

Decision No. R20-0766-I

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
PARTIALLY GRANTING UNOPPOSED
MOTION TO MODIFY PROCEDURAL SCHEDULE**

Mailed Date: October 30, 2020

I. STATEMENT AND BACKGROUND

1. Only the procedural history necessary to understand this Decision is included. Colorado Natural Gas Inc. (CNG) initiated this matter by filing the above-captioned Application on June 26, 2020.

2. The Colorado Public Utilities Commission Trial Staff (Staff) and the Office of Consumer Counsel (OCC) are the only interveners in this matter.

3. On August 31, 2020, the Administrative Law Judge (ALJ) scheduled the matter for an evidentiary hearing for December 3, 2020, established a procedural schedule and process for conducting the hearing, and identified the information that CNG must present (per Commission Decision No. C20-0610-I) through supplemental direct testimony. Decision No. R20-0633-I. CNG's supplemental direct testimony was originally due on September 18, 2020. *Id.* The ALJ ordered that the hearing would be held by video-conference, with exhibits presented electronically. Due to this, the ALJ also established detailed procedures relating to the

formatting and filing of exhibits to facilitate the smooth presentation of electronic exhibits during the hearing.

4. On September 17, 2020, the ALJ *sua sponte* modified the deadline to file cross-answer testimony. Decision No. R20-0666-I. That same day, CNG filed an Unopposed Motion to Modify the Procedural Schedule, which the ALJ granted on September 22, 2020. Decision No. R20-0681-I.

5. Under the latest procedural schedule, CNG's supplemental direct testimony was due October 2, 2020, and Staff's and the OCC's answer testimony is due on October 30, 2020. *Id.* In addition, the ALJ vacated the December 3, 2020 hearing and all other deadlines, and ordered the parties to file a proposed procedural schedule, including a hearing date and deadlines for other filings by November 6, 2020. That Decision did not modify the formatting and filing requirements for exhibits detailed in Decision No. R20-0633-I and the attachments thereto. *Id.*

6. On October 2, 2020, CNG filed supplemental direct testimony and attachments for two witnesses, Harry Di Domenico and Stanwood Given. Then on October 7, 2020, CNG filed revised supplemental direct testimony for both witnesses with attachments, including executable attachments.

7. On October 23, 2020, CNG filed an Unopposed Motion to Modify the Existing Procedural Schedule and for Waiver of Response Time (Motion). The Motion states that after CNG filed its supplemental direct testimony, it had discussions with Staff that lead it to determine that it should adjust its initial proposal from a three-year System and Safety Integrity Rider (SSIR) plan to a five-year plan. CNG proposes that it file another round of supplemental direct testimony by November 12, 2020 describing these changes and the reasons it seeks to adjust the proposed plan. CNG proposes that answer testimony be due on December 11, 2020,

and that the deadline for the parties to submit a proposed hearing date and procedural schedule for remaining deadlines be extended to November 20, 2020. The Motion states that it is unopposed, and for that reason, asks that the response time to it be waived.

8. Because the Motion is unopposed, the ALJ will waive the response time to it. *See* Rule 1400(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. The ALJ finds that the Motion establishes good cause for the requested relief. Except for the proposed deadlines for additional supplemental direct testimony and answer testimony, the ALJ will grant the Motion. The ALJ is setting deadlines for additional supplemental direct testimony and answer testimony slightly further out than proposed, to allow additional time for CNG to comply with the items discussed below.

9. The ALJ is concerned that CNG's multiple supplemental direct testimony and attachment filings do not comply with the filing, formatting, and identification requirements in Attachment B to Decision No. R20-0633-I. While Decision No. R20-0681-I vacated the hearing date and other deadlines, it did not vacate or otherwise relieve the parties from complying with the requirements in Decision No. R20-0633-I and the Attachments thereto which are unrelated to deadlines and the hearing date. Indeed, the majority of the requirements directly relate to exhibits, especially including written testimony exhibits and attachments. The requirements are designed to ensure that the parties are able to present exhibits electronically during the hearing in an efficient, effective, and clear manner. The requirements also aim to avoid confusion as to which exhibits are the most current, which exhibits have been modified or corrected, which documents are attachments to exhibits (as opposed to separate and independent exhibits), and ultimately which exhibits should be included in the hearing spreadsheet for use during the hearing. The ALJ implemented the same requirements used in other hearings where exhibits are

presented electronically, specifically because these requirements have proven successful in achieving their desired result.

10. Through its supplemental direct testimony and attachments, CNG followed many of those requirements, but not all of them. There are so many instances where CNG failed to follow the relevant requirements that it is simply unworkable to allow matters to remain as they currently stand. This is particularly the case given that this Decision authorizes additional supplemental direct testimony.

11. A few examples of CNG's errors include failing to correctly mark attachments to testimony for identification and to correctly title those attachments in the Commission's E-filing System when filing them.¹ As laid out in detail in Attachment B to Decision No. R20-0633-I, "[a]nything accompanying pre-filed written testimony within a hearing exhibit . . . must be referred to as an 'attachment' to the testimony and identified by the designated hearing exhibit number, the witness's initials, and a number sequence." Attachment B to Decision No. R20-0633-I, at ¶16. The example provided for this should leave no doubts as to what this means, "[f]or example, if the party assigned block 300 files answer testimony of Albert B. Cooke that includes a table as Attachment ABC-1, then the title of the table will be "'Hearing Exhibit 300, Attachment ABC-1.'" *Id.* CNG did not follow this identification format for all of its attachments to written testimony. *See e.g.*, "Exhibit HCD-1" filed on October 2, 2020 (marked for identification as "Hearing Exhibit 104, Exhibit HCD-1 Rev.1.").

12. When filing attachments, CNG built upon its identification errors. Decision No. R20-0633-I requires that when filing exhibits and attachments thereto, "parties must title the

¹ The ALJ does not provide a full and complete description of every error that CNG made with its filings, but instead only provides examples.

exhibits to match the title of the hearing exhibit.” Attachment B to Decision No. R20-0633-I, ¶ 17. CNG did not do this. Even where CNG correctly marked an exhibit or attachment for identification, it failed to ensure that the title it entered into the Commission’s E-Filing System matched the title on the document. For example, the entry in E-Filings for “Harry Di Domenico Supplemental Testimony” and “Exhibit HCD-1” (filed on October 2, 2020) does not match the titles used to mark those documents for identification. Later revisions to Mr. Di Domenico’s Supplemental Direct Testimony suffer from similar problems, and also add to them by failing to comply with the requirements relating to corrected, modified, or revised testimony. *See* ¶¶ 24-27 of Attachment B to Decision No. R20-0633-I.

13. There are other errors, such as the filing made on October 2, 2020 titled in the Commission’s E-Filing System as “Exhibit HCD-1,” which includes two different identification references, to wit, one identifying it as Attachment JTC-2 and one identifying it as Hearing Exhibit 104, Exhibit HCD-1 Rev. 1.

14. CNG’s failure to follow the identification, formatting, and filing requirements for exhibits and attachments has already created confusion and will most certainly create obstacles to the smooth functioning of the evidentiary hearing, especially given the additional supplemental direct testimony authorized by this Decision. For all these reasons, the ALJ will require CNG to correct its errors and refile all of its written testimony and attachments, as explained below.²

² This includes the initial direct testimony filed with the Application, except that CNG may continue to use the hearing exhibit numbers (starting with Hearing Exhibit 1) that currently exist on those documents rather than using its assigned hearing exhibit number block. Otherwise, the direct testimony and attachments must be refiled in accordance with the requirements of Attachment B to Decision No. R20-0633-I.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Colorado Natural Gas Inc.'s (CNG) Unopposed Motion to Modify the Existing Procedural Schedule and for Waiver of Response Time (Motion) filed on October 23, 2020 is partially granted. CNG is authorized to file additional supplemental direct testimony addressing the issues identified in its Motion.

2. In order to minimize confusion that may be caused based on multiple supplemental direct testimony filings, for each witness who has already submitted supplemental direct testimony for whom CNG seeks to provide additional supplemental direct testimony authorized by this Decision, **on or by November 16, 2020**, CNG must: file supplemental direct testimony and attachments that captures all of the prior supplemental direct testimony already filed (as corrected through the most recent filings) *and* the additional testimony authorized by this Decision *in a single written testimony submission*. All the attachments must be refiled with the new supplemental direct testimony. All such filings must comply with the requirements in Attachment B to Decision No. R20-0633-I, except for the requirements relating to revised, modified, or corrected exhibits and attachments in ¶¶ 24-27 of Attachment B to that Decision.

3. If CNG does not provide additional supplemental direct testimony authorized by this Decision through a witness who has already submitted supplemental direct testimony, **on or by November 16, 2020**, CNG must refile the most recent version of its witnesses' supplemental direct testimony and attachments. All such filings must comply with the requirements in Attachment B to Decision No. R20-0633-I, except for the requirements relating to revised, modified, or corrected exhibits and attachments in ¶¶ 24-27 of Attachment B to that Decision.

4. If CNG offers supplemental direct testimony authorized by this Decision from witnesses who have not already provided supplemental direct testimony, **on or by November 16, 2020**, it must file such supplemental direct testimony and attachments thereto. All such filings must comply with the requirements in Attachment B to Decision No. R20-0633-I.

5. Answer testimony and attachments thereto must be filed **on or by December 14, 2020**.

6. The parties are reminded that, except for aspects of Decision No. R20-0633-I and the attachments thereto relating to the vacated hearing and deadlines, or as otherwise noted above, the requirements in Decision No. R20-0633-I and attachments thereto remain in full force and effect. The parties must pay special attention to ensure that their exhibit filings comply with the identification, filing, and formatting requirements in that Decision and attachments thereto. Parties who fail to do this will be required to refile their exhibits.

7. **On or by November 20, 2020**, the parties must submit a proposed procedural schedule and hearing date.

8. 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