

Decision No. R14-1401-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0046G

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN NATURAL GAS LLC FOR AN ORDER AUTHORIZING IT TO PUT INTO EFFECT A SYSTEM SAFETY AND INTEGRITY RIDER.

PROCEEDING NO. 13AL-0067G

IN THE MATTER OF THE ADVICE LETTER NO. 77 FILED BY ROCKY MOUNTAIN NATURAL GAS LLC TO RESTRUCTURE AND UNBUNDLE ITS SERVICE AND TO REPLACE TARIFF NO. 3 IN ITS ENTIRETY TO BECOME EFFECTIVE MARCH 4 2013.

PROCEEDING NO. 13AL-0143G

IN THE MATTER OF THE ADVICE LETTER NO. 261 OF SOURCEGAS DISTRIBUTION LLC TO REVISE ITS COLORADO SCHEDULE OF RATES FOR NATURAL GAS SERVICE AVAILABLE IN THE ENTIRE TERRITORY SERVED BY THE COMPANY, WITH TARIFF SHEETS FOR PUC NO. 7, TO BECOME EFFECTIVE MAY 1, 2013.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
SETTING HEARING**

Mailed Date: November 21, 2014

I. STATEMENT

A. Background

1. On October 6, 2014, A M Gas Transfer Corp. (A M Gas) filed a Motion to Enforce Stipulation (Motion) in this proceeding. A M Gas claims that SourceGas Distribution, LLC (SourceGas) has failed to fulfill its obligations under a Stipulation and Agreement

(Stipulation) entered into between the parties (among other parties) and approved by the Commission in Decision No. R14-0114, issued January 30, 2014.

2. A M Gas states that pursuant to Section II.G.3 of the Stipulation, SourceGas agreed to file an advice letter within 30 days after a final Commission Decision approving the Stipulation by which SourceGas would propose that its Gas Cost Adjustment (GCA) mechanism allocate certain natural gas storage costs on a zoned basis.

3. SourceGas filed its Advice Letter No. 269, along with supporting material on new storage rates on March 20, 2014 in Proceeding No. 14AL-0258G. Staff of the Colorado Public Utilities Commission (Staff) subsequently filed a protest letter requesting that the Commission suspend the tariff sheets and set the matter for hearing. Staff questioned whether: the proposed “with storage” and “without storage” rates for the Western Slope GCA were just and reasonable; whether it was reasonable to rely on certain evidence concerning the downstream recovery of storage costs; and whether modifications were necessary to the assignment of costs.

4. The Commission issued Decision No. C14-0554 in Proceeding No. 14AL-0258G on May 23, 2014, in which it suspended the effective date of the proposed tariffs attached to Advice Letter No. 269 and referred the matter to an Administrative Law Judge (ALJ) for an evidentiary hearing on the proposed tariffs and for a Recommended Decision.

5. Staff then filed a Notice of Intervention and Request for Hearing on the proposed tariffs. No other party intervened in the proceeding.

6. Subsequently, on June 30, 2014, SourceGas filed a Motion to Withdraw Advice Letter No. 269, which was granted by Interim Decision No. R14-0748, issued July 1, 2014.

7. According to A M Gas, the contention of SourceGas is that by the filing of Advice Letter No. 269, it has complied with the terms of the Stipulation, despite the fact that it later withdrew that advice letter.

8. A M Gas argues that under the terms of the Stipulation, SourceGas was required to file the advice letter and to prosecute that advice letter through a Commission Decision. Simply filing an advice letter does not relieve SourceGas of its responsibility under the terms of the Stipulation according to A M Gas. Further, A M Gas asserts that to read the Stipulation in that manner renders the Stipulation meaningless as to SourceGas' obligations under Section II.G.3.

9. A M Gas represents that it has spoken to SourceGas on several occasions and believes that SourceGas takes the position that because A M Gas did not intervene in the Advice Letter No. 269 proceeding (14AL-0258G) A M Gas therefore waived its ability to enforce the Stipulation on storage rates. A M Gas argues that it waived none of its rights related to the Stipulation by not intervening in Proceeding No. 14AL-0258G.

10. Finally, A M Gas makes the point that as a contract, the Stipulation was subject to the covenant of good faith and fair dealing. The only fair reading of the Stipulation, according to A M Gas is that SourceGas was to prosecute the advice letter to a final decision. A M Gas argues that any other reading results in an absurd outcome. As a result, A M Gas requests that SourceGas be required to adhere to the terms of the Stipulation and file a new advice letter.

11. On October 20, 2014, SourceGas filed its response to the A M Gas Motion. SourceGas takes issue with the characterization by A M Gas of SourceGas' Advice Letter No. 269 filing as "any old thing." SourceGas describes the analysis it conducted prior to filing the advice letter.

12. SourceGas also argues that A M Gas' Motion is a collateral attack on a Commission Decision. SourceGas takes the position that the Stipulation merely required it to file an advice letter that proposed zoned storage rates, and nothing in the Stipulation specifically states that SourceGas is required to prosecute the advice letter it was required to file. Rather, SourceGas maintains that had A M gas wanted to advocate a position on the issue regarding Advice Letter No. 269, it should have intervened in that proceeding.

13. SourceGas also takes the position that A M Gas waived its right to advocate its position regarding zoned storage rates by failing to intervene in the Advice Letter No. 269 proceeding. SourceGas views the Motion as an attempt by A M Gas to negotiate its position on zoned storage rates which was precluded when Decision No. R14-0748 was issued granting SourceGas' request to withdraw Advice Letter No. 269.

II. FINDINGS

14. The claims asserted by SourceGas in its response to A M Gas' Motion are extraordinary and a matter of first impression for this Commission. Importantly, SourceGas' assertions implicate fundamental issues that may have significant consequences on the validity of the Stipulation approved by Decision No. R14-0748.

15. The most fundamental elements of contract law are implicated when the specter of ambiguity arises in an agreement. It is nearly axiomatic that whether a provision contained within an integrated agreement is ambiguous is a question of law to be determined by the trier of fact. 4 S. Williston, *A Treatise on the Law of Contracts* § 601 (W. Jaeger ed. 1961); Restatement of the Law (Second), Contracts § 212 The American Law Institute (1981); *see also*, *Pepcol Manufacturing Co. v. Denver Union Corporation*, 687 P.2d 1310 (Colo. 1985).

16. Because it must be determined whether the remaining signatories to the Stipulation attached the same meaning to Section II.G.3 as SourceGas, each party's attorney will be required to attend this hearing in order to make certain determinations regarding A M Gas' Motion and the claims raised by SourceGas in its response. This includes, in addition to A M Gas and SourceGas, attorneys for, Rocky Mountain Natural Gas, LLC; Staff of the Commission; the Colorado Office of Consumer Counsel; and, Seminole Energy Services, LLC.¹

17. The attorneys will be prepared to answer questions regarding each party's intention in reaching agreement on Section II.G.3, as well as any other questions pertinent to the positions taken by A M Gas and SourceGas in order to address whether the provision is ambiguous.

III. ORDER

A. It Is Ordered That:

1. A hearing on the Motion to Enforce is scheduled as follows:

DATE: December 10, 2014

TIME: 10:30 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

¹ The penultimate sentence of Section II.G.3 provides that "[i]n addition to SourceGas Distribution, the remaining Settling Parties agree to this resolution and to support such advice letter or application in concept." This provision requires all signatory parties to the Stipulation to be in attendance at this hearing.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director