

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1

RULES OF PRACTICE AND PROCEDURE

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[indicates omission of unaffected rules]

1100. Confidentiality.

- (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, or produced in response to audit conducted by the Commission or Commission staff, 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 these standards of conduct. All persons afforded access to confidential information shall treat such information as confidential and shall neither use nor disclose such information except in accordance with these standards of conduct.
- (b) 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 not presumed to be open for inspection, and is, in fact, confidential under applicable law, including the Colorado Open Records Act. If a claim of confidentiality is made in violation of this subparagraph (b), 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 reasonable attorney's fees.

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[indicates omission of unaffected rules]

- (e) Persons shall make only general references to information claimed to be confidential or highly confidential in their public testimony, including attachments, in other public filings, and in oral presentations other than those made on a confidential or highly confidential record.

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[indicates omission of unaffected rules]

1101. Procedures Relating to Confidential Information Filed with the Commission in a Proceeding.

- (a) Procedure for filing information claimed to be confidential or highly confidential in a proceeding.

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[indicates omission of unaffected rules]

- (III) Unless filed through the E-Filings System, the original and three copies of the pages containing confidential or highly confidential information shall be filed under seal 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 and proceeding number of the associated proceeding and the notation "CONFIDENTIAL -- SUBMITTED IN PROCEEDING NO. _____" or "HIGHLY CONFIDENTIAL – SUBMITTED IN PROCEEDING NO. _____", as applicable;
 - (B) the name of the filing party;
 - (C) the date of filing;
 - (D) a description of the information (e.g., testimony, including attachments of _____ (name of witness), statement of position, motion);

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[indicates omission of unaffected rules]

- (e) Information which is subject to highly confidential protection and that is provided in response to discovery or in response to Commission staff audit shall not be filed with the Commission. Unless the Commission orders otherwise, a complete version of the document that contains the information which is subject to highly confidential protection shall be filed with the Commission as soon as any one of the following applies:
- (I) the information is used to support a motion;
 - (II) the information is filed as an attachment included in prefiled testimony;

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[indicates omission of unaffected rules]

1104. Personal Information – Collection.

- (a) A regulated entity shall collect only that personal information, including information regarding credit worthiness that 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 regulated service supplier. A regulated entity may request, but shall not require, a customer's Social Security Number as a prerequisite to evaluating credit worthiness or to providing regulated service.

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[indicates omission of unaffected rules]

1105. Personal Information– Disclosure.

- (a) A utility may only disclose personal information as permitted by Commission rule or as compelled by state or federal law.

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1202. Form and Content.

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[indicates omission of unaffected rules]

- (b) Titles and captions.

- (I) The caption of an application or petition proceeding shall contain the name of the applicant or petitioner, describe the authority or decision being sought from the Commission with sufficient specificity to distinguish the application or petition from other proceedings, and briefly describe the subject matter of the proceeding. If the application or petition relates to a previous proceeding, the caption of the application or petition proceeding shall identify the previous proceeding by proceeding number.
- (II) The first page of every pleading shall contain the proceeding caption, proceeding number, a heading "Before the Public Utilities Commission of the State of Colorado," and the title of the pleading.
- (III) Every pleading shall include 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.

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[indicates omission of unaffected rules]

- (e) Written testimony is not subject to paragraphs (c) and (d) 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, beginning with “1” on each page.
 - (II) The cover sheet for written testimony shall contain the proceeding number, the caption of the proceeding, the name of the witness and the party for whom the witness is testifying, the date on which the testimony is filed, and whether it is direct, answer, cross-answer, rebuttal, surrebuttal, or other testimony.
 - (III) Except as required by subparagraph (IV), attachments included with written testimony shall be numbered in sequence and shall be physically contained in the same document as the testimony.
 - (IV) Attachments included with written testimony and submitted through the E-Filings System shall be numbered in sequence and separately uploaded as secondary documents to the primary written testimony.
 - (V) Each witness’ attachments to testimony shall be numbered sequentially beginning with the witness’ initials and followed by the number of the attachment. For example, attachments to the testimony of John Q. Public would be identified as JQP-1, JQP-2, etc., regardless of whether it is direct, answer, cross-answer, rebuttal, surrebuttal or other testimony.
 - (VI) The Commission may permit minor revisions to written testimony and attachments by a witness on the witness stand, and may permit more extensive revisions by allowing the filing of revised testimony and attachments using the same Arabic numeral as the original with a hyphenated designation that the testimony is revised, such as "Attachment JQP-1, 2d Rev." All revisions other than those of a minor nature shall be filed promptly with the Commission and served on all parties. Such filed revisions of testimony and/or attachments shall include a cover page that contains a list of the revisions made, as well as a complete copy, not just individual pages, of the testimony and/or attachments revised.
- (f) When the E-Filings System is used to file multiple documents as a single filing (e.g., an application with a related motion, a motion with attachments, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separately uploaded.
- (g) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion with exhibits, or an advice letter with related tariff pages), the primary document and each secondary document must be separately identified and separated through the use of slip sheets.

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[indicates omission of unaffected rules]

1206. Commission Notice – Generally.

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[indicates omission of unaffected rules]

- (b) The notice required by paragraph (a) of this rule shall state the following:
- (I) the name and address of the applicant or petitioner;
 - (II) the caption and proceeding number of the proceeding;
 - (III) the date the application or petition was filed;
 - (IV) a brief description of the purpose and scope of the application or petition;
 - (V) 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.;
 - (VI) 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;
 - (VII) 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)(VI) of this rule;
 - (VIII) a statement 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 and contests or opposes the application or petition; and
 - (IX) a statement 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.

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[indicates omission of unaffected rules]

1208. Adoptions and Adoption Notices.

Generally. When the Commission authorizes 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.

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[indicates omission of unaffected rules]

1210. Tariffs and Advice Letters.

(a) General.

- (I) All utilities, unless specifically exempted by the Commission, shall have current tariffs for all jurisdictional services on file with the Commission.
- (II) The utility shall have its current tariff available for public inspection at its principal place of business during normal business hours. The utility may post its tariffs on its website.
- (III) The utility shall file with the Commission an advice letter, the proposed tariff pages, any supporting documentation, and any supporting testimony and exhibits. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

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[indicates omission of unaffected rules]

1301. Informal Complaints and Mediation.

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[indicates omission of unaffected rules]

- (d) If the informal complainant and the regulated entity agree, Commission staff may refer an informal complaint for mediation. 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.

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[indicates omission of unaffected rules]

1308. Responses: Generally – Complaints.

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[indicates omission of unaffected rules]

- (e) A respondent may file a motion to dismiss a complaint or counterclaim within 14 days of service except in an accelerated complaint proceeding, in which case 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 decision 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, and no claim need 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. Unless the Commission shortens the response time, rule 1400 governs response time to a motion to dismiss. Any motion to dismiss shall be determined before hearing unless the Commission orders that it be deferred.

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[indicates omission of unaffected rules]

1400. Motions.

- (a) Except for oral 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. Moving counsel is encouraged to confer with all parties to report when the requested relief is unopposed.

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[indicates omission of unaffected rules]

- (f) A motion for summary judgment may be made in accordance with rule 56 of the Colorado Rules of Civil Procedure. A motion to dismiss may be made in accordance with rule 12 of the Colorado Rules of Civil Procedure. If the relief sought by the motion has been agreed to by all parties or is not opposed, the moving counsel shall so state in the motion.

1401. Intervention.

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[indicates omission of unaffected rules]

- (c) A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas, electric or telephone proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

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[indicates omission of unaffected rules]

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.
- (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); 30(a)(2)(A); 30(a)(2)(C); 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.

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[indicates omission of unaffected rules]

- (c) In application proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses and objections, if any, within 10 days from service of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (d) In proceedings where prefiled testimony and exhibits are filed, the last day to propound written discovery directed solely to direct testimony and exhibits shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony and exhibits shall be the deadline for filing rebuttal and cross-answer testimony and the last day to propound discovery solely directed to rebuttal and cross-answer testimony shall be five business days before the first day of hearing.

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[indicates omission of unaffected rules]

- (g) 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.
- (h) Discovery requests, responses, and objections thereto shall not be filed with the Commission except as necessary to support a pleading relating to discovery, as an exhibit to prefiled testimony, as a prefiled exhibit, as an exhibit offered at hearing, or as an impeachment exhibit. No discovery, discovery responses, or objections to discovery shall be submitted to or served through the Commission's E-Filings System. Paragraph 1205(f) addresses service with respect to discovery.
- (i) 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) Discovery may commence with the filing of the complaint. Unless the Commission orders otherwise, the following 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.

- (j) In application proceedings and all rate proceedings set for hearing, all parties shall file and serve their testimony and exhibits as ordered by the Commission.

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[indicates omission of unaffected rules]

1502. Interim Decisions.

- (a) Interim decisions are issued after the Commission sets a tariff for hearing or a proceeding is opened by Commission decision or otherwise, other than a decision that may become a decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any person aggrieved may challenge the matters determined in an interim decision in exceptions to a recommended decision or in an application for RRR of a Commission decision.
- (c) Any person aggrieved by an interim decision may file a written motion with the presiding officer entering the decision to set aside, modify, or stay the interim decision.
- (d) The Commission, hearing Commissioner or Administrative Law Judge may certify any interim decision as immediately appealable through the filing of a motion subject to review by the Commission en banc. Such motion shall be filed pursuant to rule 1400 and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX]."

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[indicates omission of unaffected rules]

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. In administrative proceedings and application proceedings where the applicant has waived the applicable statutory period for the Commission to issue a decision, parties may file responses to exceptions within 14 days following service of the exceptions. In application proceedings where the applicant has not waived the applicable statutory period, parties may file responses to exceptions within seven days following service of the exceptions.

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[indicates omission of unaffected rules]