

Decision No. C24-0133-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24D-0074G

IN THE MATTER OF COLORADO NATURAL GAS, INC.'S PETITION FOR A DECLARATORY ORDER TO CLARIFY WHETHER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED, FOR SHORTENED RESPONSE TIME AND FOR AN EXPEDITED DECISION.

**INTERIM COMMISSION DECISION ACCEPTING
PETITION FOR DECLARATORY ORDER
AND ISSUING NOTICE**

Mailed Date: March 4, 2024
Adopted Date: February 28, 2024

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission opens a proceeding to accept and issue notice of the Petition for Declaratory Order (Petition) filed by Colorado Natural Gas, Inc., (CNG), on February 9, 2024. The Petition requests the Commission enter an order to terminate a controversy regarding whether CNG is required to obtain a Certificate of Public Convenience and Necessity (CPCN) prior to beginning construction on a line to serve an existing customer requiring increase throughput which will cost in excess of \$5 million, or in the alternative, to waive Commission Rule 4102(d), 4 *Code of Colorado Regulations* (CCR)723-4 which requires a utility to apply for a CPCN for any project greater than \$5 million. The Petition also requests that the Commission set a 14-day response time to the Petition and that the Commission rule expeditiously on the merits.

2. This Decision establishes a 30-day notice and intervention period for CNG's Petition. Interventions shall be due by **5:00 p.m. on April 3, 2024**.

B. Background

3. On February 9, 2024, CNG filed its Petition seeking a declaratory order pursuant to Rule 4 CCR 723-1-1304(f) of the Commission's Rules of Practice and Procedure.

4. CNG is scheduled to begin construction of a project known as the GCC project (Project) in early July 2024. The Project is an 11-mile natural gas distribution steel mainline which is intended to enable GCC¹, one of CNG's gas transportation customers, to begin using natural gas instead of coal. Due to the emissions requirements established by the CDPHE, GCC is required to substitute coal with natural gas to meet air quality standards and therefore requested that CNG construct the Project which will satisfy GCC's increased natural gas requirements. Currently, CNG serves GCC with natural gas for start-up operations only. The Project will allow GCC to convert its full-time operations from coal to natural gas. Currently, CNG expects the cost of the project to exceed \$5 million.

5. Commission Rule 4102(d), recently adopted in Proceeding No. 21R-0449G, requires that a utility with less than 50,000 full-service customers to apply for a CPCN for approval for construction and operation of a facility, or an extension or expansion of a facility where the total utility capital investment value is greater than \$5 million in 2020 dollars, unless the utility has already received approval by the Commission pursuant to a Gas Infrastructure Plan (GIP). CNG has not yet filed its first GIP. However, CNG asserts that the Project does not require a CPCN under § 40-5-101(1)(a)(II) and (III), C.R.S. which establishes that a CPCN is not required when the project is (II) an extension into territory, either within or outside of a city and county,

¹ GCC is an abbreviation for Grupo Cementos de Chihuahua of America, Inc.

city, or town, contiguous to its facility, line, plant, or system and not already served by a public utility providing the same commodity or service; or (III) an extension within or to territory already served by the corporation, as is necessary in the ordinary course of its business. According to CNG, the Project does not need a CPCN under this statute because the Project is a line extension through territory that is contiguous to territory served by CNG that is not served by any other public utility and the line extension is in CNG's ordinary course of business in providing service to an already existing customer.

6. CNG further argues that the line extension is within the company's ordinary course of business because public utilities generally have an "obligation to serve" customers requesting service under §§ 40-3-101(2) and 40-4-101(2), C.R.S. In addition, CNG cites Commission precedent and argues that analogous electric proceedings did not require CPCNs for projects serving a single retail customer.

7. CNG concludes its argument by asserting that the Project is in the public interest because it will not negatively impact customers, is unlikely to increase rates, and will reduce carbon dioxide emissions by facilitating the transition from coal to natural gas. CNG cites to GCC's Greenhouse Gas Emissions and Energy Management compliance action plan which requires GCC to reduce its carbon dioxide output by five percent by 2025. CNG also cites to the fact that GCC employs about 150 individuals and may move its operation out of state if it is unable to fully convert to natural gas.

8. CNG seeks a declaratory order affirming that a CPCN is not required for the Project under §40-5-101(1)(a)(II) and (III) and that the project is plainly an activity falling within the ordinary course of business standard of Rule 4102. In the alternative, CNG seeks a permanent waiver of Rule 4102(d), 4 CCR 723-4 with respect to GCC's facilities. CNG also seeks an

expedited ruling on the Petition and asks that the Commission set a 14-day response time to the Petition.

C. Findings and Conclusions

9. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 CCR 723-1-1304(f)(II). If a petition meets those requirements, the Commission then exercises its discretion to accept or dismiss the Petition.

10. We find that evaluating the questions presented in the Petition will remove uncertainty regarding whether the Project requires CNG to apply for a CPCN under § 40-5-101, C.R.S., and Rule 4 CCR 723-3-4102(d). We therefore accept the Petition and issue notice of the Petition to interested persons, firms, and corporations by service of this Decision.

11. However, because the Petition asks the Commission to interpret the interaction between Commission Rules and the public utilities statutes, the Commission denies CNG's request to set a 14-day response time. We find that the Petition raises novel and potentially complex legal questions. The Commission's understanding and analysis of the issues will benefit from a thorough adjudicatory process and therefore expediting this proceeding is inappropriate.

12. The Petition is available for public inspection by accessing the Commission's E-Filings System under Proceeding No. 24D-0074G at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24D-0074G.

This Decision is the notice that CNG's Petition for Declaratory Order To Clarify Whether A Certificate Of Public Convenience And Necessity Is Required, For Shortened Response Time And For An Expedited Decision, has been filed with the Commission.

13. This Decision establishes a 30-day notice and intervention period for CNG's Petition. The Commission's notice period for the Petition shall extend through and include **5:00 p.m. on April 3, 2024**. The intervention period will run concurrent with the notice period. Interventions shall be due by **5:00 p.m. on April 3, 2024**.

14. Whether additional pleadings or processes are necessary following consideration of intervention and responsive pleadings will be addressed through separate decision.

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order (Petition) filed by Colorado Natural Gas, Inc., (CNG), on February 9, 2024, is granted, consistent with the discussion above.

2. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

3. The notice period for the Petition shall extend through and include **5:00 p.m. on April 3, 2024**.

4. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on April 3, 2024**.

5. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments in response to the Petition, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or by accessing the Commission's E-Filing system under the above proceeding number at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

Comments provided on or before May 15, 2024, will best ensure they can be reviewed as the Commission considers further actions in this proceeding.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 28, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners