



# PUBLIC UTILITIES COMMISSION

## Performance Audit, May 2012 Report Highlights



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### PURPOSE

Evaluate the adequacy of the Public Utilities Commission's (the Commission) policies and procedures for ensuring the transparency of *ex parte* communications between Commissioners and interested persons and that Commissioners' travel expenditures are reasonable, appropriate, and allowable.

### BACKGROUND

- The Constitution and statute provide the Commission regulatory authority over fixed utilities, rail safety, gas pipeline safety, and motor carriers.
- The Commission is a Type 1 agency within the Department of Regulatory Agencies (the Department), made up of three members appointed by the Governor with approval of the Senate. Commissioners serve 4-year terms and are not subject to term limits.
- The Commissioners are full-time, salaried state officials, and the Commission is supported by 96 full-time-equivalent staff within the Public Utilities Commission Division.
- The Commission is entirely cash funded through fees paid by regulated companies.

### OUR RECOMMENDATIONS

The Public Utilities Commission should:

- Establish and implement written policies or rules related to the disclosure of *ex parte* and permit-but-disclose communications between Commissioners and interested persons.
- Work with the Department Executive Director to develop and implement written travel policies to address travel authorizations when there is disagreement between the Commissioners and Department policy and work with the Department to ensure that all travel documentation is properly and consistently maintained.

The Commission agreed with these recommendations.

### EVALUATION CONCERN

**The Public Utilities Commission could strengthen its internal policies and controls to ensure that the Commissioners' communications with interested persons and travel practices comply with the letter and spirit of the Colorado Constitution, statutes, and state rules.**

### KEY FACTS AND FINDINGS

- The Commission functions in a uniquely independent capacity within state government, with limited administrative oversight. Given the limited administrative oversight, it is important that the Commission have sufficient controls and processes in place to ensure that the Commissioners comply with all state requirements and that their actions are transparent to the general public.
- We identified instances where the Commissioners have not fully complied with statutory requirements related to the disclosure of *ex parte* communications. For example, we found that the Commissioners do not currently disclose *ex parte* communications occurring through email even though statute does not distinguish between oral and written communications and requires that *all* private communications concerning matters under the Commission's jurisdiction be disclosed.
- Current statutory and rule requirements related to the disclosure of *ex parte* communications are limited. There are no time requirements for filing the disclosure memoranda, and the Commissioners do not have to note the affiliation of the individuals identified in the disclosures.
- Interested persons have not always filed permit-but-disclose memoranda within the 2-day filing requirement or included the location of the communications, as directed in Commission orders.
- The Commissioners did not consistently follow applicable State Fiscal Rules or Department policies related to travel. Of the 128 out-of-state trips taken by Commissioners during Calendar Years 2008 through 2011:
  - 8 lacked documentation to show they had been approved prior to travel, or at all, by the Executive Director.
  - 17 trips to Washington, D.C., and foreign countries lacked documentation to show Governor's Office approval.
  - 27 trips paid for in part, or fully, by third-party organizations lacked documentation to show they complied with Amendment 41 requirements.