

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

PROCEEDING NO. 19A-0352G

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

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ROBERT I. GARVEY  
ESTABLISHING QUALITY OF SERVICE  
PLAN, APPROVING SETTLEMENT  
AGREEMENT, AND GRANTING APPLICATION**

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Mailed Date: January 27, 2020

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**I. STATEMENT**

1. As part of the prior Stipulation and Settlement Agreement (2018 Settlement) in the rate case Proceeding No. 18AL-0305G, Colorado Natural Gas Inc. (CNG or Company), the

Office of Consumer Counsel (OCC), and Trial Staff of the Commission (Staff) agreed to collaborate on a Quality of Service Plan (QSP), which CNG was to file within six months of the effective date of the final decision in Proceeding No. 18AL-0305G. The 2018 Settlement was approved through Decision No. R18-0972, issued November 1, 2018. After a brief extension of time was granted for CNG to make the agreed-to QSP filing, CNG initiated this proceeding by filing its Application for Approval of a QSP (Application) on June 20, 2019. Through its Application, CNG proposes “to capture and monitor data”<sup>1</sup> in key areas. CNG notes that this is its “first QSP” and proposes a three-year period of data collection only, with “no associated goals, and no penalties or incentives.”<sup>2</sup>

2. The OCC and Staff, each of which was a party to the 2018 Settlement, timely filed notices of intervention as of right and each requested a hearing on the Application. No other potential parties requested intervention. Therefore, the Parties in this proceeding are CNG, Staff, and the OCC.

3. On August 23, 2019, by Decision No. C19-0706-I, the above captioned proceeding was referred to an Administrative Law Judge (ALJ).

4. In referring the proceeding to an ALJ, the Commission required CNG to file additional supporting testimony to address enforcement mechanism(s) that could apply to its QSP. The Commission stated that the supplemental direct testimony shall include, at a minimum, potential negative incentives<sup>3</sup> that the Company proposes to ensure quality of service is maintained by the Company over the term of the QSP.

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<sup>1</sup> Application at p. 1.

<sup>2</sup> *Id.* at p. 2.

<sup>3</sup> Enforcement mechanisms and negative incentives for QSP filings have traditionally been included as customer refund amounts or billing credits. The Commission required CNG to propose a negative incentive at a minimum in Decision No. C19-0706-I.

5. The Commission required each party to support its positions in this proceeding fully through testimony and evidence. Proposals regarding incentives, at a minimum, must demonstrate that the magnitude and proposed implementation of the incentive is at an adequate level to ensure CNG's quality of service is maintained. If negative incentives would be incurred, the party proposing the incentive must demonstrate that the negative incentive is reasonable for the Company from a financial perspective.

6. On September 6, 2019, by Decision No. R19-0738-I, a prehearing conference was scheduled for October 8, 2019.

7. On October 1, 2019, CNG filed its Unopposed Motion to Vacate Prehearing Conference and Accept Procedural Schedule.

8. On October 4, 2019 by Decision No. R19-0817-I, the prehearing conference was vacated and a procedural schedule was adopted.

9. On December 19, 2019, CNG filed its Unopposed Motion to Hold Procedural Schedule in Abeyance and Schedule a Hearing on the QSP Stipulation and Settlement Agreement (Unopposed Motion).

10. On December 30, 2019, by Decision No. R19-1045-I, the Unopposed Motion was granted and a hearing on the settlement was scheduled for January 9, 2020.

11. On January 6, 2020, the Parties filed an Unopposed Motion for Approval of the Stipulation and Settlement Agreement (QSP Settlement).<sup>4</sup> In addition, each of the Parties filed testimony in support of the settlement.

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<sup>4</sup> CNG, Staff, and the OCC, collectively, are the Parties in this proceeding.

12. On January 7, 2020, by Decision No. R20-0013-I, the undersigned ALJ, having reviewed the QSP Settlement and the testimony filed in this proceeding, determined that a hearing on the settlement was not necessary and vacated the hearing scheduled for January 9, 2020.

## **II. DISCUSSION**

### **A. Testimony and Terms of the QSP Settlement**

13. The QSP Settlement, attached to this Decision as Attachment A, explains that the Parties negotiated a resolution of all issues which were raised or could have been raised in this proceeding. The Parties state that the QSP and attendant performance metrics set forth in the provisions of the QSP Settlement are in the public interest and supported by the testimony of the Parties. Below is a summary of some of the terms agreed upon by the Parties.

#### **1. Damage Prevention Metric**

14. The current Pipeline and Hazardous Materials Safety Administration report for CNG establishes that the Company's current three-year average is 6.34 damages per 1,000 pipeline locates.

15. To improve this metric, the QSP Settlement proposes a three-step process starting in 2020. Specifically, CNG agrees to reduce target hits per 1,000 from 6.34 in 2020, to 4.42 in 2021, and 2.49 in 2022. In the QSP Settlement, the Parties state that this three-year phase down is an appropriate methodology to improve the Company's damage prevention performance based on the five-year Colorado average from 2016.

## 2. Grade 2 Leak Repair Time

16. The QSP Settlement explains that under Department of Transportation regulations, the term “Grade 2 leak” refers to a “nonhazardous” leak that must be repaired within one year.

17. CNG proposed to repair Grade 2 leaks within a 15 to 25-day band.

18. Staff, on the other hand, initially proposed a goal of 24 hours for Grade 2 leak repairs. In its Corrected Answer Testimony, Staff modified its proposed timeframe to 16 days.<sup>5</sup>

19. The QSP Settlement proposes a 16-day time period for repair of Grade 2 leaks, demonstrating CNG’s focus on safe, reliable, and effective operation and maintenance of its distribution system.

20. In the event of extenuating circumstances beyond CNG’s control, the QSP Settlement further provides that the Company may have additional time to repair Grade 2 leaks so long as CNG reports in its annual reporting the rationale for extending the time period beyond the agreed-upon 16-day timeframe.

## 3. Customer-Owned Yard Lines

21. The Company presently provides all customers with annual notice regarding Customer-Owned Yard Lines (COYL) and customer responsibilities for operating and maintaining such lines.

22. In its Answer Testimony, Staff advocated for individual notice for each customer in possession of a COYL. Staff specifically recommended that for each year of the QSP,

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<sup>5</sup> Corrected Answer Testimony of Adam Gribb, filed December 20, 2019.

notification concerning customer responsibility for COYLs be targeted to the specific customers owning and operating COYLs.

23. The QSP Settlement proposes:

- a) CNG will have 24 months, ending December 31, 2021, to determine the location of each COYL on its system, allowing the Company to also conduct leak surveys and other operation oversight in addition to identifying the COYL locations;
- b) during this 24-month period, CNG will continue providing annual notice to all customers regarding COYLs and the attendant responsibilities;
- c) at the time of identification, CNG will provide a door hanger to the customers possessing the identified COYLs and indicate within each customer's account when the door hanger was provided;
- d) in addition to informing customers that they possess a COYL, the door hangers will provide a phone number and website with more information about the operation and maintenance responsibilities associated with COYLs; and
- e) at the end of the 24-month period (ending December 31, 2021), CNG will provide annual targeted notice to all customers possessing a COYL reminding them of their responsibilities for operating and maintaining COYLs.

#### **4. System Safety and Integrity Rider**

24. The Company does not currently have a System Safety and Integrity Rider (SSIR) to recover costs of system safety improvements.

25. As part of the QSP Settlement, CNG agrees to file an application seeking approval of an SSIR by the end of the second quarter of 2020.

#### **5. Penalty Levels for Failure to Meet Metrics**

26. The Company proposed a penalty of \$3,500 if it fails to meet any of the service metrics articulated in its Direct and Supplemental Direct Testimonies.

27. Staff proposed a penalty of \$9,500.

28. The Parties agree that Staff's proposed penalty of \$9,500 per category for safety, reliability, and adequate service metrics is appropriate if the Company fails to meet its goals within a particular calendar year. Specifically, the Parties agree that the penalties will apply to three performance areas:

- a) System Safety, which is captured by the damage prevention metric described in section 1 above;
- b) System Reliability, which is captured by the Grade 2 leak repair time articulated in section 2 above; and
- c) Adequate Service, which is captured by the Company's agreement to survey its COYLS as articulated in section 3 above.

### **III. FINDINGS AND CONCLUSIONS**

29. The Parties have the burden of proving by a preponderance of the evidence that the QSP Settlement is just and reasonable.<sup>6</sup> In reviewing the terms of the QSP Settlement, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

30. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

31. The undersigned ALJ has reviewed the Direct and Supplemental Direct Testimony filed by CNG, the Answer Testimony filed by the OCC and Staff, the Rebuttal Testimony filed by CNG, and the recitations of the Parties in the Unopposed Motion, QSP Settlement, and supplemental Settlement Testimony. The ALJ has duly considered the positions of all parties in this matter.

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<sup>6</sup> Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 of the Commission's Rules of Practice and Procedure, establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No 05A-072E issued July 3, 2006 at ¶ 40 and n.23.

32. Based on the entire record, the ALJ finds that approval of the QSP and attendant performance metrics set forth in the provisions of the QSP Settlement are in the public interest.

33. The ALJ further finds that the Parties have established by a preponderance of the evidence that the QSP Settlement is just, is reasonable, and should be accepted by the Commission.

#### **IV. ORDER**

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

1. The Unopposed Motion for Approval of the Stipulation and Settlement Agreement (Unopposed Motion), filed by the Colorado Natural Gas Inc. (CNG), the Office of Consumer Counsel, and Trial Staff of the Commission, on January 6, 2020 is granted.

2. The Stipulation and Settlement Agreement (QSP Settlement), attached to and incorporated into this Decision as Attachment A, is approved.

3. The Application for Approval of a QSP filed by CNG on June 20, 2019 is granted, as modified by the QSP Settlement.

4. CNG shall comply with the QSP Settlement and this Decision as discussed above.

5. CNG shall use its best efforts to achieve, at a minimum, the QSP performance metrics, consistent with the QSP Settlement and this Decision.

6. CNG shall make any and all filings and reports required by the QSP Settlement and this Decision.

7. CNG shall implement the processes and programs and shall give the notices that it agreed to give, as those processes and programs and notices are described in the QSP Settlement and this Decision.



8. 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.

9. As provided by § 40-6-106, 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 Recommended 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 a basic finding 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.

10. If exceptions to this Recommended 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

ROBERT I. GARVEY

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director