

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-018G

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
POSING QUESTIONS REGARDING SETTLEMENT,
WAIVING RESPONSE TIME AND
VACATING HEARING**

Mailed Date: October 31, 2023

I. STATEMENT AND PROCEDURAL BACKGROUND

1. 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.¹

2. On May 3, 2023, the Commission sent out a Notice of Application Filed (Notice) to interested persons. The Notice stated that CNG “is seeking a Commission decision within 250 days.”²

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

¹ Verified Application of Colorado Natural Gas, Inc., filed May 1, 2023, p. 1.

² Notice of Application Filed by Colorado Natural Gas, Inc., May 3, 2023, p. 1.

- 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; and
- Trial Staff of the Commission filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing on May 25, 2023.

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

5. 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.

6. By Decision No. R23-0498-I, issued August 1, 2023, the undersigned ALJ granted EOC's Unopposed Motion to Intervene and acknowledged the Interventions of Right filed by Commission Staff and UCA.

7. Based on this Decision and the notices, the parties to this proceeding are CNG, Commission Trial Staff, UCA, and EOC.

8. On July 27, 2023, the parties informally advised the undersigned ALJ by email that they had agreed to a proposed procedural schedule to govern this Proceeding.

9. By Decision No. R23-0499-I, issued August 1, 2023, the undersigned ALJ adopted the parties' proposed procedural schedule and set the matter for an evidentiary hearing to be held remotely November 2 and 3, 2023.

10. On October 12, 2023, CNG's counsel, Mark Davidson, contacted the undersigned ALJ to advise that the parties had reached a global settlement of all issues raised in this Proceeding. However, Mr. Davidson indicated that it would be difficult for the parties to complete, execute,

and file the settlement documents by the current October 20, 2023, deadline. Mr. Davidson therefore requested that the procedural schedule be amended to grant the parties until October 27, 2023, to submit their settlement documents. By Decision No. R23-0705-I, issued October 19, 2023, the undersigned ALJ granted the parties' request for an extension up to and including October 27, 2023, within which to file their settlement documents.

II. UNOPPOSED JOINT MOTION FOR APPROVAL OF COMPREHENSIVE JOINT SETTLEMENT AGREEMENT

11. On October 27, 2023, CNG filed an Unopposed Joint Motion for Approval of Comprehensive Joint Settlement Agreement. The Unopposed Joint Motion advises that the parties have finalized their settlement agreement and requests that their "Settlement be approved without modification."

12. The parties' fully executed Comprehensive Joint Settlement Agreement was attached to the Unopposed Joint Motion. The Settlement Agreement outlines the following terms of the agreement:

- A gas savings goal of 5,000 Dekatherms per year and a budget of \$380,000 for the DSM Plan;
- CNG may recover its Acknowledgement of Lost Revenues (ALR) "for a period of two years of the measure's life" and an ALR level will be established in CNG's next DSM Plan or DSM SI application filing;
- The adoption of a bonus structure for CNG whereby it would be awarded 6percent of Net Benefits for achieving 80percent of goal, plus an additional 0.2percent bonus for each 1percent attainment beyond the 80percent goal up to 100percent of the goal. The bonus will increase by 0.4percent for each 1percent of goal over 100percent, up to 125percent attainment, at which point CNG would be awarded a bonus of 20percent of Net Benefits;
- CNG will not include the social cost of carbon and methane emissions in the bonus calculation;
- Rule 4760(e) of the Commission's rules shall govern, and, accordingly, the costs and benefits associated with CNG income-qualified (IQ) programs whose mTRC value is greater than 1.0 shall be included in the bonus calculation until

CNG meets its target for IQ programs. If CNG exceeds target savings for IQ programs, the Commission should use its discretion to allow any net benefits to be included in the bonus calculation;

- CNG will use non-energy benefit adders of 1.10 for market rate programs and 1.50 for IQ programs;
- CNG shall use a discount rate of 2.5percent for the social costs of both carbon and methane;
- CNG will not reallocate funding between residential and commercial DSM programs;
- CNG will continue the protocols for notifying stakeholders of proposed changes to the DSM plan made part of its 2020-2022 DSM Plan for its 2024-.2025 DSM Plan; and,
- CNG agrees to notify its customers annually of any new DSM programs or changes to existing programs.

13. Also filed on October 27, 2023, was the sworn settlement testimony of Clark Medlock, CNG's Director of Energy Efficiency Programs; Seina Soufiani, Chief Engineer/Section Chief of the Commission's Engineering Section in Fixed Utilities; and Aaron Moseley, Professional Engineer with the Commission. All three testified in favor of approving the settlement.

14. CNG acknowledges in its Unopposed Motion that the undersigned ALJ may have questions regarding the terms of the Settlement Agreement which must be addressed if the Settlement Agreement is to be approved. CNG indicates that representatives of the parties will be available to answer questions should the Commission decide to hold a hearing regarding the settlement. CNG also noted, though, that the parties believe "this proceeding can be resolved without a hearing."

15. The ALJ has reviewed the Unopposed Motion, the Settlement Agreement, the parties' direct and answer testimony, as well as the settlement testimony.

16. Based on this review, the ALJ finds that a hearing to answer questions about the Settlement Agreement is not necessary at this time.

17. However, the ALJ finds that it is in the public interest for the parties to clarify certain terms included in the Settlement Agreement. Therefore, the ALJ will order the parties to file, on or before **November 15, 2023**, written responses to the questions posed in this Order. Should the parties determine that amending the Settlement Agreement will respond to the ALJ's questions, the parties may file, on or before November 15, 2023, an Amended Settlement Agreement in lieu of, or in addition to, providing written responses to the questions posed.

18. For ease of reference the ALJ will pose questions based on where the provisions appear in the Settlement Agreement. The order in which the questions are posed does not indicate or reflect the relative importance of the questions.

19. The parties are directed to respond to the following questions:

- a) The Settlement Agreement makes no mention of avoided methane leakage. However, the ALJ notes a discrepancy regarding this issue in some of CNG's filings. Paragraph xlvi on p. 16 of the CNG SI filing (Attachment A to the original filing) indicates zero methane emission reduction has been included in the cost-effectiveness analysis, whereas Table 2 on p. 10 of the DSM filing (Attachment B) suggests that a value of 3.12percent percent leakage for "Lost & Unaccounted Gas" has been used in the company's cost-effectiveness analysis. How has this discrepancy been resolved and has CNG accounted for DSM's ability to reduce methane emissions from its distribution system?
- b) Paragraph 10 of the Settlement Agreement addresses the treatment of lost revenues and specifies that the Company will recover lost revenues for two years of measure savings. But the Settlement Agreement does not address or account for the effect on ALR should CNG file a rate case during that time period. How do the parties intend to address this issue?
- c) Paragraph 16 of the Settlement Agreement provides that "If the mTRC [modified total resource cost test] value of income-qualified programs drops below 1.0 or CNG has already met its target for such programs, the parties agree that the Commission should exercise its discretion and continue to allow the costs and benefits of those programs to be included in the bonus calculation, as

doing so will provide CNG with a greater incentive to pursue income-qualified DSM programs.” If the mTRC drops below 1.0, how would allowing the costs and benefits of those programs to be included in the bonus calculation incentivize CNG to pursue IQ DSM?

- d) Paragraph 18 of the Settlement Agreement states that “CNG will use non-energy benefit (NEB) adders of 1.10 for market rate programs and 1.50 for IQ programs.” Will CNG be adopting the NEB adders set by the upcoming litigation addressing Public Service’s 2024-2025 DSM Plan filing once that litigation is resolved, and, if not, why are differing values appropriate for CNG?
- e) Mr. Moseley testified at p. 9 of his settlement testimony that the Settlement includes a provision that the IQ NEB adder “will be subject to a pending Commission review of the IQ adder in the upcoming Public Service 2024-2025 DSM Plan,” and that any new value adopted in that proceeding can be addressed in CNG’s next DSM plan filing. However, the Settlement Agreement does not reflect this statement. Was this plan part of the parties’ agreement and, if so, should such a statement be included in the Settlement Agreement?

20. It may be the parties’ opinion that some of the ALJ’s questions are not relevant either to this Proceeding or to the review of the Settlement Agreement. The parties nonetheless shall respond to the ALJ’s questions. If the parties believe that a question is not relevant, they may explain the basis for that belief or opinion in their responses.

21. If, after considering the ALJ’s questions, the parties believe that written responses will not allow them to respond adequately to the ALJ’s questions, the parties may request an evidentiary hearing in order to present testimony in support of the Settlement Agreement and to respond to the ALJ’s questions.

22. If the ALJ has additional or unresolved questions about the Settlement Agreement after receiving and reviewing the parties’ responses to the questions posed above, the ALJ may hold an evidentiary hearing in order to ensure that the ALJ understands the Settlement Agreement.

III. VACATING HEARING

23. In light of the parties' settlement and the ALJ's determination that a hearing is not necessary at this time to explain the Settlement Agreement, the ALJ will vacate the evidentiary hearing scheduled for November 2 and 3, 2023.

IV. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, on or before November 15, 2023, Colorado Natural Gas, Inc., Trial Staff, the Office of the Utilities Consumer Advocate, and Energy Outreach Colorado (the parties) shall file written responses to the questions posed in this Order.

2. The evidentiary hearing scheduled for November 2-3, 2023, is vacated.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in black ink that reads "Rebecca E. White".

Rebecca E. White,
Director