

Decision No. C23-0019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0153SG

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING A STOCK PLEDGE AND DEBT REFINANCE PURSUANT TO SECTION 40-1-104 C.R.S. AND SECTION 40-5-105 C.R.S.

COMMISSION DECISION DENYING EXCEPTIONS

Adopted Date: December 28, 2022
Mailed Date: January 9, 2023

I. BY THE COMMISSION

A. Statement

1. On October 28, 2022, Trial Staff of the Colorado Public Utilities Commission filed exceptions to Recommended Decision No. R22-0608. Having considered the arguments presented in Trial Staff's exceptions and the evidence in the record we deny the exceptions as set forth more fully below.

B. Background

2. This Proceeding concerns a securities application filed by Colorado Natural Gas, Inc. (CNG) on April 4, 2022. Though the application CNG seeks authorization to pledge capital stock as security for financing that would be obtained by CNG's parent company, Summit LDC Holdings, LLC (referred to by all the parties to this Proceeding as "MidCo").

3. The history of this Proceeding is thoroughly set forth in the ALJ's Recommended Decision.¹ For simplicity's sake we provide a brief background and then pick up where the Recommended Decision leaves off.

4. After CNG filed this Application, both the Colorado Office of the Utility Consumer Advocate (UCA) and Commission Trial Staff intervened. All three of the parties proceeded to an evidentiary hearing and afterwards the ALJ assigned to this proceeding issued his Recommended Decision. The Recommended Decision grants CNG's application, and, with one exception, rejects all relief and modifications requested by both Trial Staff and the UCA.

5. UCA did not file exceptions to the Recommended Decision. Trial Staff did. Trial Staff reiterates many of the claims it made before the ALJ and asks us to:

- deny the Application;
- issue a show cause order directing CNG to show cause why its rates are not unjust and unreasonable;
- require CNG to file an updated Cost Assignment and Allocation Manual;
- develop and enforce reporting requirements for CNG that are akin to the Securities and Exchange Commission's requirements for public companies;
- require CNG to adopt certain obligations it had voluntarily assumed when CNG Holdings, its first holding company, was created.

6. In support of the relief it requests, Trial Staff articulates three challenges to the ALJ's Recommended decision: first, that the ALJ applied the wrong standard when denying Trial Staff's request to issue a show cause order; second, that the relief CNG requests may violate § 40-1-104(2) C.R.S.; and third, that CNG's 2019 application before this Commission seeking authorization for a new holding company structure for CNG was made improperly. Woven

¹ Recommended Decision No. R22-0608.

throughout these arguments are repeated observations and insinuations about CNG's opaque corporate structure.

C. Discussion

7. Trial Staff's first argument is that the ALJ improperly denied the request to open a show cause proceeding because he used a standard that would require Staff to "prove" wrongdoing rather than provide some evidence suggesting wrongdoing. Staff contends that it does not need to conclusively prove wrongdoing to support a show cause proceeding, and that it has provided evidence of wrongdoing. Trial Staff is correct that it need not prove wrongdoing, but in our view, it has failed to point to any particular evidence that indicates wrongdoing on the part of CNG. In its exceptions, Trial Staff spends pages detailing how CNG is a subsidiary, and that its parent company is also a subsidiary and that both companies have sister companies that are both regulated and unregulated. None of these things are evidence of wrongdoing. After reviewing Trial Staff's arguments and independently reviewing the record, we cannot discern any evidence of wrongdoing that would support issuing a show cause order.

8. Second, Trial Staff argues that it is possible this application (or CNG's 2019 securities application that authorized a nearly identical transaction) violates § 40-1-104(2) C.R.S., because it "will not refund any obligations," which is one of the many permissible purposes of a securities application. We do not perceive a violation of section 104. Trial Staff's argument cherry picks one permissible purpose of many; ultimately that section allows for securities to be issued or assumed "for any other lawful purpose authorized by the commission." Given the catchall provision, Trial Staff's allegations do not lead to the conclusion that the 2019 application or the relief requested in this one violates that section.

9. Staff's third argument alleging wrongdoing is that CNG's 2019 application to authorize a new holding company structure for CNG was done improperly because it was not made (as required) under Commission Rule 4104 regarding change of ownership. This assertion is factually incorrect. The 2019 application's first sentence cites Rule 4104 as one basis for the application; the application clearly describes the reorganization; the Public Notice filed as Attachment 9 to the application is clear about the corporate reorganization;² and the decision granting the 2019 application acknowledges that the reorganization request was made under Rule 4104 and spends two paragraphs discussing it in that context.³

10. Having rejected the three challenges to the Recommended Decision we deny Trial Staff's exceptions. We also decline Trial Staff's invitation to develop reporting requirements for CNG in this proceeding as well as the additional relief it requests. As we see it, the concerns raised by Trial Staff are too soundly based in speculation to support any of the additional requested relief at this time.

² These filings are publicly available in the Commission's electronic filings system in Proceeding No. 19A-0070SG.

³ See Decision No. C19-0195 issued in Proceeding No. 19A-0070SG.

D. Additional Guidance

11. While we believe that this Application has merit and ultimately approve it, we do see virtue in Trial Staff's concerns regarding the risk of cross-subsidization between CNG and other entities in its corporate tree. As the Recommended Decision recognized, in theory there may be an increased incentive for cross-subsidization amongst privately held companies in corporate structures like CNGs. So, we would ask CNG to be prepared to provide additional information in its next rate case that would allow this Commission to better understand and verify that these types of transactions are not taking place.

II. ORDER**A. The Commission Orders That:**

1. The exceptions filed by Commission Trial Staff are denied.
2. The 20-day time 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.

3. This Decision is effective on its Mailed Date.

(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

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners