

Colorado

Public Utilities Commission



For Your Information

P-4

FORMAL COMPLAINT PROCEDURES

PRE-HEARING PROCEDURES CHECK LIST

1. **Utility company response.** After a utility company receives your formal complaint and the "Order to Satisfy or Answer" from the Public Utilities Commission (PUC), it will do one or more of the following:
 - Contact you and attempt to resolve the problem to your satisfaction. If your problem is resolved, either you inform the Commission that you wish to withdraw your complaint or the utility will file a motion to dismiss your complaint.
 - File a motion to dismiss your complaint. This must be done within 20 days after the date of the "Order to Satisfy or Answer." The utility's motion will state why it thinks your complaint should be dismissed. You have the opportunity to respond if you wish. The Administrative Law Judge (ALJ) will then decide in writing whether your complaint should be dismissed. If the motion is denied, the utility will be required to file an answer to your complaint.
 - File an answer to your complaint. The utility responds to your complaint and states its side of the story. This must be done within 20 days after the date of the Order to Satisfy or Answer, unless a motion to dismiss is filed.
2. **Response to utility's motion to dismiss.** If the utility files an answer, you do not have to file anything further, and you can begin to prepare for hearing. If the utility files a motion to dismiss, you will receive a copy of the motion, and you should respond to it. You do not have to respond, but if you choose to:
 - Your response must be in writing. Include the docket number that your complaint has been assigned;
 - You must attach a certificate of service¹ to the original and all copies;
 - You must file the original and one copy with the Commission, send one copy to the utility, and keep a copy for yourself; and

¹ If a term is underlined, you will find it explained in alphabetical order in the glossary.

To reach PUC Consumer Affairs:

1560 Broadway, Suite 250, Denver, CO 80202
303-894-2070 (local); 1-800-456-0858 (toll-free)
PUCConsumer.Complaints@dora.state.co.us

- Your response must be filed within 14 days of the mailed date shown on the certificate of service on the motion to dismiss.
3. **Hearing preparation.** Prior to hearing, you should determine who you want to call as witnesses and what exhibits you want to present at hearing. You may request subpoenas from the Commission for witnesses; you may also ask the utility for documents concerning your case. If the utility does not provide these documents, you may file a written request for a subpoena for these documents as well. The ALJ will resolve this issue between the parties before the hearing.

HEARING PROCEDURES CHECK LIST

1. **Call to order.** The ALJ calls the case by name and docket number.
2. **Appearances.** You and the utility's attorney state who you are, who you represent, and your addresses.
3. **Preliminary matters.** The ALJ will ask if there are any preliminary matters. This could be questions about order of witnesses, timing problems, marking of exhibits, any other procedural matters.
4. **Opening statements.** The ALJ will ask if anyone has an opening statement. This is optional unless the ALJ requests it. One side may give one and the other side may decide not to give one. The utility may reserve the right to give its opening statement after you have finished presenting your case.
5. **Complainant's case.** Your case will now be presented. You may call yourself to testify and then give a sworn statement. You may also call other witnesses on your behalf and conduct direct examination. The utility may cross-examine you and your witnesses.

It is during direct examination that exhibits are identified. They should be offered into evidence after the person offering them has laid a foundation for the exhibits. The person offering the exhibits must bring copies of each exhibit for the ALJ and the other party or parties, and keep a copy for themselves. The other party or parties may ask questions about the exhibits and may object to their being admitted into evidence.

Even if an exhibit has been identified, it will not be part of the evidence until the ALJ admits it. After you have presented all of your evidence, you state that you are finished (you "rest your case").

6. **Utility's case.** The utility presents its case, if any. You may cross-examine each witness if you wish, but you do not have to do so if you have no questions. When it has presented all of its evidence, the utility will rest its case.

7. **Rebuttal.** You may then present rebuttal evidence. Rebuttal is meant to counter or refute the utility's testimony. Rebuttal is optional.
8. **Closing argument.** After all evidence is presented, both sides have the opportunity for closing argument. The ALJ may decide not to allow closing argument. Either side can decide they do not wish to make a closing argument.

POST-HEARING PROCEDURES CHECK LIST

1. **ALJ's decision.** At the end of the hearing the ALJ may tell both sides right then what his or her decision will be, or may take the case under advisement for further consideration. In either case, the ALJ will issue a written recommended decision, typically within 30 days after the last day of hearing, or 30 days after the filing of statement of positions, if allowed.
2. **Appeal of ALJ decision.** If either you or the utility disagrees with the recommended decision, a written appeal (called "exceptions") must be filed within 20 days of the decision's mailed date. If you disagree with the facts as stated in the ALJ's decision, you must pay for a transcript of the hearing made by the court reporter. A partial transcript may be ordered. If you do not provide a transcript, the Commissioners must decide your complaint based on the facts as stated in the ALJ's decision. You will have no other opportunity to challenge those facts. You must file an original and four copies of your appeal. It must include a certificate of service.
3. **Commission decision.** At the earliest possible time, the Commissioners will review an appeal of the ALJ's recommended decision. The Commissioners could decide to adopt the ALJ's recommended decision, or change part or all of the decision. If the Commission doesn't act on the recommended decision within 20 days of its issuance, and no appeals are filed, the recommended decision automatically becomes a Commission decision.
4. **Reconsideration of Commission decision.** If either you or the utility disagrees with the Commission decision, you may file another written appeal (called an "Application for Rehearing, Reargument or Reconsideration") within 20 days of the decision's mailed date. You should state in your appeal the reasons you feel the Commissioners should review their decision. You must file an original and seven copies of your appeal. It must include a certificate of service. At the earliest possible time, the Commission will issue a decision on reconsideration, which will be sent to both sides by mail.
5. **District court review.** If you or the utility still don't agree with the Commission's final decision, either side can file an appeal in District Court. You will need to contact the District Court to learn about its filing procedures and legal representation guidelines.

GLOSSARY OF TERMS

CERTIFICATE

OF SERVICE:

A statement you include with any filing that shows you mailed a copy of the document to:

- (1) The utility company or companies listed as respondents in your complaint; and
- (2) Any other persons or groups who the Commission has given permission to be included as parties in your complaint.

A certificate of service should be written like the following:

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing pleading were placed in the U.S. mail, first class postage prepaid, on this _____ day of _____, 20__, addressed to: (list the name and address of each utility or party you sent the document to).

CLOSING ARGUMENT:

Summation; a person's final chance to review the evidence that was presented and state why that evidence supports a ruling in that person's favor. Closing arguments are not evidence.

COMPLAINANT:

The person who filed the complaint and who bears the burden of proof.

CROSS-EXAMINATION:

Questions the opposing side or its attorney asks of the witness after the witness' direct testimony. Cross-examination must be in the form of questions; it is not an argument between the questioner and the witness.

DIRECT EXAMINATION:

Initial questions and answers, under oath, by a witness for either side. In the case of a complainant acting without an attorney, it is given in the form of a statement under oath.

EXHIBITS:

Any document or physical piece of evidence a complainant or utility believes helps to prove that side's case. If an exhibit is accepted into evidence by the judge, it will be kept in the PUC's files and will not be returned to the party.

IDENTIFIED:

Marked for identification so that everyone knows which document is being discussed.

LAYING

A FOUNDATION:

Once an exhibit has been identified, the person offering it into evidence presents testimony about it through the witness. This testimony shows what the document is, how the witness knows about it and where it came from.

OBJECTIONS: Objections are raised when a person believes a question, statement or exhibit offered by the other party is improper. The person making the objection states the legal reasons for such objection and the other party is given an opportunity to respond. The ALJ will then rule on the objection by overruling or sustaining it. "Overruled" means the evidence will be allowed; "sustained" means the ALJ agrees with the objection and the evidence will not be allowed.

OPENING STATEMENT: A preview or explanation of what each side believes the case is about and what each intends to prove with testimony and exhibits. Sometimes this is referred to as an overview or roadmap of evidence to be presented at hearing. An opening statement is not evidence.

REBUTTAL: Testimony that is similar to direct testimony but is limited to addressing particular testimony or exhibit evidence that the other side has presented. Rebuttal is meant to counter or refute that testimony.

SUBPOENAS: A document issued by the Commission requiring the attendance of a witness or the production of documentary evidence, or both, at a hearing. A subpoena must be served by the person requesting it.

(3/07)