COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2018 Sunset Review:
Public Utilities Commission

October 15, 2018

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 15, 2018

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and

- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Public Utilities Commission (Commission). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Title 40, C.R.S. The report also discusses the effectiveness of the Commission and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar
Executive Director

COLORADO
Department of Regulatory Agencies
Colorado Office of Policy, Research & Regulatory Reform

2018 Sunset Review
Public Utilities Commission

SUMMARY

What is regulated?
The Public Utilities Commission (Commission), located in the Department of Regulatory Agencies, has varying degrees of regulatory authority over natural gas, electrical, telecommunications, steam and water utilities, as well as motor carriers, transportation network companies, railroads and certain natural gas and propane pipelines.

Why is it regulated?
Article XXV of the Colorado Constitution directs the Commission to regulate "the facilities, service and rates and charges of public utilities in Colorado."

Who is regulated?
In fiscal year 16-17, the Commission had full regulatory authority over 15 natural gas, electrical, steam and water utilities; 400 local exchange telecommunications providers; 168 common motor carriers and 103 contract motor carriers. The Commission also had partial regulatory authority over 44 municipal utilities and cooperative electric utilities, and safety jurisdiction over 3,467 transportation carriers and 61 liquid petroleum, natural gas and propane pipeline operators.

How is it regulated?
The Commission issues certificates of public convenience and necessity to entities seeking to provide service as public utilities, issues permits to transportation carriers, performs safety inspections and audits, resolves complaints between consumers and regulated entities, ensures that rates and services meet prescribed standards, and takes enforcement actions against those found to be in violation of the law.

What does it cost?
In fiscal year 16-17, Commission expenditures totaled approximately $14.6 million and 84 full-time equivalent employees were associated with the program.

What disciplinary activity is there?
Between fiscal years 12-13 and 16-17, the Commission's enforcement activities included:

- Informal Complaints Closed: 10,523
- Formal Complaints Closed: 109
- Transportation Civil Penalty Assessment Notices: 458 assessments totaling approximately $6.8 million
- Rates Suspended & Cases Heard: 52

From calendar year 2013 to 2017, the Commission also took the following enforcement actions:

- Gas Pipeline Safety Compliance Actions: 101
- Pipeline Safety Civil Penalties Assessed: $636,568

Key Recommendations

Continue the Commission for 13 years, until 2032, and make additional statutory changes, including prohibiting the Commission from promulgating rules that allow property owners to grant agency to towing companies; modifying the signage requirements for parking areas related to non-consensual tows; require the towing company to notify the consumer that the Commission may be contacted with a complaint; and increase the penalties for not following the rules regarding nonconsensual towing.

The Commission receives a large number of consumer complaints regarding nonconsensual tows. To protect consumers in the cases of nonconsensual towing, the General Assembly should direct that any tow truck driver and property owner must have proof positive that the vehicle was out of compliance with posted property restrictions; require the towing carriers to give formal notice to vehicle owners at pick up, advising them that they may file a complaint with the Commission if they believe the towing company violated the nonconsensual towing rules; require that all warning signage posted on private properties advising consumers of the possibility of nonconsensual towing should also state that the towing carrier is regulated by the Commission and include a Commission telephone number and website address. The civil penalties for failure to comply with any rule or law when performing nonconsensual tows should also be increased.

Methodology

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff conducted a literature review; attended Commission meetings; interviewed stakeholders, officials with state and national associations; and reviewed Commission records, federal laws and rules, Colorado statutes and rules, and the laws of other states.

Major Contacts Made During This Review

A Custom Coach
AARP
ABC Shuttle
AT&T
Black Hills Energy
BNSF Railway
Broadband Deployment Office, DORA
Centennial Worldwide Transportation
CenturyLink
City & County of Denver
Colorado 911 Resource Center
Colorado Association of Commerce and Industry
Colorado Association of Municipal Utilities
Colorado Limousine Association
Colorado Motor Carriers Association
Colorado Oil and Gas Association
Colorado Oil and Gas Conservation Commission
Colorado Public Utilities Commission members
Colorado Public Utilities Commission staff
Colorado Rural Electric Association
Colorado Solar Industries Energy Association
Colorado Springs Utilities
Colorado Telecommunications Association
Cortez/Durango Cab
Delta Montrose Electric Association – Elevate Fiber, LLC
Denver Metro BOMA
Earthjustice
Energy Outreach Colorado
Freedom Cab
Independence Institute
Lyft
National 911 Coordination Office
Pikes Peak Cab
Pipeline and Hazardous Materials Safety Administration
Regional Transportation District
San Juan Sentry
Sierra Club
Towing and Recovery Professionals of Colorado
Tri-State Generation and Transmission
Uber
Union Pacific Railroad Company
Vote Solar
Western Resource Advocates
Wyatt's Towing
Xcel Energy

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

[1] Criteria may be found at § 24-34-104, C.R.S.

- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals

who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Public Utilities Commission (Commission) as enumerated in Title 40, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2019, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commission pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commission and staff. During this review, the Commission and staff must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff conducted a literature review; attended Commission meetings; interviewed stakeholders, officials with state and national associations and other stakeholders; and reviewed Commission records, federal laws and rules, Colorado statutes and rules, and the laws of other states.

Profile of the Industries

The Commission's regulatory authority encompasses five general categories: energy, gas pipeline safety, telecommunications, transportation, and water.

Energy

ELECTRIC

Modern society depends upon reliable electrical service to ensure economic prosperity, national security and public health and safety. Without electricity, everyday things like food preparation, water distribution and law and order become difficult or impossible.

Capital investment in the electric industry is a significant driver to the overall cost of electricity. This is because investment in rate base drives earnings for regulated utilities. While coal and natural gas have historically been used to generate most electricity, in recent years there has been a significant push by regulators and stakeholders, as well as electric utilities themselves, to invest in renewable energy, including wind and solar generation, and battery technology.

The electrical distribution system that has evolved in North America, commonly referred to as "the grid," comprises a complicated system of generation, transmission and distribution facilities. The United States is divided into three grids, or interconnection regions: the Western Interconnection, the Eastern Interconnection and the Electric Reliability Council of Texas, Inc. (ERCOT) Interconnection.[2]

The Western Interconnection lies to the west of a line that runs north and south along, more or less, the Colorado-Kansas border north through Canada and south to the U.S.-Mexico border. The Eastern Interconnection lies to the east of this line. ERCOT includes most, but not all, of Texas. Although there are some relatively low capacity interconnections between the interconnection regions, there is very limited capacity to transport electricity from one interconnection region to another. However, this lack of capacity also serves to insulate the various regions from problems that may

[2] U.S. Department of Energy. *Learn More About Interconnections.* Retrieved June 28, 2018, from www.energy.gov/oe/services/electricity-policy-coordination-and-impementation/transmission-planning/recovery-act-0

arise in another region. As a result, a blackout in the Eastern Interconnection will have minimal impact on the Western and ERCOT Interconnections, and vice versa.

The electric distribution system in the United States is highly complex, but, in the end, it consists of little more than the movement of electrons from one physical location to another at the time they are needed. This requires careful monitoring of the electric grid and of power plants' generation. Power plants must be brought online, ramped up or down, and taken offline within precise time limitations to match the fluctuations in demand, or load, for electricity throughout the grid in order to prevent system instability or collapse.

Electrons are most commonly generated at power plants. A power plant may be owned by a utility or by an independent power producer (IPP), and it may be located inside or outside of Colorado. Colorado's peak summer generating capacity in 2016 was 16,078 megawatts (MW), of which 5,476 MW (34 percent) was produced by IPP's or combined heat power (CHP) producers.[3,4]

There are three primary types of electric utilities in Colorado that distribute or transmit electricity: investor-owned utilities, municipal utilities and cooperatives. The Commission has financial, electric resource planning, and quality of service regulatory authority over two investor-owned electric utilities and limited electric transmission planning regulatory authority over one wholesale electric transmission and generation cooperative utility. The Commission has only partial regulatory authority over municipal electric utilities (rates when services are offered outside of municipal boundaries and only if those rates differ from those charged to municipal customers) and 25 electric cooperative associations (transmission lines).[5] The Commission has jurisdiction over intrastate transmission lines, distribution lines and substations in Colorado for the two investor-owned utilities.

The General Assembly and the Commission have established a rigorous process by which investment in electric generation facilities is vetted and ultimately determined to be in the public interest. Both investor-owned utilities are required to file electric resource plan applications. When a regulated utility seeks to construct, own and operate a power plant to service Colorado consumers, the utility must obtain a certificate of public convenience and necessity from the Commission. In other words, the utility must demonstrate that the power plant is necessary.

Electricity can be generated in many ways. Historically, the most common type of power plant was the coal-fired plant. Coal is burned to heat water, creating steam, forcing a turbine to turn, thereby creating electricity. Although coal itself is

[3] CHP systems, also known as cogeneration systems, generate electricity and useful thermal energy in a single, integrated system. *See* American Council for an Energy-Efficient Economy. *Combined Heat Power (CHP).* Retrieved July 6, 2018, from www.aceee.org/topics/combined-heat-and-power-chp

[4] U.S. Energy Information Administration. *Electricity: State Electricity Profiles: Colorado Electricity Profile 2016.* Retrieved July 6, 2018, from www.eia.gov/electricity/state/colorado/

[5] Colorado Public Utilities Commission. *About Electric: Infrastructure*. Retrieved June 28, 2018, from https://www.colorado.gov/pacific/dora/aboutelectric

relatively inexpensive, the cost of a coal plant can easily reach into the billions of dollars and take five or more years to construct. Additionally, it takes hours to fire up a coal plant and bring it online and hours to take one offline. As a result, coal plants are considered to be base-load generating facilities, meaning that they are depended on to be online most of the time. The last coal plant constructed in Colorado went into operation in 2010.

In the last 15 to 20 years, however, natural gas-fired plants have become more common. Depending on the type of plant, the natural gas may be used to power a gas turbine, which is similar to an aircraft jet engine, thereby creating electricity. Additionally, in a combined cycle plant, the exhaust from the turbine heats water, creating steam, forcing a steam turbine to turn, thereby generating even more electricity.

Although natural gas may sometimes be more expensive than coal, natural gas power plants can be built at substantially less cost and, generally, in less time than coal plants. Many can be taken online or offline in a matter of minutes, making them ideal for peak load operations.

Even more recently, renewable sources of energy have gained a larger share of generating capacity in the state. These include wind farms and solar arrays. The amount of energy produced by these sources is growing quickly and their cost is increasingly competitive with both coal and natural gas. However, since these sources are dependent on the sun shining or the wind blowing, they are not, for reliability purposes, considered base-load sources. At the same time, however, they are considered "must take" sources, meaning that when the sun shines or the wind blows, these resources are utilized, regardless of systemic demand at the moment.

Finally, the passage of Amendment 37 in 2004 popularized a new type of generation in Colorado—customer-sited generation. This allows consumers, and others, to install solar panels, for example, and receive federal tax incentives as well as incentives from some utilities. In short, customer-sited generation not only reduces the amount of electricity that these consumers take from the grid, but allows them, through net metering, to sell their generated and unused electricity back to the utility by allowing the electricity to flow onto the grid.

The energy mix of Colorado's power producers in March 2018 consisted of: coal (45 percent); natural gas (26 percent); non-hydroelectric renewables (25 percent); hydroelectric (5 percent) and oil (0.02 percent).[6]

Once the electricity has been generated, it enters the grid and the electrons flow through a series of transmission and distribution lines. Higher voltage transmission lines are used to transport the electrons over greater distances and step-down substations and transformers are used to take the electricity from higher voltage to

[6] U.S. Energy Information Administration. *Colorado Net Electricity Generation by Source March 2018.* Retrieved July 6, 2018, from www.eia.gov/state/?sid=CO#tabs-4

relatively lower voltage transmission and distribution lines until, ultimately, the electricity is delivered to the end user.

Once the electrons reach the end user, a meter records the amount of electrons taken off the grid, as well as the rate of consumption for larger commercial users, which then serves as the basis for that customer's bill from the utility.

Recent advances in distributed generation, energy storage, smart meters and grids and regional transmission organizations, coupled with the movement towards rate cases using forecasting methodologies rather than historical data and the evolution of performance-based ratemaking make the future of Colorado's energy infrastructure, and the Commission's role in regulating it, increasingly fluid.

Natural Gas

Natural gas is extracted from the ground and then transported through gathering lines to processing facilities where impurities such as water, heavy metals and valuable liquids are removed. The gas is then compressed and sent into transmission lines, which deliver the gas to local distribution companies, more commonly referred to as natural gas utilities, for ultimate distribution to the end user who may use the gas to among other things, heat a structure, heat water or generate electricity.

There are two primary types of natural gas utilities: investor-owned and municipal. Colorado has seven investor-owned natural gas utilities, two investor-owned propane utilities, and five municipal natural gas utilities.

While the Commission fully regulates the rates and service that investor-owned utilities provide their customers, the Commission asserts jurisdiction over municipal utilities only when they serve customers outside their physical boundaries and only when those customers are charged more than customers within the municipality's physical boundaries.

Regardless of the type of utility, natural gas utilities buy natural gas in a competitive wholesale market. As a result of fluctuations in this market, and due to differences in forecasted versus actual costs, the cost to consumers also fluctuates through a gas cost adjustment mechanism and hedging programs regulated by the Commission. While this may result in more volatile natural gas bills, it provides customers with a price signal and encourages conservation when the cost of gas is relatively high.

Steam

Steam is generally used to heat and, in some cases, cool buildings. Additionally, the steam can be used to heat water for laundries, as is most common in the hotel industry.

The steam is created at a plant by burning natural gas to heat the water, thereby creating steam. Additives are injected into the steam to prevent corrosion of the steam pipeline system and to inhibit bacterial growth, and then the steam is delivered into the steam pipeline system. Steam customers are connected to the steam pipeline system and take steam as they need it.

In Colorado, there is only one steam utility and it serves approximately 150 customers (mostly commercial buildings) in downtown Denver. Two of the utility's largest customers are the City and County of Denver and the State of Colorado.

The advantage to a customer of buying steam from a utility is the avoidance of purchasing, installing and maintaining a boiler for an individual building. Additionally, not all buildings have the physical space required to accommodate a boiler.

GEOTHERMAL

Large-scale geothermal energy projects involve tapping into superheated water under the earth's surface. Several limitations on the practicality of geothermal energy involve the depth at which the water is located and the relative depth of magma from the earth's surface.

Tapping into such a large-scale geothermal energy source is akin to drilling for oil. The reservoirs are typically miles below the surface and require the well to be encased and topped off before the resource can be exploited. As a result, it can be very expensive to develop geothermal energy sources.

However, there are at least 39 users in Colorado that utilize geothermal energy for a variety of purposes: 18 pools and spas; 15 space heating; 4 greenhouses; 1 aquaculture and 1 district heating.[7]

Space heating users are primarily hotels and resorts that are affiliated with pools and spas.

Interestingly, the single district-heating user is actually a municipal utility. The U.S. Department of Energy drilled a test well in Pagosa Springs and when the research was completed, the federal government turned the facility over to Pagosa Springs to use as a municipal heating source.

However, due to the statutory definition of a geothermal utility, all of these users of geothermal energy are exempt from Commission regulation.

[7] Colorado Geological Survey. *Geothermal Resources in Colorado and Geothermal Development Overview*. Retrieved July 6, 2018, from www.coloradogeologicalsurvey.org/wp-content/uploads/2013/08/COGeothermalResources_Powerplantsforwebv2.pdf

Pipeline Safety

Pipelines transport energy products throughout the country to heat and cool homes, power businesses and fuel transportation systems.[8] Regulated pipelines include:

- Natural gas pipelines,
- Liquid petroleum pipelines, and
- Hazardous liquids.

Both federal and state agencies regulate pipelines throughout the United States. Interstate pipelines are regulated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) in the U.S. Department of Transportation. The federal government is responsible for developing, issuing and enforcing pipeline safety regulations. Most inspections, however, are conducted by state agencies. State regulations must be at least as stringent as federal regulations, and states are responsible for the regulation, inspection and enforcement of pipelines within state boundaries.[9]

PHMSA annually certifies each state agency that conducts inspections and enforces pipeline safety within its state lines.

There are three different types of gas pipelines:[10]

- Gas distribution pipelines, which distribute gas to homes and businesses;
- Gas transmission pipelines, which transport gas thousands of miles across the country from processing facilities; and
- Gas gathering pipelines, which transport raw natural gas from production wells to transmission pipelines.

The Commission has jurisdiction over intrastate pipelines, including approximately:[11]

- 54,000 miles of gas distribution lines,
- 3,200 miles of gas transmission lines, and
- 1,000 miles of regulated gas gathering lines.

PHMSA oversees interstate gas transportation and all hazardous liquid transportation, and, another agency, the Colorado Oil and Gas Conservation Commission promulgates and enforces rules for pipelines directly associated with gas and oil production. Only the Commission's oversight of pipelines is relevant to this report.

[8] Pipeline and Hazardous Material Safety Administration, U.S. Department of Transportation. *General Pipeline FAQs*. Retrieved October 30, 2017, from https://www.phmsa.dot.gov/faqs/general-pipeline-faqs
[9] National Conference of State Legislatures. *Federal and State Responsibilities*. Retrieved October 30, 2017, from http://www.ncsl.org/research/energy/state-gas-pipelines-federal-and-state-responsibili.aspx
[10] Pipeline 101. *Natural Gas Pipelines*. Retrieved August 29, 2017, from http://www.pipeline101.com/why-do-we-need-pipelines/natural-gas-pipelines
[11] Colorado Department of Regulatory Agencies. *Pipeline Safety Program*. Retrieved October 30, 2017, from https://www.colorado.gov/pacific/dora/gaspipelines

Telecommunications

The telecommunications industry has experienced many significant changes in the past 35 years. The first significant change involved the American Telegraph and Telephone Company (AT&T). In 1982, AT&T agreed to divest in order to avoid a lawsuit filed by the U.S. Department of Justice. The divestiture of AT&T in 1984 created competition in the long-distance market.

Divestiture of AT&T also enabled the formation of multiple new local service telecommunications companies. Specifically, AT&T was divided into seven Regional Bell Operating Companies (RBOCs), commonly known as the "Baby Bells." In Colorado, Mountain States Telephone and Telegraph (Mountain Bell) became one of three major subsidiaries consolidated under the umbrella of US West, one of the seven RBOCs, which later merged with another competitive local exchange provider to become part of Qwest and, through another merger, CenturyLink.

With the breakup of AT&T, and the continued evolution of the telecommunications industry, the country's service areas (territories) were divided into Local Access Transport Areas (LATAs). In Colorado, there are two LATAs. One LATA includes the 303, 720 and 719 area codes, while the other LATA includes the 970 area code. At the time of divestiture, intrastate calls were subject to Commission jurisdiction, while interstate calls fell under the jurisdiction of the federal government.

The Colorado legislature, in 1995, passed House Bill 95-1335, which opened local competition in the telecommunications industry in Colorado. House Bill 95-1335 changed the landscape of the telecommunications industry in Colorado in a variety of ways. First, House Bill 95-1335 allowed the Commission to regulate all providers of local telecommunications services in a competitive environment to ensure that basic (universal) voice service is available to everyone in the state at fair and affordable rates. In Colorado, basic service included the following:

- A single-party line,
- Voice grade access to the network,
- Touch-tone service,
- Fax and data transmission within the voice grade bandwidth,
- A local calling area that reflects a community of interest,
- Access to emergency services,
- Equal access to toll (long-distance) services,
- Customer billing as required by Commission rules,
- Access to operator services,
- White page directory listing, and
- Access to directory assistance.

House Bill 95-1335 also required the Commission to review the definition of basic services every three years. These reviews included input from the public, the telecommunications industry and Commission staff.

It is important to note that local telecommunications companies were required to offer basic services to customers at Commission-regulated rates; however, local telecommunications companies could offer additional features (services) for additional fees, some of which were subject to Commission jurisdiction while others were not.

Additionally, House Bill 95-1335 created the Colorado High Cost Support Mechanism (CHCSM). The initial purpose of the CHCSM was to create a funding system that assists in providing universal telecommunications services at affordable rates to all customers. All telecommunications providers pay into the CHCSM, which currently collects approximately $36 million annually. Telecommunications service providers, in turn, charge a monthly surcharge to their customers (2.6 percent of retail revenues).

Congress updated the Communications Act of 1934 when it passed the Telecommunications Act of 1996 (FTA). The FTA permitted a variety of companies, including cable, wireless, long-distance and satellite companies to compete in offering telecommunications services for both local and long-distance services. The FTA established provisions for new companies or Competitive Local Exchange Carriers (CLECs) to compete with existing or Incumbent Local Exchange Carriers (ILECs) in the local service market. The effect of the FTA was to create a competitive market that could ultimately increase choice for the consumer, thereby establishing more competitive services.

The FTA also enabled the Federal Communications Commission (FCC) to preempt any state or local law or regulation that presents an "illegitimate barrier" to the telecommunications market by favoring one provider over another. Under the FTA, ILECs are required to resell or lease to other competitive carriers (CLECs) access to their physical infrastructure at any technically feasible point as well as provide access to other services such as directory assistance and emergency service. ILECs, in turn, are permitted to offer long-distance services within their incumbent territory.

In 2014, the Commission's oversight over the telecommunications industry was impacted. House Bills 14-1329, 1330 and 1331 reclassified basic local exchange services from regulated telecommunications services to exempt from regulation, with certain exceptions for geographic areas that received state high cost fund support.

Transportation

MOTOR CARRIERS

The Commission regulates motor carriers operating in Colorado. To varying degrees, the Commission regulates commercial enterprises that transport people and/or goods.

The common foundation of motor carrier regulation, regardless of the category in which a motor carrier company may be classified is public safety and company indemnification. The Commission has the right to inspect the "motor vehicles, facilities, and records and documents" of motor carriers to enforce regulation.[12]

Significant newcomers to passenger transportation regulation are transportation network companies (TNC). During 2014, Colorado became the first state to regulate TNCs. Since their genesis, TNCs have changed the way consumers view the transport of persons and consumer behavior. Statute defines a TNC as a:

> …corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation. A transportation network company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements, as defined in section 39-22-509(1)(a)(II), C.R.S., or any transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempted from federal income tax under section 115 of the federal "Internal Revenue Code of 1986", as amended.[13]

Unless regulation is specifically delineated, TNCs are exempt from the Commission's rate, market entry, operational, and common carrier requirements.

The Commission's oversight of motor carriers generally entails verifying the safety and insurance of passenger carriers, household goods movers, and towing carriers who operate on an intrastate basis, permitting hazardous and nuclear materials carriers, and rate regulation and market entry for common and contract carriers.

Generally, the difference between a common and a contract carrier is that a common carrier provides indiscriminate service to the public and charges are paid by the passenger. An example is a taxi which must give a ride to any member of the public without discrimination. A contract carrier provides services based on a contract. An example is a shuttle company that contracts with a property owner to transport guests for a fee paid by the property owner and not the guests.

A full list of motor carriers regulated by the Commission is as follows:

- Common Carrier (taxi/shuttle/sightseeing),
- Contract Carrier,
- Luxury Limousine,

[12] § 40-10.1-102, C.R.S.
[13] § 40-10.1-602(3), C.R.S.

- Medicaid Client Transport,
- Children's Activity Bus,
- Charter Scenic Bus,
- Off-Road Scenic Charter,
- Fire Crew Transport,
- Household Goods Mover,
- Hazardous Material, and
- Nuclear Material.

According to statute, TNCs are explicitly not regulated as motor carriers. However, they are subject to limited regulation by the Commission.

In addition to TNC regulation, regulation of non-consensual tows has become a salient issue in Colorado. Rates for the tows and most types of storage are regulated by the Commission in rule. Those rates cannot be changed, except through formal rulemaking by the Commission or the granting of a waiver or variance. Any registered towing company may apply for a waiver or variance of the rates set by the towing rules. Regarding consensual towing, the Commission regulates insurance and safety.

Commission involvement with interstate motor carriers is extremely limited. The Commission is the designated agency for Colorado to manage the federal Unified Carrier Registration System (UCR).[14] The UCR regulates interstate trucking with limited participation by states.

RAIL

The Federal Transit Administration (FTA) mandates that every state with a rail fixed guideway system must have an approved State Safety Oversight (SSO) program. The Commission houses the SSO program. Among other tasks, the program must adopt and enforce laws concerning safety and employ individuals who have completed the Public Transportation Safety Certification Training Program.[15] A rail fixed guideway system, as defined in Colorado law is,

> …any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway used to transport passengers that is not regulated by the federal railroad administration.

It does not include passenger tramways.[16]

Aside from the federal mandates, the Commission also has sole authority over rail systems that operate on intrastate lines that are not connected to the interstate system of lines.[17]

[14] § 40-10.5-102(2)(a), C.R.S.
[15] 49 CFR § 674.11.
[16] § 40-18-101(3), C.R.S.
[17] 4 CCR 723-7100, Public Utilities Commission Rules.

Regulation of rail by the Commission is almost completely limited to safeguarding that the intersections of rail rights-of-way and public roads are safe. It regulates everything at those intersections from grade to signage. Because the Commission acts in conjunction with the FTA, there are often complaints of redundancy and superfluous paperwork and approvals. Nonetheless, if Colorado is to retain its authority as an SSO, it must follow the federal guidelines. The SSO program was re-certified by the FTA in 2018 as being in compliance.

Water

In Colorado, water utilities are regulated in a variety of ways. Municipal water utilities and special water districts fall outside the jurisdiction of the Commission; they are accountable to consumers through their own bylaws and governing procedures. The bulk of water utilities in Colorado fall within these categories. As of August 2018, corporations that are registered as non-profits are also exempt from Commission regulation pursuant to section 40-3-104.4, C.R.S,[18] with formal complaints allowed in certain circumstances if a sufficient mass of customers or local civic officials initiate a complaint. For-profit corporations remain subject to Commission jurisdiction.

Water utilities that are regulated by the Commission include small investor-owned water utilities. Currently, there are five such utilities.[19] All five are regulated due to a complaint or complaints having been filed against the utility, typically involving increases in rates. As a result of the complaint(s), the Commission asserts regulatory authority over the aforementioned water utility.

Once an investor-owned water utility is under the Commission's jurisdiction, the Commission approves tariffs, which set rates and terms of service, that are established for water services. The Commission reviews requests for rate changes by the investor-owned water utilities to ensure that the proposed rate changes meet financial, engineering, legal and economic requirements. In addition to approving rate changes, the Commission assists investor-owned water utilities in establishing standards to initiate and maintain service and equipment to an appropriate level that satisfies the comfort and convenience of the customers.

[18] This is due to Senate Bill 18-134, which was signed into law by the Governor on April 2, 2018.
[19] Note that one of these utilities has been in bankruptcy proceedings for more than two years, as such it is currently managed by a bankruptcy trustee.

The Commission provides regulatory oversight through a simplified regulatory treatment for small, under 1,500 customers, privately-owned water utilities. Specifically, section 40-3-104.4, C.R.S., states:

> The Commission, with due consideration to public interest, quality of service, financial condition, and just and reasonable rates, must grant regulatory treatment that is less comprehensive than otherwise provided for under this article to small, privately-owned water companies that serve fewer than 1,500 customers. The Commission when considering policy statements and rules, must balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from such regulation.

Legal Framework

History of Regulation

Energy

ELECTRIC

The following timeline outlines significant regulation milestones related to electric utilities:

1961 – All suppliers of electricity, including cooperative and non-profit electric associations were declared to be public utilities, placing them under the jurisdiction of the Public Utilities Commission (Commission).

1983 – Cooperative electric associations were allowed to exempt themselves from Commission regulation by majority vote of their members and consumers. Municipal utilities were also exempted from Commission regulation.

1983 – The General Assembly authorized the Commission to pursue civil actions against electric utilities.

1992 – The Commission was given the power to flexibly regulate electric utilities by approving or denying applications for special rate contracts. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – The federal government enacted the Federal Energy Policy Act of 1992, requiring open access of investor-owned electric transmission lines. The act also prohibited the Federal Energy Regulatory Commission (FERC) from regulating retail wheeling, leading many to conclude that states could now regulate retail wheeling.

1998 – The 21-member Colorado Electricity Advisory Panel (CEAP) was created to assess whether retail competition in the electricity market would benefit the state's consumers.

1999 – CEAP issued its final report, which concluded that restructuring Colorado's electricity market to enable retail competition would not be in the best interests of consumers.

1999 – The Commission promulgated rules requiring investor-owned utilities to itemize the fuel sources of their generated and purchased electricity. Consumer bills were required to itemize fuel and delivery costs.

2001 – The General Assembly directed the Commission to give full consideration to clean energy and energy efficient technologies when examining jurisdictional utilities' resource selection plans.

2004 – The people of Colorado approved Amendment 37, which amended the state's constitution to require all utilities serving over 40,000 customers to meet certain renewable energy standards by certain identified dates.

2006 – The General Assembly directed the Commission to consider proposals by jurisdictional utilities to propose, fund and construct integrated gasification combined cycle electric generation plants, as opposed to subjecting such projects to the Commission's bidding rules.

2007 – The General Assembly doubled the renewable energy standards delineated in Amendment 37 and expanded the number and types of utilities that would be required to meet a new set of targets.

2007 – The General Assembly authorized the Commission to permit jurisdictional utilities to engage in discriminatory ratemaking for low-income customers.

2007 – The General Assembly mandated that jurisdictional utilities more aggressively participate in demand-side management activities.

2010 – The General Assembly increased the renewable energy standard for investor-owned utilities from 20 percent to 30 percent. It also added a three percent carve-out for distributed generation, half of which is for generation behind-the-meter, such as rooftop solar.

2010 – The General Assembly authorized the development of community solar gardens which are solar facilities that can be owned or subscribed to on a cooperative basis.

2010 – The Clean Air-Clean Jobs Act was enacted, which mandated the early retirement of several investor-owned utility coal-fired generation units that were replaced primarily by natural gas-fired generation and the addition of new emissions controls on several of the remaining coal-fired generation units.

2016 – The Governor most recently re-designated the Commission as the state agency tasked with Emergency Support Function #12, which covers energy, meaning the Commission assists the Colorado Division of Homeland Security and Emergency Management, as well as the Federal Emergency Management Administration, when there is an emergency. Importantly, this function is statewide, meaning it reaches beyond those utilities falling within the Commission's regulatory jurisdiction.

2017 – The Mountain West Transmission Group (MWTG) consisting of two cooperatives, four investor-owned utilities, one municipal utility, one Colorado power authority, and two divisions of a federal power administration, that together serve loads in Colorado, Wyoming, New Mexico, Arizona, Utah and Montana, announced their intent to join the Southwest Power Pool (SPP) which is a regional transmission organization and both a real-time and day-ahead market in a 14-state region of the Midwest.

2018 – A major Colorado investor-owned utility announced its withdrawal from MWTG's effort to join the SPP.

Natural Gas

The following timeline outlines significant regulation milestones related to natural gas utilities:

1983 – The General Assembly authorized the Commission to pursue civil actions against gas utilities.

1992 – The Commission was given the power to flexibly regulate gas utilities by approving or denying applications for special rate contracts. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – FERC Order 636 fully implemented previous requirements that interstate gas pipelines provide gas suppliers non-discriminatory open access to transmission facilities.

1996 – The General Assembly authorized a study to assess whether retail competition in the natural gas market would benefit the state's consumers.

1999 – The General Assembly authorized, but did not require, natural gas utilities that demonstrated, among other things, that at least five other natural gas companies could offer service to customers in their respective service territories, to engage in retail competition. If such a situation arises, the Commission was authorized to promulgate rules to implement the transition to competition and to, among other things, establish standards of conduct.

2001 – The General Assembly directed the Commission to investigate the natural gas acquisition practices of jurisdictional natural gas utilities with the aim of ensuring greater long-term price stability for consumers.

2007 – The Commission approved, for the first time, an investor-owned utility's proposal for partial revenue decoupling, thereby reducing the utility's disincentive to encourage conservation.

Steam

The following timeline outlines significant regulation milestones related to steam utilities:

1983 – The General Assembly authorized the Commission to pursue civil actions against steam utilities.

1989 – The General Assembly authorized the Commission to authorize steam utilities to negotiate contracts with specific customers within their respective service territories. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – The General Assembly directed the Commission to flexibly regulate steam utilities by approving or denying applications for special rate contracts.

2015 – The Commission approved a steam resource plan which granted Colorado's only investor-owned steam utility permission to shut down its aging Zuni plant in Denver's Sun Valley neighborhood and granted a request to expand the capacity of the thermal plant located near Denver's Union Station. The construction is scheduled to be completed in 2019.

GEOTHERMAL

In 1983, the General Assembly authorized the creation of geothermal heat suppliers, requiring such utilities to obtain operating permits from the Commission. Only one geothermal heat supplier has ever been granted an operating permit from the Commission. That permit was issued in 2012 and expired in 2017 without ever having been operationalized.

Pipeline Safety

The following timeline outlines significant regulation milestones related to gas pipeline safety:

1970 – The General Assembly specifically authorized the Commission to cooperate with other governmental agencies, including municipalities, regarding the safety of natural gas pipelines. Natural gas gathering lines, however, were exempted from this authority.

1983 – The Commission was granted the authority to pursue civil actions against pipeline operators.

1993 – The General Assembly authorized the Commission to adopt rules to enforce and administer, in cooperation with the U.S. Department of Transportation, the provisions of the federal Natural Gas Pipeline Safety Act. The rules were limited to gas pipeline safety issues and applied to all investor-owned utilities, municipal utilities, quasi-municipal utilities and master meter systems. Additionally, the exemption for natural gas gathering lines was repealed and the Commission promulgated safety standards for gathering lines in populated areas.

2003 – The Commission's jurisdiction with respect to safety rules was expanded to include all intrastate natural gas pipelines.

2007 – The Commission asserted jurisdiction over all natural gas gathering lines in the state, including those in rural areas.

Telecommunications

The following timeline outlines significant events regarding regulation of telecommunications services in Colorado:

1984 – AT&T was ordered to divest itself of its local operating companies which were organized into seven regional operating companies.

1984 – Telecommunications providers of intrastate telecommunications service were declared to be public utilities, which subjected them to regulation by the Commission.

1985 – Consumers owning pay telephone equipment and reselling local exchange and toll service using the tariff services and facilities of regulated telephone utilities and cellular radio systems were exempted from regulation as public utilities.

1987 – Article 15 of Title 40, Colorado Revised Statutes (C.R.S.), was repealed and reenacted. Reenactment created three categories of regulation. First, it included full regulation under traditional means with alternative regulation available under specified conditions. Second, it included "emerging competitive" services where various types of alternative regulatory formats were allowed for certain services. Third, it deregulated services. The services in existence at the time were placed in one of the three categories. The reenactment also articulated that competition for telecommunications services was to be encouraged and fostered, where possible. The Commission was granted the authority to deregulate services under certain conditions.

1990 – The Commission established the Low-Income Telephone Assistance Program (Lifeline program). The Lifeline program allows eligible customers to receive local telephone service at a discounted rate.

1990 – The legislature established the ability of 911 governing bodies to set local 911 surcharges up to $0.70 per subscriber landline access line per month. If the governing body determines that a surcharge in excess of $0.70 is necessary, it must apply for approval from the Commission for a higher surcharge. This authorization for a local surcharge was later changed to also apply to wireless access lines, pre-paid wireless service and Voice-over-Internet-Protocol (VoIP) service.

1992 – The Commission was given the power to implement and fund Telecommunications Relay Services for telephone users with disabilities, conforming to the federal Americans with Disabilities Act of 1990.

1993 – The Commission amended its definition of basic telecommunications service. The amended definition incorporated changes in new technology within the telecommunications industry. The amended definition includes:

- Single party line,

- Facsimile and data transmission capable of at least 2,400 bits per second,
- E-911,
- A calling area that reflects the community of interest in which the customer is located, and
- Access to toll (long-distance) services.

1995 – Colorado House Bill 95-1335 opened local exchange services to competition, created a rate cap for residential basic local exchange service, and reiterated the previous policy of encouraging competition for all regulated services while providing high quality and affordable services through an appropriate blending of traditional and non-traditional regulatory schemes.

1996 – The Telecommunications Act of 1996 (FTA) was the first significant overhaul of national telecommunications law in over 60 years. The intent of the legislation was to allow the entry of any entity into the communications market as well as to allow direct competition between and among providers. The FTA delegated to state commissions the authority over wholesale interconnection agreements between incumbent local exchange carriers and competitive local exchange carriers.

2003 – The Commission eliminated zone charges for certain customers. A zone charge is a monthly fee, in addition to the basic monthly rate, that is assessed to customers who live outside the base rate area served by a central office.[20]

2005 – The Commission deregulated intrastate toll service for all providers and began a new regulatory scheme that allows even greater pricing flexibility.

2010 – The General Assembly passed legislation setting 911 surcharges on prepaid cellular minutes at a rate of 1.4 percent of the sale of minutes at the retail point of sale, to be collected by the Colorado Department of Revenue. The funds are to be distributed to the various local 911 governing bodies of the state using a distribution formula provided by the Commission.

2013 – The Colorado legislature eliminated the Low-Income Telephone Assistance Program, with subscribers defaulting to the eligibility process and continued subsidies from the Federal Communications Commission (FCC) Lifeline Program, which is administered by the Universal Service Administrative Company.

2014 – The Commission found, pursuant to factors contained in section 40-15-207, C.R.S., that 56 wire centers were effectively competitive (effective competitive areas or "ECAs") and no longer eligible to receive state high cost funding from the Colorado High Cost Support Mechanism (CHCSM).

2014 – House Bills 14-1329, 14-1330 and 14-1331 impacted the Commission's oversight and statutory authority over telecommunications. Basic local

[20] Colorado Public Commission. *PUC Approves Elimination of Zone Charges July 30, 2003: 2003-_07-30NR_PUC-EliminatesQwestZoneCharges.pdf* . Retrieved August 30, 2018 from DORA website at https://www.colorado.gov/pacific/dora/archived-news-releases-0.

exchange services were reclassified from section 40-15-201, C.R.S., ("Part 2" regulated telecommunications services) to section 40-15-401, C.R.S., ("Part 4" exempt from regulation) with certain exceptions for geographic areas that received CHCSM support.

2014 – House Bill 14-1328 created, within the Department of Regulatory Agencies, the Broadband Deployment Board, which is charged with implementing and administering the deployment of broadband funds, sourced with funds no longer needed to support basic voice service (funding that was previously provided to geographic areas that received CHCSM funding and subsequently found to be effectively competitive).

2015 – The FCC allowed interconnected VoIP providers to obtain telephone numbers directly from the North American Numbering Plan Administrator (NANPA). As a part of the requirements, requesting companies must notify the Commission of their intent to request telephone numbers at least 30 days prior to requesting numbers from NANPA.

2016 – House Bill 16-1414 expanded the definition of voice service providers to include both wireless and VoIP. The bill also required contributions from these entities to support the Colorado Telephone Users with Disabilities Fund.

2017 – An additional transfer from the CHCSM Fund in the amount of $9.45 million was transferred to the broadband fund pursuant to Senate Bill 17-254 and section 40-15-509.5, C.R.S.

2018 – Senate Bill 18-002 required the Commission to allocate 60 percent of the yearly CHCSM contribution to broadband deployment in unserved rural areas starting in 2019. An additional 10 percent will be allocated yearly for four years from the non-rural incumbent, until 100 percent is assigned to rural broadband deployment. The Commission is prohibited from making additional ECA determinations for the purpose of CHCSM determination. By December 31, 2018, the Commission must have a plan in place to eliminate, on an exchange-area-by exchange-area basis, provider of last resort obligations consistent with the reductions in state high cost support for basic service.

2018 – The legislature passed House Bill 18-1184, requiring the Commission to work with stakeholders to provide an annual report to the legislature on the state of 911 service, including Next Generation 911 service deployment, by September 15 of each year.

Transportation

The following timeline outlines significant regulation milestones related to the transportation industry:

1885 – The General Assembly established the Office of Railroad Commissioner with the power to investigate railroad rates and charges and to recommend, but not enforce, reasonable and just rates.

1893 – The General Assembly repealed the statute creating the Office of Railroad Commissioner.

1910 – The General Assembly created the three-member Railroad Commission.

1913 – The General Assembly passed the Public Utility Act, creating the three-member Public Utilities Commission and abolishing the Railroad Commission.

1915 – The General Assembly amended the public utilities statutes to specify that motor vehicle common carriers providing services similar to those provided by railroads were subject to Commission regulation as public utilities.

1927 – The General Assembly gave the Commission full and complete jurisdiction over all motor vehicle common carriers.

1955 – The General Assembly authorized the Commission to regulate motor vehicle commercial carriers.

1969 – The General Assembly placed ash and trash motor vehicle carriers within Commission jurisdiction.

1971 – The General Assembly placed towing carriers within Commission jurisdiction.

1980 - The General Assembly removed ash and trash motor vehicle carriers from Commission jurisdiction.

1984 – The General Assembly declared carriers of household goods to fall within the scope of public interest and subject to safety and insurance requirements.

1985 – The General Assembly exempted charter/scenic bus, courier, luxury limousine, and off-road scenic charter motor vehicle carriers from regulation as public utilities but required them to register and have adequate insurance and comply with Commission safety requirements.

1986 – The General Assembly placed transportation of hazardous materials by motor vehicle within Commission jurisdiction.

1994 – Senate Bill 94-113 relaxed the market entry requirement for taxicab companies in Colorado's 11 largest counties. As a result, instead of having a regulated monopoly, taxicab companies in these counties have regulated competition. This means that permit applicants no longer had to prove that existing service was substantially inadequate. Instead, they only had to show the need for service and their fitness to provide the service. An intervener could then show that destructive competition would result and the applicant would then have to prove that additional authority would not result in destructive competition.

1995 – Federal regulation preempted state regulation of transportation utilities that carry property within state boundaries (intrastate). The Commission no longer regulated routes, rates, or services of intrastate property carriers and household movers.

2003 – The General Assembly placed intrastate movers of household goods under the jurisdiction of the Commission and made them subject to regulation. Movers were required to provide estimates and contracts, meet safety standards, and comply with insurance, bonding or self-insurance requirements.

2003 – The Highway Crossing Protection Fund, originally created in 1965 under the Highway Users Tax Fund to pay for the costs of installing, reconstructing, and improving safety signals or devices at crossings that are not covered by federal funds, was transferred to the Commission.

2003 – Non-consensual towing rates by towing carriers, for vehicles less than 10,000 pounds, fell under the jurisdiction of the Commission to prescribe minimum and maximum rates. In addition, the Commission could require financial statements or other information from carriers to determine costs associated with performing non-consensual tows.

2006 – Directors, officers, owners and general partners of household goods moving companies and the drivers for some passenger carriers (charter or scenic bus, fire crew transport, luxury limousine, off-road scenic charter, children's activity bus, and taxicab) were required to be fingerprinted for criminal history record checks.

2006 – The Single State Registration System (SSRS) and Interstate Exempt Registration (bingo stamp) programs expired and were replaced by the federal Unified Carrier Registration (UCR) program. The UCR program manages the collection and distribution of registration and financial responsibility information provided and fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies.

2008 – As a result of a sunset review recommendation, an applicant for a taxi cab operating authority no longer had to prove public need. Existing companies would have to prove that, if approved, adding an additional operating authority would harm the public.

2013 – Senate Bill 13-189 created the Moving Outreach Fund which was created to educate consumers about their rights when dealing with movers.

2014 – Colorado became the first state in the country to regulate Transportation Network Companies. They were given broad exemptions to the laws that regulate common carriers.

2014 – The restriction prohibiting the Commission from regulating the rates of nonconsensual towing of vehicles weighing in excess of 10,000 pounds was repealed (HB14-1031).

2016 – The regulation of motor carriers that transport Medicaid patients began.

2018 – Large-market taxis where deregulated to a great extent. A company providing large-market taxicab service must have at least 25 vehicles in its fleet unless it provides service in El Paso, Larimer, or Weld county. If it operates in those counties, it must have 10 vehicles in its fleet.

Water

The five water utilities currently regulated by the Commission do not serve more than 1,500 households. The Commission's regulatory oversight, in each case, resulted from a complaint brought by customers receiving potable water from the company in question.[10] Rates were already in place and in several instances the companies' proposed dramatic increases in rates "triggered" the complaint to the Commission.[11] The following timeline outlines when the five water utilities came under Commission jurisdiction:

1996 – The first water utility came under the regulatory authority of the Commission.

1999 – An additional water utility came under the regulatory authority of the Commission.

2006 – Two additional water utilities came under the regulatory authority of the Commission.

2007 – The final water utility came under the regulatory authority of the Commission.

In 2018, Senate Bill 18-134 deregulated water companies that are registered as non-profits as long as their rates, charges and terms and conditions of service are just and reasonable. The PUC retains the right to entertain a complaint of unjust or unreasonable rates, and may take remedial action.

Legal Summary

Federal Laws

The breadth and complexity of public utility regulation necessitates a network of federal laws to coordinate regulatory efforts among the states. Significant federal legislation in the realm of public utilities includes:

The **Natural Gas Pipeline Safety Act of 1968** and the **Hazardous Liquid Pipeline Safety Act of 1979** authorized the U.S. Department of Transportation's (USDOT's) Pipeline and Hazardous Material Safety Administration to regulate pipeline transportation and storage of 1) natural gases, and 2) hazardous liquids, respectively.[21]

The **Public Utility Regulatory Policies Act of 1978** (PURPA) pioneered promotion of energy conservation and fostered the development of renewable energy sources by non-utility power producers.[22]

The **Unified Carrier Registration Act of 2005** eliminated the Single State Registration System (SSRS) for motor carriers and authorized the Unified Carrier Registration System, which established standard guidelines for motor carrier registration and fees.[23]

The **Telecommunications Act of 1996** paved the way for the deregulation of telecommunications services, including local and long distance telephone, cable, and broadcast services, by allowing communications businesses to compete against each other in any market.[24]

The **Energy Policy Act of 2005** (EPACT) set forth a research and development program encompassing a broad range of topics, including energy efficiency; renewable and alternative energy sources; and modifications to all sectors of the mainstream energy industry.[25]

Colorado Laws

The Public Utilities Act of 1913 provided the foundation for current public utilities law in Colorado, creating the Commission and granting the Commission authority over public utilities. Article XXV of the Colorado Constitution, enacted in 1954, grants the General Assembly the power to designate a state agency to regulate the facilities, service and rates and charges of public utilities in the state. The Article formally delegates such authority to the Commission.

Title 40 of the Colorado Revised Statutes (C.R.S.) contains most of the laws governing the regulation of public utilities. Generally speaking, this title defines the powers and duties of the Commission; the types of utilities subject to regulation and the extent of such regulation; the obligation of the Commission to strike a balance between

[21] United States Department of Transportation. *Pipeline and Hazardous Materials Safety Administration*. Retrieved August 30, 2018, from https://www.phmsa.dot.gov/
[22] Bureau of Reclamation. *Public Utility Regulatory Policies Act of 1978*. Retrieved August 30, 2018, from https://www.usbr.gov/power/legislation/purpa.pdf
[23] Library of Congress. *THOMAS, Summary of Public Law 109-59*. Retrieved August 30, 2018, from http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00003:@@@L&summ2=m&|TOM:/bss/d109query.html
[24] Federal Communications Commission. *Telecommunications Act of 1996*. Retrieved August 30, 2018, from http://www.fcc.gov/telecom.html
[25] Library of Congress. *THOMAS, Summary of Public Law 109-58*. Retrieved August 30, 2018, from http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00006:@@@L&summ2=m&|TOM:/bss/d109query.html

protecting consumers and providing utility companies the opportunity to earn a reasonable profit; the rights and responsibilities of utility companies; and establishes standards for broad policy issues relating to topics as varied as telecommunications deregulation and renewable energy standards. Following is a summary of each article within Title 40.

Article 1: Definitions defines critical terms and establishes the jurisdiction of the Commission. Further, it establishes the rules for the issuance of securities.

Article 1.1: People Service Transportation seeks to promote availability of transportation for certain populations—including people in rural areas, the elderly, and people with disabilities—by exempting transportation companies operated by charitable or non-profit organizations from specific portions of Title 40 and establishing more relaxed regulatory criteria.

Article 2: Public Utilities Commission—Renewable Energy Standard creates the Commission and defines its administrative structure, including the qualifications, duties, and terms of the three Commissioners, the Commission director and staff. The article grants the Commission the authority to promulgate rules to administer and enforce all aspects of Title 40. The article creates the Motor Carrier Fund and the Fixed Utility Fund to pay for the regulatory activities of the Commission.

The article also lays the groundwork for the deregulation of the natural gas supply market and emphasizes the Commission's obligation to develop and use alternative (renewable) energy sources to the greatest possible extent.

Article 3: Regulation of Rates and Charges establishes one of the primary functions of the Commission: to ensure that rates are reasonable, nondiscriminatory, and commensurate with the level of service provided, yet sufficient to assure the utility a reasonable rate of return on its investment. This article authorizes the Commission to suspend rates it deems unreasonable and to modify rates after hearing.

Article 3.2: Air Quality Improvement Costs states that it is in the public interest to improve air quality. To encourage utility companies to reduce the amount of air pollutants they produce, this article allows utilities to request from the Commission, expedited recovery of costs prudently incurred to improve air quality, and authorizes the Commission to develop a means of such recovery. Further, the article establishes the Clean Air-Clean Jobs Act, which seeks to reduce air pollutants, and provides additional flexibility to the Commission to ensure the viability of utilities that enter into long-term natural gas contracts.

Article 3.5: Regulation of Rates and Charges by Municipal Utilities grants the governing body of a municipal utility the authority to adopt all necessary rates,

charges, and regulations, within the authorized electric and natural gas service areas of each municipal utility that lie outside the jurisdictional limits of the municipality.

Article 4: Service and Equipment authorizes the Commission to establish standards for the construction, use, and maintenance of safe and adequate facilities and equipment, including railroad crossings, and to promulgate rules to enforce these standards. Additionally, the Commission must promulgate rules defining the appropriate level of service that all electric, gas and water utilities must provide.

Article 5: New Construction—Extension requires public utilities to prove that existing facilities are inadequate before constructing a new facility or extending an existing facility. The article requires a public utility to obtain a certificate of public convenience and necessity, which grants a public utility the right to serve customers in a specific geographic region.

Article 6: Hearings and Investigations authorizes the Commission to conduct hearings and investigations and defines the procedures to be followed by all parties during the hearings process. The article establishes standards of conduct for staff and Commissioners, including the rules for conflict of interest and ex parte communications, and outlines the process for amendment of Commission decisions.

Article 6.5: Office of Consumer Counsel requires the creation and appointment process for the Office of Consumer Counsel (OCC) within the Department of Regulatory Agencies (DORA). The article also describes consumer counsel qualifications, creates the Utility Consumer's Board, defines the goal of the OCC as a representative of the public interest, and details provisions for interveners other than the Consumer Counsel.

Article 7: Enforcement—Penalties defines penalties the Commission may impose on public utilities that violate the law. A public utility that violates or fails to comply with any provision of Articles 1 through 7 is subject to a penalty of no more than $2,000 per offense per day. The Commission must bring an action in district court to recover these penalties. The Commission has the authority to assess fines against motor carriers directly.

Article 7.5: Civil Remedies Available to Utilities permits a public utility that incurs damages or losses due to bypassing, tampering, or unauthorized metering to bring a civil action against any person directly or indirectly responsible.

Article 8: Unclaimed Funds for Overcharges authorizes the Commission to determine how overcharges should be returned to utility customers.

Article 8.5: Unclaimed Utility Deposits creates the legislative commission on Low-Income Energy Assistance, which is charged with defraying energy costs for disadvantaged populations by collecting monies, including a portion of unclaimed utility deposits, for the Low-Income Energy Assistance Fund and distributing such monies to eligible recipients.

Article 8.7: Low-Income Energy Assistance creates a program responsible for collecting optional energy assistance contributions from utility consumers and distributing the monies to low-income energy assistance programs. Electric utilities that provide retail service to their customers are required to serve as collection agents for these programs, must allow their customers a means to contribute to the programs, and are reimbursed for the cost of collecting the contributions.

Article 9: Carriers Generally applies to transportation within the state's borders, and addresses common carriers' liability for property loss or damage, or injury to person; the duty of common carriers to exercise utmost diligence in the transportation of shipments, and the procedures railroads must follow in the event of an accident.

Article 9.5: Cooperative Electric Associations allows member-owned electric associations to elect exemption from Commission regulation. The article establishes requirements for the governance and administration of all cooperative electric associations, and defines their duties and prohibited acts. The article clarifies the service territories' relationship between such cooperatives and municipalities that operate electric utilities.

Article 10.1: Motor Carriers describes the powers of the Commission to regulate the motor carrier industry and defines exceptions to motor carrier regulations. The article further outlines the applicable motor carrier permit and certification processes and requirements for motor carriers of passengers, motor carriers of towed motor vehicles, motor carriers of household goods, and transportation network companies.

Article 10.5: Unified Carrier Registration System prohibits any entity subject to the federal Unified Carrier Registration Act from operating on any public highway in the state without first registering with the U.S. Department of Transportation and vests the Commission with the authority to administer the Unified Carrier Registration System in Colorado, and to promulgate rules to that end.

Article 11.5: Independent Contractors - Motor Carriers allows motor vehicle carriers and contract motor carriers to use independent contractors, and sets forth the provisions lease agreements may contain.

Article 15: Intrastate Telecommunications Services seeks to create a flexible regulatory environment for telecommunications services that encourages competition while assuring the public a wide availability of high-quality telecommunications services. Part 1 defines key terms, differentiates between regulated and unregulated services, outlines methods for calculation of rates and charges, and prohibits telecommunications companies from changing customers' telephone service without their consent ("slamming") and from charging customers for extra services they did not request ("cramming"). Part 2 addresses the regulation of basic emergency service. Part 2 also creates the HCSM to help fund the expansion of telephone and broadband services into remote or high-cost areas. Part 3 authorizes a more flexible regulatory treatment for emerging competitive telecommunications services, which are defined as those services subject to future deregulation. Part 4 addresses services, products and providers that are exempt from regulation generally. Part 5 directs the Commission to encourage competition and the development of alternate, interim regulatory mechanisms with the ultimate goal of implementing a fully competitive telecommunications marketplace. Part 5 also creates the Broadband Deployment Board and the Broadband Administrative Fund in order to provide universal access to broadband products and services.

Article 17: Telecommunications Relay Services for Telephone Users with Disabilities establishes the service standards for telephone relay services and creates a mechanism to fund these services.

Article 18: Rail Fixed Guideway System Safety Oversight authorizes the Commission to create an oversight program for rail fixed guideway systems not subject to federal regulation, and to promulgate rules governing these systems.

Article 20: Organization and Government addresses the governance and administration of railroad corporations.

Article 21: General Offices sets forth requirements for the headquarters of domestic railroads.

Article 22: Consolidation sets forth the circumstances under which a railroad company may consolidate its capital stock, franchises, and property into and with the capital stock, franchises, and property of any other railroad company.

Article 23: Reorganization empowers railroad companies to reorganize.

Article 24: Electric and Street Railroads determines right-of-way issues and requires railroads to keep bridges and crossings in good repair.

Article 27: Killing Stock – Fencing clarifies the rights and responsibilities of both landowners and railroad companies in preventing the accidental killing of livestock on railroad tracks.

Article 29: Safety Appliances sets forth the standards for railroad safety devices and the penalties for failure to meet those standards.

Article 30: Fire Guards requires railroad companies to maintain fire guards alongside all tracks, sets forth the penalties for failure to do so, and establishes the liability of the railroad company in the event of a fire.

Article 31: Overcharges establishes the method by which overcharges are refunded to customers.

Article 32: Employees permits railroads to employ peace officers on trains and defines the scope of such peace officers' duties.

Article 33: Damage to Employees holds a railroad corporation liable for the injury of its employees if such injury occurred due to the negligence of the corporation's officers, agents, or employees, or due to any defect or insufficiency caused by the corporation's negligence.

Article 40—Geothermal Heat Suppliers grants the Commission authority over geothermal heat suppliers and authorizes the Commission to establish a system of operating permits for geothermal heat suppliers, and grants the Commission authority the enforce compliance with this article.

Colorado Rules

The **Rules and Regulations** (Rules) are divided into eight parts.

Part 1: Rules of Practice and Procedure provides guidance on all aspects of the Commission's administrative activities; sets forth instructions for the treatment of confidential and personal information in Commission proceedings; prohibits certain communications and establishes disclosure requirements for others; and delineates the procedure for all proceedings before the Commission.

Parts 2 through 8 address the following for each specific industry area: types of authorities requiring application to the Commission and the rights and obligations that come with such authorities; the reporting process for "major events" (e.g., outages); standards for the maintenance of facilities and equipment and quality of service; required information that companies must display on customers' bills; and methodology for calculating rates and charges.

In addition to this information, the Rules address the following notable issues:

Part 2: Rules Regulating Telecommunications Providers, Services, and Products identifies the default forms of regulation for each service and includes guidance for the administration of the HCSM.

Part 3: Rules Regulating Electric Utilities outlines the resource planning process; provides guidance for utilities in implementing the renewable energy standard as well as the Low-Income Energy Assistance Act.

Part 4: Rules Regulating Gas Utilities and Pipeline Operators introduces the gas cost adjustment, which allows utilities an expedited process for changing rates to reflect increases or decreases in gas commodity and upstream costs.

Part 5: Rules Regulating Water Utilities lays out the five options available to small, privately-owned water companies seeking simplified regulatory treatment.

Part 6: Rules Regulating Transportation by Motor Vehicle establishes the rules and any applicable permit requirements for regulated intrastate carriers, limited regulation carriers, unified carriers, towing carriers, movers, and transportation network companies.

Part 7: Rules Regulating Railroads, Rail Fixed Guideways, Transportation By Rail, and Rail Crossings provides extensive guidance on the design and construction of safety crossings and warning devices and explains cost-allocation methodology; and compels every transit company to develop a system safety program plan.

Part 8: Rules Regulating Steam Utilities addresses matters relating to jurisdictional steam utilities.

Program Description and Administration

Article XXV of the Colorado Constitution creates the Public Utilities Commission (Commission) and vests it with the authority to regulate public utilities. Title 40, Colorado Revised Statutes (C.R.S.), places the Commission within the Department of Regulatory Agencies (DORA) and establishes the agency's structure, jurisdiction, and procedures.

To fulfill its mission, the Commission performs both quasi-judicial functions, such as presiding over contested matters and assuring due process for all parties, and quasi-legislative functions, such as promulgating rules. Since almost all Colorado citizens are also utility customers, the Commission has formidable reach.

"Fixed utilities" are utilities that do not move: gas, electrical, telecommunications, steam, and water. Currently the Commission has full regulatory authority over:

- 400 local exchange telecommunications service providers[26]
- 2 investor-owned electric utilities
- 4 investor-owned natural gas distribution companies
- 2 investor-owned propane distribution companies
- 5 investor-owned water utilities
- 1 investor-owned steam utility

The Commission has partial regulatory oversight over:

- 18 municipal utilities
- 1 cooperative electric association - regulated
- 25 cooperative electric associations - unregulated

The Commission has jurisdiction over intrastate pipelines, including approximately:[27]

- 54,000 miles of gas distribution lines
- 3,200 miles of gas transmission lines
- 1,000 miles of regulated gas gathering lines

The Commission has safety jurisdiction over natural gas pipeline operators comprised of:

- 4 private gas distribution systems
- 9 municipal gas distribution systems

[26] The Commission has oversight of approximately 400 telecommunications providers in Colorado, which includes rural and non-rural incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers/toll resellers and wireless carriers. Oversight varies among the type of carriers and services and includes but is not limited to certificates of convenience and public necessity, wholesale interconnection, basic emergency service, lifeline certification, telecommunication relay service voice and broadband high cost service mechanism administration and statewide numbering administration.

[27] Colorado Department of Regulatory Agencies. Public Utilities Commission. *Pipeline Safety Program.* Retrieved October 30, 2017, from https://www.colorado.gov/pacific/dora/gaspipelines

- 17 master metered gas distribution systems
- 6 liquid petroleum distribution systems
- 17 private gas transmission systems
- 8 private gas gathering systems

The Commission has full regulatory jurisdiction, including rates and schedules, over the following transportation carriers:

- 168 common carriers (including taxi, shuttles, and sightseeing carriers)
- 103 contract carriers

The Commission has safety jurisdiction over 3,467 additional transportation carriers.

The Commission itself consists of three salaried, full-time Commissioners whom the Governor appoints with the consent of the Senate, designating one Commissioner as chair. Commissioners serve staggered, four-year terms and are prohibited from holding any outside employment during this time. Commissioners must be qualified electors and no more than two of them may be affiliated with the same political party.[28]

The Commission meets at least weekly. At the Commissioners' weekly meetings, the Commission conducts routine business, such as referring docketed items to administrative law judges (ALJs) for resolution; approving interconnection agreements and railroad safety crossings; and considering uncontested applications, as well as applications to discontinue service, transfer assets, or make changes to existing tariffs. Commissioners may also, at their discretion, schedule "deliberative meetings" for more in-depth discussion of issues that would normally be handled at a weekly meeting. Commission meetings are open to the public and must be given full and timely notice pursuant to Colorado's open meetings law.[23] Since March 2003, the Commission has broadcasted audio and video of its meetings live over the internet; it started archiving the audio broadcasts on its website in April 2017.

The Commission may host informational sessions on emerging topics related to public utilities and hold town hall meetings around the state to solicit feedback from utility customers.

The staff of the Commission is responsible for carrying out the agency's regulatory activities, which include evaluating applications, issuing permits, conducting financial and engineering analyses, performing inspections and audits, resolving complaints between consumers and regulated utilities, and enforcing compliance with Commission statutes and rules.

[28] § 40-2-101(1), C.R.S.

Funding

The Commission is cash funded: the regulated utilities themselves pay annual fees to finance the Commission's regulatory activities.

Every year, fixed utilities must report their gross intrastate annual operating revenues to the Department of Revenue (DOR).[29] The Executive Director of DOR computes the fees each utility must pay to cover the administrative costs associated with regulation based on a percentage of their reported revenues.[30] DOR cannot require a telecommunications company to pay more than 0.2 percent of its gross intrastate utility operating revenues and cannot require any other utility to pay more than 0.25 percent. Each utility pays the total fee to the DOR in equal quarterly installments.[31]

The State Treasurer allocates the fees collected by DOR. Three percent of the fees are split between two funds: a portion of the three percent is directed to rail fixed guideway system safety oversight, as needed to draw down matching federal funds, and the remaining dollars are directed to a highway-rail crossing signalization fund. Of the remaining 97 percent of the fees collected by DOR, the State Treasurer credits the fees paid by telecommunications companies to the Telecommunications Utility Fund, and the fees paid by other public utilities to the Fixed Utilities Fund.[32]

The process is simpler for motor carriers. All motor carriers, except Household Goods Movers and Unified Carrier Registration System (UCR) registrants, operate under a permit or certificate issued by the Commission. Each must pay a $45 annual identification fee per vehicle, which is credited to the Motor Carrier Fund.

At each regular session, the General Assembly determines the amount of money needed to finance the Commission's administrative expenses for the regulation of motor carriers and fixed utilities and authorizes an appropriation from the appropriate fund for that purpose.[33]

Table 1 shows the total program expenditures and staffing levels for the three fiscal years indicated.

Table 1
Total Program Expenditures

	FY 14-15	FY 15-16	FY 16-17
Total Program Expenditures	$ 15,522,166	$ 15,190,224	$ 14,630,408
Total Full-Time Equivalent (FTE) Employees	89	81.9	84

[29] § 40-2-111, C.R.S
[30] §40-2-112(1), C.R.S.
[31] § 40-2-113, C.R.S.
[32] § 40-2-114, C.R.S.
[33] § 40-2-110, C.R.S.

While typically a sunset report includes five years of data, the Total Expenditure information for fiscal years 12-13 and 13-14 was tracked in an accounting system that is now obsolete, so is unavailable.

The Executive Director of DORA appoints a Commission Director (Director), charged with managing the operations of the Commission and implementing its policies and decisions,[34] to oversee the agency's allocated employees. Due to the scope and complexity of the Commission's regulatory activities, the Director employs a wide range of professionals with specific expertise, including engineers, economists, and financial analysts. The Director also employs ALJs to help fulfill the Commission's quasi-judicial role.

The office of the Director also includes a program assistant and an executive assistant, for a total of 3.0 full-time equivalent (FTE) employees. Three deputy directors and the Chief ALJ, who report to the Director, oversee the following sections:

- **Safety and Operations.** This section includes the following units:
    - The **Transportation** unit (13.0 FTE) regulates the affordability and availability of motor carriers transporting passengers for hire. The unit conducts inspections, ensures rates and service meet acceptable standards, and issues permits.
    - The **Rail and Transit** unit (5.0 FTE) is responsible for regulatory activities relating to rail utilities. This unit conducts on-site safety inspections, accident investigations, and audits.
    - The **Gas Pipeline Safety** unit (5.0 FTE) ensures the safety of gas pipelines, by conducting gas pipeline safety inspections and accident investigations.
    - The **Operations** unit (3.0 FTE) addresses system requirements and provides fund administration, budgeting, and financial oversight.
- **Fixed Utilities.** This section includes the following units:
    - The **Telecommunications** unit (7.0 FTE) is responsible for retail and wholesale telecommunications regulatory activities, including evaluating rates and conducting financial and engineering analyses. The Telecommunications unit also administers Telecom Relay Service, the Colorado High Cost Support Mechanism, the 911 Taskforce and statewide numbering.

[34] § 40-2-103(1), C.R.S.

- The **Energy** unit (4.0 FTE) is responsible for regulatory activities relating to electric, gas, and steam utilities. Its responsibilities include conducting gas volume and compliance audits, producing energy supply and demand forecasts, and ensuring rates and service meet acceptable standards.
- The **Economics** unit (11.0 FTE) performs economic analysis for all regulated utilities.

- **Policy and External Affairs.** This section includes the following units:

  - The **Research and Emerging Issues** unit (4.0 FTE) works directly with Commissioners, conducting research on topics related to utility regulation.
  - The **Commission Advisors** (8.0 FTE) provide recommendations, policy analysis, and technical training to Commissioners and ALJs.
  - The **External Affairs** unit (5.0 FTE) resolves complaints between customers and regulated entities and informs the public about Commission decisions and ratepayer issues through publications, an agency spokesperson and community outreach.
  - The **Administrative Services** unit (8.0 FTE) is responsible for purchasing, central records control, business system administration, personnel, and administrative support.
  - **Administrative Hearings.** This section (5.0 FTE) consists of ALJs and certified court reporters. The section is responsible for conducting hearings and issuing recommended decisions.

Because of the sophisticated technical knowledge many regulatory activities require, the Commission's decision-makers—the Commissioners and ALJs—rely on staff subject matter experts—such as engineers, economists, and financial analysts—for guidance in adjudicated proceedings. It would be improper for a staff member who drafted a formal complaint against a utility to provide information affecting the complaint's disposition to the decision-makers. To address this potential conflict of interest, an important distinction is made between trial staff and advisory staff in contested proceedings:

- **Trial staff** advocates for specific positions in litigated proceedings. Trial staff is prohibited from advising decision-makers on issues relevant to that proceeding.

- **Advisory staff** provides subject-matter expertise, technical advice, and options to decision-makers.

The Director designates which staff members will serve as trial and advisory staff.[35]

[35] 4 CCR 723-1-1007 (a), Public Utilities Commission Rules.

Formal Proceedings

A formal adjudication before the Commission is called a proceeding. Each proceeding —which can be related to an application or petition, formal complaint, advice letter/tariff filing, or rulemaking—is assigned a unique number that it retains from inception to resolution. This allows staff to keep track of responses and testimony for complex matters that may stretch over a period of months. There may be more than one decision for a single proceeding and often there are a number of related decisions for a specific proceeding prior to it being finally closed. These final written decisions made by Commissioners and ALJs form the core of the agency's work.

Table 2 shows the number of decisions issued by Commissioners and ALJs over the five fiscal years indicated.

Table 2
Commission Decisions

Category	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Commissioners	673	705	755	814	664
ALJs	860	806	654	524	451
Total	**1,533**	**1,511**	**1,409**	**1,338**	**1,115**

Typically, the Commission refers adjudicatory matters to ALJs for initial review and analysis, although it may elect to hear a matter itself.[36] The ALJ then issues a recommended decision, which he or she transmits to the Commission. Upon review, the Commission may adopt, modify, or reject the findings of fact or conclusions of the recommended decision.[37]

Hearings are on-the-record, contested proceedings that are held before the Commission or an ALJ. Hearings are conducted in compliance with Colorado Rules of Civil Procedure, section 40-6-101, C.R.S., *et seq.*, and Part 1 of the Commission's Rules and Regulations. All hearings are recorded by a court reporter. In the event of an appeal or exceptions filed to a recommended decision, the requesting party must order the appropriate transcripts, which become part of the record.

Rulemaking hearings are a critical function of the Commission. The Commission is charged with promulgating rules to enforce all aspects of Title 40, C.R.S. Changes in federal or state laws, evolving perspectives on energy policy, technological advances, and a multitude of other issues can precipitate a rulemaking proceeding.

[36] § 40-6-101(2)(b), C.R.S.
[37] § 40-6-109(2), C.R.S.

Table 3 shows, for the five fiscal years indicated, the number of rulemaking hearings held for each industry area.

Table 3
Rulemaking Hearings by Industry

Category	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Natural Gas	0	0	0	0	0
Electric	1	2	1	1	0
Water	0	0	0	0	0
Telecommunications	2	1	3	3	0
Transportation	1	2	4	1	0
Electric/Gas	0	1	0	0	1
Railroad	0	0	0	0	2
Practice & Procedure	0	1	1	0	0
Gas Pipeline Safety	1	0	0	0	0
Total	**5**	**7**	**9**	**5**	**3**

The increase in transportation rulemakings in fiscal year 14-15 was primarily due to the passage of Senate Bill 14-125, which created a regulatory framework for transportation network companies (TNCs). The Commission conducted rulemaking hearings to put temporary, then permanent, rules in place, and also made corresponding changes to the rules governing taxis, which compete with TNCs.

Rate cases may occur when a utility seeks Commission approval to change the rates its customers pay for their utility service. The process begins at least 30 days before the effective date of the proposed rate change, when the utility files an advice letter (request) and the proposed new tariffs (price list with terms and conditions) with the Commission.[38] Typically, the utility is requesting to increase its revenues because of an earnings shortfall. A key principle of utility regulation is that because utilities provide a vital service to the public, they are entitled to a certain rate of return on equity. The Commission is responsible for assuring that utilities have the opportunity to earn a reasonable rate of return, while at the same time ensuring that rates are "just and reasonable" for customers.[39]

If the Commission finds the rates acceptable, they are allowed to go into effect by operation of law after a hearing. If the Commission determines that the new rates are in any way unjust, unreasonable, or discriminatory, or that they are insufficient, the Commission determines what the appropriate rates should be.[40]

Large rate cases are typically split into two phases. During Phase 1, the Commission determines the overall total dollar amount the utility is entitled to recover. During Phase 2, the utility proposes how much to increase the rates for the various classes of

[38] § 40-3-104(1)(a), C.R.S.
[39] § 40-3-101(1), C.R.S.
[40] § 40-3-111(1), C.R.S.

customers—e.g., residential, commercial, and agricultural—in order to recover the Commission-approved overall revenue level determined in Phase 1.

Because of the sweeping impact of increases to utility rates, rate cases typically generate a great deal of interest. Individual customers can provide feedback during public comment hearings, and consumer groups and professional associations may elect to be represented by counsel and participate in the formal hearing as parties.

Table 4 shows the number of rate cases held in the five fiscal years indicated.

Table 4
Rate Case Activity

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Fixed Utilities					
Rate and price changes filed	519	365	249	222	191
Rates suspended and cases heard	22	13	10	3	2
Money saved consumers	$71,274,373	$67,059,244	$205,057,386	$180,133,143	$49,127,065
Transportation					
Rate and price changes filed	90	99	85	116	104
Rates suspended and cases heard	0	1	1	0	0

The figures in the "Money Saved Consumers" row reflect the projected difference between the rates filed with the Commission and the rates that were ultimately approved.

Rate filings for fixed utilities decreased steadily over the five-year review period, largely due to the deregulation of retail telecommunications and a rule revision that lifted the requirement that telecommunications providers have tariffs on file.

Compared with the total number of rates filed with the Commission, the number of rate changes suspended and set for hearing is very low. This just means that most rates filed with the Commission are not contested by the Commission staff or any other party. Uncontested rates are simply allowed to go into effect.

Licensing

In General

One of the primary functions of the Commission is to authorize companies to provide service as public utilities. Such authority is granted via one of the following documents.

- Companies seeking to provide gas, electric, water, or regulated telecommunications services (pursuant to Part 2 of Article 15 of Title 40, C.R.S.) must first secure a Commission order stating the present or future public convenience and necessity requiring such service. This order, a **certificate of public convenience and necessity** (CPCN), grants a company the right to provide specific services to customers in a defined geographical region.

- To remove barriers to market entry for telecommunications companies, the Commission created a simplified application process for entities seeking to provide emerging competitive telecommunications services pursuant to Part 3 of Article 15 of Title 40, C.R.S. These "Part 3" applicants apply for a **letter of registration** (LOR)[41] instead of a CPCN. Because the Commission considers emerging competitive services less essential than basic local interchange services, the LOR requires less documentation; consequently the licensing process is faster and less expensive. While a CPCN for local exchange services correlates to a specific service territory as defined by the calling areas and exchange maps each provider files, the Commission grants LORs on a statewide basis.

- Motor carriers seeking to operate as common carriers[42]—meaning those intending to provide transportation indiscriminately to all customers, such as taxicabs—must apply for a **certificate of public convenience and necessity** (CPCN),[43] which is defined as a CPCN. Those seeking to operate as contract carriers—for example, someone wishing to operate an employee shuttle bus for a certain company—apply for a **contract carrier permit**.[44]

Because the Gas Pipeline Safety program is unique, it is discussed in a separate section below.

In addition to the request for initial authority to provide utility service, companies must apply to the Commission for a variety of other reasons. These reasons vary considerably across each industry, but typical applications for fixed utilities include those to amend or transfer a CPCN or LOR; to change the boundaries of a service area; to implement a change in tariffs outside the timeline dictated by statute; to

[41] 4 CCR § 723-2, 2001(uu), Public Utilities Commission Rules.
[42] § 40-1-102(3)(a), C.R.S.
[43] § 40-10.1-101(2), C.R.S.
[44] § 40-10.1-101(6), C.R.S, and 4 CCR § 723-6 6001(b), Public Utilities Commission Rules.

change, extend, or discontinue any service or facility; to issue securities for the purpose of funding a long-term capital project; and to approve a refund plan or resource plan. Typical applications for contract and common carriers include those for a temporary, emergency, or seasonal authority; and to suspend or abandon a CPCN.

Most applications submitted by fixed utilities and motor carriers follow essentially the same process.

1. **Entity files an application.** Applicants file required documentation with the Commission either via a legal pleading or using forms provided by the Commission. The rules for each utility type specify the required documentation.[45]

2. **Application is logged and posted.** Intake staff logs the application, assigns it a proceeding number, and processes it through the Commission's E-filings System. The required notice period varies depending on the type of application, but is typically 15 to 30 days. Securities filings, considered business-critical because of potential fluctuation in interest rates, are placed on a particularly accelerated time schedule: the Commission must issue a decision on the application within 30 days of receipt.[46]

3. **During the notice period, interested parties apply for intervention.** An intervention occurs when a person or entity with an interest in the outcome of the proceeding seeks to become part of a docketed matter. There are two types of interventions:

    a. **Interventions as of right** occur when a party has a legally protected right that might be affected by the proceeding.[47] Commission staff can intervene by right in any proceeding.[48] The Office of Consumer Counsel (OCC) and the Colorado Energy Office can intervene by right in energy proceedings.
    b. Requests for **permissive interventions** must be evaluated by the Commission on a case-by-case basis and may be granted or denied.[49]

4. **Application is assigned to an analyst with the appropriate expertise.** Commission staff includes individuals with a broad range of professional and technical expertise, including engineers, network and information technology specialists, economists, accountants, and financial analysts.

5. **Analyst determines whether application is complete.** If, while reviewing the application, the analyst finds deficiencies, the analyst sends a letter to the

[45] 4 CCR § 723-2, 2002(b), Telecommunications; 3002(b), Electric; 4002 (b), Gas; 5002(b) Water; 6302(a), Common and Contract Carriers; 7002(b), Rail; Public Utilities Commission Rules.
[46] § 40-1-104(5), C.R.S.
[47] 4 CCR § 723-1-1401(b), Public Utilities Commission Rules.
[48] 4 CCR § 723-1-1401(d), Public Utilities Commission Rules.
[49] 4 CCR § 723-1-1401(c), Public Utilities Commission Rules.

applicant giving a timeframe for correction of the deficiencies. If the applicant does not cure the deficiencies within the specified timeframe, the analyst skips to Step 7 below, with the recommendation that the application be dismissed as incomplete.

6. **Analyst evaluates the application on its merits.** Once the application is complete, the analyst determines whether the entity has the managerial, technical and financial resources to support the authority being applied for. The applicant must also demonstrate there is a public need for the service. A complex application might be reviewed by several analysts.

7. **Analyst develops a recommendation for the Commissioners.** If no substantive concerns remain after analysis of the application and any supplemental information provided by the filing party, and after review of any pleadings by other parties, the analyst may draft an order consistent with his or her recommendation. The analyst provides this draft order along with the analyst's recommendation to the Commissioners and their counsel for discussion at their weekly meeting. However, if the analyst has substantive concerns about the application, he or she notifies Commission advisory staff of intent to intervene, then works closely with the Attorney General's Office to develop the rationale for the intervention. In this situation, an advisory staff member assumes responsibility for advising the Commissioners on the application.

8. **Commissioners decide on the application at a weekly meeting**. The analyst or the advisory staff member shares his or her recommendation and draft order with the Commissioners during their weekly meeting.

    a. **If an application is complete and uncontested**, the Commission may waive the hearings process and adopt an order issuing the authority at its weekly business meeting.
    b. **If the application is contested and the Commission determines a hearing is necessary**, then the Commission will issue a decision setting the matter for hearing. The applicant and all intervening parties including Commission staff may present testimony and have the right to cross-examine witnesses. In high-profile cases or those addressing broad policy issues, the Commission may elect to preside over the hearing. In all other cases, the Commission will refer the matter to an ALJ. In referred cases, the ALJ will issue a recommended decision, which the Commission may affirm, amend, or reject. If the Commission takes no affirmative action on a recommended decision, it will become a Commission decision by operation of law.

9. **The Commission adopts an order granting or denying the authority.** The order may include a formal CPCN or it may simply grant the utility the authority to do something. The order lays out any terms and conditions of the authority (e.g., applicant must provide tariffs or proof of insurance by a

specified date). Staff will verify that the terms and conditions of the order have been met.

Table 5 shows the number and type of applications the Commission evaluated over the five fiscal years indicated.

Table 5
Applications Filed with the Commission

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Fixed Utilities					
General applications processed	131	114	134	102	75
Security filings	3	0	5	4	1
Filings on less than statutory notice	28	32	24	25	25
Interconnection filings	12	12	12	15	9
Total Fixed Utilities	**174**	**158**	**175**	**146**	**110**
Transportation					
Applications for common or contract carrier	96	70	66	71	69
Applications for railroad crossings	46	75	63	43	52
Total Transportation	**142**	**145**	**129**	**114**	**121**
Grand Total	**316**	**303**	**304**	**260**	**231**

Though the number of applications in each industry area fluctuated somewhat from year to year, the overall total of applications filed remained remarkably stable.

The following sections discuss in more detail the types of applications handled by the transportation section, and provide an overview of the Gas Pipeline Safety program, which is unique.

Transportation

Motor Carriers

The Commission grants operating authority common and contract carriers. It issues over-the-counter permits to limited regulation carriers, towing carriers, household goods carriers, TNCs, hazardous materials carriers, and nuclear materials carriers. To qualify, a carrier must have any required surety and safety prerequisites in place. There are several variables that determine the level of surety required. These variables include the type of cargo, human or otherwise, the size of vehicle(s), and the amount of cargo. The required safety provisions cover both the safety of the vehicle(s) and the drivers. Both vehicle and driver must be verifiably deemed road worthy and safe to operate.

Table 6 shows the number of new authorities to operate issued by the Commission for the fiscal years listed. This table does not include all active authorities.

Table 6
New Motor Carrier Operating Authorities Issued

Certificate/Permit Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Common Carrier (taxi/shuttle/sightseeing)	22	18	27	30	26
Contract Carrier	29	37	23	84	22
Limited Regulation Luxury Limousine	232	436	284	250	124
Limited Regulation Medicaid Client Transport	0	0	0	0	59
Limited Regulation Children's Activity Bus	2	2	1	12	10
Limited Regulation Charter Scenic Bus	2	5	8	6	5
Limited Regulation Off-Road Scenic Charter	6	4	1	4	2
Limited Regulation Fire Crew Transport	0	0	0	0	0
Transportation Network Company	0	0	2	0	1
Towing	119	99	98	125	126
Household Goods Mover	38	47	23	32	37
Hazardous Material	125	161	181	150	140
Nuclear Material	1	0	2	1	1
Total	**576**	**809**	**650**	**694**	**553**

According to Commission staff, the fluctuation in the number of operating authorities varies due to marketplace dynamics and demand. Most notably, the number of Limited Regulation Luxury Limousines saw more than a 100 percent increase followed by a total decrease of 47 percent from the beginning of the period examined for this sunset review to the end.

Table 7 shows the number of active certificates/permits issued by the Commission to operate a motor carrier in Colorado for the years listed.

Table 7
Number of Active Authorities 2018

Certificate/Permit Type	
Common Carrier (taxi/shuttle/sightseeing)	168
Contract Carrier	103
Limited Regulation Luxury Limousine	677
Limited Regulation Medicaid Client Transport	104
Limited Regulation Children's Activity Bus	17
Limited Regulation Charter Scenic Bus	30
Limited Regulation Off-Road Scenic Charter	21
Limited Regulation Fire Crew Transport	0
Transportation Network Company (TNC)	3
Towing	648
Household Goods Mover (HHG)	204
Hazardous Material	1,752
Nuclear Material	11
Total	**3,738**

RAIL

Where federal regulation of rail systems halts, the Commission steps in to fill the void. Generally, state-level rail regulation concerns the intersection of rail rights-of-way and public roads relating to safety. However, it also has sole authority over the one rail system in the state that is not regulated by the federal government, the Platte Valley Trolley.

When an entity wants to construct a crossing of one of the 26 railroads in Colorado, it must apply to the Commission with all required engineering and safety specifications. The Commission then provides guidance on the design. Table 8 shows the number of railroad intersection applications filed with the Commission during the fiscal years indicated.

Table 8
Rail Crossing Applications

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Applications filed	102	81	65	51	60

The Commission performs inspections when there is an issue concerning the safety of the intersection. Inspection data are included in the "Inspections" section below.

Pipeline Safety

The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) in the U.S. Department of Transportation annually certifies each state agency that enforces pipeline safety within its state lines. The gas pipeline safety unit under the Commission has jurisdiction over intrastate gas pipelines. The unit is primarily concerned with whether the pipeline is designed, operated and maintained in a manner that protects public safety.

The gas pipeline safety unit accomplishes this by inspecting pipeline operators. It is primarily concerned with:

- Design, construction and repair;
- Operations, such as procedures, processes and personnel qualifications;
- Maintenance;
- Risk management programs; and
- Drug and alcohol programs.

The Commission staff also provides training to pipeline operators.

PHMSA requires the gas pipeline safety unit to be staffed with trained inspectors, and it requires the inspectors to attend multiple training sessions directed by the federal agency prior to being allowed to lead any inspections.

Federal law requires each pipeline operator to obtain a pipeline operator identification number from PHMSA. PHMSA notifies the Commission of any new pipeline operators and changes in pipeline operator ownership, and the Commission works with the Colorado Oil and Gas Conservation Commission (COGCC), the Colorado Department of Labor and Employment's Division of Oil and Public Safety (OPS) and local governments to determine which pipeline operators fall within its jurisdiction.

Table 9 provides the total number of pipeline operators under the jurisdiction of the Commission over a five-year period.

Table 9
Pipeline Operators

Calendar Year	Operators
2013	48
2014	51
2015	64
2016	63
2017	66

The number of pipeline operators varies from year to year. The increase in pipeline operators in 2015 is attributed to an increase in natural gas production in the Denver-

Julesburg Basin and the multiple production basins on the Western Slope. Also, larger gathering companies began selling existing assets to smaller companies.

The Commission regulates gas distribution systems, transmission systems and gathering systems.

Gas distribution pipelines distribute gas to homes and businesses. Gas transmission pipelines transport gas thousands of miles across the country from processing facilities, and gas gathering pipelines transport raw natural gas from production wells to transmission pipelines. [50]

Table 10 demonstrates the type of natural gas pipeline operators regulated by the Commission in 2017.

Table 10
Type of Natural Gas Pipeline Operators in Calendar Year 2017

Type	Number
Private Gas Distribution Systems	4
Municipal Gas Distribution Systems	9
Master Metered Gas Distribution Systems	17
Liquid Petroleum Distribution Systems	6
Private Gas Transmission Systems	17
Private Gas Gathering Systems	8

Inspections and Audits

The transportation section and the gas pipeline safety unit conduct audits and inspections.

Transportation

RAIL

There are more than 2,000 rail crossings in Colorado. The Commission performs inspections when there is an issue concerning the safety of the intersection.

[50] Pipeline 101. *Natural Gas Pipelines*. Retrieved August 29, 2018, from http://www.pipeline101.com/why-do-we-need-pipelines/natural-gas-pipelines

Table 11 lists the inspections conducted by the Commission during the fiscal years indicated.

Table 11
Railroad Safety and Compliance Inspections

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Railroad					
Inspections	82	116	339	144	159
Rail Fixed Guideway System					
Inspections	5	5	8	2	4
Audits	12	18	18	18	6

An audit is the review and analysis of records. There are several specific items that are audited over a three-year period. A portion of the audit process is completed every six months. An inspection is a physical observation of equipment, facilities, rolling stock, operations, or records to obtain facts and information. Staff performs the inspections separate from the audits to review trends and verify compliance.

MOTOR CARRIER

The Commission conducts inspections to help ensure that vehicles are roadworthy and safe. Table 12 lists the number of inspections performed on vehicles during the period examined for this sunset review.

Table 12
Motor Carrier and Vehicle Inspection Statistics

Fiscal Year	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Motor Vehicle Safety Inspections	1,033	1,556	1,252	821	550
Safety & Compliance Reviews	244	445	337	189	114

Pipeline Safety

The gas pipeline safety unit performs several activities necessary to ensure that gas pipelines meet the minimum safety standards defined by the federal government:

- Standard Inspections – Involve the procedures and processes that a pipeline operator must develop and use in the routine operations and maintenance of its pipeline system.

- Construction Inspections – Involve the design, construction and testing of a pipeline system.

- Integrity Management Inspections – Involve the integration of many different sources of information to identify and rank threats to pipelines, determine the likelihood of pipeline failure and implement measures to mitigate or reduce

the possibility of a failure that impacts public safety. The program audits the entirety of these plans' development and implementation.

The Commission staff also investigates pipeline incidents that are reported to the Commission from a variety of sources, including the pipeline operator's direct reports to the Commission, the National Response Center (NRC), other pipeline officials such as COGCC and OPS inspectors, local emergency responders and media reports. Reportable incidents include corrosion failure, incorrect operation, material failure of a pipe or weld, equipment failure, natural force damage and other damage and incidents.

The Commission staff also conducts programmatic inspections of a pipeline operator's damage prevention program and determines whether it is adequate.

Table 13 illustrates the number and type of gas pipeline safety activities over a five-year period.

Table 13
Pipeline Safety Activities by Calendar Year

Type	CY 2013	CY 2014	CY 2015	CY 2016	CY 2017
Standard Inspections	72	67	65	91	90
Construction Inspections	106	151	70	85	90
Pipeline Operator Training	8	11	9	8	21
Integrity Management Inspections	3	5	62	32	16
Qualification Inspections	18	29	19	6	5
Incident Investigations	19	8	14	8	12
Damage Prevention Activities	15	11	33	13	26
Follow-up Compliance Inspections	44	21	7	2	10
Total	**285**	**303**	**279**	**245**	**270**

The Commission staff follows an inspection planning cycle. Pipeline operators who have compliance problems or have new programmatic activity are inspected more frequently than other pipeline operators. Incident investigations, damage prevention activities and follow-up compliance inspections are performed when necessary.

Table 14 charts the pipeline safety violations identified by inspectors over a five-year period.

Table 14
Pipeline Safety Violations by Calendar Year

Type	CY 2013	CY 2014	CY 2015	CY 2016	CY 2017
Inadequate or Missing Pipeline Records	46	88	222	31	25
Inadequate, Unperformed or Unqualified Pipeline Activity	2	3	2	1	3
Inadequate Pipeline Facility	1	1	6	2	1
Total	**49**	**92**	**230**	**34**	**29**

The increase in violations in 2015 was due to a comprehensive audit of all master meter operators.

A pipeline operator may also be cited for "inadequate pipeline activities," which include any activity that is either not performed as scheduled or not performed as procedurally-described by the pipeline operator.

An "inadequate pipeline facility" is a portion of a regulated pipeline that:

- Has not been designed, constructed or tested in a manner that can be safely operated; or
- Has not been operated and maintained in a manner that allows it to continue to be safely operated.

Complaints and Enforcement

The vast majority of complaints against regulated utilities are handled via the "informal complaint" process set forth in Rule 1301. This streamlined grievance resolution process is intended to avoid the costs of litigation.

Before contacting the Commission with a complaint, consumers are expected to make a reasonable effort to resolve billing or service issues directly with the utility. When those efforts prove unsatisfactory, consumers contact the Commission's External Affairs unit by mail, fax, telephone, email, or walk-in, and an information specialist will initiate the informal complaint process. The information specialist evaluates the matter to ensure it is within Commission's jurisdiction. If the matter is not within Commission jurisdiction, it is referred to the appropriate agency. If the matter relates to a proceeding like a formal complaint or rulemaking hearing, it is referred to that proceeding as a public comment. If the matter relates to an issue the specialist can address without referring to the utility, it is coded as an "informational" request rather than a complaint. If the matter meets the criteria of a jurisdictional complaint, the specialist forwards the complaint to the utility, giving it 14 days to respond. The specialist then works as an intermediary between the consumer and the utility,

typically resolving the issue within 15 days. When closing an informal complaint, the specialist documents the estimated dollars saved the customer (if any).

Table 15 shows the number of calls or inquiries received by the External Affairs unit, the number that were coded as complaints and resolved via the informal complaint process, and the estimated money saved consumers for the five fiscal years indicated.

Table 15
Informal Complaints

Category	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Total number of complaints	2,127	1,914	2,301	2,221	1,938
Total complaints closed	2,141	1,885	2,270	2,266	1,961
Transportation complaints closed	550	543	699	649	694
Fixed utility complaints closed	1,577	1,371	1,602	1,572	1,244
Money saved consumers	$836,314	$119,397	$1,070,953	$101,115	$45,703

In fiscal year 16-17, the greatest number of complaints for fixed utilities related to billing issues and repairs.

The number of complaints is not necessarily directly tied to the estimated money saved consumers. The estimated money saved consumers fluctuates from year to year because many complaints have to do with billing errors. A few "large" billing errors in a given year could yield a larger savings amount than many "small" billing errors.

If a complaint cannot be resolved via the informal process, the complainant has the option to file a formal complaint, which is then most typically presided over by an ALJ. Formal complaints are considered the last resort for resolution of a jurisdictional issue. The Commission may also initiate a formal complaint proceeding on its own motion.[49]

Table 16 shows the number of formal complaints for the five fiscal years indicated.

Table 16
Formal Complaints

Category	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Total Formal Complaints	37	18	15	24	15

Formal complaints can result in the Commission taking enforcement actions.

It is the duty of the Commission to see that the provisions of the constitution and statutes affecting public utilities are:[51]

> enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state are recovered and collected, and to this end it may sue in the name of the people of the State of Colorado. Upon the request of the Commission, the Attorney General or the district attorney acting for the proper county or city and county shall aid in any investigation, hearing, or trial […] and institute and prosecute actions or proceedings for the enforcement of the constitution and statutes of this state affecting public utilities and persons subject to [the laws governing motor carriers] and for the punishment of all violations thereof.

Typical grounds for enforcement action include utilities over-collecting money from customers and utilities' failure to file required documents such as annual reports. The most dramatic enforcement action at the Commission's disposal is to revoke a utility's CPCN or registration, but in cases where hundreds if not thousands of customers would be affected, revoking a company's CPCN is simply not a viable option.

Although the Commission can levy fines against fixed utilities, it has not done so since the General Assembly granted it administrative fining authority in 2008. Rather than taking formal action against fixed utilities, Commission staff typically works closely with the regulated utility to bring it into compliance with the applicable laws and rules. This approach generally minimizes the negative impact on ratepayers.

Transportation

The Commission has the ability to issue civil penalties to motor carriers who violate the provisions of regulation. A Civil Penalty Assessment Notice (CPAN) is issued when a motor carrier is found to have violated. If the motor carrier pays within 10 days, the amount of the fine is lowered. Any fine may be appealed to an ALJ who will hold a hearing and render a decision upholding or modifying the penalty, or dismissing the case.

Table 17 lists the number and dollar amount of CPANs issued over the five fiscal years indicated.

Table 17
CPANs Issued by Fiscal Year

Fiscal Year	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17
CPANs Issued	111	191	57	18	81
CPAN Issuance Amount	$350,350	$5,909,847	$225,833	$116,421	$197,455

[51] § 40-7-101, C.R.S.

The table indicates that there were large swings in both the number and the amount of the CPANs.

Pipeline Safety

When pipeline safety violations are uncovered, several pipeline safety rule violations may be incorporated into an individual compliance action.

An inspector issues a warning notice when he or she uncovers a probable violation with no previous enforcement history and the violation poses a low risk to public safety, pipeline integrity or facility integrity. If a probable violation of the rules has a previous enforcement history or it poses a moderate to severe risk to public safety, pipeline integrity or facility integrity, a notice of probable violation will be issued to the pipeline operator.

If an inspection, audit or investigation reveals that a pipeline operator's plans or procedures are inadequate to ensure the safe operation of a pipeline or facility, a Notice of Amendment will be issued. Typically, a Notice of Amendment will be associated with a warning notice or notice of probable violation. The pipeline operator may need to correct an existing procedure immediately or in a specified amount of time in order to ensure pipeline safety.

Alternatively, if violations are minor in nature, meaning they are administratively inadequate and pose low risk to public safety and pipeline integrity, a Request for Amendment may be issued. A Request for Amendment requires a pipeline operator to modify, edit or correct an existing procedure prior to the next scheduled review of the pipeline operator's plans or procedures.

Since 2016, any notice of probable violations that are issued will always have a calculated and recommended civil penalty. The civil penalty is not always imposed on a pipeline operator since state law and federal policy explicitly envision alternative enforcement methods, such as requiring repair or replacement of inadequate facilities or requiring improved training of a pipeline operator's technical staff.

Table 18 provides the number of pipeline safety compliance actions taken over a five-year period.

Table 18
Pipeline Safety Compliance Actions

Type	CY 2013	CY 2014	CY 2015	CY 2016	CY 2017
Warning Notice	20	16	25	12	6
Notice of Probable Violation without Fine	0	0	0	1	0
Notice of Probable Violation with Fine	6	3	1	4	1
Notice of Amendment	0	0	0	0	0
Request for Amendment	0	0	1	3	2
Total	**26**	**19**	**27**	**20**	**9**

Pipeline safety inspectors issued warning notices in about 78 percent of the compliance actions taken. Only 15 percent of the compliance actions included fines.

Table 19 provides the number and total value of civil penalties assessed over a five-year period.

Table 19
Pipeline Safety Civil Penalties Assessed

Calendar Year	Number	Value
2013	6	$85,540
2014	3	$169,928
2015	1	$31,100
2016	2	$325,000
2017	1	$25,000

The total number and value of civil penalties varies from year to year. On average, civil penalties assessed approximate $58,000.

In 2016, one civil penalty was assessed for $25,000 to a municipal pipeline operator with a repeated violation related to distribution integrity management, and another penalty in the amount of $300,000 was issued to a private utility for failing to follow its existing emergency response procedures, which resulted in an injury to a member of the public.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

Neither taxi drivers nor TNC drivers are specifically regulated as a profession. However, to be eligible to drive for one of these regulated entities, a person must not have committed certain criminal offenses involving substance abuse, sexual conduct, or violent behavior, among others.

The Commission does not enforce the prohibition at the driver level. In the case of taxis, because the criminal history background check is done through Colorado Bureau of Investigation channels, the Commission informs the possible employer if a driver is eligible to drive based on the findings of the criminal history check. In the case of TNCs, most companies perform their own criminal history checks. If, during an inspection, the Commission finds that a driver is ineligible to drive, it cites the TNC for violating the TNC Act.

Analysis and Recommendations

General

Recommendation 1 – Continue the Public Utilities Commission for 13 years, until 2032.

Article XXV of the Colorado Constitution, enacted in 1954, designates the Public Utilities Commission (Commission) as the sole state agency responsible for regulating the facilities, service and rates and charges of public utilities in Colorado. The laws governing the regulation of public utilities are contained within Title 40 of the Colorado Revised Statutes (C.R.S.).

The Commission has full regulatory authority over investor-owned gas, electric, and steam utilities, common carriers (such as taxicabs), contract carriers (such as hotel shuttles), and private water utilities that were brought under Commission oversight due to complaints; partial jurisdiction over some electric cooperatives, municipal utilities[52] and telecommunication companies; and is responsible for ensuring the safety of gas pipelines, railroad crossings, and various kinds of transportation carriers, from hazardous waste movers to children's activity buses.

The central question of this sunset review is to determine whether the Commission is still needed to protect the public health, safety, and welfare.

The industries under Commission jurisdiction are diverse and necessitate a range of regulatory frameworks.

At one end of the spectrum are the large, investor-owned gas and electric utilities that are subject to the most rigorous regulation. Before a utility can provide service to the public, it must apply to the Commission for a certificate of public convenience and necessity (CPCN). The Commission must determine whether there is a need for the services being offered and whether the applicant has the technical and financial resources to provide such service. If the utility is granted the CPCN, it is legally obligated to provide service to anyone who seeks it. In exchange for providing this service and fulfilling the responsibilities that entails, the Commission provides the utility the opportunity to earn a reasonable rate of return. If there were no regulatory body to authorize companies to make a reasonable profit, companies might elect not to take on such a costly, potentially risky venture and investors might choose to invest their money in another industry. A mass divestment from any of the Commission's regulated industries could have devastating consequences.

[52] The Commission only asserts jurisdiction over municipal utilities when they serve customers outside their physical boundaries and only when those customers are charged more than customers within the municipality's physical boundaries.

The Commission also retains authority over the rates these utilities charge. Because these utilities function essentially as monopolies, Coloradans simply do not have the option to "shop around" to find the best, safest, cheapest utility service. The Commission's oversight is essential to assure ratepayers receive safe and reliable service, while also assuring a regulated utility can fund ongoing infrastructure maintenance, upgrades, and expansions and secure a reasonable profit for its shareholders.

In contrast to the fairly rigorous oversight of investor-owned gas and electric utilities, other industries, such as telecommunications, have more flexible regimes. As the telecommunications industry has been largely deregulated over the past 30 years, citizens have increasingly had the ability to pick and choose among competitive vendors for telecommunications services. Although largely deregulated, the Commission maintains regulatory authority in certain areas of the telecommunications industry. An important component that is still under the jurisdiction of the Commission is 911 service. Because 911 service is essential to the public health and safety, it is appropriate for the State to maintain its regulatory authority.

Other areas under Commission jurisdiction include the gas pipeline safety program, which is driven largely by federal requirements, and assures that qualified inspectors inspect intrastate gas pipelines to assure they meet minimum safety standards; the regulation of railroads, which involves assuring railroad crossings and Colorado's sole fixed guideway system are safe; and the motor carrier regulation program, which assures that rates charged by common carriers are reasonable and that vehicles are compliant with safety regulations.

Across these diverse industries and varying regulatory models, Commission staff includes engineers, analysts, and economists who provide the wide-ranging subject matter expertise and administrative and managerial support necessary to fulfill the Commission's constitutional and statutory responsibilities. It promulgates necessary rules and takes enforcement actions when necessary. Through its licensing, rulemaking, enforcement, and inspection activities, the Commission serves to protect the health, safety, and welfare of Coloradans. For these reasons, the General Assembly should continue the Commission.

Over the course of this review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff heard from stakeholders dissatisfied with the Commission's administrative structure. Currently, Commissioners are Governor-appointed, rather than elected, and do not have any employees that report directly to them. As required by the state's constitution, the Executive Director of the Department of Regulatory Agencies appoints the Director of the Commission,[53] who has considerable statutory power and maintains control over the administrative practices and organizational structure of the staff.

[53] Colo. Const. Art. XII, § 13(7).

In response to these concerns, COPRRR investigated the structure of other public utilities commissions in the United States and found there is no "typical" structure. How commissioners are selected, where they fall in the organizational charts of the agencies where they are housed, and whether they hire and oversee their own staff vary considerably from state to state. While the Commission might have its limitations, it also has unique virtues. Each of the alternative administrative structures poses its own particular drawbacks: changing the administrative structure might solve some problems but create others. Overall, the Commission is effective in meeting its mandates.

COPRRR also heard discussion of the cumbersome nature of the Commission's filing process and its transparency. The Commission processes a prodigious amount of information. Its docketing system, while non-intuitive in some respects, allows a generally effective way of tracking and organizing the tremendous quantity of filings made to the Commission. The Commission has generally, through its rules, strived to simplify the process as much as possible, particularly for the electronic filing process. It could, however, continually monitor its administrative procedures to ensure that they are grounded in statutory requirements and streamline them to the greatest possible extent.

As far as transparency, COPRRR did not identify an institutional reluctance to share information over the course of this review. The Commission makes the vast majority of its work available to the public on its website: it posts nearly all filings, including public comments, minutes, affidavits, written testimony, and applications from 2002 forward. While some documents are confidential, this is typically because they contain proprietary information about a company. Furthermore, beginning in 2017, the Commission started archiving audio recordings of its weekly meetings on its website. The transparency concern might be more precisely framed as a navigation issue: it is not necessarily easy to navigate the tremendous amount of information that is publicly available. The Commission could consider system improvements, such as a more precise search function, that would help citizens find what they are looking for and should expand public outreach and customer assistance as much as feasible.

The industries under the Commission's jurisdiction encompass a broad swath of American history. In the United States, railroads have been a fact of life since before the Civil War; electrical service has been considered a basic right for nearly 100 years. Transportation network companies occupy the other end of the timeline: Colorado only started regulating them in 2014. It is difficult to think of another state agency that has had an effect on almost every person in Colorado over so many years, through a radically changing world.

The Commission's activities affect Coloradans in ways large and small: its inspection of gas pipelines and railroad crossings might prevent accidents and its attention to the capacity of electric utilities might prevent widespread service outages; it helps people resolve billing disputes and ensures buses are safe to transport children. Through all these activities, the Commission fulfills its constitutional mandate to

regulate "the facilities, service and rates and charges of public utilities in Colorado."[54]

For all of these reasons, the General Assembly should continue the Commission for 13 years, until 2032. That extension period is commensurate with the scope of the recommendations in this report.

Recommendation 2 – Authorize the Commission to delegate routine administrative matters to staff.

The Commission has a prodigious workload. In fiscal year 17-18 alone, the Commission and its ALJs issued over 1,000 decisions.

While some of these decisions address substantive matters, many of them, particularly those relating to the transportation industry, are routine and administrative in nature. A typical example of a routine transportation matter would be a determination on the safety of a common carrier vehicle. The Commission has a process whereby these items are included on the consent agenda and do not require discussion, however, it might be appropriate for the Commission to have the ability to define, in rule, routine, non-substantive matters that it can delegate to Commission staff.

The Commission already has authority to:[55]

> direct that any of its work, business, or functions under any provision of law, except functions vested solely in the Commission under [Title 40], be assigned or referred to an individual Commissioner or to an administrative law judge to be designated by order for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference.

The Commission delegates considerable authority to ALJs while maintaining ultimate authority. The ability to delegate routine administrative decisions to Commission staff could make the Commission more efficient and expedite the application process for applicants.

Therefore, the General Assembly should grant the Commission the authority to promulgate rules defining routine administrative matters it may delegate to Commission staff.

[54] Colorado Constitution Art. XXV.
[55] § 40-6-101(2)(a), C.R.S

Recommendation 3 – Clarify that every case submitted for adjudication should go to the Commission, unless the Commission assigns the case to an individual Commissioner or an administrative law judge.

Section 40-6-101(2)(b), C.R.S., states that:

> Every case submitted to the Commission for adjudication shall in the first instance be heard by an administrative law judge unless the Commission, by minute order, assigns the case to the Commission or to an individual Commissioner for hearing.

This provision makes it sound as though an administrative law judge (ALJ) is the default decision-maker for cases, unless the Commission decides to hear it itself or refer it to an ALJ. In practice, the Commission provides the initial review of each case and determines whether it wishes to consider it en banc, refer it to an individual Commissioner, or refer it to an ALJ.

The General Assembly should revise this provision to state that:

> Every case submitted to the Commission for adjudication shall in the first instance be heard by the Commission, unless, by minute order or written decision, the Commission assigns the case to an administrative law judge or to an individual Commissioner for hearing.

This revision would clarify the provision and reflect current administrative practice.

Recommendation 4 – Revise the provisions governing utilities' mandatory notice of rate changes to customers to increase transparency and allow for additional notification methods.

Section 40-3-104(1)(a), C.R.S., requires public utilities to give the public 30 days' notice before changing any rate, fare, or other charge, or making any rule or regulation change that would affect such charges. While all utilities must file with the Commission the new rates and their effective dates, certain utilities—those other than water and transportation and certain telecommunications companies—must provide additional notice.[56] Utilities may make this additional notice by

- Publishing a notice in the newspaper and mailing the notice to customers as a billing insert,
- Mailing a notice to customers via a separate letter, or
- Including an insert with customers' bills.

Utilities may also ask the Commission to approve other notification methods.

[56] § 40-3-104(1)(c)(I), C.R.S.

This section should be modernized to allow for modern forms of communication and to increase transparency.

First, to allow utilities greater flexibility, the General Assembly should allow utilities to notify customers of rate changes by the following additional methods:

- Text,
- Email, or
- A message on a billing statement (bill insert).

Secondly, the General Assembly should require utilities to post notices of rate changes on the websites they maintain for Colorado customers and to include in any communication announcing the rate change—whether it is a message on a billing statement, a newspaper item, a bill insert, a text, or an email—the web address for the online notice and a toll-free number customers can call for assistance.

These changes would allow flexibility for utilities and increase transparency for their customers.

Recommendation 5 – Amend section 40-7-118, C.R.S., such that control over the money in the Legal Services Offset Fund lies with the Commission.

During the 2017 legislative session, the General Assembly created the Legal Services Offset Fund (Fund) in the Commission statutes. The Fund was created to,

> offset the costs of legal representation of the staff of the Commission in proceedings before the Commission concerning the enforcement of [motor carrier regulation].[57]

Most importantly, the governing statute requires that the money in the fund be used,

> only to supplement the appropriations made to the Department of Regulatory Agencies when the appropriations are insufficient to cover the costs of such representation.[58]

In 2018, the Office of the Attorney General implemented a "1/12 billing system." This has created an unintended consequence. The money within the Fund is no longer accessible to be used for the purpose of supplementing insufficient funds because, technically, appropriations can no longer be insufficient. Thus, the money in the Fund is not available to offset the cost of legal representation concerning enforcement of motor carrier statutes.

[57] § 40-7-118(1)(a), C.R.S.
[58] *Ibid*.

Though the cost of the appropriation is set, the cost of legal representation is allocated across industry specific regulatory programs. If services rendered exceed available money, a subsidization is required but not allowed.

To avoid this situation and to make the money within the Fund available for the law's stated purpose, control of the Fund should be moved to the Commission.

The second sunset criterion asks if an agency's operations are impeded through practices and procedures, including budgetary matters. Agency operations are impeded because of the manner in which law is currently written. Therefore, the General Assembly should amend section 40-7-118, C.R.S., such that control over the money in the Fund lies with the Commission.

Recommendation 6 – Make technical changes.

As with any law, the statutes administered by the Commission contain instances of obsolete, duplicative and confusing language, and they should be revised to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact.

The General Assembly should make the following technical changes:

- **Section 40-2-127(3)(b), C.R.S.** Repeal the directive to promulgate rules pertaining to community solar gardens by October 1, 2010, as this date has past and the rules have been promulgated, but retain the directive to promulgate the rules.

- **Section 40-15-503.5(1)(c), C.R.S.** Replace the reference to the "fixed utility fund" with "telecommunications utility fund." This change will bring the law into compliance with House Bill 15-1372, which created the new "telecommunications utility fund."

- **Section 40-15-302(5), C.R.S.** Repeal the entire section, which relates to non-optional operator services because it is no longer subject to regulation.

- **Section 40-15-401(1), C.R.S.** Add non-operational services to the list of services exempt from regulation.

- **Section 40-15-503(2)(h), C.R.S.** Remove "pursuant to paragraph (g) of this subsection (2)." This section of the law was repealed.

- **Section 40-10.1-110(1), C.R.S.** Update this section to comport with current Colorado Bureau of Investigation (CBI) protocols in performing criminal history record checks. The CBI system now allows those seeking a criminal history

check to submit fingerprints digitally directly to a vendor. There is no longer a need to submit fingerprints directly to the Commission.

Energy

Recommendation 7 – Repeal, effective July 1, 2043, directives to utilities regarding the purchase of electric energy from community solar gardens, and permissible limitations on those purchases, in compliance years 2011 through 2013.

Section 40-2-127(5)(a)(II), C.R.S., provides,

> For the first three compliance years commencing with the 2011 compliance year, each qualifying retail utility shall issue one or more standard offers to purchase the output from community solar gardens of [500] kilowatts or less at prices that are comparable to the prices offered by the qualifying retail utility under standard offers issued for on-site solar generation. During these three compliance years, the qualifying retail utility shall acquire, through these standard offers, one-half of the solar garden generation it plans to acquire, to the extent the qualifying retail utility receives responses to its standard offer. Notwithstanding any provision of this subparagraph (II) to the contrary, renewable energy credits generated from solar gardens shall not be used to achieve more than [20] percent of the retail distributed generation standard in years 2011 through 2013.

Section 40-2-127(5)(a)(III), C.R.S., provides,

> For the first three compliance years commencing with the 2011 compliance year, a qualifying retail utility shall not be obligated to purchase the output from more than six megawatts of newly installed community solar garden generation.

These provisions were enacted when community solar gardens were initially authorized in statute and served as a mechanism to assist their launch while at the same time limiting the amount of energy utilities had to acquire from the community solar gardens. With the conclusion of the 2013 compliance year, these directives and limitations have expired and can be repealed as obsolete.

However, their repeal should be delayed until 2043 because, under the terms of section 40-2-124(1)(f)(V), C.R.S., at least some of the contracts under which a utility complied with sections 40-2-127(5)(a)(II) and (III), C.R.S., have minimum 20-year terms. Delaying the repeal of these sections will allow the legislation that gave rise to most of those contracts to remain in place until the contracts expire.

While it may seem odd to add a sunset provision to these sections now, 25 years before it will become effective, doing so now helps to ensure that they are not inadvertently repealed in the meantime, as memories fade as to their relevance.

Therefore, the General Assembly should repeal sections 40-2-127(5)(a)(II) and (III), C.R.S., effective July 1, 2043.

Recommendation 8 – Repeal the ability of the Commission to consider proposals to fund and construct integrated gasification combined cycle generation facilities as new energy technologies.

Section 40-2-123, C.R.S., very generally authorizes the Commission to consider proposals for new energy technologies and demonstration projects, and directs the Commission to consider such proposals as acceptable use of ratepayer moneys.

One such technology referenced in this statue is integrated gasification combined cycle (IGCC) generation facilities, a primary attribute of which is the capture and sequestration of carbon dioxide.

This recommendation makes no attempt to opine on the merits and feasibility of carbon sequestration. Rather, this recommendation advocates for the repeal of the reference to the very specific technology and program limitations of IGCC as provided in statute.

Most agree that IGCC was added to this section of the statute in 2006 because, at the time, one of Colorado's investor-owned utilities had a desire to launch an IGCC project. That project never came to fruition. Therefore, the General Assembly should repeal references to IGCC in section 40-2-123(2), C.R.S.

Transportation

Recommendation 9 – Prohibit the Commission from promulgating rules that allow property owners to grant agency to towing companies; modify the signage requirements for parking areas related to non-consensual tows; require a towing company to notify the vehicle owner that the Commission may be contacted with a complaint; and increase the penalties for not following the rules regarding nonconsensual towing.

There has been much attention drawn to nonconsensual towing in Colorado. According to a rule promulgated by the PUC:

> "Nonconsensual tow" means the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle. Law enforcement-ordered tows are nonconsensual and subject to these rules, even when the owner or operator of the vehicle consents to a law enforcement official ordering a tow.[59]

There are two main categories of nonconsensual towing. The first is when a governmental entity orders a vehicle towed for public safety reasons. The second category of nonconsensual towing occurs when a vehicle is towed from private property, including lots allowing some public access, without the consent of the vehicle's owner. This latter category is the subject of this recommendation.

The majority of complaints that come into the Commission's transportation section, contemplating all of the facets of transportation that it regulates, concern towing companies. During the period January 2015 to April 2018, the Commission was contacted 1,099 times concerning nonconsensual tows while in the next closest category, the Commission was contacted 123 times. Roughly nine times more contacts concerned towing and most of those concerned nonconsensual tows. Considering every consumer interaction received during that period, the Commission was contacted 2,383 times concerning transportation issues, of those, 62 percent, 1,477 contacts, were related to the towing industry. When one considers that a towing carrier authority[60] is but one of 13 categories of operating authority granted by the Commission, and that towing authorizations represent only 17 percent of the total transportation operating authorities granted by the transportation section, it is concerning.

One has only to do an internet or media search to find several alarming stories concerning towing companies and the predatory nature of nonconsensual towing. A major issue with nonconsensual towing is that some property owners have contracts

[59] 4 CCR 723-6501(i), Public Utilities Commission Rules.
[60] In this case the word "authority" connotes all certificates and permits issued by the Commission which grant authority to an entity perform in the marketplace.

with towing companies. In some of those cases, a towing carrier acts as an "agent" for the property's manager. Many of those agency contracts allow a vehicle to be towed from a property without any specific, instance-related approval from the property's manager. The towing carrier is empowered by agency to act on its own. Some tow truck drivers stalk areas looking for vehicles to tow. If there is something amiss, such as a vehicle parked slightly into a neighboring parking space or a vehicle facing the wrong direction, the tow truck has the property manager's contractual permission to tow and impound the vehicle. Commission staff related one instance when a driver moved a vehicle slightly so that it was out of compliance with property rules and then towed and impounded it.

In most cases currently, if a vehicle is towed, it is the tow truck driver's word against the vehicle owner's word that the tow was legitimate. The vehicle owner typically needs the vehicle, so he or she pays the charges, whether they are legitimate or not. However, there are also cases on record when vehicle owners could not afford to pay the charges and the vehicles were sold as collateral.

The General Assembly should take steps to protect consumers in the cases of nonconsensual towing. Interviews with consumer victims and towing companies, and analysis of the regulations, produced some solutions to predatory nonconsensual towing.

The General Assembly should prohibit the Commission from promulgating a rule allowing property owners to grant agency to towing carriers as is done in Commission rule 6508(a). It is too tempting for some to not abuse the authority that they have been given rather than simply protecting the property owner's interests. A vehicle should not be towed without a property manager's instance-related, signed verification of the need for it to be towed. The verification should meet all of the requirements described in Commission rule 6508(b)(VI) which are the current requirements where no agency contract is in place.

> Property owner authorization. The authorization from the property owner, or authorized agent of the property owner, shall be in writing; shall identify, by make and license plate number (or in lieu thereof, by vehicle identification number), the motor vehicle to be towed; and shall include the date, time, and place of removal.
>
> (A) The authorization shall be filled out in full, signed by the property owner, and given to the towing carrier before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then a verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the towing truck. At a minimum, such documentation shall contain:

(i) the name, address, email address (if applicable), and telephone number of the property owner;

(ii) the address of the property from which the tows will originate; and

(iii) the name of each individual person who is authorized to sign the tow authorization.

(B) A towing carrier shall not have in his or her possession, accept, or use blank authorizations pre-signed by the property owner.

(C) The written authorization may be incorporated into the tow record/invoice required by rule 6509 or on any other document.

(D) With the exception of law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

It must be noted that this is currently the practice for some towing companies. Failure to obtain the required authorization prior to towing a vehicle should result in criminal charges of automobile theft for the tow truck driver. This was the standard prior to the promulgation of the Commission's rule allowing agency.

While this recommendation does not claim that all towing companies operate in a predatory or unsavory manner, some do.

The General Assembly should direct that any tow truck driver and property owner must have proof positive that the vehicle was out of compliance with posted property restrictions. Proof positive should be determined by the Commission in rule.

When a vehicle is nonconsensually towed, there must also be an obligation that formal notice, in a manner determined by the Commission, is to be given by the towing carrier to the vehicle owner at pick up. The notice must state that the vehicle owner has the ability to file a complaint with the Commission if he or she believes all rules pertaining to nonconsensual towing where not followed. All warning signage that is currently required to be posted on private properties advising consumers of the possibility of nonconsensual towing should also have the information that the towing carrier is regulated by the Commission with a Commission telephone number and website address.

Failure to comply with any rule or law when performing nonconsensual tows could result in a letter of admonition, a suspended or revoked registration, and/or a civil penalty. Currently, there is a maximum of $1,100 civil penalty for violations concerning having the correct authorization to tow a vehicle. The more unscrupulous, predatory tow drivers consider that amount as a risk worth taking. It is merely, the cost of doing business. The penalties should be doubled for any first violation associated with a nonconsensual tow and subsequent violations should allow for the possibility that fines be doubled per violation. These measures are necessary because the low fines issued by the Commission have had no deterrent effect on this segment of the industry.

Purchasing a vehicle is a major investment for most people. To protect the welfare of the public, the General Assembly should prohibit the Commission from making a rule allowing property owners to grant agency to towing companies; modify the signage requirements for parking areas; require the towing company to notify the consumer that the Commission may be contacted with a complaint; and increase the penalties for not following the rules regarding nonconsensual towing.

Recommendation 10 – Require transportation network company drivers to undergo a criminal history record check as provided in section 40-10.1-110, C.R.S.

To be an eligible driver in a transportation network company (TNC), a person must undergo a criminal history record check[61] and cannot have been convicted of or pled *nolo contendere* to several criminal acts. Among those prohibited acts are:[62]

- Driving under the influence of drugs or alcohol in the previous seven years before applying to become a driver;
- Fraud, as described in Article 5 of Title 18, C.R.S.;
- Unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;
- An offense against property, as described in Article 4 of Title 18, C.R.S.; or
- A crime of violence, as described in section 18-1.3-406, C.R.S.

The TNC statute[63] allows a TNC to use a privately administered national criminal history record check which includes a check of the national sex offender database.[64] However, the privately administered checks have been exposed as sometimes inaccurate.

The Commission issues a civil penalty to a TNC that uses a driver that should be ineligible to drive based on criminal history. The base fine for a violation of this

[61] § 40-10.1-605(3)(a)(I), C.R.S.
[62] § 40-10.1-605(3)(c), C.R.S.
[63] § 40-10.1-601, *et seq*, C.R.S.
[64] § 40-10.1-605(3)(a)(I), C.R.S.

statute is $275. One TNC was fined nearly $450,000 for violations of these provisions[65] and as of this writing there were nearly $500,000 in fines being temporarily stayed by the Commission.

The solution is to require TNCs to use the same system that is required of other passenger carriers that are fully regulated or, like TNCs, subject to limited regulation by the Commission. Section 40-10.1-110, C.R.S, lays out the Commission's criminal history record check procedure. The procedure goes through the Colorado Bureau of Investigation. Requiring the same system for all passenger drivers will eliminate the accuracy problems. Such a change is necessary to protect the public's health, safety, and welfare.

Because the General Assembly requires a criminal history record check for all TNC drivers and the private system(s) employed by TNCs are not always accurate and leaves consumers exposed to harm, the General Assembly should require that TNC drivers undergo a criminal history record check as provided in section 40-10.1-110, C.R.S.

Recommendation 11 – Grant the Commission fining authority for violations concerning rail crossing safety.

The Commission has the authority to issue fines for certain violations but not for others. For example, a railroad may be fined for not having operable switch lights,[66] a headlight on a locomotive,[67] or not clearing a fire guard in the right-of-way.[68] However, there is no such authority regarding safety violations in rail crossings.

The General Assembly has directed the Commission to promulgate rules governing the safety of crossings. Section 40-4-106(1), C.R.S., reads:

> The Commission shall have power, after hearing on its own motion or upon complaint, to make general or special orders, rules, or regulations or otherwise to require each public utility to maintain and operate its lines, plant, system, equipment, electrical wires, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, subscribers, and the public and to require the performance of any other act which the health or safety of its employees, passengers, customers, subscribers, or the public may demand.

However, if the crossing is out of compliance with safety regulations, the Commission only has the ability to close the crossing. When the Commission closes a crossing, the

[65] This is the assessed amount. Because it was paid within 10 days the payment was lowered to 50 percent of the amount assessed.
[66] § 40-29-102, C.R.S.
[67] § 40-29-107. C.R.S.
[68] § 40-30-102, C.R.S.

closing only affects automobiles and pedestrians who may want to utilize that crossing. In the majority of cases, the railroads can still use the right-of-way. Consequently, there is no urgency on their part to comply with state safety regulations. Only the public that uses the roadway is negatively impacted.

A regulator needs multiple tools to protect the public rather than an all or nothing approach as is the case here. The ability to issue a civil fine to the regulated entity responsible for compliance provides a needed impetus for that regulated entity to quickly rectify a hazardous situation. It is an enforcement tool that does not exist for the Commission today.

To protect public safety, the General Assembly should grant the Commission fining authority for violations of rail crossing safety.