

Decision No. R23-0327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0188G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR RECOVERY OF THE EXTRAORDINARY GAS COSTS RELATED TO THE EXTREME WEATHER EVENT OF FEBRUARY 13-16, 2021.

PROCEEDING NO. 23AL-0029G

IN THE MATTER OF COMPLIANCE ADVICE LETTER NO. 126 FILED BY COLORADO NATURAL GAS, INC. TO MODIFY THE COMPANY'S GAS TARIFF P.U.C. NO. 2 TO IMPLEMENT THE EXTRAORDINARY GAS COST RECOVERY RIDER ("EGCRR") WITH DECISION NO. C23-0006 IN PROCEEDING NO. 21A-0188G IN ITS RATE AREAS OF BAILEY/SOUTH PARK AND PUEBLO WEST, TO BECOME EFFECTIVE JANUARY 11, 2023.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
VACATING HEARING, ACKNOWLEDGING THE
SECOND AMENDED ADVICE LETTER AND ATTACHED
TARIFF SHEETS, ACKNOWLEDGING THE
WITHDRAWAL OF INTERVENTIONS, AND LIFTING
THE SUSPENSION OF TARIFF SHEETS**

Mailed Date: May 17, 2023

I. STATEMENT

A. Background

1. In May 2021, Colorado Natural Gas, Inc. (CNG) filed an application for recovery of extraordinary gas costs associated with the extreme weather event in February 2021 (Application for Cost Recovery) in Proceeding No. 21A-0188G. The Application for Cost Recovery ultimately resulted in a Comprehensive Joint Stipulation and Settlement Agreement

(Settlement Agreement) between CNG, Trial Staff of the Commission (Staff), and the Office of the Utility Consumer Advocate (UCA). The Settlement Agreement allowed CNG to recover \$7.1 million over 24 months through an Extraordinary Gas Cost Recovery Rider (EGCRR). The Commission approved the Settlement Agreement in Decision No. R21-0759.

2. The Settlement Agreement also anticipated CNG receiving an operational flow order (OFO) penalty from Public Service Company of Colorado (Public Service) for transportation service during the Extreme Weather Event. The Settlement Agreement permitted CNG to either file a new application for recovery of the OFO penalty or amend the previous application.¹ The Settlement Agreement did not address the amount of the potential penalty or how it would be recovered.

3. On November 22, 2022, CNG filed its Motion to Reopen and Amend the Application for Recovery of Extraordinary Gas Costs Related to the Extreme Weather Event of February 13 – 16, 2021 (Motion) and Amended Application. CNG requested authorization to amend its original Application for Cost Recovery to include a \$1.2 million OFO penalty issued by Public Service in September 2022. In its Motion, CNG stated that it had conferred with Staff and UCA and neither objected to the Application for Cost Recovery being re-opened, amended, and re-noticed. In accordance with that statement and the Commission's Rules of Practice and Procedure, the Commission issued a Notice of Amended Application Filed. No new interventions were filed, and neither Staff nor UCA filed an objection or another pleading to request a hearing as instructed in the Commission's notice.

¹ Comprehensive Joint Stipulation and Settlement Agreement, p. 6.

4. On January 5, 2023, the Commission issued Decision No. C23-0006, granting CNG's Motion in Proceeding No. 21A-0188G.

5. On January 6, 2023, CNG filed Advice Letter No. 126-Gas with tariff sheets amending the EGCRR to include recovery of \$1.2 million from the OFO penalty consistent with Decision No. C23-0006. The effective date of the tariffs was January 11, 2023. CNG's filing of Advice Letter No. 126-Gas with tariff sheets amending the EGCRR initiated Proceeding No. 23AL-0029G.

6. On January 10, 2023, three events took place. First, UCA filed an Application for Rehearing, Reargument, or Reconsideration (RRR) of Decision No. C23-0006 and Request for Expedited Ruling. UCA contended that the Commission erred in finding that the Amended Application was unopposed and erred in granting CNG's Motion and authorizing the modification of the EGCRR. UCA stated that the Amended Application was opposed by the Intervenor in the case, stating that UCA and Trial Staff have served discovery on CNG related to the OFO penalty. Second, CNG filed an Amended Advice Letter No. 126-Gas and attachments in Proceeding No. 23AL-0029G. The only change was the addition of the mailing date of Decision No. C23-0006 to the Advice Letter. Third, the Commission issued Decision No. C23-0028 in Proceeding No. 23AL-0029G suspending the tariff sheets filed with CNG's Advice Letter 126-Gas for 120 days, through May 11, 2023, and set the matter for hearing.

7. On January 26, 2023, Staff filed an Application for RRR, stating that: (a) CNG's Motion only requested that Proceeding No. 21A-0188G be re-opened but does not request approval of the Amended Application; and (b) Decision No. C23-0006 denied intervening parties the opportunity to review the prudence of the recovery of extraordinary gas costs related to the Extreme Weather Event of February 13-16, 2021.

8. On February 7, 2023, the Commission issued Decision No. C23-0086 that granted UCA's Application for RRR, denied Staff's RRR as filed out of time, consolidated Proceeding Nos. 21A-0188G and 23AL-0029G pursuant to Rule 1402 of the Commission's Rules of Practice and Procedure,² established an intervention period through March 9, 2023, and referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

9. On February 22, 2023, UCA filed a Notice of Intervention in the consolidated proceedings.

10. On March 20, 2023, the ALJ issued Decision No. R23-0186-I that scheduled a remote prehearing conference for March 31, 2023, and required the parties to confer regarding a schedule for the consolidated proceedings, any discovery procedures that are inconsistent with the Commission's rules governing discovery, and the method by which the hearing should be conducted. Decision No. R23-0186-I also required CNG to file a report of the conferral by 12:00 p.m. on March 28, 2023.

11. On March 28, 2023, CNG filed the report required by Decision No. R23-0186-I.

12. On March 30, 2023, the ALJ issued Decision No. R23-0333-I that vacated the remote prehearing conference, extended the suspension of the Advice Letter, established a procedural schedule based on the schedule proposed by the parties, and scheduled a remote hearing for May 17 and 18, 2023.

13. On May 5, 2023, CNG filed in Proceeding No. 21A-0188G a Second Amended Advice Letter No. 126-Gas (Second Amended Advice Letter), redlined pages from tariff CO

² 4 Code of Colorado Regulations 723-1.

PUC No. 2 showing the proposed changes (Attachment A), a clean copy of the pages of CO PUC No. 2 containing the proposed changes (Attachment B), CNG's responses to Staff's discovery requests CPUC 14-1 through 14-7 (Confidential Attachment C), and CNG's responses to UCA's discovery requests UCA 7-1 through 7-10 (Attachment D and Confidential Attachment D). The Second Amended Advice Letter states in relevant part:

After discussions with CPUC Staff and UCA, CNG is hereby authorized to notify the Commission that CPUC Staff and UCA agree to withdraw their objection to implementation of this tariff under the following conditions:

1. In order to provide a factual basis demonstrating that CNG acted prudently, CNG agrees to submit for inclusion in the record a copy of the Data Responses provided by CNG in response to the Data Requests issued by Staff and UCA. Please see Attachment C and D for these Requests and Responses for inclusion in the record in this proceeding.
2. CNG agrees to confer with CPUC Staff regarding future conservation messaging to customers intended to enhance the Company's current successful customer messaging.
3. PSCo imposed the OFO penalty upon CNG, which CNG has already paid, under the same tariffs being challenged by Tiger Natural Gas in Case No. 2022CV32823 in Denver District Court. If Tiger's appeal is successful, it could change how the OFO penalty should have been computed under PSCo's tariffs which were interpreted by the Commission in Proceeding No. 21A-0192EG in Decision No. C22-0512. Under those circumstances, CNG would seek a refund from PSCo for any amounts overpaid by CNG and subsequently refund to those affected customers any such amounts refunded by PSCo to CNG.

CNG agrees to comply with the above conditions and hereby requests that the Commission allow Second Amended Advice Letter No. 126-Gas to go into effect by operation of law on June 1, 2023.

14. On May 10, 2023, CNG filed in Proceeding NO. 23AL-0029G the same Second Amended Advice Letter and attachments that it filed on May 5, 2023, in Proceeding No. 21A-0188G.

15. On May 11, 2023, the UCA filed a Withdrawal of Interventions in Proceeding Nos. 21A-0188G and 23AL-0029G stating that UCA:

withdraws its intervention filed in these proceedings on February 22, 2023, conditionally, upon the Administrative Law Judge's ("ALJ") approval of the terms of the 2nd Amended Advice Letter No. 126 or by allowing the 2nd Amended Advice Letter No.126 to become effective by operation of law. In the event the ALJ does not approve the terms recited above in the 2nd Amended Advice Letter No.126, UCA requests it continue to be a party in these Proceedings.

16. On May 12, 2023, Staff filed a withdrawal of its interventions in Proceeding Nos. 21A-0188G and 23AL-0029G.

B. Second Amended Advice Letter No. 126-Gas and Attached Tariffs

17. The filing of the Second Amended Advice Letter No. 126-Gas and attached Tariff Sheet Nos. 27B, 27C, and 27D are acknowledged. The Tariff Sheets attached to the Second Amended Advice Letter supersede and replace the Tariff Sheets filed with the preceding Advice Letters filed in this proceeding. The parties have stated good cause to allow the Second Amended Advice Letter and Tariff Sheet Nos. 27B, 27C, and 27D to go into effect by operation of law.

C. Withdrawal of Interventions

18. Staff and UCA have agreed to contingently withdraw their interventions if the Second Amended Advice Letter and Tariff Sheet Nos. 27B, 27C, and 27D are approved as proposed, or allowed to go into effect by operation of law. As explained above, the Second Amended Advice Letter and Tariff Sheet Nos. 27B, 27C, and 27D will be permitted to go into effect by operation of law. As a result, the withdrawal of the interventions of Staff and the UCA is acknowledged.

D. Lifting of Suspension

19. As noted above, in Decision No. C23-0028 filed in Proceeding No. 23AL-0029G, the Commission set the tariff pages for hearing, which suspended the effective date for 120 days from the proposed effective date (January 11, 2023) to May 11, 2023. The undersigned ALJ extended the suspension an additional 130 days, or up to and including September 18, 2023, in Decision No. R23-0333-I. The proposed effective date of Second Amended Advice Letter is thus currently suspended.

20. As noted above, the parties have resolved the issues to be litigated and CNG has filed the Second Amended Advice Letter reflecting the agreements reached by the parties. The withdrawal of the interventions by Staff and UCA has been acknowledged. Consequently, CNG's amendments to Advice Letter No. No. 126-Gas and the accompanying Tariff Sheets Nos. 27B, 27C, and 27D are now unopposed and uncontested.

21. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Advice Letter may be processed under the modified procedure, without a formal hearing.

22. The Second Amended Advice Letter and Tariff Sheet Nos. 27B, 27C, and 27D, as amended, will amend the EGCRR to include recovery of \$1.2 million from the OFO penalty consistent with Decision No. C23-0006. CNG has demonstrated that the concerns leading the Commission to suspend the proposed effective date in Decision No. C23-0028 have now been fully resolved by the parties. It is found and concluded that good cause exists to lift the suspension, permitting the Second Amended Advice Letter and Tariff Sheets Nos. 27B, 27C, and 27D, as amended, to become effective by operation of law. The suspension of the Second Advice Letter and Tariff Sheet Nos. 27B, 27C, and 27D will therefore be lifted and will be

permitted to become effective by operation of law if this Recommended Decision becomes a Commission decision.

23. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The filing of the Second Amended Advice Letter No. 126-Gas and attached Tariff Sheets 27B, 27C, and 27D are acknowledged.

2. The withdrawal of the interventions filed by Trail Staff of the Commission and the Office of the Utility Consumer Advocate are acknowledged.

3. The suspension of the proposed effective date of tariffs accompanying Second Amended Advice Letter No. 126-Gas and Tariff Sheets Nos. 27B, 27C, and 27D by Decision Nos. C23-0028 and R23-0333-I, is rescinded.

4. Tariff Sheets Nos. 27B, 27C, and 27D are permitted to go into effect by operation of law.

5. The hearing scheduled for May 17 and 18, 2023 is vacated.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge