

Decision No. R14-1236

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0285G

IN THE MATTER OF ADVICE LETTER NO. 84 FILED BY ROCKY MOUNTAIN
NATURAL GAS LLC TO RECOVER COSTS FOR SYSTEM SAFETY AND INTEGRITY
PROJECTS THROUGH THE SYSTEM SAFETY AND INTEGRITY RIDER (SSIR), TO
BECOME EFFECTIVE JUNE 1, 2014.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ACCEPTING STIPULATION;
PERMANENTLY SUSPENDING TARIFFS;
AND REQUIRING THE FILING OF NEW TARIFFS**

Mailed Date: October 10, 2014

TABLE OF CONTENTS

I. STATEMENT.....	2
II. FINDINGS AND DISCUSSION	4
A. Burden of Proof.....	4
B. Terms of Stipulation Concerning Fully Resolved Issues	5
1. SSIR Projects, Eligible System Safety and Integrity Costs, SSIR Rate and Refund Plan.....	5
2. November 1 Annual Filings	8
C. Definition of “System Safety and Integrity Projects” in the Company’s SSIR Tariff	8
D. Findings and Conclusions.....	12
III. ORDER.....	13
A. The Commission Orders That:	13

I. STATEMENT

1. On March 31, 2014, Rocky Mountain Natural Gas, LLC (Rocky Mountain or Company) filed Advice Letter No. 84. Rocky Mountain which stated that the purpose of the filing was to comply with the terms of a Stipulation and Agreement approved in consolidated Proceeding Nos. 13A-0046G, 13AL-0067G, and 13AL-0143G (Consolidated Proceedings). Rocky Mountain agreed in that Stipulation and Agreement that it would file an Advice Letter to implement a cost recovery mechanism for pipeline system safety and integrity projects through a System Safety and Integrity Rider (SSIR).

2. By Decision No. C14-0580, issued May 30, 2014, the effective date of the Advice letter was suspended until September 29, 2014. The matter was also referred to an administrative law judge (ALJ) for disposition.

3. On June 24, 2014, Staff of the Colorado Public Utilities Commission (Staff) filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. As required by Rule 4 *Code of Colorado Regulations* 723-1-1007(a) of the Commission's Rules of Practice and Procedure, in that filing Staff identified the Trial Advocacy (litigation) Staff and the Advisory Staff. Staff is an intervenor as of right and a party in this proceeding.

4. On June 25, 2014, Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. OCC is an intervenor as of right and a party in this proceeding.

5. By Interim Decision No. R14-0687-I, issued June 24, 2014, a prehearing conference was scheduled for July 8, 2014.

6. At the prehearing conference, an evidentiary hearing was scheduled to commence on September 16, 2014.

7. On September 12, 2014, a conference call was held at which the parties stated that a resolution had been reached in the above captioned proceeding. The parties requested the evidentiary hearing be vacated and stated that the stipulated settlement would be filed by September 16, 2014.

8. By Interim Decision No. R14-1134-I, issued on September 15, 2014, the evidentiary hearing was vacated and a hearing on the proposed stipulation was scheduled for September 30, 2014.

9. On September 17, 2014, the parties filed their Stipulation and Settlement Agreement (Stipulation). In the Stipulation, the parties stated they have resolved the disputed issues in the proceeding but intended to file Post-Hearing Statements of Position concerning modification in the Company's SSIR Tariff as proposed by the OCC.

10. On September 30, 2014, a hearing was held on the settlement. As a preliminary matter the Motion to Withdraw the Company's pending Motion for Administrative Notice and Staff's Motion to Withdraw its pending Third Set of Data Requests to Rocky Mountain Natural Gas LLC were granted. During the hearing, Exhibits 1 through 6, 8, and 15 were offered and admitted and testimony was received from Jerrad Hammer for Rocky Mountain, Eugene Camp for Staff, and Cory Skluzak for the OCC.

11. On October 3, 2014, the parties filed statements of position.

12. Upon reaching agreement on the issues in the proceedings, the parties now request that the Commission approve the Stipulation and grant Rocky Mountain relief consistent with the Stipulation.

II. FINDINGS AND DISCUSSION

A. Burden of Proof

13. The parties have the burden of proving by a preponderance of the evidence that the Stipulation is just and reasonable.¹ In reviewing the terms of the Stipulation (Hearing Exhibit No. 37), the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, e.g., Decision No. C06-0259, Proceeding No. 06S-264G issued March 20, 2006.

14. Section 40-3-101, C.R.S., contains the standard against which the Commission judges proposed rates and charges: All rates and charges must be "just and reasonable." In addition, the Colorado Supreme Court lists these factors:

Those charged with the responsibility of prescribing rates have to consider the interests of both the investors and the consumers. Sound judgment in the balancing of their respective interests is the means by which a decision is reached rather than by the use of a mathematical or legal formula. After all, the final test is whether the rate is "just and reasonable." And, of course, this test includes the constitutional question of whether the rate order "has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation."

Public Utilities Commission v. Northwest Water Corporation, 168 Colo. 154, 173, 451 P.2d 266, 276 (Colo. 1969) (*Northwest Water*) (citations omitted). Further, the Commission must consider whether the rates and charges, taken together, are likely to generate sufficient revenue to ensure a financially viable public utility, which is in both the ratepayers' interest and the investors' interest. Finally, the Commission must consider the ratepayers' interest in avoiding or minimizing rate shock because the monopoly which a utility enjoys cannot be exerted, to the public detriment, to impose oppressive rates. *Northwest Water*, 168 Colo. at 181, 451 P.2d at

¹ Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No. 05A-072E issued July 3, 2006 at ¶ 40 & n.23.

279. The Commission balances these factors and considerations when reviewing proposed rates and charges.

B. Terms of Stipulation Concerning Fully Resolved Issues

15. The Stipulation, attached to this Decision as Appendix A, explains that the parties propose a negotiated resolution of the disputed issues in the case. The Stipulation resolves all but one issue which has been raised by Rocky Mountain, Staff, and the OCC.

16. Below are the terms of the Stipulation where Rocky Mountain reached agreement with Staff and the OCC.

1. SSIR Projects, Eligible System Safety and Integrity Costs, SSIR Rate and Refund Plan

17. Rocky Mountain and Staff agree and the OCC does not oppose the following projects identified in Attachment 1 to Advice Letter No. 84 and Exhibit MMA-40 to Ms. Moorman Applegate’s Rebuttal Testimony being included in the SSIR rate:

Capital Project No. 1 - Reroute of the Ten-Inch Pipeline at Olathe, Colorado, Near Highway 90 and Read Junction

Capital Project No. 2 - Replace Shorted Cased Crossing at Olathe, Colorado

Capital Project No. 3 - Roaring Fork III Project – Extend Ten-Inch Pipeline Five Miles from Aspen Valley Ranch to the Brush Creek Town Border Station (“TBS”)

Capital Project No. 4 - Replace Short Radius Fittings and Cased Crossing in Eight-Inch Pipeline from Read Junction to Collbran, Colorado

Capital Project No. 5 - Telluride Lateral Pipeline – Piggability

Capital Project No. 6 - South Pipeline – Replace Eight-Inch Pipeline at Surface Creek

Capital Project No. 8 - Anomaly Repairs on the Pipeline between Read, Colorado and Collbran, Colorado, and the Pipeline between Glenwood Springs, Colorado and Edwards, Colorado

Capital Project No. 9 - 12-Inch Pipeline Replacement between Rifle, Colorado and Avon, Colorado

Capital Project No. 10 - Olathe, Colorado TBS Relocation

Capital Project No. 15 - Centerline Survey

O&M Project No. 2 - Anomaly Repairs on the Pipeline between Read, Colorado and Collbran, Colorado, and the Pipeline between Glenwood Springs, Colorado and Edwards, Colorado

O&M Project No. 3 - Hydrostatic Testing of the Six-Inch Pipeline between the Collbran Compressor Station and the Wolf Creek Storage Field to Measure and Verify Maximum Allowable Operating Pressure (“MAOP”)

O&M Project No. 4 - Hydrostatic Testing of the Pipeline between the Eagle TBS and the Cordillera TBS to Measure and Verify MAOP

18. Rocky Mountain and Staff agree and the OCC does not oppose the following projects identified in Attachment 1 to Advice Letter No. 84 and Exhibit MMA-40 to Ms. Moorman Applegate’s Rebuttal Testimony shall not be included in the SSIR rate:

Capital Project No. 7 - Replace Eight-Inch Pipeline South of Collbran Compressor Station

Capital Project No. 11 - Installation of a Coalescing Filter at the Cordillera TBS

Capital Project No. 12 - Installation of a Coalescing Filter at the Edwards Interconnect

Capital Project No. 13 - Installation of a Coalescing Filter at the Glenwood Interconnect

Capital Project No. 14 - South Pipeline – Replace Six-Inch Placerville Mainline Block Valve

19. Rocky Mountain and Staff agree and the OCC does not oppose Rocky Mountain shall deduct \$125,361 from the total SSIR-related expenses included in the SSIR Rate filed with Advice Letter No. 85 and made effective June 1, 2014, on an interim basis and subject to refund and from the total SSIR-related expenses requested in future SSIR filings until Rocky Mountain’s base rates are adjusted in its next general rate case.

20. Attachment 1 to Appendix A presents the calculation of the SSIR Rate that reflects the resolution contained in paragraphs 16-18.

21. Within 30 days after the effective date of a Commission decision that accepts and approves this Stipulation in its entirety or that accepts and approves this Stipulation with modifications that are acceptable to and consented by the Parties, the Company shall file in this Proceeding a refund plan to reflect the resolution contained in paragraphs 16-18 as it applies to the total SSIR-related expenses.

22. The refund plan shall present the calculation of the amount of a one-time SSIR Rate bill credit to each of the Company's customers subject to the SSIR Rate and shall include schedules supporting that calculation.

23. At least five business days prior to filing the refund plan, Rocky Mountain shall provide to Staff and to the OCC a draft of the refund plan that it will file with the Commission, including the proposed customer notice of such refund, and work papers supporting the calculation of such refund.

24. Within 60 days after the effective date of a Commission decision that accepts and approves the Stipulation in its entirety or that accepts and approves this Stipulation with modifications that are acceptable to and consented by the Parties, Rocky Mountain shall issue the one-time SSIR Rate bill credit presented in the refund plan.

25. Within 120 days after the effective date of a Commission decision that accepts and approves the Stipulation in its entirety or that accepts and approves this Stipulation with modifications that are acceptable to and consented by the Parties, the Company shall file in this Proceeding detailed confirmation information, including information that Staff and the OCC have requested, that the one-time SSIR Rate bill credit has been issued to Rocky Mountain's customers subject to the SSIR Rate.

26. The record supports this aspect of the Stipulation without modification.

2. November 1 Annual Filings

27. The Company and Staff agree to, and the OCC does not oppose, the format and type of pertinent information and supporting data to be provided by the Company with each advice letter it files by November 1 pursuant to Section 24.2 of its SSIR Tariff.

28. Attached and incorporated into each such advice letter, the Company shall provide a document containing the same type of information and presented in the same general format as Exhibit MMA-40 to Ms. Moorman Applegate's Rebuttal Testimony, supplemented to include Project description, Project scope of work, a hierarchy of Projects, Project cost, and Project estimated in-service date.

29. Not more than two business days after Rocky Mountain files each such advice letter, the Company shall provide to Staff and to the OCC, the backup documentation and information that meets the SSIR Tariff language for each Project included in the advice letter filing, organized by Project and types of backup documentation and information.

30. Parties agree that further information can be requested by Staff and the OCC if necessary.

31. The record supports this aspect of the Stipulation without modification.

C. Definition of "System Safety and Integrity Projects" in the Company's SSIR Tariff

32. The OCC proposes a modification for the language used in the definition of the term "System Safety and Integrity Projects," as that term appears on Original Sheet Nos. 147 and 148 of the Company's Colo. PUC No. 4 Tariff. The proposal is set forth in OCC Attachment A to the Stipulation.

33. The OCC proposes three revisions to the tariff language. The first revision would add the following language (additional language in bold):

“System Safety and Integrity Projects” (“Projects”) shall mean **projects addressing high risk gas infrastructure**² within one or more of the following:

- (1) Projects in accordance with Code of Federal Regulations Title 49 (Transportation), Part 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards), Subpart O (Gas Transmission Pipeline Integrity Management), including projects in accordance with the Company’s transmission integrity management program (“TIMP”) and projects in accordance with State enforcement of Subpart O and the Company’s TIMP;
- (2) Projects in accordance with Code of Federal Regulations Title 49 (Transportation), Part 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards), Subpart P (Gas Distribution Pipeline Integrity Management), including projects in accordance with the Company’s distribution integrity management program (“DIMP”) and projects in accordance with State enforcement of Subpart P and the Company’s DIMP; and
- (3) Projects in accordance with final rules and regulations of the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration that become effective on or after the filing date of the Application requesting approval of this System Safety and Integrity Rider.

34. The second and third revisions would remove the phrase “such as” and replace it with “including” and remove “that are for high risk gas infrastructure” in the following paragraph contained within the tariff (additional language in bold: language removed in italics):

Projects shall be analyzed based upon objective criteria, *such as* **including**,³ but not limited to: specific regulatory requirements, threat assessment, corrosion control analysis, pipeline vintage, pipeline material, pipeline design and class location, pipeline configuration and segmentation, pipeline system constraints, pipeline replacement history, population density, pipeline maintenance and internal inspection history, pipeline piggability, existence and reliability of pipeline asset and testing records, pipeline leakage and other incident history, subject matter expert knowledge, project timeframe, weather and climate constraints on the construction season, permitting constraints, probability of

² First revision.

³ Second revision.

pipeline testing failures and dewatering constraints, service outage management, and pipeline source of supply and availability of alternate gas supply. As part of its analysis, the Company shall identify and describe the proposed projects *that are for high-risk gas infrastructure*⁴ by providing its risk assessment for each such project including, if applicable, the probability of failure, the consequences of failure for the project and how it prioritized the project for which it seeks recovery. The Company shall also provide the results of performance metrics measuring any reduction in incidents and safety-related events, as well as the overall effectiveness of the SSIR program, including any reduction in O&M expenses associated with the pipeline integrity projects.

35. In the first revision, the OCC argues that System Safety and Integrity Projects should be restricted to only high risk gas infrastructure projects. Further, the OCC argues that this revision will remove any ambiguity in the language of the tariff.

36. Rocky Mountain and Staff both oppose the proposed modification to the Tariff language.

37. The OCC was a party in the Consolidated Proceedings.

38. The OCC argued in Answer testimony filed in the Consolidated Proceeding that SSIR projects should only include “high-risk gas infrastructure” *See Joint Statement of Position of Staff of the Public Utilities Commission of the State of Colorado and Rocky Mountain Natural Gas LLC. p. 5-6.*

39. The tariff language is a result of the settlement agreed to in the Consolidated Proceedings.

40. The first revision is not a clarification to the tariff language. The first revision is a new definition for what will constitute System Safety and Integrity Projects. Creating a new

⁴ Third revision.

definition for what constitutes System Safety and Integrity Projects is a collateral attack on the Commission Decision in the Consolidated Proceeding.⁵

41. The third revision proposed by the OCC also creates a new definition and therefore is also a collateral attack on the Commission Decision in the Consolidated Proceeding.

42. Pursuant to § 40-6-112(2), C.R.S., which states, “[i]n all collateral actions or proceedings, the decisions of the commission which have become final shall be conclusive”

43. The first and third revisions proposed by the OCC are denied as being collateral attacks on a prior Commission Decision.

44. The second revision deals with language that caused controversy between Rocky Mountain and Staff.

45. In testimony filed in this proceeding, Staff argued the first sentence of the paragraph in question contained the word “shall” and therefore all of the criteria listed in the paragraph was required to be analyzed for each project proposed by Rocky Mountain.

46. Rocky Mountain contended that the phrase “such as” was placed in the sentence to show that the list was meant to provide examples of what could be necessary to be shown for each project.

47. In the Stipulation, Rocky Mountain has agreed to analyze all future projects with each of the listed criteria.⁶

⁵ It is noted that this was the basis of the OCC argument in their Answer testimony in the instant proceeding. Rocky Mountain pointed out in their Rebuttal testimony that this definition for what constituted a project eligible for recovery under the SSIR was not included in the tariff language. This revision appears to be a last ditch attempt to create the language necessary to give the OCC argument legitimacy in future filings. Contrary to the arguments of the OCC, the undersigned ALJ believes that allowing this revision would only confuse the parties and lead to further contested hearings on this issue.

⁶ This information was provided in Exhibit MMA-40.

48. With this agreement Rocky Mountain and Staff have agreed to a common interpretation of this sentence or at least as to what Rocky Mountain will provide in future filings.⁷

49. With this understanding between parties and the requirement that each of the criteria is analyzed in each future filing, it does not appear necessary to revise the language in the tariff.⁸

50. The substitution of the word “including” for the phrase “such as” does not make the actual requirements clear. There is no discernable benefit to the revision proposed by the OCC.

51. The second proposed revision to the tariff language proposed by the OCC is denied.

D. Findings and Conclusions

52. The proposed the Stipulation is just and reasonable, therefore good cause is found to accept the Stipulation without modification.

53. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

⁷ It is unclear if the OCC agrees to this interpretation, although it can be assumed that the OCC does not oppose this interpretation based upon their inclusion in the Settlement Agreement.

⁸ It is also noted that the OCC, with the inclusion of MMA-40, able to easily determine which of the projects fit into their definition of high risk gas infrastructure. This also makes the other requested revisions unnecessary. *Hearing Transcript p. 36, l.3-25.*

III. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed by the parties on September 17, 2014 and attached to this Decision as Appendix A, is approved without modifications.

2. The effective date of the tariff sheets filed on March 31, 2014 with Advice Letter No. 84 is permanently suspended.

3. No more than 30 days after this Recommended Decision becomes the Decision of the Commission, if that is the case, the Rocky Mountain Natural Gas, LLC (Rocky Mountain) shall file a new advice letter and tariff on not less than two business days' notice. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice

4. Within 30 days after the effective date of a Commission decision, Rocky Mountain shall file in this proceeding a refund plan to reflect the resolution, as stated above in paragraphs 19 thru 25, as it applies to the total System Safety and Integrity Rider (SSIR)-related expenses included in the SSIR Rate filed with Advice Letter No. 85 and made effective June 1, 2014, on an interim basis and subject to refund.

5. Rocky Mountain shall provide documents for each advice letter it files by November 1 pursuant to Section 24.2 of its SSIR Tariff consistent with the discussion contained in paragraphs 27 through 30.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. Response to exceptions shall be due within seven calendar days from the filing of exceptions.

10. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

11. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director