



PRE-HEARING AND HEARING PROCEDURES IN CIVIL PENALTY ASSESSMENT PROCEEDINGS

GENERALLY

1. As explained in detail in the Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) that you received, you can avoid a hearing on the alleged violations by paying the “Total Amount if Paid within 10 Calendar Days” of receipt of the document. If you instead choose to contest some or all of the violations summarized in the CPAN, a hearing will be scheduled on the contested violations.
2. If you choose to contest some or all of the alleged violations summarized in the CPAN, the Public Utilities Commission’s (PUC) Rules of Practice and Procedure will govern the PUC’s pre-hearing and hearing procedures.
3. In order to understand the PUC hearing process, please read the Rules of Practice and Procedure, which can be found online at <https://www.Colorado.gov/pacific/pucrules> and in hard copy from the Commission. Please review them carefully to ensure that you comply with them. The PUC’s website has other information you may find helpful.
4. If your name is listed as a respondent, you may choose to represent yourself or hire an attorney. If you choose to represent yourself without an attorney, you will be bound by, and held to, the same procedural and evidentiary rules that attorneys must follow. This means that you must at least have read the Rules of Practice and Procedure. You will not be held to a lesser standard because you have chosen not to have an attorney represent you.

If a name other than yours is listed as a respondent (e.g. a company) and the amount in question exceeds \$15,000, exclusive of costs, interest, or statutory penalties, it must be represented by an attorney. If the amount in question is less than \$15,000, the PUC may allow you to represent the company.

PRE-HEARING PROCEDURES

1. **Pre-Hearing Motions:** To ask the Commission to take an action prior to the hearing, file a motion. Either you or the Staff of the PUC may file any appropriate motion. Please review

the Rules of Practice and Procedure (Rule 1400) for the requirements for filing a motion with the Commission.

2. **Responses to Motions.** If the Staff files a motion, you may file a response to it. If you do not respond, the PUC may then assume you do not oppose the request and grant the motion. If you respond, your response must:
 - Be in writing and include the proceeding number that the CPAN has been assigned (sending an email to an employee of the Commission is NOT filing – see Rule 1200);
 - Include a certificate of service¹ to the original;
 - Be received by the PUC within 14 days of the mailed date shown on the certificate of service on the motion.
3. **Date of Hearing.** The PUC will schedule the hearing. If you are unable to attend on the date scheduled, you must file a motion to reschedule and include at least three dates within the following two months on which you are available for the hearing. As required by Rule 1400(a), you must confer with counsel for Staff of the PUC about the motion before you file it. Try to propose new dates agreeable to both parties.
4. **Hearing preparation.** Prior to hearing, you should determine who you want to call as witnesses and what exhibits you want to present at hearing. You may request the PUC to issue subpoenas from the Commission to compel the attendance of witnesses at the hearing. Please refer to Rule 1406 for how to request the Commission to issue a subpoena. You may also submit a written request to Staff's attorney requesting a copy of documents concerning your case. This process is addressed in Rule 1405. If the Staff does not provide these documents, and you have a good-faith belief that you need the documents to defend yourself at the hearing, you may file a motion to compel with the PUC.

HEARING PROCEDURES

1. **Call to order.** The ALJ calls the case by name and proceeding number.
2. **Appearances.** The Staff's attorney and you state who you are, who you represent, and your addresses.
3. **Preliminary matters.** The ALJ may ask if there are any preliminary matters. This could be questions about order of witnesses, timing problems, marking of exhibits, any other procedural matters.
4. **Opening statements.** The ALJ may ask if anyone has an opening statement. This is an optional introduction to your case. It is important to understand that the statement is not

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

evidence, but rather an introduction of the evidence that will be presented in your case. One side may give one and the other side may decide not to give one. You may reserve your right to give your opening statement after the Staff has finished presenting its case.

5. **Staff's case.** The Staff will present its case first, which means it will present evidence that it believes proves that you committed the violations summarized in the CPAN. The Staff will present the testimony of one or more witnesses through direct examination. You may cross-examine the Staff's witnesses, but you do not have to do so if you have no questions. If there is cross-examination, then Staff has the opportunity for redirect examination within the scope of the information addressed in cross examination. The ALJ may also ask questions of the witnesses.
 - a. Exhibits: It is during examination that exhibits are identified. They should be offered into evidence after the person offering them has laid a foundation for the exhibits. The party offering the exhibits must bring copies of each exhibit for the ALJ, the other party, the witness and keep a copy for themselves. The other party may ask questions about the exhibits and may object to their being admitted into evidence. The objection must be a legal objection. Even if an exhibit has been identified it will not be part of the evidence unless the ALJ admits it.

After the Staff has presented all of its evidence, it will state that it is finished (i.e., it will "rest its case").

6. **Your case.** You will now present your case. You may call yourself to testify as a witness and then give a sworn statement. You may also call other witnesses on your behalf and conduct direct examination. As part of your case, you may also identify and offer exhibits into evidence. (The same provisions for exhibits provided under subheading 5 a. apply to your case.) The Staff may cross-examine you and your witnesses. If there is cross-examination, then you will have the opportunity for redirect examination within the scope of the information addressed in cross examination. The ALJ may also ask questions of the witnesses. When you have presented all of your evidence, you will rest your case.
7. **Rebuttal.** The Staff may then present rebuttal evidence. Rebuttal is meant to counter or to refute your case. Rebuttal is optional.
8. **Closing argument.** After all evidence is presented, the ALJ may ask if anyone wishes to make a closing argument. This is an optional summation of your case. It is important to understand that the argument is based on evidence already presented and cannot add new evidence. Rather closing argument is a summary of the evidence and why you think you should prevail.

POST-HEARING PROCEDURES

1. **ALJ's decision.** The ALJ will generally issue a written recommended decision within 30 days after the last day of hearing, or 30 days after the filing of written statements of position, if allowed.
2. **Appeal of ALJ decision.** If either you or the Staff disagrees with the recommended decision, a written appeal (called "exceptions") must be filed within 20 days of the decision's service date. You should carefully review Rule 1505. If you disagree with the facts as stated in the ALJ's decision, you must pay for a transcript of the hearing made by the court reporter. A partial transcript may be ordered. If you do not provide a transcript, the Commissioners must decide the exceptions to the recommended decision based on the facts as stated in the ALJ's decision. You will have no other opportunity to challenge those facts. If a transcript is not ordered, you or Staff may still challenge the law relied on by the ALJ or the conclusions the ALJ reached. If Staff files Exceptions, you may file a response within 14 days of the service date. See Rule 1505(a).

GLOSSARY OF TERMS

CERTIFICATE

OF SERVICE:

A statement you include with any filing that shows you served a copy of the document in accordance with Rule 1205 to:

- (1) The Staff; and
- (2) Any other persons or groups who the Commission has given permission to be included as parties in the proceeding.

A certificate of service should be written like the following:

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing pleading were served on this _____ day of _____, 20__, upon each of the persons appearing below either through the E-Filing system or by other means in accordance with applicable law:

(list the name and address of each party you sent the document to).

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

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

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

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

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

LAYING

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

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

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

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

STATEMENT OF POSITION: A written closing argument.

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