

Decision No. C17-0149-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16F-0822G

KELLY M. BATES,

COMPLAINANT,

V.

COLORADO NATURAL GAS, INC.,

RESPONDENT.

**INTERIM DECISION REOPENING
PROCEEDING AND REQUIRING BRIEFS**

Mailed Date: February 21, 2017
Adopted Date: February 16, 2017

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Colorado Public Utilities Commission (Commission) finds good cause to reopen this Proceeding, and require legal briefs in order to review Decision No. R16-1145, issued on December 14, 2016, dismissing the Complaint with prejudice.

B. Background and Procedural History

2. In this Formal Complaint proceeding, Mr. Kelly Bates asserts that Colorado Natural Gas, Inc. (CNG) violated a contract by not providing him with a gas service extension to his new cabin near Fairplay, Colorado. Under § 40-6-114, C.R.S., this proceeding is closed.

3. After attempts to resolve Mr. Bates's informal complaint against CNG through the Commission's customer assistance staff failed, Mr. Bates filed his Complaint on October 27, 2016. Mr. Bates is appearing *pro se*. The Commission referred the Complaint to an Administrative Law Judge (ALJ). The parties communicated via email with the ALJ to determine a procedural schedule.

4. On November 16, 2016, CNG filed a Motion to Dismiss. The response was due November 30, 2016. Mr. Bates did not file a response and he claims that he never received the Motion to Dismiss.

5. On December 14, 2016, the ALJ issued his Recommended Decision dismissing the Complaint with prejudice as a matter of law.¹ The ALJ construed the Certificate of Service on the Motion to Dismiss as proof that Mr. Bates was served. On December 16, 2016, Mr. Bates emailed the ALJ and CNG stating his objections to the Recommended Decision. The email

¹ Decision No. R16-1145, issued December 14, 2016.

states, “Consider this the filing of an exception.”² Mr. Bates also asked for assistance in filing his exceptions. The December 16 email was never filed in the Commission’s efilings system, CNG never responded, and the Commission was never notified of the exceptions.

6. On January 3, 2017, under § 40-6-109(2), C.R.S., the Recommended Decision became a Commission Decision because no exceptions were filed. Under § 40-6-114(1), C.R.S., an application for rehearing, reargument, or reconsideration (RRR) was due on January 23, 2017.³ On January 24, 2017, Mr. Bates filed his RRR via an email to the Commission. This email was filed in efilings. Mr. Bates states that he was incorrectly informed that the deadline for RRR was January 24, 2017.

7. On February 2, 2017, CNG filed a Motion to Strike the RRR or, in the alternative, Motion for Leave to Respond to the RRR and Response (Motion to Strike). CNG argues that Mr. Bates’s RRR was filed one day late and should be stricken.

8. Finally, on February 13, 2017, Mr. Bates filed supplemental information to his RRR explaining that he was never informed on how to use the efilings system. He also requests mediation in this matter.

C. Findings and Conclusions

9. Under § 40-6-114, C.R.S., because Mr. Bates did not file his RRR within the statutory deadline, the proceeding is now closed as a matter of law, and we cannot consider Mr. Bates’s RRR filings. We deny CNG’s Motion to Strike as moot.

² Correspondence from all parties, filed by the ALJ on December 19, 2016, at 4.

³ Under § 40-6-114(1), C.R.S., the Commission may not extend the time to file RRR unless there is a request within the 20-day RRR time period.

10. Mediation, as requested by Mr. Bates, is not appropriate at this time. Under Rule 1301, of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission can refer informal complaints for mediation with the goal that the issues can be resolved without formal Commission proceedings.

11. Under Rule 1504(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission can reopen a proceeding for good cause.⁴ We could then decide—under § 40-6-112, C.R.S., and after notice and an opportunity to be heard—whether to rescind, alter, or amend the Decision dismissing the Complaint.⁵

12. We find good cause to reopen the proceeding and review Decision No. R16-1145 dismissing the Complaint with prejudice. We require further briefing on this matter. Mr. Bates shall file a brief addressing Decision No. R16-1145 within 20 days of the effective date of this Decision, March 13, 2017. CNG shall file a response brief within 14 days after Mr. Bates's brief is filed. CNG shall also file citations to any tariffs or certificates of public convenience and necessity that are implicated by the contract at issue in this Complaint. All filings in the record may be considered, and no additional evidence shall be filed.

⁴ Rule 1504(b) of the Commission's Rules of Practice and Procedure states:

Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

⁵ Section 40-6-112(1), C.R.S., states:

The commission, at any time upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any decision rescinding, altering, or amending a prior decision, when served upon the public utility affected, shall have the same effect as original decisions.

II. ORDER**A. It Is Ordered That:**

1. The Motion to Strike the RRR or, in the alternative, Motion for Leave to Respond to the RRR and Response, filed by Colorado Natural Gas, Inc. (CNG) on February 2, 2017, is denied as moot consistent with the discussion above.

2. We find good cause to reopen this Proceeding to review Decision No. R16-1145, issued on December 14, 2016.

3. Mr. Kelly M. Bates shall file a legal brief addressing Decision No. R16-1145 within 20 days of the effective date of this Decision, March 13, 2017.

4. CNG shall file a response brief within 14 days after Mr. Bates's brief is filed. CNG shall also file citations to any tariffs or certificates of public convenience and necessity that are implicated by the contract at issue in the Complaint.

5. No other evidence shall be filed.

6. This Decision is effective on its mailed date.

**B. ADOPTED IN COMMISSIONER'S WEEKLY MEETING
February 16, 2017.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners