

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES**

Mailed Date: December 23, 2019

TABLE OF CONTENTS

I. <u>STATEMENT</u>	2
II. Findings, Discussion, and Conclusion.....	3
A. Background.....	3
B. Proposed Rules	4
1. Rule 1004. Definitions.	4
2. Rule 1007. Commission Staff.	5
3. Standards of Conduct	5
4. Rules Regarding Confidential Information Generally	6
5. Rule 1100. Confidentiality	6
6. Rule 1105. Personal Information - Disclosure	7
7. Rule 1200. Parties, <i>Amicus Curiae</i> , Non-Parties.	7
8. Rule 1201. Attorneys.....	14
9. Rule 1202. Form and Content.	15
10. Rule 1203. Time.....	16
11. Rule 1207. Utility Notice.	16
12. Rule 1208(b). Adoptions and Adoption Notices	17
13. Rule 1210 (Rule 1305) Tariffs and Advice Letters.....	18

14. Rule 1302(g) Show Cause Proceedings.18

15. Rule 1303 Applications.20

16. Rule 1304. Petitions.23

17. Rule 1400. Motions.23

18. Rule 1401. Intervention.25

19. Rule 1404. Referral to Hearing Commissioner or Administrative Law Judge32

20. Rule 1405. Discovery32

21. Rule 1408. Settlements.....37

22. Rule 1409. Conferences40

23. Rule 1502. Interim Decisions40

24. Rule 1505. Exceptions.....42

C. Conclusion.....42

II. ORDER.....43

A. The Commission Orders That:43

I. STATEMENT

1. On September 13, 2019, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) to amend the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Decision No. C19-0747. The NOPR commenced this Proceeding. The Commission referred the rulemaking proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing for October 29, 2019.

2. Throughout the Proceeding, oral and written comments were filed with the Commission by Black Hills Colorado Electric, LLC, Black Hills Colorado Gas, Inc., and Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy (collectively, Black Hills); Qwest Corporation dba CenturyLink QC (CenturyLink); the Colorado Telecommunications Association (CTA); Energy Outreach Colorado (EOC); Colorado Rural Electric Association (CREA); Public Service Company of Colorado (Public Service); the Regional Transportation

District (RTD); Tri-State Generation and Transmission Association, Inc. (Tri-State); Natural Resources Defense Council (NRDC), Sierra Club, and Western Resource Advocates (WRA) (NRDC, Sierra Club and WRA will be referred to collectively as the Conservation Commenters); the Colorado Energy Office (CEO); and the Colorado Office of Consumer Counsel (OCC).

3. At the scheduled time and place, the hearing was convened.

4. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption. Similarly, not all comments are specifically addressed herein. Recommendations in comment not incorporated into the redline version of the rules appended hereto were considered, but are not recommended for adoption.

5. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

A. Background

6. The Commission’s Rules of Practice and Procedure “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.” *See* Basis, Purpose, and Statutory Authority of the Rules of Practice and Procedure.

7. Proposed modifications come from a variety of sources and are intended to further the purpose of the rules. The Commission intends to address particular concerns of legislators

and other stakeholders regarding impediments to the public easily understanding and participating in Commission matters.

B. Proposed Rules

1. Rule 1004. Definitions.

8. Rule 1004(II) is amended to better define the role of Trial Staff. The OCC comments that the definition should be expanded to recognize that a designation of Trial Staff may occur outside of adjudicated proceedings. The substance of the comment is accurate and reasonable. It will be incorporated in the rule recommended for adoption.

9. Rule 1004(y) is the first rule affected by a category of OCC comment regarding alignment of business applications and processes with precise rule language. Current business processes include creation of proceeding and assignment of an identifying number upon filing of an advice letter. Of technical necessity, the Commission's E-Filing System requires a proceeding (in the context of the business application) in order for the advice letter to be visible to others and for distribution of notice. Further, establishing a proceeding facilitates associating any protest with the proper advice letter. Only if the Commission suspends the proposed effective date of the tariff, the identifying number continues for use as the contested proceeding. However, if the Commission takes no action regarding an advice letter filing, the number assigned effectuates notice, remains associated with the advice letter, and the proposed tariff that goes in to effect by operation of law. In such instance, the status is updated to reflect that the tariff is in effect and the assigned number upon filing of the advice letter never represents a contested proceeding. The number assigned in the Commission's filing system serves more than one purpose.

10. The OCC does not identify difficulties with operation of the existing rule that overcomes the risk of unintended consequences of changing it. For example, including advice

letter in the definition of a pleading (as proposed by the OCC) affects application of the definition throughout the rules. If adopted, the definition would create conflicts between Rules 1202 and 1210, which are beyond the scope addressed by the OCC. The Commission does not propose to change the definition of a pleading. The current rule has performed adequately as interpreted and applied and OCC has not demonstrated sufficient need to change the definition of a pleading. The rule will be adopted as proposed.

11. No other comment addressed or opposed modifications to definitions.

2. Rule 1007. Commission Staff.

12. It is well settled that the deliberative process privilege is part of the common law of Colorado. *City of Colo. Springs v. White*, 967 P.2d 1042, 1050-51 (Colo. 1998). Importantly, the privilege protects the frank exchange of ideas and opinions critical to the government's decision making process where disclosure would discourage such discussion in the future.

13. Modification of Rule 1007(a) is intended to define and explain the role of Advisory Staff. Recognizing the deliberative process privilege as part of the common law of Colorado, Public Service comments that the proposed modifications are overly broad. Public Service proposes to modify the language to recognize that "certain" communications are within the scope of the proceeding. The proposal is reasonable and will be adopted. As modified, the proposal may assist a reader to understand that some communications may be privileged, while not attempting to define the scope of privilege defined by common law.

3. Standards of Conduct

14. CEO suggests assigning a rule number to the introductory paragraph under the Standards of Conduct heading and titling the new rule as Rule 1100.

15. The Statement, Purpose and Statutory Authority is the only other unnumbered introductory paragraph in the rules. However, the suggested change is purely in form rather than substance. Adopting the proposal would require renumbering all rules in the Standards of Conduct without any substantive change. The undersigned is more concerned with the risk of unintended consequences from changing references to the substantive confidentiality rules that have long been in place. Renumbering alone would also add unnecessary complexity for those researching prior Commission decisions. While the comment may be addressed in a more-comprehensive substantive review in the future, the comment fails to demonstrate sufficient immediate benefits to warrant the risk of affecting current practices at this time.

4. Rules Regarding Confidential Information Generally

16. The Commission sought comment as to whether changes are necessary to Rules 1100 through 1103. Public Service comments that it does not believe any such change is necessary. While acknowledging that these rules could be improved, Tri-State comments that “rules generally work well and provide appropriate access to information.” *See* Initial Comments of Tri-State at 3. If the Commission seeks to modify Rules 1100 through 1103, Tri-State suggests severing those issues and convening workshops to consider appropriate amendments. The body of comments failed to demonstrate sufficient need to address these rules generally in this proceeding.

5. Rule 1100. Confidentiality

17. Rule 1100(n) in the current rule is proposed to be reorganized as Rule 1100(b). The rule identifies documents presumed to be available by the Commission for public inspection in accord with the *Colorado Open Records Act*. Subparagraph (X) includes “safety inspection

reports or information filed with the Commission or compiled by Commission staff pursuant to Commission decision or rule.”

18. RTD’s comments that the listed types of documents may be considered by the public as presumptively available for inspection without regard to restrictions provided by law. In order to avoid ambiguity, RTD suggests duplicating the phrase “subject to restrictions specifically provided by law” with the documents listed in 1100(b).

19. RTD’s proposal is reasonable and will be adopted.

6. Rule 1105. Personal Information - Disclosure

20. CEO and EOC comments suggest expanding the scope of permissible disclosure in Rule 1105(c) to accommodate the State’s Weatherization Assistance Program. The comments contend that the proposed modifications would bring improved efficiencies and reduce administrative costs. During hearing, no responsive comments were offered.

21. The proposed modifications are reasonable and will be adopted. Providing information to CEO, subject to the same protections as EOC and the Low-income Energy Assistance Program, will further the public interest by ensuring program funding reaches intended beneficiaries.

7. Rule 1200. Parties, *Amicus Curiae*, Non-Parties.

22. Several commenters address the proposed amendments to Rule 1200(c) explicitly allowing participants appearing as *amicus curiae* to address policy issues independent of legal argument. Legal argument incorporating policy considerations have long been permitted by the Commission. Proposed modifications address the role of *amici curiae* in proceedings.

Public comment versus *amicus curiae* status

23. The Conservation Commenters seek clarification whether the Commission intends a net increase in participation without affecting those granted intervention in proceedings. CEO supports increased participation, but joins concerns of the Conservation Commenters that the proposed rule will result in additional participants not being full parties to the proceeding (*i.e.*, denials of requests for permissive intervention). CEO notes that subjective, policy, or academic interest is not a sufficient basis to intervene and raises concern that groups not having well-defined financial interests or other real property interests will be denied permissive intervention.

24. Except as to the proposed addition of Rule 1401(d), the Commission proposes no modification to the standard for permissive intervention in Rule 1401(c). In any event, permissive intervention and amicus status remain discretionary. To the extent subject matters may be addressed by parties, *amici*, and public comment, interested persons must choose how they would like to participate and they carry the corresponding burden of demonstrating any appropriate requested relief. Rule 1509(b) continues a bright line between submitting public comment and petitioning for amicus curiae status. One granted participation as *amicus curiae* is precluded from submitting comment. The potential for overlapping subject matters does not create a conflict. *See, e.g.*, Decision No. C17-0196-I issued March 10, 2017, in Proceeding No. 16A-0396E.

25. CEO recommends removing the proposed page limitation for *amici curiae* and cautions that failure to do so could merely result in additional public comments.

26. CREA properly recognizes potential for overlapping subject matters to be addressed by *amici curiae* and public commenters. However, the rules retain clear distinctions between the roles and comment fails to demonstrate sufficient concern to warrant further modification.

27. The Commission is providing the potential for a broader range of participation in rule. Including a page limit applicable to an *amicus curiae* provides an appropriate means for the Commission to manage the proceeding and informs a person's expectations. If a person does not wish to be subjected to page limits, they may wish to participate through other means rather than seeking *amicus curiae* status.¹ Including the proposed page limit is reasonable and will be adopted.

Candor and Standards of Conduct

28. CEO contends inclusion of the provision regarding candor and Standards of Conduct are redundant. The Rules of Professional Conduct impose a duty of candor to the tribunal upon attorneys. CEO contends that the current rules impose no such burden upon non-attorneys appearing before the Commission, and thus, should not be imposed upon *amici curiae*.

29. The Commission is exercising its discretion to broaden the scope of possible *amicus curiae* status. No longer mandating representation by counsel, the Commission requires inclusion of the specified acknowledgement as a condition of requesting *amicus curiae* status. This requirement emphasizes to those requesting *amicus curiae* status that the Commission is specifically relying upon candor in their statements. The proposal is reasonable even if duplicative or imposing a modest additional burden. The rule proposed will be adopted.

Definition of *amicus curiae* in Commission proceedings

30. CREA comments to characterize current practices regarding *amici curiae* appearing before the Commission as being consistent with civil proceedings. Typically, they participate through filing of legal briefing and statements of position on the same schedules as parties.

¹ Note that Rule 1509(b) still prohibits parties and *amici curiae* to a proceeding from providing public

31. CEO recommends clarifying language regarding acceptance of issues. Comparing to standards applicable in appellate courts, concern is raised that the term “issues” is vague and someone interested might choose to submit public comment rather than presenting an issue as an *amici curiae*. Concern is also address the term “proposition” and limiting *amici curiae* ability to raise policy or legal arguments based on the organization’s interests not raised by a party.

32. Public Service proposes further clarification that parties define the scope of the proceeding.

33. Tri-State and Public Service propose requiring *amici curiae* to file policy considerations by the deadline for answer testimony to ensure a fair opportunity for response.

Discussion regarding role

34. The Commission maintains distinctions in the roles of persons participating in proceedings: a party, an *amicus curiae*, and a member of the public. *See* Decision No. C17-0196-I mailed March 10, 2017, in Proceeding No. 16A-0396E.

35. Foundationally, *amicus curiae* means "friend of the court" in Latin. The Commission exercises discretion to grant a request for *amicus curiae* when it is convinced the requester can provide assistance sought in arriving at a just and reasonable determination of a proceeding. *See* Rule 1200(c), *see also* Decision No. C13-0967-I mailed August 9, 2019, in Proceeding No. 13D-0559E, and Decision No. R17-0409-I mailed May 19, 2017, in Proceeding No. 17A-0179T.

comment in the same proceeding.

36. No matter when offered, the arguments and considerations of *amicus curiae* are not evidence and are not part of the evidentiary record. See Rule 1200(c), and see also Decision No. R15-0219 mailed March 9, 2015, in Proceeding No. 14A-0872CP-XFER.

37. While the Commission has long included a rule recognizing *amicus curiae* status, the term is not universally defined or applied.

38. Colorado state district courts have long permitted third parties to participate in litigation as *amici curiae*. See *Jefferson Cnty. Educ. Ass'n v. Jefferson Cnty. Sch. Dist. R-1*, 378 P.3d 835, 843 (Colo. App. 2016); *Oborne v. Bd. of Cnty. Comm'rs of Douglas Cnty.*, 764 P.2d 397, 399 (Colo. App. 1988). (“[T]he Commission, the State Board of Land Commissioners, and the Independent Petroleum Association of Mountain States were allowed to appear before the trial court as *amici curiae*.”). However, the Colorado Rules of Civil Procedure, are silent as to participation. Concluding that the trial court had not erred when it accepted an *amicus* brief, the Colorado Court of Appeals stated that “[t]he Colorado Rules of Civil Procedure do not address this situation, and we have not found any Colorado authority that addresses it.” See *Jefferson*, 378 P.3d at 843. Further, in denying a Motion for Leave to File Response as *Amicus Curiae*, the Colorado District Court Water Division One stated: “Nor is the court aware of any authority that would permit a nonparty to file a brief as *amicus curiae* in a case in water court. Compare Colo. Appellate Rule 29.” *In re Water Rights*, No. 03 CW 415, 2008 Colo. Water LEXIS 9, at *20 (Colo. Water April 17, 2008).

39. Federal district courts in Colorado have discretionarily permitted *amicus* participation. See *High Country Conservation Advocates v. U.S. Forest Serv.*, 333 F. Supp. 3d 1107 (D. Colo. 2018) (“Courts have broad discretion in determining whether to allow participation by *amicus curiae*.”). However, the Federal Rules of Civil Procedure are silent as to

amicus participation. See *Ctr. for Biological Diversity v. Jewell*, No. 16-cv-01932-MSK-STV, 2017 U.S. Dist. LEXIS 215881, at *3 (D. Colo. May 16, 2017). The United States District Court for the District of Colorado has stated:

District courts have the discretion to authorize participation by *amici curiae*. But neither the Tenth Circuit nor the Federal Rules of Civil Procedure set forth standards upon which such discretion should be exercised. As a consequence, district courts often look to Federal Rule of Appellate Procedure 29 (“Rule 29”), which governs *amicus curiae* participation in appeals, for guidance.

Id.; see also *Andrew F. v. Douglas Cnty. Sch. Dist. RE 1*, No. 12-cv-02620-LTB, 2017 U.S. Dist. LEXIS 189776, at *3 (D. Colo. Nov. 16, 2017). (“No Federal Rule of Civil Procedure governs *amicus curiae* participation in a district court case, so courts commonly look for guidance in *Federal Rule of Appellate Procedure 29*, which governs the filing of such briefs in the United States Circuit Courts of Appeal.”).

40. In determining whether to permit the filing of an *amicus* brief, federal courts consider the following, among other things:

(1) whether the proposed *amicus* is a disinterested entity; (2) whether there is opposition to the entry of the *amicus*; (3) whether counsel is capable of making arguments without the assistance of an *amicus*; (4) the strength of the information and argument presented by the potential *amicus curiae*'s interests; and (5) perhaps most importantly, the usefulness of information and argument presented by the potential *amicus curiae* to the court.

Andrew F., 2017 U.S. Dist. LEXIS 189776, at *3-4; see also *United States v. Bd. of Cnty. Comm'rs of Otero*, 184 F. Supp. 3d 1097, 1115 (D. Colo. 2015).

41. Parties to Commission proceedings are entitled to be heard, examine and cross-examine witnesses, and introduce evidence. See § 40-6-109, C.R.S. While expanding opportunity for participation, the Commission expresses no intent for *amici curiae* to change the scope of the proceeding or permit introduction of evidence in proceedings. Public Service's proposed clarification regarding scope are reasonable and will be adopted.

42. At its heart, the Commission recognizes *amici curiae* to assist the Commission. The Commission is largely free to define the role as it believes helpful, limited only by the bounds of Colorado law (*i.e.*, including the rights of parties). The Commission proposes to provide an opportunity to expand public input to the decision making process. Incorporating protections in the proposed rules, the rights of parties are adequately protected. Commenters have not shown otherwise and the rule will be adopted consistent with the discussion above.

43. The undersigned appreciates and understands concerns about implementing the revised role of *amici curiae*. However, the proposal to tie *amici curiae* policy considerations to the answer testimony deadline is problematic. Most obviously, not all Commission proceedings require prefiled written testimony. Secondly, the proposal ignores the possibility of *amici curiae* positions aligning with the proponent of the requested relief (*e.g.*, the applicant in an application proceeding). Finally, and to the undersigned's view of the traditional role of a friend of the Commission, the *amici curiae* should be able to weigh the entire body of evidence when addressing the Commission.

44. Rather than accelerate the deadline for *amici curiae* positions, the undersigned anticipates the possibility of more requests for reply briefing, on a case by case basis (which may or may not be granted). Accelerating timing of policy positions as proposed would inappropriately allow an *amici curiae* to influence the flow of the proceeding, including presentation of rebuttal evidence. The Commission remains bound to decide proceedings before it based upon the record. An opportunity for reply briefing may provide an appropriate means to address concerns raised in comment, where justice so requires.

8. Rule 1201. Attorneys.

45. The Commission proposes deleting the requirement by rule that all *amici curiae* be represented by an attorney at law.

46. Unless appearing *pro se*, Black Hills proposes refinement to require representation for a party or *amicus curiae* presenting legal considerations.

47. CEO supports the proposed rule as a means to increase participation.

48. CREA comments that inconsistency and confusion could result among the paragraphs of Rule 1201 and suggests expanding the role of public comment to avoid these concerns.

49. Jurisdiction to regulate and control the practice of law is granted to the Supreme Court. *See Supreme Court of Colorado v. Grimes*, 654 P.2d 822, 823 (Colo. 1982) citing *Conway-Bogue v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957). The Supreme Court has applied its jurisdiction in the context of Commission proceedings, recognizing:

There is no wholly satisfactory definition as to what constitutes the practice of law; it is not easy to give an all-inclusive definition. We believe that generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. Difficulty arises too in the application of the definition.

Denver Bar Ass'n v. PUC, 391 P.2d 467, 471 (1964).

The Supreme Court identified examples of the practice of law as well as common activities not constituting the practice of law. *Id.* at 471-472.

50. Natural persons may appear and represent themselves, notwithstanding the fact that they may not be a lawyer. *Denver Bar Ass'n v. PUC*, 391 P.2d 467, 471 (1964)(citations omitted). The Colorado Legislature has also created an exception from the general prohibition of an individual appearing as counsel for another entity in a court of record. An officer of a closely

held entity may generally represent the entity before the Commission before any court of record or before an agency if the amount in controversy does not exceed \$15,000. *See* § 13-1-127, C.R.S.

51. Related to the legislative nature of its functions, the Commission invites public comment. Public comments provide an opportunity for interested persons to submit input for the Commission's information and to encourage the Commission to exercise discretion in a matter. *See* Rule 1509.

52. The undersigned agrees with CREA that the Commission could have chosen to expand public participation by modifying the role of public comment. However, that is not the path chosen and does not preclude adoption of the proposed rules. As to commented potential for inconsistency, the “notwithstanding paragraph (a)” reference in Rule 1201(b) will be clarified as to *amicus curiae*.

53. These rules inform the public about the Commission’s practices and procedures. While comments attempt clarification, the Commission expands possible participation by eliminating any potential rule-imposed requirement for representation. However, the Commission does not define the practice of law. Whether the character of an act performed constitutes the practice of law ultimately relies upon the particular circumstances of the case. *Id.* at 471. The remainder of the rule will be adopted as proposed.

9. Rule 1202. Form and Content.

54. Rule 1202(f) sets forth the requirements for formatting written testimony in 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.

55. RTD's comment observes that each type of a witness' prefiled written testimony, consisting of testimony and incorporated attachments, are filed as a single document. It offers revisions so that all testimony of a witness, regardless of type, would be filed as one exhibit.

56. The rules will be adopted as proposed. A witness's direct testimony (including any attachments) would be filed as one exhibit. If the same person separately files rebuttal testimony (including any attachments), the rebuttal testimony would be filed as an exhibit separate from the first exhibit.

10. Rule 1203. Time.

57. The body of the NOPR referenced a proposed rule modification that was omitted from the attachments to the decision. A few commenters noted the omission. The statement in the body of the decision will not be addressed further.

11. Rule 1207. Utility Notice.

58. Changes are proposed to clarify compliance filings and associated filing requirements.

59. CEO comments that the Commission should require compliance filings to be filed in the proceeding of the decision authorizing the filing to ensure that all parties to the original proceeding will be notified of the filing.

60. Handling of advice letters is one example of where, the Commission must adapt business processes to technical limitations of business applications. In order for the Commission to review (and potentially reject) an advice letter and proposed tariff as a compliance filing in the business applications currently available, it must be filed in a proceeding separate from the

proceeding in which the decision issued authorizing the filing. Notice is also provided for all advice letters in the same manner. This process, required in rule, is critical for the Commission in order to ensure and enable timely review. On the other hand, the commented concerns of parties to the underlying proceedings are understandable. It is also noteworthy that compliance filings are typically filed on shortened notice.

61. Full duplication of the compliance filing is overly broad and more burdensome than necessary to address concerns raised in comment. Attempting a balance of all concerns, the rule will be amended to require the filing of a notice in the underlying proceeding identifying the compliance filing.

12. Rule 1208(b). Adoptions and Adoption Notices

62. Proposed amendments address filing requirements in the event a utility transfers ownership or control to another entity or changes its corporate name.

63. Black Hills proposes a revision to clarify that an advice letter and associated tariff reflecting a utility name change may be filed subsequent to the adoption notice. It urges that the accommodation is reasonable because the updated tariff reflecting a utility name change can take considerable time and effort to develop.

64. The adoption notice is reasonably adequate to notify the public of a change in information contained on the title page of the tariff until an appropriate filing can be developed. However, to open-endedly require a further filing effectively negates the filing requirement under the proposed rule. To acknowledge the practical reality, while maintaining the general requirement, a specific time limit will be incorporated into the proposed rule.

13. Rule 1210 (Rule 1305). Tariffs and Advice Letters.

65. Because notice of an advice letter is identified by the same number when the proposed effective date is suspended to create a contested proceeding, the OCC proposes that motions requesting permissive intervention and protests be able to be filed upon the posting of notice. The OCC contends that § 40-6-111(b), C.R.S. supports the proposed modification. However, confusion and unnecessary burden could result. Illustratively, when would response time expire as to a motion requesting permissive intervention? There is no need for the Commission to address permissive interventions prior to deciding to set the matter for hearing. Further, it is wasteful and inefficient to require that responses be filed before the Commission decides to set the matter for hearing. Even though the same number is used in the Commission's E-Filing System to track an advice letter whether it goes into effect or is contested, the OCC has not shown sufficient need to change the rule at this time. The rule will be adopted as proposed.

14. Rule 1302(g). Show Cause Proceedings.

66. The NOPR streamlines the show cause process and captures all information in one proceeding.

67. Black Hills and Public Service are concerned with changes in timing. Black Hills is unaware of problems or concerns with the 20-day timeframe. Public Service comments that a 15-day response time is more appropriate than ten.

68. The OCC opposes the filing of a proposed order and contends the process appears to contemplate filing a decision twice.

69. Public Service suggests the rule not presume any violation. Public Service also suggests clarification that the process begins with allegations and that only the Commission

designates the parties, rather than Staff. Finally, Public Service proposes retaining the explicit opportunity for cure.

70. Initially, the undersigned notes that the show cause process is rarely used by the Commission. However, it is reasonable to improve efficiency of the process. The proposed rule will be clarified to promote efficiency, in light of comments.

71. The rules continue to provide a preliminary review of a request for issuance of an Order to Show Cause, supported by an affidavit. The subject respondent will be notified, provided the allegations and the supporting affidavit, and be granted an opportunity to respond to the request for issuance of the show cause order. Notably at that point, the only issue is whether the Order to Show Cause should be issued by the Commission. If the Commission issues the Order to Show Cause, the named respondents have the opportunity to show cause as a response on the merits.

72. Echoing comments regarding discovery response times, and partially addressing comments of Black Hills and Public Service, ten calendar days can materially impact the business days to respond. By changing the proposed process to ten business days, respondents will be assured of more time to respond, while still modestly shortening the historical process.

73. Addressing comment regarding an explicit period of cure, insufficient need has been shown to expressly continue the provision. As adopted, a party named in an Order to Show Cause will likely have been aware of the allegations for weeks. If the allegations have merit, the responding party would have the opportunity to negotiate resolution or cure to moot the claims alleged. If the order issues, the respondent still has the opportunity to cure, negotiate settlement, or otherwise request relief not to address the merits of the allegations. Solely deleting the

explicit language regarding a cure does not negate the opportunity to resolve the underlying dispute and otherwise causes unnecessary delay.

74. Addressing the OCC’s concern regarding possible confusion resulting from filing of a proposed interim decision, in addition to the rule itself, emphasis will be added that the affidavit will be filed supporting issuance of a proposed interim decision.

15. Rule 1303. Applications.

75. Proposed modification to Rule 1303(c) injects an opportunity for the Commission to seek additional information for determining completeness of an application.

76. Black Hills comment address the distinction between substantive matters in a proceeding and the information required to start litigation of an application.

77. RTD comments that the rules provide notice of application requirements through specific provisions and that the modifications would “erode the fair notice of application requirements, and the relative predictability in cost and time that rules of procedures otherwise provide.” Rather, RTD prefers continuation of Staff issuing notices of deficiency as has occurred in the past.

78. Public Service comments that the proposed modifications would frustrate the purpose of time limits imposed by § 40-6-109.5, C.R.S. and create administrative inefficiencies. The Company contends the change is unnecessary and adds to applicable statutory timelines.

79. Applications are deemed complete in accordance with § 40-6-109.5, C.R.S., which provides:

the commission shall issue its decision on such application no later than one hundred twenty days after the application is deemed complete as prescribed by rules promulgated by the commission.

80. Some comment improperly equates deeming an application complete with a prima facie demonstration. As address in Decision No. R12-1466:

The undersigned sees completeness as an integral part of efficient processing of Commission proceedings. Too quickly deeming an application complete shifts the burden of determining and understanding the basis and relief requested to the discovery process. The proposed rule conceptually adopts an appropriate balance of party interests and proposals to modify will not be adopted.

....

The deeming process only determines completeness sufficient to commence the applicable statutory period. The determination is made without prejudice as to the merits of the proceeding, including whether the application, in fact, satisfies any required scope of the proceeding.

Decision No. R12-1466 mailed December 21, 2012 at 42-42, Proceeding No. 12R-500ALL.

81. Those filing applications define the scope of the proceeding in the first instance. It is reasonable that the Commission should understand the relief sought before triggering the time available to reach a decision.

82. The undersigned is concerned that the common experience of RTD is not as predictive for all affected industries for all applications. Where the relief sought is more predictable or of narrow scope, it is more likely that rules can provide specificity. However, that is not the case across the Commission's jurisdiction. In any event, the additional provision does not necessarily change Staff's practice of notifying those seeking relief of deficiencies, as RTD supports.

83. When the Commission reaches a decision that additional information is necessary, the proposed rule allows, based upon facts and circumstances present, for supplementation. The NOPR illustrates applicability where two applications may otherwise appear to stand alone. The Commission may find it necessary to understand how one will affect the other based upon

specific circumstances present. There is simply no way to anticipate all such possibilities in rules of general applicability.

84. Public Service's observation that the Commission theoretically could enter a decision requiring additional information in every application is correct. This recognition reflects the important counter-balance encouraging filers to clearly define and support the scope of relief sought, avoiding need for the Commission to enter such a decision.

85. Beginning the time for issuance of a decision without understanding the relief sought unfairly burdens the Commission and intervening parties. Would the Company and the Commission not be in a worse position if the application was ultimately denied at the end of litigation because information known at the beginning to be necessary was not provided? The proposal seeks to avoid the Commission facing a predicament of choosing whether to seek additional information or guess and hope that others obtain answers. Parties request that specific or coordinated relief be granted within time periods for a variety of reasons. If the necessary information is not present at the beginning of the case, it would be tremendously inefficient and possibly impractical for the application to ultimately be denied based thereupon at the end of contested litigation.

86. The possibility of commented inefficiencies does not overcome the benefit from efficient determination of merits that the Commission seeks to address. Commenters should not assume the Commission's effort to promote efficiency will be applied to abuse its discretion. The Commission is expanding sole reliance upon rules of general applicability. Where a decision determines that additional information is necessary in a particular application, there is no more efficient manner to provide that information than at the beginning of the process. While rules are intended to advise participants, it is wholly unreasonable for all filers to attempt to bind

the Commission's discretion to decide any case based upon particular facts and circumstances. To attempt otherwise would also improperly reward those ever seeking to provide the minimum amount of information over those assisting the Commission in reaching a decision that is truly in the public interest.

87. The proposed rule is within the Commission's discretion, reasonable, and will be adopted.

16. Rule 1304. Petitions.

88. The Commission proposes to clarify the process for determining whether to go forward with a petition for declaratory order. Public Service recommends further clarification that the Commission is not limiting the basis upon which the Commission may decide not to accept a petition. The proposal is reasonable and will be adopted in part for clarification.

17. Rule 1400. Motions.

89. CEO proposes that Rule 1400 be modified to certify all denials of permissive intervention for immediate appeal, limiting the time for filing a motion for reconsideration. Addressing Rule 1401, CEO also proposes that a person have a seven-day response time to reply to a challenge of a claim of right.

90. The Conservation Commenters also recommend clarifying the process to challenge interim decisions denying intervention, impose a seven-day response time, and require Commission action on such a challenge within 21 days of filing.

91. Since its adoption, Rule 1502 has provided that interim orders are generally not subject to exceptions. Commenters did not point to any occurrences where the current rules failed to operate as intended and the issues raised have been previously considered and addressed by the Commission:

8. In recommending adoption of Rule 1502, Judge Ken F. Kirkpatrick summarized:

It is the current practice of the Commission to entertain appeals of interim [*3] 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.

Decision No. R12-1466 at 60, *quoting* Decision No. R05-0461 at 18.

92. The Commission denied exceptions to Judge Kirkpatrick's Recommended Decision, reiterating that it is left to the "discretion of ALJs and the Commission as to when interim orders may be appealed." Decision No. R09-1068-I mailed September 22, 2009, *quoting* Decision No. C05-1093 at 36. *See also* Decision No. R12-1466 at 60.

93. As observed in 2012, the current rule has continued to prove adequate and remains an important aspect of managing pending proceedings on a timely basis. Sufficient cause has not been shown to modify the rule.

94. The OCC comments regarding the length of time it takes for those requesting permissive intervention to know whether their request will be granted. Permissive intervenors do not become a party until granted such status. The OCC proposes establishing a seven-day response time.

95. The OCC's proposal to establish a seven-day response time to requests for permissive intervention is reasonable, not opposed in any comment, and will be adopted.

18. Rule 1401. Intervention.

96. Modifications are proposed in accordance with SB19-236 and to allow challenges to claimed interventions by right or the party's request for hearing. Several commenters seek clarification or further modification of the rule regarding permissive intervention.

Rule 1401(b)

97. Without identifying any specific basis or purpose, CEO proposes that challenges to legally protected interests be limited to those not having a statutory intervention of right. Then, when a legally protected interest is challenged, CEO contends that an opportunity for reply be available for the party claiming such right.

98. The proposal to prohibit a party from even be permitted to challenge a statutory claim of right will not be adopted. CEO demonstrates no reasonable basis for such a prohibition to challenge the claim as being within the scope of the statutory right.

99. Historically, while not specifically proscribed in rule, parties have challenged intervention of right by filing a motion to strike the intervention. The party intervening based upon a claim of right would then have an opportunity to file a response to the motion in accordance with Rule 1400. The rule will be amended to expressly incorporate this best practice.

Rule 1401(c)

100. CEO proposes clarification of "tangible interests" and recognizing that policy interests alone is a sufficient basis for intervention. CEO believes the Commission considers state policies and goals when reaching decisions and that parties include policy discussions in comments and testimony.

101. The Commission clearly incorporates any number of policy considerations in reaching a decision; however, that does not necessarily require the Commission to permit those

having only a policy interest in a subject matter be permitted to participate as a party to the proceeding. Rather, the Commission's relies upon its own expertise and discretion as well as those the Colorado Legislature has granted intervention by right and those demonstrating a pecuniary or tangible interest substantially affected by the proceeding to address policy considerations

102. CEO addresses the meaning of the term "tangible" interest:

While Black's Legal Dictionary ... [defines] tangible in terms of material or physical existence....Dictionary.com defines tangible as "definite, not vague or elusive." Merriam-Webster defines tangible to mean "capable of being precisely identified by the mind" or "capable of being appraised at an actual or approximate value."

Consistent with the PUC's mission, CEO contends the rule should specify that environmental interests are tangible interests.

103. As noted by the Conservation Commenters, and evident in prior decisions, the Commission has granted permissive intervention to environmental groups in specific cases. Particularly in light of the discretionary nature of permissive intervention, further specificity has neither been shown necessary to modify the rule to allow intervention nor would the rule require intervention even if amended. The rule will be adopted as proposed in the NOPR.

104. The Conservation Commenters do not propose specific modifications, but request clarification and additional guidance.

105. The Commission must "conduct its proceedings in such a manner as will best conduce the proper dispatch of business and the ends of justice." § 40-6-101(1), C.R.S. Section 40-6-109(1) C.R.S. "creates two classes that may participate in PUC proceedings: those who may intervene as of right and those whom the PUC permits to intervene. *DeLue v. Public Utilities Commission*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 24 L. Ed. 2d 421,

90 S. Ct. 428 (1969). Under the statute, the PUC has promulgated rule 15 R.I 276, 7 A. 2., 4 Cambria Co. Reports 723-1 (1980), limiting persons whom it will permit to intervene to those having "a substantial personal interest in the subject matter of the proceedings [whose] intervention will not unduly broaden the issues." *RAM Broadcasting of Colorado, Inc. v. Public Utilities Com.*, 702 P.2d 746, 749 (Colo.1985).

106. In addition to § 40-6-109, C.R.S., the Colorado Legislature has statutorily granted intervention by right to the Colorado Office of Consumer Counsel pursuant to § 40-6.5-106, C.R.S. and the Colorado Energy Office pursuant to § 40-6-108, C.R.S.

107. The OCC represents the "public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges, in matters involving rulemaking which have an impact on the charges, the provision of services, or the rates to consumers, and in matters which involve certificates of public convenience and necessity for facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges." *See* § 40-6.5-104, C.R.S.

108. The mission of CEO is to:

- (a) Sustain the Colorado energy economy and promote all Colorado energy;
- (b) Promote economic development in Colorado through energy-market advances that create jobs;
- (c) Encourage Colorado-based clean and innovative energy solutions that include traditional, clean, and renewable energy sources in order to encourage a cleaner and balanced energy portfolio;
- (d) Promote energy efficiency;
- (e) Increase energy security;

- (f) Lower long-term consumer costs; and
- (g) Protect the environment.

§ 24-38.5-101, C.R.S.

109. Most comment addresses those requesting permissive intervention, rather than those intervening by right. In Decision No. C13-0442, the Commission reviewed the several requirements for permissive intervention:

There are several requirements for permissive intervention. First, the Colorado Supreme Court interpreted the “will be interested in or affected by” language of § 40-6-109(1), C.R.S., to mean that a “substantial interest in the subject matter of the proceeding” is required. *Id.*, at 749. Accordingly, not every person, firm, or corporation that has any type of an interest in a Commission proceeding or will be affected in any way by a Commission order has a right to intervene. Second, even if the person or entity seeking intervention has an otherwise sufficient interest in a matter, courts and administrative agencies have discretion to deny intervention if that interest is represented adequately. This is the case even where the person or entity seeking intervention will be bound by the judgment of the case. *Denver Chapter of the Colo. Motel Ass’n v. City and County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming a trial court’s denial of an intervention by certain taxpayers, under C.R.C.P. 24(a), in a lawsuit filed by the City and County of Denver against its auditor—because the interests of these taxpayers were represented by the city).² The test of adequate representation is whether or not there is an identity of interests, not discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*, *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

Decision No. C13-0442 mailed April 16, 2013.

110. When permissive intervention was most recently visited in a Rules of Practice and Procedure rulemaking, the undersigned observed:

In establishing permissive intervention standards, the Commission must be mindful of the resulting impact from increasing the number of parties upon the efficient administration of proceedings utilizing limited resources, the nature of proceedings, and the likelihood that expanding the number of parties will materially assist the Commission in reaching a just and reasonable result. Illustratively, too low of entry threshold can result in unnecessarily burdensome

² The Commission is not strictly bound by the C.R.C.P., but they are useful for purposes of analysis. Rule 1001 provides the Commission may seek guidance from the C.R.C.P.

multi-party litigation. Litigation costs for all parties as well as the Commission may be materially impacted by expanding the discovery process and lengthening hearings. Particularly where duplicate interests advocate redundant or irrelevant positions, Commission proceedings are not furthered and resources are wasted.

Decision No. R12-1466 at 45-47.

111. The need to balance these considerations remains today. The Commission has applied the current standard to deny permissive intervention where it was found that pecuniary and tangible interests would not be substantially affected or would be otherwise adequately represented. *See e.g.*, Decision No. C13-0967-I in Proceeding No. 13D-0559E; Decision No. R19-0625-I in Proceeding No. 19AL-0290E (certified for interim appeal and upheld by Decision No. C19-0757 in Proceeding No. 19AL-0290E); and Decision No. R19-0801-I in Proceeding No. 19A-0409E.

112. The Supreme Court favorably cited the test for inadequate representation under Rule 24 in *Wright and Miller*:

If the interest of the absentee is not represented at all, or if all existing parties are adverse to him, then he is not adequately represented. If his interest is identical to that of one of the present parties, or if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate.

Feigin v. Alexa Group, Ltd., 19 P.3d 23, 31 (Colo. 2001), *citing* 7C *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* § 1908, 318-19 (2d ed. 1986).

113. Considering whether an interest is adequately represented, the Commission has noted reliance on the OCC's status as a governmental entity required to represent interests as a factor. *See e.g.*, Decision No. C13-0442 mailed April 16, 2013 at 19, and Decision No. R19-0625-I in Proceeding No. 19AL-0290E. The Commission similarly looks to CEO as a governmental entity because the Colorado Legislature granted it broad intervention of right to fulfill its statutory responsibilities.

114. The standards specified in the rules must be applied based upon the facts and circumstances of each proceeding. Dependent upon findings based upon those facts and circumstances, the level of clarity and guidance sought is not possible in light of the long-standing standard applied by the Commission. Thus, the body of Commission case law is the most beneficial aid to practitioners, while acknowledging that the Commission is not bound by the doctrine of *stare decisis*.

115. The OCC proposes that the Commission act on motions for permissive intervention prior to expiration of the notice period. The rule will be amended to clarify that the provision is permissive. Particularly in determining multiple requests for permissive intervention, the Commission may choose to await expiration of the notice period in order to consider the number, positions, and identity of those seeking permissive intervention in light of other parties in the proceeding. Also, current practice maximizes the opportunity for all seeking intervention to respond to other requests for permissive intervention. While this may slightly delay commencement of discovery for those granted permissive intervention, the benefit to permissive intervenors cannot overcome the benefit to the Commission identifying parties before deciding motions for permissive intervention.

Rule 1401(d)

116. CEO proposed further modifications to implement § 40-2-125.5(5)(f), C.R.S., which provides:

The commission shall consider affected communities within the filing qualifying retail utility's service territory with a tangible and pecuniary interest, and organizations representing those communities shall be presumed to have standing in a proceeding seeking approval of any clean energy plan filed pursuant to this section.

117. CEO suggests that organizations representing communities (*e.g.*, non-governmental organizations”) be required to demonstrate how the NGO represents such community. Upon such a showing, CEO interprets the statute grants a “community, including an elected political body representing such a community, a statutory intervention as of right.” CEO comments at 13.

118. The Commission summarized the recently-enacted legislation:

Senate Bill 19-236, directed "electric [utilities] with greater than five hundred thousand customers in the state or any other electric utility that opts in..." to file a Clean Energy Plan to reduce carbon emissions to 80 percent below 2005 levels by 2030 and reduce atmospheric carbon emissions by 100 percent by 2050.

Decision No. C19-0756 mailed September 17, 2019, in Proceeding No. 19M-0495E.

119. The Colorado Legislature incorporated a broad policy declaration § 40-2-125.5(1), C.R.S. addressing matters of statewide importance. However, CEO presents no basis to support statutory creation of intervention by right nor the scope of community. Other provisions granting statutory intervention by right are clear and unambiguous. The Colorado Legislature provided communities “shall be presumed to have standing in a proceeding.” § 40-2-125.5(5)(f), C.R.S. No basis has been shown to equate this presumption with a right.

120. The statute requires the Commission to consider affected communities within a qualifying retail utility’s service territory with a tangible and pecuniary interest when considering a clean energy plan. CEO presents no basis to narrow the definition of communities and organizations representing those communities. The statutory language does not define or limit affected communities in terms of interests, geography, or otherwise. The Commission has not proposed to further define communities at this time. CEO has not demonstrated that the rules

and existing procedures regarding permissive intervention require further amendment at this time. The rule will be adopted as proposed.

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

121. Rule 1404 is amended to implement legislative changes pursuant to SB19-236. Adjudicatory proceedings are no longer before an administrative law judge upon filing. Rather, they will be before the Commission *en banc* unless the Commission refers the case by rule, minute order, or written decision.

122. Referral to an administrative law judge or hearing commissioner has always been, and remains, a matter within the Commission's discretion. However, for the benefit of affected parties as well as an administrative law judge or hearing commissioner, it should be clear whether a matter is before the Commission or referred. As drafted, subparagraphs (b) is permissively stated. The undersigned believes it should be clear that the identified matters are referred to be heard in the first instance by rule. This aligns with the statutory reliance upon the rule for referral and avoids ambiguity of knowing whether, in fact, any specific case is referred.

20. Rule 1405. Discovery

Rule 1405(b)

123. The OCC's comment recommends clarification of the applicability within Rule 1405 to types of proceedings. Comment points out that Rule 1405(b) applies to applications, not advice letter and tariff proceedings. Rule 1405(c) does not apply to advice letter and tariff proceedings because they do have a statutory period within which the Commission must issue decision (*i.e.*, Section 40-6-111(b), C.R.S. addresses the suspension period). Finally, 1405(d)

applies in proceedings with prefiled testimony. The OCC points out that this may, but does not necessarily cover advice letters.

124. The proposed addition to Rule 1405(b) is reasonable and will be adopted to avoid potential confusion.

125. Public Service also proposes that the rule reflect business days, rather than calendar days. It comments that the discovery process has fallen out of balance and that this one change would significantly assist the regulatory community and the Commission. No reply comment opposed the requested change.

126. As noted by Public Service, the Commission has little involvement in day-to-day uncontested discovery. Specifying response times in business days is reasonable and will more accurately align with the time reasonably available for preparation of a response. Further, it will avoid potential manipulation of weekends and/or holidays.

Rule 1405(f)

127. Proposed revisions to Rule 1405 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. Rule 1405(f) proposes to extend the period of time prior to the filing of a proceeding when discovery will be presumed not to be reasonably calculated to lead to the discovery of admissible evidence from four years to ten years. In addition, and as an exclusion to this limiting period, 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. Predictably, those more likely responding to discovery oppose expansion and those more likely propounding discovery support expansion.

128. Black Hills first points out that the four-year period in Rule 1405(f) is not a limit on discovery; rather, it is a presumption applied in the context of the Commission's standard for discovery. Based upon Black Hills' experience and review of Commission decisions, it does not support the proposed revision. Black Hills also notes that the Commission has already adopted a scope of discovery that is broader than that permitted under the Colorado Rules of Civil Procedure. Further expansion of the scope of discovery will increase litigation costs and burdens as well as impact business practices necessary for compliance.

129. CIEA acknowledges that certain narrow subjects may require a longer time window of relevant information. However, it contends those cases represent the exception rather than the rule. It further comments regarding the potential for dramatic increases in costs and burden of participating in Commission proceedings, if adopted.

130. Tri-State also comments regarding concerns as to cost and burden. Tri-State's experience reflects a trend of increasing burden and cost to comply with discovery obligations. It is concerned that more than doubling the period of time for which responsive information must be produced will significantly increase the problems it has experienced. As an alternative, while not agreeing with the reasoning, Tri-State suggests a specific subset of adjudicatory proceedings where a ten-year period could be adopted, leaving the four-year period in place for other adjudicatory proceedings.

131. Regarding asset life, Black Hills seeks further clarification whether the intent is to address regulatory or physical assets. Physical assets, in particular, can have lives up to 35-50 years. Black Hills anticipates that the broad expansion proposed will impose an undue recordkeeping burden on utilities.

132. Public Service also comments regarding the proposed references to life of an asset (or liability) and notes that some assets (or liabilities) have very long amortization periods. Aside from burdens of scope, Public Service points out that changing systems and capabilities over many years can significantly increase discovery burdens. Public Service illustratively points to the Company's prepaid pension asset that started in 1987. In order to comply with the proposed scope, the Company would have to develop a process for a timely and cost effective means of readily producing these documents.

133. The OCC strongly supports the change to ten years. The OCC points to illustrative cases where it contends a period greater than four years is appropriate and is often necessary to develop an understanding of the context, magnitude, or trends.

134. Critically, consideration begins with recalling that these rules are of general applicability to all Commission proceedings. Addressing comparable comment in a prior proceeding, the undersigned recognized:

The presiding officer in any proceeding is in the best position to exercise discretion and weigh affected discovery interests.

The goal of this proceeding must be to establish the appropriate "default" procedures. Where those provisions are adequate, prehearing conferences can more likely be delayed or avoided. Where prehearing conferences are necessary, deadlines may be modified on a case by case basis as has occurred in the past. Promotion of efficiency in the discovery process benefits all parties concerned in the exchange of information. However, the undersigned is convinced that increasing the potential for additional process regarding discovery disputes interferes with maximizing the Commission's opportunity and ability to meet the letter and spirit of applicable statutory periods.

135. The cost of litigation should not be increased more than is necessary. As Administrative Law Judge Garvey recently recognized, the cost of discovery and other legal costs ultimately fall upon ratepayers. *See* Decision No. R19-0625-I at 9.

136. Those initiating proceedings, in the first instance, have some opportunity to manage the scope of discovery through their requested relief. As commented by the OCC, it is reasonable that the amount of discovery increases with the scope and complexity of proceedings.

137. The Commission raised for discussion the period of time prior to the filing of an application that will presumptively be deemed to be not reasonably calculated to lead to the discovery of admissible evidence. As noted in comment, the Commission's discovery standard is already fairly broad, relative to trial courts. The undersigned finds the weight of comment supports continuing the status quo at this time and addressing needed exceptions on a case by case basis.

138. The Commission noted that a four-year look-back period seems overly restrictive for someone conducting discovery for trend analysis and historical implications, particularly because adjudicatory proceedings impact investments and capital expenditures for decades. Relative to all of proceedings, it is not clear how often those issues arise in proceedings. However, it seems the exception rather than the rule and such a large expansion applicable to all proceedings increases burdens without any ability to attempt quantification of benefit. Thus, in proceedings where such issues are anticipated, the period could be addressed on a case by case basis during a prehearing conference or upon motion.

139. There is little comment demonstrating that discovery directed to a time period greater than four years prior to the filing of an application was in fact reasonably calculated to lead to the discovery of relevant information **and** that objections based upon the period of time were the basis for denial of such discovery. It seems that current practice would result in no such objection or the parties conferring as to a reasonable period, where appropriate. Otherwise, one

might expect those parties being denied discovery to raise the issue in this proceeding and requests to compel discovery would be more common.

140. Defining a more narrow scope of proceedings where discovery is anticipated to reasonably address a longer period of time before filing has appeal. However, there is insufficient comment to develop such a rule at this time. Perhaps a rule could be fashioned relative to prior proceedings or some other basis of limitation.

141. As to the life of asset, first the rule would require clarification that the additional provision only relates to the presumption based upon the time period covered in discovery, but the discovery otherwise remains subject to objection and must be reasonably calculated to lead to the discovery of admissible evidence. However, comment raises significant concern as to the scope of the proposal. Particularly because the provision cannot be limited to a considered narrow scope of proceeding, it could potentially have an unintended drastic impact upon the scope of permissible discovery. Further, the comment reasonably suggests that maintaining such records in a manner to permit compliance with discovery obligations could come at a significant cost. Finally, similar to consideration of lengthening the time addressed in the presumption regarding reasonable calculation, the same issues arise as to the scope of proceedings affected and no indication whatsoever of when objections were raised to discovery reasonably calculated to lead to the discovery of admissible evidence resulted in such discovery not being provided.

142. The amendments addressing discovery in Rule 1405(f) are not incorporated for adoption at this time.

21. Rule 1408. Settlements.

143. Proposed amendments to Rule 1408 expand the evidentiary support for all settlement agreements.

144. Black Hills comments that imposing additional requirements for all settlements will discourage settlement, conflicting with the express policy to encourage them. Further, it comments that joint testimony simply may be impossible because individuals may contend that approval is appropriate and in the public interest for different, often conflicting, reasons.

145. Black Hills also points out that many parties appearing before the Commission have no obligation whatsoever to the public interest; rather, they may appropriately pursue their personal interests. Thus, Black Hills contends it is inappropriate for the rule to impose an obligation to agree to a settlement only because it serves a public interest.

146. Black Hills comment also addresses the proposed attestation contending non-lawyers should not be required to attest that a settlement is in accordance with applicable laws. A lesser alternative is proposed attesting that parties are not aware of a settlement agreement violating applicable laws.

147. In sum, Black Hills contends the current rule appropriately leaves discretion with the presiding officer to consider whether oral or written testimony is necessary to support any given settlement agreement.

148. CenturyLink comments that expanding the requirements for every settlement to include prefiled, joint testimony supporting settlement of every contested case is excessive and that the Commission and administrative law judges should shape procedures to meet the needs of each case. At least, it is suggestion that a concept of proportionality and discretion should guide any additional obligations. Illustratively, CenturyLink notes resolution of minor proceedings should not impose such a significant burden.

149. CenturyLink proposes adding a permissive standard to the provision. Substantively, CenturyLink also notes that not all proceedings are resolved based upon the

standard that the agreement is in the public interest. Finally, it suggest considering removal of the requirement of joint testimony as the reasons one party agrees to a settlement may be entirely independent of any another party might agree.

150. CTA joins the comments expressed by CenturyLink, the OCC and Black Hills. It further joins that the current rule is adequate and does not require modification. In sum, the presiding officer considering a settlement is in the best position to structure consideration of the settlement based upon the proceeding and the Commission's policy of encouraging parties to settle their differences.

151. Public Service also opposes an imposition that joint testimony must be filed. Comment highlighted that current processes have proven effective, permitting some parties to file testimony while others choose not to proactively support approval.

152. CEO supports the proposed amendments but proposes eliminating the requirement that testimony be jointly filed. CEO recognizes that diverse interests and perspectives may lead parties to support approval of a settlement.

153. The OCC comments that the proposed amendments are not necessary because supporting testimony is generally provided. Also, the OCC comments that oral testimony at hearing has been accepted in the past without requiring pre-filed written testimony. Finally, supporting testimony has not necessarily been requested or provided by all parties historically.

154. The NOPR attempts to clarify what is to be filed with a settlement. However, settlements are commonly approved by the Commission omitting some or all of the clarified requirements. Parties must provide sufficient evidentiary support for the Commission's decision. The undersigned joins commented concern that imposing broad burdens on all settlement agreements will frustrate the encouragement of parties to resolve their differences. On the other

hand, an attempt to obtain evidentiary support for a settlement agreement may promote efficiency and avoid otherwise unnecessary hearings. Thus, the proposal will be made permissive and further modified to address commented concerns.

22. Rule 1409. Conferences.

155. Black Hills proposes amending Rule 1409 to establish “default and non-binding procedural schedules that are applicable to both application and advice letter proceedings.” It contends more Commission guidance is necessary to inform parties of the establishment of a fair procedural schedule. In particular, Black Hills notes the extension to of the applicable statutory periods through enactment of SB19-236.

156. Black Hills’ comment was not addressed by any other comment. The undersigned notes first that such a process is applied in transportation proceedings; however, in practice the rule seldom governs proceedings. *See* Rule 1405(k). The undersigned also finds transportation proceedings more predictable in scope as opposed (particularly) to energy proceedings. Thus, it would likely prove even more difficult to define a generally applicable schedule, resulting in less likelihood to govern proceedings. The Commission did not propose default procedural schedules and the undersigned is not convinced that adopting any rule would do more than create an exception to a general rule that must still be defined elsewhere.

23. Rule 1502. Interim Decisions.

157. CEO proposes a time limit for requesting reconsideration of an interim decision, deadlines for rulings on motions requesting certification for interim appeal, and immediate certification for appealability of decisions denying intervention.

158. The Conservation Commenters propose specific time periods for ruling upon a motion to certify for interim appeal and then such ruling should be immediately appealable.

Striking the Commission reference at the beginning of Rule 1502(d) is also proposed to be stricken as the process would not apply to Commission decisions.

159. The Commission summarized the purpose and application of the process for certifying an interim decision on appeal:

The scope of interim relief is indeed an extraordinary remedy and is not proposed to be modified. As has been recognized:

7. Interim orders are generally not subject to exceptions. Rule 1502, 4 Code of Colorado Regulations (CCR) 723-1. However, 1502(b) provides that "[a] presiding officer may certify an interim order as immediately appealable via exceptions." Rule 1502(b), 4 CCR 723-1.

8. In recommending adoption of rule 1502, Judge Ken F. Kirkpatrick summarized:

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.

Decision No. R05-0461 at 18.

Denying exceptions to Judge Kirkpatrick's Recommended Decision, the Commission reiterated that it is left to the "discretion of ALJs and the Commission as to when interim orders may be appealed." Decision No. R09-1068-I, issued September 22, 2009, quoting Decision No. C05-1093 at 36.

Decision No. R12-1466 at 60-61 mailed December 21, 2012, in Proceeding No. 12R-500ALL.

160. The Commission recently reiterated reliance upon administrative law judges to independently manage cases:

Through statute, rule, and sound judicial discretion, the Commission entrusts its ALJs to manage cases independently. The Commission, *en banc*, itself has discretion to overturn the ALJs' rulings when the matters are certified as appealable. Rule 1502(d), 4 CCR 723-1. However, particularly when a case is ongoing before an ALJ, the Commission's review is treated much like an appeal to a higher court. Consistent with C.R.C.P. 24, under Commission Rule 1401, requests for permissive intervention are addressed by the hearing officer in his or her sound discretion; in court, the decision upon the request is reversible only for an abuse of that discretion. *Grijalva v. Elkins*, 132 Colo. 315, 287 P.2d 970 (1955). It can seldom, if ever, be shown that such discretion was abused in denying the permissive right to intervene. *Allen Calculators, Inc., v. National Cash Register Co.*, 322 U.S. 137, 64 S.Ct. 905, 88 L.Ed. 1188. To show an abuse of discretion, the decision must be shown to be manifestly arbitrary, unreasonable, or unfair. *See, e.g., King v. People*, 785 P.2d 596, 603 (Colo. 1990).

Decision No. C19-0757 at 8, in Proceeding No. 19AL-0290E.

161. These considerations underlying original adoption and continued operation under the rule remain true. It is important that the ALJ be able to efficiently manage referred matters. The Commission proposed no modification and the current rule has proven adequate. Sufficient cause has not been shown to modify the rule.

24. Rule 1505. Exceptions

162. In consideration of the lengthening of the applicable statutory period in § 40-6-109.5, C.R.S., the OCC proposes simplifying Rule 1505(a) to adopt a 14-day time period within which parties may file responses to exceptions. The proposal is reasonable and there was no responsive comment addressed the proposal. It will be adopted.

C. Conclusion

163. Attachment A of this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

164. Attachment B of this Recommended Decision represents the rule amendments adopted by this decision in a clean/final format.

165. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

166. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

II. ORDER

A. The Commission Orders That:

1. The Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, attached to this Recommended Decision in legislative/strikeout format as Attachment A, and in final format attached as Attachment B, are adopted. The adopted rules are also available through the Commission's Electronic Filings system at:

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

2. 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.

3. If this Recommended Decision becomes a Commission Decision, the relevant rules are adopted on the date the Recommended Decision becomes a final Commission Decision.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the participants and the representative group of participants, 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

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

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- ~~(g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.~~
- ~~(gh)~~ "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- ~~(hi)~~ "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- ~~(ij)~~ "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- ~~(jk)~~ "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- ~~(kl)~~ "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- ~~(lm)~~ "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- ~~(mn)~~ "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- ~~(n) [Reserved].~~
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner, ~~the chairman of the Commission, or any Commissioner other than the chairman~~, conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, Party, stakeholder or other public comments concerning a particular matter on the agenda on any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (de) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:
- (I) annual reports required under the Commission's rules;
 - (II) rates, terms and conditions for regulated services;
 - (III) tariffs and price lists;
 - (IV) advice letters but not necessarily information filed in support of advice letters;
 - (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 motor carriers;
 - (VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and
 - (XI) any document or information that has been previously made public.

- (bc) 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 ~~sub~~paragraph (bc), 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.
- (ed) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (de) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (ef) 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.
- (fg) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
- (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
- (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
- (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (gh) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (hi) The Commission, Commission staff, ~~and~~ Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (ij) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (kj) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (kl) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (n) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
- (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
- (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (i) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
- (III) The OCC shall not use the procedure specified in this paragraph (n) as a substitute for discovery in Commission proceedings.
- (IV) This paragraph (n) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
- (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
- (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (n).

- ~~(n) — In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:~~
- ~~(I) — annual reports required under the Commission's rules;~~
 - ~~(II) — rates, terms and conditions for regulated services;~~
 - ~~(III) — tariffs and price lists;~~
 - ~~(IV) — advice letters but not necessarily information filed in support of advice letters;~~
 - ~~(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 motor carriers;~~
 - ~~(VIII) — unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and~~
 - ~~(XI) — any document or information that has been previously made public.~~

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.

- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
 - (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
 - (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for

furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;

- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.
- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

- (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.
- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the

signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.

- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.
 - (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
 - (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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- 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.

- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to ~~twenty-four~~thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
- (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information- that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

- (VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.
- (d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.
- (b) Persons participating solely through public, academic, or policy comments are not parties.
- (c) A non-party who desires to present legal argument or policy considerations to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument and/or policy considerations may be useful to the Commission. The motion shall also include an acknowledgment that by signing the motion the movant understands that amici are held to the same standards of conduct and candor as parties. An amicus curiae is not a party, and may only present ~~a~~ legal arguments and policy considerations only, as permitted by the Commission. The arguments and policy considerations of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Briefing from amici must address the relief being considered by the Commission and the specific attendant issues raised by the parties to the proceedings regarding such. Any additional issues presented in a brief filed by an amicus curiae will not be considered. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' ~~opening~~ statements of position, ~~or~~ legal briefs ~~or responses to motions~~. Filings made by amici shall be limited to 15 pages in length including attachments.
- (d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

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 205.4, C.R.C.P.
- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
 - (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, -and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.
- (b) ~~Titles-Captions~~ and ~~caption~~titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) ~~Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.~~
- (III) ~~The title of a pleading shall include 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~~ a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (~~III~~c) 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.
- (~~ed~~) 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 pleading shall not be included for calculating the length of the pleading.
- (~~de~~) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, 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, telephone number, and e-mail address. 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.
- (~~fe~~) Written testimony is not subject to paragraphs (~~ed~~) and (~~de~~) of this rule. When written testimony is filed, it shall meet the following requirements: ;

- (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
- (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
- (III) Each line shall be serially numbered in the left margin, beginning with “1” on each page.
- (IV) 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.
- (V) Each type of a witness’ testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness’ attachments to testimony shall be numbered sequentially using the witness’ initials 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, or other testimony. The first page of each attachment shall be numbered as “page 1” consistent with subparagraph (f)(II) of this rule.
- ~~(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.~~
- (VI) 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.~~
- (VII) 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.
- (VIII) All written testimony shall include a signed affidavit from the witness.
- (fg) 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.

- (gh) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.
- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
- (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the ~~Commission's~~ E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either ~~(i)~~ by e-mail and by hand; ~~(ii)~~ by e-mail and overnight delivery, or ~~(iii)~~ through the ~~Commission's~~ E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the ~~Commission's~~ E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the ~~Commission's~~ E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.

- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the ~~Commission's~~ E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;
 - (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(~~DE~~), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and
 - (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.
- (d) All persons 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.
 - (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
 - (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
 - (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. ~~No additional notice beyond the tariff filing itself shall be required. A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number, and date). No additional notice shall be required.~~

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) ~~Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.~~

1209. Payments[Reserved].

~~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. 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~~ shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.
- (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
- (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
- (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
- (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
- (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed ~~90~~130 days.

(b) Tariffs.

- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;

- (B) a table of contents;
- (C) an explanation of the tariff's paragraph numbering sequence;
- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
 - (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;

- (vii) late payment charges; and
- (viii) customer and utility responsibilities, obligations, duties, and rights; and

(H) the following information, on each tariff page:

- (i) utility's name;
- (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
- (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
- (iv) the tariff title, which identifies the types of services included in the tariff;
- (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
- (vi) relevant section or heading captions;
- (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
- (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;

- (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and
 - (v) whether the tariff makes textual changes;
- (F) an identification of tariff page numbers included in the filing;
- (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
- (H) the tariff's or tariff page's proposed effective date;
- (I) the name, telephone number, and email address of the person to contact regarding the filing; and
- (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the ~~Commission's~~ E-Filings System: typographical errors, document title, ~~the document to which a filing is responsive~~ and the document type. When making any a change to a document ~~title~~ in the ~~Commission's~~ E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, ~~proceeding caption for new proceedings~~, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process ~~other than the document to which a filing is responsive, the document title and document type on the one hand~~ and documents electronically attached or associated with the filing ~~on the other hand~~, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:

- (I) ~~Within~~ within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;
 - (B) an identification of all proceedings affected by the difficulty or error;
 - (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) ~~Without regard to the proceeding in which difficulty was experienced or the erroneous e-filing was made, t~~The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
- (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
- (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
- (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission personnel staff will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;

- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or
- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:
- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates; ~~and~~
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; and-
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection complaints if:

- (I) ~~A~~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) ~~T~~he complainant has attached to the complaint copies of all relevant non-confidential documents, including correspondence and work papers~~;~~
 - (III) ~~T~~he 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) ~~T~~he complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue~~;~~
 - (V) ~~T~~he complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above~~;~~ and
 - (VI) ~~O~~on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System 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(c); 1308(d); 1308(e); 1400; 1405(i); and 1409(b).~~
- ~~(f)~~ In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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~~ interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.

(hg) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. ~~show cause alleging that a regulated entity has violated a statute, rule, decision, tariff, price list, time schedule, or agreement accepted or approved by Commission decision, and to make any appropriate order or requirement.~~ The show cause decision shall issue on the Commission's own motion or through the following process.

(I) Affidavit and P~~proposed decision ordering a regulated entity to order to~~ show cause.

(A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. ~~first prepare a proposed decision. The proposed decision shall set forth sufficient facts and information to advise the respondent of the relief sought and how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~ The proposed decision~~affidavit~~ shall contain the following information, at a minimum:

- (i) the name and address of the party that is the subject of the proposed order to show cause;
- (ii) the name and address of the party that is proposing the order to show cause;
- (iii) a clear statement of the facts and law which ~~are form~~ the bases alleged for the issuance of the decision;
- (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, ~~suspend, annul,~~ limit, or modify any authority granted by the Commission; and
- (v) any supporting documents that will support the request for issuance of an order to show cause.
- (iii) ~~a notice to the respondent that any rates collected that are found to be unlawful are subject to refund; and~~
- (iv) ~~a statement that any relief sought may be granted as of the date of the notice of the issuance of an order to show cause.~~

- (B) ~~Commission staff shall submit the proposed decision ordering a regulated entity to show cause to the Commission at its regular weekly meeting for approval to advise the regulated entity of the proposed proceeding. If the Commission approves the advisement, then the proposed decision presented by Commission staff shall be served on the regulated entity and shall be attached to a notice of proposed order to show cause over the Director's signature. The regulated entity shall have 20 days to cure or satisfy the allegations set forth in the notice of proposed show cause. If the Commission decides not to approved the advisement then the matter shall be deemed closed. The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed through the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.~~
- (C) ~~A notice of proposed decision shall identify those Commission staff members assigned by the Director or the Director's designee to service as trial staff and as advisory staff should the proposed show cause proceed to hearing. The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.~~
- (D) ~~After the 20 days to cure or satisfy have expired, Commission staff shall present the proposed decision ordering the regulated entity to show cause, along with any responses from the regulated entity, at a meeting of the Commission for a determination on whether to adopt the decision. If the Commission determines that the information available, including the proposed decision ordering the regulated entity to show cause and the regulated entity's response, if any, does not support issuance of the decision to show cause in accordance with the standards found in §§ 40-6-108 and 24-4-104(3), C.R.S., if applicable, and Commission rules, the Commission shall not adopt the decision and the matter will be closed. Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.~~

~~(II) — Decision ordering a regulated entity to show cause.~~

- ~~(A) — If the Commission determines that the information available, including the proposed decision and the regulated entity's response, if any, demonstrates good cause for further proceeding, the Commission shall, upon its own motion, open a show cause proceeding and issue a decision ordering a regulated entity to show cause and providing notice of hearing.~~
- ~~(B) — The decision shall join trial staff and the regulated entity as parties to the proceeding.~~
- ~~(C) — The Commission may take administrative notice of evidence in a decision ordering a regulated entity to show cause in accordance with rule 1501(c). Based thereupon, the decision may include a finding that a prima facie case has~~

~~been shown and shift the burden of going forward as to how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~

~~(DE) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(F) Upon issuance of the decision, if the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.~~

~~(E) A decision ordering a regulated entity to show cause shall be served in the same manner as a formal complaint, including an order requiring the respondent to satisfy the complaint or file its answer within 20 days of service of the order.~~

~~(F) Except as to a finding regarding a prima facie showing, if applicable, a Commission determination to open a proceeding and to issue a decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(i) Notwithstanding the requirements of paragraph (h), when the Commission finds either that a regulated entity has engaged in a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may institute expedited and/or summary proceedings for suspension or revocation of authority subject to and in accordance with § 24-4-104(3) and (4), C.R.S.~~

1303. Applications.

(a) An application may be made as follows:

- (I) telecommunications matters, as provided in rule 2002;
- (II) electric matters, as provided in rule 3002;
- (III) gas matters, as provided in rule 4002;
- (IV) water, including combined water and sewer, matters, as provided in rule 5002;
- (V) motor carrier matters, as provided in rule 6002;
- (VI) rail matters, as provided in rule 7002; or
- (VII) steam matters, as provided in rule 8002.

(b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.

- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.:
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.
 - ~~(IV)~~ If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (IV) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive- 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 matters, as provided in rule 3003;~~

~~(c) — gas matters, as provided in rule 4003;~~

~~(d) — water, including combined water and sewer, matters, as provided in rule 5003;~~

(~~e~~b) motor carrier matters, as provided in rule 6003;

(~~f~~c) rail matters, as provided in rule 7003;

(~~g~~d) petition for rulemaking, as provided in rule 1306;

(~~h~~e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or

(~~i~~f) petition seeking a declaratory order.

(I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.

(III) At its discretion and prior to issuing notice, the Commission may ~~grant, deny, or~~ dismiss or otherwise not accept any petition seeking a declaratory order.

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

(a) Protests.

(I) During the initial notice period, ~~A~~any person may file a written protest against a proposed tariff, price list, or time schedule.

(II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then has~~intervene~~s as provided in rule 1401 and paragraph (d) of this rule.

(b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.

(c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.

(d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed ~~90~~130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. ~~When the notice period has expired, if the Commission accepts the petition, it~~ The Commission will ~~may~~ set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an

accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.

- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a

motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
- (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and
 - (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
- (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.

- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.

- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have 7 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide Motions to intervene by permission ~~will not be decided~~ prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- ~~(de)~~ Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- ~~(ef)~~ Transportation regulated intrastate carrier application proceedings.
- (I) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.
- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, or Transportation Staff.

- (a) ~~Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to a hearing Commissioner or an Administrative Law Judge. All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.~~
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) ~~A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.

- (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to ~~the an~~ applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than four years prior to the filing of the application are presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.
- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.
- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
 - (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement’s violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the

party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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-I]."
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 proceedings where no statutory period for Commission decision exists and in 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.~~
- (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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.
- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.

- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S..

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1 RULES OF PRACTICE AND PROCEDURE

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.
- (h) "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- (i) "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- (j) "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- (k) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (l) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (m) "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- (n) "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, party, stakeholder or other public comments concerning a particular matter on the agenda on any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (d) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:
 - (I) annual reports required under the Commission's rules;
 - (II) rates, terms and conditions for regulated services;
 - (III) tariffs and price lists;
 - (IV) advice letters but not necessarily information filed in support of advice letters;
 - (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 motor carriers;
 - (VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and
 - (XI) any document or information that has been previously made public.

- (c) 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 paragraph (c), 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.
- (d) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (e) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (f) 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.
- (g) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
 - (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
 - (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
 - (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (h) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (i) The Commission, Commission staff, Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (j) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (k) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (l) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (n) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
 - (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
 - (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (j) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
 - (III) The OCC shall not use the procedure specified in this paragraph (n) as a substitute for discovery in Commission proceedings.
 - (IV) This paragraph (n) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
 - (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
 - (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (n).

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.
- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
- (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
 - (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.

- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
 - (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.

- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.
- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.

- (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
- (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request

for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.
- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
 - (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.

(b) Persons participating solely through public, academic, or policy comments are not parties.

(c) A non-party who desires to present legal argument or policy considerations to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument and/or policy considerations may be useful to the Commission. The motion shall also include an acknowledgment that by signing the motion the movant understands that amici are held to the same standards of conduct and candor as parties. An amicus curiae is not a party, and may only present legal arguments and policy considerations, as permitted by the Commission. The arguments and policy considerations of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Briefing from amici must address the relief being considered by the Commission and the specific attendant issues raised by the parties to the proceedings regarding such. Any additional issues presented in a brief filed by an amicus curiae will not be considered. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' statements of position or legal briefs. Filings made by amici shall be limited to 15 pages in length including attachments.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

1201. Attorneys.

- (a) A party 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 205.4, C.R.C.P.
- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
 - (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.

- (b) Captions and titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
 - (III) The title of a pleading shall include a heading "Before the Public Utilities Commission of the State of Colorado" and a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (c) 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.
- (d) 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 pleading shall not be included for calculating the length of the pleading.
- (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, e-mail address, 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, telephone number, and e-mail address. 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) Written testimony is not subject to paragraphs (d) and (e) of this rule. When written testimony is filed, it shall meet the following requirements.
- (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
 - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
 - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
 - (IV) 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.

- (V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered sequentially using the witness' initials 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, or other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.
- (VI) 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.
- (VII) 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.
- (VIII) All written testimony shall include a signed affidavit from the witness.
- (g) 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.
- (h) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.
- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the

notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
- (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either by e-mail and by hand; by e-mail and overnight delivery, or through the E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;

- (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(E), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and

- (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.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number and date). No additional notice shall be required.

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

1209. [Reserved].

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 shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

- (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
 - (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
 - (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
 - (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
 - (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed 130 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;
 - (B) a table of contents;
 - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;
 - (vii) late payment charges; and
 - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
 - (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
 - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
 - (iv) the tariff title, which identifies the types of services included in the tariff;
 - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
 - (vi) relevant section or heading captions;
 - (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
 - (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;
 - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and

- (v) whether the tariff makes textual changes;
 - (F) an identification of tariff page numbers included in the filing;
 - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
 - (H) the tariff's or tariff page's proposed effective date;
 - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
 - (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the E-Filings System: typographical errors, document title and the document type. When making a change to a document in the E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process and documents electronically attached or associated with the filing, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
 - (I) within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;
 - (B) an identification of all proceedings affected by the difficulty or error;

- (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
 - (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
 - (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
 - (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission staff will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or
- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:

- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates;
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; and
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection 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 non-confidential 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 that 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; and
 - (VI) on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System during normal business hours on the person designated by the respondent to receive service of process.
- (e) In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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 interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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.
- (f) Upon the filing of any formal complaint, except as provided in rule 1205(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.
- (g) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. The show cause decision shall issue on the Commission's own motion or through the following process.

- (I) Affidavit and proposed order to show cause.
- (A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. The affidavit shall contain the following information, at a minimum:
- (i) the name and address of the party that is the subject of the proposed order to show cause;
 - (ii) the name and address of the party that is proposing the order to show cause;
 - (iii) a clear statement of the facts and law which form the basis alleged for the issuance of the decision;
 - (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, limit, or modify any authority granted by the Commission; and
 - (v) any supporting documents that will support the request for issuance of an order to show cause.
- (B) The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed through the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.
- (C) The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.
- (D) Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.
- (E) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.
- (F) If the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall

be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.

1303. Applications.

- (a) An application may be made as follows:
- (I) telecommunications matters, as provided in rule 2002;
 - (II) electric matters, as provided in rule 3002;
 - (III) gas matters, as provided in rule 4002;
 - (IV) water, including combined water and sewer, matters, as provided in rule 5002;
 - (V) motor carrier matters, as provided in rule 6002;
 - (VI) rail matters, as provided in rule 7002; or
 - (VII) steam matters, as provided in rule 8002.
- (b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.
- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans, If the applicant does not respond in the time

allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.

- (IV) If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (V) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive 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) motor carrier matters, as provided in rule 6003;
- (c) rail matters, as provided in rule 7003;
- (d) petition for rulemaking, as provided in rule 1306;
- (e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or
- (f) petition seeking a declaratory order.
 - (I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.
 - (III) At its discretion and prior to issuing notice, the Commission may dismiss or otherwise not accept any petition seeking a declaratory order.

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

- (a) Protests.
 - (I) During the initial notice period, any person may file a written protest against a proposed tariff, price list, or time schedule.

- (II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then intervenes as provided in rule 1401 and paragraph (d) of this rule.
- (b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.
- (c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.
- (d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed 130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. If the Commission accepts the petition, it may set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.
- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
 - (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and

- (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
 - (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.
- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.
- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have 7 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide Motions to intervene by permission prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- (e) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- (f) Transportation regulated intrastate carrier application proceedings.
 - (l) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must

explain the consequences to the common carrier and the public interest if the application is granted.

- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, Administrative Law Judge, or Transportation Staff.

- (a) All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or the Commission specifies otherwise in a written order.

- (d) 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.
 - (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to an applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than four years prior to the filing of the application are

presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.

- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.

- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
- (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any

Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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-I]."
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 following 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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues

material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.

- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.
- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S.

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].

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.

COMMISSION DECISION ADOPTING RULES

Mailed Date: March 30, 2020
Adopted Dates: February 26, 2020 and March 4, 2020

TABLE OF CONTENTS

I. BY THE COMMISSION1
A. Statement1
B. Analysis and Findings3
C. Adopted Rules4
D. Conclusion30
II. ORDER30
A. The Commission Orders That:30
B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETINGS February 26, 2020 and March 4, 202031

I. BY THE COMMISSION

A. Statement

1. On September 13, 2019, the Public Utilities Commission, on its own initiative, issued the Notice of Proposed Rulemaking (NOPR) to amend the Commission’s Rules of

Practice and Procedure (P&P Rules), 4 *Code of Colorado Regulations* (CCR) 723-1. Decision No. C19-0747. The NOPR commenced this Proceeding.

2. The purpose of the Commission's P&P 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." The purpose of the NOPR was to solicit comments on possible changes to the P&P Rules as described in the NOPR and its attachments, and to schedule a rulemaking hearing. We provided interested persons the opportunity to submit written comments on the proposed rules and to provide oral comments at the scheduled hearing. The Commission referred the rulemaking proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing for October 29, 2019.

3. Comments to the proposed rules were submitted by Black Hills Colorado Electric, LLC, Black Hills Colorado Gas, Inc., and Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy (collectively, Black Hills); Qwest Corporation, doing business as CenturyLink QC; the Colorado Telecommunications Association; Energy Outreach Colorado (EOC); Colorado Rural Electric Association; Public Service Company of Colorado (Public Service); the Regional Transportation District (RTD); Tri-State Generation and Transmission Association, Inc.; Natural Resources Defense Council (NRDC), Sierra Club, and Western Resource Advocates (WRA) (NRDC, Sierra Club, and WRA will be referred to collectively as the Conservation Commenters); the Colorado Energy Office (CEO); and the Colorado Office of Consumer Counsel (OCC).

4. At the scheduled date and time, the ALJ convened a public comment hearing and received comments from interested parties. After taking comments at the hearing and considering the written comments submitted by various parties, the ALJ issued Recommended Decision No. R19-1022 on December 23, 2019 adopting rules as amended.

5. Subsequently, exceptions to the Recommended Decision were filed on January 13, 2020 individually by OCC, CEO, and WRA. Black Hills filed a response to the exceptions on January 27, 2020.

6. We review the rules as proposed by the ALJ and the parties' exceptions to those proposed rules and adopt permanent rules as discussed below.

B. Analysis and Findings

7. In the NOPR we stated that the Commission last updated its P&P Rules approximately five years ago. We found the time ripe to review our processes and attendant rules based on our experiences as well as recommendations we received from active parties and Commission Staff concerning ways to improve our processes to make them as streamlined and effective as possible. These rules concern the Commission's business processes and the amendments adopted here provide clarification and updates of rules we find are in need of updating, as well as those amendments necessary due to legislative changes in the 2019 legislative session. We address the rule amendments in numerical order.

C. Adopted Rules

**Rule 1004
Definitions**

8. Rule 1004(a) as amended in the NOPR to clarify the definition of an accelerated telecommunications interconnection complaint proceeding is adopted.

9. Rule 1004(e) was amended to add language regarding the role of Advisory Staff. The Recommended Decision removed language binding Advisory Staff to the same standards of conduct as Commissioners and ALJs. The recommended amendment will be adopted.

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

11. Rule 1004(z) which defines the term “Presiding Officer” as that term applies to Commission proceedings is adopted.

12. Rule 1004(gg), which 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.*, was further amended by the ALJ to provide that “where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such a specific statutory provision shall control as to the Commission.” We adopt the proposed additional language.

13. Rule 1004(ll) provided the definition of “Trial Staff” and explains its role in Commission proceedings. The Recommended Decision added proposed language which included proceedings in which Trial Staff filed notice of participation. We adopt the proposed additional language.

**Rule 1005
Meetings**

14. Rule 1005(c), which explains public comments taken at Commission Weekly Meetings and the circumstances under who may provide public comment is adopted as set forth in the NOPR.

15. 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 and will be adopted as provided in the NOPR.

**Rule 1007(c)
Commission Staff**

16. Rule 1007(c) defines and explains the role of Advisory Staff and clarifies that all communications between advisors and Commissioners and ALJs are to be considered part of the deliberative process. We adopt the language as provided in the NOPR.

**Rules 1100-1103
Confidential Information**

17. The purpose of the amendments to the confidentiality rules is to bring them into closer conformance with federal and state court rules related to confidentiality. This includes streamlining language that is now overly broad related to what types of information generally falls under the rubric of confidentiality and requiring affidavits attesting to the confidentiality sought by the parties.

18. Rule 1100(b) 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 and subsumes Rule 100(n).

19. We propose changes to Rule 1100(i) to include Commission Trial Staff legal counsel in 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.

20. The remainder of the amendments to Rule 1100 are to streamline the rule to make it more user friendly.

21. The Recommended Decision accepted a proposal by RTD that the listed types of documents may be considered by the public as presumptively available for inspection without regard to restrictions provided by law. In order to avoid ambiguity, RTD suggested duplicating the phrase “subject to restrictions specifically provided by law” with the documents listed in 1100(b). We adopt that proposed change to the language of Rule 1100(b).

Rule 1105

Personal Information - Disclosure

22. CEO’s and EOC’s comments suggest expanding the scope of permissible disclosure in Rule 1105(c) to accommodate the State’s Weatherization Assistance Program. The comments contend that the proposed modifications would bring improved efficiencies and reduce administrative costs. During the hearing, no responsive comments were offered.

23. Modifications to Rule 1105(c) include allowing a utility to disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to 36 months rather than 24 months. It also adds the number of heating degree days to the list of information that may be disclosed. The proposed amendments also include the Weatherization Assistance Program as an entity that may request the information set out in the rule.

24. We adopt the proposed language amendments to Rule 1105(c) as set out in the Recommended Decision.

Rule 1200
Parties, *Amicus Curiae*, Non-Parties

25. We proposed amendments to Rule 1200(c) to clarify that we may allow parties to appear as *amicus curiae* to address legal issues, as well as policy issues. We determined that allowing parties to do so in certain circumstances may provide additional information in assisting the Commission in its decision-making process.

26. In his Recommended Decision, the ALJ stated that the Commission is exercising its discretion to broaden the scope of possible *amicus curiae* status. No longer mandating representation by counsel, the Commission requires inclusion of the specified acknowledgement as a condition of requesting *amicus curiae* status. This requirement emphasizes to those requesting *amicus curiae* status that the Commission is specifically relying upon candor in their statements. The ALJ recommended adopting the proposed rule.

27. CEO takes exception to the ALJ's findings regarding the role of *amicus* parties. CEO argues that while it has no recommendations regarding the language of proposed Rule 1200(c), it nevertheless takes the opportunity to express concerns over recent decisions that denied several parties status in proceedings, especially those organizations with ties to environmental and environmental justice organizations. CEO states that it opposes anything that funnels such organizations away from party status toward *amicus* status.

28. CEO is also concerned that the definition of *amicus curiae* proposed is too limiting. CEO argues that the term "issue" has a different and broader meaning in Commission contexts than a question of law under review by an appellate court. Instead, the term "issue"

could mean something as broad as a factual or legal argument, a situation, or even simply a concern. Under these meanings, to make a policy argument, *amici* might need to go beyond the issues raised by the parties. CEO provides the example that an *amicus* might wish to present an issue they have with an application which no party has raised. The proposed language would prohibit an *amicus* from presenting the issue. To the extent the proposed language is intended to keep *amicus* from raising policy or legal arguments based on the organization's interests in the proceeding that are not already raised by a party, CEO opposes the language.

29. CEO requests that the language requiring standards of conduct and candor applicable to *amicus* parties be removed. CEO finds the requirements confusing, redundant, and unnecessary. CEO would rather see this language in a separate section applicable to general standards of conduct for all parties appearing before the Commission.

30. CEO also opposes a 15-page limit for *amicus* briefs, and instead requests that they be allowed 30 pages as other parties to the proceeding.

31. If *amici* are allowed to make policy arguments, then CEO's concern that environmental and environmental justice organizations would be precluded from participating as parties is misplaced and speculative. This was not our intent in proposing the amendments to Rule 1200 and nothing we proposed would lead one to believe that the rule amendments are to serve as a funnel to move those groups to the sidelines in Commission proceedings.

32. Black Hills, in its response to the exceptions takes issue with CEO's exceptions. Black Hills takes the position that when weighing the competing interests, the Recommended Decision properly found that reasonable limitations are necessary on *amicus curiae* participation to ensure no abridgement of due process rights. Black Hills agrees with the Recommended Decision's reasonable limitations on *amicus curiae* participation and it is concerned that if

CEO's requests are adopted, then utilities such as Black Hills will have their fundamental due process rights denied. Black Hills also believes it is appropriate for *amicus curiae* to be held to the same or similar standards of conduct and candor as attorneys in proceedings before the Commission.

33. Regarding CEO's arguments that *amici* should not be limited to addressing only issues raised by the parties is untenable. By allowing *amici* to raise extraneous issues not directly germane to the proceeding would open proceedings to unintended consequences, improperly expanding the scope of the proceeding and unfairly requiring the main litigants to address those unanticipated issues directly affecting the litigants' due process rights. *Amici* are intended to participate for the limited purpose of providing legal or policy considerations for the Commission to consider within the scope of the proceeding. To allow *amici* to steer the proceeding away from the proponent's intended path for relief fails to serve the interests of the parties or the Commission.

34. We therefore deny CEO's exceptions and retain the currently effective language of Rule 1200(c).

Definition of Attorneys

Rule 1201

35. Rule 1201(a) was proposed to reinforce that parties appearing in proceedings must be represented by an attorney in good standing with the Colorado Supreme Court or as authorized under Rule 205.4 of the Colorado Rules of Civil Procedure. It also supports Rule 1200 in that it removes the requirement that *amicus curiae* must be represented by legal counsel.

36. In keeping with our decision regarding Rule 1200, we decline to amend Rule 1201(a) and retain the currently effective rule.

Rule 1202 **Form and Content**

37. 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.

38. Rule 1202(f) sets forth the requirements for formatting written testimony in a Commission proceeding. Subsection (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 a hearing. Subsection (f)(V) sets forth in detail how testimony is to be properly marked for identification.

39. In addition, amendments are proposed to coordinate the requirements for the formatting of filed testimony with Rules 1410 through 1416, which are the proposed rules governing electronic hearing processes.

40. The Recommended Decision offered no additional amendments to the rule language as proposed in the NOPR. We therefore adopt the amended rule language as it appears in the NOPR.

Rule 1204 **Filing**

41. Rule 1204(a)(II) proposes requirements for E-filings 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.

42. The proposed rule language was not addressed in the Recommended Decision and is therefore adopted as it appears in the NOPR.

Rule 1205
Service

43. Rule 1205 amendments are a general cleanup to make the rule more understandable. These amendments are adopted as the language appears in the NOPR.

Rule 1207
Utility Notice

44. The change to Rule 1207(b) corrects the statutory citation to § 40-3-104(1)(c)(I)(E), C.R.S.

45. 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.

46. In the Recommended Decision, the ALJ added additional language requiring the filing of a notice in the underlying proceeding identifying the compliance filing.

47. We adopt the additional language proposed by the ALJ and therefore adopt the amended language as proposed in the NOPR with the additional language proposed by the ALJ to Rule 1207(g).

Rule 1208
Adoptions and Adoption Notices

48. Amendments to this rule address advice letter tariff filings 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.

49. In the Recommended Decision, the ALJ added language that places a ten-day period of time in which a utility is to file a compliance advice letter and tariff.

50. We adopt the additional language proposed by the ALJ and therefore adopt the amended language as proposed in the NOPR with the additional language proposed by the ALJ to Rule 1208(b).

Rule 1210 (Rule 1305)
Tariffs and Advice Letters

51. These amendments are made pursuant to statutory additions and changes by Senate Bill (SB) 19-236. 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 120 days to an additional 10 days or 130 days.

52. The ALJ adopted the rule language as proposed in the NOPR. We therefore adopt the language as proposed in the NOPR.

Rule 1211
E-Filings System

53. We proposed 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.

54. 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.

55. The proposed language was adopted by the Recommended Decision without comment. We adopt the amendments to the rule language as set forth in the NOPR.

Rule 1302(h) Show Cause Proceedings

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

57. 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.

58. 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 the hearing, the ALJ is to send the matter back to the Commission for disposition on the merits of the show cause claim.

59. Rule 1302(f) was 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.

60. In response to various comments received during the rulemaking process, the ALJ amended language in several subsections to change the discovery response time to ten business days rather than calendar days, and emphasizing that an affidavit will be required in support of issuance of a proposed interim decision.

61. We find those changes appropriate and will therefore adopt the amendments to Rule 1302 as set forth in the NOPR with the changes proposed by the ALJ in the Recommended Decision.

Rule 1303 Applications

62. We proposed 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 was proposed to be included whereby the Commission may request further information in support of an application. This would 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.

63. 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.

64. No changes to the rule as provided in the NOPR were proposed in the Recommended Decision. We therefore adopt the amendments to Rule 1302 as set forth in the NOPR.

Rule 1304
Petitions

65. We found 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 is rejected, 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.

66. Public Service commented that further clarification was necessary to show that the Commission does not intend to limit the basis upon which it may decide not to accept a petition. We clarify that this was not our intent, but merely language that clarifies the process for determining whether to go forward with a petition for declaratory order. Therefore, we adopt the amended language as provided in the NOPR.

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

67. 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.

68. As no amendments to the language as provided in the NOPR are indicated in the Recommended Decision, we adopt the language as set forth in the NOPR.

Rule 1306
Rulemaking Proceedings

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

70. As no amendments to the language as provided in the NOPR are indicated in the Recommended Decision, we adopt the language as set forth in the NOPR.

Rule 1400
Motions

71. During the public comment period, CEO proposed that Rule 1400 be modified to certify all denials of permissive intervention for immediate appeal, limiting the time for filing a motion for reconsideration. Addressing Rule 1401, CEO also proposes that a person have a seven-day response time to reply to a challenge of a claim of right. The Conservation Commenters also recommend clarifying the process to challenge interim decisions denying intervention, impose a seven-day response time, and require Commission action on such a challenge within 21 days of filing. OCC proposed establishing a seven-day response time to motions for permissive intervention.

Rule 1401
Intervention

72. Pursuant to legislative changes initiated pursuant to SB19-236, the language of the rule was proposed to be modified to allow for communities affected by qualified retail utilities Clean Energy Plan filings to seek to intervene in those proceedings. The rule further indicated that those communities must be represented by legal counsel (*See*, Rule 1401(d)). It was 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.

73. The ALJ found that a proposal to prohibit a party from being permitted to challenge a statutory claim of right under 1401(b) would not be adopted. The ALJ found that CEO demonstrated no reasonable basis for such a prohibition to challenge the claim as being within the scope of the statutory right. The ALJ pointed out that historically, while not specifically proscribed in a rule, parties have challenged intervention of right by filing a motion to strike the intervention. The party intervening based upon a claim of right would then have an opportunity to file a response to the motion in accordance with Rule 1400. The ALJ amended the rule to expressly incorporate this best practice.

74. CEO and WRA, in their respective exceptions to the Recommended Decision, take issue with the ALJ's findings concerning Rule 1401. While each party's arguments run into each of the subsections of 1401, they nonetheless express a common theme.

75. WRA takes the position that if a party contests an Interim Decision denying intervention, it would put the ALJ in the position of "gatekeeper" for interim order appeals, which is problematic. According to WRA, interim decisions denying intervention are "significant ruling[s] regulating the future course of the proceeding"¹ and therefore warrant appropriate treatment and an opportunity for timely review by the full Commission. Decisions denying intervention are distinguishable from other types of interim decisions, in that they are *de facto* final agency action for the entity seeking intervention. WRA posits that a decision denying intervention operates as a final decision because it is "conclusive of the issue presented."²

¹ WRA Exceptions at p. 3.

² *Id.*

76. WRA goes on to argue that an order denying intervention is the consummation of the agency's decision-making process as to the issue at hand. An organization denied intervention is prohibited from further participation as a party to the proceeding, marking the consummation of their interests in the proceeding. Second, an order denying intervention is an action that determines the "rights or obligations" of the organization seeking intervention. Upon issuance of an order addressing motions for permissive intervention, organizations seeking intervention either are granted the right to participate fully in the proceeding by presenting evidence, promulgating discovery, and cross-examining witnesses, or they are denied these rights. Because interim orders denying intervention have the effect of a final agency action for the organizations seeking leave to intervene, WRA takes the position that the existing approach is inappropriate for these types of Commission orders.

77. As with CEO, WRA notes several Commission decisions in which environmental groups were denied intervention in proceedings. WRA argues that the existing process creates unnecessary confusion and delay and creates the very real risk of depriving parties of their due process rights. WRA recommends amendments to the Commission's existing P&P Rules to clarify and streamline review of interim decisions, including interim decisions denying motions to intervene.

78. CEO takes no issue with the proposed Rule 1401(b) language regarding intervention as of right and challenges to that request. However, it seeks clarification that the statutory right to intervene applicable to it and OCC are allowable only to the extent that a party allege CEO or OCC are operating outside their statutory authority.

79. We agree with the ALJ that the current process has not proven to be a denial of a parties' due process rights. A party may seek to have the interim decision denying intervention

immediately appealed to the Commission for review. The language of the rule is straightforward. To adopt the parties' recommendations would require the Commission to basically interfere with a proceeding once it's been assigned to an ALJ. When a party requests reconsideration of an interim decision denying intervention, the proponent of the proceeding, as well as any other party to the proceeding would most likely file responses. This would result in additional delays to the litigation, which WRA identified as a concern in the first place. However, WRA's proposal to shorten timelines has merit. We therefore adopt the language as proposed in the NOPR with the amendments suggested by the ALJ, including language in Rule 1401(c) that requires a party to respond to a motion for permissive intervention within seven days after service of the motion, or such lesser or greater time as the Commission may allow.³ The remaining issues surrounding Rule 1401(c) are addressed below.

80. Regarding Rule 1401(c), several parties sought to expand the rulemaking regarding this Rule. For example, during the public comment period and hearing, regarding Rule 1401(c), CEO proposed clarification of the term "tangible interests" and recognizing that policy interests alone is a sufficient basis for intervention. CEO believes the Commission considers state policies and goals when reaching decisions and that parties include policy discussions in comments and testimony. CEO also contends that the rule should specify that environmental interests are tangible interests.

81. The ALJ addressed those concerns in stating that the Commission clearly incorporate any number of policy considerations in reaching a decision; however, that does not necessarily require the Commission to permit those having only a policy interest in a subject

³ The exceptions of WRA and CEO in addressing Rule 1401 addressed the rule in its entirety in places, rather than specifically by subsection. While we address some issues raised regarding 1401(c) in the analysis of Rule 1401(b), we nonetheless note that the attached red-lined rules sort out the final Commission determinations.

matter be permitted to participate as a party to the proceeding. Rather, the Commission relies upon its own expertise and discretion as well as those the Colorado Legislature (Legislature) has granted intervention by right and those demonstrating a pecuniary or tangible interest substantially affected by the proceeding to address policy considerations.

82. As to including an environmental interest as a tangible interest, the ALJ found that particularly in light of the discretionary nature of permissive intervention, further specificity was not shown to be necessary to modify the rule to allow intervention, nor would the rule require intervention even if amended. In recounting past Commission decisions concerning permissive interventions, the ALJ noted that the need to balance costs and whether allowing additional parties into a proceeding will materially assist the Commission in reaching a just and reasonable result, is as relevant now as in the past. Therefore, the rule was adopted by the ALJ as proposed in the NOPR.

83. The ALJ cited to *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 31 (Colo. 2001), citing, *7C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* § 1908, 318-19 (2d ed. 1986) for the proposition that when the interests of an absentee party are identical to one of the parties to a proceeding, or if a party to the proceeding is charged by law with representing the absentee party's interest, a "compelling showing should be required to demonstrate why this representation is not adequate." *Id.* Applying this standard, the ALJ concluded that the standards specified in the rules must be applied based upon the facts and circumstances of each proceeding. As such, the ALJ declined to amend the language of Rule 1401(c) as requested.

84. Exceptions to the Recommended Decision regarding Rule 1401(c) were filed by WRA and CEO as discussed above. In addition to those arguments, additional arguments were raised as indicated in the following discussion.

85. WRA wishes to add language to both subsections that would include “motions requesting reconsideration of an interim decision denying intervention,”⁴ consistent with its arguments above. WRA argues that its proposed changes to Rules 1400(b) and (c) would ensure motions seeking reconsideration of an interim decision denying intervention are timely considered.

86. WRA expresses concern with regard to the Commission’s denial of its interventions previously. According to WRA, these decisions are a significant departure from the Commission’s long-standing practice, and are not in response to any change in the statutory intervention standards or rules governing intervention. WRA requests the Commission take this opportunity to restate its long-standing policy of recognizing environmental protection as a tangible interest that can serve as the basis for permissive intervention in Commission proceedings. One method WRA has in mind is to indicate that “pecuniary or tangible interests” include “environmental or environmental justice interests consistent with state policy.”⁵ In the alternative WRA suggests the Commission list examples of pecuniary or tangible interests. WRA states that it is not seeking to substantively change the intervention standard, but rather preserve the long-standing *status quo*.

87. According to WRA, categorically excluding environmental protection from the set of recognized tangible interests that can serve as the basis for intervention would deprive the Commission of robust evidentiary records upon which to base its decisions. Allowing conservation organizations with demonstrated tangible interests in environmental protection to intervene in Commission proceedings ensures that evidence and information related to

⁴ WRA Exceptions at p. 8. (Emphasis Omitted)

⁵ *Id.* at p. 10. (Emphasis Omitted)

environmental protection and emissions impacts may be fully considered and evaluated by the Commission. Thus, WRA urges the Commission take this opportunity to reaffirm its long-standing position that environmental protection interests are tangible interests, and that those interests may warrant intervention in Commission proceedings on a case-by-case basis.

88. CEO believes that it is a long-standing Commission practice to consider State policies and policy goals, among other factors, when reaching decisions and that parties routinely include policy discussions in their comments and testimony. It cites to the Electric Resource Plan and Renewable Energy Standard plan proceedings.

89. CEO suggests that it is not obvious which proceedings will have environmental policy issues raised in them. Further, it is not reasonable to allow some parties with interests in addition to policy interests to present policy arguments, while prohibiting groups existing specifically to advocate for policy goals from participating on equal footing as intervening parties. CEO argues this would undermine policy organizations' ability to respond to policy arguments and to advocate for their own policy goals, and would unfairly advantage the policy goals of organizations with both policy concerns and financial interests.

90. CEO further argues that allowing policy interests to form a sufficient basis for permissive intervention is reasonable based on the "tangible interests" standard the Commission has adopted. CEO takes the position that environmental interests, such as an interest in ensuring that utilities adopt policies to increase adoption of energy efficiency, meet these notions of tangible interests. CEO argues that environmental and environmental justice interests are tangible in the context of the Commission's mission which includes serving the economic, environmental, and social values of the state.

91. We are not persuaded by CEO's and WRA's arguments to include environmental concerns and environmental justice interests as a standard under "tangible interests" in granting permissive interventions. To do so would certainly raise opposition from parties with other interests not specifically delineated in Rule 1401(c). This in turn could raise arguments of discrimination by including CEO's and WRA's specific definitions of "tangible interest" without defining other interests that would qualify as "tangible." We do not find CEO's and WRA's arguments compelling and see no reason to alter the language of 1401(c) as the parties propose.

92. We agree with the ALJ's findings, especially his reference to the basic, settled legal principle that when the interests of an absentee party are identical to one of the parties to a proceeding, or if a party to the proceeding is charged by law with representing the absentee party's interest, a "compelling showing should be required to demonstrate why this representation is not adequate."⁶

93. Therefore, we deny WRA's and CEO's exceptions regarding Rule 1401(c) because what they propose creates a statutory right the Legislature simply did not intend, in addition to the discrimination problems we discussed previously.

94. New Rule 1401(d) was proposed whereby communities affected by a qualified retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in proceedings set forth in statutory language. The rule specifies that such communities must be represented by an attorney.

95. CEO commented that the statutory language provides an intervention as of right status to communities. The ALJ found that while the Legislature incorporated a broad policy

⁶ Decision No. R19-1022 at ¶ 112.

declaration in § 40-2-125.5(5)(f), C.R.S., CEO offers no basis to support a statutory creation of intervention as of right for those communities. The ALJ referred to language in the statute that states that communities “shall be presumed to have standing in a proceeding”⁷ and held that there is no basis to equate that presumption with a right.

96. The ALJ further stated that the statute requires the Commission to consider affected communities within a qualifying retail utility’s service territory with a tangible and pecuniary interest when considering a clean energy plan. The ALJ was not convinced that CEO presented a basis to narrow the definition of communities and organizations representing those communities. The ALJ went on to state the statutory language does not define or limit affected communities in terms of interests, geography, or otherwise. The ALJ determined that CEO had not demonstrated that the rules and existing procedures regarding permissive intervention require further amendment at this time and adopted the rule as proposed in the NOPR.

97. In its exceptions, CEO again argues it wants language to appear that communities affected by a QRU’s clean energy plan have an intervention of right status. In addition, CEO requests that nongovernmental organizations demonstrate they represent a community in order to intervene on that community’s behalf.

98. CEO argues that the language of § 40-2-125.5(5)(f), C.R.S., requires the Commission to grant standing to a community affected by a clean energy plan intervention by right in the proceeding concerning approval of that clean energy plan because the Legislature explicitly recognized that such a community has a tangible and pecuniary interest in that plan, forming the basis of the presumption of standing, which can only be ready to be equivalent to the

⁷ *Id.* at ¶ 116.

right to intervene. According to CEO, no other reasonable interpretation of this statutory language exists.

99. We agree with the ALJ's rationale here. We agree that the statutory language, while not completely clear, nonetheless does not define or limit affected communities in terms of interests, geography, or otherwise. Therefore, we deny CEO's exceptions here.

Rule 1404

Referral to Hearing Commissioner or Administrative Law Judge

100. This rule change was 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.

101. Rule 1404(b) was 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.

102. Rule 1404(d) was 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.

103. No amendments were added by the ALJ other than a request to indicate that subsection (b) referrals of show cause proceedings under Rule 4 CCR 723-6-6009 of the Commission's Rules Regulating Transportation by Motor Vehicle are heard by ALJs. We do not

see a need to amend the language of the proposed Rule, but we point out that Rule 6009 matters are to be referred to an ALJ in the first instance.

Rule 1405
Discovery and Disclosure of Prefiled Testimony

104. The ALJ amended Rule 1405(b) to provide that a party is to serve discovery responses on direct and answer testimony, and objections, if any, within ten business days from service of a request. This language was added at the urging of Public Service. In addition, with rebuttal and cross-answer testimony, a party is to serve discovery responses within seven business days of a request. Finally, the ten-day period in which to serve discovery responses and objections in a proceeding with no statutory time period for a Commission decision or when the applicable time limits have been waived is also amenable to us.

105. Black Hills opines that the ALJ's findings are well reasoned and supported. It states that the ALJ found that adopting the change to business days "will more accurately align with the time reasonably available for preparation of a response,"⁸ and that adopting the change will avoid potential manipulation of weekends or holidays. We agree and therefore, we adopt the amendments to Rule 1405(b) and (c) as set out in the Recommended Decision.

106. Rule 1405(f) was amended pursuant to the NOPR to include a sentence that "[d]iscovery requests concerning a utility's regulatory asset (liability) with a life over ten years are only restricted in time by the life of the asset or the end of the life of the depreciation for that asset." The ALJ removed that sentence based on comments discussing concern as to the scope of the proposal. Parties commented that the provision cannot be limited to a considered narrow scope of proceeding. As a result, it could potentially have an unintended drastic impact upon the

⁸ Black Hills' Response at p. 3.

scope of permissible discovery. Further, commenters suggest that maintaining such records in a manner to permit compliance with discovery obligations could come at a significant cost.

107. We disagree with the comments and the ALJ's amendments to Rule 1405(f). We find ten years to be an adequate amount of time. OCC filed exceptions to the discovery procedures as set out in proposed Rule 1405(f). Because utilities have a distinct advantage when it comes to the amount of information they have and because utilities have adequate staffing and resources to prepare rate cases compared to the resources of the OCC and Trial Staff, OCC supports the proposed language change to ten years for when a discovery request is presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence, instead of four years which is currently contained in the rule. Thus, the OCC requests that the Commission adopt Rule 1405 as proposed in the NOPR.

108. We agree with OCC that we see no burden to utilities by implementing a ten-year period prior to the filing of the application for discovery requests. We find that a period shortened to four years may leave intervenors with inadequate information on which to base their respective cases. Therefore, we adopt the language of Rule 1405(f) as proposed in the NOPR.

Rule 1408 Settlements

109. The proposed amendments to this rule were 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.

110. The ALJ amended our proposed Rule language without comment. Instead of requiring that parties to a settlement **must** attest the terms and conditions are in accordance with applicable laws, the ALJ softened the language to read that “those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement’s violation of any applicable laws.”

111. We will adopt the ALJ’s softer language; however, we may revisit this language should it be determined that the ALJ’s language fails to lead to the outcomes that led us to amend the rule language in the first place.

Rule 1502 Interim Decisions

112. In comments to the NOPR, CEO proposed a time limit for requesting reconsideration of an interim decision, deadlines for rulings on motions requesting certification for interim appeal, and immediate certification for appealability of decisions denying intervention. The Conservation Commenters proposed specific time periods for ruling upon a motion to certify for interim appeal and that such ruling should be immediately appealable. Striking the Commission reference at the beginning of Rule 1502(d) is also proposed as the process would not apply to Commission decisions.

113. The ALJ denied those requests for modification of Rule 1502(d), finding that it is important for ALJs to be able to efficiently manage referred matters. The ALJ noted that the Commission proposed no modification and the current rule has proven adequate.

114. WRA, in its exceptions, reiterates its request that the Commission make certain changes to Rule 1502. Specifically, WRA requests Rule 1502(d) be amended to clarify that

interim decisions denying intervention are self-certified and thus immediately appealable to the Commission, as follows:

(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-I]. Any interim decision denying a motion for permissive intervention shall be issued as a certified decision that may be immediately appealed to the Commission under Rule 1502(b).⁹

115. According to WRA, having a requirement to certify an interim decision denying intervention in the first instance will make that decision immediately appealable to the full Commission. This will prevent unnecessary motions work for the entity seeking intervention, other parties in the proceeding, and the ALJ or Hearing Commissioner presiding over the proceeding.

116. WRA also states that it is sensitive to the Commission’s concern that review of interim orders not disrupt the orderly disposition of the proceeding. Therefore, WRA also suggests adding language to Rule 1502(b) that places reasonable deadlines on the process, in order to avoid unnecessary delay, as follows:

(b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision’s rulings will result in the practical denial of a person’s substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding. A motion for reconsideration of an interim decision

⁹ WRA Exceptions at p. 6. (Emphasis in Original)

shall be filed no more than 7 days after the date of issuance of the interim decision.¹⁰

CEO agrees with WRA's proposals.

117. The proposals here tie in with WRA's and CEO's arguments raised in Rule 1401 above. We find it problematic to make interim decisions denying interventions immediately appealable to the Commission due to interference by the Commission in ongoing ALJ proceedings. We agree with the ALJ that the language is not necessary. Therefore, we deny WRA's and CEO's exceptions.

D. Conclusion

118. Attachment A of this Decision represents the rule amendments adopted by this Decision with modifications to the prior rules as indicated in redline and strikeout format.

119. Attachment B of this Decision sets forth the rule amendments adopted by this Decision in a final format.

120. It is found that the good cause exists to adopt the proposed rules attached to this Decision as Attachment A and Attachment B.

II. ORDER

A. The Commission Orders That:

1. The Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, attached to this Decision in legislative/strike out format as Attachment A, and in final format attached as Attachment B are adopted. The adopted rules are available through the Commission's Electronic Filings system at:

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

¹⁰ *Id.* at p. 7. (Emphasis in Original)

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS
February 26, 2020 and March 4, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

Commissioners

COMMISSIONER FRANCES A. KONCILJA'S
TERM EXPIRED MARCH 13, 2020.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1

RULES OF PRACTICE AND PROCEDURE

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- ~~(g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.~~
- ~~(gh)~~ "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- ~~(hi)~~ "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- ~~(ij)~~ "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- ~~(jk)~~ "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- ~~(kl)~~ "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- ~~(lm)~~ "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- ~~(mn)~~ "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- ~~(n) [Reserved].~~
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner, ~~the chairman of the Commission, or any Commissioner other than the chairman~~, conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, Party, stakeholder or other public comments concerning a particular matter on the agenda or any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (de) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:

(I) annual reports required under the Commission's rules;

(II) rates, terms and conditions for regulated services;

(III) tariffs and price lists;

(IV) advice letters but not necessarily information filed in support of advice letters;

(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 motor carriers;

(VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and

(XI) any document or information that has been previously made public.

- (bc) 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 (bc), 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.
- (ed) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (de) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (ef) 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.
- (fg) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
- (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
- (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
- (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (gh) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (hi) The Commission, Commission staff, ~~and~~ Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (hj) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (kj) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (kl) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (nn) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
- (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
- (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (i) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
- (III) The OCC shall not use the procedure specified in this paragraph (nn) as a substitute for discovery in Commission proceedings.
- (IV) This paragraph (nn) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
- (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
- (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (nn).

- ~~(n) — In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:~~
- ~~(I) — annual reports required under the Commission's rules;~~
 - ~~(II) — rates, terms and conditions for regulated services;~~
 - ~~(III) — tariffs and price lists;~~
 - ~~(IV) — advice letters but not necessarily information filed in support of advice letters;~~
 - ~~(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 motor carriers;~~
 - ~~(VIII) — unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and~~
 - ~~(XI) — any document or information that has been previously made public.~~

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.

- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
 - (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
 - (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for

furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;

- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.
- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

- (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.
- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the

signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.

- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.
 - (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
 - (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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- 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.

- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to ~~twenty-four~~thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
- (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information- that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.

(b) Persons participating solely through public, academic, or policy comments are not parties.

(c) A non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument may be useful to the Commission. An amicus curiae is not a party, and may present a legal argument only, as permitted by the Commission. The arguments of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

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 205.4, C.R.C.P.

- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
- (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.
- (b) ~~Titles~~ Captions and ~~caption~~ titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
- (III) The title of a pleading shall include 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 a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (Hc) 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.
- (ed) 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 pleading shall not be included for calculating the length of the pleading.
- (de) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, 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, telephone number, and e-mail address. 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.
- (fe) Written testimony is not subject to paragraphs (ed) and (de) of this rule. When written testimony is filed, it shall meet the following requirements:
 - (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
 - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
 - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
 - (IV) 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.

(V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered sequentially using the witness' initials 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, or other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.

~~(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.~~

~~(VI) 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.~~

(VII) 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.

(VIII) All written testimony shall include a signed affidavit from the witness.

(fg) 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.

(gh) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.

- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
 - (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the ~~Commission's~~ E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either ~~(i)~~ by e-mail and by hand; ~~(ii)~~ by e-mail and overnight delivery, or ~~(iii)~~ through the ~~Commission's~~ E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the ~~Commission's~~ E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the ~~Commission's~~ E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the ~~Commission's~~ E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;

- (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(~~DE~~), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and

- (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.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. ~~No additional notice beyond the tariff filing itself shall be required.~~ A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number, and date). No additional notice shall be required.

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

1209. ~~Payments~~Reserved.

~~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. 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~~shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.
 - (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
 - (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
 - (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
 - (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
 - (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed ~~90~~130 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;
 - (B) a table of contents;
 - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;
 - (vii) late payment charges; and
 - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
 - (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
 - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
 - (iv) the tariff title, which identifies the types of services included in the tariff;
 - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
 - (vi) relevant section or heading captions;
 - (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
 - (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;
 - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and

- (v) whether the tariff makes textual changes;
 - (F) an identification of tariff page numbers included in the filing;
 - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
 - (H) the tariff's or tariff page's proposed effective date;
 - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
 - (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the Commission's E-Filings System: typographical errors, document title, ~~the document to which a filing is responsive~~ and the document type. When making any a change to a document ~~title~~ in the Commission's E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, ~~proceeding caption for new proceedings~~, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process ~~other than the document to which a filing is responsive, the document title and document type on the one hand~~ and documents electronically attached or associated with the filing ~~on the other hand~~, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
 - (I) ~~W~~within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;

- (B) an identification of all proceedings affected by the difficulty or error;
 - (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) ~~Without regard to the proceeding in which difficulty was experienced or the erroneous e-filing was made, t~~The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
- (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
- (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
- (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission ~~personnel staff~~ will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or

- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:
- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates; ~~and~~
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; ~~and-~~
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection complaints if:

- (I) ~~A~~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) ~~T~~he complainant has attached to the complaint copies of all relevant non-confidential documents, including correspondence and work papers~~;~~
 - (III) ~~T~~he 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) ~~T~~he complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue~~;~~
 - (V) ~~T~~he complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above~~;~~ and
 - (VI) ~~O~~on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System 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(c); 1308(d); 1308(e); 1400; 1405(i); and 1409(b).~~
- ~~(f)~~ In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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~~ interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.

(hg) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. ~~show cause alleging that a regulated entity has violated a statute, rule, decision, tariff, price list, time schedule, or agreement accepted or approved by Commission decision, and to make any appropriate order or requirement.~~ The show cause decision shall issue on the Commission's own motion or through the following process.

(I) Affidavit and P~~proposed decision ordering a regulated entity to order to~~ show cause.

(A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. ~~first prepare a proposed decision. The proposed decision shall set forth sufficient facts and information to advise the respondent of the relief sought and how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~ The proposed decision~~affidavit~~ shall contain the following information, at a minimum:

- (i) the name and address of the party that is the subject of the proposed order to show cause;
- (ii) the name and address of the party that is proposing the order to show cause;
- (iii) a clear statement of the facts and law which ~~are form~~ the bases alleged for the issuance of the decision;
- (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, ~~suspend, annul,~~ limit, or modify any authority granted by the Commission; and
- (v) any supporting documents that will support the request for issuance of an order to show cause.
- ~~(iii) a notice to the respondent that any rates collected that are found to be unlawful are subject to refund; and~~
- ~~(iv) a statement that any relief sought may be granted as of the date of the notice of the issuance of an order to show cause.~~

- (B) ~~Commission staff shall submit the proposed decision ordering a regulated entity to show cause to the Commission at its regular weekly meeting for approval to advise the regulated entity of the proposed proceeding. If the Commission approves the advisement, then the proposed decision presented by Commission staff shall be served on the regulated entity and shall be attached to a notice of proposed order to show cause over the Director's signature. The regulated entity shall have 20 days to cure or satisfy the allegations set forth in the notice of proposed show cause. If the Commission decides not to approved the advisement then the matter shall be deemed closed.~~ The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed though the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.
- (C) ~~A notice of proposed decision shall identify those Commission staff members assigned by the Director or the Director's designee to service as trial staff and as advisory staff should the proposed show cause proceed to hearing.~~ The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.
- (D) ~~After the 20 days to cure or satisfy have expired, Commission staff shall present the proposed decision ordering the regulated entity to show cause, along with any responses from the regulated entity, at a meeting of the Commission for a determination on whether to adopt the decision. If the Commission determines that the information available, including the proposed decision ordering the regulated entity to show cause and the regulated entity's response, if any, does not support issuance of the decision to show cause in accordance with the standards found in §§ 40-6-108 and 24-4-104(3), C.R.S., if applicable, and Commission rules, the Commission shall not adopt the decision and the matter will be closed.~~ Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.

~~(II) Decision ordering a regulated entity to show cause.~~

- ~~(A) If the Commission determines that the information available, including the proposed decision and the regulated entity's response, if any, demonstrates good cause for further proceeding, the Commission shall, upon its own motion, open a show cause proceeding and issue a decision ordering a regulated entity to show cause and providing notice of hearing.~~
- ~~(B) The decision shall join trial staff and the regulated entity as parties to the proceeding.~~
- ~~(C) The Commission may take administrative notice of evidence in a decision ordering a regulated entity to show cause in accordance with rule 1501(c). Based thereupon, the decision may include a finding that a prima facie case has~~

~~been shown and shift the burden of going forward as to how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~

~~(DE) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(F) Upon issuance of the decision, if the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.~~

~~(E) A decision ordering a regulated entity to show cause shall be served in the same manner as a formal complaint, including an order requiring the respondent to satisfy the complaint or file its answer within 20 days of service of the order.~~

~~(F) Except as to a finding regarding a prima facie showing, if applicable, a Commission determination to open a proceeding and to issue a decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(i) Notwithstanding the requirements of paragraph (h), when the Commission finds either that a regulated entity has engaged in a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may institute expedited and/or summary proceedings for suspension or revocation of authority subject to and in accordance with § 24-4-104(3) and (4), C.R.S.~~

1303. Applications.

(a) An application may be made as follows:

- (I) telecommunications matters, as provided in rule 2002;
- (II) electric matters, as provided in rule 3002;
- (III) gas matters, as provided in rule 4002;
- (IV) water, including combined water and sewer, matters, as provided in rule 5002;
- (V) motor carrier matters, as provided in rule 6002;
- (VI) rail matters, as provided in rule 7002; or
- (VII) steam matters, as provided in rule 8002.

(b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.

- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.:
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.
 - ~~(IV)~~ If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (IV) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive- 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 matters, as provided in rule 3003;~~

~~(c) — gas matters, as provided in rule 4003;~~

~~(d) — water, including combined water and sewer, matters, as provided in rule 5003;~~

(~~e~~b) motor carrier matters, as provided in rule 6003;

(~~f~~c) rail matters, as provided in rule 7003;

(~~g~~d) petition for rulemaking, as provided in rule 1306;

(~~h~~e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or

(~~i~~f) petition seeking a declaratory order.

(I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.

(III) At its discretion and prior to issuing notice, the Commission may ~~grant, deny, or~~ dismiss or otherwise not accept any petition seeking a declaratory order.

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

(a) Protests.

(I) During the initial notice period, ~~A~~any person may file a written protest against a proposed tariff, price list, or time schedule.

(II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then has~~intervene~~s as provided in rule 1401 and paragraph (d) of this rule.

(b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.

(c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.

(d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed ~~90~~130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. ~~When the notice period has expired, if the Commission accepts the petition, it~~ The Commission will ~~may~~ set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an

accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.

- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a

motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
- (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and
 - (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
- (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.

- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.

- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide Motions to intervene by permission ~~will not be decided~~ prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- ~~(de)~~ Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- ~~(ef)~~ Transportation regulated intrastate carrier application proceedings.
- (I) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.
- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, or Transportation Staff.

- (a) ~~Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to a hearing Commissioner or an Administrative Law Judge. All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.~~
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.

- (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to ~~the an~~ applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than ~~four-ten~~ years prior to the filing of the application are presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.
- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.
- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
 - (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement’s violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the

party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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. Such motion shall be filed within seven days of the mailed date of the interim decision and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX-I]." Parties shall have five days to respond to any such motion.
- (d) The Commission, hearing Commissioner or Administrative Law Judge may certify any interim decision as immediately appealable and 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-I]."~~
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 proceedings where no statutory period for Commission decision exists and in 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.~~
- (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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.
- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.

- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S..

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1 RULES OF PRACTICE AND PROCEDURE

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.
- (h) "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- (i) "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- (j) "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- (k) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (l) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (m) "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- (n) "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, party, stakeholder or other public comments concerning a particular matter on the agenda or any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (d) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:
 - (I) annual reports required under the Commission's rules;
 - (II) rates, terms and conditions for regulated services;
 - (III) tariffs and price lists;
 - (IV) advice letters but not necessarily information filed in support of advice letters;
 - (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 motor carriers;
 - (VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and
 - (XI) any document or information that has been previously made public.

- (c) 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 paragraph (c), 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.
- (d) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (e) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (f) 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.
- (g) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
 - (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
 - (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
 - (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (h) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (i) The Commission, Commission staff, Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (j) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (k) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (l) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (n) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
 - (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
 - (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (j) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
 - (III) The OCC shall not use the procedure specified in this paragraph (n) as a substitute for discovery in Commission proceedings.
 - (IV) This paragraph (n) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
 - (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
 - (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (n).

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.
- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
- (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
 - (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.

- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
 - (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.

- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.
- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.

- (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
- (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request

for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.
- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
 - (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.

(b) Persons participating solely through public, academic, or policy comments are not parties.

(c) A non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument may be useful to the Commission. An amicus curiae is not a party, and may present a legal argument only, as permitted by the Commission. The arguments of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

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 205.4, C.R.C.P.

- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
- (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.
- (b) Captions and titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
 - (III) The title of a pleading shall include a heading "Before the Public Utilities Commission of the State of Colorado" and a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (c) 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.
- (d) 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 pleading shall not be included for calculating the length of the pleading.
- (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, e-mail address, 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, telephone number, and e-mail address. 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) Written testimony is not subject to paragraphs (d) and (e) of this rule. When written testimony is filed, it shall meet the following requirements.
- (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
 - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
 - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
 - (IV) 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.
 - (V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered

sequentially using the witness' initials 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, or other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.

- (VI) 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.
- (VII) 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.
- (VIII) All written testimony shall include a signed affidavit from the witness.
- (g) 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.
- (h) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.
- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the

notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
- (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either by e-mail and by hand; by e-mail and overnight delivery, or through the E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;

- (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(E), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and

- (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.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number and date). No additional notice shall be required.

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

1209. [Reserved].

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 shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

- (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
 - (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
 - (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
 - (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
 - (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed 130 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;
 - (B) a table of contents;
 - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;
 - (vii) late payment charges; and
 - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
 - (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
 - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
 - (iv) the tariff title, which identifies the types of services included in the tariff;
 - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
 - (vi) relevant section or heading captions;
 - (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
 - (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;
 - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and

- (v) whether the tariff makes textual changes;
 - (F) an identification of tariff page numbers included in the filing;
 - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
 - (H) the tariff's or tariff page's proposed effective date;
 - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
 - (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the E-Filings System: typographical errors, document title and the document type. When making a change to a document in the E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process and documents electronically attached or associated with the filing, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
 - (I) within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;
 - (B) an identification of all proceedings affected by the difficulty or error;

- (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
 - (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
 - (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
 - (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission staff will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or
- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:

- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates;
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; and
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection 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 non-confidential 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 that 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; and
 - (VI) on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System during normal business hours on the person designated by the respondent to receive service of process.
- (e) In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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 interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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.
- (f) Upon the filing of any formal complaint, except as provided in rule 1205(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.
- (g) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. The show cause decision shall issue on the Commission's own motion or through the following process.

- (I) Affidavit and proposed order to show cause.
- (A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. The affidavit shall contain the following information, at a minimum:
- (i) the name and address of the party that is the subject of the proposed order to show cause;
 - (ii) the name and address of the party that is proposing the order to show cause;
 - (iii) a clear statement of the facts and law which form the basis alleged for the issuance of the decision;
 - (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, limit, or modify any authority granted by the Commission; and
 - (v) any supporting documents that will support the request for issuance of an order to show cause.
- (B) The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed through the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.
- (C) The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.
- (D) Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.
- (E) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.
- (F) If the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall

be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.

1303. Applications.

- (a) An application may be made as follows:
- (I) telecommunications matters, as provided in rule 2002;
 - (II) electric matters, as provided in rule 3002;
 - (III) gas matters, as provided in rule 4002;
 - (IV) water, including combined water and sewer, matters, as provided in rule 5002;
 - (V) motor carrier matters, as provided in rule 6002;
 - (VI) rail matters, as provided in rule 7002; or
 - (VII) steam matters, as provided in rule 8002.
- (b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.
- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the

time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.

- (IV) If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (V) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive 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) motor carrier matters, as provided in rule 6003;
- (c) rail matters, as provided in rule 7003;
- (d) petition for rulemaking, as provided in rule 1306;
- (e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or
- (f) petition seeking a declaratory order.
 - (I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.
 - (III) At its discretion and prior to issuing notice, the Commission may dismiss or otherwise not accept any petition seeking a declaratory order.

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

- (a) Protests.
 - (I) During the initial notice period, any person may file a written protest against a proposed tariff, price list, or time schedule.

- (II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then intervenes as provided in rule 1401 and paragraph (d) of this rule.
- (b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.
- (c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.
- (d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed 130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. If the Commission accepts the petition, it may set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.
- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
 - (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and

- (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
 - (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.
- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.
- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- (e) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- (f) Transportation regulated intrastate carrier application proceedings.
 - (l) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must

explain the consequences to the common carrier and the public interest if the application is granted.

- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, Administrative Law Judge, or Transportation Staff.

- (a) All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or the Commission specifies otherwise in a written order.

- (d) 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.
 - (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to an applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than ten years prior to the filing of the application are

presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.

- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.

- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
- (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any

Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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. Such motion shall be filed within seven days of the mailed date of the interim decision and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX-I]." Parties shall have five days to respond to any such motion.
- (d) The Commission, hearing Commissioner or Administrative Law Judge may certify any interim decision as immediately appealable and subject to review by the Commission en banc.
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 following 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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues

material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.

- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.
- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S.

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].

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.

**DECISION ON APPLICATIONS FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: May 19, 2020
Adopted Date: May 13, 2020

TABLE OF CONTENTS

I. BY THE COMMISSION1
A. Background.....1
B. CEO RRR3
 1. Findings on CEO RRR.....3
C. WRA’s RRR.....5
D. Findings on WRA’s RRR.....7
II. ORDER.....10
A. The Commission Orders That:10
B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING May 13, 2020.....10

I. BY THE COMMISSION

A. Background

1. On September 13, 2019, by Decision No. C19-0747, the Colorado Public Utilities Commission (Commission) issued a 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 were issued by the Commission on 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.

The purpose of the Commission's P&P Rules is to advise the public, regulated entities, attorneys, and any other person of our Rules of Practice and Procedure in order to properly administer and enforce the provisions of Title 40 of the Colorado Revised Statutes and to regulate proceedings before the Commission. The purpose of the NOPR was 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. We provided interested persons the opportunity to submit written comments on the proposed rules and to provide oral comments at the scheduled hearing. The Commission referred the rulemaking proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing for October 29, 2019.

2. At the scheduled date and time, the ALJ convened a public comment hearing and received comments from interested parties. After taking comments at the hearing and considering written comments submitted by various parties, the ALJ issued Recommended Decision No. R19-1022 on December 23, 2019 adopting rules as amended.

3. Subsequently, exceptions to the Recommended Decision were filed on January 13, 2020 by the Colorado Energy Office (CEO) and Western Resource Advocates (WRA), as well as the Colorado Office of Consumer Counsel. After reviewing the exceptions, we issued Decision No. C20-0177 on March 30, 2020 adopting the rules consistent with our findings on the exceptions.

4. On April 20, 2020, CEO filed an application for Rehearing, Reargument, or Reconsideration (RRR). On that same date, WRA filed its RRR. Each RRR is addressed in turn below.

B. CEO RRR

5. CEO affirms it agrees with Decision No. C20-0177 at ¶ 92 in which we indicated that “[w]e agree with the ALJ’s findings, especially his reference to the basic, settled legal principle that when the interests of an absentee party are identical to one of the parties to a proceeding, or if a party to the proceeding is charged by law with representing the absentee party’s interest, a ‘compelling showing should be required to demonstrate why this representation is not adequate.’”

6. Nonetheless, while CEO agrees that a potential new party should distinguish its interests from those of existing parties, CEO requests that the Commission clarify that CEO does not and cannot represent the interests of any other group or person because of its statutory duty to represent the interests of the Governor of the State of Colorado. CEO also requests clarification that it does not and cannot represent environmental groups, therefore environmental organizations should not be denied intervention in a proceeding simply because CEO has intervened as of right in that proceeding. CEO also requests that the Commission clarify that CEO’s absence from a proceeding does not mean that no environmental interests exist in that proceeding.

1. Findings on CEO RRR

7. The process for ruling on RRR is contained in § 40-6-114, C.R.S. Subsection (3) provides in relevant part: “If after rehearing, reargument, or reconsideration of a decision of the

commission it appears that the original decision in any respect unjust or unwarranted, the commission may reverse, change, or modify the same accordingly.” *Id.*

8. CEO, in its RRR directs its concerns about its role in proceedings to the ALJ’s Recommended Decision in this proceeding, asserting that ¶ 113 of that Decision can be read to imply that CEO represents the interests of other groups. According to CEO, it may only represent the interests of the Governor, and as such, uses this as the basis for its requests for clarification.

9. CEO goes on to argue that in Proceeding No. 19A-0660E, we held that “[s]pecific to this proceeding and contrary to the ALJ’s finding, we determine it is not appropriate in this proceeding to conclude that CEO ‘... is the party charged with environmental protection and renewable energy.’” *See*, Decision No. C20-0248-I, issued April 15, 2020, Proceeding No. 19A-0660E, at ¶ 27. It is CEO’s position that this statement should apply in all proceedings.

10. First, we observe that applications for RRR apply to a Commission Decision in a proceeding in which the Commission has presided over the matter, or a Commission Decision addressing exceptions to a Recommended Decision. *See generally, Snell v. Pub. Utils. Comm’n.*, 114 P.2d 563 (1941); *Pub. Utils. Comm’n. v. Poudre Valley Rural Electric Ass’n.*, 480 P.2d 106 (1970); *Denver Clean-Up Service, Inc., v. Pub. Utils. Comm’n.*, 483 P.2d 974 (1971). CEO’s clarifications (as indicated *supra*) appear to target the ALJ’s Recommended Decision and a decision we issued in another proceeding, decisions we find to be beyond the scope of this particular RRR.

11. Further, CEO asks us to adopt the finding we made in Decision No. C20-0248-I and incorporate what amounts to a rule, that CEO is the party charged with environmental

protection and renewable energy and incorporate that finding into our Decision here. We decline to do so.

12. We first point to the very specific language of Decision No. C20-0248-I at ¶ 27 which states:

Specific to this proceeding and contrary to the ALJ's finding, we determine it is not appropriate in this proceeding to conclude that CEO "... is the party charged with environmental protection and renewable energy."

(Emphasis added)

We were very explicit that our findings regarding CEO's participation was specific to Proceeding No. 19A-0660E, in order to emphasize that nothing from that finding was binding in subsequent proceedings. We find nothing in CEO's RRR to convince us that this finding should be incorporated into this Decision or adopted as a rule.

13. Consequently, based on the discussion above, we deny CEO's RRR and decline to clarify the matters for which it requests clarifications.

C. WRA's RRR

14. WRA states that in Decision No. C20-0177 and attached redline rules, the Commission proposed changes to Rule 1502(c), which were adopted relying on changes proposed by WRA in its exceptions to the Recommended Decision. However, in making this modification, WRA states that the Commission deviated significantly from the redline rules proposed by WRA in its initial comments and exceptions. WRA objects to these changes and asks that the Commission reconsider adopting its originally proposed redline rules put forward in its initial comments and exceptions, and to reject the new language added to Rule 1502(c) in its entirety.

15. WRA comments that some ALJs issue an interim decision denying a motion for intervention as a certified decision immediately appealable to the Commission *en banc* pursuant to Rule 1502(d). Certification of the interim decision is sometimes noted by a specific ordering paragraph noting that the decision is appealable to the Commission *en banc* by a date certain. However, in other Commission Decisions, WRA states that ALJs and hearing officers do not issue interim decisions denying intervention as a certified decision. In such a situation, the prospective intervenor must follow the process laid out in Rule 1502(c) and (d) to seek full Commission review.

16. In Decision No. C20-0177, in ¶ 117, the Commission rejected WRA's full proposal to modify Rule 1502 finding "it problematic to make interim decisions denying interventions immediately appealable to the Commission due to interference by the Commission in ongoing ALJ proceedings." However, WRA points out that the redline rules attached to the Decision propose entirely new changes to Rule 1502(c), which now reads:

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. Such motion shall be filed within seven days of the mailed date of the interim decision and shall be titled "Motion Contesting Interim Decision No. [XXX-XXXX-I]." Parties shall have five days to respond to any such motion.

17. WRA argues that in effect, the Commission considered WRA's recommendation to modify the time period in which to file a motion for reconsideration of an interim decision from 1502(b) and hybridized it with new modifications to the requirements for motions contesting interim decisions under Rule 1502(c). The resulting effect is that these new redline rules propose, for the first time in this proceeding, that Motions Contesting an Interim Decision will no longer be filed with and decided on by the Commission *en banc*, but instead must be filed and ruled upon by the presiding officer that issued the Interim Decision. WRA states that the

proposed redline rule language in Rule 1502(c) shifts the authority to rule on a Motion Contesting an Interim Decision from the Commission *en banc*, to the presiding officer. WRA states that it is a major change that was not contemplated by the Commission or commenters in either initial comments or exceptions. WRA asserts it also represents a significant shift in the Commission's authority to rule on motions contesting interim decisions.

18. WRA requests the Commission reconsider Decision No. C20-0177 and adopt the rule changes to Rule 1502(b) and (d) as proposed in WRA's initial comments and cull the redline changes to Rule 1502(c) put forward in Decision No. C20-0177 in their entirety.

D. Findings on WRA's RRR

19. By way of background, we begin by reference to Decision No. C20-0177, where the Commission denied WRA's recommendations to modify Rule 1502, "find[ing] it problematic to make interim decisions denying interventions immediately appealable to the Commission due to interference by the Commission in ongoing ALJ proceedings. We agree with the ALJ that the language is not necessary. Therefore, we denied WRA's and CEO's exceptions." (*See*, Decision at ¶ 117).

20. In addressing WRA's and CEO's exceptions to the Recommended Decision adopting rules, those parties argued that the existing process creates unnecessary confusion and delay and creates the very real risk of depriving parties of their due process rights. WRA recommended amendments to the Commission's existing P&P Rules to clarify and streamline review of interim decisions, including interim decisions denying motions to intervene.

21. In Decision No. C20-0177 at pages 18 and 19, the Commission determined that the ALJ was correct in finding that the current process had not proven to be a denial of a parties' due process rights. The Commission stated that a party may seek to have the interim decision

denying intervention immediately appealed to the Commission for review. We found the language of the rule straightforward. The Decision held that to adopt the parties' recommendations would require the Commission to basically interfere with a proceeding once it's been assigned to an ALJ.

22. We agreed with the ALJ's Recommended Decision that when a party requests reconsideration of an interim decision denying intervention, the proponent of the proceeding, as well as any other party to the proceeding would most likely file responses. This would result in additional delays to the litigation, which WRA identified as a concern in the first place. However, we determined that WRA's proposal to shorten timelines had merit. We therefore adopted the language as proposed in the NOPR with the amendments suggested by the ALJ, including language in Rule 1401(c) that requires a party to respond to a motion for permissive intervention within seven days after service of the motion, or such lesser or greater time as the Commission may allow.

23. This background is presented to better understand that the amendments adopted by the Commission should have been applicable to Rule 1402(c) as follows:

(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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have

seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide Motions to intervene by permission will not be decided prior to expiration of the notice period.

This highlighted language is what we intended Decision No. C20-0117 to adopt rather than the redline language indicated in Rule 1502 attached to the Decision.

24. This transposition of language to Rule 1502(c) was inadvertent. The language appearing in redline to Rule 1502(c) was actually intended to be incorporated into Rule 1401(c) with no amendments to Rule 1502.

25. Therefore, we agree with WRA and grant its RRR to the extent it requests to remove the amendments to Rule 1502(c) that appear in the redline rules attached to Decision No. C20-0117. Additionally, we clarify that we adopt the amendments to Rule 1401(b) and (c) as adopted by Recommended Decision No. R19-1022 on December 23, 2019 and attached to this Decision.

26. 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 SB 19-236.

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

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

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0177 filed on April 20, 2020 by the Colorado Energy Office is denied consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0177 filed on April 20, 2020 by Western Resource Advocates is granted in part and denied and part consistent with the discussion above.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 13, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1 RULES OF PRACTICE AND PROCEDURE

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- ~~(g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.~~
- ~~(gh)~~ "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- ~~(hi)~~ "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- ~~(ij)~~ "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- ~~(jk)~~ "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- ~~(kl)~~ "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- ~~(lm)~~ "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- ~~(mn)~~ "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- ~~(n) [Reserved].~~
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner, ~~the chairman of the Commission, or any Commissioner other than the chairman~~, conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, Party, stakeholder or other public comments concerning a particular matter on the agenda or any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (de) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:

(I) annual reports required under the Commission's rules;

(II) rates, terms and conditions for regulated services;

(III) tariffs and price lists;

(IV) advice letters but not necessarily information filed in support of advice letters;

(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 motor carriers;

(VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and

(XI) any document or information that has been previously made public.

- (bc) 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 (bc), 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.
- (ed) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (de) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (ef) 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.
- (fg) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
- (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
- (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
- (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (gh) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (hi) The Commission, Commission staff, ~~and~~ Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (hj) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (kj) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (kl) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (n) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
- (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
 - (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (j) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
 - (III) The OCC shall not use the procedure specified in this paragraph (n) as a substitute for discovery in Commission proceedings.
 - (IV) This paragraph (n) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
 - (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
 - (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (n).

- ~~(n) — In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:~~
- ~~(I) — annual reports required under the Commission's rules;~~
 - ~~(II) — rates, terms and conditions for regulated services;~~
 - ~~(III) — tariffs and price lists;~~
 - ~~(IV) — advice letters but not necessarily information filed in support of advice letters;~~
 - ~~(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 motor carriers;~~
 - ~~(VIII) — unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and~~
 - ~~(XI) — any document or information that has been previously made public.~~

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.

- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
 - (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
 - (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for

furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;

- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.
- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

- (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.
- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the

signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.

- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.
 - (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
 - (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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- 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.

- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to ~~twenty-four~~thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
- (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information- that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.

(b) Persons participating solely through public, academic, or policy comments are not parties.

(c) A non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument may be useful to the Commission. An amicus curiae is not a party, and may present a legal argument only, as permitted by the Commission. The arguments of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

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 205.4, C.R.C.P.

- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
- (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.
- (b) ~~Titles~~ Captions and ~~caption~~ titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
- (III) The title of a pleading shall include 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 a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (Hc) 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.
- (ed) 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 pleading shall not be included for calculating the length of the pleading.
- (de) Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, 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, telephone number, and e-mail address. 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.
- (fe) Written testimony is not subject to paragraphs (ed) and (de) of this rule. When written testimony is filed, it shall meet the following requirements:
 - (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
 - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
 - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
 - (IV) 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.

(V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered sequentially using the witness' initials 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, or other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.

~~(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.~~

~~(VI) 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.~~

(VII) 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.

(VIII) All written testimony shall include a signed affidavit from the witness.

(fg) 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.

(gh) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.

- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
 - (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the ~~Commission's~~ E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either ~~(i)~~ by e-mail and by hand; ~~(ii)~~ by e-mail and overnight delivery, or ~~(iii)~~ through the ~~Commission's~~ E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the ~~Commission's~~ E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the ~~Commission's~~ E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the ~~Commission's~~ E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;

- (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(~~DE~~), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and

- (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.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. ~~No additional notice beyond the tariff filing itself shall be required.~~ A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number, and date). No additional notice shall be required.

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

1209. ~~Payments~~Reserved.

~~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. 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~~shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.
 - (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
 - (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
 - (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
 - (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
 - (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed ~~90~~130 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;
 - (B) a table of contents;
 - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;
 - (vii) late payment charges; and
 - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
 - (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
 - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
 - (iv) the tariff title, which identifies the types of services included in the tariff;
 - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
 - (vi) relevant section or heading captions;
 - (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
 - (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;
 - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and

- (v) whether the tariff makes textual changes;
 - (F) an identification of tariff page numbers included in the filing;
 - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
 - (H) the tariff's or tariff page's proposed effective date;
 - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
 - (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the ~~Commission's~~ E-Filings System: typographical errors, document title, ~~the document to which a filing is responsive~~ and the document type. When making ~~any a~~ change to a document ~~title~~ in the ~~Commission's~~ E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, ~~proceeding caption for new proceedings~~, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process ~~other than the document to which a filing is responsive, the document title and document type on the one hand~~ and documents electronically attached or associated with the filing ~~on the other hand~~, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
 - (I) ~~W~~within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;

- (B) an identification of all proceedings affected by the difficulty or error;
 - (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) ~~Without regard to the proceeding in which difficulty was experienced or the erroneous e-filing was made, t~~The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
- (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
- (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
- (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission ~~personnel staff~~ will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or

- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:
- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates; ~~and~~
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; ~~and-~~
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection complaints if:

- (I) ~~A~~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) ~~T~~he complainant has attached to the complaint copies of all relevant non-confidential documents, including correspondence and work papers~~;~~
 - (III) ~~T~~he 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) ~~T~~he complaint provides specific facts demonstrating that the complainant engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue~~;~~
 - (V) ~~T~~he complaint includes a certification of the complainant's compliance with subparagraph (d)(I) above~~;~~ and
 - (VI) ~~O~~on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System 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(c); 1308(d); 1308(e); 1400; 1405(i); and 1409(b).~~
- ~~(f)~~ In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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~~ interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.

(hg) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. ~~show cause alleging that a regulated entity has violated a statute, rule, decision, tariff, price list, time schedule, or agreement accepted or approved by Commission decision, and to make any appropriate order or requirement.~~ The show cause decision shall issue on the Commission's own motion or through the following process.

(I) Affidavit and P~~proposed decision ordering a regulated entity to order to~~ show cause.

(A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. ~~first prepare a proposed decision. The proposed decision shall set forth sufficient facts and information to advise the respondent of the relief sought and how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~ The ~~proposed decision~~affidavit shall contain the following information, at a minimum:

- (i) the name and address of the party that is the subject of the proposed order to show cause;
- (ii) the name and address of the party that is proposing the order to show cause;
- (iii) a clear statement of the facts and law which ~~are form~~ the bases alleged for the issuance of the decision;
- (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, ~~suspend, annul,~~ limit, or modify any authority granted by the Commission; and
- (v) any supporting documents that will support the request for issuance of an order to show cause.
- ~~(iii) a notice to the respondent that any rates collected that are found to be unlawful are subject to refund; and~~
- ~~(iv) a statement that any relief sought may be granted as of the date of the notice of the issuance of an order to show cause.~~

- (B) ~~Commission staff shall submit the proposed decision ordering a regulated entity to show cause to the Commission at its regular weekly meeting for approval to advise the regulated entity of the proposed proceeding. If the Commission approves the advisement, then the proposed decision presented by Commission staff shall be served on the regulated entity and shall be attached to a notice of proposed order to show cause over the Director's signature. The regulated entity shall have 20 days to cure or satisfy the allegations set forth in the notice of proposed show cause. If the Commission decides not to approved the advisement then the matter shall be deemed closed. The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed though the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.~~
- (C) ~~A notice of proposed decision shall identify those Commission staff members assigned by the Director or the Director's designee to service as trial staff and as advisory staff should the proposed show cause proceed to hearing. The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.~~
- (D) ~~After the 20 days to cure or satisfy have expired, Commission staff shall present the proposed decision ordering the regulated entity to show cause, along with any responses from the regulated entity, at a meeting of the Commission for a determination on whether to adopt the decision. If the Commission determines that the information available, including the proposed decision ordering the regulated entity to show cause and the regulated entity's response, if any, does not support issuance of the decision to show cause in accordance with the standards found in §§ 40-6-108 and 24-4-104(3), C.R.S., if applicable, and Commission rules, the Commission shall not adopt the decision and the matter will be closed. Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.~~

~~(II) — Decision ordering a regulated entity to show cause.~~

- ~~(A) — If the Commission determines that the information available, including the proposed decision and the regulated entity's response, if any, demonstrates good cause for further proceeding, the Commission shall, upon its own motion, open a show cause proceeding and issue a decision ordering a regulated entity to show cause and providing notice of hearing.~~
- ~~(B) — The decision shall join trial staff and the regulated entity as parties to the proceeding.~~
- ~~(C) — The Commission may take administrative notice of evidence in a decision ordering a regulated entity to show cause in accordance with rule 1501(c). Based thereupon, the decision may include a finding that a prima facie case has~~

~~been shown and shift the burden of going forward as to how any statute, rule, tariff, price list, time schedule, decision, or agreement accepted or approved by Commission decision is alleged to have been violated.~~

~~(DE) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(F) Upon issuance of the decision, if the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.~~

~~(E) A decision ordering a regulated entity to show cause shall be served in the same manner as a formal complaint, including an order requiring the respondent to satisfy the complaint or file its answer within 20 days of service of the order.~~

~~(F) Except as to a finding regarding a prima facie showing, if applicable, a Commission determination to open a proceeding and to issue a decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.~~

~~(i) Notwithstanding the requirements of paragraph (h), when the Commission finds either that a regulated entity has engaged in a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action, the Commission may institute expedited and/or summary proceedings for suspension or revocation of authority subject to and in accordance with § 24-4-104(3) and (4), C.R.S.~~

1303. Applications.

(a) An application may be made as follows:

- (I) telecommunications matters, as provided in rule 2002;
- (II) electric matters, as provided in rule 3002;
- (III) gas matters, as provided in rule 4002;
- (IV) water, including combined water and sewer, matters, as provided in rule 5002;
- (V) motor carrier matters, as provided in rule 6002;
- (VI) rail matters, as provided in rule 7002; or
- (VII) steam matters, as provided in rule 8002.

(b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.

- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.:
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.
 - ~~(IV)~~ If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (IV) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive- 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 matters, as provided in rule 3003;~~

~~(c) gas matters, as provided in rule 4003;~~

~~(d) water, including combined water and sewer, matters, as provided in rule 5003;~~

(eb) motor carrier matters, as provided in rule 6003;

(fc) rail matters, as provided in rule 7003;

(gd) petition for rulemaking, as provided in rule 1306;

(he) petition seeking a waiver or variance of any rule, as provided in rule 1003; or

(if) petition seeking a declaratory order.

(I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.

(III) At its discretion and prior to issuing notice, the Commission may ~~grant, deny, or dismiss~~ or otherwise not accept any petition seeking a declaratory order.

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

(a) Protests.

(I) During the initial notice period, ~~A~~any person may file a written protest against a proposed tariff, price list, or time schedule.

(II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then has~~intervene~~s as provided in rule 1401 and paragraph (d) of this rule.

(b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.

(c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.

(d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed ~~90~~130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. ~~When the notice period has expired, if the Commission accepts the petition, it~~ The Commission will ~~may~~ set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an

accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.

- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a

motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
- (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and
 - (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
- (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.

- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.

- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide ~~M~~otions to intervene by permission ~~will not be decided~~ prior to expiration of the notice period.
- ~~(d)~~ Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- ~~(de)~~ Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- ~~(ef)~~ Transportation regulated intrastate carrier application proceedings.
- (I) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.
- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, or Transportation Staff.

- (a) ~~Unless the Commission orders otherwise, all matters submitted to the Commission for adjudication shall be referred to a hearing Commissioner or an Administrative Law Judge.~~ All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.

- (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to ~~the an~~ applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than ~~four-ten~~ years prior to the filing of the application are presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.
- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.
- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
 - (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement’s violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the

party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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-I]."
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 proceedings where no statutory period for Commission decision exists and in 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.~~
- (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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.
- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.

- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S..

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

PART 1 RULES OF PRACTICE AND PROCEDURE

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.

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, 40-6-114(1), and 40-6-122(4), 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.

The Rules of Practice and Procedure 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 and 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 may employ the Colorado Rules of Civil Procedure.

1002. Construction.

All rules and decisions 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 and Variances.

- (a) The Commission has promulgated these rules to ensure orderly and fair treatment of all persons. The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The

Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

- (b) Waiver or variance requests made in an existing proceeding shall be by motion. Waiver or variance requests made outside an active proceeding shall be by petition. If a petition requests a waiver or variance to be effective less than 40 days after the date of filing, the petition must include a request to waive or shorten the Commission notice and intervention period found in paragraph (d) of rule 1206. If such request is not included, the Commission notice and intervention period found in paragraph (d) of rule 1206 apply.
- (c) All waiver or variance requests shall include:
 - (I) citation to the specific paragraph of the rule or decision from which the waiver or variance is sought;
 - (II) a statement of the waiver or variance 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 or variance, explaining the specific date or event that will terminate it;
 - (V) a statement whether the waiver or variance, 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 telecommunications interconnection complaint" means a formal complaint that is filed to resolve a dispute arising out of a telecommunications interconnection agreement, and that meets the requirements of paragraph (d) of rule 1302.
- (b) "Administrative proceeding" means a non-adjudicatory proceeding 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, any miscellaneous matter, advice letter proceedings prior to suspension of the effective date by Commission decision, any petition requesting a rulemaking proceeding, or any proceeding designated by the Commission as an administrative proceeding.
- (c) "Adjudicatory proceeding" means the following types of proceedings: applications, petitions, other than petitions for rulemaking, formal complaints, show cause proceedings, advice letter proceedings after suspension of the effective date by the Commission, or any other proceeding designated by the Commission as an adjudicatory proceeding.
- (d) "Advice letter" means the introductory letter to a formal proposal by a utility to establish new tariffs or to revise existing tariffs, through which the utility submits proposed new or revised tariff pages to the Commission for inclusion in its effective tariff and provides the information required by paragraph 1210(c).

- (e) "Advisory staff" means Commission staff designated as advisory staff in a particular adjudicatory proceeding by operation of rule 1007; Commission staff in an administrative proceeding, or Commission staff in an adjudicatory proceeding in which Commission staff does not intervene; or any assistant attorney general advising the Commissioners, Administrative Law Judges, or advisory staff. Advisory staff directly supports the Commissioners and the Administrative Law Judges. Advisors provide technical analysis and policy advice; manage cases; and assist the Commissioners and Administrative Law Judges in reaching their decision in formal proceedings.
- (f) "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 entity's involvement with the joint venture, or a fellow subsidiary of a parent corporation of a regulated entity.
- (g) "Business day" means Monday through Friday from 8:00 a.m. to 5:00 p.m. Mountain Time, excluding legal holidays and any other day when the Commission's office is lawfully closed.
- (h) "Colorado Rules of Civil Procedure" means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes.¹ 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, 1560 Broadway, Suite 250, Denver, Colorado 80202. The material incorporated by reference may be examined at any state publications depository library.
- (i) "Commission" means the Public Utilities Commission of the state of Colorado, two or more commissioners acting on behalf of the Public Utilities Commission, a hearing Commissioner, or an Administrative Law Judge, as the context requires.
- (j) "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.
- (k) "Commission staff" means individuals employed by the Commission, including individuals appointed or hired by the Director pursuant to § 40-2-104, C.R.S.
- (l) "Consumer Counsel" means the director of the OCC, as indicated by § 40-6.5-102(1), C.R.S.
- (m) "Contracted agent" means any person or entity that has contracted with a regulated entity to assist in the provision of the regulated entity's services (e.g., an affiliate or vendor).
- (n) "Customer" means any person who has applied for, been accepted for, or is receiving regulated service in Colorado from a regulated entity subject to Commission jurisdiction.
- (o) "Day" means a calendar day.
- (p) "Director" means the Director of the Commission appointed pursuant to § 40-2-103, C.R.S.

¹ All or a portion of the incorporated Colorado Rules of Civil Procedure may be available through the Commission's website.

- (q) "E-Filings System" means the Internet-based process available through the Commission's website that is authorized by the Commission for, among other uses, the electronic submission of filings, pleadings, and other papers and service of process in Commission proceedings.
- (r) "List of witnesses" means a list of the names, titles, addresses, and telephone numbers of the persons a party intends to call as a witness in a hearing.
- (s) "Motor carrier" means a motor carrier as defined in § 40-10.1-101(10), C.R.S.
- (t) "Newspaper of general circulation" means a newspaper having a paid Colorado circulation of at least 100,000, or a newspaper 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.
- (u) "OCC" means the Colorado Office of Consumer Counsel.
- (v) "Party" means "party" as that term is defined in rule 1200.
- (w) "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.
- (x) "Personal information" means the following:
 - (I) social security or tax identification number;
 - (II) driver's license number or identification card number;
 - (III) credit card, debit card, other account number used for payment;
 - (IV) any required security code, access code, or password that would permit access to the customer's account;
 - (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and
 - (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media.
- (y) "Pleading" means applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses, and proposed decisions requested by the Commission to be filed by a party in a proceeding.
- (z) "Presiding officer" means an Administrative Law Judge, the chairman of the Commission, or a hearing Commissioner conducting a Commission hearing, as applicable.
- (aa) "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.

- (bb) "Rate" includes any fare, toll, rental, or charge. Rate also includes any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge.
- (cc) "Refund" means any money, other than a deposit, collected by a utility in its rates and charges that is required to be returned to customers.
- (dd) "Regulated entity" means any entity subject to Commission regulation pursuant to Title 40, C.R.S.
- (ee) "Regulated intrastate carrier" means a common carrier as defined in § 40-10.1-101(4), C.R.S. or a contract carrier as defined in § 40-10.1-101(6), C.R.S., except as may be exempted from regulation under § 40-10.1-105, C.R.S.
- (ff) "RRR" means an application for rehearing, reargument, or reconsideration, as that phrase is used in § 40-6-114, C.R.S.
- (gg) "Rulemaking proceeding" means a proceeding initiated by a Notice of Proposed Rulemaking or any other proceeding designated by the Commission as a rulemaking proceeding. All rulemaking proceedings are conducted in compliance with § 24-4-101 et seq., C.R.S; but where there is a specific statutory provision in title 40 C.R.S. applying to the commission, such specific statutory provision shall control as to the Commission.
- (hh) "Signed" means an original signature or an electronic signature created through the process of submitting a filing through the Commission's E-Filings System.
- (ii) "Tariff" means a schedule that is filed with the Commission pursuant to § 40-3-103, C.R.S. showing all rates and classifications collected or enforced, or to be collected or enforced, and/or rules, regulations, terms, and conditions, that in any manner affect or relate to rates, classifications, or service.
- (jj) "Third party" means a person who is not the customer, a regulated entity, or a contracted agent.
- (kk) "Time schedule" means a document that is submitted to the Commission by a common carrier, as defined in § 40-10.1-101(4), C.R.S., showing the carrier's pick-up and drop-off times and locations, including flagstops.
- (ll) "Trial staff" means Commission staff designated as trial staff in a proceeding pursuant to rule 1007. Trial staff provides expert testimony, participates in settlement conferences and agreements, and otherwise participates as full parties in proceedings in which they have intervened or otherwise filed notice of participation.
- (mm) "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 weekly 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 the E-Filings System and shall be available in paper copy at its offices at a reasonable time prior to the meeting.

- (c) The Commission's regular weekly meetings are for the purpose of Commissioners' discussions and decisions on particular matters as noticed on the agenda. The Commissioners will allow for public comment at each regular weekly meeting. However, party, stakeholder or other public comments concerning a particular matter on the agenda or any matter pending before the Commission are not permitted at regular weekly meetings.
- (d) 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 for a future meeting.
- (e) Absent any technical difficulties, all regular weekly meetings will be broadcast via webcasting and audio recordings will be archived on the Commission's website.
- (f) 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; shall be responsible for all Commission staff functions, including providing and receiving all notices and service required of or by the Commission; and shall serve as custodian of the Commission's records.

1007. Commission Staff.

- (a) When Commission staff intervenes in any adjudicatory proceeding the entry of appearance by Commission staff's counsel shall specify those Commission staff members assigned by the Director or the Director's designee to serve as trial staff and as advisory staff.
- (b) Trial staff, for purposes of the particular proceeding, shall be considered a party for purposes of the standards of conduct. Once a member of Commission staff has been designated as trial staff in a proceeding, that staff member shall not function in any advisory capacity with respect to that proceeding.
- (c) Advisory staff is available to provide advice, consultation, summaries and recommendations to the Commission regarding policy and technical issues, and shall be considered the Commission for purposes of the standards of conduct. Certain communications between advisory staff and Commissioners or Administrative Law Judges are covered by the deliberative process doctrine and privilege.
- (d) The Commission staff may provide informal assistance to the general public and to prospective applicants for Commission authorizations. Opinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

1008. – 1099. [Reserved].

STANDARDS OF CONDUCT

These rules apply to all persons filing information with, or seeking information from, the Commission. They also apply to the Commission, the Director, and a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in proceedings, requests to restrict public inspection

of information outside of a proceeding, and requests for information under the Colorado Open Records Act. Information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law.

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) In accordance with the Colorado Open Records Act, information filed with or provided to the Commission is public record and is presumed to be open for inspection by any person at any reasonable time, subject to restrictions specifically provided by law. In particular, subject to restrictions specifically provided by law, the following documents shall be presumed to be available for public inspection:
 - (I) annual reports required under the Commission's rules;
 - (II) rates, terms and conditions for regulated services;
 - (III) tariffs and price lists;
 - (IV) advice letters but not necessarily information filed in support of advice letters;
 - (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 motor carriers;
 - (VIII) unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or decision to demonstrate compliance or lack of compliance with Commission rules or decisions. 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 decision or rule; and
 - (XI) any document or information that has been previously made public.

- (c) 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 paragraph (c), 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.
- (d) The Commission's acceptance of information pursuant to a claim of confidentiality is not, and shall not be construed to be, an agreement or a determination by the Commission that the subject information is, in fact, confidential.
- (e) At any time, the Commission may issue a decision on its own motion stating that a determination will be made whether information provided subject to a claim of confidentiality is confidential. In that event, the provisions of the Commission decision shall govern the procedure.
- (f) 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.
- (g) Until otherwise ordered by the Commission or the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.
 - (I) In the event the Commission rules that any information previously filed or provided subject to a request for highly confidential protections should no longer be protected in accordance with such request, all persons afforded access to such information shall not disclose the information or use it in any manner for seven days. During this period, any person claiming highly confidential or confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to the information shall continue to treat the information as subject to the protection requested by the provider of the information.
 - (II) In the event the Commission rules that information previously filed or provided subject to a claim of confidentiality is not confidential and should be removed from the protective requirements of these standards of conduct, all persons afforded access shall not disclose such information or use it in the public record for seven days. During this period, any person claiming confidential protections may seek a stay, request that it be permitted to remove the subject information from the record, or other relief. If a motion is filed to continue protection, pending the ruling on the motion, all persons afforded access to such information shall continue to treat the information as confidential pursuant to these standards of conduct.
 - (III) In the absence of new information or a change in circumstances, as determined by the Director in responding to a request for Commission records under the Colorado Open Records Act, a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under the Colorado Open Records Act.

- (h) When filed with the Commission, or otherwise provided, confidential and highly confidential information will be sealed by the Director, designated as confidential or highly confidential, as applicable, in the E-Filings System, and withheld from inspection by any person not bound by the terms of these standards of conduct or Commission decision, as applicable. This treatment shall prevail unless the confidential or highly confidential information is released from the restrictions of these standards of conduct either through agreement of the interested persons and publication, or, after opportunity for comment, pursuant to a decision of the Commission or final order of a court having jurisdiction. Nothing in these standards of conduct shall require the Commission to provide information filed under seal to any person other than Commission staff and the OCC. Persons seeking access to information filed under seal must comply with the terms of these standards of conduct and must acquire the information filed under seal from the filer. Service of confidential or highly confidential information shall not be accomplished through the E-Filings System, except for service to the Commission's assigned trial staff and advisory staff. The OCC will provide written notification to a filer if it obtains access to the filer's confidential information from the Commission. Service of a signed non-disclosure agreement by the OCC upon the filer shall be deemed as such written notification.
- (i) The Commission, Commission staff, Commission advisory counsel, and Commission staff counsel shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of the Commission, Commission counsel, and Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each Commissioner, Commission counsel, and Commission staff member executes shall include a provision that requires the individual to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a Commissioner, Commission counsel, and Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements and shall make such agreements available for public inspection.
- (j) All persons afforded access to any information filed subject to a claim of confidentiality shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of these standards of conduct. All persons, including Commission staff, who are afforded access to information to which the Commission has granted highly confidential protection shall maintain and shall treat that information in accordance with the protections for confidential information specified in these standards of conduct and the decision granting highly confidential protection.
- (k) Parties to a proceeding 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 these standards of conduct on the grounds of relevancy or materiality.
- (l) Acceptance of information claimed to be confidential or highly 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 Colorado Open Records Act; 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 these standards of conduct, and compliance with these standards of conduct shall not be construed to be a waiver of those rights.
- (n) The OCC may submit a written request for access to Commission records containing information claimed to be confidential by the person providing the information. In such instances, the Director 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 the Director 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 not disclose the information to the OCC for an additional seven days. During this additional seven-day period, the person objecting to disclosure may commence judicial action to prevent such disclosure or may take other appropriate action.
 - (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. The OCC shall serve such a petition on the person who provided the subject information to the Commission.
 - (II) Disclosure to the OCC of information claimed to be confidential shall be conditioned upon the OCC's compliance with the provisions of these rules, including the requirement in paragraph (j) 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 (j) of rule 1101, and shall deliver such agreement to the Director and the provider of the information claimed to be confidential, prior to review of the information claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under these standards of conduct absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.
 - (III) The OCC shall not use the procedure specified in this paragraph (n) as a substitute for discovery in Commission proceedings.
 - (IV) This paragraph (n) shall not authorize the OCC to obtain access to Commission staff work papers or work product.
 - (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, upon written request approved by the Director or the Commission, the OCC may retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request for additional time upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.
 - (VI) An OCC request for access to Commission records containing confidential information 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 the Colorado Open Records Act shall not apply to requests under this paragraph (n).

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.
- (I) A party submitting to the Commission information claimed to be confidential or highly confidential shall file, as part of the public record (i.e., not under seal), the required number of copies of its filing, according to these rules and without including the information claimed to be confidential or highly confidential. The first page of each of these copies shall be labeled: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page shall list each document filed under seal, shall list each page number of each document on which confidential or highly confidential material is found, and shall indicate the nature of the documents that are filed under seal. Failure to make a public filing that excludes information claimed to be confidential or highly confidential along with the information claimed to be confidential or highly confidential will result in administrative rejection of the filing by Commission staff.
- (II) Unless filed through the E-Filings System, in addition to the copies available for public inspection, the person filing shall file under seal an original and three copies of the pages on which the information is claimed to be confidential or highly confidential. All pages and copies of the information claimed to be confidential or highly confidential shall be clearly marked as "confidential" or "highly confidential" as applicable and shall be filed on lightly colored paper. Each page of the document containing information claimed to be confidential or highly confidential shall be clearly marked so that, should the pages of the document be separated from the envelope, it will be clear that the information on the page of the document is claimed to be confidential or highly confidential.
- (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);
- (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 it prefers to have the Commission and/or parties served destroy the information by shredding following conclusion of Commission proceedings and any related court actions; 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.
- (b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
 - (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
 - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.
- (c) If a person believes that information presumed to be open for public inspection as contained in paragraph (n) of rule 1100 should not be open for public inspections, then the person may file a motion requesting highly confidential protection in accordance with paragraph (b) above. The appropriate treatment for such information must be determined by the Commission. A claim of confidentiality does not overcome the presumption of public availability.
- (d) The person seeking highly confidential protection for information shall comply with paragraph 1204(a) in filing the motion. Prior to deciding the motion and as it deems necessary, the Commission may enter a decision requiring the filing of additional information, including the filing of a complete version of the information for which highly confidential protection is sought. The person seeking highly confidential protection for information shall bear the burden of proof to establish the need for highly confidential protection. The Commission will consider in camera the motion and, as applicable, the description of the information, the representative sample of the information, or the complete information. After considering the motion and the circumstances, the Commission may enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision.

- (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;
 - (III) the information is prefiled as an exhibit to be offered at hearing; or
 - (IV) the information is offered as an exhibit at hearing.
- (f) This rule establishes the procedure for the expeditious handling of a challenge to the claim by a person that information is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
 - (I) A person seeking to challenge a claim of confidentiality shall first contact counsel for the providing person 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 person challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems information non-confidential. This notice shall designate the information challenged in a manner that specifically isolates the challenged information from other information claimed as confidential.
 - (III) The person claiming confidentiality shall, within ten days of the notice required by subparagraph (II) of this paragraph, file an appropriate pleading stating grounds upon which the challenged information is claimed to be confidential. The challenging person shall have ten days to respond to the pleading. In the event the claiming person fails to file the required pleading stating grounds for treating the challenged information as confidential within ten days, the Commission may enter a decision that the challenged information may be included in the public record or subject to modified protections.
- (g) 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 paragraphs (h) and (i) 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, unless the Commission orders otherwise, the parties may take notes about the information or may request and receive copies of the documents, or both. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with these standards of conduct.
- (h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission 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 Commission staff may have access to any confidential information made available under the terms of these standards of conduct. Commission staff is not limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in these standards of conduct or other Commission rule or decision, Commission staff shall be subject to all other requirements of standards of conduct. Upon motion approved by the Commission, the OCC 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.

- (i) No person shall have access to information under seal until the person, who is either a party or an authorized agent of a party and who is seeking such access, signs a nondisclosure agreement on a form approved by the Commission, serves the nondisclosure agreement on the party filing the confidential information, and files the nondisclosure agreement with the Commission. The nondisclosure agreement form shall require the person to whom disclosure is to be made (the signatory) to certify in writing that the signatory has read the protective provisions contained in rules 1100 - 1103 and agrees to be bound by the terms of those provisions. The agreement shall contain (1) the caption and number of the associated proceeding; (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) the signatory's signature and the date of execution of the nondisclosure agreement; and (5) the signature of the associated party's counsel of record for the proceeding. The agreement shall be delivered to counsel for the filing person and shall be filed with the Commission at or before the time of review of the documents.
- (j) 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 shall be submitted to the Commission under seal in accordance with these rules.
- (k) 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.
- (l) Retention of documents.
 - (I) At the conclusion of the proceedings, all documents and information subject to this rule, except the original and copies retained by Commission staff shall be retrieved by the party or person producing them unless the filer states on the outside of each sealed envelope served that its preference is to have the Commission and/or parties served destroy the information following the conclusion of Commission proceedings and any related court actions. 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. Commission staff shall take all reasonable precautions to maintain the confidentiality of information subject to these standards of conduct.
 - (II) Upon motion approved by the Commission, the OCC 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 these standards of conduct were produced, return such documents and information to the person providing the information.

- (III) In the event Commission staff intends to use confidential or highly confidential information in a subsequent proceeding, it shall notify, in writing, the person 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. Commission staff's use of confidential or highly confidential information in a subsequent proceeding shall be in accordance with the provisions of these standards of conduct.
- (IV) Commission staff and OCC shall develop and maintain internal procedures to protect from disclosure any confidential or highly confidential information permitted to be retained pursuant to these standards of conduct or order of the Commission.

1102. Procedures Relating to Confidential Information Submitted To The Commission Outside Of A Formal Proceeding.

- (a) A person providing any document or information outside of a proceeding that is claimed to be confidential, including information submitted in an electronic format on a physical medium such as CD, DVD or flash disk, shall use 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 that 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 confidential portions provided under seal shall be submitted under separate publicly-available cover which cover shall identify the person providing the information, the documents provided, and the confidential portions identified by page number. 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 is not, and shall not be construed to be, an agreement by or ruling of the Commission that the subject information is, in fact, confidential.
 - (II) All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on lightly-colored paper.
- (b) Upon notification from the Commission that the confidential information is no longer needed, the filer shall make arrangements to retrieve the information unless the filer previously indicated its preference to have the Commission destroy the information. If the information is not retrieved by the filer within seven days after notification, the Commission will shred or destroy the information. The Commission may retain the original of a filed document where necessary or required by law.

1103. Procedures Concerning Requests For Public Inspection Of Information Claimed To Be Confidential or Highly Confidential.

- (a) When any person makes a request to inspect Commission records that another person has claimed are confidential or is subject to highly confidential protection, the Director shall determine whether the records are subject to public inspection pursuant to the provisions of the Colorado Open Records Act. The Director shall use procedures that are consistent with the provisions of the Colorado Open Records Act. In any event, the Director shall give timely notice of the request

for inspection of records to the person who submitted the documents or information subject to the request and who claims that the records are confidential or are subject to highly confidential protection. 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 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 Colorado Open Records Act and all other applicable law.
- (e) In the instance that a person files personal information or information that is otherwise sensitive to an individual's identity and does not designate the information as confidential, Commission staff may redact or otherwise designate the information as confidential and inform the filer.

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.
- (b) If a regulated entity collects personal information concerning a customer, then not later than three months after first billing the customer, the regulated entity shall notify the customer, in writing of his or her right to request a copy of any or all personal information that the regulated entity holds concerning that customer, including a true copy of that information. Upon such request and upon verification of the customer's identity, the regulated entity 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 regulated entity. Within 30 days of the request, the regulated entity shall:
 - (I) verify and correct any portion of a record that 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 that is disputed, and include in its records the customer's concise statement of disagreement. The regulated entity shall also inform the customer of his or her right to file a complaint with the Commission regarding the disputed personal information.

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.
- (b) Requests to disclose personal information must specify the identity of the requestor, the electronic or mail address to which requested information is to be delivered, and the authority or authorization for the request. With the exception of requests pursuant to paragraph 1105(c) or by the consumer requesting a copy of his or her personal information as permitted in paragraph 1104(b), all requests must be in writing. Written requests must be on official letterhead or from an official e-mail address. Permitted disclosure of personal information may be provided in response to a telephone request; however, the employee of the regulated entity must first verify the caller's identity by returning the call using a telephone number verified independently of the caller, including without limitation, prior experience of the authorized representative. Permitted disclosure of personal information may also be provided in person; however, the person requesting information in person must demonstrate to the regulated entity that he or she is authorized to request the personal information.
- (c) A utility may disclose information regarding monthly gas, steam, and electric customer charges and general usage for up to thirty-six months (at no more granular level than monthly totals), payment history, past due amounts, pending deposits, current shut-off due dates or disconnection, current life support status, payment arrangements, history of energy assistance payments, number of heating degree days, and other specifically requested information in response to requests from Energy Outreach Colorado (EOC), the Low-Income Energy Assistance Program (LEAP), the Weatherization Assistance Program (WAP) and any other affiliated agencies using the information to provide energy assistance and programs to Colorado customers, provided that EOC, LEAP, WAP, and any other affiliated agencies receiving information pursuant to this rule have included as part of their application process notice to the applicant for assistance that his or her utility may disclose certain information including a notice to the customer of all personal information that is or may be requested, to facilitate the energy assistance and program application process.
- (d) A regulated entity may disclose personal information to a contracted agent to assist in the provision of regulated services, provided, however, that the contract contains the following minimum requirements:
 - (I) The contracted agent shall implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the regulated entity internally to protect personal information.
 - (II) The contracted agent shall use personal information only for the purpose of fulfilling the terms of the contract. The use of personal information for a secondary commercial purpose not related to the purpose of the contract without the regulated entity first obtaining the customer's consent is prohibited.
 - (III) The contracted agent shall destroy or return to the regulated entity all personal information that is no longer necessary for the purpose for which it was transferred.
 - (IV) The contracted agent shall execute a non-disclosure agreement with the regulated entity.

- (V) In the event a contracted agent uses, maintains, or otherwise distributes personal information in a way that would violate Commission rule if done directly by a regulated entity, such use, maintenance, or distribution shall be considered a violation of these rules by the regulated entity that disclosed the person information to the contracted agent.
- (e) The regulated entity shall maintain records of the disclosure of personal information to the contracted agent for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

1106. Prohibited Communications – Generally.

Ex parte communications concerning any disputed substantive or procedural issue, or facts or allegations at issue, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509; and
- (c) is made without providing other parties notice and an opportunity to respond.

1107. Prohibited Communications – Disclosure.

- (a) Any person communicating with any advisory staff, Commissioner, or Administrative Law Judge concerning a pending adjudicatory proceeding shall state the party with whom he or she is associated and the number and short title of the proceeding.
- (b) Any person, party, Commissioner, Administrative Law Judge, or member of Commission staff engaging in prohibited communications shall forthwith serve a notice on all parties describing:
 - (I) the name and 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.

1108. 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; this includes, if necessary, calling and cross-examining

witnesses. In addition, the Commission may, upon its own motion or upon the motion of a party, order any of the following remedial measures:

- (a) dismissal of the proceeding, in whole or in part;
- (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication;
- (c) a public statement of censure; or
- (d) such alternative or additional sanctions as may be appropriate under the circumstances.

1109. 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 a 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 on 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.

1110. Commissioner and Administrative Law Judge Communications - Generally.

- (a) Prohibited communications do not include:
 - (I) procedural, scheduling, status inquiries, E-Filings System support, 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 that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to pending legislative proposals, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative or rulemaking proceeding.
- (b) Every Commissioner and Administrative Law Judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
 - (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;

- (B) the names of the persons present;
 - (C) the interested persons' affiliations;
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of the Commissioner or Administrative Law Judge to certify that the disclosure is complete and accurate.
- (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by e-mail exchange.

1111. Permit, but Disclose Process.

- (a) In administrative proceedings, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative proceeding and cannot concern any matter pending before the Commission in another proceeding. The Commission will attempt to accommodate all reasonable requests for ex parte meetings, subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.
- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the proceeding with which the presentation is associated.
- (c) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular proceeding, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.

(VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.

(d) The disclosure letter and any materials will become part of the official record of the proceeding.

1112. – 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 decision 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 by Commission decision.

(b) Persons participating solely through public, academic, or policy comments are not parties.

(c) A non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as an amicus curiae. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party will address through argument, and shall explain why the legal argument may be useful to the Commission. An amicus curiae is not a party, and may present a legal argument only, as permitted by the Commission. The arguments of amicus curiae shall not be considered as evidence in the proceeding and shall not become part of the evidentiary record. All requests for amicus curiae status may be accepted or declined at the Commission's discretion. Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.

(d) Persons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative 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 confidentiality as are parties.

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 205.4, C.R.C.P.

- (b) Notwithstanding paragraph (a) of this rule, an individual who is not an attorney may represent:
- (I) his or her own interests;
 - (II) the interests of a closely held entity, subject to and in accordance with § 13-1-127, C.R.S., after demonstrating eligibility to do so in the closely held entity's initial application or petition or its motion for intervention;
 - (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;
 - (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; or
 - (V) a partnership, corporation, association or any other entity, solely to provide public, academic or policy comments, pursuant to rule 1509. In no event shall a non-attorney representative take actions that constitute the practice of law.
- (c) No attorney shall appear before the Commission in any 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, e-mail address, and the attorney's registration number. If the attorney's address, telephone number or e-mail address changes during a proceeding the attorney shall file in the proceeding a notice that includes the updated information.
- (d) An attorney of record who wishes to withdraw from a proceeding shall file a notice of withdrawal. The notice of withdrawal shall include a list of all pending hearing and procedural dates and shall be served in accordance with rule 1205, and on the party represented by the withdrawing attorney. The withdrawing attorney shall specifically advise the party represented 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 a decision of the Commission.

1202. Form and Content of Pleadings.

- (a) Unless the Commission orders otherwise, every pleading shall comply with the following requirements: Pleadings other than pre-printed forms shall be printed or electronically formatted on 8 1/2" x 11" white pages, with one-inch margins at the top, bottom, and both sides of each page, excluding page numbering, and shall be bound with removable bindings. 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, the filed testimony shall contain a table of contents.
- (b) Captions and titles of pleadings.
- (I) The caption of an application or petition proceeding shall be authored by the filing party and 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) Captions for advice letter and tariff proceedings shall be authored by the Commission's administrative staff and shall contain the name of the filer, the advice letter number, the tariff number or numbers, the proposed effective date and a short description of the requested change in tariff rates, terms and/or conditions.
 - (III) The title of a pleading shall include a heading "Before the Public Utilities Commission of the State of Colorado" and a short description of the pleading. The first page of every pleading shall contain the proceeding caption, proceeding number and title.
- (c) 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.
- (d) 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 pleading shall not be included for calculating the length of the pleading.
- (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, e-mail address, 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, telephone number, and e-mail address. 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) Written testimony is not subject to paragraphs (d) and (e) of this rule. When written testimony is filed, it shall meet the following requirements.
- (I) Each page shall have a header in the upper right corner of the page. The header shall include the title of the document and the page number.
 - (II) The first page of the document shall be numbered as page 1, with each additional page numbered in sequence. No page of a filing of written testimony shall be without a page number and only one set of page numbers shall be used in a filing of written testimony.
 - (III) Each line shall be serially numbered in the left margin, beginning with "1" on each page.
 - (IV) 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.
 - (V) Each type of a witness' testimony (e.g., direct, answer, rebuttal and cross-answer) including any attachments, shall be a single exhibit during hearing and marked using one hearing exhibit number. Each witness' attachments to testimony shall be numbered

sequentially using the witness' initials 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, or other testimony. The first page of each attachment shall be numbered as "page 1" consistent with subparagraph (f)(II) of this rule.

- (VI) 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.
- (VII) 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.
- (VIII) All written testimony shall include a signed affidavit from the witness.
- (g) 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.
- (h) When multiple documents are filed as a single paper filing (e.g., an application with a related motion, a motion including attachments, 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 blank slip sheets.

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 the effective date shall be continued until 5:00 p.m. Mountain Time on the next business day.
- (b) Unless a decision 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) Except in the calculation of notice, a calculation of a period of days shall exclude the first day and include the last day. In calculating the period of notice in days, neither the date on which the

notice is filed with the Commission nor the last day is included. The entire notice period must expire prior to the proposed effective date of a tariff.²

1204. Filing.

- (a) Unless a decision of the Commission or a specific rule provides otherwise:
- (I) Persons making a filing may file either an electronic document through the E-Filings System or a paper document. However, paper documents shall not be filed with the Commission if the documents are filed through the E-Filings System. All documents filed through the E-Filings System shall be uploaded to the system in a text-searchable format when possible.
 - (II) 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.
 - (III) Filings made in paper copy shall include an original and three copies.
 - (IV) Unless filing through the E-Filings System, a person filing an annual report shall file an original and one copy. The filing shall also include one executable, read-only electronic copy, unless filing an electronic copy would be infeasible. If a person files an annual report through the E-Filings System, the report shall be uploaded to the system in an executable format.
- (b) All filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day. Although the Commission's E-Filings System is generally available 24 hours a day, seven days a week, a document transmitted to the E-Filings System shall be deemed filed with the Commission pursuant to the business hours specified in this paragraph.
- (c) A person wishing to receive a date stamped copy of any paper filing shall file one copy in addition to the requirements of paragraph (a) of this rule. If the person desires that the Commission mail the date stamped copy of the paper filing, the person shall also include a self-addressed envelope with adequate postage affixed.

² For example, if a tariff has a 30-day notice period requirement, a tariff filed on June 1 could, at the earliest, have an effective date of July 2. A tariff filed on July 1 could, at the earliest, have an effective date of August 1.

1205. Service.

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on 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 assigned trial staff and advisory staff. Except as provided in rule 1205(c) 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 is registered in the E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) 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 either by e-mail and by hand; by e-mail and overnight delivery, or through the E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) 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 also be made upon the attorney. Where a party is represented by an attorney of record and is not registered in the E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.
- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

1206. Commission Notice – Generally.

- (a) Except as provided in paragraph (c) of this rule, the Commission shall, within 15 days of the date an application or petition is filed, provide 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. Unless a mailed notice is required by Commission decision or specific rule, the Commission shall give notice of applications or petitions to all persons through the E-Filings System.
- (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 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 or any other document must be filed;
 - (VII) the date by which Commission staff must file any objection, notice of intervention, testimony, 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, 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 provide notice of:
 - (I) an application or petition that does not reasonably specify the information required by subparagraph (b)(IV) of this rule;
 - (II) a restrictive amendment of any pleading;

- (III) a petition for declaratory order or a petition for rulemaking, until the Commission in its discretion opens a proceeding regarding such a petition;
 - (IV) a regulated intrastate carrier application that does not include the requisite filing fee; or
 - (V) a regulated intrastate carrier application for emergency temporary authority.
- (d) Unless shortened by Commission decision 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 that, through amendment or otherwise, is changed in any manner that broadens the application's or petition's purpose or scope.
- (e) In addition to complying with § 24-4-103, C.R.S., the Commission shall provide a 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; each person who registered to receive notification of rulemakings through the E-Filings System; and any other person who in the opinion of the Commission may be interested in or affected by the rulemaking proceedings.

1207. Utility Notice.

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(E), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files 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 shall 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, and 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 may file to intervene 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; and

- (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.
- (d) All persons 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.
- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. A tariff filing is considered to be a compliance filing when it is the subject of a Commission decision and agrees in both substance and timing determined in that decision. All compliance filings shall be made as a new advice letter proceeding. A notification shall also be filed on the same date as the compliance filing in the proceeding authorizing the compliance filing that identifies the compliance filing (e.g., advice letter number and date). No additional notice shall be required.

1208. Adoptions and Adoption Notices.

- (a) 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.
- (b) Within ten business days following the filing of the adoption notice, the utility shall file a compliance advice letter and tariff pursuant to subparagraph 1210(c)(III), if applicable.

1209. [Reserved].

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 shall 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, including attachments. Unless such filing is made through the E-Filings System, the original and three copies must be filed.

- (IV) Format and required contents. Utilities shall file proposed tariffs using the form available from the Commission or from its website and shall provide the information required by the form.
 - (V) The Commission will provide notice by electronic posting in the E-Filings System within seven days of the receipt of an advice letter and tariff.
 - (VI) Effective date calculation. In calculating the proposed effective date of a tariff, the date on which the tariff is filed with the Commission shall not be counted. The entire notice period must expire prior to the proposed effective date of the tariff. See also rule 1203(c).
 - (VII) Any person affected by a tariff change proposed under this rule may submit a written protest to the proposed change. Any protest must be filed sufficiently in advance of the effective date to permit Commission consideration before the tariff becomes effective, generally at least ten days before the effective date of the proposed tariff.
 - (VIII) Hearing and suspension. When a utility files a proposed tariff, the Commission may suspend the proposed tariff's effective date by ordering that a hearing be held. Pending hearing and decision, the proposed tariff shall not go into effect. The period of suspension shall not extend more than 120 days beyond the proposed effective date of the tariff, unless the Commission, by separate decision, extends the period of suspension for an additional period not to exceed 130 days.
- (b) Tariffs.
- (I) Contents. In addition to the utility's rates, classifications, rules, regulations, forms of contracts, terms, conditions, and service offerings, the following shall be included in the tariff:
 - (A) a title page including:
 - (i) the utility's name and trade name, address, website address, and telephone number, including a toll free customer service telephone number, if applicable; and
 - (ii) a general statement of the services to which the tariff applies;
 - (B) a table of contents;
 - (C) an explanation of the tariff's paragraph numbering sequence;

- (D) a list explaining tariff change symbols. At a minimum, the following symbols shall be used:

Symbol	Signifying
C	Change in text due to a changed regulation, term, or condition, that does not affect rates.
D	Discontinued service or deleted material.
I	Rate increase.
R	Rate reduction.
M	Material moved from or to another part of the utility's tariff; a footnote indicating where the material was moved from and where the material was moved to shall accompany all "M" classified changes.
N	New material, including new products, services, rates, terms, or conditions.
T	Change in text not related to changes in rates, charges, terms, or conditions.

- (E) a list of all abbreviations and definitions used in the tariff;
- (F) identification of the utility's types of service and service territory, as applicable, to which the tariff applies;
- (G) provisions regarding the following, as applicable;
- (i) line extensions;
 - (ii) customer deposits;
 - (iii) return check charges consistent with § 13-21-109, C.R.S.;
 - (iv) disconnection, discontinuance, and restoration of service;
 - (v) billing and payments;
 - (vi) liability limitations;
 - (vii) late payment charges; and
 - (viii) customer and utility responsibilities, obligations, duties, and rights; and

- (H) the following information, on each tariff page:
- (i) utility's name;
 - (ii) the tariff number ("Colorado PUC No. ____"), running consecutively for each subsequent tariff filing;
 - (iii) if applicable, the number of the tariff being canceled ("Cancels PUC No. ____");
 - (iv) the tariff title, which identifies the types of services included in the tariff;
 - (v) the tariff page numbers (e.g., "Original Sheet No. 34"); or, if the page cancels another page, a listing of the canceled page number shall be included (e.g., "First Revised Sheet No. 34", "Cancels Original Sheet No. 34");
 - (vi) relevant section or heading captions;
 - (vii) an identification of the corresponding advice letter number implementing the tariff or the tariff change and an identification of the corresponding Commission decision number, if applicable; and
 - (viii) the tariff or tariff page's effective date, and, if applicable, the tariff or tariff page's cancellation date.

(c) Advice letters.

- (I) Filing with tariff. A utility shall file an advice letter with each tariff filing.
- (II) The advice letter shall include:
 - (A) the utility's name, trade name, if any, and address;
 - (B) the sequentially numbered identification of the advice letter;
 - (C) an identification of the corresponding tariff number;
 - (D) an identification of the corresponding Commission proceeding number and decision number, if applicable;
 - (E) a brief description of the tariff or tariff changes, which at a minimum shall include:
 - (i) affected classes of service;
 - (ii) affected classes of customers;
 - (iii) whether the tariff contains an increase in rates, a decrease in rates, or both;
 - (iv) whether the tariff changes terms or conditions; and

- (v) whether the tariff makes textual changes;
 - (F) an identification of tariff page numbers included in the filing;
 - (G) if applicable, a listing of revised page numbers and/or canceled page numbers;
 - (H) the tariff's or tariff page's proposed effective date;
 - (I) the name, telephone number, and email address of the person to contact regarding the filing; and
 - (J) the signature of the agent of the utility authorized to file the advice letter.
- (III) If there is a change in any information contained in the title page of the tariff, the utility shall file an advice letter with the new information and the new title page. The advice letter and title page may be filed on not less than five-days' notice, if the only revision to the tariff is to provide the new information on the title page.
- (IV) The advice letter shall be filed in the prescribed form as available from the Commission.

1211. E-Filings System.

- (a) Corrections or other modifications primarily affecting Commission recordkeeping and searchability of information. Upon request or observation, Commission staff will actively monitor and correct the following information input during the electronic filing process through the E-Filings System: typographical errors, document title and the document type. When making a change to a document in the E-Filings System, Commission staff will send an e-mail to registered filers in the E-Filings System for that proceeding notifying them of the change if, in its estimation, the change may cause confusion to the parties in the proceeding.
- (b) Other corrections or modifications. To avoid prejudice to recipients of information through the E-Filings System, the filer must effectuate any other modification to e-filing inputs, including without limitation, the name of the person on behalf of whom the filing was made, filing date, proceeding number, claimed confidentiality, and service recipients. Such filer action may be initiated by motion or in accordance with paragraph (d) below.
- (c) Information contained within the documents submitted through the E-Filings System must be consistent with the information input in the fields required in the E-Filings System. To the extent of any conflict between information input in the e-filing process and documents electronically attached or associated with the filing, the information input in the e-filing process shall prevail.
- (d) Procedure for expedited relief. In addition to other relief available, the following expedited relief is available when a filer experiences technical difficulties while using or attempting to make a filing through the E-Filings System:
 - (I) within one business day after a filer experiences technical difficulty, or e-files an erroneous filing, the filer may file a statement containing, without limitation:
 - (A) a description of the difficulty or error;
 - (B) an identification of all proceedings affected by the difficulty or error;

- (C) an identification of all electronic filings affected by the difficulty or error;
 - (D) a description of all actions taken to notify those affected by the difficulty or error;
 - (E) a verification that the filer undertook reasonable effort to notify those affected by the difficulty or error; and
 - (F) if the e-filing was filed in an unintended proceeding, a statement as to whether the filing should be administratively stricken from the unintended or improper proceeding.
- (II) The filer's statement shall be filed both in the proceeding in which the erroneous filing was submitted and the proceeding originally intended or attempted to be filed.
 - (III) A copy of the correct filing shall be filed with the statement in the correct proceeding.
 - (IV) Upon filing of a statement in compliance with this rule, the corrected filing shall be accepted nunc pro tunc to the date it was first attempted to be filed electronically. The filing date will be changed administratively to reflect this acceptance.
 - (V) Unless requested otherwise and pursuant to the statement filed in compliance with this rule, Commission staff will administratively strike any original erroneous filing giving rise to the filing of the statement described in this rule.

1212– 1299. [Reserved].

PROCEEDINGS

1300. Commencement of Proceedings.

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

- (a) a complaint, by any interested person, or a show cause proceeding, 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) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;
- (e) an appeal of an emergency decision in a pipeline safety matter concerning public safety, health, or welfare;
- (f) a decision opening an administrative proceeding under rule 1307;
- (g) a notice of proposed rulemaking issued by the Commission; or
- (h) a report, in certain circumstances prescribed by statute, Commission decision, or Commission rule.

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, orally or in writing, an informal complaint with Commission staff 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;
 - (IV) refer the informal complaint to the affected regulated entity for a response;
 - (V) file a formal complaint against the regulated entity, when specifically permitted by statute;
 - (VI) request that the Commission issue an order to show cause;
 - (VII) offer mediation;
 - (VIII) provide to the informal complainant information about how to file a formal complaint; or
 - (IX) 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. Commission staff may only require a response period less than five days if such period is reasonable under the circumstances of the informal complaint.
- (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; and
 - (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 at any time.

1302. Formal Complaints and Show Cause Proceedings.

- (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, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated. In addition, a formal complaint shall meet the following requirements, as applicable:

- (I) a complaint that 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 that claims 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.; and
 - (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, when provided by law. The Commission will consider any evidence concerning some or all of 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 respondent's business; 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, thereby adjudicating the proceeding as an accelerated complaint. If the Commission expedites a formal complaint, it shall enter a procedural decision that:
- (I) establishes the expedited schedule, including hearing dates;
 - (II) details the limits, if any, that the Commission, in its discretion, places on discovery; and
 - (III) requires compliance with the following paragraphs, if applicable: 1205(c); 1308(d); 1308(e); 1400(c); 1405(i); and 1409(b).
- (d) Formal complaints to enforce a telecommunication provider's interconnection duties or obligations, and formal complaints regarding interconnection service quality matters, shall be treated as accelerated telecommunication interconnection 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 non-confidential 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 that 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; and
 - (VI) on the same day as the complaint is filed with the Commission, the complainant serves a copy of the complaint by hand-delivery or through the E-Filings System during normal business hours on the person designated by the respondent to receive service of process.
- (e) In complaint proceedings where discontinuance of service becomes an issue, the Commission or an Administrative Law Judge may issue an interim decision 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 interim decision, the amount of which may be increased, or the terms adjusted, by the Commission, Hearing Commissioner or Administrative Law Judge as needed at any time while the dispute is pending;
 - (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.
- (f) Upon the filing of any formal complaint, except as provided in rule 1205(c), 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. Except in the case of an accelerated complaint, 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 order shall require 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.
- (g) Show cause proceedings. The Commission may issue a decision ordering a regulated entity to appear before the Commission and explain why the regulated entity allegedly took certain actions that violate Title 40 of the Colorado Revised Statutes, an effective Commission decision, or an effective Commission rule, or allegedly failed to take action in contravention of the same, and why the Commission should or should not grant some form of relief against the regulated entity. The show cause decision shall issue on the Commission's own motion or through the following process.

- (I) Affidavit and proposed order to show cause.
- (A) When Commission staff intends to request an order to show cause against any regulated entity, the staff shall file an affidavit supporting a request for issuance of an order to show cause and a proposed order to show cause with the Commission and serve the same upon the regulated entity that is the subject of the proposed order. The proposed order to show cause shall contain the request being made, or relief sought by the party filing, and an identification of all proposed parties to the proceeding. A supporting affidavit must accompany the proposed order to show cause. The affidavit shall contain the following information, at a minimum:
- (i) the name and address of the party that is the subject of the proposed order to show cause;
 - (ii) the name and address of the party that is proposing the order to show cause;
 - (iii) a clear statement of the facts and law which form the basis alleged for the issuance of the decision;
 - (iv) the relief, remedy, or sanction that may be ordered, including any reparations, or an order to revoke, limit, or modify any authority granted by the Commission; and
 - (v) any supporting documents that will support the request for issuance of an order to show cause.
- (B) The affidavit, including any supporting documents attached, and a proposed order to show cause, must be filed through the E-Filings System as a request for a new proceeding. Upon receipt of the filing, the Director shall promptly serve the respondent with a notice setting the date, time and location of a hearing before an Administrative Law Judge.
- (C) The regulated entity may prepare a response or answer to the proposed order to show cause, stating any objections to the issuance of the order requested. This response must be e-filed into the proceeding no later than ten business days after service of the affidavit and proposed order to show cause.
- (D) Staff and all respondents must appear at the hearing to present their cases to the Administrative Law Judge, who will then render an interim decision either granting issuance or dismissing the order to show cause. The Administrative Law Judge must render the decision within ten business days of the hearing.
- (E) A determination to issue an interim decision ordering a regulated entity to show cause is based on the information then available. The determination is not, and shall not be taken or assumed to be, a decision on the merits or on any factual allegation.
- (F) If the decision entered by the Administrative Law Judge grants issuance of the order to show cause, the show cause proceeding will be returned to the full Commission for a decision regarding referral on the merits. The proceeding shall

be processed pursuant to the procedures in these rules and the applicable provisions of § 40-6-101, et seq., C.R.S.

1303. Applications.

- (a) An application may be made as follows:
- (I) telecommunications matters, as provided in rule 2002;
 - (II) electric matters, as provided in rule 3002;
 - (III) gas matters, as provided in rule 4002;
 - (IV) water, including combined water and sewer, matters, as provided in rule 5002;
 - (V) motor carrier matters, as provided in rule 6002;
 - (VI) rail matters, as provided in rule 7002; or
 - (VII) steam matters, as provided in rule 8002.
- (b) All applications must state the relief requested, identify all applicable requirements of Commission rule and decision(s), and address each of those respective requirements. If an application fails to meet each of these requirements the application may be deemed incomplete.
- (c) Determination of the completeness of an application for purposes of § 40-6-109.5, C.R.S.
- (I) The Commission shall determine whether an application meets the application requirements prescribed by Commission rule and decision. This determination is not, and shall not be taken or assumed to be, a decision on the merits.
 - (II) Commission staff shall evaluate the application and prepare a recommendation regarding completeness. Not more than ten days after the filing of an application, Commission staff may send the applicant and its attorney written notification concerning any specific deficiencies of the application regarding its completeness. The deficiency notification may be made by mail or e-mail and shall be filed in the E-Filings System. Upon receiving the 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, deem the application incomplete, dismiss the application without prejudice, and close the proceeding. The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.
 - (III) If the Commission finds that more information is necessary before deeming the application complete (e.g., to understand fully the implications of an application and the requested relief), it may issue a decision identifying such information and establishing a deadline for supplementation. For example, the Commission may identify information to assist in understanding how the relief requested will affect other current or future proceedings; how it will affect the applicable state, regional or national markets; or how it will affect the applicant's future growth plans. If the applicant does not respond in the

time allotted or within such additional time upon motion, the Commission may dismiss the application without prejudice and close the proceeding. If the applicant files responsive information or offers an explanation to the satisfaction of the Commission, the Commission shall issue a decision deeming the application complete for purposes of § 40-6-109.5, C.R.S.

- (IV) If the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period, and absent a determination that the application is not complete or that more information is found to be necessary, the application shall be automatically deemed complete. At any time, the Commission may, by decision or by minute entry, deem an application complete.
 - (V) Nothing in this paragraph (c) shall be construed to prohibit dismissal of an application on its merits, as provided by law and these rules.
- (d) At any time, an applicant may waive 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) motor carrier matters, as provided in rule 6003;
- (c) rail matters, as provided in rule 7003;
- (d) petition for rulemaking, as provided in rule 1306;
- (e) petition seeking a waiver or variance of any rule, as provided in rule 1003; or
- (f) petition seeking a declaratory order.
 - (I) A person may file a petition for a declaratory order either as an original proceeding or in 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 tariff, statutory provision, or Commission rule, regulation, or order.
 - (III) At its discretion and prior to issuing notice, the Commission may dismiss or otherwise not accept any petition seeking a declaratory order.

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

- (a) Protests.
 - (I) During the initial notice period, any person may file a written protest against a proposed tariff, price list, or time schedule.

- (II) If the Commission sets a proposed tariff, price list or time schedule for hearing, a person who registers a protest shall not be permitted to participate as a party unless that person then intervenes as provided in rule 1401 and paragraph (d) of this rule.
- (b) The Commission may, pursuant to § 40-6-111(3), C.R.S., reject any proposed tariff, price list, or time schedule that is not submitted in the format required by statute or the Commission's orders or rules.
- (c) The Commission may determine that a hearing is required to investigate and determine the propriety of any proposed tariff, price list, or time schedule. Such a decision thereby suspends the effective date of the proposed tariff, price list, or time schedule pending a decision by the Commission, pursuant to § 40-6-111(1)(a) and (b). Any decision requiring a hearing shall be served upon the regulated entity proposing the tariff, price list, or time schedule.
- (d) Any person wishing to participate as a party in any hearing 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 regulated entity filing the suspended tariff, price list, or time schedule is a party and does not need to 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 period of time not to exceed 130 days.
- (f) No change sought by a suspended tariff, price list, or time schedule, shall become effective unless the Commission fails to issue a decision on the merits within the suspension period. If the Commission orders a change to be made to the suspended tariff, price list, or time schedule and states the time when the change shall take effect, and states the manner in which it shall be filed and published, the suspended tariff shall be permanently suspended and the regulated entity shall make a compliance filing that incorporates the ordered changes.

1306. Rulemaking Proceedings.

- (a) Rulemaking proceedings generally. Either upon its own motion or upon the petition of any person, the Commission may issue a notice of proposed rulemaking, in accordance with rule 1206. A rulemaking proceeding shall be governed by § 24-4-103, C.R.S., and such specific procedures as the Commission may order.
- (b) Petition for rulemaking. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue a notice of petition filed in accordance with rule 1206, unless a different notice period is requested and the Commission consents in writing to a modified notice period. If the Commission accepts the petition, it may set a schedule to receive comments on the petition from interested participants. The Commission may also allow for the filing of reply comments. Once all comments are received, the Commission will deliberate and determine whether good cause exists to proceed to grant the petition, in whole or in part, and proceed to issue a notice of proposed rulemaking.

1307. Administrative Proceedings.

The Commission may open an administrative proceeding on its own motion at any time. Administrative proceedings 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 or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.
- (b) No response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. Motions for leave to file a response to applications for RRR are addressed in rule 1506.
- (c) The Commission may shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence or that the requested relief is unopposed. The Commission can act immediately where response time is waived and after the expiration of the shortened response time.
- (d) Except in an accelerated complaint proceeding, a party named as a respondent shall file a response within 20 days of being served with an order to satisfy or to answer the complaint. In an accelerated complaint proceeding, the respondent shall file a response within ten days after service of the order to satisfy or answer 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 (e) of this rule.
- (e) A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a 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; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; insufficiency of signatures; failure to state a claim upon which relief can be granted; or failure to join a party. 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.
- (f) If a party fails to file timely 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 may grant any or all of the relief requested.

1309. Amendment or Withdrawal.

- (a) Except in complaint proceedings, a party commencing an action may amend or supplement its pleading at any time during the intervention and notice period, if any. In complaint proceedings or after the close of the intervention and notice period, if any, 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, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. 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 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. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.
- (e) A party may withdraw an advice letter and tariffs prior to the effective date of the tariffs if they have not yet been suspended and set for hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw a tariff or an advice letter. In ruling upon such a motion, the Commission shall consider whether good cause for withdrawal is stated, and whether other parties would be prejudiced by the withdrawal.

1310. Information Regarding Regulated Entities.

- (a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:
 - (I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);
 - (II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;
 - (III) the name, business address, and title of each officer, director, and partner;
 - (IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and

- (V) the name and address of the regulated entity's Colorado agent for service of process.
- (b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

1311. – 1399. [Reserved].

PRE-HEARING PROCEDURE

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. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
 - (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
 - (II) If a motion is unopposed, it shall be entitled "Unopposed Motion for _____."
- (b) Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, 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.
- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
 - (I) a material misrepresentation of a fact;
 - (II) accident or surprise, which ordinary prudence could not have guarded against;
 - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
 - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed 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 intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (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. Motions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing. No decision shall be entered permitting intervention in response to a notice of intervention as of right, but rather a decision on motions to intervene may include an acknowledgement of the parties that have intervened as of right.
- (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 or electric 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. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.
- (d) Communities affected by a qualifying retail utility's clean energy plan pursuant to § 40-2-125.5(5)(f), C.R.S., may move to intervene in such a proceeding, but must be represented by an attorney.
- (e) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- (f) Transportation regulated intrastate carrier application proceedings.
 - (l) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must

explain the consequences to the common carrier and the public interest if the application is granted.

- (II) A common 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 or a request to intervene in a corresponding permanent authority application proceeding.

1402. Consolidation.

Either on its own motion or on the motion of a party, the Commission may 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 determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if 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.
- (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 on which the proceeding is contested or opposed.
- (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, Administrative Law Judge, or Transportation Staff.

- (a) All matters submitted to the Commission for adjudication shall be heard, in the first instance, by the Commission unless by rule, minute order, or written decision, the Commission assigns a matter to an Administrative Law Judge or a hearing Commissioner.
- (b) A proposed show cause proceeding filed pursuant to rule 6009 of the Commission's Rules Regulating Transportation by Motor Vehicle, may be heard by an Administrative Law Judge in the first instance.
- (c) A referral to a hearing Commissioner or Administrative Law Judge shall encompass all issues of fact and law concerning the matter except as provided in this rule or the Commission specifies otherwise in a written order.

- (d) 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.
- (e) Pursuant to § 40-6-101(5), C.R.S. and the Commission's Rules Regulating Transportation Motor Vehicles, 4 CCR 723-6, the Commission may authorize the delegation of routine administrative transportation matters to Commission staff.

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.
 - (III) Unless the Commission orders otherwise, the Colorado Rules of Civil Procedure incorporated by reference govern discovery.
- (b) In advice letter and application proceedings subject to an applicable statutory period for the Commission to issue a decision, a party shall serve discovery responses regarding direct and answer testimony, and objections if any, within ten business days from service of a request. A party shall serve discovery responses regarding rebuttal or cross-answer testimony, and objections if any, within seven business days of a request. These response times apply regardless of the number of discovery requests or subparts to discovery requests issued by parties.
- (c) In adjudicatory proceedings where no statutory period for Commission decision exists and in 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 ten business 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 is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony 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.
- (e) Deadlines established in paragraphs (b) through (d) are subject to modification by agreement of the person propounding discovery and the person upon whom the discovery is propounded.
- (f) Discovery requests that are unrestricted as to both time and scope (e.g., all e-mails and other materials) or cover a time period more than ten years prior to the filing of the application are

presumptively deemed to be not reasonably calculated to lead to the discovery of admissible evidence. A proponent can overcome such presumption with leave of the Commission or without (e.g., acknowledgement by respondent) by demonstrating that such requests are reasonably calculated to lead to discovery of admissible evidence under the circumstances. Without limitation, the determination of reasonableness may include consideration of whether the discovery propounded is reasonably necessary to evaluate the proposal before the Commission and whether the burden or cost of the discovery sought substantially outweighs the likely probative value of the information.

- (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 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 attachment 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; and
 - (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 complaint proceedings that are not accelerated, application proceedings, and all rate proceedings set for hearing, all parties shall file and serve their testimony, including attachments, as ordered by the Commission.

- (k) In regulated intrastate carrier application proceedings, notwithstanding anything in 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 a regulated intrastate carrier application proceeding 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.

1406. Subpoenas.

- (a) Incorporation by reference and exceptions.
- (I) The Commission incorporates by reference rule 45(a) – (d) of the Colorado Rules of Civil Procedure.
 - (II) Except as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the Colorado Rules of Civil Procedure, as incorporated herein. For purposes of Commission subpoena practice, the word “court” in rule 45(a) and the last sentence in rule 45(c) shall be deemed to mean the Commission; otherwise, the word “court” in the incorporated material shall be deemed to mean the Commission or the Director.
- (b) 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.

The Commission encourages parties to offer into evidence a written stipulation resolving any fact or matter of substance or procedure that is at issue. 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 of, or disapprove any stipulation offered into evidence or on the record.

1408. Settlements.

- (a) The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a settlement agreement are encouraged to attest that they are not aware of a settlement agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.
- (b) The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion 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, establish a procedural schedule, 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. The Commission will issue a written notice establishing the date, time, and place of the pre-hearing conference. 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.

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. 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 of proof.

1501. Evidence.

- (a) The Commission shall not be bound by the technical rules of evidence. Nonetheless, to the extent practical, the Commission shall 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. Informality in any proceeding or in the manner of taking testimony shall not invalidate any

Commission order, decision, rule, or regulation. 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; of state and federal constitutions, statutes, rules, and regulations; of tariffs, price lists, time schedules, rate schedules, and annual reports; of documents in its files; of matters of common knowledge, matters within the expertise of the Commission; and facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Any person requesting administrative notice shall specify on the record every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding. If a complete copy of the document is unreasonably voluminous, then the party requesting administrative notice may seek leave to provide only the relevant portion of the document. Every party shall have the opportunity on the record and by evidence, to controvert evidence admitted by administrative notice.

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 final decision of the Commission.
- (b) Interim decisions shall not be subject to exceptions or applications for RRR, except that any party or rulemaking participant 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. A party or rulemaking participant may file a motion for modification of an interim decision issued by the Commission upon good cause shown. Such good cause may include, without limitation, establishing that the deferral of Commission reconsideration of the interim decision's rulings will result in the practical denial of a person's substantive or procedural rights or will cause unreasonable delay in the completion of the proceeding.
- (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-I]."
- (e) Nothing in this rule prohibits a motion for clarification of an interim decision or a motion to amend a procedural schedule set forth in an interim decision.

1503. Briefs or Statements of Position.

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

1504. Record.

- (a) The record of a proceeding shall include all information introduced by the parties, as provided in § 24-4-105(14), C.R.S., and all information set out in § 40-6-113(6), C.R.S.
- (b) Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

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 following 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 files an appropriate motion and the Commission by decision equitably apportions the cost among the parties.
- (c) The Commission may, upon its own motion 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 file an application for RRR of any Commission decision or of any recommended decision that becomes a Commission decision by operation of law.
- (b) No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues

material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed.

- (c) The Commission may waive or shorten response time to a motion requesting leave to file a response to an application for RRR upon the motion of a party or on its own motion if it is found that time is of the essence or the requested relief is unopposed. The Commission can act immediately after the grant of the waiver or the expiration of the shortened of response time.
- (d) An application for RRR, or a motion for an extension of time in which to file such an application, shall be filed within 20 days after the date of the Commission decision, or after the date on which 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.
- (e) An application for RRR does not stay the Commission's decision unless the Commission orders a stay. If the Commission does not act upon an application for RRR within 30 days of its filing, the application is denied and the Commission's decision shall be final.

1507. Judicial Review.

Any party may seek judicial review of any Commission decision in accordance with applicable law, including § 40-6-115, C.R.S.

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, rule, 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.

1509. Public, Academic, or Policy Comments.

- (a) The Commission may accept oral or written comments from the public concerning any proceeding; however, anonymous or vulgar comments will not be accepted. These comments may be general in nature or may specifically address consideration of academic or policy concerns. Comments shall not be considered evidence in the proceeding. Rather, comments provide a means for interested persons to encourage the Commission in the exercise of discretion.
- (b) Parties and amici curiae to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes. Parties and amici curiae must participate in the scope and manner permitted in the proceeding (e.g., testimony or argument). Further, it will be presumed that the interests of individuals associated with a party or amicus curiae are represented in the proceeding.
- (c) The Commission will not rely upon comments submitted in adjudicatory proceedings after the latter of the close of the evidentiary record or the latest due date for filing statements of position.

1510. – 1999. [Reserved].