

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

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

##### PART 1

##### RULES OF PRACTICE AND PROCEDURE

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[indicates omission of unaffected rules]

#### 1100. Confidentiality.

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[indicates omission of unaffected rules]

- (h) The Commission, ~~Commission and its~~ staff, ~~and Commission counsel~~ shall have access to all information filed under these standards of conduct by virtue of the annual nondisclosure agreement executed in accordance with this rule. Notwithstanding anything in these standards of conduct to the contrary, each member of ~~the Commission, Commission counsel, and~~ Commission staff need only sign one nondisclosure agreement annually. The annual nondisclosure agreement that each ~~Commissioner, Commission counsel, and~~ Commission staff member executes shall include a provision that requires the individual ~~staff member~~ to maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection. Signing such an annual nondisclosure agreement shall permit a ~~Commissioner, Commission counsel, and~~ Commission staff members to have access to all confidential information filed with or provided to the Commission and to have access to all information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b). The Commission shall maintain in its files the annual nondisclosure agreements ~~signed by Commission staff~~ and shall make such agreements available for public inspection.

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[indicates omission of unaffected rules]

#### 1201. Attorneys.

- (a) A party or an amicus curiae shall be represented by an attorney at law, currently in good standing before the Colorado Supreme Court or the highest tribunal of another state as authorized in rule ~~221.1205.4~~, C.R.C.P.

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[indicates omission of unaffected rules]

**1205. Service.**

- (a) A person filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on every other party and amicus curiae in the proceeding, except that the Director shall serve a complaint as provided in rule 1302(g). Such service shall include service upon the Commission's assigned trial staff and advisory staff. Except as provided in rule 1205(c) and rule 1302(g), service shall be made by hand or through mailing on the same day the document is filed, unless a party expressly agrees by a signed waiver to accept service via fax, or is registered in the Commission's E-Filings System. Service required by this paragraph (a) may alternatively be made by e-mail, unless the party or amicus curiae to be served previously files a notice in such proceeding that service will not be accepted through e-mail.
- (b) All registered filers in the E-Filings System must have expressly agreed, through attestation, to accept service in all Commission proceedings through the E-Filings System. Filing through the E-Filings System constitutes service on all assigned trial staff, advisory staff, and registered users of the system.
- (c) In accelerated complaint proceedings:
  - (I) the complainant shall serve the complaint upon the respondent; and
  - (II) all pleadings and motions shall be served on the same day they are filed either (i) by e-mail and by hand; (ii) by e-mail and overnight delivery, or (iii) through the Commission's E-Filings System. Discovery shall be accomplished pursuant to rule 1405.
- (d) Service upon a private corporation, partnership, or unincorporated association may be made by delivering a copy to one or more of the officers, partners, associates, managers, or designated agents thereof. When an attorney represents a party, service shall **also** be made upon the attorney, ~~unless the Commission orders service upon the party.~~ Where a party is represented by an attorney of record and is not registered in the Commission's E-Filings System, service upon the party is complete upon service to the attorney of record. If more than one attorney who is not registered in the E-Filings System represents a party, service is complete upon service to one of those attorneys. Where a party is represented by more than one attorney, some of whom are registered in the Commission's E-Filings System and some of whom are not, service is complete upon service to those registered users of the E-Filings System only.
- (e) Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission. Certificates of service may be filed in paper, filed through the Commission's E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. For any filing for which there is no certificate of service demonstrating service upon an amicus curiae, a pro se party, or a party's counsel of record in any of the identified forms, the Commission will presume that the document has not been served on omitted amici, parties or counsel of record. This presumption may be overcome by evidence of proper service.

- (f) All interrogatories, requests for production, and requests for admission may be served by hand, through mailing by first class mail, or by fax if a person expressly agrees by a signed waiver to accept service via fax. Service required by this paragraph (f) may alternatively be made by e-mail, unless the person to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

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[indicates omission of unaffected rules]

**1207. Utility Notice.**

- (a) A utility, other than a rail carrier or motor carrier, filing tariffs shall provide notice in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. or, when it files tariffs on less than statutory notice, as allowed by § 40-3-104(2), C.R.S.
- (b) A utility may also file a ~~an application request~~ for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(D), C.R.S. Such request shall be in the form of a motion filed as a separate pleading within the proceeding in which the utility is proposing a change to its rates or schedules. No responses to such motions shall be allowed.
- (c) A utility that files an application to make a refund shall, within three days of filing the application, publish notice of the application in a newspaper of general circulation. The notice shall include the following information:
- (I) the name and address of the utility;
  - (II) a statement that the utility has filed an application with the Colorado Public Utilities Commission for approval of its proposed refund plan;
  - (III) a statement summarizing the amount of the refund, the date for making the refund, the date the refund is anticipated to be completed, and the manner in which the refund is proposed to be made;
  - (IV) a statement that the application is available for inspection at each local office of the utility and at the Colorado Public Utilities Commission;
  - (V) a statement that any person may file with the Commission a written objection to the application, or may file to intervene to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party; and
  - (VI) a statement that written objections and interventions must be filed by the time listed in the notice separately given by the Colorado Public Utilities Commission.
- (d) All persons who are required to provide notice shall, within 15 days of providing notice, file an affidavit with the Commission stating the date notice was completed and the method used to provide it, accompanied by a copy of the notice or notices provided.

- (e) The Commission may order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S.
- (f) In all cases, notice shall contain adequate information to enable interested persons to be reasonably informed of the purpose of the matter noticed.
- (g) Unless the Commission orders otherwise, a utility shall be permitted to file tariffs complying with a decision of the Commission or updating adjustment clauses previously approved by the Commission on not less than two business days' notice. No additional notice beyond the tariff filing itself shall be required.

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[indicates omission of unaffected rules]

## PRE-HEARING PROCEDURE

### 1400. Motions.

- (a) Except for oral motions made during hearing, or where the Commission orders otherwise, any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.
  - (I) Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e), motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.
  - (II) If a motion is unopposed, it shall be entitled “Unopposed Motion for \_\_\_\_\_.”
- (b) Except in an accelerated complaint proceeding, the responding party shall have 14 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response.
- (c) In accelerated complaint proceedings, responses to motions shall be due within seven days of the date of service of the motion.
- (d) The Commission may deem a failure to file a response as a confession of the motion.
- (e) A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:
  - (I) a material misrepresentation of a fact;

- (II) accident or surprise, which ordinary prudence could not have guarded against;
  - (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or
  - (IV) an incorrect statement or error of law.
- (f) A motion for summary judgment may be filed in accordance with rule 56 of the Colorado Rules of Civil Procedure.

**1401. Intervention.**

- (a) Except as provided by paragraph (d) of this rule, any person may file a notice of intervention as of right or a motion to intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise. The Commission shall not enter a final decision in any proceeding before the intervention period has expired. The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements. If a person wishes to intervene and to request a hearing, that person's intervention as of right or motion to intervene by permission must state that the application or petition is contested or opposed, must give reason why the application or petition is contested or opposed, and must explicitly request a hearing. The Commission may consider any application or petition without a hearing and without further notice if a hearing is not required by law.
- (b) A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding. No decision shall be entered permitting intervention in response to a notice of intervention as of right.
- (c) A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas, ~~or electric or telephone~~ proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.
- (d) Commission staff is permitted to intervene by right in any proceeding. Commission staff shall be permitted to file its notice of intervention within seven days after the time otherwise specified by paragraph (a) of this rule.
- (e) Transportation ~~-regulated~~ intrastate carrier application proceedings.

- (I) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.
- (II) A common carrier holding either temporary or suspended authority in conflict with the authority sought in the application shall not have standing to intervene as of right, but may file a motion to permissively intervene.
- (III) A person filing a notice of intervention as of right or motion to permissively intervene in temporary authority application proceedings shall, if applicable, include a description of the services the intervenor is ready, willing, and able to provide, or has provided, to the persons or class of persons supporting the application.
- (IV) An intervention, whether permissive or as of right, in temporary authority application proceedings shall not constitute an intervention or a request to intervene in a corresponding permanent authority application proceeding.

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[indicates omission of unaffected rules]