

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0352G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR
APPROVAL OF A QUALITY OF SERVICE PLAN

STIPULATION AND SETTLEMENT AGREEMENT

I. INTRODUCTION

This Stipulation and Settlement Agreement (“Settlement Agreement”) is a full and complete resolution of the Colorado Natural Gas, Inc. (“CNG” or “Company”) application seeking approval of its first Quality of Service Plan (“QSP”) as agreed to by the Settling Parties, which represent all the parties to this proceeding. Along with CNG, the Settlement Agreement is joined by the Colorado Public Utilities Commission (“Commission”) Trial Staff (“Staff”), and the Colorado Office of Consumer Counsel (“OCC”) (collectively “Settling Parties”). The Settlement Agreement is a comprehensive settlement among the Settling Parties, which proposes a resolution of all issues that have been raised, or could have been raised, in this proceeding. The Settling Parties respectfully request that the Commission approve this Settlement Agreement.

II. BACKGROUND

1. As part of the Stipulation and Settlement Agreement filed on October 10, 2018 in CNG's most recent base rate case, Proceeding No. 18AL–0305G, the Company agreed to collaborate with Staff and OCC on the development of a QSP. CNG was to file its first QSP within six months of the effective date of the final decision in Proceeding No. 18AL–0305G.

2. The Stipulation and Settlement Agreement in Proceeding No. 18AL–0305G was approved by Decision No. R18–0972 issued November 1, 2018. CNG requested and was granted a brief extension of time to make the agreed to QSP filing and filed its QSP commencing this

proceeding on June 20, 2019. Through this application, CNG proposed “to capture and monitor data” in key areas for purposes of developing a QSP. The Company proposed a three-year period of data collection with “no associated goals, and no penalties or incentives.”

3. The Staff and OCC, which were each parties to the aforementioned rate case proceeding, timely filed notices of intervention as of right and requested a hearing on the application. No other parties intervened in the instant proceeding.

4. By Decision No. C19-0706-I, mailed August 23, 2019, the Commission assigned this proceeding to an Administrative Law Judge (“ALJ”) and required that CNG submit Supplemental Direct Testimony in which the Company was required to address enforcement mechanisms that would apply to its QSP. The Supplemental Direct Testimony was to include potential negative incentives that the Company proposes to ensure quality of service would be maintained by the Company over the term of the QSP. On October 18, 2019, CNG filed the Supplemental Direct Testimony of Matthew S. Kaply, Senior Director of Regulatory Affairs and Rates, addressing the proposed QSP enforcement mechanisms, requesting positive incentives for superior performance and describing the level of potential penalties for not meeting the adequate service metrics that the Company was willing to accept.

5. Pursuant to the procedural schedule established by the ALJ, both Staff and OCC filed Answer Testimony on November 22, 2019, in support of their positions in this proceeding. On December 13, 2019, CNG filed the Rebuttal Testimony of Keith Lincoln, Vice President of Operations, responding to the Answer Testimony filed by Staff and OCC, and withdrawing the Company’s request for positive incentives. Staff filed the Corrected Answer Testimony of Adam M. Gribb on December 20, 2019.

6. During the course of this proceeding, the Settling Parties have had several rounds of negotiations in an attempt to reach a resolution of the issues that have arisen in the proceeding. The Settling Parties are pleased to report that, as a result of those discussions, they have reached a resolution of all issues which were raised or could have been raised in the proceeding and now offer this Settlement Agreement for approval by the Commission in full resolution of this proceeding.

III. SETTLEMENT TERMS

1. In resolution of the issues raised, or which could have been raised, by the parties in this proceeding, the Settling Parties agree as follows.

A. Damage Prevention Metric

The Settling Parties acknowledge that the Company's current Pipeline and Hazardous Materials Safety Administration ("PHMSA") report shows the number of damages per 1,000 pipeline locates as a modest 6.34 damages per 1,000 locates for the Company's current three-year average. In recognition of CNG's efforts to improve on the number of damages per 1,000 locates, the Settling Parties have agreed to a three-step process beginning in 2020, whereby the Company will reduce target hits per 1,000 from 6.34 in 2020, to 4.42 in 2021, and 2.49 in 2022. The 2.49 hits per 1,000 locates to be achieved in 2022 is a figure based on the five-year Colorado average drawn from Colorado's Underground Damage Prevention Legislation Study of 2016. The Settling Parties agree that this three-year phase-down of target hits per 1,000 locates is an appropriate methodology for CNG to follow in improving its damage prevention performance.

B. Grade 2 Leak Repair Time

The Company proposed a 15 to 25-day band to repair Grade 2 leaks. In Staff's Answer Testimony, Staff proposed a goal of repairing Grade 2 leaks within 24 hours. After discussion with the Company, Staff filed Corrected Answer Testimony that modified its proposed timeframe for Grade 2 leak repairs to 16 days. The parties have agreed that an appropriate time period for Grade 2 leak repair is 16 days going forward. Grade 2 leaks are by definition "nonhazardous leaks that need to be repaired within one year," under Department of Transportation regulations. The fact that the Company can agree to a 16-day timeframe is indicative of the Company's focus on operating and maintaining its distribution system in a safe, reliable and effective manner. The Settling Parties also acknowledge that to the extent that extenuating circumstances beyond the Company's control require an extension of time beyond the proposed 16-day time period for repair of a Grade 2 leak, the Company may have additional time within which to repair such leaks and report in its annual reporting the rationale for extending the time period beyond the agreed-to 16-day timeframe.

C. Customer-Owned Yard Lines

In its Answer Testimony, Staff recommended that the Company identify all Customer-Owned Yard Lines ("COYL") and that the Company be required to provide individual notice to each customer operating a COYL. CNG currently provides annual notice to all customers regarding customer responsibilities for COYLs. Staff requested that the notification of customer responsibility for COYLs be targeted to the specific customers owning and operating COYLs each year of the QSP after resolution of this proceeding. In settlement of this issue, Staff and CNG have agreed that the Company will have 24 months, ending December 31, 2021, within which to

conduct its review of its system for the purpose of determining the locations of all Customer-Owned Yard Lines. This will enable the Company to conduct leak surveys and other operational oversight, in addition to identifying the location of COYLs on its system, within a timely fashion. During this period, the Company will continue to provide annual notice to all customers concerning the customer's responsibility for operating and maintaining COYLs. Additionally, the Company will provide door hangers to those customers who have been identified as having a COYL at the time that identification is made and will mark within the customer's account when the door hanger was placed. The door hanger will make the customer aware of their COYL and include a phone number and website which will provide additional information about the operation and maintenance responsibilities related to COYLs. At the end of the 24-month period ending December 31, 2021, after all COYLs in its system have been identified, CNG will provide annual targeted notice to all customers in possession of a COYL to remind them of their responsibilities for operation and maintenance of their COYL.

D. System Safety and Integrity Rider

During the course of settlement negotiations, the parties discussed the fact that CNG does not presently have a System Safety and Integrity Rider ("SSIR") for use in recovering the costs of system safety improvements. As part of the resolution of this proceeding, the Company agrees to file an application for approval of an SSIR by the conclusion of the second quarter of 2020. The Company's intent is to continue analyzing its system for the purpose of determining those portions of the system in need of further upgrade, repair and maintenance, which could be incorporated in cost recovery attributable to an SSIR.

E. Penalty Levels for Failure to Meet Metrics

In its Direct Testimony, the Company proposed a number of metrics for use in determining the Company's compliance with the proposed QSP. In negotiations with the other Settling Parties, the Company agreed to reduce the number of metrics contained within the QSP to those advanced by the Staff in its Answer Testimony. In addition, the Company had proposed a \$3,500 penalty for its failure to meet any of the specific service metrics set forth in its Direct and Supplemental Direct Testimonies. The Settling Parties have agreed that the Staff's proposed penalty of \$9,500 per category for safety, reliability and adequate service metrics is an appropriate penalty to be applied in the event that CNG fails to meet its service metric goals within a particular calendar year.

The three performance areas to which the Settling Parties agree the penalties will apply to are: (1) System Safety; (2) System Reliability; and (3) Adequate Service. The proposed metrics are therefore captured by the System Safety metric with the damage prevention hits per 1,000 locates measurement. The System Reliability metric is captured by the average time to repair a Grade 2 leak. The Adequate Service metric is covered by the Company's agreement to survey its COYLs.

IV. GENERAL PROVISIONS

1. This Settlement Agreement is made for settlement purposes only. Nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any future QSP Proceeding, rate review or any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement

does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

2. Each Settling Party understands and agrees that this Settlement Agreement represents a negotiated resolution of all issues the Settling Party either raised or could have raised in this proceeding. The Settling Parties agree that the provisions of this Stipulation and Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence (“CRE”).

4. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement. In the event this Settlement Agreement becomes null and void or in the event the Commission does not approve this Settlement Agreement, it, as well as the negotiations or discussions undertaken in conjunction with the Settlement Agreement, shall remain inadmissible into evidence in these or any other proceedings in accordance with Rule 408 of the CRE.

5. The Settling Parties will support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each

Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

6. The Settling Parties agree that approval by the Commission of this Settlement Agreement shall constitute a determination that this resolution of the matters in this proceeding represent a just, equitable and reasonable resolution of issues that were or could have been contested among the parties in this proceeding. The Settling Parties state that reaching agreement as set forth herein by means of a negotiated settlement rather than through a formal adversarial process is in the public interest and that the results of the compromises and settlements reflected in this Settlement Agreement are in the public interest.

7. The Settling Parties do not believe any waiver or variance of Commission Rules and Regulations is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

8. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Stipulation and Settlement Agreement.

9. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

10. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

11. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

DATED this 6th day of January, 2020

Respectfully submitted,

FAIRFIELD AND WOODS, P.C.

/s/ Mark A. Davidson

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day January, 2020, I served a true and correct copy of the **STIPULATION AND SETTLEMENT AGREEMENT** in Proceeding No. 19A-0352G via the Public Utilities Commission E-filing system and will be mailed to those parties not receiving service through the Public Utilities Commission E-filing system.

/s/Celeste Jourdonais
Celeste Jourdonais