

Decision No. R24-0518-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24D-0074G

IN THE MATTER OF COLORADO NATURAL GAS, INC.'S PETITION FOR A DECLARATORY ORDER TO CLARIFY WHETHER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED, FOR SHORTENED RESPONSE TIME AND FOR AN EXPEDITED DECISION.

**INTERIM DECISION ACKNOWLEDGING
INTERVENTIONS AND SCHEDULING PREHEARING
CONFERENCE**

Issued Date: July 18, 2024

I. STATEMENT

A. Summary

1. By this Decision, the undersigned Administrative Law Judge (“ALJ”) acknowledges the interventions as of right and schedules a fully remote prehearing conference to be held Friday, August 2, 2024, at 11:00 a.m.

B. Procedural Background

2. On February 9, 2024, Colorado Natural Gas, Inc. (“CNG”) filed its Petition seeking a declaratory order pursuant to Rule 1304(f) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1. The Petition requests the Commission enter an order to terminate a controversy regarding whether CNG is required to obtain a Certificate of Public Convenience and Necessity (“CPCN”) prior to beginning construction on a line to serve an existing customer requiring increase throughput which will cost in excess of \$5 million, or in the alternative, to waive Rule 4102(d) of the Commission’s Rules Regulating Gas Utilities,

4 CCR 723-4. Rule 4102(d) requires a utility to apply for a CPCN for any project greater than \$5 million.

3. CNG is scheduled to begin construction of a line to serve one of its existing customers, Grupo Cementos de Chihuahua of America, Inc. (“GCC”). Construction of the line, known as the GCC project (“the Project”), is scheduled to begin in early July 2024. The Project is an 11-mile, 8-inch high -pressure natural gas distribution steel mainline which is intended to enable GCC to begin using natural gas instead of coal to fuel its cement production operation. Due to the emissions requirements established by the Colorado Department of Public Health and Environment (“CDPHE”), GCC is required to substitute natural gas for coal to meet air quality standards and therefore requested that CNG construct the Project which will satisfy GCC’s increased natural gas requirements. Currently, CNG serves GCC with natural gas for start-up operations only. The Project will allow GCC to convert its full-time operations from coal to natural gas. CNG expects the cost of the project to exceed \$5 million.

4. Commission Rule 4102(d), recently adopted in Proceeding No. 21R-0449G, requires utilities with less than 50,000 full-service customers to apply for a CPCN for approval for construction and operation of a facility, or an extension or expansion of a facility, where the total utility capital investment value is greater than \$5 million in 2020 dollars, unless the utility has already received approval by the Commission pursuant to a Gas Infrastructure Plan (GIP). CNG has not yet filed its first GIP.

5. CNG initiated this declaratory action Proceeding to determine whether it is required to obtain a CPCN for the Project. CNG asserts that the Project does not require a CPCN if a project falls within a utility's ordinary course of business. CNG argues that § 40-5-101(1)(a)(II) and (III), C.R.S. provide that a CPCN is not required when the project is

(II) An extension into territory, either within or outside of a city and county, city, or town, contiguous to its facility, line, plant, or system and not already served by a public utility providing the same commodity or service;

or (III) An extension within or to territory already served by the corporation, as is necessary in the ordinary course of its business.

Likewise, CNG argues, Commission Rule 4102 expressly excludes projects undertaken in the ordinary course of its business. The applicable provision of Rule 4102 states:

A utility seeking authority to construct and to operate a facility, or an extension or expansion of a facility, pursuant to § 40-5-101, C.R.S., shall file an application in accordance with this rule. The utility shall apply to the Commission for issuance of a certificate of public convenience and necessity for approval of construction and operation of a facility, or an extension or expansion of a facility, *which is not in the ordinary course of business.* (Emphasis added.)

6. According to CNG, the Project does not need a CPCN under this statute and Rule because the Project is a line extension through territory that is contiguous to territory served by CNG that is not served by any other public utility. Consequently, CNG contends, the line extension is in the ordinary course of its business to provide service to an already existing customer.

7. CNG further argues that the line extension is within the company's ordinary course of business because public utilities generally have an "obligation to serve" customers requesting service under §§ 40-3-101(2) and 40-4-101(2), C.R.S. In addition, CNG cites Commission precedent and argues that analogous electric proceedings did not require CPCNs for projects serving a single retail customer.

8. Last, CNG asserts that the Project is in the public interest because it will not negatively impact customers, is unlikely to increase rates, and will reduce carbon dioxide emissions by facilitating the transition from coal to natural gas. CNG cites to GCC's Greenhouse Gas Emissions and Energy Management compliance action plan which requires GCC to reduce its carbon dioxide output by five percent by 2025. CNG also notes that GCC employs about 150 individuals and may move its operation out of state if it is unable to fully convert to natural gas.

9. Through this Proceeding, CNG seeks a declaratory order affirming its position that a CPCN is not required for the Project under §40-5-101(1)(a)(II) and (III) and that the project falls within the ordinary course of business standard of Rule 4102. In the alternative, CNG seeks a permanent waiver of Rule 4102(d), 4 CCR 723-4 with respect to GCC's facilities.

10. The Commission accepted CNG's declaratory proceeding by Decision No. C24-0133-I, issued March 4, 2024. Decision No. C24-0133-I also established a timetable for interventions.

II. INTERVENTIONS

11. On March 14, 2024, the Office of the Utility Consumer Advocate ("UCA") filed its Notice of Intervention of Right, Request for Hearing and Entry of Appearances. Section 40-6.5-104(1), C.R.S., permits UCA to intervene in any proceeding before the Commission that involves "certificates of public convenience and necessity for facilities employed in the provision of utility service." UCA maintains that its presence in this Proceeding is necessary so that it can monitor the effect the Project may have on ratepayers.

12. Subsequently, on April 3, 2024, Trial Staff of the Public Utilities Commission ("Staff") filed its Notice of Intervention, Entry of Appearance, Notice Pursuant to Rule 1007(a)

and Rule 1401, and Request for Hearing. Rule 1401(e) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, permits Staff to intervene in any Commission proceeding.

13. The interventions of right filed by Staff and UCA are acknowledged.
14. No other persons or entities have intervened in this Proceeding.
15. The parties to this Proceeding are therefore CNG, Staff, and UCA.

III. PREHEARING CONFERENCE

16. In order to move this Proceeding forward, the ALJ will schedule and hold a fully remote prehearing conference per Rule 1409(a), 4 CCR 723-1, on Friday, August 2, 2024, at 11:00 a.m.

17. Participants will appear at the prehearing conference from remote locations by video conference 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.

18. To minimize the potential that the video-conference 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.

19. At the prehearing conference, the ALJ anticipates discussing the parties’ preferences for a procedural schedule, evidentiary hearing(s), oral argument(s), and/or a briefing schedule.

20. 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 petition. 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.

IV. ORDER

A. It Is Ordered That:

1. The interventions of right filed by Trial Staff of the Public Utilities Commission and the Office of the Consumer Advocate are acknowledged.

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

DATE: Friday, August 2, 2024

TIME: 11:00 a.m.

PLACE: Join by video conference using Zoom

METHOD: By videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

All parties and witness must participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.¹

3. **Video-Conference Participation.** 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.

¹ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to 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. 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