

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
PARTIALLY GRANTING AND PARTIALLY DENYING
STAFF’S MOTION TO COMPEL, AND
GRANTING CHALLENGE TO
CONFIDENTIALITY DESIGNATION**

Mailed Date: May 6, 2024

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A. It Is Ordered That:18

I. STATEMENT, PROCEDURAL HISTORY AND BACKGROUND

1. 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 Rule 4503(d) of the Commission’s Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4, mandates that utilities file an updated CAAM with the Commission with every rate case or every five years, “whichever is earlier.”

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

- 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.

3. 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

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

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

³ *Id.*

⁴ *Id.*

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

- a) 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
- b) Staff 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.

5. 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).

6. On January 10, 2024, the Commission deemed the Application complete and assigned the Proceeding by minute order to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

7. 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

8. On March 15, 2024, the undersigned ALJ issued Decision No. R24-0169-I, granting ARM/Heartland's Motion to Intervene and acknowledging Staff's and UCA's interventions of right. The parties to this Proceeding are thus CNG, Staff, UCA, and ARM/Heartland. Decision No. R24-0169-I ordered the Intervenors to file their Answer Testimony, which had been due by March 7, 2024.

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.

9. Decision No. R24-0169-I also scheduled a prehearing conference for March 22, 2024, commencing at 10:00 a.m., to discuss and determine a procedural schedule to govern this Proceeding and to set an evidentiary hearing.

10. On March 21, 2024, Staff filed a Motion to Compel and Challenge Confidentiality Designation and Request to Shorten Response Time (Motion to Compel). Staff seeks to require CNG to supplement the latter's responses to discovery requests propounded by Staff, challenges CNG's designation of certain materials as highly confidential without having expressly requested that designation, and requests that the response time to the Motion be shortened.

11. Counsel for CNG, Mark Davidson, contacted the undersigned ALJ informally by email on March 21, 2024, with a proposed procedural schedule and dates for an evidentiary hearing, and also requested that a timeline for CNG to respond to the Motion to Compel be discussed at the March 22, 2024 prehearing conference.

12. After discussing issues associated with the Motion to Compel, the proposed procedural schedule, and the scheduling of an evidentiary hearing at the prehearing conference, the ALJ issued Decision No. R24-0199-I on April 1, 2024, which adopted the parties' proposed procedural schedule, scheduled an evidentiary hearing, and shortened CNG's response time to the Motion to Compel. A fully remote evidentiary hearing is now scheduled for May 29-31, 2024.

II. MOTION TO COMPEL

13. Staff's Motion to Compel alleges that CNG has failed to answer critical questions Staff propounded in written discovery on CNG. In particular, Staff asserts that CNG has not provided requested information about CNG's "corporate management and corporate structure"

which Staff contends is “within the scope of this case.”⁷ Staff asserts that it “cannot make intelligent recommendations on CNG’s proposed CAAM without understanding its corporate and management structure.”⁸

14. CNG counters that most of the information Staff seeks is irrelevant to a CAAM proceeding and beyond the scope of information generally sought in a CAAM proceeding. CNG cites to Rule 4503 of the Commission’s Rules Regulating Gas Utilities, 4 CCR 723-4, arguing that nowhere in the Rule is corporate structure or governance mentioned. CNG maintains that information about its “corporate structure and management” is “completely irrelevant to the issues in this proceeding.”⁹

A. Law Governing Discovery

15. Discovery in proceedings before the Commission is broadly governed by Rule 1405 of the Rules of Practice and Procedure, 4 CCR 723-1. Rule 1405(b) and (h) permit a party to serve an opposing party with written discovery requests. Rule 1405(a) also expressly incorporates into the Commission’s Rules, Rules 26-37 of the Colorado Rules of Civil Procedure¹⁰, which govern discovery in litigated matters.

16. “Under the Colorado Rules of Civil Procedure (C.R.C.P.), the scope of discovery is very broad.” *Corbetta v. Albertson’s, Inc.*, 975 P.2d 718, 720, (Colo. 1999). C.R.C.P. 26(b)(1) (2012) provides that a party “may obtain discovery regarding any matter, not privileged, that is

⁷ Motion to Compel and Challenge Confidentiality Designation and Request to Shorten Response Time (Motion to Compel), p. 2, filed Mar. 21, 2024.

⁸ *Id.*

⁹ Response of Colorado Natural Gas, Inc. to Trial Staff’s Motion to Compel and Challenge Confidentiality Designations and Request to Shorten Response Time (Response), p. 3, filed Apr. 2, 2024.

¹⁰ Note: Rule 1004(h) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, defines the “Colorado Rules of Civil Procedure” as those “published in the 2012 edition of the Colorado Revised Statutes.” All references to the C.R.C.P. are consequently to the 2012 edition. A copy of the 2012 version of the C.R.C.P. can be found on the PUC’s website, under the tab for “Regulations Incorporated by Reference in PUC Rules” on the page for the PUC’s Rules of Practice and Procedure, at this link: <https://puc.colorado.gov/pucrules>

relevant to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” “[T]he standard for discovery is whether the information sought is reasonably calculated to lead to the discovery of admissible evidence.” *Bowlen v. Dist. Ct.*, 733 P.2d 1179, 1182, (Colo.1987). But, notably, C.R.C.P. 26(b)(1) (2012) specifies that “information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.”

17. The Colorado Supreme Court has admonished that “[w]hen resolving discovery disputes, the rules should be construed liberally to effectuate the full extent of their truth-seeking purpose. . . .” *Nat’l Farmers Union Prop. & Cas. Co. v. Dist. Ct.*, 718 P.2d 1044, 1046, (Colo. 1986). “In close cases, the balance must be struck in favor of allowing discovery.” *Williams v. Dist. Ct.*, 866 P.2d 908, 911 (Colo. 1993).

18. However, discovery is not limitless. “The need for discovery must be balanced by weighing a party’s right to privacy and protection from harassment against the other party’s right to discover information that is relevant. Thus, the information sought through discovery must be relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.” *Silva v. Basin W., Inc.*, 47 P.3d 1184, 1188 (Colo. 2002).

B. Scope of Discovery Request

19. As CNG correctly points out, the Rules addressing CAAM proceedings mention neither corporate structure nor corporate management. But contrary to CNG’s characterization, these factors are not “completely irrelevant” to this Proceeding.

20. To assess the scope of a CAAM proceeding, it is helpful to look to the Rules themselves to determine the Proceeding’s scope.

21. First, the Rules Regulating Gas Utilities define CAAM as: the indexed document filed by a utility with the Commission that describes and explains the cost assignment and allocation methods the utility uses to segregate and account for revenues, expenses, assets, liabilities, and rate base cost components assigned or allocated to Colorado jurisdictional activities. It includes the cost assignment and allocation methods to segregate and account for costs between and among jurisdictions, *between regulated and non-regulated activities, and between and among utility divisions*.¹¹

Thus, the Rule defining CAAM expressly provides for the inclusion of information about financial accounting between different divisions of a utility and between a utility's regulated and non-regulated activities.

22. Looking at Rule 4503, upon which CNG relies, reveals that a utility's cost assignment and allocation manual must include all the following information:

- (I) A listing of all regulated or non-regulated divisions of the Colorado utility together with an identification of the regulated or non-regulated activities conducted by each.
- (II) A listing of all regulated or non-regulated affiliates of the Colorado utility together with an identification of which affiliates allocate or assign costs to and from the Colorado utility.
- (III) A listing and description of each regulated and non-regulated activity offered by the Colorado utility. The Colorado utility shall provide a description in sufficient detail to identify the types of costs associated with the activity and shall identify how the activity is offered to the public and identify whether the Colorado utility provides the activity in more than one state. If an activity is offered subject to tariff, the Colorado utility may identify the tariff and the tariff section that describes the service offering in lieu of providing a service description.
- (IV) A listing of the revenues, expenses, assets, liabilities and rate base items by Uniform System of Accounts account number that the utility proposes to include in its revenue requirement for Colorado jurisdictional activities including those items that are partially allocated to Colorado as well as those items that are exclusively assigned to Colorado.
- (V) A detailed description showing how the revenues, expenses, assets, liabilities and rate base items by account and sub-account are assigned and/or allocated to

¹¹ Rule 4501(d) of the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4.

the Colorado utility's non-regulated activities, along with a description of the methods used to perform the assignment and allocations.

(VI) A description of each transaction between the Colorado utility and a non-regulated activity which occurred since the Colorado utility's prior CAAM was filed and, for each transaction, a statement as to whether, for this Commission's jurisdictional cost assignment and allocation purposes, the value of the transactions is at cost or market as applicable.

(VII) A description of the basis for how the assignment or allocation is made.

(VIII) If the utility believes that specific cost assignments or allocations are under the jurisdiction of another authority, the utility shall so state in its CAAM and give a written description of the prescribed methods. Nothing herein shall be construed to be a delegation of this Commission's ratemaking authority related to those assignments or allocations.

(IX) Any additional information specifically required by Commission order.¹²

Rule 4503(b) thus mandates that a utility provide information in its CAAM information about its regulated and unregulated affiliates (divisions) and activities.

23. CNG nevertheless maintains that the information Staff seeks "is not even remotely related to the issues in a CAAM filing." Given the breadth of compulsory information that must be included in a CAAM, the ALJ disagrees that *all* the information Staff seeks is "completely irrelevant" to this Proceeding. Some information about CNG's corporate structure may be helpful, and, as pertinent here, discoverable, if it relates to the structure of regulated and unregulated divisions within and affiliated with CNG, as well as to CNG's regulated and unregulated activities.

24. As this determination can only be made by reviewing the individual requests, it is necessary to examine each specific request to determine its relevance and discoverability.

C. Specific Information Requested

25. Staff has identified several specific interrogatories it posed to CNG as requiring additional responses from CNG. The ALJ will address each question in turn.

¹² Rule 4503(b), 4 CCR 723-4.

1. CPUC 1-6

26. This request seeks information about the composition of CNG's Board of Directors. CNG maintains that because Rule 4503 "is silent as to any requirements regarding corporate boards of directors or governance,"¹³ it should not be required to produce this information.

27. The ALJ finds and concludes, however, that information about CNG's Board of Directors could lead to the discovery of admissible information pertaining to the structure of CNG's regulated and unregulated divisions, as well as its regulated and unregulated activities.

28. Moreover, the ALJ finds and concludes that information about CNG's Board of Directors should be readily accessible to the Company and therefore is not unduly burdensome.

29. CNG will therefore be ordered to provide the information requested in CPUC 1-6.

2. CPUC 2-1

30. This request propounds two questions. The first asks a general question about the "duties and purpose of a board of directors." The second inquires whether there is "any internal evaluation of the effectiveness of the board."¹⁴

31. In its Response, CNG argues that the questions are "simply irrelevant to this proceeding and beyond the scope of the CAAM requirements."¹⁵

32. Here, the ALJ agrees with CNG. A general question about the "duties and purpose of a board of directors" is not sufficiently specific to CNG's CAAM to lead to the discovery of admissible evidence. The ALJ is hard-pressed to understand how or why Staff "believes" that CNG's "views [about] the role of its Board could impact Staff's recommendations on the CAAM."¹⁶

¹³ Response, p. 4.

¹⁴ Motion to Compel, p. 5.

¹⁵ Response, p. 4.

¹⁶ Motion to Compel, P. 5.

33. Moreover, this question, as it is transposed in Staff's Motion to Compel, did not inquire into CNG's views about its own Board, but rather asked a general question about Boards of Directors.

34. Likewise, Staff's question about evaluations of the "effectiveness of the board" is non-specific and vague.

35. The ALJ finds and concludes that the questions posed in CPUC 2-1 are not reasonably likely to lead to the discovery of admissible evidence. CNG therefore need not answer this interrogatory.

3. CPUC 2-3

36. Next, Staff points to the questions posed by CPUC 2-3, which inquired about specific CNG Board composition and activities. CNG objects to the production of this information, arguing that, like the information sought by CPUC 2-1, CPUC 2-3 seeks information which it asserts is "simply irrelevant"¹⁷ to this Proceeding. CNG offers no other basis for refusing to produce the requested information.

37. Here, the ALJ disagrees with CNG. CPUC 2-3 seeks information which is specific to CNG and which could lead to the production of admissible information about CNG's regulated and non-regulated divisions and activities. The individuals in attendance at CNG's Board meetings, as well as those individuals' participation in other boards or CNG affiliates, could shed light on the regulated and nonregulated activities of CNG's affiliates and divisions, as anticipated by Rule 4503. The information therefore is reasonably likely to lead to the production of admissible evidence.

38. CNG will therefore be ordered to produce the information sought by CPUC 2-3.

¹⁷ Response, p. 4.

4. CPUC 2-6

39. CPUC 2-6 requests an “executable file detailing all payments and debits paid to CNG” as well as “bank statements to verify these data.”¹⁸

40. CNG provided the information sought in a confidential attachment to its responses. However, it declined to produce bank statements, contending that producing those would be “unduly burdensome,” irrelevant to the issue of cost allocation in a CAAM proceeding, and “unlikely to lead to the production of admissible information.”¹⁹ CNG offers no further explanation as to the bank statements’ alleged irrelevance beyond its declaration.

41. Staff counters that the information sought is indeed relevant “because the figures they have given us suggest CNG has reimbursed more to entities for customer payments than appropriate. It is also relevant to verify if CNG is following its current CAAM.”²⁰

42. Without further explanation from CNG describing how and why the requested and specific information is irrelevant, the ALJ must err on the side of discoverability. *See Nat’l Farmers Union*, 718 P.2d at 1046; *Williams.*, 866 P.2d at 911.

43. Moreover, Rule 4503(b)(IV), (V), and (VI), mandate the inclusion of a “detailed description” of a utility’s expenses and expenditures in its CAAM. In the ALJ’s view, information contained in bank statements is not only relevant to the information that must be included in the CAAM, but in fact contemplated by the Rule. Bank statements are directly related to a utility’s expenses, assets and liabilities, which Rule 4503(b)(IV) and (V) require a utility to describe in detail.

¹⁸ Motion to Compel, p. 5.

¹⁹ Response, p. 4.

²⁰ Motion to Compel, p. 6.

44. CNG will therefore be ordered to produce the bank statements sought by CPUC 2-6.

5. CPUC 3-11 and 3-12

45. These interrogatories seek a list of “all shareholder representatives” sitting on CNG’s Board and a list of “all shareholder representatives who attend CNG board meetings.”²¹ Staff asserts that it requested this information because “it will lead to knowledge about how CNG is managed and whether CNG is acting on behalf of its interests and those of its ratepayers or its unregulated affiliates.”²² Staff contends that this information could, in turn, impact its “recommendations for the proposed CAAM.”²³

46. In response, CNG contends that this discovery request is “irrelevant” to a CAAM proceeding because the Commission’s Rules “are totally silent as to shareholders’ identities and attendance at Board meetings.” CNG also notes that Staff has offered no “legal basis for the production of this information.”²⁴ It does not contend that the request is overly burdensome, unlikely to lead to admissible evidence, or privileged.

47. But, as has repeatedly been noted, discovery must be liberally construed and decisions on discovery disputes must err on the side of production “in close cases.” *See Nat’l Farmers Union*, 718 P.2d at 1046; *Williams.*, 866 P.2d at 911.

48. Here, the identity of shareholder representatives on CNG’s Board or in attendance at Board meetings is relevant to, and may lend insight into, the issue of CNG’s regulated and non-regulated divisions, affiliates, and activities of which Rule 4503(b)(I), (II), and (III) mandate disclosure in a CAAM. CNG appears to take the position that information is only

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Response, p. 4.

“relevant” to a CAAM proceeding if the applicable rules explicitly require disclosure of such information. However, discovery is broader than an enumerated list in the applicable rules and regulations. Rather, discovery is designed to lead to admissible evidence.

49. Thus, if the information sought in discovery is calculated to lead to the discovery of admissible evidence — as pertinent here, information that may illuminate the enumerated items required by Rule 4503 — then it is generally discoverable.

50. Accordingly, the ALJ finds and concludes that the lists of shareholder representatives who sit on CNG’s Board or attend its meetings, is reasonably calculated to lead to the discovery of admissible evidence.

51. CNG will therefore be required to produce the information requested in CPUC 3-11 and 3-12.

6. CPUC 4-3

52. CPUC 4-3 asked CNG to “describe all the functions performed by Summit Utilities on behalf of unregulated affiliates.”²⁵

53. CNG did not object to this interrogatory. Instead, according to Staff, CNG answered that “Summit does not conduct any activities on ‘behalf’ of its unregulated affiliates.”²⁶

54. Staff now indicates that it has conferred with CNG and inquired about “what other functions” Summit Utilities performs but has received no further response.

55. It is unclear to the ALJ what Staff is seeking here. CNG appears to have responded to the question posed. Dissatisfaction with a response does not necessarily mean that the response

²⁵ Motion to Compel, p. 6.

²⁶ *Id.*

was incomplete or improperly evasive. Nor does it mean that an order compelling a response would produce a satisfactory answer.

56. Because it appears that CNG has answered this question, the ALJ declines to order further production of information pursuant to CPUC 4-3.

7. CPUC 4-23

57. CPUC 4-23 asks CNG to expand upon its response to CPUC 1-7²⁷ by creating and providing “two files: one is only for goods or services acquired from or provided to an affiliate and the other file is for financial flows that are a result of commingling of funds.”²⁸ Staff explains that its “goal” in seeking the production of this information in this format “is to separate the funds related to the goods and services provided to or by an affiliate from other funds that are otherwise co-mingled such as funds paid to CNG that should have been paid to other affiliates.”²⁹

58. CNG responds that it is “unclear . . . what . . . this question is supposed to be seeking.”³⁰ It notes that it already produced “all of the CNG transactions between affiliates from 2018 through 2023, as well as explanations and a summary of these transactions.”³¹

59. The ALJ agrees that the request is unclear and vague. Staff does not argue that CNG has not provided the information sought. As the ALJ understands Staff’s contention, it seems to be asking CNG to produce the information in a different format. However, an interrogatory that requires such exposition to even convey what is being sought is inherently confusing.

60. Because the ALJ agrees CPUC 4-23 is unclear and confusing, CNG will not be required to produce the information sought by this request,

²⁷ CPUC 1-7 is not set out in the Motion to Compel or attachments thereto. The ALJ is therefore uncertain what information was requested by CPUC 1-7.

²⁸ Motion to Compel, p. 7.

²⁹ *Id.*

³⁰ Response, p. 5.

³¹ *Id.*

8. CPUC 4-24

61. CPUC 4-24 poses the following request: “Please provide a detailed explanation for all ‘payables.’ Please provide a copy of all invoices paid or returned on behalf of CNG since 2018.”³² Staff asserts that this question “is designed to understand what ‘payables’ really are.”³³ Staff expounds that it believes payables “are apparently amounts owed by CNG to other entities.”³⁴ Staff then lists the types of information it hopes to obtain through this discovery request.

62. However, as CNG points out, if Staff wanted to know “what payables really are,” Staff should have and could have asked that question. Instead, the question propounded is confusing, vague, and lacking in limiting parameters. Indeed, the question does not even specify whose “payables” it seeks to have detailed.

63. The ALJ therefore concludes that the first part of CPUC 4-24 is confusing and vague. CNG will therefore not be required to answer that question.

64. With respect to the second part of CPUC 4-24, CNG asserts — and Staff does not appear to dispute — that it has produced all of its transactions between affiliates from 2018 through 2023. However, CNG argues that the invoices themselves are “irrelevant” to and beyond the scope of a CAAM proceeding.

65. As with the bank statements sought by CPUC 2-6, the ALJ disagrees. Indeed, invoices may indeed be even more relevant to a CAAM proceeding than bank statements. Rule 4503(b)(IV) and (V) mandate the provision of a “detailed description” of a utility’s expenses. Invoices are directly related to a utility’s expenses. In fact, invoices are a record of the utility’s expenses. The ALJ is therefore unpersuaded that invoices are irrelevant.

³² Motion to Compel, p. 7.

³³ *Id.*

³⁴ *Id.*

66. To the contrary, the ALJ finds and concludes that invoices are directly relevant to this Proceeding and their production is reasonably calculated to lead to the discovery of admissible evidence.

67. CNG will therefore be required to provide the information sought by the second question propounded by CPUC 4-24.

9. CPUC 4-33 through 4-40

68. The final group of interrogatory requests which Staff seeks to compel CNG to answer all relate to information about CNG's shareholders, board members, and the boards of CNG's affiliates. Staff argues that this information is critical in order for it to understand CNG's corporate governance, and its relationship with its divisions and affiliates.

69. CNG maintains that the requested information is "wholly inapposite to this proceeding," chafes at Staff's assertion that certain of CNG's affiliates are "shell corporations," and argues that "corporate governance is not an aspect of review of the CAAM."³⁵

70. While it is true that Rule 4503 does not mention corporate governance or shell corporations, the ALJ disagrees that such information is "wholly inapposite" to this Proceeding. To the contrary, and as noted above, Rule 4503(b)(I) and (II) mandate the disclosure of a listing of a utility's divisions and affiliates, both regulated and non-regulated. The ALJ is therefore hard-pressed to understand why information about the shareholders and boards of CNG's affiliates would be entirely irrelevant to this Proceeding. Information about the affiliates' boards could inform a picture of CNG's regulated and non-regulated divisions and affiliates, as anticipated by Rule 453(b)(I) and (II).

³⁵ Response, p. 5.

71. The ALJ therefore finds and concludes that the questions posed in CPUC 4-33, 4-34, 4-35, 4-37, 4-39, and 4-40 are reasonably calculated to lead to the discovery of admissible evidence.

72. CNG will therefore be ordered to provide the information sought by these discovery requests.

III. MOTION CHALLENGING LEVEL OF CONFIDENTIALITY

73. Staff's motion also challenges CNG's designation of material as highly confidential under Rule 1101, 4 CCR 723-1. Staff claims that CNG has improperly designated certain propounded questions as "highly confidential" but failed to take the steps necessary to assert the "highly confidential" designation. Staff contends that CNG has not filed a motion seeking a "highly confidential" designation for any of the documents, information, or records it has produced in this Proceeding, and has improperly redacted the *questions themselves* in responding to Staff's discovery requests.³⁶

74. CNG does not dispute that it has not filed a motion to designate certain documents "highly confidential." As the ALJ understands CNG's position — which the ALJ found confusing and unclear — CNG believed that no such motion was necessary because it had, at some point in the past in conjunction with another proceeding, "admitted [Staff] to the Company's offices, chaperoned by a Company representative" to review documents on site. CNG deemed these documents "too commercially sensitive" to permit any photocopying or removal of the documents from CNG's offices. CNG continues that because "these were corporate records and documents, there was no need for the Company to have stamped them as 'highly confidential.'"³⁷

³⁶ See, e.g., Ex. B to Motion to Compel, p. 4.

³⁷ Response, p. 6.

75. CNG then explains that it will seek highly confidential status of documents it may now be required to disclose but that it had understood the information to be so highly commercially sensitive that it was “not subject to discovery in other proceedings.”³⁸

76. Rule 1101(b) provides that a party seeking to protect information that “requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, . . . *must file a motion requesting highly confidential protection.*”³⁹ Any such motion must include specific information set out in Rule 1101(b)(I) through (VII).

77. The ALJ finds and concludes that to the extent CNG seeks to designate any disclosed information as highly confidential and warranting of extraordinary protection, CNG must follow the procedures set out in Rule 1101. Failure to follow the Commission’s mandated procedures for highly confidential documents necessitating extraordinary protections could result in the disclosure of information which CNG seeks to protect.

IV. **ORDER**

A. **It Is Ordered That:**

1. The Motion to Compel and Challenge Confidentiality Designation and Request to Shorten Response Time filed by Commission Trial Staff (Staff) on March 21, 2024, is granted in part and denied in part.

2. Colorado Natural Gas, Inc. (CNG) is ordered to provide the information sought by Staff in the following requests for production within fourteen days of this issuance of this Decision:

- CPUC 1-6
- CPUC 2-3
- CPUC2-6

³⁸ *Id.* at p. 7.

³⁹ Rule 1101(b), 4 CCR 723-1.

- CPUC 3-11
- CPUC 3-12
- Question 2 of CPUC 4-24
- CPUC 4-33
- CPUC 4-34
- CPUC 4-35
- CPUC 4-37
- CPUC 4-39
- CPUC 4-40

3. CNG is *not* required to provide the information sought by Staff in the following requests for production:

- CPUC 2-1
- CPUC 4-3
- CPUC 4-23
- Question 1 of CPUC 4-24

4. CNG is ordered to file a motion for extraordinary protection of highly confidential information pursuant to Commission Rule 1101, 4 *Colorado Code of Regulations* (CCR) 723-1, if it seeks the highly confidential designation for any produced information.

5. 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