

Decision No. R24-0286-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0635G

IN THE MATTER OF ADVICE LETTER NO. 133 FILED BY COLORADO NATURAL GAS, INC. TO ELIMINATE THE CONSTRUCTION ALLOWANCES, TO BECOME EFFECTIVE APRIL 29, 2024.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
VACATING REMOTE
PREHEARING CONFERENCE, EXTENDING
STATUTORY DEADLINE, ESTABLISHING
PROCEDURAL SCHEDULE, ASSIGNING EXHIBIT
NUMBER BLOCKS, AND SCHEDULING REMOTE
HEARING**

Mailed Date: April 29, 2024

I. STATEMENT

A. Background

1. On December 29, 2023, Colorado Natural Gas, Inc. (CNG) filed Advice Letter No. 133 with modified tariff sheets addressing the Service Lateral Connection and Distribution Main Extension Policy (Line Extension Policy) within its Rules and Regulations for Natural Gas Service for effect April 29, 2024. The proposed changes to the tariff sheets include: (a) the elimination of the construction allowance generally; and (b) the introduction of exceptions that may cause certain new customers to qualify for a construction allowance. CNG filed Advice Letter No. 133 in compliance with Senate Bill (SB) 23-291 that requires each of Colorado's four investor-owned gas utilities to file with the Commission, no later than December 31, 2023, an updated tariff to reflect the removal of any incentives for establishing gas service. CNG contends that SB 23-191 violates the Contract and Takings Clauses of the U.S. and

Colorado Constitutions. For that reason, CNG filed Advice Letter No. 133 “under protest” and set the effective date as April 29, 2024 “to allow for the [Constitutional] issues raised [in Advice Letter No. 133] to be addressed in the appropriate forum.”¹

2. On January 5, 2024, Staff of the Colorado Public Service Commission (Staff) filed a protest to CNG’s Advice Letter No. 133. Staff states that, in its “plain-language reading of the new statute,” CNGs construction allowances for service lines and main lines are only one component of the “incentives” that must be removed from CNG’s tariff. Staff argues that CNG’s proposed tariff revisions do not include removal of the incentives of a utility-provided meter and other infrastructure associated with the addition of a new customer, such as a service regulator. Staff thus states it is concerned that CNG’s filing may not satisfy the statutory requirement to file an “updated tariff to reflect the removal of any incentives for an applicant to establish gas service to a property.” In addition, Staff suggests that the Commission would benefit from additional legal analysis and briefing regarding CNG’s claims that SB 23-291 violates the United States and Colorado Constitutions.

3. On January 18, 2024, the Colorado Office of the Utility Consumer Advocate (UCA) filed an intervention as of right into this Proceeding and request for hearing. UCA states that it shares the concerns raised by Staff in its protest.

4. On January 26, 2024, the Commission issued Decision No. C24-0061 suspending the tariff sheets filed with CNG’s Advice Letter No. 133 for 120 days, through August 29, 2024, set the matter for hearing, established an intervention period through February 23, 2024, waived the December 31, 2024 deadline in Commission Rule 4210(d)² pursuant to Commission Rule

¹ Advice Letter No. 133 at 1.

² 4 *Code of Colorado Regulations* (CCR) 723-4.

1003(a),³ and referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

5. On February 23, 2024, Staff filed a Notice of Intervention.

6. On February 23, 2024, Sierra Club filed a Motion to Intervene. On February 29, 2024, CNG filed a Response in Opposition to Sierra Club's Motion to Intervene. On March 5, 2024, Sierra Club filed a Motion for Leave to Reply and Reply in Support of Motion to Intervene (Motion for Leave).

7. On March 11, 2024, the ALJ issued Decision No. R24-0157-I that granted Sierra Club's Motion to Intervene, denied its Motion for Leave, scheduled a remote prehearing conference for March 21, 2024, and required the parties to confer 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. Decision No. R24-0157-I also required CNG to file a report of the conferral by March 19, 2024.

8. On March 20, 2024, Public Service filed the report required by Decision No. R24-0157-I.

9. On March 20, 2024, the ALJ informed counsel for the parties by email that the information contained in the conferral report was sufficient and the remote prehearing conference was vacated.

B. Pre- and Post-Hearing Schedule

10. In the Conferral report, CNG states that the parties are unable to agree to a schedule, with CNG proposing one schedule and the remaining parties another. Both parties agree that CNG will file an Opening Brief outlining its constitutional objections to the statute

³ 4 CCR 723-1.

simultaneously with its Direct Testimony, the Intervenors will be “permitted” to file Response Briefs with their Answer Testimony, and CNG may file a Reply Brief with its Rebuttal Testimony. The competing schedules are as follows:

| <u>Event</u> | <u>CNG’s Proposed Deadline</u> | <u>Deadline Proposed by Staff, UCA, and Sierra Club</u> |
|--|--------------------------------|---|
| Direct Testimony and Opening Brief | May 20, 2024 | May 3, 2024 |
| Answer Testimony and Response Brief | June 28, 2024 | June 12, 2024 |
| Rebuttal Testimony, Cross-Answer Testimony, and Reply Brief | July 29, 2024 | July 12, 2024 |
| Settlement Agreement(s) | August 19, 2024 | July 26, 2024 |
| Prehearing Motions | August 23, 2024 | August 2, 2024 |
| Cross-Examination Matrix Corrections to Prefiled Testimony & Exhibits | August 23, 2024 | August 16, 2024 |
| Evidentiary Hearing | August 26-28, 2024 | August 28-30, 2024 |
| Statements of Position | September 11, 2024 | September 20, 2024 |

11. In addition, the parties agree that Commission Rule 1405 will govern discovery in this proceeding and that the hearing will be held remotely.

12. The ALJ finds and concludes that a remote hearing, and the following schedule, are reasonable and acceptable:

| <u>Event</u> | <u>Deadline</u> |
|-------------------------------------|-----------------|
| Direct Testimony and Opening Brief | May 20, 2024 |
| Answer Testimony and Response Brief | July 10, 2024 |

| <u>Event</u> | <u>Deadline</u> |
|---|--------------------|
| Rebuttal Testimony, Cross-Answer Testimony, and Reply Brief | August 5, 2024 |
| Settlement Agreement(s) | August 12, 2024 |
| Prehearing Motions | August 19, 2024 |
| Responses to Prehearing Motions | August 23, 2024 |
| Corrections to Prefiled Testimony & Exhibits | August 23, 2024 |
| Cross-Examination Matrix | August 23, 2024 |
| Remote Evidentiary Hearing | August 27-29, 2024 |
| Statements of Position | September 16, 2024 |

C. Extension of Time for Commission Decision

13. As noted above, the Commission set the tariff pages for hearing, which suspended the effective date for 120 days from the proposed effective date (April 29, 2024) to August 29, 2024.

14. Section 40-6-111(1), C.R.S., provides that the Commission may, in its discretion, by a separate decision, suspend the effective date of the tariff page(s) for an additional 130 days. Thus, the Commission has the power and authority to suspend the effective date of the tariff pages for a maximum of 250 days.

15. Here, in light of the time available, the schedule proposed by the parties, the time necessary to address other pending matters, and the need for the Commission to have adequate time to deliberate the issues presented in this matter, it is not feasible for a final Commission decision to issue by August 29, 2024. Accordingly, it is necessary to extend the effective date of the tariff sheets filed with the Advice Letter for an additional 130 days pursuant to § 40-6-111(1),

C.R.S. The new effective date of the Advice Letter and accompanying tariff sheets, after suspension, is January 4, 2025.

D. Hearing Exhibit Number Block Assignments

16. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- CNG is assigned hearing exhibit numbers 100 to 299;
- Staff is assigned hearing exhibit numbers 300 to 399;
- UCA is assigned hearing exhibit numbers 400 to 499; and
- Sierra Club is assigned hearing exhibit numbers 500 to 599.

E. Remote Hearing

17. The evidentiary hearing will be held remotely, which means that the participants will appear from remote locations. The participants may not appear at the hearing in-person. The remote evidentiary hearing will be held using the web-hosted service, Zoom. This Decision and Attachments A and B provide critical information and instructions to facilitate holding the hearing by video-conference, which all parties must follow.

18. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link, meeting ID code, and passcode 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.

19. Attachment A to this Decision provides the information addressing how to use the Zoom platform for participating in the remote hearing. Attachment B outlines procedures and

requirements for marking and formatting exhibits to facilitate efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

II. ORDER

A. It is Ordered That:

1. The effective date of the tariff sheets filed with Advice Letter No. 133 is suspended for an additional 130 days pursuant to § 40-6-111(1), C.R.S.

2. The schedule detailed in paragraph 12 above is adopted.

3. The remote prehearing conference scheduled for March 21, 2024 is vacated.

4. A remote hearing is scheduled as follows:

DATE: August 27-29, 2024

TIME: 9:00 a.m. to 5:00 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 Judge OR Commission Staff⁴

5. Nobody should attend the hearing in person.

⁴ 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>.

6. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

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

Rebecca E. White,
Director