

Decision No. C13-0347-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 13A-0112SG

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC., FOR AN ORDER AUTHORIZING SUMMIT UTILITIES, INC., TO ENCUMBER ISSUED AND OUTSTANDING SHARES OF COLORADO NATURAL GAS, INC., COMMON STOCK

STIPULATION AND SETTLEMENT AGREEMENT

Come now Colorado Natural Gas, Inc. (CNG or the Company) and the Trial Staff of the Public Utilities Commission of the State of Colorado (Staff) and submit this Stipulation and Settlement Agreement in resolution of all the issues which were raised or could have been raised in the above referenced proceeding and in support thereof state as follows:

1. On February 13, 2013, CNG filed an Application along with exhibits pursuant to Rules 4002 and 4105 of the Rules Regulating Gas Utilities and Pipeline Operators 4CCR723-4. By its Application, CNG seeks an order from the Commission authorizing it to encumber issued and outstanding shares of CNG common stock.

2. The Commission issued a Notice of Application Filed on February 20, 2013. On April 2, 2013, the Staff filed its Unopposed Motion for Late Intervention, Waiver of Response Time, Entry of Appearance, Notice Pursuant to Rule 100(a) and Rule 1403(b) and Request for Hearing. Staff's intervention was granted by Decision No. R13-0384-I mailed April 3, 2013.

3. CNG and Staff have negotiated language which, if approved by the Commission, resolves all issues which Staff could have raised in this docket. Attached hereto is Exhibit 1 which is copy of the language negotiated between Staff and CNG regarding the pledge of shares

and the Commission's jurisdiction in the event of a default of the Promissory Note and the Master Note Purchase Agreement for which those shares serve as collateral.

4. The execution of Exhibit 1 by CNG's lenders is evidence of their understanding and commitment to abide by Section 40-5-105, C.R.S. and any applicable Commission rules requiring that the lenders obtain authorization from the Commission to proceed with the transfer of the shares held by pledgor in Colorado Natural Gas for the terms of the Pledge Agreement.

5. CNG and Staff commend Exhibit 1 to the Commission as evidence that the Commission's jurisdiction over any subsequent transfer of shares pursuant to default or foreclosure on the Promissory Note and Master Note Purchase Agreement is governed by and requires prior Commission approval in order to complete such a transaction.

6. Based upon the terms of the agreement attached to this Stipulation and Settlement Agreement as Exhibit 1, Colorado Natural Gas respectfully requests that the Commission issue an order granting the application to pledge the shares of Colorado Natural Gas, Inc. held by Summit Utilities, Inc..

GENERAL TERMS AND CONDITIONS

1. Through active prehearing investigation and negotiations, CNG and Staff have negotiated the agreement as set forth in this Stipulation, resolving the enumerated contested and disputed issues in this docket in a manner which they agree is just and reasonable and in the public interest. This Stipulation reflects the compromise and settlement of those disputed issues between CNG and Staff in this docket. CNG and Staff further agree that reaching agreement by means of negotiation, stipulation and /or settlement, rather than through litigation, is in the public interest.

2. CNG and Staff agree to present, to support, and to defend this Stipulation before the Commission and in the courts. They further agree to present testimony and exhibits in the

evidentiary hearing in this docket, or in a separate hearing set for the purpose of obtaining the Commission's approval of this Stipulation. In the event the Commission rejects this Stipulation on a certain issue, CNG and Staff agree that as to that issue, CNG or Staff may request a hearing on that issue and must file written notice of the issue on which a hearing is requested and a motion requesting a hearing. The written notice and motion must be filed with the Commission within five (5) calendar days of the effective date of the Commission's decision rejecting the Stipulation on that certain issue. If the Commission schedules a hearing on the rejected stipulated issue, CNG and Staff agree that they may cross-examine each other's witnesses on the issue rejected by the Commission.

3. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of the disputed issues resolved herein.

4. CNG and Staff specifically agree and understand that this Stipulation represents a negotiated settlement in the public interest with respect to the various matters and issues enumerated therein, for the sole purpose of the settlement of the matters agreed to in this Stipulation. CNG and Staff shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Stipulation, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Stipulation, none of the methods or principles herein contained shall be deemed by CNG and Staff to constitute a settled practice or precedent in any future proceeding.

5. This Stipulation may be executed in counterparts and by facsimile or electronic copies of signatures, all of which when taken together shall constitute the entire Stipulation with respect to the matters addressed herein.


CONCLUSION

For the reasons stated above, Colorado Natural Gas, Inc. and the Trial Staff of the Public Utilities Commission of the State of Colorado respectfully request that the Commission enter an order approving this Stipulation and Settlement Agreement and find that the Commission's approval of this Stipulation represents a fair, just, and reasonable resolution of any and all disputes in this docket as to those issues.

DATED this 24th day of April, 2013.

Agreed on behalf of:

ROTHGERBER JOHNSON & LYONS LLP:

By: 
Mark A. Davidson (Reg. No. 10364)
Rothgerber Johnson & Lyons LLP
One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, Co 80202
Telephone: 303-628-9577
Email: mdavidson@rothgerber.com

By: 
Michelle Moorman
Director, Regulatory Affairs
Summit Utilities, Inc.
7810 Shaffer Parkway, Ste 120
Littleton, CO 80127

Attorneys for Colorado Natural Gas, Inc.

Approved as to form: OFFICE OF THE ATTORNEY GENERAL By: <u><i>Jane K. Botterud # 20726 JKB</i></u> Jean S. Watson-Weidner, 21036 Assistant Attorney General Revenue and Utilities Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, Colorado 80203 Telephone: (720) 508-6331 Email: jsww@state.co.us	Agreed on behalf of: TRIAL STAFF OF THE COMMISSION: <u><i>Kevin R. Kunzick</i></u> 1560 Broadway, Suite 250 Denver, CO 80202
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Attorney for the Trial Staff of the Commission

It is agreed to and stipulated by the undersigned as the Pledges of the Pledge Agreement to be executed by Summit Utilities, Inc. as Pledgor of shares held by Pledgor in Colorado Natural Gas, Inc., a public utility subject to the jurisdiction and rules of the Colorado Public Utilities Commission (CPUC), that prior to exercising any rights per the Pledge Agreement in the event of a default on the promissory note and the Master Note Purchase Agreement that the Pledges will comply with § 40-5-105, C.R.S. and any applicable CPUC Rules and obtain authorization from the CPUC to proceed with transfer of the shares per the Pledge Agreement.

METROPOLITAN LIFE INSURANCE
COMPANY

METLIFE INVESTORS USA INSURANCE
COMPANY

By: Metropolitan Life Insurance Company, its
Investment Manager

NEW ENGLAND LIFE INSURANCE
COMPANY

By: Metropolitan Life Insurance Company, its
Investment Manager

METLIFE INSURANCE COMPANY OF
CONNECTICUT

By: Metropolitan Life Insurance Company, its
Investment Manager

By: Nancy Doyle TP
Name: NANCY DOYLE
Title: DIRECTOR

COBANK, ACB, in its capacity as Collateral
Agent on behalf of the Colorado Natural Gas
Holders

By: Brent F. Knight
Name: Brent F. Knight
Title: Vice President

The above stipulation is consented and agreed to by the undersigned.

JPMORGAN CHASE BANK, N.A.,
in its capacity as Colorado Natural Gas lender

By: K Thomas
Name: K Thomas
Title: Underwriter

Colorado Natural Gas, Inc. and Summit Utilities, Inc. agree to the above stipulation and agree to comply with § 40-5-105, C.R.S. in the event of a default on the loan if Colorado Natural Gas, Inc. and/or Summit Utilities, Inc. received notices that the Pledges intend to exercise rights per the Pledge Agreement.

Utility:

COLORADO NATURAL GAS, INC.

Michael P. Earnest, President and CEO

Pledgor:

SUMMIT UTILITIES, INC.

Michael P. Earnest, President and CEO

COBANK, ACB, in its capacity as Collateral Agent on behalf of the Colorado Natural Gas Holders

By: 
Name: Brent R. Knight
Title: Vice President

The above stipulation is consented and agreed to by the undersigned.

JPMORGAN CHASE BANK, N.A.,
in its capacity as Colorado Natural Gas lender

By: _____
Name: _____
Title: _____

Colorado Natural Gas, Inc. and Summit Utilities, Inc. agree to the above stipulation and agree to comply with § 40-5-105, C.R.S. in the event of a default on the loan if Colorado Natural Gas, Inc. and/or Summit Utilities, Inc. received notices that the Pledges intend to exercise rights per the Pledge Agreement.

Utility:

COLORADO NATURAL GAS, INC.


Michael P. Earnest, President and CEO

Pledgor:

SUMMIT UTILITIES, INC.


Michael P. Earnest, President and CEO

CERTIFICATE OF SERVICE
DOCKET NO. 13A-0112SG

I hereby certify that on this 24th day of April, 2013 the foregoing **COLORADO NATURAL GAS, INC.'S STIPULATION AND SETTLEMENT AGREEMENT** was e-filed with the Colorado Public Utilities Commission.

A copy was electronically served in Adobe.pdf format to the following:

Mariya Cassin	<u>Mariya.Cassin@state.co.us</u>	Commission Counsel
William Levis	<u>william.levis@dora.state.co.us</u>	OCC
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s/Patty Sheley