

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.

**RECOMMENDED DECISION
GRANTING APPLICATION**

Issued Date: October 25, 2024

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 A. It Is Ordered That:25

I. STATEMENT

A. Summary

1. This Decision recommends the Commission grant the Verified Application of Colorado Natural Gas, Inc. (“CNG” or “the Company”) for approval of its Cost Assignment and Allocation Manual (“CAAM”) and Fully Distributed Cost (“FDC”) Study.

B. Evidentiary Hearing

2. A fully remote evidentiary hearing on the issues raised in CNG’s Verified Application was held on August 8, 2024, commencing at 9:00 a.m.

C. Appearances and Exhibits

3. The following individuals appeared at the hearing:
- a. Counsel Mark Davidson of Fairfield and Woods, P.C., appeared on behalf of Applicant CNG.
 - b. Counsel Mark Valentine of Keyes & Fox, LLP, appeared as special counsel on behalf of Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“PUC” or “the Commission”).
 - c. Counsel Patrick Witterschein, of the Colorado Office of the Attorney General, appeared on behalf of the Office of the Utility Consumer Advocate (“UCA”).

4. Although ARM, LLC (“ARM”) and Heartland Industries, LLC (“Heartland”) (collectively “ARM/Heartland”) remain parties to this Proceeding, they requested to be excused from participating in the evidentiary hearing after the Formal Complaint they filed against CNG

in Proceeding No. 23F-0418G was resolved through settlement.¹ ARM/Heartland's motion to be excused was granted by Decision No. R24-0567-I, issued August 6, 2024. ARM/Heartland thus did not appear at or participate in the August 8, 2024 evidentiary hearing.

5. The following individuals testified at the hearing:
 - a. Angela Monroe, Directory of Regulatory Affairs covering Colorado and Maine for Summit Utilities, Inc. ("SUI"), testified on behalf of CNG²;
 - b. Timothy Lyons, a partner with ScottMadden Consulting, which provides consulting services for electric, gas, and water utilities, testified on behalf of CNG³;
 - c. Jennifer Fallon, Senior Financial Manager for SUI, testified on behalf of CNG⁴;
 - d. Craig Root, Vice President and Corporate Treasurer for SUI, testified on behalf of CNG⁵;
 - e. Kerry Kuykendoll, a Rate Analyst with UCA, testified on behalf of UC⁶; and,
 - f. Fiona Sigalla, a Senior Economist with the Commission, testified on behalf of Staff.⁷

6. The following exhibits were admitted during the hearing:
 - a. CNG's Hearing Exhibits 100 and 102.
 - b. Staff's Hearing Exhibits 202, 203HC, and 208.
 - c. UCA's Hearing Exhibits 301, 301C, 302, 302C, 304, 306, and 308.

7. In addition, Hearing Exhibit 500, the spreadsheet of all exhibits identified and introduced by the parties, was admitted into evidence, along with all the exhibits listed thereon.

¹ See ARM, LLC and Heartland Industries, LLC's Unopposed Motion to be Excused from Evidentiary Hearing and Motion for Waiver of Response Time, filed Aug. 5, 2024.

² Hearing Transcript, p. 13, line 11 – p. 14, line 8.

³ *Id.* at p. 77, line 7 – p. 78, line 11.

⁴ *Id.* at p. 108, line 18 – p. 109, line 20.

⁵ *Id.* at p. 127, line 21 – p. 128, line 16.

⁶ *Id.* at p. 172, lines 3- 24.

⁷ *Id.* at p. 183, line 4 – p. 184, line

D. Procedural History and Background

8. CNG initiated this matter on November 21, 2023, by filing its Verified Application with the PUC seeking approval of its CAAM and FDC Study.⁸

9. Contemporaneously with and attached to its Application, CNG submitted its 2023 CAAM and FDC Study for the 12 months ending December 31, 2022.

10. 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.”⁹

11. After the Commission’s issuance of the Notice, the following entities intervened as of right in this Proceeding:

- a) 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.

12. In addition, on December 21, 2023, ARM/Heartland jointly filed a Motion to Intervene and Entry of Appearance in this Proceeding (“Motion to Intervene”).

13. 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.

14. 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.

⁸ Verified Application of Colorado Natural Gas, Inc., filed Nov. 21, 2023, p. 1.

⁹ Notice of Application Filed by Colorado Natural Gas, Inc., Nov. 22, 2023, p. 1.

15. 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 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. Decision No. R24-0199-I also established a procedural schedule to govern this Proceeding:

16. Although the parties adhered to the procedural schedule established by Decision No. R24-0199-I and completed discovery in advance of the scheduled May 29, 2024 hearing, the undersigned ALJ had to vacate and reschedule the hearing due to illness.

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

18. Subsequently, by Decision No. R24-0379-I, issued June 4, 2024, the undersigned ALJ scheduled a fully remote evidentiary hearing to be held August 8-9, 2024. Decision No. R24-0379-I also revised and extended the procedural schedule. Because the parties had already completed discovery, Decision No. R24-0379-I did not extend or revise the discovery deadlines originally set by Decision No. R24-0199-I.

19. Decision No. R24-0379-I also found that the ALJ's illness and the need to reschedule the evidentiary hearing constituted extraordinary conditions meriting the further extension of statutory deadlines. The ALJ therefore determined that, pursuant to § 40-6-109.5(4), the statutory deadlines should be extended by an additional 130 days, for a total statutory time period of 380 days, from the date the Application was deemed complete until a final Commission

decision must be issued. The statutory time period was consequently extended up to and including January 20, 2025.

20. On August 8, 2024, the ALJ convened the fully remote evidentiary hearing on CNG's Application.

II. FACTUAL FINDINGS

A. General Facts

21. CNG is a gas local distribution company. It serves approximately 25,000 customers in eleven Colorado counties.¹⁰ It is, therefore, a comparatively small gas local distribution company.

22. CNG is a subsidiary of SUI, a privately-held holding company headquartered in Centennial, Colorado.¹¹ In addition to CNG, SUI owns

five other natural gas local distribution companies, including Arkansas Oklahoma Gas Corporation (A.O.G), Summit Natural Gas of Missouri, Inc. (SNGMO), Summit Natural Gas of Maine, Inc. (SNGME), Summit Utilities Arkansas, Inc. (SUA), and Summit Utilities Oklahoma, Inc. (SUO). It also owns unregulated entities, including Summit LDC Holdings, LLC, Southern Col Holdco, LLC, Wolf Creek Energy, LLC, and Peaks Renewables Holdco, LLC.¹²

23. The proposed CAAM lists "ten unregulated entities, including A.O.G. Corporation, Wolf Creek Energy, LLC, Summit LDC Holdings, LLC, Southern Col Holdco, LLC, Southern Col Midco, LLC, Peaks Renewables Holdco, LLC, Clinton P2G, LLC, Peaks Renewables, LLC, Peaks H2 DevCo 5, LLC, and Vermont Peaks Community Energy, LLC" affiliated with CNG.¹³

¹⁰ Hearing Exhibit 101, Rev. 1, Direct Testimony of Timothy S. Lyons, p. 5, lines 16-18.

¹¹ *Id.* at p. 5, line 19; *see also* Cost Assignment and Allocation Manual, Hearing Exhibit 101, TSL-2, Rev. 1, p. 2.

¹² Hearing Exhibit 100, Rev. 1, Direct Testimony of Angela Monroe, p. 5, line 17 - p. 6, line 8.

¹³ Hearing Exhibit 101, TSL-2, Rev. 1, p. 2.

24. A diagram (organizational chart) illustrating the regulated and unregulated entities under SUI's umbrella is included as Appendix in CNG's proposed CAAM.¹⁴ The diagram shows CNG under Summit LDC Holdings, LLC, which, in turn, is under SUI and parallel with Wolf Creek Energy, LLC.¹⁵ The latter was to be dissolved by the end of September 2024.¹⁶

25. Like its parent company, CNG is a privately-held entity, meaning that its shares are not publicly traded on any stock exchange.¹⁷ Consequently, CNG is not bound by certain disclosure requirements imposed on publicly-traded entities and corporations.

26. In this Proceeding, CNG seeks approval of its proposed new CAAM and FDC Study. The purpose of CNG's CAAM "is to establish criteria, guidelines, and procedures to assign and allocate costs among affiliate companies, such as CNG and its affiliated entities."¹⁸ CNG's Verified Application is independent of any proposal to adjust CNG's rates.

27. CNG's previous CAAM was approved via a settlement agreement in an advice letter rate proceeding, Proceeding No. 18AL-0305G, by Decision No. R18-0972, issued November 1, 2018. That settlement was unopposed and no exceptions were filed contesting Decision No. R18-0972.¹⁹

B. Provisions of CAAM and FDC Study

28. The proposed CAAM describes two types of affiliate transactions in which CNG engages:

- (1) charges from SUI for goods and services related to accounting, accounts payable, accounts receivable, administrative services, auditing, business development, customer communications, customer billing, customer

¹⁴ Hearing Exhibit 101, TSL-2, Rev. 2, Clean Copy, p. 18 of 23.

¹⁵ *Id.*

¹⁶ Hearing Transcript, p. 20, lines 18-24.

¹⁷ Hearing Exhibit 101, p. 5, lines 19-20.

¹⁸ *Id.* at p. 6, lines 12-13.

¹⁹ Hearing Exhibit 100, p. 4, line 20 p. 5, line 8.

collections, customer service, engineering, facilities management, financial reporting and analysis, gas supply, human resources, information technology, legal services, marketing, payroll, procurement services, regulatory compliance, risk management, taxes, and treasury. [And]

(2) affiliate transactions for the provision and receipt of goods and services between CNG and SUI's other subsidiaries. SUI's subsidiaries provide support services to each other in order to leverage expertise and enhance their respective operations. These services include construction services, operational support and leadership, engineering, and GIS. These services may be performed by CNG employees for SUI's other subsidiaries or performed by SUI's other subsidiaries for CNG. The costs associated with these services are charged to the applicable subsidiary at cost with no markup.²⁰

29. The types of allocable costs were described further through witness testimony. Mr. Lyons explained that costs assigned to CNG in the FDC Study include costs associated with providing services, such as labor and expenses, to CNG.²¹ The FDC Study also addresses "corporate support or shared services" costs that include items such as "joint corporate oversight, governance, business systems, treasury, risk management, strategy, business development, executive management, finance, accounting, human resources, legal, engineering, safety, customer service, procurement, fleet, facilities, gas supply, and support services."²² CNG proposes using the Distrigas method to allocate corporate support or shared services costs among SUI's various affiliates and subsidiaries.²³

30. Ms. Monroe, SUI's Directory of Regulatory Affairs, described the types of activities that SUI provides to and charges CNG for as

relating to accounting, accounts payable, accounts receivable, administrative services, auditing, business development, customer communications, customer billing, customer collections, customer service, engineering, facilities management, financial reporting and analysis, gas supply, human resources, information technology, legal services,

²⁰ Hearing Exhibit 101, TSL-2, Rev. 1, pp. 2-3.

²¹ Hearing Exhibit 101, p. 7, lines 3-5.

²² *Id.* at p. 7, lines 7-13.

²³ *Id.* at p. 7, line 14 – p. 8, line 2.

marketing, payroll, procurement services, regulatory compliance, risk management, taxes, and treasury. Regarding affiliate transactions between CNG and SUI's other subsidiaries, as also described in the CAAM, SUI's subsidiaries provide support services to each other in order to leverage expertise and enhance their respective operations. These services include construction services, operational support and leadership, engineering, and GIS. The costs associated with these services are charged to the applicable subsidiary at cost with no markup.²⁴

31. With respect to labor costs CNG may incur from external, affiliated entities,

Ms. Fallon, SUI Senior Financial Manager, testified that SUI

tr[ies] to direct charge the labor . . . as much as we possibly can. . . . [T]hat labor would be direct charged to the utility that it is benefiting . . . and that would be actual labor that is paid. So, there wouldn't be any markup, or anything like that. It would just be the cost of actual labor.²⁵

32. Although the CAAM will not be set out in its entirety here, the following is a summary of the most significant items and issues included in CNG's proposed new CAAM.

1. Costing Methods

33. SUI labor costs and employee benefits will be “directly and indirectly assigned to CNG.”²⁶

34. SUI “prefers to use direct billing” when assigning costs to CNG and SUI's other subsidiaries.²⁷

35. SUI provides administrative, support and management services to CNG, including “joint corporate oversight, governance, business systems, treasury, risk management, strategy, business development, executive management, finance, accounting, human resources, legal, engineering, safety, customer service, procurement, fleet, facilities, gas supply, and support services.”²⁸

²⁴ Hearing Exhibit 100, p. 7, lines 16-27.

²⁵ Hearing Transcript, p. 114, lines 9-16.

²⁶ Hearing Exhibit 101, TSL-2, Rev. 1, p. 6.

²⁷ *Id.*

²⁸ *Id.* at 7.

36. Indirect “SUI expenses include labor costs, employer payroll tax expenses, employee benefits, and common expense costs. Common expenses include the overhead associated with SUI’s corporate headquarters as well as overhead associated with shared services provided out of SUI’s other applicable regional offices.”²⁹

2. Shared Service Billings

37. Shared service billings include billings for services that SUI’s subsidiaries may provide to each other, including “construction services, operational support and leadership, engineering, and GIS.”³⁰

38. There is no indirect billing to CNG from a fellow subsidiary; all shared service works is billed directly and “are billed to the entity based on the labor code specified in the employee’s timesheet.”³¹

39. No asset transfers will occur “without appropriately accounting for the value of such transfers at the higher of the FMP or book value.”³²

3. Clearings and Loadings

40. CNG employees “will directly charge labor to SUI and its affiliates” for paid absence costs; payroll tax for each activity they perform for SUI; pension, retirement, employee insurance, and other benefits; and general and administrative costs.³³

4. Specific Assignment of Costs Method

41. The specific assignment of costs among affiliates will be used to segregate and track non-regulated activities.³⁴

²⁹ *Id.* at pp. 8-9.

³⁰ *Id.* at p. 10.

³¹ *Id.*

³² *Id.*

³³ *Id.* at pp. 11-12.

³⁴ *Id.* at p. 13.

5. Affiliate Pricing

42. CNG vows to act in its own best interests when engaging in transactions with affiliates or dealing with non-regulated activities. The CAAM expressly states that “[w]hen pricing goods, services, information, or assets:”

1) All assets, information and goods transferred to CNG from its affiliates will be compensated at the lower of net book value or Fair Market Price (“FMP”); All assets, information and goods transferred from CNG to its affiliates will be compensated at the higher of net book value or FMP and

2) All services, other than labor, transferred to CNG from its affiliates will be compensated at the higher of FMP or the FDC; All services transferred from CNG to its affiliates will be compensated at the lower of FMP or FDC.³⁵

43. The CAAM states that CNG will determine the FMP “either through competitive bids or other measures it deems proper.”³⁶

44. The CAAM also specifies that the fully distributed cost for a good or service will include direct, indirect, and generally allocated costs.³⁷

45. The FMP will be calculated using a competitive bid process “or other measures” CNG “deems proper to establish the FMP.”³⁸

6. Reporting and Recording Requirements

46. SUI “will maintain CNG’s books and records separately from CNG’s affiliates.” Its affiliates’ books and records will be maintained in such a manner that those transactions “are auditable” in CNG’s books.³⁹

³⁵ *Id.* at p. 14.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at p. 17.

47. CNG commits to complying with all the Commission’s applicable “record-keeping requirements.”⁴⁰

III. PARTIES’ POSITIONS

48. CNG seeks approval of its proposed CAAM, which is opposed by both Staff and UCA. Both Staff and UCA argue that CNG’s Application should be denied and that CNG should be required to file a new application with a revised CAAM that meets all the Commission’s regulatory requirements.

A. **Staff’s Position:**

49. In support of its opposition to CNG’s CAAM, Staff points to CNG’s position as part of “a sprawling conglomerate” which includes both regulated and unregulated entities.⁴¹ Staff argues that “CNG does very little for itself,” instead permitting its “unregulated parent,” SUI, to perform “nearly all of the functions of the regulated entity, and then allocate[ing] the costs of those service[s] to CNG.”⁴² Staff maintains that because so much of CNG’s costs are allocated to work performed for it by SUI and/or other SUI affiliates, “it is imperative that there be sufficient guardrails, through the approved CAAM and through the ring-fencing mechanisms proposed by Staff in its testimony, to prevent Colorado ratepayers from subsidizing activity other than the provision of regulated natural gas service by CNG.”⁴³

50. Staff notes that although this CAAM Proceeding does not directly impact CNG’s rates, “CNG does not plan to file a rate proceeding any time soon.”⁴⁴

⁴⁰ *Id.*

⁴¹ Trial Staff’s Statement of Position (“Staff’s SOP”), filed Aug. 30, 2024, p. 1.

⁴² *Id.* at pp. 1-2.

⁴³ *Id.* at p. 2.

⁴⁴ *Id.* at p. 3.

51. Staff argues that the list of services CNG’s parent company, SUI, provides to the former “is quite . . . substantial” and indicates that SUI “is absolutely central to the functioning of CNG.”⁴⁵ Because CNG and SUI are so entwined, Staff maintains that the guardrails it proposes are necessary to ensure CNG’s customers are not charged improperly for these services.

52. Staff also points to particular language in the proposed CAAM which it states violates certain regulatory requirements. First, under paragraph 2 of “Affiliate Pricing,”⁴⁶ the CAAM states that “All services, other than labor, transferred to CNG from its affiliates will be compensated at the higher of FMP or the FDC; All services transferred from CNG to its affiliates will be compensated at the lower of FMP or FDC.”⁴⁷ Staff argues that Rule 4502 requires that all services “be priced at the *lower* of FDC or market price.”⁴⁸ (Emphasis added.)

53. Staff next points to the CAAM’s omission of any explanation or discussion of how CNG “determines fully distributed cost, or what the utility’s cost would be were it to perform the services internally.”⁴⁹ Staff maintains that this omission violates Rule 4502(e)(I) which requires any such costs to be assessed at the same rate had the costs been incurred internally.

54. Staff next asserts that the CAAM improperly omits labor costs from the pricing policy it applies to the costs for services provided by non-regulated entities.⁵⁰ Staff argues that because labor is “a significant portion” of any utility’s costs, CNG should provide information ensuring the Commission that CNG is adhering to “the Commission’s rules for labor performed on behalf of and by CNG.”⁵¹

⁴⁵ *Id.* at p. 4.

⁴⁶ *See* ¶¶ 42-45 above.

⁴⁷ Hearing Exhibit 101, Rev. 1, TSL-2, p. 14.

⁴⁸ Staff’s SOP, p. 5.

⁴⁹ *Id.* at p. 6.

⁵⁰ *Id.* at p. 7.

⁵¹ *Id.*

55. Staff also takes issue with the CAAM's provisions for calculating a fair market price ("FMP"). The CAAM provides that, "[f]or affiliate transactions involving the sale of a" good or service, CNG will use a competitive bid process, "a market study of the service," or by "other measure(s) it deems proper."⁵² Staff maintains that the inclusion of the phrase "other means [CNG] deems proper" grants CNG "too much leeway."⁵³ Instead, Staff argues, CNG should be limited to setting the fair market price through a more accurate means such as "a market study or an RFP [request for proposal]."⁵⁴

56. Staff also insists CNG should be required to have service agreements in place with its affiliates.⁵⁵ Staff does not dispute CNG's point, made by Ms. Monroe, explaining that "[t]he CAAM serves the same purpose as a service agreement."⁵⁶ However, Staff counters that service agreements "by nature" are more specific "than a general CAAM" and that, as a result, this provision, too, grants CNG "too much discretion."⁵⁷

57. Staff challenges CNG's methods of customer payment, contending that CNG improperly comingled funds with payments received from Wolf Creek customers.⁵⁸ Staff argues that CNG's customers "have no idea that gas is being purchased" by SUI employees "at prices that *potentially* are not advantageous."⁵⁹ (Emphasis added.) Staff insists that this lack of transparency is a "hazard posed when an unregulated entity such as [SUI] is charged with running . . . regulated utilities as well as unregulated utilities" because SUI employees "*could* be serving both regulated

⁵² Hearing Exhibit 101, Rev. 1, TSL-2, p. 15.

⁵³ Staff's SOP, p. 8.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Hearing Exhibit 103, Rebuttal Testimony of Angela Monroe, p. 16, lines 1-12.

⁵⁷ Staff's SOP, pp. 8-9.

⁵⁸ *Id.* at pp. 11-12.

⁵⁹ *Id.* at 12.

and unregulated utilities at the same time.”⁶⁰ Staff argues that the CAAM is “insufficient” to ensure CNG ratepayers “do not subsidize other entities.”⁶¹

58. Staff proposes that the Commission impose ring-fencing mechanisms as guardrails “to prevent such subsidization” in light of the “thicket” that CNG/SUI represent, which could lead to “the resultant *possibility if not probability* of subsidization.”⁶² (Emphasis added.) Staff urges the Commission to require CNG to put service agreements in place; maintain separate bookkeeping and records for its operations; keep a separate money pool; and refrain from entering into any transaction with an affiliate unless the transaction is in the ordinary course of business, reasonable, and employs fair terms.⁶³ Staff contends that such ring-fencing will ensure that CNG does not subsidize its affiliates. Further, Staff suggests that the CNG be required to agree to hold its customers harmless, not transfer “assets” SUI or any other affiliate without first obtaining Commission approval, “expand its activities” without prior Commission approval, and consent to be audited by Staff.⁶⁴

59. The undercurrent of Staff’s arguments against approving the CAAM is that CNG has not produced sufficient and/or specific information that Staff sought and needs to fully evaluate CNG’s proposed CAAM. Staff implies that the alleged lack of information and lack of transparency in CNG’s internal dealings with its parent, SUI, and its affiliates leaves open too many questions about how CNG conducts its business, how much it is paying its affiliates and parent for certain goods and services, and how those costs assessed to CNG are borne by CNG’s ratepayers.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 13.

⁶³ *Id.*

⁶⁴ *Id.* at pp. 14-15.

60. Yet, Staff acknowledges this Proceeding will not have a direct and immediate impact on the Company's rates.⁶⁵

B. UCA's Position:

61. Although UCA also concedes that this CAAM Proceeding will not have a direct and immediate impact on the Company's rates, UCA points out that all involved parties must assume "that this CAAM is to be used for any rate case that may be filed."⁶⁶ In other words, UCA echoes Staff's concern that the acceptance of CNG's CAAM in this Proceeding could negatively impact ratepayers in CNG's next rate case by setting the calculation methods and figures which will be used in CNG's next rate case.⁶⁷

62. Likewise, UCA reiterates Staff's underlying concern that CNG's and SUI's "corporate opacity" inhibits the Commission's ability to assess the Company's financial structure and ensure that ratepayers are not subsidizing one or more of CNG's unregulated affiliates.⁶⁸

63. UCA also points out that the corporate holdings chart contained in the CAAM is incomplete.⁶⁹ Hearing Exhibit 306 includes a more extensive diagram illustrating the holdings of IIF US Holding 2 LP, the (apparently) ultimate parent company of SUI. The chart shows a tangled multitude of related companies and entities, and identifies the entities held under SUI's umbrella as simply "Chain of subsidiaries."⁷⁰ UCA asserts that the corporate holdings chart CNG includes in its CAAM is insufficient and fails to comply with Commission regulations requiring a utility to identify its affiliates.⁷¹ UCA laments that the corporate entanglement evidenced by the holdings

⁶⁵ Staff's SOP, p. 2.

⁶⁶ Hearing Transcript, p. 175, lines 16-19.

⁶⁷ Statement of Position of the Office of the Utility Consumer Advocate ("UCA's SOP"), filed Aug. 30, 2024, p. 7.

⁶⁸ *Id.*

⁶⁹ *Id.* at p. 8.

⁷⁰ Hearing Exhibit 306, p. 13 of 21.

⁷¹ UCA's SOP, p. 9.

chart for IIF US Holding 2 LP “makes it difficult to untangle the financial relationships among entities under the IIF US Holding 2 LP umbrella,” which *could potentially* harm consumers.⁷²

64. UCA also questions the “dividends funded by ratepayers and paid by CNG to its parent corporation.”⁷³ UCA argues that this information, too, is overly opaque, leading to the *potential* that ratepayer-funded dividends are being used to subsidize CNG’s affiliates.⁷⁴

65. In the absence of sufficient transparency, UCA cautions, the Commission cannot perform its mandated public service of ensuring Colorado ratepayers are not subsidizing non-regulated entities and activities.⁷⁵ In turn, if CNG does not remedy the information void, the Commission should reject the CAAM Application.⁷⁶

C. CNG’s Position:

66. CNG reiterates that this CAAM will not affect CNG’s current rates.⁷⁷ It characterizes this Proceeding as a “ministerial proceeding” approving its CAAM, which complies with all regulatory requirements.⁷⁸

67. CNG contends that “Staff failed to present a single piece of evidence to support their position” justifying denial of the CAAM Application.⁷⁹ Instead, CNG describes Staff’s assertions as a “parade of possible, potential, suggested and speculative nefarious activities” with no evidentiary support in the record.⁸⁰ Contrary to Staff and UCA’s positions, CNG asserts, the harm to ratepayers lies in Staff’s and UCA’s refusal to reach an agreement in this Proceeding,

⁷² *Id.*

⁷³ *Id.* at p. 10.

⁷⁴ *Id.* at p. 13.

⁷⁵ *Id.* at p. 15.

⁷⁶ *Id.*

⁷⁷ Colorado Natural Gas, Inc.’s Post-Hearing Statement of Position (“CNG’s SOP”), filed Aug. 30, 2024, p. 3; Hearing Exhibit 103, p. 7, lines 11-12 and 18-20.

⁷⁸ *Id.*

⁷⁹ *Id.* at p. 2.

⁸⁰ *Id.* at p. 3.

essentially forcing CNG's ratepayers to pay for the latter's litigation expenses.⁸¹ Further, CNG asserts, Staff improperly expanded the scope of this Proceeding by morphing what should have been a routine CAAM proceeding into rate-making litigation "under the guise of investigating the Company's CAAM," and consequently increasing CNG's litigation costs.⁸²

68. Likewise, CNG describes UCA's concerns as unsupported "suspicions" that do not constitute evidence justifying rejection of the CAAM Application.⁸³ It also points out that, like Staff, UCA acknowledged this CAAM Proceeding will not impact customers' bills or the Company's rates.⁸⁴

69. CNG further argues that many of the issues and concerns Staff raises here had been previously litigated "and rejected by the Commission in CNG's Securities Application in Proceeding No. 22A-0153SG by Recommended Decision No. R22-0608," which was affirmed by the Commission on Exceptions and Rehearing, Reargument or Reconsideration.⁸⁵ CNG points out that, although Staff continues to seek information in this Proceeding, Commission Decision No. C23-0019, issued January 9, 2023 — which denied Staff's Exceptions to Recommended Decision No. R22-0608 — instructed the Company to provide additional information about verifying that "these types of transactions are not taking place" in its *next rate case*.⁸⁶ As CNG makes clear, this Proceeding is not a rate case.

70. CNG argues, for instance, that the "guardrails" Staff proposes — (1) implementing Service Agreements between the Company and its related entities; (2) imposing "ring-fencing"

⁸¹ *Id.* at pp. 3-4.

⁸² *Id.* at p. 4.

⁸³ *Id.* at p. 6.

⁸⁴ *Id.* at p. 7; *see* Hearing Transcript, p. 175, lines 4-24.

⁸⁵ *Id.* at p. 4; *see* Decision Nos. R22-0608, issued Oct. 10, 2022; C23-0019, issued Jan. 9, 2023; and C23-0137, issued Feb. 24, 2023, in Proceeding No. 22A-0153SG.

⁸⁶ CNG's SOP, pp. 4-5; *see* Decision No. C23-0019, p. 5, ¶ 11.

around asset transfers; (3) requiring CNG’s “money pool” to be separate from the money pools of non-regulated entities; and (4) mandating a certain font size for advertising materials — are beyond the scope of this CAAM Proceeding.⁸⁷ Such proposals, CNG maintains, are more properly addressed in a rate case.⁸⁸ Further, CNG points out, the Commission considered identical proposals to implement guardrails, including ringfencing, proffered by Staff in Proceeding No. 22A-0153SG, but rejected Staff’s suggestions by Decision No. R22-0608.⁸⁹ There, the ALJ found Staff’s concerns and proposed solutions “too speculative” to justify rejecting CNG’s Securities Application and noted that Staff “concedes it has no evidence establishing” that any alleged irregularities occurred.⁹⁰

71. Finally, CNG responds to Staff’s implication that CNG is “hiding something” by noting that it responded to nearly 150 data requests, provided full work papers for the FDC and full information on every transaction between CNG and every other affiliate from 2018 forward.⁹¹ CNG also maintains — and Staff does not dispute — that CNG “repeatedly attempted to schedule time with Staff and UCA to go over its methodologies . . . but neither Staff nor UCA was responsive to this offer.”⁹²

IV. RELEVANT LAW

72. Rule 4502 of the Commission’s Rules Regulating Gas Utilities (“the Gas Rules”), 4 *Code of Colorado Regulations* (“CCR”) 723-4 sets out the “principles” utilities must follow in setting a CAAM. Those principles include the requirement that any fully distributed costs assessed to a utility for services provided to a gas utility by a non-regulated entity “shall be the cost that

⁸⁷ CNG’s SOP, pp. 5-6.

⁸⁸ Hearing Exhibit 102, Rebuttal Testimony of Angela Monroe, p. 10, lines 5-7.

⁸⁹ Hearing Exhibit 102, p. 8, line 12 – p. 9, line 22.

⁹⁰ *Id.* at p. 9, lines 1-11; *see* Decision No. R22-0608, ¶ 34, p. 17.

⁹¹ *Id.* at p. 10, lines 14-18.

⁹² *Id.* at p. 10, lines 18-21.

would be incurred by the utility to provide the service internally.”⁹³ In addition, “if the transaction involves a product or service that is not provided pursuant to a tariff, the value of the transaction shall be the *lower* of the fully distributed cost or the market price.” (Emphasis added.)

73. Pursuant to Rule 4503 of the Gas Rules, a gas utility must maintain on file with the Commission

an approved indexed cost assignment and allocation manual which describes and explains the calculation 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 calculation methods to segregate and account for costs between and among jurisdictions, between regulated and non-regulated activities, and between and among utility divisions.⁹⁴

74. Rule 4503 enumerates the information a gas utility must include in its CAAM. That information includes:

(b) Each utility shall include the following information in its CAAM.

(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.

⁹³ Rule 4502(e)(I) of the Commission’s Rules Regulating Gas Utilities (“the Gas Rules”), 4 *Code of Colorado Regulations* (“CCR”) 723-4.

⁹⁴ Rule 4503(a), 4 CCR 723-4.

(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 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.⁹⁵

V. FINDINGS, CONCLUSION AND ANALYSIS

75. Pursuant to Rule 4503 of the Gas Rules, a CAAM must include certain specific information. The CAAM sets the stage for a future rate proceeding but does not, by itself, impact a utility's rates.

⁹⁵ Rule 4503(b), 4 CCR 723-4.

76. The arguments advanced by UCA and Staff focus not on the specific provisions of CNG's proposed CAAM, but instead suggest that the opacity of CNG's corporate structure — and that of CNG's parent company, SUI — merits the rejection of CNG's CAAM Application.

77. The ALJ does not disagree that utilities must provide information to the Commission and be transparent with certain transactions in order to enjoy the benefits of operating a regulated monopoly. But that transparency does not entitle the Commission to reach deep into the inner workings of a privately-held entity, much as the Commission may wish to do so.

78. The ALJ is particularly concerned by the unsupported tone of suspicion permeating the positions of both Staff and UCA. Time and again, Staff and UCA express concern that CNG's opacity *could* result in harm to ratepayers; that ratepayers *may* inadvertently subsidize a non-regulated entity; that ratepayers *potentially* could fund improper dividends. While these are not illegitimate concerns, they are *speculative*. Neither Staff nor UCA offers any evidence whatsoever indicating that CNG has engaged in any practices that have harmed ratepayers. As Ms. Monroe stated on rebuttal, "Staff has presented no evidence that the Company is over-earning or that customers are being harmed in any way." Staff's and UCA's laser focus on the *potential* for harm obscures the *absence* of any evidence of actual harm in the record. While it is, unquestionably, the Commission's duty to protect consumers, the ALJ agrees with CNG that the record here does not establish any actual harm to consumers.

79. Furthermore, the issues Staff and UCA seek to pursue — ferreting out the nuances of CNG's corporate structure; determining precisely where and how CNG's funds are allocated, distributed, and collected; and imposing any necessary guardrails to protect against the improper expenditure of ratepayers' funds — are issues more properly raised and addressed in CNG's next

rate case. The Commission expressly so stated in Decision No. C23-0019 (at p. 5, ¶ 11) in Proceeding No. 22A-0153SG.

80. Moreover, as CNG has repeatedly pointed out, no rates will change as a result of this CAAM. The ALJ understands that provisions in the CAAM could affect a future rate case filed by CNG, if, notwithstanding the litigation in this proceeding, CNG files an advice letter unsupported by a new CAAM.

81. In this Proceeding, CNG's proposed CAAM meets the requirements of Rule 4503. It includes an organizational chart of CNG's parent company, SUI; provides a listing of its regulated and non-regulated affiliates, along with a description of the affiliates' activities; describes how costs will be assigned and allocated; breaks down the transactions with its affiliates; and details the calculation methods used to determine cost assignment and allocation. CNG's CAAM thus complies with the Gas Rules and should be approved.

82. Staff insists the CAAM expressly require CNG to maintain separate books and records. The ALJ is uncertain, though, what such language would accomplish given Ms. Fallon's and Ms. Monroe's uncontroverted testimony emphasizing that this is already CNG's practice and CNG has no intention of straying from this practice.⁹⁶ As Ms. Monroe unequivocally stated and Ms. Fallon reiterated "CNG *does* have separate books and records,"⁹⁷ If in the future CNG ceases to maintain separate books and records, then, certainly, the inclusion of such language would be warranted. But in the absence of such a showing here — and based on nothing but Staff's unsupported concerns — the omission of such language is not grounds for rejecting the CAAM.

⁹⁶ Hearing Exhibit 104, Rebuttal Testimony of Jennifer Fallon, p. 5, lines 14-19.

⁹⁷ Hearing Exhibit 102, p. 13, line 17 – p. 14, line 2; Hearing Exhibit 104, p. 6, lines 4-13.

83. With respect to certain specific provisions in the CAAM Staff targets, the ALJ finds that most do not warrant rejecting the CAAM. In particular, Staff's concern that the inclusion of language permitting CNG to use "other measures" it deems appropriate to calculate allocable costs does not, in the ALJ's view, grant CNG "too much leeway" as much as allow CNG the latitude it may need in the future should certain as-yet-unknown circumstances necessitate a different calculation approach. Importantly, the inclusion of this language does not violate any provisions of the Gas Rules.

84. However, as Staff correctly points out, the CAAM does appear to contain an error that must be corrected. The text of the section of the CAAM addressing "Affiliate Pricing" states that CNG will pay the *higher* of FMP or the FDC for all services transferred to CNG by its affiliates. But to comport with Rule 4502, it should state that CNG shall pay the *lower* of FMP or FDC for those services. This appears to be a simple typographical error which should be easily corrected. Indeed, in the introduction section of the CAAM, summarizing the provisions contained in the CAAM, CNG states that it "will compensate SUI for the assets, goods, information and services that CNG receives at the *lower* of fully distributed cost ("FDC") or fair market price ("FMP")."⁹⁸ (Emphasis added.) Clearly, then, CNG intended the CAAM provisions to state that it will pay the *lower* of FMP or FDC. The ALJ will therefore order that page 14 of the CAAM addressing "Affiliate Pricing" be amended to read as set forth below to ensure the CAAM fully complies with Rule 4503.

- 2) All services, other than labor, transferred to CNG from its affiliates will be compensated at the higher lower of FMP or the FDC; All services transferred from CNG to its affiliates will be compensated at the lower higher of FMP or FDC.

⁹⁸ Hearing Exhibit 101, TSL-2, Rev. 1, p. 4.

85. Based on the foregoing discussion, the ALJ will order and recommend that CNG's CAAM Application, as modified in accordance with the above discussion, be granted.

86. The ALJ notes that any arguments or issues not expressly addressed herein are rejected.

VI. ORDER

A. The Commission Orders That:

1. The Application of Colorado Natural Gas, Inc. for approval of its Cost Assignment and Allocation Manual ("CAAM") and Fully Distributed Cost ("FDC") Study, filed November 21, 2023, is granted.

2. Page 14 of the CAAM addressing "Affiliate Pricing" shall be corrected in accordance with the above discussion.

3. The corrected CAAM will be filed with the Commission within 30 days of a final decision in this Proceeding.

4. Proceeding No. 23A-0570G is closed.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If

no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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