

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0483ALL

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES OF PRACTICE AND PROCEDURE, 4 CODE OF COLORADO REGULATIONS 723-1, TO AMEND, STREAMLINE AND CLARIFY RULES ON THE COMMISSION’S OWN INITIATIVE AND PURSUANT TO THE PROVISIONS OF SENATE BILL 19-236.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: September 13, 2019
Adopted Date: September 11, 2019

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (P&P Rules). The proposed amendments are issued by the Commission upon its own initiative, and pursuant to changes to certain business practices of the Commission as set forth in Senate Bill (SB) 19-236 enacted by the Colorado General Assembly in the 2019 legislative session.

2. The purpose of our P&P Rules is to “advise the public, regulated entities, attorneys, and any other person of the Commission’s rules of practice and procedure ... 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.” The purpose of this NOPR is for the Commission to solicit comments on possible changes to the P&P Rules as described in this Decision and its attachments, and to schedule a rulemaking hearing. Interested persons will have opportunities to submit written comments on the proposed rules and to provide oral comments at the scheduled hearing. The Commission welcomes the submission of additional or alternative

proposed rules that affect our business practices. Participants are encouraged to provide redlined rules if possible.

3. This rulemaking satisfies the requirements of SB19-236, codified at various locations within Title 40 of the Colorado Revised Statutes, that requires the Commission to adopt rules to implement changes and additions to the Commission's processes.

B. Background

4. The Commission last updated its P&P Rules approximately five years ago. We find it is time to review our processes and attendant rules based on our experiences and recommendations we have received from active parties and Commission Staff concerning ways we can improve our processes to make them as streamlined and effective as possible. These proposed amendments deal with the Commission's business processes and provide clarification and updates of rules we find are in need of such, as well as those amendments necessary due to legislative changes embodied in SB19-236.

5. The Commission is especially cognizant of concerns expressed by legislators and other stakeholders regarding how the Commission conducts its business. In particular, concerns have been expressed regarding impediments to the public easily understanding and participating in Commission matters. Those concerns are addressed in these proposed rules.

C. Proposed Rules

1. Rule 1004

a. Definitions

6. Rule 1004(a) is amended to clarify the definition of an accelerated telecommunications interconnection complaint proceeding.

7. Rule 1004(c) clarifies the role of Advisory Staff and under what circumstances Commission Staff may serve in an advisory capacity.

8. Rule 1004(g) adds the definition of “business day” as Monday through Friday, 8:00 a.m. through 5:00 p.m. Mountain Time, excluding any day the Commission offices are legally closed.

9. Rule 1004(z) defines the term “Presiding Officer” as that term applies to Commission proceedings.

10. Rule 1004(gg) makes clear that all Commission rulemaking proceedings are conducted in conformance with the Colorado Administrative Procedures Act codified at § 24-4-101, C.R.S. *et seq.*

11. Rule 1004(ll) provides the definition of “Trial Staff” and explains its role in Commission proceedings.

2. Rule 1005

a. Meetings

12. In order to address concerns raised by certain stakeholders and participants regarding open and transparent proceedings and decision making by the Commission, we have implemented certain business practices regarding our regular weekly business meetings. The Commission has webcasted its weekly meetings for a number of years. Beginning in approximately July 2018, the Commission began the practice of making audio recordings and the archiving of those audio recordings on the Commission website. We proposed the following changes to our rules to reflect those practices and believe that they have gone a long way in ensuring the public has access to the Commission and to our meeting discussions.

13. Rule 1005(c) explains public comments taken at Commission Weekly Meetings and the circumstances under who may provide public comment.

14. Rule 1005(e) informs the public that Commission Weekly Meetings will be webcast and audio recordings will be archived and available on the Commission's website.

3. Rule 1007(c)

a. Commission Staff

15. Rule 1007(a) defines and explains the role of Advisory Staff and clarifies that all communications between advisors, Commissioners, and Administrative Law Judges (ALJs) are to be considered part of the deliberative process doctrine and privilege.

4. Rules 1100 through 1103

a. Confidential Information

16. Rule 1100(b) is not new language, but rather a move from paragraph (n) to paragraph (b). It sets forth the parameters of the documents and information that are available by the Commission for public inspection in accord with the Colorado Open Records Act.

17. We propose changes to Rule 1100(h) to include Commission Trial Staff legal counsel to the existing list of persons to have access to all information filed under the confidential rule standards by virtue of executing an annual nondisclosure agreement. This will preclude those attorneys from filing a nondisclosure agreement in every proceeding in which they participate.

18. In addition to the above proposed Rule changes, the Commission would like comments on Rules 1100 through 1103. We request comment on whether changes are necessary to bring the Rules into closer conformance with federal and state court rules related to confidentiality. This may include streamlining language that is overly broad, types of

information that generally fall under the rubric of confidentiality, and requiring affidavits attesting to the confidentiality sought by the parties.

5. Rule 1200

a. Parties, *Amicus Curiae*, Non-Parties

19. In any request for participation within an adjudicatory proceeding, the Commission strikes a balance among the various classes of participants: those with a legally protected right to intervene (intervention by right), those with pecuniary or tangible interests that may be substantially impacted by the proceedings (permissive intervention), those who may have legal arguments that would aid the Commission in rendering a decision (*amicus curiae*), and those public commenters who have an opinion based on their own personal circumstance (public commenters). The latter two sets of participants are non-parties, but have distinct roles and, most often, different levels of knowledge related to the proceeding at hand. In this rulemaking, we propose changes to the existing rules on *amicus curiae* status, Rules 1200(c) and 1201(a), in an attempt to allow for increased participation in adjudications while still managing the conduct and role that *amici* play. (Interventions are dealt with Commission Rule 1401 below, which also contains proposed changes in compliance with SB 19-236.)

20. We propose amendments to Rule 1200(c) to allow participants that appear as *amicus curiae* to address both legal issues, as well as policy issues. We find that allowing *amici* to do so in certain circumstances may provide additional information in assisting the Commission in its decision-making process. We clarify that *amici* are held to the same standards of conduct as parties in the proceeding; that *amici* must accept the issues and propositions made by parties to a proceeding; and we establish a page limit on *amici* filings.

6. Rule 1201**a. Attorneys**

21. Rule 1201(a) deletes the requirement that an *amicus curiae* must be represented by an attorney at law. Thereby allowing *amici* to represent themselves in proceedings and allowing broader participation in Commission proceedings by removing the barrier of hiring counsel, which can be expensive.

7. Rule 1202**a. Form and Content**

22. The proposed modifications to Rule 1202 are to clarify that Administrative Staff are the creators of the captions for advice letter filings. The amendments also list the information to be included in those captions and clarify the information to be included in the title of the proceeding.

23. Rule 1202(f) sets forth the requirements for formatting written testimony in a Commission proceeding. Subparagraph (f)(V) sets out the requirement that each type of testimony along with its attachments shall be a single exhibit and marked with a single exhibit number during hearing. Subparagraph (f)(V) sets forth in detail how testimony is to be properly marked for identification.

8. Rule 1203**a. Time**

24. Rule 1203(d) proposes to calculate the fourth business day prior to hearing, as referenced in paragraph 1414(a), as excluding the first day of the hearing and including each of the four business days preceding the hearing. The example is provided that if the first day of the

hearing falls on a Monday, then the fourth business day prior to hearing is Tuesday of the preceding week.

9. Rule 1204

a. Filing

25. Rule 1204(a)(II) proposes requirements for the Commission’s Electronic Filings (E-Filings) System captions. When filing through the E-Filings System, the filing party must enter the title of a filing in title case format, *i.e.*, the first letter of each word is capitalized, except for certain small words such as articles and short prepositions

10. Rule 1205

a. Service

26. Rule 1205 amendments are a general cleanup to make the rule more understandable.

11. Rule 1207

a. Utility Notice

27. The change to Rule 1207(b) corrects the statutory citation to § 40-3-104(1)(c)(I)(E), C.R.S., based on changes made in SB19-236.

28. Changes to Rule 1207(g) are to clarify language for the requirement for compliance filings. This is to include also, the definition of a compliance filing. This will make clear to parties what is expected when the Commission orders a compliance filing and the proper method of filing.

12. Rule 1208**a. Adoptions and Adoption Notices**

29. Amendments to this rule address advice letter tariff filing requirements in the event a utility transfers ownership or control to another entity or changes its corporate name. In addition to the requirements of paragraph (a), the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

13. Rule 1209**a. Payments**

30. This Rule is deleted as it is unnecessary and confusing.

14. Rule 1210 (Rule 1305)**a. Tariffs and Advice Letters**

31. These amendments are made pursuant to statutory additions and changes by SB19-236. This amendment increases the amount of time for the Commission to extend a suspension period in an advice letter filing after the initial 120-day process. The amendment, comporting with statutory changes, alters the follow on period which is currently 90 days to an additional 40 days, or 130 days.

15. Rule 1211**a. E-Filings System**

32. We propose updating the E-filings rules to reflect current Commission business practices including e-mailing parties to a proceeding of an administrative change to information submitted through the E-filing system. However, this is only to be done in the event it is determined that confusion could result by providing notice of the administrative change through

E-filings. This process is proposed to be utilized when any administrative changes are deemed to be rather minor.

33. The proposed rule changes will also allow for administrative changes to captions and to clarify the process when filings are inadvertently made in an incorrect proceeding.

16. Rule 1302(g)

a. Show Cause Proceedings

34. This substantive change to the Show Cause rule is intended to streamline what is now a somewhat cumbersome process. The proposed amendments are intended to streamline the process on the front end to capture all information in an actual proceeding.

35. The proposed show cause matter, when made by a party to a proceeding, is to be referred by rule to an ALJ and will require the Commission Director to automatically set a hearing date for the show cause proceeding. The proposed amendments will also shorten the time for the object of the show cause to respond or answer from 20 days to 10 days.

36. In addition, the rule changes will require the ALJ to issue an interim decision either granting the issuance of the show cause, or dismissing the proposed show cause based on the response of the object of the show cause within ten days of a show cause hearing. If the show cause order is granted and after hearing, the ALJ shall send the matter back to the Commission for disposition on the merits of the show cause claim.

37. Rule 1302(e) is proposed to be modified to allow for an ALJ, in the first instance, to hear matters regarding pending utility discontinuances as part of a complaint case.

17. Rule 1303**a. Applications**

38. We propose adding additional language to Rule 1303 to address the process of determining whether an application is “complete” under our processes. Rule 1303(c) sets forth the process to determine completeness of an application. Additional language is proposed to be included whereby the Commission may request further information in support of an application. This will be especially applicable if the application is considered extraordinary or in some manner impacts markets or other proceedings. It may also be utilized if the application proceeding has broader implications than a typical proceeding.

39. The request for further information to determine completeness of the application will suspend the current 15-day period in which the Commission must determine completeness or the application is automatically deemed complete. In that event, the statutory deadline for the Commission to issue a decision does not begin to run until the determination of completeness is made by the Commission based on the additional information.

18. Rule 1304**a. Petitions**

40. We find it necessary to clarify the language of Rule 1304(i) regarding the process for determining whether to go forward with a petition for declaratory order. The proposed language clarifies that the first step in assessing a petition for declaratory order is for the Commission, in the first instance, to determine whether to accept or reject the petition. If the petition rejects the petition, the matter is closed. Should the Commission accept the petition, the next step is to receive briefs from the petitioner (if not already included in the petition) and from any party opposing the relief sought in the petition.

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

41. The proposed rule change adds language that indicates during the initial notice period, any person may file a written protest against a proposed tariff, price list, or time schedule.

20. Rule 1306**a. Rulemaking Proceedings**

42. Language is proposed in this rule to make clear that the Commission has discretion to accept or reject petitions for rulemaking from any party.

21. Rule 1401**a. Intervention**

43. Pursuant to legislative changes initiated pursuant to SB19-236, the language of the rule will be modified to allow for communities affected by qualified retail utilities Clean Energy Plan filings to seek to intervene in those proceedings. The rules will further indicate that those communities must be represented by legal counsel (*See*, Rule 1401(d)). Requiring legal counsel to represent “communities” is necessary so that proceedings before the Commission are efficient.

44. It is also proposed to amend Rule 1401(b) to allow responses to interventions by right regarding the party’s legally protected interest, or the party’s request for hearing.

22. Rule 1404**a. Referral to Hearing Commissioner or Administrative Law Judge**

45. This rule change is also pursuant to legislative changes initiated pursuant to SB19-236. The amended language will state that the law (now) requires that all matters to come

before the Commission, in the first instance, are to be heard by the Commission rather than an ALJ, unless the Commission assigns the matter to an ALJ or Hearing Commissioner by rule, written order, or minute entry. This language will also be referenced in Rule 1302 as it applies to formal complaint proceedings.

46. Rule 1404(b) is proposed to be clarified to indicate that all financial show cause proceedings and insurance show cause proceedings in Transportation matters are to be heard in the first instance by an ALJ in keeping with current practices.

47. Rule 1404(d) is proposed to be amended to acknowledge that certain routine administrative transportation matters may be delegated to Transportation Staff. Those matters will be further defined in an upcoming Transportation rulemaking proceeding.

23. Rule 1405(f)

a. Discovery

48. Rule 1405(f) is proposed to be amended to allow for discovery requests within an adjudicatory proceeding to cover a time period of ten years prior to the filing of an application, rather than the existing four-year limitation. In addition, and as an exclusion to this limitation, discovery requests concerning a utility's regulatory asset will only be limited in time by the useful life of that asset or the depreciation life. Much of the issues that we address and the decisions that we make in adjudicated proceedings impact investments and capital expenditures for decades. A four-year look-back limitation for discovery request seeking to gather information for trend analyses and historical implications seems to be overly restrictive, especially in light of the recent requests by utilities that the Commission consider multi-year rate plans and or future test years. These proposed changes will raise the issue for discussion

regarding the proper balance between the availability of adequate information and the possible burden of less restrictive rules for requests.

24. Rule 1408

a. Settlements

49. The proposed amendments to this rule are intended to clarify that settlement agreements filed with the Commission are to include attestations regarding the applicability of relevant laws. In addition, settlement agreements are to state and explain why the agreement is in the public interest, and include supporting testimony from the settling parties explaining how the public interest is met.

D. Conclusion

50. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-2-108, 40-6-101(1), 40-6-108(2), 40-6-109(5), 40-6-109.5, 40-6-114(1), and 40-6-122(4), C.R.S., as well as the statutory amendments contained in SB19-236.

51. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0483ALL.

52. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than October 18, 2019 and that any changes are proposed in legislative redline format. The Commission prefers that comments be filed using its E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding. The Commission will consider all submissions, whether oral or written.

53. We refer this proceeding to an Administrative Law Judge to hold a public hearing on October 29, 2019. Interested persons may provide oral comments at the public hearing unless the Commission deems oral presentations unnecessary.

II. **ORDER**

A. **The Commission Orders That:**

1. This Notice of Proposed Rulemaking including Attachments A and B shall be filed with the Colorado Secretary of State for publication in the September 25, 2019, edition of *The Colorado Register*.

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

DATE: October 29, 2019

TIME: 10:00 a.m. until not later than 5:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The Administrative Law Judge may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments in this proceeding (19R-0483ALL) through its Electronic Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

5. The Commission requests that initial pre-filed comments be submitted no later than October 18, 2019. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 11, 2019.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners