

Decision No. C23-0086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0188G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING IT TO RECOVER THE COSTS ASSOCIATED WITH THE FEBRUARY 2021 EXTREME WEATHER EVENT THROUGH THE COMPANY'S GAS COST ADJUSTMENT MECHANISM.

PROCEEDING NO. 23AL-0029G

IN THE MATTER OF COMPLIANCE ADVICE LETTER NO. 126 FILED BY COLORADO NATURAL GAS, INC. TO MODIFY THE COMPANY'S GAS TARIFF P.U.C. NO. 2 TO IMPLEMENT THE EXTRAORDINARY GAS COST RECOVERY RIDER ("EGCRR") WITH DECISION NO. C23-0006 IN PROCEEDING NO. 21A-0188G IN ITS RATE AREAS OF BAILEY/SOUTH PARK AND PUEBLO WEST, TO BECOME EFFECTIVE JANUARY 11, 2023.

**COMMISSION DECISION ADDRESSING APPLICATIONS
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C23-0006,
CONSOLIDATING PROCEEDINGS, AND REFERRING
MATTER TO AN ADMINISTRATIVE LAW JUDGE**

Mailed Date: February 7, 2023
Adopted Date: February 1, 2023

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NOS. 21A-0188G AND 23AL-0029G. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission addresses the Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0006 and Request for Expedited Ruling filed by the Colorado Office of Utility Consumer Advocate (UCA RRR) on January 10, 2023. We grant the UCA RRR and dismiss the Request for Expedited Ruling as moot. By this Decision we deny the Application for Reargument, Rehearing, or Reconsideration of Decision No. C23-0006 filed by Staff of the Commission (Staff RRR) filed on January 26, 2023, as filed out of time. Also by this Decision, the Commission consolidates Proceeding No. 21A-0188G, the Application of Colorado Natural Gas (CNG) for recovery of costs associated with the February 2021 Extreme Weather Event, and Proceeding No. 23AL-0029G, CNG's Advice Letter No. 126.

2. We refer the consolidated matter to an Administrative Law Judge (ALJ).

3. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding no later than 30 days after the mailing date of this Decision.

B. Discussion

4. In May 2021, CNG filed an Application for recovery of extraordinary gas costs associated with the extreme weather event in February 2021 (Application for Cost Recovery) in Proceeding No. 21A-0188G. The Application for Cost Recovery was the subject of a Comprehensive Joint Stipulation and Settlement Agreement (Settlement Agreement) between CNG, Trial Staff of the Commission (Staff), and UCA. The Settlement Agreement allowed CNG

to recover \$7.1 million over 24 months through an Extraordinary Gas Cost Recovery Rider (EGCRR). The Settlement Agreement was approved through Decision No. R21-0759.

5. The Settlement Agreement also anticipated CNG receiving an operational flow order (OFO) penalty from Public Service for transportation service during the Extreme Weather Event and allowed CNG to either file a new application for recovery of the OFO penalty or amend the previous application.¹ The Settlement Agreement did not address the amount of the potential penalty or how it would be recovered.

6. On November 22, 2022, CNG filed its Motion To Reopen and Amend the Application for Recovery of Extraordinary Gas Costs Related to the Extreme Weather Event of February 13 – 16, 2021 (Motion) and Amended Application. CNG requested authorization to amend its original Application for Cost Recovery to include a \$1.2 million OFO penalty issued by Public Service Company of Colorado in September 2022. In its Motion, CNG stated that it conferred with Staff and UCA and neither objected to the Application for Cost Recovery being re-opened, amended, and re-noticed. In accordance with that statement and the Commission's Rules of Practice and Procedure, the Commission issued a Notice of Amended Application Filed. No new interventions were filed, and neither Staff nor UCA filed an objection or another pleading to request a hearing as instructed in the Commission's notice.

7. On January 5, 2023, the Commission issued Decision No. C23-0006, granting CNG's Motion.

¹ Comprehensive Joint Stipulation and Settlement Agreement, p. 6.

8. On January 6, 2023, CNG filed Advice Letter No. 126 with tariff sheets amending the EGCRRT to include recovery of \$1.2 million from the OFO penalty in accordance with Decision No. C23-0006. The effective date of the tariffs was January 11, 2023.

9. On January 10, 2023, UCA filed its Application for RRR and Request for Expedited Ruling. UCA contends that the Commission erred in finding that the Amended Application was unopposed and erred in granting CNG's Motion and authorizing the modification of the EGCRRT. UCA questions whether Decision No. C23-0006 simply reopens the proceeding and allows CNG to amend its Application or whether the Decision authorizes the amendment to the Application. If the Commission intended the latter, UCA contends the Commission erred.

10. UCA contends that Decision No. C23-0006 violates Rule 1403 by determining an application without a hearing when the application is not unopposed and Rule 1404 by failing to set the matter for hearing, as well as violating UCA's due process rights. UCA holds that the Amended Application is opposed by the Intervenor in the case, stating that UCA and Trial Staff have served discovery on CNG related to the OFO penalty.

11. UCA requests the Commission assign the proceeding to an ALJ and set it for hearing.

12. UCA also requests expedited treatment of the Application for RRR because CNG filed and advice letter and tariff sheets to implement Decision No. C23-0006 effective January 11, 2023, in Proceeding No. 23AL-0029G.

13. On January 10, 2023, the Commission issued Decision No. C23-0028 in Proceeding No. 23AL-0029G suspending the tariff sheets filed with CNG's AL 126 for 120 days, through May 11, 2023, and set the matter for hearing.

14. On January 26, 2023, Staff filed its Application for RRR, stating that Decision No. C23-0006 CNG's Motion only requests that Proceeding No. 21A-0188G be re-opened but does not request approval of the Amended Application, and that Decision No. C23-0006 denies intervening parties the opportunity to review the prudence of the recovery of extraordinary gas costs related to the Extreme Weather Event of February 13-16, 2021.

C. Findings and Conclusions

15. The Commission granted CNG's Motion to amend its Application for recovery of Storm Uri costs with the understanding that it was unopposed, given that no objections, requests for hearing, or new interventions were filed.

16. UCA's Application for RRR, filed after the Commission issued Decision No. C23-0006, clarifies that the Motion and the Amended Application are opposed. Therefore, we grant UCA's request for rehearing.

17. Decision No. C23-0006 was issued on January 5, 2023. Staff's Application for RRR was filed on January 26, 2023, one day after the January 25, 2023 expiration of the RRR period as ordered in Ordering Paragraph 2 of Decision No. C23-0006.² We therefore deny Staff's Application for RRR.

18. We find good cause to consolidate Proceeding Nos. 21A-0188G and 23AL-0029G pursuant to Rule 1402 of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* 723-1. Rule 1402 governs and establishes the standard for granting consolidation. In relevant part, that Rule states: "The Commission may ... consolidate proceedings where the issues

² "The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision."

are substantially similar and the rights of the parties will not be prejudiced.” Whether to consolidate proceedings lies in the Commission’s sound discretion. We find that consolidation will not prejudice parties in the two proceedings. Further, we find that consolidation will result in significant litigation and administrative efficiencies and will conserve the resources of the Commission and parties to the proceedings. Finally, and foremost, consolidation eliminates confusion about the proceeding in which a particular issue will be addressed. The issues in the two proceedings are substantially similar, and the rights of CNG and any intervening party will not be prejudiced by consolidation.

19. We refer this consolidated matter to an ALJ.

20. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this consolidated proceeding, as ordered below. The filing of any other document protesting the tariff pages shall not allow participation as an intervenor in this matter.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reconsideration, or Reargument filed by the Colorado Office of Utility Consumer Advocates (UCA) on January 10, 2023, is granted, consistent with the discussion above.

2. The Request for Expedited Rule filed by UCA on January 10, 2023, is dismissed.

3. The Application for Rehearing, Reconsideration, or Reargument filed by the Staff of the Commission on January 26, 2023, is denied, consistent with the discussion above.

4. Consistent with the discussion above, Proceeding Nos. 21A-0188G and 23AL-0029G are consolidated for all purposes. Proceeding No. 21A-0188G shall serve as the primary proceeding and its caption shall appear first.

5. The parties in each proceeding shall be parties in the consolidated proceeding.

6. All proceeding numbers and captions in the consolidated proceeding shall be listed on all future filings as shown above in this Decision.

7. This consolidated matter is referred to an Administrative Law Judge (ALJ). The ALJ shall set a hearing date, rule on interventions, and establish other procedures by separate decision(s).

8. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission within 30 days after the mailing date of this Decision and shall serve a copy of the notice or motion on Public Service's attorney of record.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 1, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

Commissioners

COMMISSIONER JOHN GAVAN'S
TERM EXPIRED FEBRUARY 3, 2023.