

Decision No. C23-0137

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
APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: February 24, 2023
Adopted Date: February 15, 2023

I. BY THE COMMISSION

A. Statement

1. On January 26, 2023, Trial Staff of the Colorado Public Utilities Commission (“Trial Staff”) filed this Application for Rehearing, Reargument, or Reconsideration (“RRR”) that challenges Commission Decision No. C23-0019. Having considered the arguments presented in Trial Staff’s RRR we deny the RRR 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. Most of the history of this Proceeding is thoroughly set forth in the ALJ's Recommended Decision¹ that granted CNG's Application and rejected the challenges Trial Staff raised. After the ALJ issued that decision, Trial Staff filed exceptions, challenging the decision on multiple grounds. Trial Staff reiterated many of the claims it made before the ALJ and asked 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.

Trial Staff raised three main challenges to the 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.

4. We rejected Trial Staff's challenges to the Recommended Decision and declined to grant the additional relief Trial Staff requested.² The Commission concluded that Trial Staff was unable to bring to bear any evidence showing that CNG was engaged in wrongdoing, that CNG's request did not violate § 40-1-104(2), and that CNG's similar 2019 application was made properly.

¹ Recommended Decision No. R22-0608.

² Decision No. C23-0019 issued in this proceeding on January 9, 2023.

5. Trial Staff filed this RRR asking us to reconsider CNG's Application "considering the consequences and risks of" our conclusions in Decision No. C23-0019. In total, the RRR presents four issues comprising just two full pages of argument. Each of these issues is set forth and addressed below.

C. Discussion, Findings, and Conclusions

6. We understand Trial Staff's first two arguments as each presenting a reason why the Commission should deny CNG's application. We reproduce both in their entirety here:

A. The evidence suggests that 100 percent of CNG's current and future capital stock will be pledged to finance other entities.

The record shows that the funds will be used by "CNG parent company, Summit Utility Holdings, Inc." to "refinance existing debt." There is no showing that any of the funds will be used to finance CNG.³ CNG expressly acknowledges that it holds no debt and will not receive debt from this issuance.⁴

The "Use of Proceeds" in the Summary of Terms and Conditions makes clear that the funds may be used to finance the needs of CNG's parent and not CNG.⁵

B. Granting the application increases the financial risk to CNG and, therefore, to ratepayers.

By Decision No. C23-0019, the Commission authorizes the pledge of 100 percent of CNG's present and future capital stock as collateral for five years.⁶

By fully leveraging the utility, CNG will not have equity available to weather an unexpected event requiring additional financing.

7. With respect to the first argument, Trial Staff puts forth no explanation as to why any of these statements should convince this Commission that CNG's Application should be denied. The argument appears to be another attack on the initial approval of the stock pledge

³ Attachment 7 to Application.

⁴ Confidential Attachment 4 to Application.

⁵ Confidential Attachment 6 to Application.

⁶ Confidential Attachment 6 to the Application.

that took place in the uncontested 2019 proceeding that first approved a similar financing arrangement or perhaps a reiteration of the challenges to corporate financing agreements that Trial Staff raised in its exceptions. In either case, the ALJ addressed Trial Staff's financing concerns in the Recommended Decision and the Commission addressed them in its decision on exceptions. Trial Staff's arguments were unconvincing because they were based on little more than speculation. Here, we find this abbreviated argument on RRR unpersuasive because it presents no argument as to the harm arising from the financing arrangement and does not offer a developed challenge to our decision on exceptions.

8. The second argument suffers from the same shortcomings: it is speculative in nature and presents an undeveloped assertion as an argument. If there were an unexpected need to find additional financing it is uncertain, and Trial Staff presents no support for its position, as to which would be more beneficial — CNG's equity, or its holding company financing. Therefore, we are unpersuaded by Trial Staff's claim that granting the Application would increase financial risk to CNG or its customers.

9. The third argument contends that CNG's ownership could change without Commission approval in the event of a default for which 100 percent of CNG's common stock is pledged as collateral. Trial Staff asks the Commission to "memorialize in this matter that, pursuant to § 40-5-10[5](1), C.R.S., any transfer of some or all of the collateral (i.e., the CNG common stock) to the lenders in the event of a default would be subject to Commission authorization." Trial Staff points out that the Commission has previously imposed such a condition when authorizing CNG common stock as collateral for CNG financing. The statutory section Trial Staff references requires that any sale, assignment, or transfer of utility assets (outside the ordinary course of business) must be approved by the PUC. In essence, Trial Staff is

asking us to restate the statute in this decision. We see no need to restate the statute in this decision.

10. We now turn to the fourth and final issue Trial Staff raises. In its decision denying exceptions, the Commission acknowledged Trial Staff’s concerns regarding the risk of cross-subsidization between CNG and other entities in CNG’s corporate tree. In a section titled, “Additional Guidance,” we made the general request of CNG to be prepared to file additional information in its next rate case that could provide the Commission additional transparency as to the concerns Trial Staff raised. Trial Staff asks that we order CNG to provide that information if CNG files a Cost Assignment and Allocation Manual (CAAM) instead of a rate case this year.

11. We decline, in this proceeding, to order CNG to provide specific information in a future proceeding. When CNG files its CAAM this year, whether in a rate case or in a separate litigated proceeding, Trial Staff will have the right to intervene, ask for the proceeding to be set for hearing, and to conduct discovery. The Commission will address any future discovery disputes on their own merits if they arise.

12. For the reasons articulated above Trial Staff’s RRR application is denied.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration filed on January 26, 2023, by Commission Trial Staff is denied.

2. This decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 15, 2023**

(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

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Commissioners