

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0284G

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING IT TO PUT INTO EFFECT A SYSTEM SAFETY AND INTEGRITY RIDER.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MOTION TO INTERVENE, SCHEDULING
REMOTE EVIDENTIARY HEARING, AND
ESTABLISHING PROCEDURES AND DEADLINES**

Mailed Date: August 31, 2020

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I. STATEMENT AND BACKGROUND

1. On June 26, 2020, Colorado Natural Gas (CNG) filed its Verified Application (Application) for approval of a System Safety and Integrity Rider (SSIR) with testimony and exhibits. The Commission gave public notice of the Application on June 29, 2020, and, at the same time, set the intervention deadline for 30 days after the date of the public notice. Notice of

Application Filed (Notice), 1. The Notice also allows Public Utilities Commission Trial Staff (Staff) to file an intervention within 7 days after the 30-day intervention deadline expires. *Id.*

2. On July 30, 2020, Staff filed its Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing. Staff requests a hearing to address several issues laid out in its Intervention.

3. During its weekly meeting held on August 12, 2020, the Commission referred the matter to an Administrative Law Judge (ALJ) for disposition. At the same weekly meeting, the Commission discussed the forward movement of this proceeding. The Commission issued a detailed written decision on August 19, 2020 outlining its findings, conclusions, and orders from its August 12, 2020 weekly meeting. Decision No. C20-0610-I. The Commission directed the ALJ to address what information CNG must present to justify costs eligible for recovery for its SSIR projects, in consideration of, but not limited to:

- Long range planning costs and schedules;
- Project locations and costs;
- Project schedules;
- The number of customers downstream of each improvement;
- The age of the affected asset and the original expected life of the affected asset (*e.g.*, an asset being replaced); Changes to system capacity resulting from the project; and
- The transparent identification and evaluation of viable alternatives.

Id. at 7-8. The same Decision states that the Application is deemed complete as of August 13, 2020.

4. On August 13, 2020, the Office of Consumer Counsel (the OCC) filed an Unopposed Motion for Late-Filed Intervention, Its Intervention and Entry of Appearance of the Colorado Office of Consumer and Request for Waiver of Response Time (OCC's Motion or Intervention). The OCC's Motion seeks permission to intervene in this matter, and acknowledges that its Intervention is late. OCC's Motion, 2. As its title implies, the Motion states that it is unopposed. *Id.* at 1.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS.

A. The OCC's Intervention.

5. The OCC submits that its Intervention was filed late due to excusable neglect. Specifically, the OCC explains that the responsible OCC staff was out of the office for medical reasons when the Notice of the Application was issued. OCC's Motion, 2. When the responsible OCC staff member returned to the office, this filing was overlooked. The OCC first became aware of the filing on August 12, 2020 during the Commission's weekly meeting when it discussed this matter. *Id.* Based on the foregoing, the ALJ concludes that the OCC's Intervention was filed late due to excusable neglect. Given that no party opposes the OCC's request that its late Intervention be accepted, the ALJ finds that no prejudice will result from accepting it. For all these reasons, the ALJ concludes that the OCC has established good cause to accept its late Intervention. The OCC's Intervention is accepted, and it will be permitted to intervene in this matter.

B. Commission's Decision Referring Matter, Need for Additional Information, Extension of Statutory Deadline, and Timing of Hearing.

6. Given the directives in Decision No. C20-0610-I and additional questions the ALJ has identified, CNG will be required to provide the following information:

- Identify the chronology and specific timing for when the costs proposed to be recovered under the SSIR will be incurred;
- Identify the chronology and specific timing for proposed cost recovery for each year, and which periods of time each of the proposed November 1 and April 1 filings will address;
- Explain whether the proposed costs that the SSIR will recover in 2021 will be only those costs incurred in 2020, or both the costs incurred in 2020 and forecasted to be incurred in 2021 and why; if neither, explain;
- Clarify whether the April 1, 2021, filing contemplated in Exhibit MSK-1 will examine the costs incurred only in 2020;
- Explain when and how CNG will compare the collected SSIR revenues to the costs incurred;
- Assuming that a final Commission decision will not issue until April 20, 2021, explain how the timing of such an order will affect CNG's planned cost recovery in 2020 and the planned April 1, 2021, filing;
- Explain the long range planning costs and schedules for future SSIR projects and how CNG intends to return to the ordinary course of business after the expiration of the SSIR program;
- Identify and describe the SSIR projects' locations and costs;
- Explain and describe the specific SSIR project schedules;
- Identify the number of customers that receive gas downstream of each of each SSIR project;
- For each asset being replaced under the SSIR projects, describe the age of the affected asset, and the original expected life of the affected asset;
- Identify, explain, and justify any SSIR project that changes the system's capacity;

- Identify, describe, and evaluate viable alternatives to the SSIR projects; and.
- Provide any other information necessary to explain answers to the above and the items.

7. Given the need for additional information from CNG, the ALJ is establishing a procedural schedule that will allow CNG to submit supplemental direct testimony addressing the identified matters, and will allow the parties to respond to it through answer testimony. For the same reasons, the ALJ finds that additional time is necessary for the Commission to issue a final decision in this matter; as such, the ALJ will extend the statutory deadline by 130 days as permitted by § 40-6-109.5(1), C.R.S. The new statutory deadline for a final Commission decision is April 20, 2021.

8. Even so, given the nature of this matter, the issues the Commission wishes to address, and scheduling difficulties and conflicts in the coming months, it remains challenging to move this matter to a final decision by the statutory deadline. For example, numerous hearings involving many of the same parties and Commission advisors in this proceeding are scheduled for mid-December 2020. *See e.g.*, Proceeding Nos. 20A-0226E (12/7-8 hearing); 20AL-0220G (CNG Tariff, 12/10 hearing); and 20A-0268E (12/15-16 hearing). Holidays near the end of the year present additional scheduling challenges, making it unworkable to schedule a hearing between December 14 and 31, 2020. Scheduling a hearing in January 2021 or later does not provide the ALJ with enough time to draft and issue a recommended decision within a timeframe that will permit the Commission to meet the statutory deadline. For all of these reasons, rather than scheduling a prehearing conference to establish a hearing date and procedural schedule, the ALJ will do so in this Decision. This reduces the potential for losing additional time had the ALJ scheduled a prehearing conference in order to set a hearing and procedural schedule.

9. For the same reasons discussed above, the hearing will be scheduled for December 3, 2020.¹ The parties may submit an unopposed motion should they believe that an additional day of hearing is necessary. The ALJ has reserved December 4, 2020 as a potential second hearing date, and will hold that date for ten days after this Decision is issued to allow the parties to submit a filing requesting that additional hearing date. If the parties do not submit such a filing, the date will be released and may not be available.

C. Impact of COVID-19 on Hearing.

10. Due to the COVID-19 pandemic, in-person hearings at the Commission's offices are currently not permitted. By way of background, on March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. Executive Order D-2020 003. Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted. Based on all of this, the ALJ finds that at this time, it is in the parties' interests to plan and prepare for a remote video-conference

¹ Should the parties wish to push the hearing further out than December 4, 2020, a waiver of the statutory deadline for a final Commission decision must be provided because, as explained, a hearing later in December is unworkable, and a hearing after January 1, 2021 will threaten the Commission's ability to issue a final decision by the statutory deadline.

evidentiary hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19.

11. This Decision and Attachments A and B hereto includes requirements to facilitate holding the hearing remotely using electronic exhibits. These requirements are intended to ensure that the remote evidentiary hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the evidentiary hearing through GoToMeeting, and Attachment B includes requirements relating to exhibits. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

12. This Decision also includes additional requirements relating to exhibits that are intended to ensure the hearing goes smoothly. For example, the ALJ is setting a deadline to file and serve exhibits, in addition to deadlines to file and serve written testimony and attachments. The ALJ acknowledges that in proceedings like this, parties often use written testimony and attachments as their exhibits. But parties also often offer other exhibits that may not be included as an attachment to written testimony. To ensure that all parties have full disclosure of such exhibits, and that the hearing may proceed without unnecessary delay caused by parties who fail to pre-file all exhibits they intend to introduce, parties will be required to file and serve all exhibits they intend to introduce into evidence during the hearing. This *explicitly includes* filing exhibits that parties intend to use on cross-examination. But, the parties are not required to pre-file exhibits that may be used *solely* for impeachment, to refresh recollection, or for rebuttal. Parties seeking to admit exhibits that are not pre-filed for impeachment or to refresh recollection

must establish that the exhibits are being used for those purposes. Otherwise, the exhibits may not be admitted based on the parties' failure to pre-file the exhibits as required by this Decision.

13. The Commission will use the web-hosted video conferencing service GoToMeeting to hold the remote evidentiary hearing. Video-conference participation allows for evidence to be presented in a manner most similar to that which occurs during in-person hearings. For example, participating by video-conference allows parties and witnesses to view and display exhibits on the video-conference screen while the exhibits are being testified to and offered into evidence. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.²

III. ORDER

A. It Is Ordered That:

1. The Office of Consumer Counsel's (the OCC) Intervention filed August 13, 2020, is accepted; the OCC is a party to this proceeding.

2. Consistent with the above discussion, the statutory deadline for a final Commission decision to issue is extended by 130 days to April 20, 2021.

² The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

3. A remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: December 3, 2020
TIME: 9:00 a.m.
METHOD: Join by video-conference online at the meeting link to be sent to parties before the hearing.

4. The parties are responsible for sharing the GoToMeeting Link, access, and ID code to witnesses and others participating in the hearing. Participants in the hearing may not distribute the GoToMeeting link, access, or ID code to anyone not participating in the hearing. Unless otherwise ordered, the parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations, consistent with the requirements of this Decision.

5. All participants must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

6. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties must ensure that they and their witnesses are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using GoToMeeting.

7. **Written Testimony Deadlines.** Colorado Natural Gas Inc. (CNG) must file and serve supplemental direct testimony by September 18, 2020 providing the additional information described in ¶ 6 on pages 4 and 5 of this Decision. The OCC and Colorado Public Utilities Commission Trial Staff must file and serve answer testimony by October 16, 2020 and

cross-answer testimony by October 23, 2020. CNG must file and serve rebuttal testimony by November 16, 2020.

8. Corrections, Modifications, and Amendments to Exhibits.

a. The parties may make corrections to exhibits, including written testimony and attachments, without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical errors. Corrections do not include material or substantive changes. Material or substantive changes to a hearing exhibit or attachment amount to amending or modifying such documents. Any party wishing to amend or modify an exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

b. On or by November 23, 2020, the parties must file and serve any corrected, modified, or amended written testimony and attachments. Such filings must comply with the specific requirements in Attachment B.

9. Joint Witness Testimony Matrix. On or by November 23, 2020, the parties must submit a joint witness testimony matrix listing all the witnesses the parties anticipate will testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called.

10. Deadline for Final Hearing Exhibits, Hearing Exhibit Lists, and Witness Lists. The parties must file and serve final versions of hearing exhibits, hearing exhibit lists, and witness lists by November 23, 2020. Written testimony and attachments which have already been filed consistent with the above deadlines do not need to be filed again, but must be included on

hearing exhibit lists. Parties are also not required to pre-file and serve hearing exhibits which will be used solely for impeachment, to refresh recollection, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

11. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number and the title of each hearing exhibit and provide a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing.

12. **Prehearing Motions.** The parties must file and serve any pre-hearing motions by November 27, 2020.

13. **Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by November 30, 2020.

14. **Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file a statement of position by December 14, 2020.

15. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director