

Decision No. R24-0169-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0570G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR APPROVAL OF ITS COST ASSIGNMENT AND ALLOCATION MANUAL AND FULLY DISTRIBUTED COST STUDY.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ACKNOWLEDGING INTERVENTIONS OF RIGHT,
GRANTING PERMISSIVE INTERVENTION,
ORDERING FILING OF TESTIMONY, AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: March 15, 2024

I. STATEMENT

1. This Decision grants the permissive intervention and schedules a prehearing conference.

A. Procedural History and Background

2. Colorado Natural Gas, Inc (CNG) initiated this matter on November 21, 2023, by filing its Verified Application with the Public Utilities Commission of the State of Colorado (PUC or Commission) seeking approval of its Cost Assignment and Allocation Manual (CAAM) and Fully Distributed Cost (FDC) Study.¹

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

¹ Verified Application of Colorado Natural Gas, Inc., filed Nov. 21, 2023, p. 1.

- Attachment A: CNG’s 2023 Cost Assignment and Allocation Manual; and
- Attachment B: CNG’s Fully Distributed Cost Study for the 12 months ending December 31, 2022.

4. On November 22, 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.”² 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.”³ Further, the Commission’s order provided that any intervenors to this Proceeding “shall file testimony within 45 days of the filing of the applicant’s testimony.”⁴

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 December 19, 2023; and
- Trial Staff of the Commission filed its Notice of Intervention of Right by Staff, Entries of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing on December 22, 2023.

6. In addition, on December 21, 2023, ARM, LLC (ARM) and Heartland Industries, LLC (Heartland) (collectively ARM/Heartland) jointly filed a Motion to Intervene and Entry of Appearance in this Proceeding (Motion to Intervene).

7. On January 10, 2024, 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.

² Notice of Application Filed by Colorado Natural Gas, Inc., Nov. 22, 2023, p. 1.

³ *Id.*

⁴ *Id.*

8. Subsequently and in compliance with the Commission's Notice, on January 22, 2024, CNG filed the direct testimony of (1) Angela Monroe, the Director of Regulatory Affairs – Maine and Colorado, for Summit Utilities, Inc.⁵; and (2) Timothy S. Lyons, a partner with ScottMadden, Inc.⁶

9. No Answer Testimony has been filed.

II. INTERVENTIONS

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

11. ARM/Heartland has moved to intervene in this proceeding.

12. ARM/Heartland filed its joint motion to intervene on December 21, 2023. ARM/Heartland represented that it had conferred with CNG and UCA about its motion. According to ARM/Heartland, although UCA does not oppose its Motion to Intervene, CNG does.

13. However, despite apparently informing ARM/Heartland that it opposes the Motion to Intervene, CNG has not filed a responsive pleading opposing the ARM/Heartland's motion to intervene. ARM/Heartland's Motion to Intervene may therefore be deemed confessed.⁷

14. In the Motion to Intervene, ARM represents that it owns property in Pueblo County, Colorado "including a 2-acre greenhouse and 15,000 square-foot warehouse."⁸ ARM leases the property and facilities to Heartland "which grows and sells cannabis products in the state of Colorado pursuant to a state-issued license."⁹

⁵ Hearing Ex. 100, Direct Testimony of Angela Monroe, p. 3, lines 3-5

⁶ Hearing Ex. 101, Direct Testimony of Timothy S. Lyons, p. 4, lines 3-5.

⁷ See Rule 1400(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regs.* (CCR) 723-1.

⁸ Motion to Intervene and Entry of Appearance of ARM, LLC and Heartland Industries, LLC, p. 1, ¶ 1, filed Dec. 21, 2023.

⁹ *Id.*

15. ARM states that it “takes service from CNG as a Firm Transportation customer, and natural gas service separately from CNG’s unregulated affiliate, Wolf Creek Energy, LLC (Wolf Creek).”¹⁰ ARM/Heartland have filed a Formal Complaint with the Commission against CNG, which is currently pending under Proceeding No. 23F-0418G. As described in the Motion to Intervene, ARM/Heartland allege in the Formal Complaint that CNG and Wolf Creek “operate as a single entity, commingling financial resources, in violation of the Commission’s rules, CNG’s Tariff, . . . and to the detriment of ARM/Heartland.”¹¹

16. ARM/Heartland asserts that in this Application, CNG is seeking approval of its FDC Study and its CAAM, and thereby seeks Commission approval “that it is appropriately allocating revenues, expenses, assets, liabilities, and rate base between the regulated activities of CNG and non-regulated activities, including Wolf Creek.”¹² ARM/Heartland’s Motion to Intervene continues by asserting that

Accordingly, by its Application, CNG directly and indirectly seeks Commission approval that its business operations with respect to Wolf Creek are appropriate — at least with respect to the accounting — in the midst of ARM/Heartland’s Formal Complaint proceeding which seeks relief for the inappropriateness of these two entities’ past and ongoing business relationship.¹³

17. ARM/Heartland states that they moved to intervene in this Proceeding “to protect their interests in their pending Complaint.”¹⁴ With respect to the specific grounds which must be weighed when considering a request to intervene, they assert that they have a specific interest in this Proceeding as customers of both CNG and Wolf Creek “to ensure that CNG (1) assigns and

¹⁰ *Id.*

¹¹ *Id.* at p. 2, ¶ 2.

¹² *Id.* at p. 2, ¶ 5.

¹³ *Id.* at p. 2, ¶ 6.

¹⁴ *Id.* at p. 2, ¶ 7.

allocates costs and revenues associated with its regulated activities, separately and properly from its affiliates' unregulated activities, and (2) maintains records clearly documenting the same.”¹⁵

18. ARM/Heartland state that they have “a tangible and pecuniary interest in the fair and proper allocation and assignment of costs and revenues between CNG and Wolf Creek.” They claim that, as customers of both CNG and Wolf Creek, they have “been damaged as a result of the comingling of assets between CNG and Wolf Creek in an amount to be determined at hearing in Proceeding No. 23F-0418G.”¹⁶

19. Further, ARM/Heartland asserts that because of its unique position as a customer of both CNG and Wolf Creek — a position which no other party to this Proceeding occupies — no other party can adequately represent their interests in this Proceeding.¹⁷

20. Finally, ARM/Heartland notes that their timely intervention will not unduly broaden or delay this Proceeding¹⁸

21. 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* (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.”).

¹⁵ *Id.* at p. 3, ¶ 12.

¹⁶ *Id.* at pp. 3-4, ¶ 14.

¹⁷ *See id.* at p. 4, ¶ 15.

¹⁸ *See*

22. 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.

23. 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).

24. The ALJ finds and concludes that ARM/Heartland have 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 ARM/Heartland's interests. Moreover, no party has opposed ARM/Heartland's intervention in this Proceeding.

25. Therefore, the ALJ will grant ARM/Heartland's Motion to Intervene. ARM/Heartland are thus parties to this Proceeding.

III. FILING OF TESTIMONY

26. In compliance with the Commission's November 22, 2023 Notice, CNG filed the Direct Testimonies of Angela Monroe and Timothy S. Lyons on January 22, 2024.

27. Pursuant to the Commission's Notice, Intervenors were to file their responsive Answer Testimony within 45 days of CNG filing its Direct Testimony, or on or before March 7, 2024.

28. As of the issuance of this Decision, none of the Intervenors has filed any Answer Testimony.

29. In order to ensure this Proceeding stays on track and can be completed within the allowed statutory time period, the Intervenors should file their Answer Testimony within two weeks, or on or before March 29, 2024.

IV. PREHEARING CONFERENCE

30. To ensure this matter moves forward, and in anticipation of a hearing on CNG's Application, the ALJ is scheduling a fully-remote prehearing conference per Rule 1409(a), 4 CCR 723-1, for Friday, March 22, 2024, at 10:00 a.m. Participants will appear at the prehearing

conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

31. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

32. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates scheduling a hybrid evidentiary hearing which accommodates both in-person and remote participation in the evidentiary hearing. Alternatively, the parties may choose to hold a hearing fully in person at the Commission's offices in Denver, Colorado, or at another location agreed to by the parties and approved by the ALJ, or a fully remote hearing to be held via Zoom.

33. The ALJ notes that 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.

34. As the Commission noted in its Notice, CNG is seeking a final Commission decision within 250 days of its Application being deemed complete. CNG's Application was deemed complete January 10, 2024. Therefore, a final Commission decision is due on or before September 12, 2024. To ensure a final Commission decision can be issued by September 12, 2024, the ALJ anticipates that an evidentiary hearing in this matter must be held before the end of May 2024. The participants should keep this in mind when preparing for the prehearing conference.

35. Other issues relevant to this proceeding may be raised or addressed at the prehearing conference, including whether the parties have met the requirements of this Decision and relevant Commission rules.

36. All parties are on notice that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

37. In the alternative, if the parties reach a consensus procedural schedule, hearing format, and proposed evidentiary hearing date(s), the parties are encouraged to contact the undersigned ALJ informally by email (alenska.han@state.co.us) with their proposed procedural schedule. If the parties' proposed procedural schedule can be accommodated by the Commission, the undersigned ALJ will vacate the prehearing conference and may adopt the parties' proposed procedural schedule and hearing date(s).

V. 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 Motion to Intervene and Entry of Appearance of ARM, LLC and Heartland Industries, LLC (collectively ARM/Heartland), filed on December 21, 2023, is granted. ARM/Heartland are parties to this proceeding.

3. By Friday, March 29, 2024, the Intervenors are to file their Answer Testimony responding to the Direct Testimony filed by Colorado Natural Gas, Inc. (CNG) on January 22, 2024.

4. A fully-remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Friday, March 22, 2024

TIME: 10:00 a.m.

PLACE: Join by video conference using Zoom

5. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

7. 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 cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director