

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0220G

IN THE MATTER OF ADVICE LETTER NO. 107 FILED BY COLORADO NATURAL GAS, INC. TO RECOVER AN OVER REFUNDED AMOUNT FOLLOWING COLLECTIONS RELATED TO THE FEDERAL TAX CUTS AND JOBS ACT OF 2017 (TCJA) TO BECOME EFFECTIVE AUGUST 1, 2020.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING MOTION TO APPROVE SETTLEMENT
AGREEMENT AND APPROVING COMPREHENSIVE
SETTLEMENT AGREEMENT**

Mailed Date: January 4, 2021

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I. STATEMENT

1. On May 27, 2020, Colorado Natural Gas, Inc. (CNG or the Company) filed Advice Letter No. 107-Gas with tariff sheets establishing a one-time non-volumetric charge to recover over-refunding in CNG's Tax Cut and Jobs Act (TCJA) Refund Plan implemented in 2018.

2. On May 29, 2020, CNG filed an Amended Advice Letter No. 107 correcting the Issue Date on the tariff pages.

3. On June 9, 2020, CNG filed a Second Amended Advice Letter No. 107. CNG stated that it over-refunded customers in its TCJA Refund Plan. CNG seeks to recover \$138,062 for the Mountain Division and \$9,125 for the Eastern Colorado Division. CNG requested an August 1, 2020 effective date for the tariff sheets.

4. On June 26, 2020, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a protest letter, requesting that the Commission reject the Second Amended Advice Letter No. 107, or suspend it and set it for hearing. Staff states that CNG's TCJA Refund Plan did not include a provision for a true-up and that CNG is proposing multiple true-ups, having previously collected over-refunded amounts in 2019. Staff also states that CNG's customers are subject to economic stresses from the novel coronavirus pandemic (COVID-19) pandemic, so it is inappropriate for CNG to seek recovery of over-refunds at this time.

5. By Decision No. C20-0498, issued July 9, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ).

6. Staff timely intervened in this proceeding opposing the relief requested by the Company.

7. CNG and Staff, collectively, are the Parties.

8. By Decision No. R20-0609-I, issued August 24, 2020, a procedural schedule was adopted to govern this proceeding, a hearing was scheduled, and the effective date of the proposed tariff sheets suspended by Decision No. C20-0498, issued July 9, 2020, was further suspended for an additional 130 days through April 8, 2021.

9. In support of its request, CNG filed the Direct Testimony and Attachments of Mr. Matthew S. Kaply, Senior Director of Regulatory Affairs and Rates, and Mr. Tyson Porter, Director Regulatory Finance and Rates. The Direct Testimonies and Attachments described CNG's efforts to comply with the Commission decision to reduce retail rates to reflect the impact of the reduction in the corporate income tax rate from 35% to 21% and to refund to customers the difference in rates attributable to the reduction in the corporate income tax rate.

10. In support of its position, Staff filed the Answer Testimony of Mr. Gabriel Dusenbury, Section Head of the Rate Financial Analysts, describing why Staff did not believe that CNG was entitled to collect the over-refunded amount from its customers.

11. On November 16, 2020 CNG filed its Rebuttal Testimony in response to Staff's position that the Company was not entitled to recover the over-refunded amount from its customers. The Company maintained that the Commission anticipated that utilities would need to adjust their refunds to customers as needed to get the correct amount of refunds to customers while keeping utilities whole financially.

12. Following the filing of Rebuttal Testimony, the Parties engaged in negotiations that resulted in the Parties filing a Comprehensive Stipulation and Settlement Agreement (Settlement Agreement) on December 3, 2020, accompanied by an unopposed motion to accept the Settlement Agreement and vacate the remainder of the procedural schedule. On December 7, 2020, the undersigned ALJ issued Decision No. R20-0843-I vacating the remainder of the procedural schedule and finding that no evidentiary hearing was necessary for the ALJ to decide this proceeding.

A. Findings of Fact

13. CNG is a natural gas utility providing natural gas distribution service to approximately 23,000 customers located in four non-contiguous service territories located in both

the mountains and on the plains of Colorado. Pursuant to the Commission's direction, CNG revised its tariff to reflect the change in the corporate income tax rate as a result of the TCJA. The tariff revisions were based upon the average consumption of the retail customer class and intended to provide a refund to customers reflective of the change in the corporate income tax rate.

14. CNG's initial calculation of the amount to be refunded to customers was \$1,378,841. As indicated, the calculation was based upon an assumption of average natural gas usage by the Company's customers for a full twelve months. Because new rates pursuant to CNG's rate case Proceeding No. 18AL-0305G went into effect on December 1, 2018, CNG proposed to reduce the total refund to \$1,165,185 to reflect an eleven-month prorated refund amount. As the reduction in rates was applied to customer bills, it eventually became apparent to CNG that it had over-refunded \$744,838 to customers. CNG discontinued the refund by means of Advice Letter No. 96, filed on December 28, 2018, and approved by operation of law on February 1, 2019, in Proceeding No. 18AL-0910G.

15. CNG then filed Advice Letter No. 99 on March 29, 2019, seeking permission to impose a GRSA over a six-month period to recover the over-refunded amount of \$744,838. (Proceeding No. 19AL-0161G). Advice Letter No. 99 went into effect by operation of law, allowing for the recovery of the over-refunded amount to begin effective May 1, 2019.

16. On August 30, 2019, CNG filed Advice Letter No. 101 in Proceeding No. 19AL-0477G, which sought to end the over-refund collection effective October 1, 2019. Advice Letter No. 101 went into effect by operation of law. In Advice Letter No. 101, CNG stated that it did not want to veer into over-collecting the refund from its customers. At this point in time, the over-refund collection was being done on a volumetric basis.

17. The instant proceeding resulted from CNG's under-recovery of the amount it had refunded to customers in excess of the amounts that customers were entitled to receive as refunds under the TCJA. While CNG filed this proceeding requesting that it be allowed to recover the full amount overpaid to customers of \$155,991, CNG also recognized the change in the Colorado corporate income tax rate that became effective on January 1, 2020 and offered to offset the amount of the change in the state corporate income tax rate against the over-refund, resulting in an actual amount to be recovered of \$147,187. CNG now seeks to recover the refund on a fixed per-customer basis rather than customers' volumetric consumption, which makes it easier to recover the proper amount without going over or under the target sum for collection.

18. Staff's intervention in this proceeding argued that CNG was not entitled to a second attempt to recover an over-refunded amount from customers. Staff contended that the Commission had not provided for utilities to have multiple opportunities to get their TCJA refunds to customers accomplished with precision, nor did the Commission's decision to grant an earlier true-up obligate it to grant CNG a second true-up. Staff also alleged that some customers would be unfairly required to pay into the over-refund recovery who had not benefitted from the initial TCJA refund. Lastly, Staff expressed concerns that CNG's customers would be required to pay back the over-refunded amount during the current heating season while also being burdened by the economic impacts of the COVID-19 pandemic.

B. Settlement Agreement

19. On December 3, 2020, the Parties filed the Settlement Agreement, attached to this Recommended Decision as Appendix A, jointly stating that the Settlement Agreement resolved all issues that were presented or could have been presented in this proceeding. The Parties also filed a Motion seeking approval of the Settlement Agreement reached through negotiation, discussion, and compromise. The Settling Parties agree and contend that the provisions of the Settlement

Agreement, as well as the negotiation process undertaken to resolve the issues in this matter, are just, reasonable, and consistent with the public interest and should be approved and authorized by the Commission

20. By its terms, the Settlement Agreement modifies the relief requested by CNG in its Advice Letter and accompanying tariff sheets. Whereas CNG had requested that the tariff sheets filed to recover the over-refunded amount become effective on August 1, 2020, following the Commission's suspension of the tariff sheets, CNG sought to obtain recovery of the over-refunded amount from its customers as soon as possible.

21. In resolution of this proceeding, CNG has agreed in the Settlement Agreement to defer recovery of the over-refunded amount until August 2021 to obtain recovery during a period of reduced consumption on the CNG system. The Parties also assert that the delay in the recovery of the over-refunded amount to August 2021 will hopefully be in a post-pandemic, or at least greatly reduced COVID-19, environment.

22. The Parties also agree that CNG will offset the reduction in the state corporate income tax rate against the full amount of the over-refund so that the amount to be recovered by the Company, through the compliance tariff filing in August 2021, will be as close to \$147,187 as the Company's billing system will allow.

23. Finally, CNG agrees to provide a final accounting of the recovery of the over-refunded amount to Staff certified by a responsible CNG employee.

24. By Decision No. R20-0843-I, issued December 7, 2020, the procedural schedule and evidentiary hearing in this matter were vacated and any requests for further relief were taken under advisement to be ruled upon separately. This Recommended Decision addresses the remainder of the requested relief.

II. CONCLUSIONS

25. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest.

26. The undersigned ALJ has reviewed the full administrative and evidentiary record, considered the positions of all parties in this matter, and weighed the evidence presented. Based on the entire record, the ALJ finds that approval of the Settlement Agreement without modification is in the public interest. The Settlement Agreement proposes a fair and timely resolution of all contested issues.

27. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

III. ORDER

A. It Is Ordered That:

1. The Motion for Approval of Settlement Agreement Between Colorado Natural Gas Inc. (CNG) and Trial Staff of the Colorado Public Utilities Commission (Staff) filed on December 3, 2020, is granted, consistent with the discussion above.

2. The Comprehensive Settlement Agreement Between Colorado Natural Gas Inc. and Trial Staff of the Colorado Public Utilities Commission Settlement Agreement filed on December 3, 2020, and attached hereto as Appendix A, is approved without modification, consistent with the discussion above.

3. The effective date of the proposed tariff sheets suspended by Decision No. C20-0498, issued July 9, 2020, and filed by CNG with Second Amended Advice Letter No. 107-Gas in Proceeding No. 20AL-0220G filed June 9, 2020, is permanently suspended and may

not be further amended. CNG will file the necessary Advice Letter and accompanying tariff sheets at a time necessary to achieve the recovery of the agreed over-refunded amount during the Company's August 2021 billing cycle.

4. CNG shall subsequently make a new advice letter and tariff compliance filing on not less than two business days' notice consistent with this Recommended Decision. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Recommended Decision in order to be filed as a compliance filing on shortened notice.

5. CNG must file a final accounting of the recovery of the over-refunded amount once the recovery is completed and that accounting must be certified by the appropriate CNG personnel.

6. CNG shall comply with, and make all filings required by, the settlement agreement and this Recommended Decision.

7. 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 mailed date above.

8. 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.

9. 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.

10. 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.

11. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director