

Decision No. R24-0296-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
GRANTING-IN-PART AND DENYING-IN-PART UCA'S
MOTION TO COMPEL**

Mailed Date: May 2, 2024

I. STATEMENT

A. Relevant Procedural Background

1. On August 16, 2023, ARM, LLC and Heartland Industries, LLC (collectively, Complainants) filed a Formal Complaint against Colorado Natural Gas, Inc. and Wolf Creek Energy, LLC (collectively, Respondents) that initiated this proceeding.

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

3. On January 30, 2024, the ALJ signed a Subpoena Duces Tecum (Subpoena) filed by the Office of the Utility Consumer Advocate (UCA) ordering Summit Utilities, Inc. (Summit Utilities) to produce documents at a deposition scheduled for February 9, 2024.

4. On February 8, 2024, Summit Utilities filed a Motion to Quash Subpoena Duces Tecum (Motion to Quash). On February 22, 2024, Complainants, Commission Trial Staff, and UCA filed responses to the Motion to Quash.

5. On February 23, 2024, Complainants filed a Motion to Compel Discovery from Respondents (Motion to Compel).

6. On April 5, 2024, the ALJ issued Decision No. R24-0209-I that granted-in-part and denied-in-part the Motion to Quash, granted the Motion to Compel, and ordered Summit Utilities and Respondents to supplement their responses to the discovery addressed in the decision within two weeks.

7. On April 18, 2024, Respondents filed a First Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information for documents and categories of information that it plans to produce in response to the Motion to Quash and the Motion to Compel (First Motion).

8. On April 19, 2024: (a) the ALJ issued Decision No. R24-0249-I that shortened response time to the First Motion to April 24, 2024; and (b) Respondents filed an Unopposed Revised Motion for Extension of Time to Respond to Certain Requests in the Colorado Office of the Utility Consumer Advocate's Subpoena Duces Tecum (Unopposed Motion) requesting a one-week extension, to and including April 26, 2024, to respond to requests 14, 22, and 23 in the Subpoena.

9. On April 24, 2024: (a) the ALJ issued Decision No. R24-0273 that granted the Unopposed Motion (the ALJ had sent an email to counsel for the parties on April 19, 2024 informing them that the Unopposed Motion would be granted, but it was unclear when the written decision granting the Unopposed Motion would be filed); (b) Complainants filed a response to the First Motion; and (c) UCA filed a Motion to Compel and Request for Shortened Response Time (Second Motion to Compel) to April 25, 2024. UCA represented that it conferred with the other parties to this proceeding and that Respondents oppose the Second Motion to Compel, Complainants support it, and Staff takes no position on it.

10. On April 26, 2024, the ALJ issued Decision No. R24-0276-I that granted-in-part and denied-in-part the request to shorten response time in the Second Motion to Compel. As a result, response time to the Second Motion to Compel was shortened to April 29, 2024.

11. On April 29, 2024: (a) the ALJ issued Decision No. R24-0283-I granting the First Motion; and (b) Respondents filed their response to the Second Motion to Compel (Response).

B. Motion

12. In the Motion, UCA states it received an email from CNG stating, in part, that there are approximately 4,000 pages of documents “regarding Summit Utilities, Inc. and Summit LDC Holdings, LLC corporate materials” that CNG has not produced.¹ Instead, CNG maintains that the materials are “not relevant, are beyond the scope of this proceeding and are not related to the issues raised in the First Amended Complaint,” and requested to meet and confer regarding these documents.² Because the ALJ denied CNG’s Motion to Quash the subpoena regarding these documents, UCA requests the ALJ to grant the Second Motion to Compel and thereby compel the

¹ Second Motion to Compel at 2 (¶ 2).

² *Id.*

production of the documents. UCA also requests that CNG be ordered to produce the approximately 4,000 pages in electronic format, as well as approximately 200 pages produced by CNG in hard copy on April 22, 2024.³ Finally, UCA asks that CNG be sanctioned for “knowingly and willfully failing to comply with Decision No. R24-0209-I.”⁴

C. Response

13. CNG states that redactions must be made from the approximately 4,000 pages to remove “privileged information and material contained in those pages that have no bearing in the issues raised” in this Proceeding. CNG estimates that the review and redaction process will take approximately three weeks. In addition, CNG states that there is no basis for either compelling the production of documents in electronic format or sanctioning CNG. CNG thus requests that the Second Motion to Compel be denied.

D. Analysis

14. The Second Motion to Compel shall be granted-in-part and denied-in-part. Decision No. R24-0209-I denied the Motion to Quash on the basis that the documents at issue in the Second Motion to Compel are irrelevant, and ordered the documents to be produced within two weeks of the date of that decision. In addition, the ALJ granted Respondents’ First Motion for Protective Order over objections of the Complainants to permit Respondents to designate the documents that are the subject of the Second Motion to Compel as highly confidential. As a result, the only permissible redactions in the documents are for legal privilege and the additional content of those documents can be protected through their designation as highly confidential as appropriate under the Commission’s rules.

³ *Id.* at 3-4 (¶ 13).

⁴ *Id.*

15. Based on the foregoing, the ALJ will order Respondents and/or Summit Utilities, Inc. to produce the documents with redactions for legal privilege and a privilege log consistent with C.R.C.P. 26(b)(5) by May 17, 2024.. To the extent Respondents and/or Summit Utilities do not assert that the entirety of the produced documents is highly confidential, Respondents and/or Summit Utilities should then take the requested three weeks to highlight the documents to identify confidential and/or highly confidential material contained therein. The highlighted documents will then be produced by May 24, 2024, and the parties possessing the produced documents must rely on the highlighted documents to determine what portions of those documents must be redacted if any of them are filed or presented at the hearing. The ALJ finds and concludes that the foregoing decisions are consistent with Decision Nos. R24-0209-I and R24-0283-I and produce the fairest outcome for the parties under the circumstances.

16. The ALJ finds and concludes that there is no basis for sanctioning Respondents at this time, or for ordering Respondents to produce any documents in electronic format. Accordingly, those two requests in the Second Motion to Compel are denied.

II. ORDER

A. It Is Ordered That:

1. The Motion to Compel and Request for Shortened Response Time filed on April 25, 2024 by the Office of the Utility Consumer Advocate is granted-in-part and denied-in-part consistent with the discussion above.

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