1206(a) has been written to remove the directive to the Commission itself concerning the time to notice applications of petitions. The internal business practices of the Commission should reside primarily in Commission policies and procedures, and not in the Rules of Practice and Procedure.

37. Rule 1206(f) contains the procedural requirements for filing an application for a tariff change on less than 30 days' notice, or a so-called LSN application. The substantive contents of such an application are contained in the substantive rules. This rule engendered many comments. First, some commenters strongly suggest that the Commission's LSN notice requirements are insufficient. These commenters note that some applications filed by large utilities, for example a GCA filing, may require a substantial percentage increase in the customers' utility bills, yet the only notice given may be a small notice in the legal section of a newspaper. Other commenters suggest that these types of filings are primarily adjustment clause filings; are simply the implementation of a methodology that has been approved by the Commission; and do not deserve any more notice than currently required. The Commission has directed in certain decisions,³ that the Commission should reexamine its practices concerning

³ See, e.g., Decision No. C04-0076 and Decision No. C04-0077.

these types of applications in this proceeding. The record in this proceeding does contain examples and indications that there are times when there are substantial changes to ratepayers' utility bills on less than 30 days' notice for which the notice given is simply a newspaper notice in the legal section in a small ad. The ALJ finds and concludes that in most cases, these notices do not reach the vast majority of the ratepayers who are affected by the changes in the rates.

38. The general manner of giving notice for a normal change in rates (giving at least 30 days' notice) is set forth in § 40-3-104(1), C.R.S. All utilities are required to file the new rate schedules with the Commission and keep them open for public inspection. For utilities other than transportation and water utilities, additional notice is required by one of four means, at the option of the public utility. The first option is publication of the notice in each newspaper of general circulation in each county in which the public utility provides service. Each notice must be four columns wide and 11 inches high, stating the changes, and must be published during the first 20 days of the 30-day period prior to the effective date of the rates. The second option is mailing notice to each affected customer during the first 20 days of the 30-day period. The third option is inclusion of an insert in a regular bill mailing during the first 20 days of the 30 days prior to the effective date. The fourth option is in such other manner as the Commission may prescribe upon application by the utility.

39. Section 40-3-104(1)(c)(iii), C.R.S., provides that increases in rates, fares, tolls, rentals, or charges associated with electric and gas utility adjustment clauses are subject only to the provisions of subsection (2) of that section. Section 40-3-104(2), C.R.S., provides that the Commission may allow changes with less notice required by subsection (1).

40. The question then becomes, what is the appropriate amount of notice for electric and gas utility adjustment clauses and other tariff changes on less notice than required by § 40-3-

104(1), C.R.S.? The undersigned concludes that mandating mailings for each of these types of changes would be prohibitively expensive.⁴ The timing of the billing cycles would make it difficult if not impossible for these types of changes to always be noticed at least ten days before their effective date. Therefore it appears that some sort of newspaper notice should be required that is less than that required for a general rate case or regular 30 days' notice tariffs, but more than a simple one-column, one-inch ad in the legal notice section. A newspaper ad three columns wide by five inches high is approximately one third of the size of the newspaper notice required in § 40-3-104(1)(c)(i)(I), C.R.S. A notice of this size should be better able to capture ratepayers' attention at a reasonable cost to the utilities. Therefore this requirement has been written into Rule 1206(f)(I).

41. Other commenters discussed so-called "compliance" filings. Some utilities consider tariff sheets filed at the direction of the Commission to have special status absent any Commission directive. The Commission disagrees with this position, as is evidenced in Decision No. C04-0720. The Commission there pointed out that the Public Utilities Law makes no distinction between tariffs filed in compliance with a Commission order and regular tariff changes. Nonetheless, it is clear that in many instances at the conclusion of a formally litigated suspension proceeding, the Commission has in mind that the respondent utility will file tariffs to be effective on less-than-statutory notice. The Commission needs to be diligent in directing the utility in this matter. Thus no change has been made to the proposed rules to confer special treatment upon compliance filings.

⁴ Public Service estimated that a special mailing to all of its customers would cost in excess of \$500,000.

N. Rule 1301, Informal Complaints and Mediation

42. Proposed Rule 1301(b) has been partly modified to reflect current practice. A proposal to amend Rule 1301(c) to guarantee that a utility would have at least five days to respond to Commission Staff inquiry was not adopted. Circumstances may preclude such a time period, for example, when a discontinuance of service is imminent.

O. Rule 1302, Formal Complaints

43. Rule 1302(b) drew several comments. Rule 1302(b) states, “The Commission may impose a civil penalty, *where provided by law*, after considering evidence concerning the following factors ...” (emphasis added). The rule then sets forth several factors that will be considered. The italicized portion above should make it clear that this is not an attempt to expand into areas where the Commission previously had no authority to issue civil penalties. The Commission currently has such jurisdiction in the transportation field and in the gas pipeline safety field. Since the Commission has no authority to issue civil penalties in, for example, the telecommunications arena, the rule would not apply. Therefore no changes to the proposed rule were made.

44. Rules 1302(h) and (i) were confusing as noticed. Initially, it should be noted that the change that permits the Director to file a complaint received almost no comment and it is adopted as proposed.

45. However, the intent of the rest of the proposed rule was to clarify that when a license is in jeopardy, the Director will give such notice in advance of filing a complaint as is required by § 24-4-104(3), C.R.S. When the Director files a complaint where a license is not an issue, the Director need not give the advance notice.

P. Rule 1303, Applications

46. Rule 1303(c) concerning rail carrier applications has been deleted. The deeming of rail carrier applications treated the same as the deeming of any other application, unless it is changed in the railroad rules.

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

47. Rule 1305(f) was confusing as proposed. Rule 1305(f) speaks only to tariffs, price lists, or time schedules that have already been suspended. Rule 1305(f) clarifies that once suspended, no change can be effective except by one of two ways, namely, the Commission establishes (by order) a change, or it fails to act within a suspension period and the suspended item goes into effect by operation of law. The proposed rule has been rewritten to clarify and conform to this.

R. Rule 1308, Responses: Generally-Complaints

48. Rule 1308(a) has been substantially rewritten to clarify. In addition, a suggestion from one of the commenters was adopted concerning a requirement that a party seeking waiver of response time certify that the party has contacted other parties. This should reduce the likelihood of a party having a matter decided without its input.

S. Rule 1309, Amendment of Withdrawal

49. The phrase “restrictive amendment” contained in Rule 1309(a) refers to an amendment that does not expand the scope of the original pleading such that renote is required. While the term is most commonly used in the transportation field, the concept is the same in the other areas of the Commission’s jurisdiction.

50. Rule 1309(d) has been modified to essentially restate existing Rule 22(h) of the Rules of Practice and Procedure. The proposed 30-day cutoff for dismissal or withdrawal by right has been returned to the existing 45-day cutoff.

T. Rule 1403, Uncontested (Modified) Proceedings

51. Rules 1403(a) and (b) have been rewritten for clarity. No substantive changes are intended. The last sentence of Rule 1403(b) has been given standalone treatment as it is a separate concept.

U. Rule 1404 Referral to Hearing Commissioner or Administrative Law Judge.

52. Rule 1404(b) has been rewritten to clarify the procedure where an administrative law judge or hearing commissioner conducts a hearing but the Commission enters an initial Commission decision as provided for in § 40-6-109(6), C.R.S.

V. Rule 1405, Discovery and Disclosures of Prefiled Testimony

53. The rule has been given a more descriptive title. Rule 1405(a) has been slightly modified to add certain additional Colorado Rules of Civil Procedure that are excluded from Commission discovery.

54. Proposed Rule 1405(f) has now been moved forward to Rule 1405(b) to reflect its importance stating the general discovery parameters. The rule has been rewritten to clarify that it concerns discovery responses. In addition, discovery responses and objections must be now served concurrently, as suggested by several commenters. A sentence has been added to clarify that discovery materials are not filed with the Commission except as necessary to support a pleading relating to discovery, such as a motion for a protective order or motion to compel.

55. Rule 1405(c), formerly Rule 1405(b), concerns accelerated complaint proceedings. The reference to the method of service has been deleted as it is described in Rule 1205(b).

56. Rule 1405(d), which was noticed as proposed Rule 1405(c), has been substantially rewritten. This rule sets forth the default schedule for the filing of testimony and exhibits in application proceedings other than transportation carrier application proceedings. Several commenters noted that the Commission's current default schedule frequently conflicts with actual hearing practice and occasionally is impossible to meet. The default schedule set forth in Rule 1405(d) attempts to tie the filing deadlines to the original filing of the application. There are two scenarios, both of which are common, namely, where an applicant files its testimony and exhibits with its application and where it does not. In the former case, timelines are expedited under § 40-6-109.5(1), C.R.S. A default schedule to cover a range of application proceedings has proven difficult as the prior version of the rules and the comments make clear. The schedule set forth in Proposed Rule 1405(d) does not contain a default timeline for rebuttal testimony. The ALJ's thought was to allow for maximum flexibility when setting the final filing, being aware that rebuttal testimony is not always filed in advance of hearing. Interested persons are urged to carefully review the proposed rule and comment accordingly.

57. Recommended Rule 1405(f), which was noticed as Proposed Rule 1405(e), has been changed. The rule previously applied to "matters other than application, transportation, complaint, or accelerated complaint proceedings." The rule as rewritten and proposed for adoption applies to rate proceedings set for hearing, which would constitute the majority of the proceedings described in the notice. The default filing schedule attempts to take into consideration the suspension period for these types of proceedings. Of course, as under the

current rules, should the default schedule prove unreasonable or unworkable, the Commission may customize a procedural schedule for a given proceeding.

W. Rule 1408, Settlements

58. Rule 1408 has been substantially rewritten. Rule 1408(a) has been deleted. That rule came from the Gas Pipeline Safety Rules and appears confusing in the broader context. Rule 1408(b) now comprises the complete rule and has also been rewritten. Some commenters expressed concern that all settlements would now have to be approved by the Commission. The rule as written now reflects that there are two types of settlements. The first type of a settlement is one where the actual terms become part of the Commission order and enforceable as such. In these types of settlements the Commission has conducted a thorough review to ensure that any settlement is consistent with the public interest and Commission policy. The other type of settlement is where the parties simply agree to resolve their differences in a manner that is not incorporated into a Commission order. Commonly, a dismissal of a formal complaint has been resolved this way. In this type, the Commission does not conduct a probing inquiry into the agreed-upon terms, yet nonetheless must approve the settlement and dismissal of the action. There may be other parties whose interests must be considered. The rule as written accommodates both types of settlements.

X. Rule 1501, Evidence

59. Some commenters suggested changes to the Commission proposed rule concerning administrative notice. However, those commenters' concerns are addressed by the last sentence of Rule 1501(c), which allows any party an opportunity to controvert a fact to be noticed.

Y. Rule 1502, Interim Orders

60. Rule 1502(a) has been eliminated as unnecessary. Most of the comments in this section concern the appealability of interim orders entered by administrative law judges or hearings commissioners. It is the current practice of the Commission to entertain appeals of interim orders on a discretionary basis. The new rule should not encourage the appeal of interim orders, which would unnecessarily involve the Commission in ongoing proceedings that have been referred to ALJs. In addition, appeals of interim orders almost always unavoidably delay a proceeding. Nonetheless, there are certain circumstances where a significant ruling regulating the future course of the proceeding is made and a review would be appropriate. The rules currently have no mechanism for a presiding officer to certify an interim order as immediately appealable. Putting the presiding officer as the gatekeeper for interim order appeals seems to be a reasonable approach for allowing for some necessary interlocutory appeals but not encouraging practices that will result in unnecessary delay.

Z. Rule 1503, Briefs and Statement of Position

61. This rule has been rewritten to reflect that the Commission may order briefs at any time, not just at the conclusion of the proceeding.

AA. Rule 1504, Record

62. Rule 1504(a) has been amended to include a reference to a portion of the Public Utilities Law, § 40-6-113(6), C.R.S., in describing the record of a proceeding.

BB. Rule 1505, Exceptions

63. Rule 1505(a) has been modified by the addition of a sentence. The sentence clarifies that parties may file responses to exceptions within 14 days of the service of the exceptions, which is the current practice.

CC. Rule 1506, Rehearing, Reargument, or Reconsideration

64. Rule 1506(a) has remained unchanged from the proposed rule. It is substantially the same as current Rule 92(a)(1). Contrary to some comments, the current (and proposed) rule is not at odds with the Public Utilities Law.⁵ Rule 1506(c) has been amended by removal of the first sentence concerning responses to rehearing, reargument, or reconsideration. The intent of this is not to allow for responses but rather to reflect that this is duplicative of language contained in Rule 1308(a).

DD. Rule 1507, Judicial Review

65. A reference to the Administrative Procedures Act, § 24-4-106(4), C.R.S., has been added.

EE. Attachment 1

66. Attachment 1 has been deleted by this Decision. This is consistent with the trend of the Commission to specify the contents of forms in the rules, but not the forms themselves.

III. ORDER**A. The Commission Orders That:**

1. The existing Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, are repealed in their entirety. The existing Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-16, are repealed in their entirety.

⁵ The commenter states as follows: “Pursuant to § 40-6-113(4), C.R.S., if a party orders the transcript, it can challenge any basic findings of fact ‘in the decision of the commission.’” *See* Initial Comments of Aquila at p. 28. The cited section does not support the conclusion stated. In addition, this section must be read in conjunction with § 40-6-113(2), C.R.S., which requires, “...The transcript, as so prepared, shall be filed with the commission on or before the time the first pleading is required to be filed with the commission, whether such pleading is exceptions or a petition for rehearing, reconsideration, or reargument...”

2. The Rules of Practice and Procedure appended to this Order as Appendix A are hereby adopted.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1 RULES OF PRACTICE AND PROCEDURE

TABLE OF CONTENTS

BASIS, PURPOSE, AND STATUTORY AUTHORITY.	2
GENERAL PROVISIONS	3
1000. Citation.	3
1001. Scope and Applicability.....	3
1002. Construction.....	3
1003. Waivers.	3
1004. Definitions.....	4
1005. Meetings.....	7
1006. Director.....	8
1007. Commission Staff.....	8
1008. – 1099. [Reserved].....	8
STANDARDS OF CONDUCT	8
1100. Confidentiality.....	8
1101. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Docket.	14
1102. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential.....	18
1103. Personal Information – Collection.	18
1104. Personal Information – Disclosure.	19
1105. Prohibited Communications – Generally.	20
1106. Prohibited Communications – Disclosure.....	20
1107. Prohibited Communications - Remedies.....	21
1108. Disqualification of Commissioner or Administrative Law Judge.	21
1109. – 1199. [Reserved].....	21
FORMALITIES	21
1200. Parties, Amicus Curiae, Non-Parties.	21
1201. Attorneys.	22
1202. Form and Content.....	23
1203. Time.	25
1204. Filing.	25
1205. Service.....	25
1206. Notice – Generally.....	26
1207. Notice – Transportation Carrier Proceedings.....	29

1208.	Adoptions and Adoption Notices.....	30
1209.	Payments.....	30
1210.	– 1299. [Reserved].....	31
PROCEEDINGS.....		31
1300.	Commencement of Proceedings.....	31
1301.	Informal complaints and Mediation.....	31
1302.	Formal Complaints.....	32
1303.	Applications.....	35
1304.	Petitions.....	36
1305.	Rejection or Suspension of Proposed Tariffs, Price Lists, or Time Schedules.....	37
1306.	Rulemaking.....	37
1307.	Administrative Dockets.....	38
1308.	Responses: Generally – Complaints.....	38
1309.	Amendment or Withdrawal.....	39
1310.	– 1399. [Reserved].....	40
PRE-HEARING PROCEDURE.....		40
1400.	Motions.....	40
1401.	Intervention.....	40
1402.	Consolidation.....	41
1403.	Uncontested (Modified) Proceedings.....	41
1404.	Referral to Hearing Commissioner or Administrative Law Judge.....	42
1405.	Discovery and Disclosure of Prefiled Testimony.....	42
1406.	Subpoenas.....	45
1407.	Stipulations.....	45
1408.	Settlements.....	45
1409.	Conferences.....	45
1410.	– 1499. [Reserved].....	46
HEARINGS, ORDERS, AND POST-HEARING PROCEDURES.....		46
1500.	Burden of Proof.....	46
1501.	Evidence.....	46
1502.	Interim Orders.....	47
1503.	Briefs or Statements of Position.....	47
1504.	Record.....	47
1505.	Exceptions.....	47
1506.	Rehearing, Reargument, or Reconsideration.....	48
1507.	Judicial Review.....	49
1508.	Enforcement Actions.....	49

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 of 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. The Commission may grant waivers from Commission rules and from substantive requirements contained in Commission decisions and orders for good cause. In making its determination the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. 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 statute.
- (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) "Accelerated complaint" means a formal complaint filed to resolve a dispute arising out of a telecommunications interconnection agreement, which meets the requirements of paragraph (d) of rule 1302.
- (b) "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. An administrative docket excludes applications, rulemaking proceedings, petitions, complaints, suspension proceedings, or any other adjudicatory proceeding.
- (c) "Affiliate" of a regulated entity means a subsidiary of a regulated entity, a parent corporation of a regulated entity, a joint venture organized as a separate corporation or a partnership to the extent of the regulated entities involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (d) "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.
- (e) "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.

- (f) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (g) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (h) "Customer" means any person who has applied for, been accepted for, or is receiving regulated 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) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed orders requested by the Commission to be filed by a party in a docketed proceeding.
- (u) "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.
- (v) "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.
- (w) "Public Records Law" means Colorado's statutory provisions found at §§ 24-72-201 *et seq.*, C.R.S.
- (x) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, practice, or contract relating to a fare, toll, rental, or charge.
- (y) "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.
- (z) "Regulated entity" means any entity subject to Commission regulation.

- (aa) "RRR" means rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (bb) "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.
- (cc) "Third party" means a person who is neither the customer, a regulated entity, or a regulated entity affiliate.
- (dd) "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.
- (ee) "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.
- (ff) "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.
- (gg) "Transportation proceeding" means any proceeding before the Commission involving a transportation carrier.
- (hh) "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, except the Director, 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) 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. 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.

- (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 subparagraph (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) This rule 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 subparagraph (II) of this paragraph, 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 seven 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.
 - (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.
- (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 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 seven 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 eight copies filed under seal shall be submitted in separate, sealed envelopes numbered serially. The envelopes shall be no smaller than 9" by 12", and no larger than 10" by 13". 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 subparagraph (III)(E), the name and phone number of the person who will retrieve such information.

(d) 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. 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) 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 paragraph (g) of this rule, 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.

- (f) 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 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 in a proceeding or for a purpose unrelated to the specific proceeding in which the information was obtained.
- (g) No access to information under seal shall be allowed until the person seeking such access signs a nondisclosure agreement on a form approved by the Commission. The Nondisclosure Agreement form shall require the persons to whom disclosure is to be made (the signatory) to certify in writing that they have read the protective provisions contained in rules 1100 - 1102 and agree to be bound by the terms of such provisions. The agreement shall contain (1) a listing of the associated docket number; (2) the signatory's full name, title, employer or firm, and business address; (3) the name of the party with whom the signatory is associated; (4) a signature and the date of execution of the agreement; and (5) with the exception of Staff, the signature of the associated 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. Notwithstanding anything in this rule to the contrary, Commission staff need only sign one nondisclosure agreement annually. Such annual nondisclosure agreement shall permit staff access to all confidential material filed or provided to the Commission. The Commission shall maintain in its files the annual nondisclosure agreements signed by staff and shall make such agreements available for public inspection. 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.

- (h) Where reference to information subject to this rule is made in pleadings, 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 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.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, 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. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to retain information subject to this rule 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 were produced, return such documents and information to the party producing them.
 - (II) 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.
- (k) 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 on the grounds of relevancy or materiality.
- (l) 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) Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this rule, 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) 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 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) 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 subparagraph (II)(E) of this paragraph, the name and phone number of the person who will retrieve such information.
- (b) 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 nine 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 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 seven 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 seven-day period referenced in this paragraph, 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 seven 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 paragraph (g) of rule 1100 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 required by paragraph (g) of rule 1100, 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 paragraph (c) of this rule as a substitute for discovery in formal dockets before the Commission.
 - (IV) This paragraph (c) of this rule 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., C.R.S., shall not apply to requests under paragraph (c) of this rule.
- (d) 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) Non-confidential portions of 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.
 - (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. 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.
 - (XI) Any documents or information that have been previously made public.
- (e) A person claiming that any portion of one of the documents listed in paragraph (d) of this rule 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 seven days to allow the person objecting to such disclosure to commence judicial action to prevent public inspection of the subject records.
- (d) 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, 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 third 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) (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) (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.

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:

- (a) Dismissal of the proceeding;
- (b) An adverse ruling on a pending issue that is the subject of the communication, if other parties have been prejudiced;
- (c) The striking of evidence or pleadings when the evidence or pleading is tainted by the communication;
- (d) A public statement of censure by the Commission; or
- (e) 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 may not be impartial, 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) 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; or
 - (IV) 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.

- (c) 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, email address, facsimile number, and the attorney's registration number.
- (d) 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 pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed on 8 1/2" x 11" white paper, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and stapled or bound. 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 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 pleading shall identify the proceeding by caption and docket number, and state the title of the pleading, 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 pleading shall be more than 30 pages in length, excluding attachments.. Attachments shall not be used to evade the page limitation in this rule. The cover sheet, table of contents, certificate of mailing, copies of authorities cited, and copies of a decision that 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) Each witness' exhibits shall be numbered sequentially beginning with the witness' initials and followed by the number of the exhibit. For example, the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, or rebuttal.
 - (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 pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, email address, facsimile number, and attorney registration number. A pleading 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 pleading or filed testimony 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 Commission may reject the pleading or testimony. The party filing the pleading or testimony 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 complaint, answer, motion, intervention, exceptions, RRR, or any other document shall file an original and six copies thereof.
 - (III) 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 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 designated trial advocacy and advisory staff. No service need be made on advisory staff not explicitly listed in trial advocacy staff's pleadings. Except as provided in rule 1205 (b) and 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 on the same day they are filed by electronic mail and either (i) by hand; or (ii) by overnight delivery. Discovery shall be served the same way as pleadings and motions.
- (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 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 notice of the application in a newspaper of general circulation, which notice shall be three columns wide and five inches high.
- (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 Carrier 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) For purposes rule 1206(a), 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) Offer mediation;
 - (VII) Provide to the informal complainant information about how to file 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 be treated as accelerated complaints 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 an 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) Prior to the Director filing a complaint, 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 6002.
 - (VI) Rail matters, as provided in rule 7002.
- (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 and its attorney, 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) 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 petition may be made as follows:

- (a) Telecommunications matters, as provided in rule 2003.
- (b) Electric and steam matters, as provided in rule 3003.
- (c) Gas matters, as provided in rule 4003.
- (d) Water matters, as provided in rule 5003.
- (e) Transportation carrier matters, as provided in rule 6003.
- (f) Rail matters, as provided in rule 7003.
- (g) Petition for rulemaking, as provided in rule 1306.
- (h) Petition seeking a variance of any rule, as provided in rule 1003.
- (i) 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; or
 - (II) the Commission fails to issue a decision on the merits within the suspension period

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, as provided in rule 1503; or exceptions, as provided in rule 1505. 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. Any person requesting a waiver or shortening of response time shall certify that he or she has conferred (or reasonably attempted to confer) with all other parties and represent whether the parties concur with such a request.
- (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 party 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 party 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 responsive 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 an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. An advice letter and tariffs may be withdrawn if they have not yet been suspended and set for hearing. A party may withdraw or dismiss an application, petition, tariff, or advice letter after such respective times 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 or statute 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 that 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 that 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 carrier 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 or unopposed, if a hearing is not requested or required by law and the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing. A person having knowledge of the stated facts shall, under oath, sign a sworn statement attesting to the facts stated in the application or petition and any attachments and/or 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) A proceeding will not be considered to be contested or opposed, unless an intervention has been filed that contains a clear statement specifying the grounds therefor.

- (c) 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 it to make the initial decision.

1405. Discovery and Disclosure of Prefiled Testimony.

- (a) Incorporation by reference, exclusions, and discovery and disclosures generally.
 - (I) Except as provided in subparagraph (II) of this paragraph, the Commission incorporates by reference rules 26-37 of the Colorado Rules of Civil Procedure, as published in the 2004 edition of the Colorado Revised Statutes. No later amendments to or editions of the incorporated material are incorporated into these rules. Any person seeking information regarding how the incorporated material may be obtained or examined may contact the Chief Administrative Law Judge, Colorado Public Utilities Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203. The material incorporated by reference may be examined at any state publications depository library.
 - (II) The following rules of Chapter 4 of the Colorado Rules of Civil Procedure are not incorporated by reference: 26(a)(1)-(4); 26(b)(2); the first two sentences of 26(d); 26.2; 30(a)(2)(A); 30(a)(2)(C); 33(a); 33(b)(3); the first two sentences of the second paragraph of 34(b); 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 exclusions, any portion of Chapter 4 of the Colorado Rules of Civil Procedure that is inconsistent with any Commission rule shall also be excluded.
 - (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.

- (b) A party shall serve discovery responses, and objections if any, 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. Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery.
- (c) 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 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 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 served within seven days of receipt of the request. Any motion to compel shall be filed and served within five days of receipt of any objection, and a response to such a motion shall be filed and served within seven days of receipt of the motion.
- (d) In application proceedings set for hearing, unless the Commission orders otherwise, a party shall file and serve its testimony and exhibits as follows:

- (I) If the applicant files its testimony and exhibits with its application, then an intervenor shall file its testimony and exhibits within 60 days of the filing of the application.
- (II) If the applicant does not file its testimony and exhibits with its application, then:
 - (A) the applicant shall file its testimony and exhibits within 60 days after filing the application, and
 - (B) an intervenor shall file its testimony and exhibits within 45 days of the filing of the applicant's testimony and exhibits.
- (e) In transportation carrier application proceedings, notwithstanding anything in paragraphs (a), (c), or (d) 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 to each party, 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.

- (f) In all rate proceedings set for hearing, the respondent shall file its testimony and exhibits within 30 days of the order setting the matter for hearing. An intervenor shall file its testimony and exhibits within 75 days of the order setting the matter for hearing.

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.

The Commission encourages settlement of contested proceedings. 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. The Commission may hold a hearing on the settlement agreement prior to issuing its decision. 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) 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.
- (b) A presiding officer may certify an interim order as immediately appealable via exceptions.
- (c) 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.
- (d) 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.

The Commission may at any time during a proceeding 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., and all information set out in § 40-6-113(6), C.R.S.
- (b) The Commission may accept 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 seven days of the mailed date of the recommended decision. Parties may file responses to exceptions within 14 days of the service of the exceptions.

- (b) A party wishing to file exceptions shall request a transcript within seven days of the mailed date 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 seven days of the date on which the Commission decision was mailed.
- (c) 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 §§ 24-4-106(4), 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.

L:\final\R05-0461A_03R-528ALL.doc