

(Decision No. R92-1180-E)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

WELD 911 EMERGENCY TELEPHONE)
SERVICE AUTHORITY BOARD,)

Complainant,)

v.)

U S WEST COMMUNICATIONS, INC.,)
AND WIGGINS TELEPHONE ASSOCIA-)
TION,)

Respondents.)

DOCKET NO. 91F-429T

ERRATA NOTICE

Mailed Date: September 28, 1992

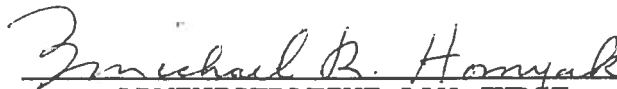
STATEMENT

Decision No. R92-1180
(Issued September 15, 1992)

Correct sentence 5 of paragraph 7 of III. Findings and Conclusions on the Contentions and Issues, by replacing the sentence with:

Telephone utilities must file tariffs for the type of service that they provide with this Commission, see § 40-3-103, C.R.S., 1992 cumulative supplement.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


ADMINISTRATIVE LAW JUDGE

MRH:srs

(Decision No. R92-1180)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

WELD 911 EMERGENCY TELEPHONE)	
SERVICE AUTHORITY BOARD,)	
)	DOCKET NO. 91F-429T
Complainant,)	
)	RECOMMENDED DECISION OF
v.)	ADMINISTRATIVE LAW JUDGE
)	MICHAEL R. HOMYAK
U S WEST COMMUNICATIONS, INC.,)	GRANTING FORMAL COMPLAINT
AND WIGGINS TELEPHONE ASSOCIATION,)	
)	
Respondents.)	

Mailed Date: September 15, 1992

Appearances: Bruce T. Barker, Assistant Weld
County Attorney, Greeley, Colorado,
for Complainant Weld 911 Emergency
Telephone Service Authority
Board;

Thomas F. Dixon, Esq., Denver,
Colorado, for Respondent Wiggins
Telephone Association; and

Russell Rowe, Esq., Denver, Colorado,
for Respondent U S WEST Communications,
Inc.

STATEMENT OF THE CASE

This formal complaint was filed on June 12, 1991, by Weld 911 Emergency Telephone Service Authority Board (Authority Board), naming U S WEST Communications, Inc. (U S WEST), and Wiggins Telephone Association (Wiggins) as Respondents. The Commission issued an order to satisfy or answer on June 13, 1991. Wiggins and U S WEST filed answers on July 3, 1991.

Staff of the Public Utilities Commission of the State of Colorado (Staff) filed Notice of Intervention of Right and Entry of Appearance on July 12, 1991. On July 31, 1991, the Authority Board filed Motion to Amend and Amended Complaint. The Motion to Amend was granted in Decision No. R91-1110-I mailed on August 22, 1991. Wiggins filed Answer to the Amended Complaint on August 20, 1991, and U S WEST filed Answer to Amended Complaint

on September 3, 1991. Staff of the Commission filed Notice of Withdrawal of Staff Intervention on August 30, 1991.

The matter was ultimately set for hearing on April 7 and 8, 1992, in Greeley, Colorado. The matter was also set for an additional day of hearing on April 30, 1992, in Denver, Colorado.

On March 9, 1992, Wiggins filed Motion and Memorandum of Law to Dismiss Complaint or for Judgment on the Pleadings. The Authority Board filed a response to Wiggins' motion on March 23, 1992. The Motion to Dismiss Complaint or for Judgment on the Pleadings was denied in Decision No. R92-492-I mailed on April 13, 1992.

This formal complaint was heard as scheduled on April 7 and 8, 1992, in Greeley, Colorado and on April 30, 1992, in Denver, Colorado, before Administrative Law Judge Michael R. Homyak. Exhibit Nos. 1 through 32 were offered and admitted into evidence. Late filed Exhibit No. 26A was admitted pursuant to agreement of the parties. Testimony was offered by Vern Hammers, Ronald T. Wood, Joseph Mike Miller, Dan Grider, Robert Gary Sandau, John Wilding, James Cameron Carroll, Dwight Schmitt, Karen Stevens, and Ronald Anderson.

At the conclusion of the hearing the Authority Board was ordered to file an opening statement of position by May 15, 1992. U S WEST and Wiggins were ordered to file responses by May 26, 1992. Reply statements of position were ordered to be filed by June 5, 1992, by the Authority Board. U S WEST filed a Motion for Extension of Time to File its Response to and including May 29, 1992. On May 22, 1992, in Decision No. R92-687-I, U S WEST and Wiggins were authorized to file responsive statements of position to and including May 29, 1992, and the Authority Board was authorized to file reply statements to and including June 10, 1992. As extended, all statements of position were timely filed.

Pursuant to § 40-6-109, C.R.S., the record and exhibits of this proceeding are transmitted to the Commission, together with this recommended decision containing findings of fact, conclusions thereon, and a recommended order.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon the evidence of record, the following facts are found and conclusions thereon are drawn.

I. Findings and Conclusions on History of the Case

1. In accordance with § 29-11-102(9)(b), C.R.S., Complainant Weld E-911 Authority Board was formed November 4, 1987, by an Intergovernmental Agreement for Establishment of the

Weld Enhanced 911 Emergency Telephone Service Authority Board (Exhibit No. 1). The Authority Board was formed to establish an enhanced 911 (E-911) emergency telephone system for Weld County, and to be the separate legal entity to enter into agreements with telephone service suppliers and telephone equipment suppliers for Weld County E-911 service.

2. Local exchange telephone service is provided in Weld County by U S WEST and four independent telephone companies/associations: Roggen Telephone Association (Roggen), Stoneham Telephone Association (Stoneham), Nunn Telephone Association (Nunn), and Wiggins. Although Roggen, Stoneham, Nunn, Wiggins, and U S WEST all provide parts of the Weld County E-911 service, only U S WEST and Wiggins are named as Respondents in this proceeding.

3. Preliminary discussions for a Weld County E-911 emergency system began in 1983, between John Wilding representing U S WEST and Rich Estrich and/or Bob Rhinesmith representing Weld County. These discussions continued beyond September 1, 1990, at which date the Weld County E-911 system was implemented. John Wilding continued to represent U S WEST and acted as a consultant to Weld County in forming the 1987 intergovernmental agreement whereby the Authority Board was created. Mr. Wilding was present at the Authority Board's initial meeting of August 3, 1988, and at subsequent meetings on August 30, 1988, and September 13, 1988 (Exhibit No. 9).

4. From before August 3, 1988, until the summer or fall of 1988, U S WEST through John Wilding represented to the Authority Board that U S WEST would coordinate all Weld County independent telephone company E-911 bills. John Wilding represented that a single monthly E-911 bill, composed of all E-911 independent telephone company charges and U S WEST charges, would be submitted to the Authority Board by U S WEST after the Weld E-911 system was implemented on September 1, 1990. The Authority Board relied on John Wilding's above representations in selecting U S WEST as the "sole source" provider of the Weld County E-911 system.

5. At the initial Authority Board meeting of August 3, 1988, a motion was offered and seconded to submit a letter of agreement to U S WEST's representative, John Wilding, "to start the tariff, and the 24-month time frame for cut-over to the E-911 system in Weld County" (Exhibit No. 9). The Authority Board also issued a letter authorizing U S WEST to begin procedures to implement a Weld County E-911 system at the August 3, 1988, meeting (Exhibit No. 17).

6. From before August 3, 1988, up to the summer and fall of 1989, U S WEST had a policy of coordinating E-911 bills and charges where E-911 service was provided by U S WEST and one or

more independent telephone companies in a service territory. U S WEST's policy was to have independent telephone companies submit their E-911 monthly charges to U S WEST. U S WEST would then submit a single bill, composed of all independent telephone company E-911 charges and U S WEST E-911 charges to the appropriate Authority Board for payment. U S WEST's E-911 coordination policy was dependent upon all independent telephone companies in an E-911 territory providing their portion of E-911 service at no more than U S WEST's tariff rate for such service.

7. In February, 1989, a meeting was held at Wiggins' office pertaining to Wiggins' implementation of its portion of Weld County E-911 service. John Wilding and Karen Stevens of U S WEST, and Dwight Schmitt and Ron Anderson of Wiggins attended the meeting. Mr. Wilding and Ms. Stevens testified that they left the meeting with the understanding that Wiggins would provide its part of Weld County E-911 service at the same rate or less than U S WEST's tariffed rate. However, Ron Anderson testified that the E-911 cost estimates provided by him at the February 1989 meeting failed to consider network exchange services, and were wrong.

8. In the summer and fall of 1989, U S WEST's Government and Education Services Group held meetings on the company's E-911 policy of coordinating independent telephone company E-911 billings with its own E-911 charges. It was then determined by U S WEST that it was impossible to continue providing a single E-911 bill, where independent telephone companies were providing E-911 service with U S WEST. U S WEST made this determination because many independent telephone companies had E-911 rates which were different from, or were more than U S WEST's E-911 tariffed rate. U S WEST also determined that some independent telephone companies were unwilling to provide E-911 rate information.

9. By virtue of the above, U S WEST decided in the fall of 1989 to discontinue its policy of coordinating E-911 independent telephone company bills with its own E-911 charges. However, U S WEST decided to continue assisting in creating intergovernmental agreements, calculating E-911 surcharges, and assisting in setting up collection mechanisms for E-911 service where independent telephone companies were providing E-911 service with U S WEST in any service area. U S WEST's change in its policy of coordinating independent telephone company E-911 billings with its own E-911 charges was not communicated to the Authority Board by U S WEST until April 1990, and then only because Vern Hammers (the Authority Board's Administrator) contacted Karen Stevens of U S WEST.

10. In April 1990 Vern Hammers, was informed by Phil Davies of Morgan County that U S WEST had changed its policy of coordinating independent telephone company E-911 bills.

Mr. Hammers was also informed by Phil Davies that Morgan County was dealing directly with independent telephone companies on E-911 charges and billings, and that it was likely that the Weld County Authority Board would be required by U S WEST to deal directly with independent telephone companies on E-911 charges and billing. Vern Hammers then contacted Karen Stevens of U S WEST and was informed by Ms. Stevens that U S WEST would no longer coordinate charges and billings of independent telephone companies for E-911 service. Ms. Stevens also informed Mr. Hammers that it would be necessary for the Authority Board to directly deal with independent telephone companies on Weld County E-911 charges and billing issues.

11. In June, 1990 Vern Hammers contacted Dwight Schmitt, the General Manager of Wiggins, and invited Mr. Schmitt to appear at the July 17, 1990, Authority Board meeting. Mr. Schmitt appeared at the meeting and presented Wiggins' estimated costs for providing Wiggins' part of Weld County E-911 service. By letter dated August 7, 1990, Mr. Schmitt again provided estimated costs for two E-911 (special access) circuits in each of Wiggins' three exchanges to the Authority Board. Wiggins' estimated monthly reoccurring charge was \$1,306.48 and its total non-reoccurring charge was \$1,425 for six special access circuits (Exhibit No. 4).

12. Pursuant to § 29-11-102(2), C.R.S., in October 1988, the Authority Board established a \$.50 per line, per month E-911 surcharge for all lines in Weld County. By letter dated November 2, 1988, U S WEST informed Wiggins of the \$.50 surcharge and that such monies should be forwarded to the Weld County Accounting Department. Wiggins did not receive a copy of U S WEST's November 2, 1988, letter until February, 1989 (Exhibit No. 2). Wiggins has collected the \$.50 surcharge since September 1990 and has remitted it monthly to Weld County until present date.

13. In January, 1991, the Authority Board received Wiggins' bill for Weld County E-911 service provided by Wiggins' six special access circuits since September, 1990. Since January 1991, Wiggins has billed the Authority Board at \$1,143.26 per month for E-911 service in Weld County, with the total being \$11,549.57 through May, 1991 (Exhibit 26A). The Authority Board has not paid any of Wiggins' E-911 bills.

14. U S WEST and the four Weld County independent telephone companies, including Wiggins, have imposed the Authority Board's \$.50 per line, per month surcharge; collected it, and remitted it to the Authority Board, since September 1990. At the time of hearing it was established that the Authority Board had a surcharge surplus in excess of \$200,000. The Authority Board has made no payments to Wiggins nor to the other three Weld County independent telephone companies providing E-911 service. At the

time of hearing, the amount which Wiggins had billed the Authority Board from September, 1990, through May, 1992 was \$28,502.28, including interest (Exhibit 26A).

II. Findings and Conclusion as to the Contentions of the Parties

1. The Authority Board declines to pay Wiggins' past and present E-911 charges, contending that:

- (a) The Authority Board agreed with U S WEST that U S WEST would be the sole source to provide Weld County E-911 network services, data base services, equipment, and a single monthly bill for reoccurring charges of the four independent telephone companies and U S WEST for the Weld County E-911 system.
- (b) U S WEST is Wiggins' customer for the six special access lines by which Wiggins provides its part of Weld County E-911 service. Also, the Authority Board never contracted with Wiggins for E-911 service, or for the six special access lines, and that Wiggins has no E-911 tariff by which such service may be provided.
- (c) The Authority Board was never informed by U S WEST that it would be required to deal with the four independent telephone companies for E-911 billings and charges. Rather, U S WEST agreed to pay Wiggins' E-911 charges and to remit a single monthly bill to the Authority Board.

The Authority Board requests that Wiggins be ordered to direct its monthly bills to U S WEST for payment, that U S WEST be ordered to pay Wiggins' bills, and that Wiggins be ordered to adopt an E-911 tariff.

2. Wiggins states that it is properly billing the Authority Board, and that all past and present bills, with interest, should be paid to Wiggins by the Authority Board. Wiggins contends that:

- (a) Wiggins is not providing E-911 service, therefore it should not be required to adopt an E-911 tariff. Wiggins further states that any E-911 tariff filed by it will have rates which are the same as the rates in its

special access tariff. Wiggins contends that it is providing special access service to the Authority Board, pursuant to its special access tariff, and thus no contract with the Authority Board is required.

(b) The Authority Board is Wiggins' customer for the special access service it provides. Wiggins states that in providing special access service, it is a service supplier as defined in § 29-11-101(7), C.R.S., and that the Authority Board is a service user as defined in § 29-11-101(8), C.R.S.

(c) Wiggins presented its estimated monthly charges for special access service to the Authority Board on July 17, 1990, and followed such up with a letter on August 7, 1990. The Authority Board implemented the Weld County E-911 system on September 1, 1990, with knowledge of Wiggins' estimated charges. The actual non-recurring and reoccurring charges which Wiggins has billed the Authority Board vary only slightly from the above estimates.

Wiggins requests that the Authority Board be ordered to pay all Wiggins' past and present charges with interest through September 1, 1992, computed as \$35, 118, 10 (Exhibit 26A). Wiggins also states that it should not be required to file an E-911 tariff.

3. U S WEST states that there was no contract between it and the Authority Board for U S WEST to be the sole provider of Weld County E-911 service nor for U S WEST to pay all charges of the four independents, to include Wiggins, and to remit one bill to the Authority Board therefore. U S WEST contends that:

(a) U S WEST agreed with the Authority Board in 1988 to only provide E-911 network services and data base services for the Authority Board. However, U S WEST offered to coordinate billing among the four independent telephone companies operating in Weld County, including Wiggins, for the proposed E-911 system.

(b) U S WEST did not and cannot lawfully agree to be the sole provider of E-911 service in Weld County. U S WEST points out that it cannot provide E-911 service in the areas of Weld County that are served by the four independent telephone companies.

(c) Wiggins, rather than U S WEST is the Authority Board's customer for the special access lines by which Wiggins provides part of the Weld County E-911 service.

U S WEST requests that Wiggins, as the customer of the Authority Board, should be ordered to direct its bills for E-911 service to the Authority Board, and that the Authority Board should be ordered to pay Wiggins' bills.

III. Findings and Conclusions on the Contentions and Issues

1. The Authority Board contends that U S WEST is Wiggins' customer for E-911 service, because U S WEST ordered six special access lines from Wiggins, and because the Authority Board has never contracted with Wiggins for E-911 service. The Authority Board also points out that Wiggins has no E-911 tariff. The Authority Board requests that Wiggins direct its bills to U S WEST for payment for the above reasons. The contention that U S WEST is Wiggins' customer for E-911 service is rejected. It is found and concluded that both U S WEST and Wiggins are service suppliers of Weld County E-911 service to Weld County local exchange service users, as defined in §§ 29-11-101(7) and (8), C.R.S. These statutes provide:

(7) "Service supplier" means any person providing exchange telephone services to any service user in this state.

(8) "Service user" means any person who is provided exchange telephone service in this state.

2. Wiggins and U S WEST contend that the Authority Board is Wiggins' customer for the special access lines by which Wiggins provides E-911 service for the Authority Board because the Authority Board is a service user as defined in above § 29-11-101(8), C.R.S. As above found, Wiggins and U S WEST provide E-911 service to Weld County local exchange customers, as service suppliers. Moreover, it is found and concluded that Weld County local exchange customers are service users pursuant to § 29-11-101(8), C.R.S., rather than the Authority Board. Accordingly, the above contentions are rejected.

3. From the evidence of record in this proceeding, it is found and concluded that the Authority Board and U S WEST agreed that U S WEST would coordinate an E-911 system for Weld County. This agreement was entered into by the Authority Board because of U S WEST's representations, on which the Authority Board relied, that U S WEST would solely coordinate all independent telephone company E-911 charges for Weld County, and that U S WEST would submit a single monthly bill to the Authority Board therefore.

It is further found and concluded that the Authority Board selected U S WEST as the "sole source" to coordinate its E-911 system because of the above representations. However, the Authority Board and U S WEST did not agree that U S WEST would pay Weld County independent telephone company E-911 charges submitted to U S WEST.

4. U S WEST unilaterally determined in the summer and fall of 1989 to no longer coordinate the E-911 charges and billings of independent telephone companies with U S WEST's E-911 charges. U S WEST made this determination after internal meetings where it found that many independent telephone companies provided E-911 service at rates which exceeded U S WEST's E-911 tariffed rate, or that information on such was not available from independent telephone companies. However, U S WEST failed to notify the Authority Board of its new policy. Vern Hammers, the Authority Board's administrator contacted Karen Stevens of U S WEST in April, 1990 and was then first informed of U S WEST's new policy. Ms. Stevens also then informed Mr. Hammers that the Authority Board would need to deal directly with the four Weld County independent telephone companies on their E-911 charges and billings. It is therefore found and concluded that U S WEST breached its agreement with the Authority Board to solely coordinate and deal with the four Weld County independent telephone companies for E-911 billings and charges.

5. It is found and concluded that U S WEST should be ordered to coordinate Wiggins' monthly charges for special access services in providing Weld County E-911 service with U S WEST's monthly E-911 charges, as originally agreed by the Authority Board and U S WEST. U S WEST may accomplish such coordination by including Wiggins' monthly special access E-911 bills with U S WEST's monthly E-911 bills. U S WEST may also charge a reasonable fee for this service, at no more than its actual cost to include Wiggins' monthly bills with U S WEST's monthly bills, forward such to the Authority Board, and forward payment to Wiggins. However, U S WEST should not be ordered to pay Wiggins' bills. U S WEST, Wiggins, and the Authority Board understood, at all pertinent times, that all Weld County E-911 charges were and are to be paid by the Authority Board from Weld County E-911 surcharge funds.

6. The Authority Board points out that Wiggins has billed it at \$1,143.26 per month since January, 1991, and that this results in a per line cost of \$2.86. The Authority Board also states that the established E-911 surcharge is \$.50 per line which leaves the Authority Board short \$2.36 per customer line, per month. Evidence was here presented that the Authority Board now has over \$200,000 in surplus funds from its \$.50 per line, surcharge. It was also shown that U S WEST now provides Weld County E-911 service at less than \$.50 per line, per month, and that the three other Weld County independent telephone companies

have not submitted bills for their part of Weld County E-911 services to the Authority Board. It is found and concluded that the Authority Board now has sufficient E-911 funds to pay Wiggins' special access bills for September 1, 1990, through the effective date of this decision and order, plus interest as required by law. Accordingly, the Authority Board will be ordered to pay Wiggins' special access bills to be submitted to it by U S WEST, with interest.

7. The Authority Board contends that Wiggins should be ordered to file an E-911 tariff. Wiggins contends that it need not file an E-911 tariff, because it is not providing emergency telephone services, only special access services. The evidence in this proceeding established, and it is found, that Wiggins provides E-911 service by its six special access lines, as a service supplier defined in § 29-11-101(7), C.R.S. It is also found that Wiggins' special access service is a part of the Weld County E-911 emergency telephone system. Telephone utilities must file tariffs for the type of service that they provide with this Commission, see § 40-3-103, C.R.S., 1984 Replacement Volume. Accordingly, Wiggins will be ordered to file an E-911 tariff with this Commission within 90 days of the effective date of this decision and order.

Pursuant to § 40-6-109, C.R.S., it is recommended by Administrative Law Judge Michael R. Homyak that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. The formal complaint of Weld 911 Emergency Telephone Service Authority Board, Complainant, v. U S WEST Communications, Inc., and Wiggins Telephone Association, Respondents, is granted to the extent consistent with the following ordering paragraphs, and is otherwise denied.

2. The Wiggins Telephone Association shall forward all monthly bills for special access service for Weld County E-911 service from September 1, 1990, to the effective date of this Decision and Order with interest as lawfully allowed, and all future monthly bills for such service, to U S WEST Communications, Inc. U S WEST Communications, Inc., shall forward Wiggins' monthly E-911 charges with U S WEST's E-911 monthly charges to the Weld 911 Emergency Telephone Service Authority Board for payment.

3. The Weld 911 Emergency Authority Board shall pay to U S WEST Communications, Inc., the Wiggins Telephone Association's bills submitted by U S WEST Communications, Inc., in accordance with above ordering paragraph 2. U S WEST

Communications, Inc., shall forward appropriate payment to Wiggins Telephone Association, after receipt thereof from the Weld 911 Emergency Authority Board.

4. U S WEST Communications, Inc., may make reasonable charges to the Weld 911 Emergency Telephone Authority Board for coordinating the monthly bills of Wiggins Telephone Association with its own. Such reasonable charges shall not exceed U S WEST Communications, Inc.'s actual costs to coordinate and forward Wiggins Telephone Association's bill with its own bill, and forward payments to the Wiggins Telephone Association.

5. The Wiggins Telephone Association shall, within 90 days of the effective date of this Decision and Order, file E-911 tariffs with this Commission. The subject matter of such tariffs shall include the Weld County E-911 services which Wiggins Telephone Association now provides pursuant to its special access tariffs.

6. All other requests for relief, not specifically granted in ordering paragraphs 2, 3, 4, and 5 are denied.

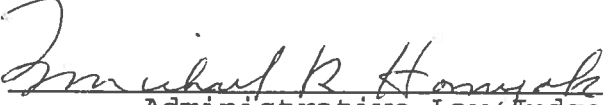
7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. 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.**

9. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

MRH:srs