

Decision No. C21-0030

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20F-0077G

WILLIAM C. DANKS,

COMPLAINANT,

V.

DCP OPERATING COMPANY, LP,

RESPONDANT

**COMMISSION DECISION DENYING REQUEST FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: January 14, 2021

Adopted Date: January 6, 2021

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies Mr. William C. Danks' request for rehearing, reargument, and reconsideration filed December 17, 2020 (RRR).¹ As further discussed below, through its orders in this proceeding, the Commission has appropriately addressed the claims raised in the Amended Complaint regarding determinations of Commission jurisdiction and interpretation of Public Utilities Law. In addition, the Commission informed Mr. Danks and the

¹ We note that the RRR improperly attempts to amend the Amended Complaint, The Amended Complaint refers to the initial Complaint filed by Mr. Danks on February 25, 2020, as subsequently amended through filings provided May 1, 2020, and accepted through Decision No. R20-0376-I, issued May 19, 2020. Prior and subsequent filings of Mr. Danks requesting to further amend his Complaint have been rejected. *See* Decision No. C20-0840, issued December 4, 2020, at ¶¶ 5-11, 23, and 34. We note also that the RRR misconstrues decisions in this proceeding and Public Utilities Law.

public of additional processes available should concerns regarding utility regulation remain on matters not appropriately raised, and therefore not addressed, in this proceeding.

2. No arguments in the RRR persuade this Commission to overturn its prior Exceptions Decision,² or further amend the Recommended Decision³ issued by the assigned Administrative Law Judge (ALJ).

B. Background

1. Complaint as Amended

3. In his original complaint, filed February 25, 2020, Mr. Danks argued that DCP Operating Company, LP (DCP) is a “public utility” under § 40-1-103(1)(a)(1), C.R.S., and claimed that, as a “public utility,” DCP failed to obtain a certificate of public convenience and necessity (CPCN) as required by § 40-5-101, C.R.S., for its 62-mile Grand Parkway pipeline project in Weld County, Colorado, and two subsequent additions to that pipeline, the Red Cloud and Lindsey pipelines.⁴

4. In response to the initial complaint, on March 19, 2020, DCP filed its first motion to dismiss the complaint, alleging Mr. Danks lacks standing and the Commission lacks subject matter jurisdiction (First Motion to Dismiss). In response, Mr. Danks made filings on March 31, 2020, purporting to amend and supplement the complaint.⁵ The assigned ALJ rejected Mr. Danks’ March 31, 2020 filings, informing Mr. Danks that if he wished to amend his complaint he must

² Decision No. C20-0840, issued December 4, 2020.

³ Decision No. Decision No. R20-0549, issued July 29, 2020.

⁴ More robust procedural filings and history is provided in the Exceptions Decision and prior ALJ decisions. *See, e.g.*, Exceptions Decision, at ¶¶ 4-25; Recommended Decision at ¶¶ 2-18.

⁵ *See* Amendment to Formal Complaint and Addendums 1 and 2 to the Formal Complaint.

file a motion consistent with Rule 1309(a), 4 *Code of Colorado Regulations* (CCR) 723-1.⁶ Subsequent to the ALJ's direction, on May 1, 2020, Mr. Danks filed a Motion to Amend Complaint and the proposed Amended Complaint (First Motion to Amend). DCP responded that it did not object to the Motion to Amend, and the ALJ subsequently granted the First Motion to Amend on May 19, 2020⁷ resulting in the "Amended Complaint" as referred to in this Decision.

5. On May 21, 2020, Mr. Danks filed a Second Motion to Amend Complaint (Second Motion to Amend) and a proposed Second Amendment. Immediately following DCP's Motion to Dismiss the Amended Complaint (Second Motion to Dismiss)⁸ and supporting documents provided on May 28, 2020, Mr. Danks filed a Third Motion to Amend (Third Motion to Amend) on June 1, 2020. Throughout the course of this proceeding, the ALJ denied both the Second and Third Motions to Amend, affirmed that DCP is the only respondent in this proceeding,⁹ and denied the First Motion to Dismiss as moot.¹⁰

6. The Amended Complaint adds that the Grand Parkway pipeline project includes processing plants and compression stations in Weld County. The Amended Complaint further includes that DCP owns 98.7 percent of the gas transported in the DCP pipelines to the DCP processing plants in the Grand Parkway projects and after that raw gas is processed, DCP sells the residue gas and natural gas liquids to the public. The Amended Complaint concludes that these

⁶ Decision No. R20-0283-I, issued April 24, 2020. The order further addressed DCP's April 15, 2020 Motion to Strike and subsequent reply filings, in addition to ordering a remote prehearing conference with the parties for June 4, 2020.

⁷ Decision No. R20-0376-I, issued May 19, 2020.

⁸ The Second Motion to Dismiss is discussed more fully in the Exceptions Decision. Exceptions Decision, at ¶¶ 12-18.

⁹ Mr. Danks includes additional entities in prior filings throughout this proceeding. Through his exceptions and RRR, Mr. Danks does not contest the ALJ's determination that DCP is the only complainant at issue for the claims raised in the Amended Complaint.

¹⁰ See Decision No. R20-0430-I, issued June 10, 2020; Recommended Decision, at ¶ 16.

pipelines and processing plants comprise the “DCP Public Utility,” and that DCP failed to obtain the required CPCN prior to constructing this “DCP Public Utility.”¹¹ Through his Amended Complaint, Mr. Danks asks the Commission to “take appropriate action as required by CRS 40-5-101” for DCP’s failure to obtain CPCNs before beginning construction.¹²

7. The Amended Complaint also adds a response to the standing arguments raised in DCP’s Second Motion to Dismiss, stating that Mr. Danks’ right to property has been damaged by DCP’s Grand Parkway project, including that DCP has four different pipelines on Mr. Danks’ property and that he has suffered damage to his property rights from those pipelines and from wells drilled by other companies near the Grand Parkway pipeline.¹³

8. Through her Recommended Decision, the ALJ finds that § 40-5-101, C.R.S., contemplates complaints seeking to prevent duplication or interference with public utility services, but includes no language allowing for complaints such as Mr. Danks that have no connection to the statutory intent of preventing competition and avoiding duplication and interference with public utility service.¹⁴ The ALJ therefore dismissed the Amended Complaint due to lack of standing.¹⁵

9. Although the ALJ’s Recommended Decision lists a series of undisputed facts in the proceeding,¹⁶ including that the pipelines at issue transport raw and unprocessed gas,¹⁷ because she concludes that Mr. Danks lacks standing to pursue the Amended Complaint, the ALJ does not

¹¹ Amended Complaint, p. 3.

¹² *Id.* at 4.

¹³ Mr. Danks’ additional property damage claims that are not before this Commission are discussed more fully in prior decisions. *See, e.g.*, Recommended Decision, at ¶¶ 22, 24, 29-36.

¹⁴ Recommended Decision, at ¶¶ 85-93.

¹⁵ *Id.* at ¶¶ 92-93.

¹⁶ *Id.* at ¶¶ 37-55.

¹⁷ *Id.* at ¶ 51.

address whether DCP is operating for the purpose of supplying the public under § 40-1-103, C.R.S.¹⁸

10. On August 14, 2020, Mr. Danks filed a “Motion for Reconsideration” of the ALJ’s Decision (Exceptions). Mr. Danks claims that the ALJ’s decision based on standing is in error and that the ALJ should, instead, deny DCP’s Motion to Dismiss based on standing and the merits, and set the matter for an evidentiary hearing.¹⁹

11. On December 4, 2020, the Commission issued a Decision Construing Filing as Exceptions and Addressing Exceptions to Recommended Decision No. R20-0549 (Exceptions Decision). Through the Exceptions Decision, the Commission construed Mr. Danks’ filings from August, 14, 2020, as exceptions pursuant to § 40-6-109(2), C.R.S., and considered the pleading in accordance with Rule 1505, 4 CCR 723-1. The Commission agreed with the ALJ that Mr. Danks’ alleged injuries are not redressable by this Commission and that Mr. Danks’ arguments in the Exceptions are unconvincing to move this proceeding to evidentiary hearing.²⁰ However, the Commission nevertheless found the interests of justice²¹ compelled review of the record to determine whether unlawful public utility operations are occurring.²²

12. Reviewing the facts alleged in the Amended Complaint, the Commission determined that the respondent, DCP, is not a public utility as defined by § 40-1-103, C.R.S., and therefore no CPCN is or would have been required for the gathering lines at issue, including the

¹⁸ *Id.* at ¶ 92.

¹⁹ *See* Motion for Reconsideration, p. 23.

²⁰ Exceptions Decision, at ¶¶ 29-36.

²¹ *See* § 40-6-101(1), C.R.S.

²² Exceptions Decision, at ¶ 37.

Grand Parkway, Red Cloud, and Lindsey pipelines, up through the processing plant as raised in the Amended Complaint.²³

13. In addition, the Commission found it appropriate to alert the public to the regular duties of Staff of the Colorado Public Utilities Commission (Staff) in ensuring compliance with the Public Utility Law. Through the Exceptions Decision, the Commission notified Staff of Mr. Danks' regulatory concerns, as evidenced through his pleadings in this case including his multiple requests to further amend the Amended Complaint. At the same time, through its Exceptions Decision, the Commission informed both Mr. Danks and the general public of the ability to alert Staff of any concerns or issues through the Commission's informal complaint processes as set forth in the Commission's Rules of Practice and Procedure, 4 CCR 723-1

14. On December 17, 2020, Mr. Danks filed the RRR. Mr. Danks threatens to pursue litigation in District Court, incorporates his exceptions arguments on standing, and includes a series of arguments reiterating his claim that DCP should have obtained a CPCN prior to construction and that the Commission erred in "breaking the DCP operations into two parts: upstream and downstream from the processing plants."²⁴ Mr. Danks requests that the Commission reverse its Exception Decision and claims that it must hold a hearing on whether DCP is a public utility as defined in statute.

C. Findings and Conclusions

15. Mr. Danks' arguments on standing have been clearly rejected by the Commission's prior decision. Specifically, Mr. Danks' filing raises no arguments other than generally citing *Ainscough v. Owens*, 90 P. 3d 851 (Colo. 2004).

²³ *Id.*, at ¶¶ 37-50.

²⁴ RRR, p. 6.

16. In *Ainscough*, employees and their associations appealed a 2001 policy from the Colorado Governor and Personnel Director regarding automatic payroll deductions. The Colorado Supreme Court overturned the trial and appeals court that agreed with the Governor, who argued that the employees and their associations had no standing to challenge the Executive Order. The Court describes the well-known standards in Colorado that confer standing. Namely, under *Wimberly v. Ettenbarg*, 570 P. 2d 535, 539 (1977), the two pronged test requires: (1) that the plaintiff must have suffered an injury-in-fact; and (2) that this harm must have been to a legally protected interest. Considering these factors in reverse order, the Court found that the plaintiff's requested payroll deductions were an "legally protected right." The Court stated that, presuming the allegations were true that they unsuccessfully requested automatic deductions of union dues from their paychecks, the plaintiffs would suffer an "injury-in-fact."

17. While it is unclear what argument Mr. Danks raises in light of *Ainscough*, for the reasons stated in the Recommended Decision, the ALJ determined that Mr. Danks demonstrated no injury in fact or legally protected interest in the regulatory CPCN requirements he sought to enforce. The ALJ's considerations align with precedent discussed in *Ainscough* and we decline to revise our decision further based on his RRR on the issue of standing.

18. Mr. Danks' arguments in the RRR titled "Merits" are also unconvincing. The issues raised were considered and rejected in the Exceptions Decision, or wholly misconstrue the direction provided by the Commission.

19. First, the Commission properly considered upstream and downstream operations separately, consistent with prior Commission decisions. Accepting the facts presented in the Amended Complaint as true, the gas in the pipelines upstream of the processing plant is raw, unprocessed gas that cannot be supplied to the public. Thus, the Commission's analysis in its

Exception Decision clearly explains that for jurisdictional purposes, pipelines downstream of processing plants present separate considerations than pipelines upstream of the processing plants. Mr. Danks attempts to gloss over this critical distinction between raw gas and processed gas; however, consistent with prior Commission determinations, just because gas could “eventually end[] up being supplied to the public” does not convert the gas gathering system of the pipeline corporation prior to processing into a public utility.²⁵

20. Further still, the Commission also addressed in the Exceptions Decision the ownership claims Mr. Danks attempts to again raise in his RRR and explained that transporting raw gas for third parties does not convert DCP into a public utility.²⁶

21. In addition, Mr. Danks misinterprets the Commission raising issues downstream of the processing plant to Staff’s attention and presenting the public with appropriate rules and processes to assist Staff if there are utility regulation concerns. As the Commission already decided, not only do facts pertinent to the pipeline downstream of the processing plant have no bearing on the upstream determinations regarding DCP’s utility status, but it is unclear that DCP would be the appropriate complainant if valid concerns are raised.²⁷ If any valid concerns arise downstream of the processing plant, the appropriate path forward would be in a separate proceeding that ensures the appropriate parties are represented. The Commission indicated that the public can, and should, use the Commission’s informal complaint processes to alert Staff of

²⁵ Exceptions Decision, at ¶¶ 45-46.

²⁶ *Id.*, at ¶¶ 47-49.

²⁷ In the RRR, Mr. Danks includes arguments regarding the processing plants themselves. (RRR, p. 8). These arguments in no way impact the clear jurisdictional claims upstream of the processing plant pled in the Amended Complaint or our rationale for finding that such upstream portions are not jurisdictional to the Commission.

concerns or facts it should review further. Staff is well situated and has a regulatory duty to raise valid concerns to the Commission.²⁸

22. Second, Mr. Danks' claims that the Commission somehow improperly converted or considered DCP's Second Motion to Dismiss and needed to hold a hearing to reach a decision in this case is inaccurate.

23. As an expert agency, the Commission's view of the limits of its own authority under the Public Utilities Law is a matter within its jurisdiction to consider irrespective of any party motion.²⁹ The PUC considers Colorado Rules of Civil Procedure (CRCP) as guidelines in making its determinations, particularly where it acts in a judiciary capacity as it does in this complaint proceeding. Under CRCP Rule 12, like a trial court, the Commission may determine jurisdictional issues without an evidentiary hearing if it accepts all of the plaintiff's assertions of fact as true. Like a court, the Commission may dismiss a complaint where "the substantive law does not support the claims alleged,"³⁰ or if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."³¹

24. In its Exceptions Decision, the Commission did exactly that – setting forth facts alleged in the Amended Complaint in this proceeding that it relied on in interpreting its own

²⁸ Staff was notified of Mr. Danks' concerns, but was not required to initiate an investigation immediately unless it determined an investigation was warranted. If Mr. Danks has any pertinent facts, he was instructed through the decision to raise them to Staff's attention. The Commission made clear that Mr. Danks is not precluded from making additional filings on issues not addressed by the proceeding, but stated, "While appropriate future formal or informal pleadings are not precluded, determinations, including without limitation standing considerations with respect to any future complaint, would necessarily be addressed on the basis of the pleading at issue." Exceptions Decision, at ¶ 54.

²⁹ *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290 (2013) (a court must defer to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's jurisdiction); *Davison v. Indus. Claim Appeals Office*, 84 P.3d 1023 (1029 (Colo. 2004); *See also*, § 40-6-101 (permitting the PUC procedural flexibility to conduct its proceedings).

³⁰ *Denver Parents Ass'n v. Denver Bd. Of Educ.*, 10 P.3d 662, 664 (Colo. App. 2000)

³¹ *Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1291 (Colo. 1992).

statutes and jurisdiction. The Commission found that no set of facts presented in this proceeding could compel its jurisdiction and require a CPCN of DCP, given the asserted facts that the pipelines upstream of the processing plant contain raw, unprocessed gas.

25. Despite the procedural and legal missteps in the Complainant's filings and Commission processes, the Commission agreed with Mr. Danks that it should address the regulatory issue raised, and went further to clarify for Mr. Danks and the public both the Commission's jurisdiction and processes. We continue to agree with the ALJ's findings that Mr. Danks is likely inappropriately perusing regulatory litigation to remedy his equitable claims. However, the Commission nevertheless appropriately addressed the jurisdictional question regarding whether DCP is a public utility for the pipeline at issue. In this instance, based on the facts alleged in the Amended Complaint, it would be inappropriate to confer jurisdiction from this Commission or require a CPCN. No hearing is required.

26. The RRR contains no arguments that compel reconsideration of the Commission's prior order and, therefore, it is denied.

II. ORDER

A. It is Ordered That:

1. The Application for Rehearing, Reargument, or Reconsideration, filed by William C. Danks on December 17, 2020, is denied, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 6, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

Commissioner Jeffrey P. Ackermann's
term expired January 11, 2021.