

Decision No. C21-0122-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0072SG

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING A STOCK PLEDGE AND DEBT REFINANCE PURSUANT TO SECTION 401-1-104 C.R.S. AND SECTION 40-5-105 C.R.S.

**INTERIM COMMISSION DECISION DEEMING
APPLICATION INCOMPLETE; REFERRING MATTER
TO AN ADMINISTRATIVE LAW JUDGE; VACATING
HEARING; AND EXTENDING DECISION DEADLINE**

Mailed Date: March 3, 2021

Adopted Date: March 3, 2021

I. BY THE COMMISSION

A. Statement

1. This Decision refers to an Administrative Law Judge (ALJ) the Application for an order authorizing a debt refinance and stock pledge (Application) filed by Colorado Natural Gas, Inc. (CNG or the Company) on February 9, 2021. We vacate the evidentiary hearing scheduled for March 4, 2021 in the Notice of Application Filed issued February 10, 2021 and extend the deadline for a decision in this matter beyond the 30-day requirement in Rule 4105(g) of the Rules Regulating Gas Utilities and Pipeline Operators (Gas Rules), 4 *Code of Colorado Regulations* (CCR) 723-4. Additionally, we deem the Application incomplete.

B. Discussion

2. On February 9, 2021, CNG filed the Application requesting authorization for its parent company, Summit LDC Holdings, LLC, to refinance and restructure three credit facilities,

pursuant to §§ 40-1-104, and 40-5-105, C.R.S, and Rules 4002, 4104, and 4105 of the Gas Rules, 4 CCR 723-4.

3. The next day, the Commission issued a notice of the Application, established a ten-day intervention period, and set a hearing on March 4, 2021 in accordance with the statutory requirements for expedited consideration of securities-related applications.

4. CNG explains in its Application that in Proceeding No. 19A-0070SG, the Commission approved its request for a corporate restructuring and stock pledge, which resulted in the creation of a new direct parent of the Company. The direct parent company, Summit LDC Holdings LLC (Summit LDC Holdings), entered into three types of credit facilities – a fixed-rate loan, a floating-rate loan, and a revolving-credit facility – and now wishes to refinance these credit facilities. CNG states that Summit LDC Holdings wishes to take advantage of favorable market conditions and historically low financing rates. Additionally, Summit LDC Holdings intends to “transition certain portions of its revolving debt into a fixed loan and expand its revolving credit facility.”¹

5. CNG states that Summit LDC Holdings has not yet negotiated terms of the proposed refinancing. It asserts that lenders often require regulatory approval before finalizing terms of a proposed financing, and that this presents a challenge because CNG is required to seek Commission approval before entering into financing arrangements. Therefore, CNG requests “conditional approval” of the proposed transaction, subject to the Company providing the final terms of the refinancing in a supplemental filing. It also states that the Summit Board of Directors will meet after the filing date of the Application, and requests that it be allowed to

¹ Application at ¶ 19.

submit the Board Resolution required by Rule 4105(b)(II), 4 CCR 723-4, as a late-filed attachment.

6. CNG claims the refinancing will not result in any new allocation of debt to CNG, and that any new funds contributed from Summit LDC Holdings will be in the form of equity. CNG also claims that neither it, its ratepayers, or the public will suffer any adverse effects; there will be no change in operations or personnel, and the refinancing will not diminish the Commission's ability to establish an appropriate capital structure in the Company's next rate case. Ratepayers would be expected to pay legal and administrative costs of this filing, expected to be \$20,000. The Company submitted 2019 and 2018 financial information in support of the Application as well as capital structure and dividend payout information for the last several years through 2020.

7. On February 19, 2021, Commission Trial Staff (Staff) timely filed a notice of intervention by right and request for hearing. Staff raises four initial concerns and reasons for further investigation including: (1) the impact to CNG 's ratepayers from Summit LDC Holding's three types of credit facilities and the proposed financing; (2) how the Company intends to determine CNG's capital structure and cost of debt and cost of equity for ratemaking purposes; (3) whether the requested refinancing would not significantly change CNG's financing status; and (4) the reasonableness of funding CNG entirely with equity.

C. Findings and Conclusions

8. Pursuant to Rule 1303(c) of the Rules of Practice and Procedure, 4 CCR 723-1, an Application that fails to meet all applicable requirements of Commission rules may be deemed incomplete. The requirements for an application for approval of a securities transaction set forth in Rule 4105(b), 4 CCR 723-4, include "the resolution of the applying utility's board of directors

approving the issuance, or assumption of the securities...” and “the anticipated interest rate or dividend rate.” We deem the Application incomplete because it fails to include this information. However, we allow CNG to cure the deficiencies of the Application during the course of this proceeding and as its refinancing negotiations proceed.

9. We find good cause to set the Application for hearing and to refer this matter to an ALJ on an expedited basis.

10. We vacate the evidentiary hearing scheduled on March 4, 2021, by the Notice of Application issued February 10, 2021. The ALJ shall schedule a hearing by separate decision.

11. Rule 4105(g), 4 CCR 723-4, which implements § 40-1-104(5), C.R.S., requires that the Commission give priority to the Application and grant or deny the Application within 30 days after filing, unless the Commission, for good cause shown, enters an order extending the deadline for a decision and states fully the facts necessitating the extension.

12. We find good cause to extend the deadline for a decision on the Application beyond the 30 days specified in Rule 4105(g) and § 40-1-104(5), C.R.S. CNG’s Application does not include information necessary for a determination. We recognize that CNG wishes to begin the approval process prior to finalizing financing terms due to constricted financing timelines. However, CNG’s request for a “conditional approval” of its proposed transaction is untenable on the limited information CNG provides. Additional information will be required, and additional time to consider such information is necessary. We conclude that these facts support an extension for a decision beyond 30 days after the filing of the Application.

13. CNG, the applicant, is a party to this Proceeding. Additionally, Staff is an intervenor as of right and is a party to this Proceeding under Rule 1401(b), 4 CCR 723-1.

II. ORDER

A. The Commission Orders That:

1. The Application for approval of a stock pledge and debt refinance (Application) filed by Colorado Natural Gas, Inc. (CNG) on February 9, 2021, is deemed incomplete and is referred to an Administrative Law Judge (ALJ) on an expedited basis.

2. The evidentiary hearing scheduled on March 4, 2021, as set forth in the Notice of Application Filed issued on February 10, 2021, is vacated. The ALJ shall schedule a hearing by separate decision.

3. The timeframe for the Commission to grant or deny the Application pursuant to Rule 4105(g) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* 723-4 and § 40-1-104(5), C.R.S., is continued beyond 30 days, consistent with the discussion above.

4. The Application is deemed incomplete. CNG shall cure the deficiencies of the Application during the course of this Proceeding, consistent with the discussion above.

5. CNG and Staff of the Colorado Public Utilities Commission are parties in this matter.

6. This Decision is effective upon its Mailed Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 3, 2021.**

(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

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners