

Decision No. R23-0679-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0418G

ARM, LLC, and HEARTLAND INDUSTRIES, LLC,

COMPLAINANTS,

V.

COLORADO NATURAL GAS, INC. and WOLF CREEK ENERGY, LLC,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
SCHEDULING REMOTE
PREHEARING CONFERENCE AND
REQUIRING PARTIES TO CONFER AND
COMPLAINANTS TO FILE A REPORT REGARDING THE
CONFERRAL BEFORE THE REMOTE PREHEARING
CONFERENCE**

Mailed Date: October 11, 2023

I. STATEMENT

A. Background

1. On August 16, 2023, Arm, LLC (Arm) and Heartland Industries, LLC (Heartland) (collectively, Complainants) filed a Formal Complaint (Complaint) against Colorado Natural Gas, Inc. (CNG) and Wolf Creek Energy, LLC (Wolf Creek) (collectively, Respondents). In the Complaint, Complainants allege ten claims for relief (six against CNG, one against Wolf Creek, and three against both CNG and Wolf Creek) and request the following relief:

a full accounting and itemization, under oath, . . .; for damages in amounts to be determined at hearing; for pre-judgment and post-judgment interest at the highest lawful rate; for civil penalties in amounts to be determined at hearing; mandating Colorado Natural Gas to be ring-fenced from Wolf Creek Energy, such that the two entities' finances may not be commingled in any way going forward; for attorney fees and costs; and for such other and further relief the Commission deems just and proper.¹

2. On August 18, 2023, the Commission entered its Order to Satisfy or Answer and issued an Order Setting Hearing and Notice of Hearing. The Commission served Respondents with the Orders and Notice (including a copy of the Complaint) and an Order to Satisfy or Answer within 20 days from service of the Orders and Notice. The Commission also set an evidentiary hearing for October 30, 2023.

3. On August 30, 2023, the Commission referred the matter to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

4. On September 7, 2023, Respondents filed a Motion to Dismiss the Complaint.

5. On September 15, 2023, Trial Staff of the Colorado Public Utilities Commission (Trial Staff), filed its Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, and Notice Pursuant to Rule 1007(a) and Rule 1401.

6. On September 21, 2023, Complainants filed their Response in Opposition to the Motion to Dismiss.

7. On September 26, 2023, Complainants filed a Motion to Amend the Complaint and its proffered First Amended Formal Complaint.

¹ Complaint at 40.

8. On October 5, 2023, the Office of the Utility Consumer Advocate filed a Notice of Intervention as a Matter of Right and Entry of Appearances.

B. Remote Prehearing Conference

9. It is appropriate to hold a remote prehearing conference in this proceeding. Accordingly, a remote prehearing conference shall be scheduled for October 19, 2023 at 1:30 p.m. The remote prehearing conference will be conducted over the Zoom videoconferencing platform. The ALJ or a member of Commission Staff will email the log-in information in advance of the hearing.

C. Conferral and Conferral Report

10. Complainants shall confer with the other parties in advance of the remote prehearing conference regarding a schedule for this proceeding, any discovery procedures that are inconsistent with the Commission's rules governing discovery, and the method by which the hearing should be conducted. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

11. The hearing in this proceeding is currently scheduled for October 30, 2023 at 9:00 a.m. The parties must confer about whether the current hearing date is viable and, if one or more parties believe it is not, alternative hearing dates.

12. Complainants shall file a report of the results of the conferral. If there is agreement on a schedule, including a date or dates for the hearing (either maintaining the current hearing date or an alternative date or dates), discovery procedures that are inconsistent with the Commission's rules governing discovery, deadlines for written testimony (if any), and/or the method for conducting the hearing (*i.e.*, remote, hybrid, or in-person), the report shall state as much and detail the stipulated procedural schedule, discovery procedures, and/or method for conducting the hearing. If no agreement is achieved, the report shall state as much and identify the competing schedules, discovery procedures, and/or methods for conducting the hearing proposed by the parties. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

13. The parties are urged to review the Commission's public calendar to identify suitable alternative days for the hearing in this proceeding and propose more than one date or consecutive alternative dates for the hearing. The latest date on which the hearing can conclude is 110 days before the statutory deadline established by § 40-6-108(4), C.R.S. The deadline for Complainants to file the report is October 17, 2023.

14. All parties must appear at the remote prehearing conference. Failure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

II. ORDER

A. It Is Ordered That:

1. The parties in this proceeding are Arm, LLC and Heartland Industries, LLC (collectively, Complainants) filed a Formal Complaint against Colorado Natural Gas, Inc. and Wolf Creek Energy, LLC.

2. A remote prehearing conference in this proceeding is scheduled as follows:

DATE: October 19, 2023

TIME: 1:30 p.m.

WEBCAST: Commission Hearing Room

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge²

3. Nobody should appear in-person for the remote prehearing conference.

4. Complainants shall file the report of the conferral identified above on or before October 17, 2023.

² Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director