

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0218G

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IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR APPROVAL OF A NUMBER OF STRATEGIC ISSUES RELATING TO ITS GAS DEMAND SIDE MANAGEMENT PLAN.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
ACKNOWLEDGING INTERVENTIONS OF RIGHT,  
GRANTING PERMISSIVE INTERVENTION, AND  
DISCHARGING SHOW CAUSE**

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Mailed Date: August 1, 2023

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**I. STATEMENT**

1. This Decision shall address the interventions of right, grant the permissive intervention, and discharge the pending order to show cause.

**A. Procedural History and Background<sup>1</sup>**

2. Colorado Natural Gas, Inc (CNG) initiated this matter on May 1, 2023, by filing the above-captioned Application with the Public Utilities Commission of the State of Colorado (PUC or Commission) seeking approval of its 2024-2027 Demand-Side Management (DSM) Strategic Issues Plan (DSM SI Plan) and its 2024-2025 DSM Plan.<sup>2</sup>

3. Contemporaneously with and attached to its Application, CNG filed the following documents:

- Attachment A: CNG’s 2024-2027 Demand-Side Management Strategic Issues, dated May 1, 2023;
- Attachment B: CNG’s 2024-2025 Natural Gas Demand-Side Management Plan, dated May 1, 2023;
- Attachment C: CNG’s Portfolio M&V 2020-2021, Evaluation Report, prepared by Demand Side Analytics, March 202, updated November 2022.

4. On May 3, 2023, the Commission sent out a Notice of Application Filed (Notice) to interested persons. The Notice stated that CNG “**has not** filed testimony and is seeking a Commission decision within 250 days.”<sup>3</sup> In addition, the Commission’s Notice mandated that “Unless [it] orders otherwise, the applicant(s) [CNG] shall file testimony within 60 days of the filing of this application.”<sup>4</sup>

5. After the Commission’s issuance of the Notice, the following entities filed Interventions as of right in this Proceeding:

- The Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing and Entry of Appearances on May 18, 2023;

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

<sup>2</sup> Verified Application of Colorado Natural Gas, Inc., filed May 1, 2023, p. 1.

<sup>3</sup> Notice of Application Filed by Colorado Natural Gas, Inc., May 3, 2023, p. 1.

<sup>4</sup> *Id.*

- Trial Staff of the Commission filed its Notice of Intervention of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing on May 25, 2023; and
- The Colorado Energy Office (CEO) filed its Notice of Intervention by Right on June 2, 2023, which it withdrew on July 12, 2023.<sup>5</sup>

6. In addition, on June 2, 2023, Energy Outreach Colorado (EOC) filed an Unopposed Motion to Intervene and Entry of Appearance in this Proceeding.

7. On June 21, 2023, the Commission by minute order deemed the Application complete and assigned the Proceeding to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

8. On July 14, 2023, Decision No. R23-0460-I was issued. In this Decision, it was noted that, per the Commission's Notice, CNG was ordered to file testimony by June 30, 2023. However, CNG had filed no testimony by the date of the Decision.

9. Also, by Decision No. R23-0460-I, CNG was ordered to make a filing by 5:00 p.m. on July 28, 2023, showing cause why its Application should not be dismissed for failing to comply with the Commission's Notice. Any testimony CNG intended to file was also ordered to accompany its response to the Order to Show Cause.

10. CNG was advised and put on notice that failure to make the required show cause filing by the date and time ordered may result in dismissal of its Application.

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<sup>5</sup> See Notice of Withdrawal of Intervention by Right of the Colorado Energy Office, July 12, 2023.

## II. FINDINGS AND CONCLUSIONS

### A. Interventions

11. The ALJ acknowledges the interventions of right filed by the UCA and Trial Staff. Both the UCA and Trial Staff are parties to this proceeding.

12. The ALJ also acknowledges the intervention of right and subsequent withdrawal of that intervention by CEO. CEO is consequently not a party to this proceeding.

13. One entity, Energy Outreach Colorado (EOC), has moved to intervene in this proceeding.

14. On June 2, 2023, EOC filed an unopposed motion to intervene. EOC represented that it had conferred with CNG, Staff, and the UCA about its motion. CNG and Staff took no position on EOC's request, and the UCA did not object to EOC's intervention. Thus, EOC's motion to intervene is unopposed.

15. EOC also addressed the grounds upon which it believes it should be permitted to intervene. It noted that it has "a vested interest in ensuring that the interests of IQ [income-qualified] customers and disproportionately impacted communities of Colorado utilities are recognized in Commission proceedings and also in ensuring that utility rates are just and reasonable such that EOC is not burdened with increased assistance payments and other crisis mitigation disbursement."<sup>6</sup> EOC pointed out that it "routinely" participates in DSM proceedings before the Commission.<sup>7</sup> And, EOC advised that, since 2012, it has served as "CNG's partner in

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<sup>6</sup> Energy Outreach Colorado's Unopposed Motion to Intervene and Entry of Appearance, ¶ 2, p. 2, filed June 2, 2023.

<sup>7</sup> *Id.* at ¶ 3, p. 2.

the administration of portions of the Company's DSM programs targeted at income-qualified customers."<sup>8</sup>

16. With respect to the specific grounds which must be weighed when considering a request to intervene, EOC noted that CNG proposes a significant increase in DSM program goals and budgets compared to its ongoing 2020-2022 DSM Plan; CNG's proposed budgets represent over a 30 percent annual increase when compared to their DSM budgets in plan years 2021 and 2022.<sup>9</sup> Additionally, CNG seeks to direct at least 15 percent of program expenditures to improve energy efficiency in IQ households and achieve greater outreach and customer participation, and proposes a performance incentive mechanism for its IQ programs through the creation of a minimum threshold for related performance incentives equal to ten percent of income-qualified spending.<sup>10</sup>

17. To the extent that these DSM strategic issues directly or indirectly impact the measures that EOC administers, and more broadly, the provision of DSM measures to CNG's IQ customers, EOC seeks intervention in this proceeding.<sup>11</sup>

18. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regulations*

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<sup>8</sup> *Id.* at ¶ 4, p. 2.

<sup>9</sup> *Id.* at ¶ 6, p. 3.

<sup>10</sup> *Id.* at ¶ 6, p. 3; *citing* CNG's Verified DAM & Strategic Issues Application, Attachment A (2024-2027 Natural Gas Demand-Side Management Strategic Issues Plan), at 4.

<sup>11</sup> *Id.* at ¶ 7, p. 3.

(CCR) 723-1; *see also* § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985) (“This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.”).

19. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented. . . .The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

20. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. *See Denver Chapter of the Colo. Motel Ass’n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by

the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

21. The ALJ finds and concludes that EOC has both a tangible and pecuniary interest in this proceeding and its outcome. The ALJ further finds that no other parties to this proceeding will adequately represent EOC's interests.

22. Therefore, the ALJ will grant EOC's Unopposed Motion to Intervene and EOC is a party to this proceeding.

#### **B. Order to Show Cause**

23. On July 17, 2023, CNG filed its response to the show cause order and the direct testimony of Clark Medlock, Hearing Exhibit 100.

24. In its response to the show cause order, CNG states that it was unable to file testimony within the 60 days of the filing of the Application for several reasons. First, CNG states that the delay in filing testimony was, in part, attributable to the complexity of filing a DSM Program Plan ("Plan") combined with its DSM Strategic Issues ("SI") application; while it makes sense to discuss the two together given the inter-relatedness of the Plan and the SI, developing testimony for both matters at once presented additional complexity by requiring several rule-based analyses and economic comparisons that are foreign to the Company's ongoing DSM program.<sup>12</sup> CNG also notes that this filing is the first instance of CNG's efforts to file a DSM SI application,

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<sup>12</sup> CNG's Response to Show Cause Order, filed July 17, 2023, at p. 3.

which is being filed in compliance with a new requirement promulgated under the Clean Heat Plan rulemaking under Rule 4761 of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* 723-4 that became effective on May 15, 2023.<sup>13</sup>

25. CNG further states that it is the smallest natural gas utility and has a comparatively small staff in relation to the three much larger regulated gas utilities in Colorado. CNG therefore needed additional time to assemble and review testimony, communicate with outside consultants, and other activities related to both the SI application and DSM plan, which was compounded by the July 4<sup>th</sup> holiday immediately following the testimony due date mandated in the Notice.<sup>14</sup>

26. CNG also argues that its failure to provide testimony in accordance with the Notice was not in violation of any Colorado statute, administrative rule, or Commission decision.<sup>15</sup> CNG states it was operating under the impression that, after the referral of the proceeding to an ALJ on June 21, 2023, the mandate to file testimony in the Notice was superseded by the Commission referral.<sup>16</sup> CNG expected that it would confer with the intervening parties and, subject to an anticipated Interim Decision directing the parties to develop a consensus procedural schedule, or submit an appropriate procedural schedule, including a filing date for direct testimony.<sup>17</sup>

27. CNG further notes that during the Commissioner's Weekly Meeting on June 21, 2021, when the matter was referred to an ALJ, the Commissioners declined to specifically order a testimony due date.<sup>18</sup> CNG states that it proactively reached out to the Commission's Chief Administrative Law Judge for the name of the ALJ assigned to this proceeding in a good faith

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at p. 3-4.

<sup>15</sup> *Id.* at p. 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at p. 2-3.

attempt to inquire about the establishing of a procedural schedule and that CNG did then, and does now, have every intention of complying with the established procedural schedule to eventually be issued in the course of this proceeding.

28. Finally, CNG apologizes to the Commission and the parties for any confusion its assumptions about the procedure for this matter may have caused.

29. The ALJ acknowledges receipt of CNG's response, the filing of Mr. Medlock's testimony, the complexity of this proceeding, and CNG's efforts to comply with the Commission's rules and orders. The ALJ notes, though, that the Commission, in its Notice of Application Filed issued on May 3, 2023, ordered CNG to "file testimony within 60 days of the filing of this application" unless the Commission subsequently ordered otherwise. Consequently, contrary to CNG's assertion, it was under an express order to file testimony in this case. The undersigned ALJ appreciates CNG's efforts and willingness to comply with the Commission's orders in this proceeding going forward.

30. The undersigned ALJ finds that CNG's response to the order to show cause and its filing of direct testimony complies with Decision No. R23-0460-I. CNG's response to the order to show cause is accepted and the order to show cause will be discharged.

### **III. ORDER**

#### **A. It Is Ordered That:**

1. The interventions of right filed by Trial Staff of the Public Utilities Commission (Staff) and the Office of the Utility Consumer Advocate (UCA) are acknowledged. Staff and the UCA are parties to this proceeding.

2. The withdrawal of the intervention by right filed by the Colorado Energy Office (CEO) is also acknowledged. CEO is not a party to this proceeding.

3. Energy Outreach Colorado's (EOC) Unopposed Motion to Intervene and Entry of Appearance, filed on June 2, 2023, is granted. EOC is a party to this proceeding.

4. The order to show cause is discharged.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director