

Decision No. R21-0801

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0327ALL

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULE 1207 OF THE  
COMMISSION RULES OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO  
REGULATIONS 723-1.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
ADOPTING AMENDMENTS TO RULES 1207 AND 1400  
OF THE RULES OF PRACTICE AND PROCEDURE**

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Mailed Date: December 17, 2021

**TABLE OF CONTENTS**

I. STATEMENT.....	2
A. Summary.....	2
B. Background and Procedural History .....	2
C. Legal Standards for Rulemaking .....	5
II. FINDINGS.....	7
A. UCA.....	8
B. Black Hills .....	9
C. CNG.....	11
D. Public Service.....	13
E. Adopted Amendments to Rule 1207 .....	15
III. CONCLUSIONS .....	23
IV. ORDER.....	24
A. The Commission Orders That: .....	24

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**I. STATEMENT**

**A. Summary**

1. This Decision adopts amendments to the Colorado Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), specifically Rules 1207 and 1400. Generally, the changes amend and clarify the rules relating to how public utilities, other than rail and motor carriers, provide notice to their customers about changes in any rate, fare, toll, rental charge, classification, or service.

**B. Background and Procedural History**

2. The impetus for this rulemaking proceeding stems from Proceeding No. 20M-0546ALL, concerning a petition filed by the Colorado Utility Consumer Advocate (UCA)<sup>1</sup> requesting that the Commission open a rulemaking proceeding to clarify and modify Rule 1207, 4 CCR 723-1. Decision No. C21-0217 (issued April 13, 2021) in Proceeding No. 20M-0546ALL, directed Staff of the Commission (Commission Staff or Staff) to prepare a Notice of Proposed Rulemaking (NOPR) to modify and clarify Rule 1207 for the Commission’s consideration.

3. On July 15, 2021, by Decision No. C21-0411, the Commission issued a NOPR to amend the customer notice requirements contained in Rule 1207 of the Rules of Practice and Procedure, 4 CCR 723-1, as well as a conforming amendment to Rule 1400. The proposed rules were included as Attachments A and B to Decision No. C21-0411. Comments from interested parties were encouraged, with initial comments due no later than August 6, 2021 and responsive

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<sup>1</sup> When its petition was filed, and since its inception in 1984, this agency was known as the Colorado Office of Consumer Counsel (OCC). However, effective on September 1, 2021, the name of the OCC was changed to the “Office of the Utility Consumer Advocate,” or “UCA.” The name change resulted from the passage in 2021 of the OCC Sunset Bill, Senate Bill (SB) 21-103. For clarity, this Decision will refer to the OCC as the UCA, regardless of when its pleadings were filed or of how counsel entered its appearance at the rulemaking hearing.

comments were due no later than August 13, 2021. A remote rulemaking hearing was scheduled for August 24, 2021 at 10:00 a.m.

4. The Commission intended the changes proposed in the NOPR to resolve inconsistencies in the interpretation of Rule 1207 by various utilities who file tariffs and applications, or parties who respond to the same filings, at the Commission. The proposed revisions were intended to ensure that customer notice required by § 40-3-104, C.R.S. (Notice Statute), is properly provided by jurisdictional public utilities. The proposed revisions would require utilities to provide notice to customers of *all* changes in any rate, fare, toll, rental charge, classification, or service. The proposed amendments would add notice requirements for applications requesting recovery of costs through rate adjustment mechanism (or “rider”) filings, even if such mechanisms may be implemented in a later filing. Additionally, the proposed amendments would require a utility requesting an alternative form of notice to explain why it seeks to deviate from each of the forms of notice allowed by § 40-3-104(1)(c)(I)(A)-(D), C.R.S. The purpose of the latter revision was to aid the Commission’s determinations of whether there is good cause for the requested alternative form of notice, including whether a utility’s proposed notice methods reach a sufficient number of customers and whether they are appropriately cost-effective when compared to statutory options such as e-mail. Finally, the proposed amendments would require utilities to confer with “Commission Staff” prior to filing an alternative form of notice (AFN) motion. If “Commission Staff” were to oppose the AFN motion after the conferral, it may file a response to the utility’s motion within two business days. Otherwise, no other responses to the AFN motion are allowed, consistent with the

language of the current Rule 1207(b). The NOPR also proposed conforming an amendment to Rule 1400(a), on Motions.<sup>2</sup>

5. During the rulemaking hearing related to proposed Rule 1207(b) and the AFN motion process, the ALJ invited the participants to propose a workable, clear definition of “routine” and “non-routine” AFN motions.

6. Initial comments were filed by Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), Colorado Natural Gas, Inc. (CNG), Public Service Company of Colorado (Public Service), and the UCA. Revisions to the rules proposed in the NOPR were submitted by Black Hills, CNG, Public Service, and the UCA.

7. On August 13, 2021, responsive comments were received from Black Hills, CNG, Public Service, and the UCA.

8. Pursuant to the notice in Decision No. C21-0411, a remote public rulemaking hearing was held as scheduled on August 24, 2021. Representatives of Black Hills, CNG, Public Service, and the UCA appeared at the hearing, presented oral comments, and answered questions from the Administrative Law Judge (ALJ).

9. Post-hearing comments were filed by Black Hills, Public Service, and the UCA. Further revisions to the rules proposed in the NOPR were submitted by the UCA.

10. This Decision summarizes the suggested significant changes to the NOPR rules, and generally does not repeat proposed changes by multiple participants. In reaching this Decision, the ALJ has considered the entire record in this proceeding, including all aspects of the

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<sup>2</sup> Decision No. C21-0411 at pp. 1-3 and Attachment A.

proposed Rules, the relevant statutes and Colorado case law, and all written and oral comments submitted in this proceeding.

### C. Legal Standards for Rulemaking

11. In rulemaking, it is particularly important for the Commission to follow the requirements of the State Administrative Procedure Act (APA), § 24-4-103, *et seq.*, C.R.S. When an administrative agency fails to comply with the requirements of the APA in adopting rules, the rules so adopted are void and not enforceable.<sup>3</sup>

12. The APA, § 24-4-103(4)(b), C.R.S., provides in part that:

(b) . . . No rule shall be adopted unless:

- (I) The record of the rule-making proceeding demonstrates the need for the regulation;
- (II) The proper statutory authority exists for the regulation;
- (III) To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation;
- (IV) The regulation does not conflict with other provisions of law; and
- (V) The duplication or overlapping of regulations is explained by the agency proposing the rule.

13. Moreover, in adopting any rules, the Commission must be mindful that its regulatory powers have been restricted by the Colorado General Assembly (General Assembly), and only the General Assembly can change statutory restrictions on the Commission's regulatory authority. This principle of Colorado public utilities law is commonly known as the *Miller Brothers Doctrine*, after *Miller Brothers v. Public Utilities Comm'n.*, 525 P.2d 443, 451 (Colo. 1974) (the Commission has as much authority as the General Assembly possessed

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<sup>3</sup> *Home Builders Association v. Public Utilities Comm'n.*, 720 P.2d 552 (Colo. 1986); *Jefferson School District R-1 v. Division of Labor*, 791 P.2d 1217 (Colo. App. 1990); *Colorado Office of Consumer Counsel v. Mountain States Tel. & Tel. Co.*, 816 P.2d 278, 284 (Colo. 1991).

prior to the adoption of Article 25 in 1954, until the General Assembly by statutory language restricts the legislative functions exercised by the Commission in regulating public utilities).

14. While the Colorado Supreme Court (Court) has said that, under Article 25 of the Colorado Constitution,<sup>4</sup> the Commission has the legislative powers to regulate the facilities, service, and rates of public utilities,<sup>5</sup> the Court has often held that “the [Commission] does not have limitless legislative prerogative. ... [B]y statute, the legislature may restrict the legislative authority delegated to the [Commission].”<sup>6</sup> Hence, the General Assembly can, and does, specifically limit the Commission’s exercise of its regulatory powers, and Commission orders entered in excess of those limitations are void.<sup>7</sup> Significantly, under the *Miller Brothers* Doctrine, the Commission lacks the power under Colorado law to enter orders or to enact rules that conflict with statutory restrictions upon its regulatory authority.

15. Finally, in any rulemaking proceeding, the Commission must adopt rules that provide administrative standards that are sufficient to ensure that administrative decision-making will be rational and consistent, that accomplish the necessary protections from arbitrary action,

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<sup>4</sup> Article 25 of the Colorado Constitution states in relevant part:

... [A]ll power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor, ... of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, ... as a public utility, presently or may as hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in ... the Public Utilities Commission of the State of Colorado....”

*Colo. Const.*, Art. 25.

<sup>5</sup> See *Mountain States Tel. & Tel. Co. v. Public Utilities Comm’n.*, 195 Colo. 130, 576 P.2d 544 (1978).

<sup>6</sup> *City of Montrose v. Public Utilities. Comm’n.*, 629 P.2d 619, 622 (Colo. 1981).

<sup>7</sup> See, e.g., *Colorado Office of Consumer Counsel v. Mountain States Tel. & Tel. Co.*, 816 P.2d 278, 283 (Colo. 1991) [specific statutory provisions regulating public utilities act to restrict the Commission’s authority]; *Peoples Natural Gas v. Public Utilities Comm’n.*, 626 P.2d 159, 162 (Colo. 1981) [once the Colorado Legislature acts, the scope of the Commission’s authority and procedures is necessarily controlled by statute]; *Mountain States Legal Foundation v. Public Utilities Comm’n.*, 197 Colo. 56, 590 P.2d 495 (1979) [special gas rates for low-income customers are rejected because the Commission’s authority to order preferential utility rates to effect social policy has been restricted by legislative enactment].

and that will make available effective judicial review of the Commission's proceedings and decisions.<sup>8</sup>

## II. FINDINGS

16. We must also be mindful of the history of the Notice Statute. In 1984 § 40-3-104(2), C.R.S., of the Notice Statute was amended specifically to govern the Commission's authority to grant less-than-statutory notice applications. That section was amended as follows: “The commission, for good cause shown, may allow changes ~~without requiring the thirty days’ notice~~ WITH LESS NOTICE THAN IS REQUIRED BY SUBSECTION (1) OF THIS SECTION by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.”<sup>9</sup> In 1985, major amendments were made to §§ 40-3-104(1)(a) and 40-3-104(1)(c), C.R.S., to specify what additional notice is required when public utilities (other than transportation and water utilities) must give prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service, and to give the public utility five options as the method for giving the additional notice.<sup>10</sup> The 2002 amendment added § 40-3-104(1)(c)(V), C.R.S., providing reduced notice requirements of changes to some intrastate telecommunications services.<sup>11</sup> Other textual amendments were made to various sections of the Notice Statute in 2000, 2015, and 2019.<sup>12</sup> The

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<sup>8</sup> *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

<sup>9</sup> 1984 Colo. Session Laws, Ch. 295 at p. 1037 (SB 84-11).

<sup>10</sup> 1985 Colo. Session Laws, Ch. 321 at pp. 1296-1298 (SB 85-33).

<sup>11</sup> 2002 Colo. Session Laws, Ch. 74 § 2 at p. 200 (House Bill (HB) 02-1169).

<sup>12</sup> See §40-3-104, C.R.S., Source Notes, Title 40 at p. 74, *Colorado Revised Statutes*, Vol. 2020.

most recent amendments in 2019 modernized the Notice Statute by adding provisions related to giving notice on a utility's public website, by email, and by text message.<sup>13</sup>

17. The positions of the participants on the amendments to Rule 1207 proposed by the Commission are summarized below.

**A. UCA**

18. The UCA generally supports the revisions proposed in the NOPR, but further expanded proposed Rule 1207(a) to incorporate the definition of "Rate," found in Rule 1004(aa) of the Rules of Practice and Procedure, 4 CCR 23-1. Rule 1004(aa) defines "Rate" to include "any fare, toll, rental, or charge" and "any rule, regulation, classification, or practice relating to a fare, toll, rental, or charge." The UCA claims its revisions would "narrow the scope of the filings requiring notice" and, by listing the types of filings subject to the Notice Statute, its revisions would correct misinterpretations by the utilities of existing Rule 1207(a) and would be consistent with the notice requirements of § 40-3-104, C.R.S.<sup>14</sup>

19. The UCA supports proposed Rule 1207(b), regarding the AFN motion conferral process, but the UCA requests that the utilities be required to confer with the UCA as well as Commission Staff on AFN motions. The UCA's revisions would also allow the UCA to file responses to AFN motions within two business days. The UCA argues that including it in the conferral process on AFN motions would not burden the utilities or Commission Staff or inject inefficiencies or delay into the AFN motion process. Noting that its Petition in Proceeding No. 20M-0546ALL did not seek to modify Rule 1207(b), the UCA speculates that by proposing

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<sup>13</sup> See HB 19-236, § 10 at pp. 22-23. HB 19-236 also amended § 40-3-104(1)(c)(I)(D), C.R.S., as follows: "~~Upon application by~~ AT THE REQUEST OF the public utility, such other manner as the commission may prescribe." 2015 Colo. Session Laws, Ch. 291 at p. 1188 (SB 15-261).

<sup>14</sup> UCA Post-Hearing Comments at pp. 3-4 and 5-6.



revisions to Rule 1207(b), the Commission must think the current AFN process is inefficient. The UCA also argues that its organic statute does not preclude it from being involved in the AFN motion process.<sup>15</sup>

20. Regarding proposed Rule 1207(b) and the AFN motion process, the UCA commented that it would not object to excluding AFN motions in non-routine filings from Rule 1207(b), if “routine” and “non-routine” AFN motions are clearly defined and do not inject ambiguity into the rule.<sup>16</sup>

### **B. Black Hills**

21. Black Hills asserts that it has provided notice to customers in compliance with statutory obligations, Commission rules, and Commission decisions and will continue to do so. Black Hills is concerned that proposed Rule 1207 is not supported by the plain language of the Notice Statute, would create confusion and ambiguity, and would result in administrative delay and increased customer costs, all of which Black Hills argues are contrary to the public interest. In its revisions to the proposed rule, Black Hills recommends deleting the new language in Rules 1207(a) and (b) and adding simple clarifying text to Rule 1207(a).<sup>17</sup>

22. Black Hills contends that the primary issue in this rulemaking is when must the utility provide some form of additional notice. Black Hills argues that the UCA’s proposed revisions to Rule 1207(a) ignore the structure of § 40-3-104, C.R.S., and places them into three different types of notice. The first type of notice is broader notice when a utility seeks to change,

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<sup>15</sup> *Id.*, at pp. 6-9, 10-12 and Attachment A. See § 40-6.5-106(1), (2), and (3), C.R.S.

<sup>16</sup> UCA Post-Hearing Comments at pp. 9-10. If the conferral process on AFN motions in Rule 1209(b) is not adopted, the UCA argues that both Commission Staff and UCA should be allowed to file responses to AFN motions within two business days. UCA claims its response would help the Commission decide whether good cause exists for the proposed alternative customer notice and to ensure that the notice provides sufficient details. *Id.*, at p. 13.

<sup>17</sup> Black Hills Post-Hearing Comments at pp. 1-2. See Black Hills Initial Comments Attachment A.

after 30 days' notice to the Commission and the public, "any rate, fare, toll, rental, charge, or classification or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental charge, classification, or service or in any privilege or facility."<sup>18</sup> The second type of statutory notice is additional notice, when the Notice Statute defines limitations associated with the additional notice. Specifically, additional notice is only required "prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service."<sup>19</sup>

23. Black Hills also contends that the UCA's proposed revisions to Rule 1207(a) ignore § 40-3-104(2), C.R.S., which provides for the Commission to allow changes with less notice than is required by § 40-3-104(1), C.R.S., which is the third type of notice. Black Hills argues that, pursuant to § 40-3-104(2), C.R.S., the "only requirements for the Commission to allow 'less than statutory notice' [changes is for] the Commission [to] issue an order (1) specifying the changes so to be made, (2) the time when they shall take effect, and (3) the manner in which they shall be filed and published."<sup>20</sup>

24. Black Hills contends that the Commission's proposed amendments to Rule 1207 fail to distinguish between tariff filings and application filings, which are clearly treated differently in the Colorado Public Utilities Law and in Commission rules, and therefore, the proposed amendments are contrary to statute and rule. Black Hills also opposes the proposed revisions to Rule 1207(b) to require conferral with Commission Staff or the UCA, arguing that they are not supported by the Notice Statute. Black Hills contends that adding time for the conferral on and responses to AFN motions will interfere with the timing requirements of § 40-3-104(1)(c)(I), C.R.S., for giving additional notice. As a result, the actual time for giving

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<sup>18</sup> Black Hills Post-Hearing Comments at pp. 3-4. See § 40-3-104(1)(a), C.R.S.

<sup>19</sup> § 40-3-104(1)(c)(I), C.R.S.

<sup>20</sup> Black Hills Post-Hearing Comments at p. 5.

additional notice will be reduced. Finally, Black Hills argues that expanding the current requirements for additional notice will have increased incremental costs, which will be borne by Colorado utility customers. Black Hills provided examples of the costs of mailing or publishing different types of customer notices.<sup>21</sup>

### C. CNG

25. Although initially not opposed to the proposed amendments to Rule 1207(a), CNG is concerned that these amendments may require additional notice whenever a utility makes any type of filing. CNG is concerned that the catch-all language in Rule 1207(a)(IV) (*i.e.*, “any other filing that seeks to change any rate, fare, toll, rental charge, classification, or service”) may be interpreted in a variety of ways, leading to unintended consequences. CNG asserts that proposed Rule 1207(a)(IV) is unnecessary and should be deleted, because the Commission has authority under the Notice Statute to order an applicant or petitioner to provide such additional notice the Commission deems appropriate. CNG contends that Rule 1207(e), which has similar language, is unnecessary and should also be deleted for the same reason.<sup>22</sup>

26. CNG contends that the proposed amendments to Rule 1207(b) requiring conferral with Commission Staff before a utility files an AFN motion is unnecessary and inefficient. CNG also opposes adding the UCA to the conferral requirement, as the current practice allowing filing AFN motions without such conferrals is sufficient. CNG agrees with the timing problem for giving additional notice identified by Black Hills, and CNG asserts that this timing problem

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<sup>21</sup> *Id.*, at pp. 5-10. As for the notice timing problem, the forms of additional notice in § 40-3-104, C.R.S., each require notice to occur “during the first twenty days of the thirty-day period prior to the effective date of the increase or change” (§ 40-3-104(1)(c)(I)(A) and (B), C.R.S.) or “not later than the twentieth day of the thirty-day period” before the effective date of the increase or change (§ 40-3-104(1)(c)(I)(C) and (D), C.R.S.).

<sup>22</sup> CNG Reply Comments at pp. 2-4, 5. See § 40-3-104(1)(c)(I)(E), C.R.S., which provides that: “At the request of the public utility, [in] such other manner as the commission may prescribe.”

supports its argument to delete the conferral and response provision of proposed Rule 1207(b). While CNG does not oppose informal communication with either Staff or the OCC, the addition of this conferral *requirement* introduces the potential for confusion. CNG asserts that removal of the AFN motion conferral requirement from Rule 1207(b) will eliminate any need to define “routine” and “non-routine” or to address the differential between “routine” and “non-routine” AFN motions.<sup>23</sup>

27. As a small gas utility serving rural areas in Colorado, with only approximately 24,000 customers, CNG is concerned about the extra costs of additional notice that would be required by the proposed Rule 1207 and provided examples of the costs of mailing or publishing different types of customer notices. CNG urges the Commission to consider the drastic differences in size between the customer bases of Colorado utilities and contends there is good cause to allow smaller utilities like CNG greater latitude with notice options to reduce costs to customers while giving effective notice.<sup>24</sup>

28. Finally, CNG opposes the part of proposed Rule 1207(b) that would allow Staff to file a response to AFN motions within two business days because it would be impractical, according to CNG, because Trial Staff would have to scramble to assign personnel and request an attorney be assigned to the case to meet that filing deadline. Moreover, CNG contends that the current process, allowing for no response to AFN motions, is grounded in sound logic. CNG asserts that the decision maker, whether the Commission or an ALJ, is best suited to judge whether the utility has complied with the Notice Statute and rules, and the decision maker is

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<sup>23</sup> CNG Initial Comments at pp. 4-5; CNG Reply Comments at pp. 2-4, 5.

<sup>24</sup> CNG Initial Comments at pp. 5-8; CNG Reply Comments at pp. 2-3.

fully capable of deciding whether to grant or deny the motion based on the merits of the motion.<sup>25</sup>

**D. Public Service**

29. Although Public Service supports the Commission's goal in commencing this rulemaking, "to modify and clarify" Rule 1207, it has concerns with the unintended consequences that might flow from the proposed amendments to Rule 1207. Public Service argues that proposed Rule 1207(a)(I)-(IV) should be stricken, because the language fails to provide real clarity and guidance to utilities about giving notice, and it could create new confusion and future compliance issues. Public Service contends that the language in proposed Rule 1207(a)(I)-(IV) fails to require additional notice, contemplated by the Notice Statute, to be provided with almost any advice letter, application, or any other utility filing that seeks to change any rate, fare, toll, rental charge, classification, or service. Public Service asserts further that the amendments in proposed Rule 1207(a)(I)-(IV) are unnecessary and repetitive of the Notice Statute, because the Commission has the authority to require an applicant or petitioner to provide additional notice as the Commission deems appropriate.<sup>26</sup>

30. Regarding proposed Rule 1207(b), Public Service opposes the requirements that utilities must first confer with Commission Staff (and the UCA) before filing an AFN motion *and* that Commission Staff (and the UCA) can file a response to the AFN motion within two business days. Public Service argues that conferrals are not needed for all utility filings that contain an AFN motion, and that together these requirements could be burdensome on Staff, the UCA, and the utilities due to the number of AFN motions filed by all Colorado utilities.

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<sup>25</sup> CNG Reply Comments at pp. 3-4.

<sup>26</sup> Public Service Post-Hearing Comments at pp. 1-3; Public Service Reply Comments at pp. 1-2, 4-5.

Rule 1207(b) could require one or the other, but not both, and Public Service offers alternative language. Public Service notes that it confers successfully with Staff and the UCA often, on a variety of matters, including AFN motions; hence, it is unnecessary for Rule 1207(b) to require such conferral on all AFN motions by all utilities. Public Service asserts that most AFN motions are filed in “routine” yearly or semi-annual filings, which provide the same type of notice year after year and that such notice has been approved by the Commission in numerous cases. Public Service concedes that conferral with Staff and the UCA may be beneficial (to them) when AFN motions are filed in “non-routine” proceedings that affect a large number of customers or has a large impact to customers’ bills (*i.e.*, rate case or rider proposal proceedings). In an effort “to balance transparency with regulatory efficiency,”<sup>27</sup> however, Public Service claims that it has been successful in engaging in informal conferrals, and incorporating feedback from both Staff and the UCA, for AFN motions in certain cases. Public Service was concerned that unintended consequences would result from the conferral requirements, causing complications and delay for the Commission to process and rule upon AFN motions. For example, in conferrals Staff and the UCA may disagree on the noticing and each may want the Company to approach the noticing in an inconsistent manner. Moreover, some conferrals may be short as hours or a day, but other conferrals have taken, and may in the future take, significantly longer like several days to a week.<sup>28</sup>

31. Public Service also contends, as discussed at the hearing, that trying specifically to define a *routine* versus a *non-routine* filing presents many challenges and may vary by utility. Public Service maintains that defining “routine” is not needed, because the Commission should

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<sup>27</sup> Public Service Initial Comments at p. 2.; Public Service Post-Hearing Comments at p. 4.

<sup>28</sup> Public Service Post-Hearing Comments at pp. 3-5; Public Service Reply Comments at pp. 3-5.

reject the proposed conferral language in Rule 1207(b). Indeed, Public Service prefers informal conferrals on AFN motions and argues that the ALJ should strike from Rule 1207(b) the conferral requirement prior to filing AFN motions, but the rule should allow Staff and the UCA to file responses to AFN motions within two business days.<sup>29</sup>

**E. Adopted Amendments to Rule 1207**

32. When a regulated Colorado public utility, other than a rail carrier or motor carrier, proposes to make changes to any rate, fare, toll, rental, charge, classification, or service, it is critically important that the utility provide to its customers clear, adequate notice of the proposed changes and their expected impacts on all affected customers.<sup>30</sup> It is also critically important that the Commission's utility notice rules, as well as the customer notices issued by the utilities, are clear, adequate, and comply with the Notice Statute. Looking only at the NOPR and proposed rules, this rulemaking might have appeared to be relatively simple to some persons. However, based upon the written comments filed by participants and on oral comments and the discussion at the rulemaking hearing, the ALJ has concluded that this rulemaking is far more complex.

33. In assessing the merits of the proposed revisions to Rules 1207 and 1400, we must first review the requirements of § 40-3-104, C.R.S. The Notice Statute provides for two types of notice that utilities must give customers when making certain filings with the Commission on 30 days' notice: simple notice and additional notice. In addition, the Notice Statute allows utilities to make certain filings with the Commission on less than 30 days' statutory notice. The proposed amendments to Rule 1207(a) and revisions to Rule 1207(a) proposed by the UCA fail to recognize these important statutory differences.

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<sup>29</sup> Public Service Post-Hearing Comments at pp. 3-5; Public Service Reply Comments, Attachment 1. See Tr. 8/24/2021 at pp. 17-18, 20-21, 62-65, and 72.

<sup>30</sup> § 40-3-104(1)(a), C.R.S.

34. First, § 40-3-104(1)(a), C.R.S., provides:

In the case of a public utility other than a rail carrier, subject to the provisions of paragraph (c) of this subsection (1), no change shall be made by any public utility in any rate, fare, toll, rental, charge, or classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, except after thirty days' notice to the commission and the public. Notwithstanding the provisions of this paragraph (a), changes in intrastate telecommunications services which have been determined by the commission to be competitive in nature, pursuant to the provisions of article 15 of this title, shall not be subject to any notice requirement, including, but not limited to, any requirement in this section whether or not denoted as a notice requirement.<sup>31</sup>

35. Second, § 40-3-104(1)(c)(1), C.R.S., provides in pertinent part:

*A public utility shall provide the notice required under subsection (1)(a) of this section by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. At the time of the public utility's filing with the commission, the public utility shall post the notice on its public website, including a reference to the docket numbers of relevant rules or adjudicatory matters, which posting must be conspicuously displayed on the website for at least thirty days. The commission may require transportation and water utilities to give additional notice in a manner set forth by order or rule. For public utilities other than transportation and water utilities, the commission shall require additional notice prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service, which additional notice may be made, at the option of the public utility, by any of the following methods: ...*

- (A) [Newspaper publication];
- (B) [Mailed notice];
- (C) [Bill inserts];
- (D) [Emails or text messages]; or

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<sup>31</sup> Neither the NOPR nor proposed Rule 1207 address changes in the services or prices filed by intrastate telecommunications carriers. Therefore, the ALJ will separately amend existing Rule 1207 to apply only to notices of changes in intrastate telecommunications services or prices, which are also governed by § 40-3-104, C.R.S. (particularly §§ 40-3-104(1)(a) and 40-3-104(1)(c)(V), C.R.S.), and by the notice requirements in the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2 (2020).



- (E) At the request of the public utility, such other manner as the commission may prescribe.

(Emphasis added.)

36. Significantly, the simple 30 days' notice is required by § 40-3-104(1)(a), C.R.S., for changes to “any rate, fare, toll, rental, charge, or classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility.” This simple notice is satisfied in accordance with § 40-3-104(1)(c)(I), C.R.S., by making the filing on 30 days' notice and “by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect.”

37. Additional notice shall be given by public utilities other than transportation and water utilities, “prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service,” and is sufficient when it satisfies the criteria specified in § 40-3-104(1)(c)(II), C.R.S.

38. For good cause shown, pursuant to § 40-3-104(2), C.R.S., the Commission may allow changes with less notice than is required by § 40-3-104(1), C.R.S., (*i.e.*, on less than 30 days' notice) “by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.” Therefore, the Commission's decision on the less-than-statutory-notice application, if granted, will specify the changes to any rate, fare, toll, rental, charge, classification, or service to be made by the utility, the time when the changes shall take effect, and the manner in which the approved changes shall be filed and published by the utility.

39. The ALJ finds that the proposed amendments to Rule 1207(a) and the UCA's revisions to Rule 1207(a) would extinguish the ability of utilities to file changes to any rate, fare, toll, rental, charge, classification, or service on less-than-statutory-notice. The 1984 amendment to § 40-3-104(2), C.R.S., of the Notice Statute clearly removed language regarding 30 days' notice filings and substituted the less-than-statutory-notice language.<sup>32</sup> Hence, these proposed amendments to Rule 1207(a) are contrary to the legislative intent of § 40-3-104(2), C.R.S. Electric and natural gas utilities file requests to change tariffs or for other relief on less-than-statutory-notice by applications, rather than advice letter and tariff filings.<sup>33</sup> The ALJ takes administrative notice that the experience of the Commission over the past 40 years has demonstrated that less-than-statutory-notice applications have proven effective to allow, for example, the pass-on to customers of needed improvements in service, sudden increases in cost of service, and refunds of wholesale price decreases.<sup>34</sup>

40. The ALJ finds that the proposed amendments to Rule 1207(a) and the revisions to Rule 1207(a) proposed by the UCA conflate these important statutory differences regarding the

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<sup>32</sup> In 1984 § 40-3-104(2), C.R.S., was amended as follows: "The commission, for good cause shown, may allow changes ~~without requiring the thirty days' notice~~ WITH LESS NOTICE THAN IS REQUIRED BY SUBSECTION (1) OF THIS SECTION by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published." See pp. 6-7 and Fn. 12 *supra*.

<sup>33</sup> See Rule 3002(a)(IX) of the Rules Regulating Electric Utilities, 4 CCR 723-3 ("(a) Any person may seek Commission action ... thorough the filing of an appropriate application to request a(n): ... (IX) amendment of a tariff on less than statutory notice, as provided in rule 3109"); Rule 3002(d)(VI) of the Rules Regulating Electric Utilities, 4 CCR 723-3 ("(d) Customer notice. ... Both the newspaper notice and any additional customer notice(s) shall include the following. ... (VI) Identify that the application was filed on less than statutory notice or if the applicant requests an expedited Commission decision, as applicable.") Rule 4002(a)(VIII) of the Rules Regulating Gas Utilities, 4 CCR 723-4, states ("(a) Any person may seek Commission action ... thorough the filing of an appropriate application to request a(n): ... (VIII) amendment of a tariff on less than statutory notice, as provided in rule 4109"). The language for gas utilities customer notice in Rule 4002(d)(VI), 4 CCR 723-4, is identical to the language in Rule 3002(d)(VI), 4 CCR 723-3.

<sup>34</sup> Rule 1501(c) of the Rules of Practice and Procedure, 4 CCR 723-1; .("The Commission [and an ALJ] may take administrative notice ... of matters of common knowledge, [and] matters within the expertise of the Commission [or the ALJ]; see *Public Service Company of Colorado v. Public Utilities Comm'n.*, 644 P.2d 933 (Colo. 1982), the Commission has the authority and discretion to allow utilities to recover operating costs through an application for a periodic pass-on adjustment clause or through a general rate case proceeding.

notice required for filings on 30 days' notice; the required additional notice for changes to any rate, fare, toll, rental, charge, classification, or service; and the statutory process for less-than-statutory-notice filings. The ALJ finds that the amendments to proposed Rule 1207(a)(I)-(IV) and the UCA's revisions to Rule 1207(a) fail to require additional notice, contemplated by the Notice Statute, to be provided with almost any advice letter, application, or any other utility filing that seeks to change any rate, fare, toll, rental charge, classification, or service. The proposed amendments to Rule 1207(a) and the UCA's revisions to Rule 1207(a) will likely lead to confusion about how utilities should provide customer notice, as well as unnecessary and costly litigation to sort out confusion and possible missteps in providing notice of utility filings. The proposed amendments to Rule 1207(a) and the UCA's revisions to Rule 1207(a) may also cause increased costs to provide adequate customer notice. We must be mindful that the customers of Colorado regulated utilities will pay the additional costs of unnecessary noticing and such litigation through their rates.

41. The ALJ finds that UCA's suggestion to add language to the rule for filings on 30 days' notice has merit. The ALJ has added to adopted Rule 1207(a)(I) the phrase "or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility." This addition tracks the language of § 40-3-104(1)(a), C.R.S., for 30 days' notice filings and is consistent with the Notice Statute.

42. Based on the record of this rulemaking proceeding, the foregoing amendments to Rule 1207(a) will be adopted by this Decision. The adopted amendments to Rule 1207(a) are consistent with the structure, intent, and requirements of § 40-3-104, C.R.S. They are clear and simply stated so that their meaning will be understood by any person required to comply with the rule.

43. Regarding the AFN filing requirements in proposed Rule 1207(b), the ALJ agrees with the Commission's statement in the NOPR that the rule should require that utilities requesting an alternative form of notice explain why it seeks to deviate from each of the notice methods allowed by § 40-3-104(1)(c)(I)(A)-(D), C.R.S. The ALJ agrees with the Commission that, this amendment will "aid our determinations of whether there is good cause for requested alternative forms of notice, including whether a utility's proposed notice methods reach a sufficient ... [number] of customers and whether they are appropriately cost-effective when compared to statutory options such as e-mail."<sup>35</sup>

44. However, based on the record of this rulemaking proceeding, the ALJ will delete the requirement in proposed Rule 1207(b) that would have required utilities to confer with Commission Staff prior to filing an AFN motion. The ALJ agrees with comments by Black Hills, CNG, and Public Service that this conferral requirement would be inefficient, would likely cause undue delays in processing AFN motions, and is unnecessary. The practice of regulated electric and gas utilities requesting alternative forms of notice in a wide variety of advice letter and application filings has become common practice at the Commission in recent years. The record of this rulemaking proceeding convincingly demonstrates that most AFN motions are filed routinely in annual or semi-annual filings, which provide the same type of alternative notice year after year and that these alternative forms of notice have been approved by the Commission in numerous cases. The ALJ agrees with Black Hills, CNG, and Public Service that the conferral requirement should be deleted. The ALJ finds that the requirement to confer with Staff and UCA would be burdensome on Staff, the UCA, and the utilities due to the large number of AFN motions filed by all regulated Colorado utilities, would likely inject undue delay into the

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<sup>35</sup> Decision No. C21-0411, ¶ 6 at pp. 2-3

processing of AFN motions, and is unnecessary. The ALJ also agrees with CNG, and finds, that deleting the AFN motion conferral requirement from Rule 1207(b) will eliminate any need to define “routine” and “non-routine” AFN motions or to address the differential between “routine” and “non-routine” proceedings. The ALJ finds that the current practice of allowing filing AFN motions without such conferrals is sufficient and generally works well for the collective benefit to Staff, the UCA, the utilities, ratepayers, the Commission, and the decision-making process for AFN motions.

45. The ALJ agrees with UCA and Public Service that Trial Staff<sup>36</sup> and the UCA should be allowed to file a response to AFN motions within two business days. The ALJ agrees with CNG that the Commission, as the decision-maker, is fully capable of judging whether the utility has complied with the Notice Statute and notice rules and of deciding whether to grant or deny AFN motions based on the merits of the motion. However, the ALJ finds that, when Trial Staff and the UCA disagree with the utility on the AFN or mechanics of giving the notice, providing them the option of filing a response to AFN motions within two business days could assist the Commission in its decision. Allowing such responses to AFN motions will not add significant delay or confusion to the decision-making process on AFN motions. No other responses to AFN motions will be allowed. Adopted Rule 1207(b) will be amended accordingly.

46. Nevertheless, the ALJ strongly encourages the utilities filing AFN motions in proceedings that affect a large number of customers or have a large impact to customers’ bills (*i.e.*, rate case or rider proposal proceedings) to confer informally with Trial Staff and the UCA

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<sup>36</sup> Proposed Rule 1207(b) uses the term “Commission Staff.” That term is vague and ambiguous. The Commission Staff is bifurcated into Trial Staff and Advisory Staff. Only Trial Staff can file pleadings in Commission proceedings, while Advisory Staff cannot. *See* Rules 1004(e) [defining “Advisory Staff”] and 1004(II) [defining “Trial Staff”] of the Rules of Practice and Procedure, 4 CCR 723-1, and Rule 1007 of the Rules of Practice and Procedure, 4 CCR 723-1 [further explaining the roles of Trial Staff and Advisory Staff].

prior to filing their AFN motions. The record of this rulemaking proceeding demonstrates that such an informal conferral practice on ALN motions would be beneficial for Staff, the UCA, the utilities, ratepayers, the Commission, and the decision-making process for AFN motions.

47. Proposed Rule 1207(e) states that, “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.” CNG contends that Rule 1207(e), which has “catch-all” language similar to proposed Rule 1207(a)(IV) (the latter of which has been deleted by this Decision), is unnecessary and should also be deleted, because the Notice Statute gives the Commission the authority to order an applicant or petitioner to provide such additional notice. However, the precise language in the Notice Statute, § 40-3-104(1)(c)(I), C.R.S., states: “... [A]dditional notice may be made, at the option of the public utility, by any of the following methods: ... (E) At the request of the public utility, such other manner as the commission may prescribe.” The ALJ finds that in § 40-3-104(1)(c)(E), C.R.S., the General Assembly has restricted the authority of the Commission unilaterally to order utilities to provide such additional notice as the Commission may deem appropriate.<sup>37</sup> Instead, the statute is clear that the Commission may prescribe such other manner of notice at the request of the public utility. The current language of Rule 1207(e) proposed in the NOPR conflicts with the statutory language. The ALJ will amend Rule 1207(e) to be consistent with § 40-3-104(1)(c)(E), C.R.S.

48. Based on the record of this rulemaking proceeding, and on this Decision, the proposed amendment to Rule 1400(a)(I) to conform to Rule 1207(b), regarding conferrals on

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<sup>37</sup> *City of Montrose v. Public Utilities. Comm’n.*, 629 P.2d 619, 622 (Colo. 1981); *Miller Brothers v. Public Utilities Comm’n.*, 525 P.2d 443, 451 (Colo. 1974). See discussion of the *Miller Brothers* Doctrine at pp. 5-6 *supra*.

ALN motions, is not needed and will be deleted. There are also two typographical errors in proposed Rule 1400 that will be corrected in adopted Rule 1400.

49. All other amendments to proposed Rule 1207 and arguments advocated by participants to this rulemaking, not specifically discussed in this Decision, are not adopted because they are not supported by the record of this rulemaking proceeding, are without merit, are not needed, or are inconsistent with § 40-3-104, C.R.S.

### **III. CONCLUSIONS**

50. The statutory authority for the rules adopted here is found at §§ 24-4-101 *et seq.*; 40-1-101, *et seq.*, 40-2-108, 40-3-102, 40-3-103, 40-3-104, 40-4-101, 40-4-108, and 40-6-101(1), C.R.S.

51. The rules proposed in the NOPR were noticed to interested persons pursuant to the requirements of the APA, § 24-4-103, *et seq.*, C.R.S.

52. The Adopted Rules correct minor typographical errors that appeared in the proposed rules attached to the NOPR.

53. The ALJ finds and concludes that:

- (I) The record of this rulemaking proceeding demonstrates the need for amendments to Rules 1207 and 1400 of the Rules of Practice and Procedure, 4 CCR 723-1, adopted by and attached to this Recommended Decision (Adopted Rules).
- (II) The proper statutory authority exists for the Adopted Rules.
- (III) The Adopted Rules are clearly and simply stated so that their meaning will be understood by any party required to comply with the Adopted Rules.
- (IV) The Adopted Rules do not conflict with other provisions of law, and the Adopted Rules are consistent with Colorado law.
- (V) The Adopted Rules do not duplicate or overlap any existing Commission regulations.

54. The adopted rules will be attached to this Recommended Decision in legislative/strikeout format as Attachment A, and in final format attached as Attachment B.

**IV. ORDER**

**A. The Commission Orders That:**

1. The amendments to Rules 1207 and 1400 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, are adopted, consistent with the discussion, findings, and conclusions in this Recommended Decision.

2. The adopted rules are attached to this Recommended Decision in legislative/strikeout format as Attachment A, and in final format attached as Attachment B. The adopted Rules are available through the Commission's Electronic Filing system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=21R-0327ALL](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0327ALL)

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

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

5. Consistent with § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the participants and their counsel, if any, 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.

6. 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. Responses to exceptions are **due within seven days** of service of any exceptions that may be filed.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

STEVEN H. DENMAN

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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

\* \* \* \*

[indicates omission of unaffected rules]

#### 1207. Utility Notice.

- (a) A utility, other than a rail carrier, ~~or motor carrier,~~ or intrastate telecommunications provider filing ~~tariffs to change, on thirty days' notice, any rate, fare, toll, rental, charge, classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility~~ 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.~~
- (I) A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider filing to change any rate, fare, toll, rental, charge, classification, or service on less than statutory notice shall provide notice in accordance with the requirements of § 40-3-104(2), C.R.S.
- (II) A utility that provides regulated intrastate telecommunications services filing to change any rate, charge, term, or condition for any regulated telecommunications service shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(V), 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. The utility's motion shall address each of the forms of notice set forth in § 40-3-104(1)(c)(I)(A)-(D), C.R.S., and explain why the utility seeks an alternative. No responses to such motions shall be allowed, except if Trial staff or the Colorado Office of Utility Consumer Advocate opposes a motion requesting an alternative form of notice, they each may file a response within two business days of the filing of the motion.
- (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) ~~At the request of the utility, The the~~ Commission may ~~prescribe~~ order an applicant or a petitioner to provide such ~~other manner of 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.

\* \* \* \*

[indicates omission of unaffected rules]

**1400. Motions.**

- (a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. Before filing a motion, moving counsel shall make a ~~reasonable~~ reasonably 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~~ paragraph 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.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-1

#### PART 1 RULES OF PRACTICE AND PROCEDURE

\* \* \* \*

[indicates omission of unaffected rules]

#### 1207. Utility Notice.

- (a) A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider filing to change, on thirty days' notice, any rate, fare, toll, rental, charge, classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S.
  - (I) A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider filing to change any rate, fare, toll, rental, charge, classification, or service on less than statutory notice shall provide notice in accordance with the requirements of § 40-3-104(2), C.R.S.
  - (II) A utility that provides regulated intrastate telecommunications services filing to change any rate, charge, term, or condition for any regulated telecommunications service shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(V), 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. The utility's motion shall address each of the forms of notice set forth in § 40-3-104(1)(c)(I)(A)-(D), C.R.S., and explain why the utility seeks an alternative. No responses to such motions shall be allowed, except if Trial staff or the Colorado Office of Utility Consumer Advocate opposes a motion requesting an alternative form of notice, they each may file a response within two business days of the filing of the motion.
- (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) At the request of the utility, the Commission may prescribe an applicant or a petitioner to provide such other manner of notice 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.

\* \* \* \*

[indicates omission of unaffected rules]

**1400. Motions.**

- (a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. Before filing a motion, moving counsel shall make a reasonably 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 paragraph 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.

Decision No. C22-0017

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0327ALL

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULE 1207 OF THE  
COMMISSION RULES OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO  
REGULATIONS 723-1.

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**COMMISSION DECISION  
STAYING RECOMMENDED DECISION**

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Mailed Date: January 5, 2022  
Adopted Date: January 5, 2022

**I. BY THE COMMISSION**

**A. Statement**

1. On December 17, 2021, an Administrative Law Judge (ALJ) for the Commission issued Decision No. R21-0801 recommending that the Commission adopt modified rules concerning customer notice requirements. Pursuant to § 40-6-109(2), C.R.S., Decision No. R21-0801 will become the decision of the Commission if no exceptions are filed within 20 days after service of the order, or within such extended period of time as the Commission may order. However, § 40-6-109(2), C.R.S., permits the Commission to stay a recommended decision upon its own motion.

2. The Commission will stay Decision No. R21-0801 on its own motion to allow for a Commission review of the recommendation of the ALJ. We do not disturb any other deadlines in this Proceeding. At a future Commissioners' Weekly Meeting, we will review the ALJ's recommendations along with any exceptions filed within 20 days after Decision No. R21-0801 was mailed.



**II. ORDER**

**A. The Commission Orders That:**

1. In accordance with § 40-6-109(2), C.R.S., Decision No. R21-0801, mailed December 17, 2021, is stayed.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 5, 2022.**

( S E A L )



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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\_\_\_\_\_

JOHN GAVAN

\_\_\_\_\_

MEGAN M. GILMAN

\_\_\_\_\_

Commissioners

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0327ALL

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULE 1207 OF THE  
COMMISSION RULES OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO  
REGULATIONS 723-1.

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**DECISION ADDRESSING EXCEPTIONS TO DECISION  
NO. R21-0801 AND ADOPTING RULES**

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Mailed Date: February 18, 2022  
Adopted Date: February 16, 2022

**TABLE OF CONTENTS**

I.	BY THE COMMISSION .....	2
A.	Statement .....	2
B.	Background.....	2
C.	Rules Adopted by the Recommended Decision and Exceptions.....	3
1.	Rule 1207(a) .....	4
a.	Exceptions and Responses6 .....	5
b.	Findings and Conclusions .....	6
2.	Rule 1207(b).....	7
a.	Exceptions and Responses .....	7
b.	Findings and Conclusions .....	7
3.	Rule 1207(e).....	8
4.	Rule 1400 .....	8
II.	ORDER.....	8
A.	The Commission Orders That: .....	8
B.	ADOPTED IN COMMISSIONERS’ WEEKLY MEETING February 16, 2022.....	10

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**I. BY THE COMMISSION****A. Statement**

1. Through this Decision, the Commission denies the exceptions filed to Decision No. R21-0801, issued December 17, 2021, by Administrative Law Judge (ALJ) Steven Denman (Recommended Decision). The Commission adopts revised rules governing customer notice requirements, located within the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 at 4 CCR 723-1-1207, and a correction of a typographical error in Rule 1400, 4 CCR 723-1-1400. The adopted rules are attached to this Decision in legislative format (*i.e.*, strikeout/underline) as Attachment A, and in final format as Attachment B.

**B. Background**

2. On December 22, 2020, in Proceeding No. 20M-0546ALL, the Office of the Utility Consumer Advocate (UCA) filed a petition requesting the Commission open a rulemaking proceeding to clarify and modify Rule 1207, 4 CCR 723-1. Among its arguments, the UCA asserted that certain applications recently filed by Colorado utilities essentially entail the approval of a future rate increase through the implementation of a rate adjustment mechanism or "rider," however, the applicant utilities had failed to provide notice to their customers such that the affected utility customers have little or no knowledge of the requested rider during the application proceeding. Through Decision No. C21-0217, issued April 13, 2021, the Commission granted the petition for rulemaking.

3. On July 15, 2021, the Commission commenced this rulemaking by a Notice of Proposed Rulemaking (NOPR) issued as Decision No. C21-0411 in this proceeding, Proceeding No. 21R-0327ALL. Through proposed changes to Rule 1207(a), the NOPR proposed that

utilities be required to provide customer notice in accordance with §§ 40-3-104(1)(c)(I) or (2), C.R.S., when filing an advice letter accompanied with tariffs, applications that would change a rate or service, applications that would change a rate or service through a rider or adjustment clause, and any other filings that seek to change a rate or service. Through proposed changes to Rule 1207(b) and Rule 1400, the NOPR proposed that a utility requesting an alternative form of notice be required to explain why it seeks an alternative to the statutory forms of additional notice; to confer with Trial Staff of the Commission (Trial Staff) prior to filing a motion for alternative form of notice; and allowed Trial Staff to respond to an alternative form of notice filing within two business days. The Commission referred the rulemaking to an ALJ and scheduled a public hearing for participant comments.

4. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled rulemaking hearing on August 24, 2021. Rulemaking participants filed post-hearing comments after the rulemaking hearing. On December 17, 2021, the ALJ issued the Recommended Decision.

5. On January 6, 2022, the UCA filed exceptions to the Recommended Decision. On January 13, 2022, Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) and Colorado Natural Gas, Inc. (CNG) filed responses to the UCA's exceptions.

**C. Rules Adopted by the Recommended Decision and Exceptions**

6. Below, we address the amendments adopted by the Recommended Decision, exceptions, any responses, and the Commission's findings and conclusions regarding the ALJ's adopted rules and the exceptions to the Recommended Decision.

**1. Rule 1207(a)**

7. The ALJ found that the proposed amendments to Rule 1207(a) conflate the differences found in § 40-3-104, C.R.S., between notice required for filings on 30 days' notice, required additional notice, and the statutory process for less-than-statutory-notice filings, and that the proposed amendments could lead to confusion, unnecessary litigation regarding notice of utility filings, and increased costs. Therefore, the Recommended Decision does not adopt the NOPR's proposed changes to Rule 1207(a) that would have required utilities to provide customer notice in accordance with §§ 40-3-104(1)(c)(I) or (2), C.R.S., when filing an advice letter accompanied with tariffs, applications that would change a rate or service, applications that would change a rate or service through a rider or adjustment clause, and any other filings that seek to change a rate or service.

8. The Recommended Decision does amend Rule 1207(a) to create a subrule, Rule 1207(a)(I), to apply to filings made on a less-than-statutory-notice basis, and another subrule, Rule 1207(a)(II) to apply to filings made by a utility providing regulated intrastate telecommunications services to change a rate or term for regulated telecommunications service. Additionally, the Recommended Decision replaces in Rule 1207(a) the word "tariff," so that a utility covered by the rule must provide notice in accordance with § 40-3-104(1)(c)(I), C.R.S., when filing to change, on 30 days' notice, "any rate, fare, toll, rental, charge, classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental charge, classification, or service or in any privilege or facility," and so that a covered utility filing on less-than-statutory-notice must provide notice in accordance with § 40-3-104(2), C.R.S., when filing to change "any rate, fare, toll, rental, charge, classification, or service."

**a. Exceptions and Responses<sup>6</sup>**

9. The UCA argues the ALJ erred by rejecting the proposed revisions to Rule 1207(a). The UCA states that the clear purpose of § 40-3-104(1), C.R.S., is to ensure customers have adequate notice of a utility's proposed changes in any rate, fare, toll, rental, charge, classification, or service, and notes that the statute does not distinguish how such a change is made. It also argues that the definition of "rate" under Rule 1004(a) includes any "practice" relating to a fare or charge, and that the recovery of utility costs through a rider and via an application is a change in "practice." UCA claims this makes the proposed rule, which requires notice for changes in rates, valid and not contrary to § 40-3-104, C.R.S. Further, the UCA asserts that the statute does not preclude the Commission from broadening its notice requirement to include applications requesting cost recovery through a rider.

10. The UCA also argues that the proposed rule required additional notice for filings made on less-than-statutory notice, and that the ALJ erred in rejecting this requirement. The UCA argues that there is no statutory basis for the Commission to eliminate its obligation to require additional notice for a proposed change under any circumstance, even in the context of a filing made on less-than-statutory notice.

11. Black Hills responds that the ALJ was correct in rejecting the proposed changes to Rule 1207(a) concerning customer notice of applications. It asserts that advice letters and applications are treated differently by the Commission's rules and the public utility statutes, and that through Rule 1206's requirement that the Commission provide notice of an application, a utility's customers, the UCA, Trial Staff, and other interested parties receive notice of the application. In its response, CNG notes that utilities have recently been willing to work with the

UCA in supplying supplemental notice where the rider or adjustment clauses may have a significant impact on customers.

**b. Findings and Conclusions**

12. Upon further review, including review of the comments submitted in this proceeding, we are persuaded that tying a customer notice requirement for certain types of applications to Rule 1207(a), and thereby to § 40-3-104(1)(c)(I), C.R.S., would not be effective. The additional notice methods set forth in that subsection of the notice statute include specific timing requirements. For example, newspaper publication must be made “during the first twenty days of the thirty-day period prior to the effective date of the increase or change.”<sup>1</sup> The specified time periods would likely fail to provide customers with timely notice so that they could participate effectively in an application proceeding or otherwise be apprised of the proceeding. We therefore deny the UCA’s exception and uphold the ALJ’s changes to Rule 1207(a) and his determination that the proposed rule changes concerning customer notice of applications seeking to change a rate or service should not be adopted, but on the reasoning that the proposed changes tied to § 40-3-104(1)(c)(I), C.R.S., would not produce an effective rule.

13. While it is necessary to arrive at this conclusion in this Proceeding, the Commission remains concerned about noticing issues raised in the UCA’s petition for rulemaking regarding utility application filings that cause changes to tariffs as a result of a proposed change in a rate, fare, toll, rental, charge, classification, or service. Therefore, we direct Commission staff to prepare a NOPR for a rule requiring customer notice of applications seeking cost recovery through future riders, not relying on § 40-3-104(1)(c)(I), C.R.S., for consideration at a future Commissioners’ Weekly Meeting.

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<sup>1</sup> § 40-3-104(1)(c)(I)(A), C.R.S.

**2. Rule 1207(b)**

14. The Recommended Decision adopts the proposed rule's requirement that a utility requesting an alternative form of notice explain why it seeks to deviate from the notice methods allowed by statute, and the adopted rules allow Trial Staff and the UCA to file a response to requested alternative forms of notice within two business days. The ALJ did not adopt the proposed rules' requirement that utilities confer with Trial Staff before moving for an alternative form of notice, finding the requirement would be inefficient and would likely cause undue delays.

**a. Exceptions and Responses**

15. The UCA opposes the ALJ's deletion of the proposed rule's requirement for conferral with Trial Staff prior to requesting an alternative form of notice, arguing that such conferral is not contrary to the notice statute. The UCA also requests the Commission require utilities to confer with the UCA, as well as Trial Staff, before moving for an alternative form of notice. The UCA asserts that it would assist in the development of customer notice that is timely, more efficient, and less costly.

16. In response, Black Hills and CNG argue that requiring conferral would lead to confusion and delay, and that conferral is unnecessary given the ALJ's adoption of language allowing Trial Staff and the UCA to file responses within two business days.

**b. Findings and Conclusions**

17. We agree that conferral is unnecessary given that the rules adopted by the Recommended Decision allow Trial Staff and the UCA to file responses to motions for alternative forms of notice. Therefore, we uphold the Recommended Decision's changes to Rule 1207(b) and deny the UCA's exception.



### 3. Rule 1207(e)

18. Through the Recommended Decision, the ALJ added that the Commission's ability to order additional notice pursuant to § 40-3-104, C.R.S., is "at the request of the utility" and deleted the phrase "as the Commission deems appropriate," stating that the changes conform more closely with statute. We find these changes unnecessary given that the current rule already refers to § 40-3-104, C.R.S., and that these changes could be interpreted to improperly limit our discretion regarding additional notice methods. Therefore, we do not adopt the changes to Rule 1207(e) made by the Recommended Decision.

### 4. Rule 1400

19. Because the ALJ did not adopt the proposed rules' requirement that utilities confer with Trial Staff before moving for an alternative form of notice, the ALJ did not adopt corresponding proposed changes to Rule 1400(a)(I) concerning conferral. The ALJ did make corrections to "two typographical errors." First, he changed the requirement in 1400(a) that counsel submitting motions shall make a "reasonable good faith effort" to confer with all parties to a "reasonably good faith effort." Second, the ALJ struck the word "Commission" which preceded a reference to a rule.

20. While we agree that the second change corrects a typographical error, we do not agree with the Recommended Decision that the first change corrects a typographical error. Therefore, we do not adopt this change.

## II. ORDER

### A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R21-0801, filed by the Colorado Office of the Utility Consumer Advocate on January 6, 2022, are denied.

2. Amendments to Rule 1207 and Rule 1400 within the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, contained in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are adopted, and 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=21R-0327ALL](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0327ALL)

3. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 16, 2022.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners

**COLORADO DEPARTMENT OF REGULATORY AGENCIES**  
**Public Utilities Commission**

**4 CODE OF COLORADO REGULATIONS (CCR) 723-1**

**PART 1**  
**RULES OF PRACTICE AND PROCEDURE**

\* \* \* \*

[indicates omission of unaffected rules]

**1207. Utility Notice.**

- (a) A utility, other than a rail carrier, ~~or motor carrier, or intrastate telecommunications provider,~~ filing ~~tariffs to change, on thirty days' notice, any rate, fare, toll, rental, charge, classification, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility~~ 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.~~
- (I) ~~A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider filing to change any rate, fare, toll, rental, charge, classification, or service on less than statutory notice shall provide notice in accordance with the requirements of § 40-3-104(2), C.R.S.~~
- (II) ~~A utility that provides regulated intrastate telecommunications services filing to change any rate, charge, term, or condition for any regulated telecommunications service shall provides notice in accordance with the requirements of § 40-3-104(1)(c)(V), 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. ~~The utility's motion shall address each of the forms of notice set forth in § 40-3-104(1)(c)(I)(A) through (D), C.R.S., and explain why the utility seeks an alternative.~~ No responses to such motions shall be allowed, ~~except if Trial staff or the UCA opposes a motion requesting an alternative form of notice, they each may file a response within two business days of the filing of the motion.~~
- (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.

\* \* \* \*

[indicates omission of unaffected rules]

**1400. Motions.**

- (a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. 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 paragraph~~ 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.

**COLORADO DEPARTMENT OF REGULATORY AGENCIES**  
**Public Utilities Commission**

**4 CODE OF COLORADO REGULATIONS (CCR) 723-1**

**PART 1**  
**RULES OF PRACTICE AND PROCEDURE**

\* \* \* \*

[indicates omission of unaffected rules]

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- (a) A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider, filing to change, on thirty days' notice, any rate, fare, toll, rental, charge, classification, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S.
  - (I) A utility, other than a rail carrier, motor carrier, or intrastate telecommunications provider filing to change any rate, fare, toll, rental, charge, classification, or service on less than statutory notice shall provide notice in accordance with the requirements of § 40-3-104(2), C.R.S.
  - (II) A utility that provides regulated intrastate telecommunications services filing to change any rate, charge, term, or condition for any regulated telecommunications service shall provides notice in accordance with the requirements of § 40-3-104(1)(c)(V), 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. The utility's motion shall address each of the forms of notice set forth in § 40-3-104(1)(c)(I)(A) through (D), C.R.S., and explain why the utility seeks an alternative. No responses to such motions shall be allowed, except if Trial staff or the UCA opposes a motion requesting an alternative form of notice, they each may file a response within two business days of the filing of the motion.
- (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.

\* \* \* \*

[indicates omission of unaffected rules]

**1400. Motions.**

- (a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. 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 paragraph 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.