

Decision No. R24-0379-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
EXTENDING TIME FOR A COMMISSION DECISION,
RESCHEDULING EVIDENTIARY HEARING, AND
MODIFYING PROCEDURAL SCHEDULE**

Mailed Date: June 4, 2024

I. STATEMENT

A. Summary

1. This Decision extends the time period within which a final Commission Decision must issue pursuant to § 40-6-109.5(4), C.R.S.; reschedules the evidentiary hearing to commence August 8 and 9, 2024; and modifies the existing procedural schedule to accommodate the rescheduled evidentiary hearing dates.

B. 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

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

3. Contemporaneously with and attached to its Application, CNG submitted its 2023 CAAM and its FDC 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 noted that CNG “**has not** filed testimony and is seeking a Commission decision within 250 days.”²

5. After the Commission’s issuance of the Notice, the following entities intervened 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) Trial Staff of the Commission (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.

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 deemed the Application complete and assigned the Proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

8. By Decision No. R24-0169-I, issued March 15, 2024, the undersigned ALJ granted ARM/Heartland’s Motion to Intervene and acknowledged Staff’s and UCA’s interventions of right. The parties to this Proceeding are thus CNG, Staff, UCA, and ARM/Heartland.

9. On March 22, 2024, the ALJ convened a prehearing conference to discuss and determine a procedural schedule to govern this Proceeding and to set an evidentiary hearing. After

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

the prehearing conference and with the parties’ consensus, on April 1, 2024, the ALJ issued Decision No. R24-0199-I, which scheduled a fully-remote evidentiary hearing to be held May 29, 30, and 31, 2024.

10. Decision No. R24-0199-I also established the following procedural schedule to govern this Proceeding:

Answer Testimony	April 5, 2024
Rebuttal Testimony and Cross-Answer Testimony	May 3, 2024
Stipulations and Settlement Agreements	May 22, 2024
Prehearing Motions Deadline	May 24, 2024
Corrected Testimony	May 24, 2024
Cross-Examination Matrix	May 24, 2024
Evidentiary Hearing	May 29-31, 2024
Statements of Position	June 14, 2024

11. The parties have adhered to the established procedural schedule and have completed discovery in this Proceeding.

12. However, in the days prior to the scheduled commencement of the evidentiary hearing, the undersigned ALJ fell ill with Covid.

13. On May 28, 2024, the ALJ therefore issued Decision No. R24-0356-I, vacating the evidentiary hearing and scheduling a fully-remote prehearing conference for May 29, 2024, at 10:30 a.m. to discuss with the parties the possibility of extending the statutory deadline, rescheduling the evidentiary hearing, and modifying the procedural schedule.

14. The ALJ also communicated with the parties informally by email and offered several dates on which the rescheduled evidentiary hearing could be held.

II. PREHEARING CONFERENCE

15. The undersigned ALJ held the prehearing conference as scheduled on May 29, 2024.

16. The following individuals appeared at the prehearing conference on behalf of the parties:

- CNG: Mark Davidson;
- Staff: Mark Valentine;
- UCA: Patrick Witterschein; and,
- ARM/Heartland: Gabriella Stockmayer.

17. At the prehearing conference, the parties discussed extending the statutory deadline, rescheduling the evidentiary hearing, modifying the procedural schedule, and prohibiting further discovery. This Decision memorializes the issues decided and discussed at the May 29, 2024 prehearing conference.

18. CNG, Staff, and UCA reached an agreement that the rescheduled evidentiary hearing could be held the week of August 5, 2024.  ARM/Heartland conditionally agreed to this time frame, with the understanding that the parties would seek a continuance of an evidentiary hearing scheduled in mid-September 2024 in a complaint proceeding ARM/Heartland has asserted against CNG and to which Staff is also a party.

A. Time For A Commission Decision

19. Section 40-6-109.5(2), C.R.S., mandates that, for Applications filed with the Commission that are “not accompanied by prefiled testimony and exhibits,” the Commission must issue its final Decision within 250 days of the Application being deemed complete.

20. As the Commission noted in its Notice of Application Filed, CNG did not file prefiled testimony with its Application and 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, pursuant to § 40-6-109.5(2), C.R.S., a final Commission decision is currently due on or before September 12, 2024.

21. The ALJ scheduled the evidentiary hearing for May 29-31, 2024, with the expectation that doing so would provide her and the Commission sufficient time to enter a Recommended Decision, allow for exceptions, and issue a final Commission Decision before the expiration of the statutory time period on September 12, 2024.

22. However, the ALJ's unexpected illness which necessitated the vacation of the scheduled evidentiary hearing makes meeting that timeline impossible.

23. Section 40-6-109.5(4), C.R.S., creates an exception to the presumed maximum 250-day timeline discussed above. Specifically, it provides that when the Commission holds a properly noticed hearing at which the existence of extraordinary conditions is established to the Commission's satisfaction, the statutory deadline for a final Commission decision may be further extended by an additional 130 days, for a total maximum of 380 days from the date an application is deemed complete.³ The parties and their counsel simply being busy does not establish the existence of extraordinary conditions.

24. The ALJ expressed her view that her illness created an extraordinary condition meriting the further extension of the statutory deadline by an additional 130 days.

25. Moreover, the ALJ notes, given that the parties seek to reschedule the evidentiary hearing to the week of August 5, 2024, it will not be possible for the parties to submit Statements

³ § 40-6-109.5(4), C.R.S.

of Position, the ALJ to issue a Recommended Decision, the parties to file any exceptions, and the Commission to issue its final decision by September 12, 2024 (only five weeks after the hearing).

26. As required by § 40-6-109.5(4), C.R.S., the ALJ scheduled a duly-noticed prehearing conference for May 29, 2024. Decision No. R24-0356-I, issued May 28, 2024, scheduled the prehearing conference and explicitly provided notice that during the hearing the parties would be given an opportunity to establish that extraordinary conditions exist justifying a 130-day extension of the statutory deadline for a final Commission decision, per § 40-6-109.5(4), C.R.S.

27. At the prehearing conference on May 29, 2024, all four parties to this Proceeding verbally expressed their agreement that the above situation constituted an extraordinary condition. None of the parties objected to invoking § 40-6-109.5(4), C.R.S., and extending the statutory time period by an additional 130 days, up to and including January 20, 2025, for a total statutory time period of 380 days from the date on which CNG's Application was deemed complete.

28. Based on the parties' representations, the undersigned ALJ's inability to conduct the evidentiary hearing on May 29-31, 2024 (as originally scheduled), and the dates selected by the parties for the rescheduled evidentiary hearing, the undersigned ALJ finds and concludes that extraordinary conditions, as contemplated under § 40-6-109.5(4), exist justifying an additional 130-day extension of the statutory deadline for a final Commission decision.

29. Accordingly, the deadline for a final Commission decision will be extended by an additional 130-days — for a total of 380 days post completion of the Verified Application — up to and including January 20, 2025, per § 40-6-109.5(4), C.R.S.

B. Evidentiary Hearing

30. At the May 29, 2024 prehearing conference, representatives for all four parties reiterated their preference for a fully remote hearing format.

31. As noted above, CNG, Staff, and UCA agreed to reschedule the hearing to the week of August 5, 2024. After discussing potential dates, CNG, Staff, and UCA agreed to a two-day fully-remote evidentiary hearing to be held August 8 and 9, 2024.

32. Ms. Stockmayer, on behalf of ARM/Heartland, expressed reservations with the proposed dates based on the potential for conflicts with the complaint proceeding ARM/Heartland has instituted against CNG. However, Ms. Stockmayer indicated she would conditionally agree to the proposed August 8-9, 2024, hearing dates with the understanding that the parties would seek a continuance of the hearing in the complaint proceeding.

33. The ALJ will therefore schedule a fully remote hearing to be held on the dates proposed by three of the parties, August 8 and 9, 2024.

34. 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.

35. The parties are advised that if circumstances or conditions change, the ALJ retains the discretion to alter the hearing forming as necessary.

C. Procedural Schedule

36. Finally, the parties discussed and acknowledged that some modifications to the procedural schedule adopted by Decision No. R24-0199 were appropriate and necessary.

37. CNG and Staff agreed, however, that because discovery had closed in this Proceeding on May 20, 2024, five business days prior to the original hearing date pursuant to Rule 1405(d) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, any further discovery would be inappropriate.

38. Further discovery in this Proceeding therefore will not be permitted.

39. Nevertheless, certain procedural deadlines established by Decision No. R24-0199-I merit modification to reflect the new evidentiary hearing dates.

40. The procedural schedule will therefore be modified as follows:

ACTION	OLD DEADLINE	NEW DEADLINE
Stipulations and Settlement Agreements	May 22, 2024	July 25, 2024
Prehearing Motions Deadline	May 24, 2024	July 25, 2024
Corrected Testimony and Exhibits	May 24, 2024	August 2, 2024
Evidentiary Hearing	May 29-31, 2024	August 8-9, 2024
Statements of Position	June 14, 2024	August 23, 2024

41. The remainder of the procedural deadlines, schedules, and exhibit procedures adopted by Decision No. R24-0199-I will remain in effect.

D. Advisements

42. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission’s website (<https://puc.colorado.gov>).

43. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

E. Informal Video-Conference Practice Session

44. The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

45. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us and stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

46. The parties will receive information and a link to participate in the informal practice session by email.

III. ORDER

A. It Is Ordered That:

1. Pursuant to §§ 40-6-109.5(4), C.R.S., the applicable period for issuance of a Commission decision is extended by an additional 130 days, up to and including January 25, 2025.

2. A fully-remote evidentiary hearing in this Proceeding is scheduled as follows:

DATE: **August 8 and 9, 2024**
TIME: **9:00 a.m.**
PLACE: **Join by video conference using Zoom**

3. 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.

4. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

5. The ALJ will hold an informal Zoom practice session upon request.

6. The procedural schedule adopted by Decision No. R24-0199-I, issued April 1, 2024, is modified as follows:

ACTION	OLD DEADLINE	NEW DEADLINE
Stipulations and Settlement Agreements	May 22, 2024	July 25, 2024
Prehearing Motions Deadline	May 24, 2024	July 25, 2024
Corrected Testimony and Exhibits	May 24, 2024	August 2, 2024
Evidentiary Hearing	May 29-31, 2024	August 8-9, 2024
Statements of Position	June 14, 2024	August 23, 2024

7. The remainder of the procedural schedule adopted by Decision No. R24-0199-I will remain in effect, including all procedures governing the preparation and presentation of exhibits at the evidentiary hearing as set forth in that Decision and in Attachment B to Decision No. R24-0199-I.

8. Discovery in this Proceeding is closed and no further discovery will be permitted.
9. 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