

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15R-0540ALL

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION RULES
OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 732-1
IMPLEMENTING SENATE BILLS 15-261 AND 15-271.

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

Mailed Date: August 11, 2015

I. STATEMENT

1. On June 29, 2015, the Public Utilities Commission issued the Notice of Proposed Rulemaking that commenced this proceeding. See Decision No. C15-0610. The Commission referred the rulemaking proceeding to an administrative law judge (ALJ) and scheduled a hearing for August 10, 2015.

2. At the scheduled time and place the hearing was convened. No persons interested or affected by proposed modifications commented in this proceeding.

3. Statutory authority for the proposed rules is found in §§24-4-101, 40-1-101, 40-2-108, 40-3-102, 40-3-103, 40-4-101, 40-4-108, and 40-6-101(1), C.R.S.

4. The amended rules should provide for clarity, necessity and efficiency and those rules found to be duplicative, inconsistent or unnecessarily burdensome should be repealed.

5. Throughout the proceeding no oral or written public comment was submitted. No interested persons appeared at the Rulemaking Hearing to provide public comment. Ms. Rebecca Quintana, Director of Regulatory & Legal Affairs for the Commission, described

the modifications proposed and explained that the changes are intended to conform the Commission's Rules of Policy and Procedure with the General Assembly's decision to amend 4 Code of Colorado Regulations (CCR) 723-1 through SB15-261 and SB15-271.

6. 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.

II. FINDINGS, DISCUSSION, AND CONCLUSION

7. The purpose of this proceeding is to harmonize the Commission's rules with Colorado Senate Bills 15-261 and 15-271 (SB15-261 and SB 15-271 respectively), enacted June 5, 2015. Senate Bill 15-261 modifies § 40-3-104(1)(c)(I)(D) to allow a public utility to ask the Commission for a method of notice to customers as an alternative to what is prescribed in statute through the filing of a 'request' rather than an 'application'. Senate Bill 15-271 modifies § 40-6.5-101(3) and 40-6.5-104 C.R.S. to remove telephone utilities from the scope of the Office of Consumer Counsel's (OCC) statutory authority. Finally, minor modifications are made regarding confidentiality processes and service.

8. Rule 1100 is modified to allow commission counsel to execute an annual nondisclosure agreement to cover all confidential and highly confidential material. Particularly because the Commission and administrative law judges may need advice of counsel in every proceeding, efficiency will be improved by allowing counsel advising the Commission to utilize the annual process currently utilized by commissioners, administrative law judges, and staff.

9. Rule 1205 is amended to clarify that service upon an attorney of record completes service to the party represented and service upon individual members of the party not registered in E-filings are not required.

10. Rules 1207 and 1400 were amended as a result of Senate Bill 15-261, which modified §40-3-104-1 (c)(1)(d), C.R.S. to allow a utility to ask for an alternative form of notice through a request rather than the filing of an application. Requests can be made by motion filed within a proceeding. Rule 1400(a) added motions for alternative forms of notice to the types of motions for which conferral is not required.

11. Rule 1401 was amended as a result of Senate Bill 15-271, which removed telecommunications from the Office of Consumer Counsel's authority to represent consumers.

12. The proposed rules attached to Decision No. C15-0610 in legislative (i.e., ~~strikeout~~/underline) format were made available through the Commission's Electronic Filings (E-Filings) system. Moreover, information was posted through *The Colorado Register* on how to access the language of the proposed rules.

13. Notice of the proceedings was properly provided.

14. No public comments to the proposed rulemaking were filed with the Commission or made at the time noticed for the hearing.

15. The ALJ finds that no further hearings are necessary.

16. The undersigned ALJ has reviewed the record in this proceeding. The ALJ finds that the proposed changes to the rules are both appropriate and necessary.

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

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

1. The Commission Rules Regulating Practice and Procedure, 4 Code of Colorado Regulations 723-1, attached to this Recommended Decision 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.Show_Docket?p_session_id=&p_docket_id=15R-0540ALL.

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

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

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

4. 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

Decision No. C15-0610

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15R-0540ALL

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION RULES OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 732-1 IMPLEMENTING SENATE BILLS 15-261 AND 15-271.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: June 29, 2015
Adopted Date: June 24, 2015

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the its rules of Practice and Procedure contained in 4 *Code of Colorado Regulations* (CCR) 723-1, consistent with Senate Bill (HB) 15-261 and Senate Bill 15-271.

2. Senate Bill 15-261 modifies § 40-3-104(1)(c)(I)(D) to allow a public utility to ask the Commission for a method of notice to customers as an alternative to what is prescribed in statute through the filing of a ‘request’ rather than an ‘application’. Currently an application is required to make such a request, triggering a separate proceeding at the Commission. This change will permit a more efficient process while still maintaining the Commission’s review of all requests.

3. Attachment A contains the redline amendments to Rule 1207(b) and Rule 1400(a)(I) proposed to address Senate Bill 15-261. These proposed amendments require the request for alternative form of notice to be in the form of a motion filed as a separate pleading in

the proceeding in which the utility is proposing a change to its rates or schedules. The motions should be e-filed with the associated advice letter or application in accordance with Rule 1204(f). The proposed amendments also make it clear that no responses to these motions are allowed. Rule 1400(a)(I) adds motions for alternative form of notice to the list of motions for which no conferral with other parties is necessary.

4. Senate Bill 15-271 modifies § 40-6.5-101(3) and 40-6.5-104 to remove telephone utilities from the Office of Consumer Counsel's (OCC) authority to represent consumers. Attachment A contains the corresponding redline amendments to Rule 1401(c) to remove telephone proceedings from the list of proceedings for which the OCC may represent residential, agricultural or small business consumers.

5. Also in this rulemaking, we propose minor changes to Rules 1100(h), 1201(a), and 1205(d) to allow Commission counsel (in addition to Commission staff) to execute one nondisclosure agreement annually to have access to all confidential and highly confidential material filed with the Commission, to correct a citation to the Rule of Civil Procedure addressing *pro hac vice* admission of out-of-state attorneys, and to clarify that service upon an attorney of record completes service to the party and service upon individual members of a party, not registered in E-Filings System, is not required, respectively.

B. Discussion

6. The primary purpose of this rulemaking is to implement amendments to the Commission's Rules of Practice and Procedure to be consistent with Senate Bills 15-261 and 15-271..

7. Our proposed rule changes are set forth in Attachment A to this NOPR.

C. Conclusion

8. The statutory authority for the rules proposed here is found at §§ 24-4-101, *et seq.*, 40-1-101, *et seq.*, 40-2-108, 40-3-102, 40-3-103, 40-4-101, 40-4-108, and 40-6-101(1), C.R.S.

9. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) are available through the Commission's Electronic Filings (E-Filings) system at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=15R-XXXXALL.

10. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

11. The ALJ will conduct a hearing on the proposed rules and related issues on August 10, 2015. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ deems oral presentations unnecessary.

12. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than July 24, 2015. The Commission prefers that comments be filed using its E-Filing System at <http://www.dora.state.co.us/pls/efi/EFI.homepage>.

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

1. This Notice of Proposed Rulemaking, and Attachment A attached hereto, shall be filed with the Colorado Secretary of State for publication in the July 10, 2015, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE August 10, 2015

TIME: 9:00 a.m. until not later than 5:00 p.m.

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

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

4. Interested persons may file written comments in this matter before hearing. The Commission requests that pre-filed comments be submitted no later than July 24, 2015. The Commission will consider all submissions, whether oral or written.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 24, 2015.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners