

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0218G

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING UNOPPOSED JOINT MOTION FOR
APPROVAL OF COMPREHENSIVE JOINT SETTLEMENT
AGREEMENT AND GRANTING APPLICATION**

Mailed Date: January 5, 2024

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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. The Office of the Utility Consumer Advocate (UCA), Trial Staff of the Commission, and Energy Outreach Colorado (EOC) intervened in this Proceeding.

3. By Decision No. R23-0499-I, issued August 1, 2023, the undersigned Administrative Law Judge (ALJ) set a procedural schedule and scheduled an evidentiary hearing for November 2 and 3, 2023.

4. In support of their positions, the parties to this Proceeding filed the following testimony:

- a) With its Verified Application, CNG filed the direct testimony of Clark Medlock, its Director of Energy Efficiency Programs;
- b) On August 31, 2023, Trial Staff filed the Answer Testimony of (1) Seina Soufiani, Chief Engineer/Section Chief of the Commission's Engineering Section in Fixed Utilities; and (2) Aaron Moseley, Professional Engineer with the Commission;
- c) Also on August 31, 2023, UCA filed the Answer Testimony of Chris Neil, rate/financial analyst for UCA;
- d) On September 25, 2023, EOC filed the Cross-Answer Testimony of Andrew Bennett, its Vice President of Advocacy; and,
- e) On September 25, 2023, CNG responded to the pre-filed Answer Testimony with Mr. Medlock's the Rebuttal Testimony.

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

5. 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. Decision No. R23-0705-I issued October 19, 2023, granted the parties until October 27, 2023, to submit their settlement documents.

6. On October 27, 2023, the parties (hereinafter collectively referred to as the Settling Parties) filed their Comprehensive Joint Settlement Agreement and moved for approval of the settlement.

7. By Decision No. R23-0738-I, issued October 31, 2023, the undersigned ALJ vacated the evidentiary hearing scheduled for November 2 and 3, 2023, and posed several questions regarding the parties’ Comprehensive Settlement, which the parties jointly answered on November 15, 2023.

8. In addition, CNG filed the Settlement Testimony of Mr. Medlock, and Trial Staff submitted the Settlement Testimony of Mr. Soufiani and Mr. Moseley. The sworn testimony of all three witnesses supported the settlement, stating that the settlement is in the best interests of the parties, the Commission, and the public.

9. The undersigned ALJ now considers the Settling Parties’ proposed Joint Comprehensive Settlement Agreement.

II. TERMS OF THE SETTLEMENT AGREEMENT

A. 2024-2025 DSM Goals and Budgets

10. The Settling Parties agreed to a gas saving goal of 5,000 Dth per year and a reduction in the budget to \$380,000, as proposed by UCA. The agreed-upon amount is less than the saving goal of 6,935 Dth in the first year and 7,048 in the second year proposed by the Company

and Trial Staff. Likewise, the agreed-upon budget for the gas savings program is less than the total two-year budget of \$1,054,894 proposed by CNG.²

B. Acknowledgement of Lost Revenue (ALR)

11. CNG sought to collect ALR “for the lifetime of the installed DSM measures” or until its next rate case. Trial Staff opposed this proposal. Under the terms of the Settlement Agreement, the Settling Parties agreed that CNG “shall be permitted to recover the ALR for a period of two years of the measure’s life” through its DSM cost adjustment mechanism filed annually with the Commission.³

C. Incentive Bonus Structure

12. CNG proposed a bonus award of 5 percent of Net Economic Benefits (NEBs) upon reaching “50% of goal attainment and rising at a rate of” 0.2% “for each percentage of goal attainment to a maximum value of 20% of Net Benefits at 125% attainment.” Neither UCA nor Trial Staff agreed to CNG’s proposal. Instead, the parties agreed to the bonus structure proposed by UCA “whereby CNG would be awarded 6% of Net Benefits for achieving 80% of goal, and for each 1% of attainment beyond 80% of goal, the bonus would increase at 0.2% until 100% attainment. Above 100% of goal, the bonus would increase by 0.4% of Net Benefits for each 1% of savings until 125% attainment, whereby CNG would be awarded 20% of Net Benefits.” The parties incorporated a chart illustrating the bonus progression in the Settlement Agreement.⁴

² Comprehensive Joint Settlement Agreement, ¶¶ 7-8, pp. 2-3.

³ *Id.* at ¶¶ 9-10, p. 3.

⁴ *Id.* at ¶¶ 11-12, pp. 3-4.

D. Social Costs of Carbon and Methane in the Bonus Calculation

13. Although CNG sought to incorporate the social costs of carbon and methane emissions (SCE) in the calculation to determine Net Benefits, it has agreed *not* to include SCE in the bonus calculation.

E. Costs and Benefits of Income Qualified Programs in the Bonus Calculation

14. CNG proposed that the performance percentage related to the Income Qualified (IQ) program “should be 10% of total income-qualified program spending, unless it caused the total incentive awarded to exceed the total incentive cap.” CNG argued that such a structure was contemplated by Rule 4760(e) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-4. Rule 4760(e) provides:

For the purposes of calculating the bonus, the costs and benefits associated with an income-qualified DSM program may be excluded from the calculation of the net economic benefits for the entire DSM portfolio if the modified TRC value for the income-qualified program is below 1.0. If the modified TRC value for the income-qualified program is above 1.0, the Commission may exclude the net economic benefits attributable to income-qualified programs from the bonus if the utility has met its targets for income-qualified programs.

Trial Staff opposed the inclusion of investments made in the IQ program in the total spent on income-qualified programs because the legislature has mandated that utilities spend a percentage of their DSM budgets on IQ programs, therefore, Staff argued, CNG should not receive a bonus for something it is required to do. However, Staff and UCA agreed that Rule 4706 governs. Consequently, the Settling Parties agreed that “the costs and benefits associated with IQ programs whose mTRC value is greater than 1.0 shall be included in the bonus calculation until the utility meets its target for income-qualified programs.”⁵

⁵ *Id.* at ¶¶ 15-16, pp. 5-6.

F. Non-Energy Benefit Adders (NEBs)

15. CNG proposed NEBs of 1.20 for market rate programs and 1.50 for IQ programs in the mTRC calculation. Trial Staff opposed these figures and instead proposed using values of 1.14 for IQ programs and 1.06 for market rate programs. UCA and EOC preferred that new values be proposed in CNG's next DSM plan or that the rates currently in effect (1.50 for IQ programs and 1.20 for market rate programs) be maintained until the issue is fully litigated in Public Service Company of Colorado's next DSM Plan filing. The parties resolved the dispute by settling on NEB adders of 1.10 for market rate programs and 1.50 for IQ programs.⁶

G. Discount Rates for Carbon and Methane

16. CNG proposed using the same discount rate for the social costs of carbon and methane emissions — 5.82 percent — as it used for other costs and benefits in its Plan. Trial Staff pointed out, though, that the rates for carbon dioxide and methane should be separate and based on rates contemplated by the legislature as mandated by §§ 40-3.2-106(4) and -3.2-107(2), C.R.S. Based on this statutory mandate, the Settling Parties agreed to a discount rate of 2.5 percent for the social costs of carbon and methane.⁷

H. Allocation of Funds Between Customer Classes

17. CNG sought flexibility in making changes to rebate amounts and reallocating “program budgets between programs in its DSM Plan, including residential and non-residential programs.” Trial Staff opposed this proposal, citing Rule 4757(a), 4 CCR 723-4, that requires cost recovery programs for residential programs “be collected from residential programs only and that cost recovery for programs directed at nonresidential customers are to be collected from

⁶ *Id.* at ¶¶ 17-18, p. 6.

⁷ *Id.* at ¶¶ 19-20, pp. 6-7.

nonresidential customers only.” Indeed, Rule 4757(a) expressly prohibits the structure CNG proposed. The Rule provides that:

A utility may spend a disproportionate share of total expenditures on one or more classes of customers, provided, however, that cost recovery for programs directed at residential customers are to be collected from residential customers only and that cost recovery for programs directed at nonresidential customers are to be collected from nonresidential customers only, except as provided for in paragraph 4757(f)

Based on this regulatory mandate, CNG agreed that it would *not* reallocate funding between residential and nonresidential (or commercial) DSM programs.⁸

I. Protocol for New and/or Changed DSM Measures

18. CNG proposed continuing its existing practice, approved in its 2020-2022 DSM Plan, of providing notice to stakeholders of proposed changes to its DSM Plan. Notices will continue to be provided for any proposal to “add a new DSM program, reduce rebate levels, adopt new or discontinue existing measures, or change technical assumptions or eligibility requirements.” Stakeholders then have 30 days to offer comments addressing proposed changes, after which CNG will be allowed 30 days to consider the comments “before making changes to its Commission-approved plan.” The Settling Parties agreed that the existing protocol will be continued in the 2024-2025 DSM Plan.⁹

J. Customer Communications

19. In addition to DSMCA changes and Plan filing notifications, CNG agreed to “actively notify” its customers “at least once per year through an on-bill message, social media, and website bulletin explaining” its new program or changes to its program, as well as providing a telephone number at which customers can obtain additional information.¹⁰

⁸ *Id.* at ¶¶ 21-22, p. 7.

⁹ *Id.* at ¶¶ 23-24, pp. 7-8.

¹⁰ *Id.* at ¶ 25, p. 8.

III. AMENDMENTS AND MODIFICATIONS

20. In the Settling Parties' Joint Response to the ALJ's Questions, CNG acknowledged that an error currently exists in the Lost & Unaccounted (L&U) for Gas Rate, Table 2 on page 10 of its DSM filing. As originally filed, the table shows a rate of 3.12 percent for the L&U Gas Rate, but, as CNG conceded, the rate "should be amended to reflect a zero percent rate."¹¹ CNG indicated its intent to file an amended 2024-2025 DSM Plan reflecting the terms of the Settlement Agreement and correcting this error.

IV. FINDINGS AND CONCLUSIONS

21. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned ALJ applied the Commission's direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

22. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

23. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct, answer, and rebuttal testimony filed by the Settling Parties; the terms and conditions of the Comprehensive Joint Settlement Agreement; the settlement testimony; and the Settling Parties' Joint Response to the questions posed by the undersigned ALJ. Further, the ALJ has duly considered the positions of the Settling Parties in this matter and weighed the evidence presented.

¹¹ Joint Response of the Settling Parties, Response (a), pp. 1-2.

24. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Comprehensive Joint Settlement Agreement and is in the public interest. The Comprehensive Joint Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties and CNG's customers.

25. The ALJ further finds that the Settling Parties have established by a preponderance of the evidence that the Comprehensive Joint Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

V. **ORDER**

A. **It Is Ordered That:**

1. The Unopposed Joint Motion for Approval of Comprehensive Joint Settlement Agreement filed by Colorado Natural Gas, Inc. (CNG) on October 27, 2023, on behalf of all parties to this Proceeding is granted, consistent with the discussion above.

2. The Verified Application seeking approval of its 2024-2027 Demand-Side Management (DSM) Strategic Issues Plan (DSM SI Plan), and its 2024-2025 DSM Plan, filed by CNG on May 1, 2023, is granted and approved as amended by the Comprehensive Joint Settlement Agreement, consistent with the discussion above. Table 2 of the submitted DSM Plan shall be amended, consistent with the discussion above.

3. The Comprehensive Joint Settlement Agreement filed by the Settling Parties on October 27, 2023, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.
5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.
6. Response time to exceptions shall be shortened to seven (7) days.
7. Proceeding No. 23A-0218G is closed.

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge