

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0570G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR
APPROVAL OF ITS COST ASSIGNMENT AND ALLOCATION MANUAL AND FULLY
DISTRIBUTED COST STUDY.

**INTERIM DECISION
GRANTING MOTION FOR PROTECTIVE ORDER AND
GRANTING EXTRAORDINARY PROTECTION FOR
HIGHLY CONFIDENTIAL INFORMATION**

Issued Date: June 25, 2024

I. STATEMENT

A. Summary

1. This Decision grants the First Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion for Protective Order) filed by Colorado Natural Gas, Inc. (CNG) on May 14, 2024.

B. Procedural History and Background

2. CNG initiated this Proceeding on November 21, 2023, by filing its Verified Application with the Public Utilities Commission of the State of Colorado (PUC or Commission) seeking approval of its Cost Assignment and Allocation Manual (CAAM) and Fully Distributed Cost (FDC) Study.¹ The manual and cost study were filed with CNG's Verified Application.

¹ Verified Application of Colorado Natural Gas, Inc., filed Nov. 21, 2023, p. 1.

3. On November 22, 2023, the Commission sent out a Notice of Application Filed (Notice) to interested persons indicating that CNG sought a Commission decision within 250 days of the Application being deemed complete.²

4. The Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff) both timely intervened as of right. In addition, on December 21, 2023, ARM, LLC (ARM) and Heartland Industries, LLC (Heartland) (collectively ARM/Heartland) jointly filed a Motion to Intervene and Entry of Appearance in this Proceeding (Motion to Intervene).

5. On January 10, 2024, the Commission deemed the Application complete and assigned the Proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

6. By Decision No. R24-0169-I, issued March 15, 2024, the undersigned ALJ granted ARM/Heartland's Motion to Intervene and acknowledged Staff's and UCA's interventions of right. The parties to this Proceeding are thus CNG, Staff, UCA, and ARM/Heartland.

7. On March 21, 2024, Staff filed a Motion to Compel and Challenge Confidentiality Designation. By Decision No. R24-0303-I, issued May 6, 2024, the ALJ partially granted Staff's Motion to Compel and ordered CNG to produce certain documents and provide responses to a number of interrogatories and requests for production of documents Staff propounded on CNG.

8. Subsequently, on May 14, 2024, CNG filed its Motion for Protective Order. Specifically, CNG seeks to designate documents it had been ordered to produce as highly confidential, describing them as "commercially sensitive corporate documents, shareholder

² Notice of Application Filed by Colorado Natural Gas, Inc., Nov. 22, 2023, p. 1.

information, financial documents and bank records of CNG and other related materials.”³ Further, CNG explained that its request was “not limited to any specific documents cited in this Motion but includes any documents or information discussing or identifying any of the Highly Confidential Information, including all testimony, discovery responses . . . and any other associated documents containing such types of information.”⁴

9. Staff opposed CNG’s initial Motion for Protective Order, filing a Response in opposition to the Motion on May 28, 2024. Staff asserts that CNG’s Motion for Protective Order should be denied because CNG has not adequately described the documents it sought to protect, as required by Rule 1101(b)(I) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Staff argues further that CNG’s Motion for Protective Order included “nowhere close to the detail required by the rule.”⁵

10. On May 29, 2024, the undersigned ALJ convened a prehearing conference attended by representatives of each party. During the prehearing conference, the ALJ and parties discussed CNG’s Motion for Protective Order. The ALJ advised CNG that it appeared to her the description of the documents CNG seeks to protect in its Motion for Protective Order does not comply with the requirements of Rule 1101(b)(I). The ALJ therefore offered CNG the opportunity to file, within one week of the prehearing conference, a supplement to its Motion for Protective Order further describing the documents it sought to protect.

11. As suggested, on June 5, 2024, CNG filed its Supplement to the Unopposed First Motion of Colorado Natural Gas, Inc. for a Protective Order Affording Extraordinary Protection

³ First Motion of Colorado Natural Gas, Inc. for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion for Protective Order), p. 2, ¶ 4, filed May 14, 2024.

⁴ *Id.* at p. 2, ¶ 5.

⁵ Response to Motion for Protective Order, p. 2, filed by Trial Staff of the Public Utilities Commission (Staff) on May 28, 2024.

for Highly Confidential Information (Supplement). The Supplement includes the following more detailed description of the information CNG now seeks to protect:

- Banking and invoicing information that is too voluminous to review individually but by its nature includes charges and invoices from CNG vendors who often bid competitively or provide discounts to the Company. CNG seeks to secure services from vendors that are both competent and offer favorable pricing. Such vendors would likely be less inclined to offer prices that are favorable to CNG, or even to submit bids for such work at all, if information regarding their pricing were to become available to their competitors and/or other customers. As a result, the cost to CNG for third-party services could become higher, to the detriment of the Company and its customers. Other billing and invoice material, such as from health care and benefits providers, may contain personally identifying information, including healthcare information, of the Company's employees.
- Non-public information related to corporate relationships and documents. Such information, particularly that which reveals transactions and relationships between CNG, on the one hand, and affiliated, unregulated entities including, but not limited to, holders of equity shares which are not publicly traded, on the other hand, is by its nature competitively sensitive, not publicly available, and the disclosure of which in a manner other than on a highly confidential basis would unduly interfere with corporate governance, private investment, and trade secrets.⁶

12. The ALJ notes that CNG's Supplement is titled "Unopposed" but does not include a certification that CNG conferred with Staff or the other parties before filing the Supplement.

II. CNG'S MOTION FOR PROTECTIVE ORDER

13. As noted above, CNG has filed a Supplement to its Motion for Protective Order providing greater detail of the types of documents it seeks to designate as highly confidential. It has characterized these documents as "commercially sensitive corporate documents, shareholder information, financial documents and bank records."⁷ CNG goes on to explain that "the public

⁶ Supplement to the Unopposed First Motion of Colorado Natural Gas, Inc. for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (Supplement), p. 2, ¶ 5, filed June 5, 2024.

⁷ Motion for Protective Order, p. 2, ¶ 4.

release of this information could harm the business interests CNG and its non-Commission jurisdictional affiliates and likewise negatively impact their customers.”⁸ Further, CNG maintains that it does “not publicly disclose this information to any outside party.”⁹

14. CNG therefore seeks an order imposing highly confidential protections for the above-listed categories of Highly Confidential Information. Based upon extraordinary circumstances, CNG requests that access be restricted to the Commissioners, the ALJ assigned to this Proceeding, the Commission’s Advisory Staff and Advisory Attorneys, members of Trial Staff, employees and attorneys of UCA, counsel for ARM/Heartland, and any third-party retained experts. In accordance with Rule 1101(b)(V), 4 CCR 723-1, the motion was accompanied by a specific form of nondisclosure agreement it requests be used in this Proceeding.

15. Although Staff initially objected to the Motion for Protective Order, CNG’s Supplement appears to address Staff’s concerns. CNG has titled the Supplement as “Unopposed” and states that it “has shared this language with counsel for Staff in advance of filing this Supplement with the Commission.”¹⁰ However, CNG does not expressly specify whether Staff indicated the Supplement quelled its objection. That said, and because more than 14 days has elapsed since CNG filed its Supplement, the Supplement can be deemed confessed pursuant to Rule 1400(b) and (d), 4 CCR 723-1.

16. The ALJ also notes that ARM/Heartland executed the nondisclosure agreement on May 15, 2024.

17. Under Rule 1100(b) CCR 723-1, information filed with the Commission is presumed to be a public record, including (I) annual reports; (II) rates, terms and conditions for

⁸ *Id.* at p. 3, ¶ 8.

⁹ *Id.* at p. 4, ¶ 8.

¹⁰ Supplement, p. 2, ¶ 4.

regulated services; and (III) tariffs and price lists. Rule 1101 provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

18. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

19. Through its Supplement, CNG has now provided a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Motion for Protective Order includes a proposed form of nondisclosure agreement to be signed by individuals who may encounter the information during this Proceeding

and by legal counsel. It has also provided the affidavit of Mark A. Davidson, counsel for CNG, attesting that only CNG employees “who have a compelling need to know the Highly Confidential information” have access to it.¹¹ However, CNG has not provided confidential or public versions of the documents it seeks to protect because, it notes, the highly confidential information is “voluminous” and will be provided in response to discovery. Highly confidential information disclosed in response to discovery requests “shall not be filed with the Commission.”¹²

20. CNG has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, CNG’s First Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information will be granted.

III. ORDER

A. It Is Ordered That:

1. The First Motion of Colorado Natural Gas, Inc. for a Protective Order Affording Extraordinary Protection for Highly Confidential Information filed on May 14, 2024, is granted.

¹¹ Affidavit of Mark A. Davidson, p. 2, ¶ 4, Attached as Attachment C to Motion for Protective Order.

¹² Rule 1101(e) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director