

Decision No. R24-0004-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0418G

ARM, LLC, and HEARTLAND INDUSTRIES, LLC

COMPLAINANTS,
V.

COLORADO NATURAL GAS, INC. and WOLF CREEK ENERGY, LLC,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
DENYING WITHOUT PREJUDICE REQUEST FOR
SUBPOENA DUCES TECUM**

Mailed Date: January 3, 2024

I. BACKGROUND

A. Procedural Background

1. The procedural background relevant to this decision is included below. A complete procedural background of this proceeding is included in Decision No. R23-0724-I that issued on October 25, 2023.

2. On August 16, 2023, ARM, LLC and Heartland Industries, LLC filed a Formal Complaint against Colorado Natural Gas, Inc. and Wolf Creek Energy, LLC.

3. On August 30, 2023, the Commission referred the matter to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

4. On October 5, 2023, the Office of the Utility Consumer Advocate filed a Notice of Intervention as a Matter of Right and Entry of Appearances.

5. On December 8, 2023, UCA filed a Request for Issuance of a Subpoena to Summit Utilities, Inc. for Production of Documents (Request), an Affidavit of Cindy Schonhaut in support of the Request, and the requested Subpoena Duces Tecum.

B. Analysis

6. The process for issuance of a subpoena is set out in Colorado Statutes, Commission Rules, and the Colorado Rules of Civil Procedure (C.R.C.P.). Section 40-6-103(1), C.R.S., provides that “[n]o subpoena shall be issued except upon good cause shown. Good cause shown shall consist of an affidavit stating with specificity the testimony, records, or documents sought and the relevance of such testimony, records, or documents to the proceedings of the commission.” Commission Rule 1406(a) incorporates by reference “rule 45(a)-(d) of the Colorado Rules of Civil Procedure,” and Rule 1406(b) states that “[e]xcept as provided in paragraph (b) of this rule and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission shall be governed by rule 45(a) – (d) of the *Colorado Rules of Civil Procedure*, as incorporated herein.”¹

7. Commission Rule 1004(h) specifies that “‘Colorado Rules of Civil Procedure’ means the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes. No later amendments to or editions of the incorporated material are incorporated into these rules.”² The 2012 edition of C.R.C.P. 45(a) states that “[s]ubpoenas may be issued under Rule 45 only to compel attendance of witnesses, with or without documentary evidence, at a deposition, hearing or trial.”³ Finally, Commission Rule 1406(b) requires in relevant part that

¹ 4 *Code of Colorado Regulations* (CCR) 723-1.

² *Id.* (footnote omitted).

³ C.R.C.P. 45(a) (2012).

“[u]pon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue . . . a subpoena duces tecum requiring . . . the production of documentary evidence . . . at a . . . deposition . . . consistent with § 40-6-103(1), C.R.S.”⁴ As a result, to compel the production of documents pursuant to a subpoena duces tecum, the subpoena duces tecum must set the time and place for a deposition at which the requested documents will be produced.

8. Here, UCA’s request does not satisfy the requirements for the issuance of a subpoena duces tecum because it does not seek to compel the production of the requested documents at a deposition.⁵ Instead, while it seeks to compel the production of documents, it requires the documents to be produced at a “place of production,” which is the work location of UCA’s attorneys.⁶ Accordingly, the subpoena duces tecum provided by UCA does not comply with the 2012 version of C.R.C.P. 45 or Commission Rule 1406(b). Based on the foregoing, UCA’s Request shall be denied.

II. **ORDER**

A. **It Is Ordered That:**

1. For the reasons stated, the Request for Issuance of a Subpoena to Summit Utilities, Inc. for Production of Documents (Request) filed by the Office of the Utility Consumer Advocate on December 8, 2023, is denied without prejudice.

⁴ 4 CCR 723-1.

⁵ See *generally* Subpoena Duces Tecum.

⁶ *Id.* at 1.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director