

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03A-135SG

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IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING COLORADO NATURAL GAS, INC. TO: 1) ISSUE UP TO \$3,600,000 IN BONDS; 2) ISSUE UP TO 31,150 SHARES OF CLASS A COMMON STOCK; AND 3) TO REDEEM ALL OR A PORTION OF ITS PREFERRED STOCK, AS THE COMPANY MAY DETERMINE.

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**ORDER OF THE COMMISSION  
GRANTING APPLICATION**

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Mailed Date: May 9, 2003  
Adopted Date: May 2, 2003

**I. BY THE COMMISSION**

**A. Procedure and Record**

1. Colorado Natural Gas, Inc. (CNG or the Company), a Colorado corporation, filed with the Colorado Public Utilities Commission (Commission) on April 4, 2003, a Verified Application, along with exhibits required under Rule 56 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (collectively, the Application).

2. On April 25, 2003, the Company filed a Motion to Amend Verified Application and Request for Waiver of Response Time seeking Commission authorization to amend the April 4, 2003 Application. In its motion, CNG states that its Amended Application provides certain additional information that Commission Staff suggested might be helpful to the Commission in considering the relief CNG seeks in this docket.

3. The Application, as amended, seeks an Order from this Commission authorizing CNG to: 1) issue up to \$3,600,000 in Bonds; 2) issue up to 31,150 shares of Class A Common

Stock; 3) create a lien against CNG's utility plant and gross revenues; and 4) redeem all or a portion of CNG's preferred stock, as the Company may determine.

4. Such authority would allow the Company to take advantage of debt and equity financing vehicles that carry significantly lower interest rates than the rates that are attributable to CNG's existing obligations.

5. Notice of this Application was issued by the Commission on April 7, 2003, allowing entities until April 17, 2003 to intervene or participate as a party in this proceeding and setting this matter for hearing on April 25, 2003. In addition, the Company published a notice of the Application in the legal notices of the *Rocky Mountain News* on Saturday, April 5, 2003. An Affidavit of Publication issued by *The Denver Newspaper Agency* was filed with the Commission on April 10, 2003, and reflects that the *Rocky Mountain News* is a newspaper of general circulation under Rule 4(b)(1) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Commission Staff filed its Notice of Intervention, Entry of Appearance, Notice Pursuant to Rule 9(d) and Rule 24(a)(1), and Request for Hearing on April 17, 2003.

6. On April 25, 2003, the Commission Staff filed its Notice of Withdrawal of Staff's Intervention. Upon Commission Staff's withdrawal, there are no interventions and the Application, as amended, is unopposed.

7. On April 25, 2003, a hearing in this matter was convened for the sole purpose of advising the presiding Administrative Law Judge that CNG intended to amend its Application in the manner described above. As a result, the evidentiary hearing was vacated.

8. The Company has requested that this Commission determine this matter without hearing and on modified procedure. Because the matter is now uncontested, it is appropriate that

the Commission consider this matter in accordance with § 40-6-109(5), C.R.S., and Rule 24 of this Commission's Rules of Practice and Procedure, 4 CCR 723-1.

**B. Findings of Fact**

9. CNG is a Colorado corporation qualified to do business within the State of Colorado. Its Articles of Incorporation have been filed with this Commission and it is in good standing with the Colorado Secretary of State. The Company provides gas utility service to various areas in the State of Colorado. The Application has been filed in accordance with § 40-1-104, C.R.S., which requires a public utility to obtain the approval of this Commission before it issues securities such as Common Stock or assumes debt.

10. On December 31, 2002, the Company had 5,000,000 shares of no par value, non-voting preferred shares authorized. The Company had 10,000,000 shares of no par value, voting common stock authorized. On December 31, 2002, the Company had 31,150 shares of preferred stock outstanding and 1,070,523 shares of common stock outstanding.

11. The total amount of dividends that have been declared and paid over the last four calendar years is \$756,664.

12. The purpose of the Application is to obtain an order authorizing: 1) the issuance of up to \$3,600,000 in Bonds; 2) the issuance of up to 31,150 shares of Class A Common Stock; 3) the creation of a lien against the Company's utility plant and gross revenues; and 4) the redemption of all or a portion of the Company's preferred stock as the Company may determine.

13. From its beginning in 1996, CNG has operated under somewhat different circumstances than the typical Colorado natural gas public utility. One such significant difference is that CNG operates primarily in mountainous areas of the state that are expensive to

serve. Another significant difference is that CNG continues to expand within its service territory. Other differences are delineated in the stipulation attached to Docket No. 96A-107G, which docket granted to CNG a certificate of public convenience and necessity. Another difference is that CNG's debt and equity financing come from securities that are not publicly traded. This fourth difference means that CNG's operating and financing circumstances may utilize variations in financing vehicles that perhaps are not often used by other companies.

14. The first and second differences explain in large part why CNG's cash flow from operations does not generate sufficient internal cash flow to fund its growth in plant and customers. Thus, to a greater degree than a larger and more established utility, CNG relies on financing from outside sources. The Commission also notes that CNG's high level of construction makes certain evaluations of CNG's financial operations less meaningful. For example, the capital structure of CNG on equity produces much lower coverage ratios than for natural gas companies with lower debt and interest rate ratios in their capital structure.

15. The issuance of the Bonds and Class A Common Stock does not require registration with the Securities and Exchange Commission. Therefore no Registration Statement was filed with the Securities and Exchange Commission.

16. At meetings of the Company's Board of Directors on March 18 and 31, 2003, the Board of Directors authorized, among other matters, its proper officers to execute and file the Application or to cause the Application to be filed.

17. The Application, as amended, contains all of the information required under Rule 56 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

18. The Company and the issuance of debt and equity Securities by the Company and the creation of a lien on utility property situated in Colorado are subject to the jurisdiction of this Commission in accordance with § 40-1-104, C.R.S. However, the Commission is not an agency that evaluates the mechanics or quality of the proposed financing transaction. The Commission has authority to approve the amount to be raised pursuant to a utility's future issuance of common stock and debt. Thus, in its Application, as amended, CNG has not asked for specific Commission approval to issue "Class A Common Stock," but rather has asked for authority to issue common stock in general. Likewise, CNG has not asked for the specific authority to issue "credit enhanced" bonds, but rather has asked for authority to issue bonds in general. Consistent therewith, the Commission's grant of the Application, as amended, is not intended as specific approval of the terms and conditions underlying the financing transaction into which CNG desires to enter.

19. The issuance of bonds and creation of liens against utility plant and gross revenues in conjunction therewith, as well as the issuance of Class A Common stock as stated in the Application, as amended, will be consistent with the provisions of the public utilities law, are for a lawful purpose, and are not inconsistent with the public interest.

20. Commission approval of a securities transaction that directly results in a lien on gross revenues is likely limited to applications by CNG. Without specifically deciding whether it is good public policy to continue to approve the entry by a utility into a securities transaction that results in a gross revenue lien, in whole or in part, on the debt issuance, the Commission accepts the practice by CNG in this case for the reasons stated in Paragraph No. 5 of these Findings of Fact with the expectation that the necessity to do so decreases over time. The Commission notes

that in the future, it may impose limitations and restrictions on subsequent securities issuances secured by liens.

21. In its Application, as amended, CNG stated its intention to submit a report to the Commission twice annually in this docket (on April 30, based on information as of December 31, and September 30, based on information as of June 30) during calendar years 2003 and 2004. Such report is to contain the following: (a) a balance sheet; (b) an income statement; (c) a statement of changes in retained earnings; (d) a statement of cash flows that delineate the company's cash flows resulting from its operating activities, financing activities, and investment activities (the cash flows from investment activities should be itemized by geographic area); (e) the cumulative total of all long-term liens on its distribution systems and gross revenues; (f) a showing that its utility business remains wholly situated in Colorado; (g) a description of the parts of its business and/or business of affiliates that is conducted outside of Colorado; and (h) identification of any changes to the previously stated use of the proceeds of the securities issuance. The Commission finds that such a report would be beneficial.

22. The Application, as amended, should be granted and the issuance of Bonds, Class A Common Stock, and the creation of Liens against utility plant and gross revenues as referenced in the Application should be authorized and approved.

## **II. ORDER**

### **A. The Commission Orders That:**

1. Colorado Natural Gas, Inc.'s Motion to Amend Verified Application and Request for Waiver of Response Time is granted.

2. The Application, as amended, of Colorado Natural Gas, Inc., is deemed complete and granted.

3. Colorado Natural Gas, Inc., is hereby authorized to: 1) issue up to \$3,600,000 in Bonds; 2) issue up to 31,150 shares of Class A Common Stock; 3) create a lien against utility plant and gross revenues; and 4) redeem all or a portion of its preferred stock, all as described in the Application, as amended.

4. Colorado Natural Gas, Inc., is ordered to submit a report to the Commission in this docket twice annually (on April 30, based on information as of December 31, and September 30, based on information as of June 30) during calendar years 2003 and 2004, containing the following: (a) a balance sheet; (b) an income statement; (c) a statement of changes in retained earnings; (d) a statement of cash flows that delineate the company's cash flows resulting from its operating activities, financing activities, and investment activities (the cash flows from investment activities should be itemized by geographic area); (e) the cumulative total of all long-term liens on its distribution systems and gross revenues; (f) a showing that its utility business remains wholly situated in Colorado; (g) a description of the parts of its business and/or business of affiliates that is conducted outside of Colorado; and (h) identification of any changes to the previously stated use of the proceeds of the securities issuance. Colorado Natural Gas, Inc., need file only three copies of such reports.

5. Nothing contained herein shall be construed to imply any recommendation or guaranty of any obligation with regard to Colorado Natural Gas, Inc., securities approved under the Application on the part of the State of Colorado.

6. The April 25, 2003, hearing on this matter is vacated.

7. This Decision and Order shall be effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
May 2, 2003.**

(S E A L)



**ATTEST: A TRUE COPY**

**Bruce N. Smith  
Director**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**GREGORY E. SOPKIN**

**POLLY PAGE**

**JIM DYER**

Commissioners