



Dora

Department of Regulatory Agencies

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Executive Director

Public Utilities Commission

Joshua B. Epel, Chairman
James K. Tarpey, Commissioner
Pamela J. Patton, Commissioner
Doug Dean, Director

October 19, 2012

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
200 East 14th Avenue, 2nd Floor
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the **May 2012 Performance Audit of the Public Utilities Commission**. The attached report provides a brief explanation of the actions taken by the Colorado Public Utilities Commission to implement each recommendation.

As noted in the status report, the Commission is currently revising its Rules of Practice and Procedure. The changes recommended by the Audit Committee are included in this rulemaking, and they are not controversial (having drawn no comments). However, since other rules in this proceeding have been contested, our estimated date of completion is now March 31, 2013, for those two recommendations requiring a change to the Commission's rules. The other two audit recommendations have been fully implemented.

If you have any questions, please do not hesitate to contact me at 303-894-2007 or by email at doug.dean@state.co.us

Sincerely,

Doug Dean
Director

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AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Public Utilities Commission Department of Regulatory Agencies

AUDIT NUMBER: 2174

DEPARTMENT/AGENCY/ENTITY: Public Utilities Commission, Department of Regulatory Agencies

DATE: May 2012

SUMMARY INFORMATION

Please complete the table below with summary information for all audit recommendations. For multi-part recommendations, list each part of the recommendation SEPARATELY. (For example, if Recommendation 1 has three parts, list each part separately in the table.)

Recommendation Number <i>(e.g., 1a, 1b, 2, etc.)</i>	Agency's Response <i>(i.e., agree, partially agree, disagree)</i>	Original Implementation Date <i>(as listed in the audit report)</i>	Implementation Status <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i> <i>Please refer to the attached sheet for definitions of each implementation status option.</i>	Revised Implementation Date <i>(Complete only if agency is revising the original implementation date.)</i>
1a	Agree	December 31, 2012	Partially Implemented.	March 31, 2013
1b	Agree	December 31, 2012	Partially Implemented.	March 31, 2013
2a	Agree	June 29, 2012	Implemented	
2b	Agree	June 29, 2012	Implemented and Ongoing	

DETAIL OF IMPLEMENTATION STATUS

Recommendation #: 1-a

Agency Addressed: Public Utilities Commission

Recommendation Text in Audit Report:

The Public Utilities Commission (the Commission) should strengthen its processes for ensuring that *ex parte* and permit-but-disclose communications are transparent to outside parties and comply with statutory and regulatory requirements. Specifically, the Commission should:

- a. Implement written policies or rules related to the disclosure of all *ex parte* communications, including the required disclosure of appropriate electronic and telephone communications, a short deadline for filing the disclosures, and identification of the affiliation of the persons participating in the communications. Once these requirements are put in place, the Commission should implement a review process to ensure that the disclosure memoranda comply with each requirement.

Agency's Response (*i.e., Agree, Partially Agree, or Disagree*): Agree, Implementation date: December 31, 2012.

Agency's Written Response in Audit Report:

The Commission has recently implemented internal processes to modify the form used by Commissioners to ensure that Commissioner *ex parte* communications disclosures contain the date, time, and location of the communications and the affiliation of all persons present. The Commission also recently created a new policy requiring the following: (1) Commissioners will submit all *ex parte* communications disclosures to the Division Director within 5 business days of the communication, (2) the Division Director will verify that the disclosures contain all the required information, and (3) the Division Director will ensure that all such disclosure are posted to the Commission's website within 3 business days of receipt. Additionally, the Commission recently issued a Notice of Proposed Rulemaking to revise its Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1. These revisions include changes to the rules on Commissioner *ex parte* disclosures, which will require that: (1) the Director post the disclosures to the Commission's website within 3 business days of their receipt, (2) the affiliations of the persons present be disclosed, and (3) the Director ensures the disclosures contain all required information. The revisions will also contain guidance for the conditions under which email and telephonic communications are to be disclosed. These rules are expected to be completed in the second quarter of the upcoming fiscal year.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

Partially implemented.

Agency's Current Comments on Implementation Status of Recommendation:

A portion of the recommendation, to implement an internal policy on Commissioner ex parte communication, including the information to be included in the disclosure form, was competed with the adoption of PUC Policy Number PUC 2012-02, effective May 9, 2012. The Commission also determined it would be appropriate to create a new rule on ex parte communications, which is included in a comprehensive modification of the Commission's rules of Practice and Procedure in Docket No. 12R-500ALL. While this particular proposed rule (1109, attached) is not controversial, other portions of the P&P rules have drawn comments from interested parties, and it is now expected that the rulemaking will be finalized by March 31, 2013.

Recommendation #: 1-b

Agency Addressed: Public Utilities Commission

Recommendation Text in Audit Report:

The Public Utilities Commission (the Commission) should strengthen its processes for ensuring that *ex parte* and permit-but-disclose communications are transparent to outside parties and comply with statutory and regulatory requirements. Specifically, the Commission should:

- b. If the decision is made to continue the permit-but-disclose communication process, implement written rules to address the requirements surrounding the disclosure of these communications. These rules should be consistent with the rules adopted in part a of this recommendation and should include rules related to the required disclosure of electronic communications, the timeliness of filing the disclosures, and the identification of the affiliation of all persons present during the communications. The Commission should also implement a review process to ensure that the disclosure memoranda comply with each requirement.

Agency's Response (*i.e., Agree, Partially Agree, or Disagree*): Agree, Implementation date: December 31, 2012.

Agency's Written Response in Audit Report:

The Commission is currently investigating whether to continue the permit-but-disclose communications process in its rulemaking proceeding. If it determines that the process is a benefit to interested persons and to the Commission and that it is administratively efficient, the Commission will amend its Rules of Practice and Procedure to codify this process. This will be determined by rule during the second quarter of the upcoming fiscal year.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

Partially implemented.

Agency's Current Comments on Implementation Status of Recommendation:

The Commission decided to continue the permit-but-disclose communication process, and to formalize this process with the adoption of rules. As with 1.a. above, this rule (1110, attached) is included in a comprehensive modification of the Commission's rules of Practice and Procedure in Docket No. 12R-500ALL. This rulemaking is expected to be completed by March 31, 2013.

Recommendation #: 2-a

Agency Addressed: Public Utilities Commission

Original Recommendation in Audit Report:

The Public Utilities Commission (the Commission) should ensure that the Commissioners are held accountable for complying with state requirements regarding travel and that complete information related to Commissioner travel is available to the public by:

- a. Working with the Executive Director of the Department of Regulatory Agencies (the Department) to develop and implement a written policy that addresses travel authorizations when there is disagreement between the individual Commissioners and the Executive Director or Department policy.

Agency's Response (*i.e., agree, partially agree, disagree*): Agree, Implementation date: June 29, 2012.

Agency's Written Response in Audit Report:

The Division Director will work with the Commissioners to develop a formal, internal Commission policy on Commissioner travel. The Division Director will consult with the Executive Director in the development of the formal, internal Commission policy. However, the Commissioners are considered equal to one another in authority, so the policy will not address the auditor's suggestion that the Commission Chairman approve travel in the event of disagreement between the Commissioners and the Executive Director of the Department as suggested in the body of this audit report. This policy will be completed no later than June 29, 2012.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

Implemented.

Agency's Comments on Implementation Status of Recommendation:

The PUC created and adopted Policy Number PUC 2012-03 effective June 7, 2012 (attached).

Recommendation #: 2-b

Agency Addressed: Public Utilities Commission

Original Recommendation in Audit Report:

The Public Utilities Commission (the Commission) should ensure that the Commissioners are held accountable for complying with state requirements regarding travel and that complete information related to Commissioner travel is available to the public by:

- b. Working with the Department and the Public Utilities Commission Division to determine where all Commission travel documentation and authorizations should be located and implement a system for maintaining this information.

Agency's Response (*i.e., agree, partially agree, disagree*): Agree, Implementation date: June 29, 2012.

Agency's Written Response in Audit Report:

The Director of the Commission has already contacted the Department to ensure that copies of approvals for travel to Washington, D.C., and foreign countries will be provided to the Commission. Additionally, the Commission will incorporate into its travel policy methods to ensure that copies of all required approvals are maintained at the Division. This policy will be completed no later than June 29, 2012.

Current Implementation Status of Recommendation (i.e., Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable):

Implemented and ongoing.

Agency's Comments on Implementation Status of Recommendation:

The PUC has revised its internal procedures to ensure that copies of all documents related to out-of-state travel by both the Commissioners and the staff of the PUC are obtained and maintained by the Executive Assistant to the Commissioners for a period of three years.

1109. Commissioner Communications - Generally.

- (a) Prohibited communications do not include:
- (I) procedural, scheduling, status inquiries, E-Filings System support, or requests for information that have no bearing on the merits, substance, or outcome of the proceeding;
 - (II) protests or comments made by any customer of a utility concerning any proposed tariff, price list, or time schedule;
 - (III) communications that occur in educational programs or conferences, or that occur in meetings of an association of regulatory agencies, except for substantive issues involving pending matters;
 - (IV) communications relating to legislation, appropriations, budget, or oversight matters, except for substantive issues involving pending matters; or
 - (V) communications relating to a pending administrative docket or rulemaking proceeding.
- (b) Every Commissioner and administrative law judge shall comply with the disclosure requirements of § 40-6-122, C.R.S.
- (I) All disclosures shall include:
 - (A) the date, time, and place of the communication;
 - (B) the names of the persons present;
 - (C) the interested persons' affiliations.
 - (D) the subject matter of the communication;
 - (E) a statement that the communication did not relate to any pending adjudicatory proceeding before the Commission; and
 - (F) the signature of Commissioner or administrative law judge to certify that the disclosure is complete and accurate.
 - (II) The Director shall ensure the completeness of all disclosures.
 - (III) All disclosures shall be posted on the Commission's website within three business days of the receipt by the Director.
 - (IV) If a disclosure is required by § 40-6-122, C.R.S., such disclosure shall be completed for all methods of communications including communications in person, by phone, and by email exchange.

1110. Permit, but Disclose Process.

- (a) In administrative dockets, the Commission may choose to allow interested persons to schedule ex parte presentations to a Commissioner in a meeting that may include Commission Staff. Any such ex parte contacts must relate to matters being reviewed in the specific administrative docket and cannot concern any matter pending before the Commission in another docket. The Commission will attempt to accommodate all reasonable requests for ex parte meetings,

subject to the schedule and availability of each Commissioner. There is no requirement that an interested person must make the same presentation to each of the three Commissioners.

- (b) To schedule an ex parte meeting under the permit, but disclose process, the interested person should contact the Commission's executive assistant and identify the docket to which the presentation is associated.
- (b) Within two business days following a permitted ex parte presentation, the person requesting the meeting shall file with the Commission in the particular docket, a letter disclosing the contact. The letter shall include the following information:
 - (I) the date, time, and place of the meeting;
 - (II) a list of all individuals in attendance;
 - (III) the affiliations of all individuals in attendance;
 - (IV) a summary description of the presentation; and
 - (V) a statement that the subject matter of the communications did not relate to any pending adjudicatory proceeding before the Commission.
 - (VI) If materials were provided to the Commissioner during the meeting, those materials must be identified in the letter and attached to the filing.
- (c) The disclosure letter and any materials will become part of the official record of the docket.

Colorado Public Utilities Commission

Policy Number PUC 2012-03

Date Issued: June 7, 2012

Date Revised:

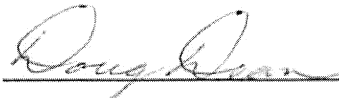
Title: PUC Policy Regarding Out-of-State Travel

References: DORA Travel Policy 2011-DORA-ACCT-005; State Fiscal Rules Chapter 5-1; § 40-6-123, C.R.S.; Executive Order D 005 03; State of Colorado Constitution Article XXIX

POLICY:

- A. The Director of the Public Utilities Commission (Director) is the approving authority for out-of-state travel for all Commission staff, subject to the subsequent approval of the Executive Director of the Department of Regulatory Agencies (Executive Director). The Director and Executive Director will also coordinate with the Commissioners to ensure that all Commissioner travel is approved according to all requirements cited herein and within the Division's approved travel budget.
- B. On or before June 15 of each year, the Director shall submit a travel plan for the upcoming fiscal year to the Executive Director. The Executive Director shall review the plan to ensure that the requested travel is prudent and within the budgetary parameters established by the Executive Director.
- C. After approval of the travel plan, if additional travel outside of the plan is requested and approved, the Director shall modify the travel plan to ensure that the PUC remains within its approved travel budget.
- D. In the event that a Commissioner submits a travel request and the Executive Director declines to approve such travel, the travel request will be submitted to the Governor's Office for final determination.
- E. Copies of all travel approval documents, including copies of all authorizations for travel to Washington, DC or to foreign countries, shall be kept on file at the PUC for a minimum of three years.
- F. Whenever travel is paid for fully or in part by a third party, the travel request shall also be submitted to the Ethics Officer of the Department of Regulatory Agencies to review for compliance with Article XXIX of the Constitution of Colorado.
- G. When travel has been paid for fully or in part by any third party, and reimbursement is made directly to any Commissioner or staff member, such Commissioner or staff member shall provide copies of all supporting documentation to the Director, which shall be kept on file for a minimum of three years.

Approved by:



Doug Dean, Director

6-7-12

Date

Colorado Public Utilities Commission

Policy Number PUC 2012-02

Date Issued: May 9, 2012

Date Revised:

Title: PUC Policy Regarding Commissioner Disclosure of Ex Parte Communications

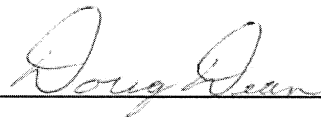
References: 4 CCR 723-1-1105 through 1109 and § 40-6-122, C.R.S.

POLICY:

In completing disclosures of ex parte communications, Commissioners shall comply with § 40-6-122, C.R.S. and 4 CCR 723-1-1109. Commissioners shall submit all required disclosures to the Director within five business days of the communication.

The Director shall ensure the completeness of all disclosures. The Director shall require that administrative staff post the disclosures on the Commission's website within three business days.

Approved by:



Doug Dean, Director

5-9-12

Date