

Decision No. R20-0824-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
SCHEDULING HEARING, ESTABLISHING
PROCEDURAL SCHEDULE, STRIKING FILINGS, AND
REQUIRING COLORADO NATURAL GAS
TO MAKE FILINGS**

Mailed Date: December 1, 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. The Colorado Public Utilities Commission Trial Staff (Staff) and the Office of Consumer Counsel (OCC) are the only interveners in this matter.

2. The Commission referred this matter to an Administrative Law Judge (ALJ) on August 19, 2020. Since then, the ALJ: scheduled a hearing; established a procedural schedule with detailed requirements relating to exhibits and attachments; modified and vacated deadlines twice per the parties' requests; vacated the hearing per the parties' request; ordered the parties to submit a proposed procedural schedule with hearing dates; reminded the parties that the requirements for exhibits and attachments in Decision No. R20-0633-I remain in full force and effect; and ordered CNG to refile exhibits and attachments which do not comply with Decision No. R20-0633-I and the attachments thereto. Decision Nos. R20-0633-I issued August 31, 2020; R20-0666-I issued

September 17, 2020; R20-0681-I issued September 22, 2020; and R20-0766-I issued October 30, 2020.

3. Under the latest procedural schedule, by November 16, 2020, CNG was required to: refile exhibits and attachments that do not comply with the requirements of Decision No. R20-0633-I and Attachment B thereto; and to file supplemental direct testimony and attachments revised to include proposed changes to its plan. Decision No. R20-0766-I. In addition, a joint proposed procedural schedule with hearing dates was due by November 20, 2020, and Answer Testimony is due by December 14, 2020. *Id.*

4. On November 17, 2020, CNG refiled exhibits and attachments.

5. On November 20, 2020, CNG filed a “Notice of Filing of Proposed Procedural Schedule, Unopposed Motion to Change Filing Date for Answer Testimony, and Request for Waiver of Response Time,” (Motion). The Motion proposes the following procedural schedule: answer testimony and attachments due January 8, 2021; rebuttal and cross-answer testimony and attachments due January 29, 2021; settlement agreements, corrections to exhibits and attachments due February 5, 2021; evidentiary hearing on February 16 and 17, 2021; and statements of position due March 8, 2021. Motion, at ¶ 3. The Motion also states that the parties agreed that the response time for discovery related to answer testimony will be shortened to five calendar days, so long as discovery requests are not served on a Friday. *Id.* at ¶ 5. The Motion also states that it is unopposed, and for that reason, it requests that the response time to it be waived. *Id.* at ¶ 4.

6. 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* (CCR) 723-1. The ALJ approves the proposed procedural schedule, and hearing dates. In order to minimize the potential that parties will have a conflict with the second day of hearing

due to the Commission's weekly meeting, the hearing will start at 10:00 a.m. The ALJ is also establishing deadlines for other filings, such as prehearing motions, a joint witness testimony matrix, and final exhibits.

7. For the same reasons discussed in Decision No. R20-0633-I, the hearing will be held remotely, by video-conference using GoToMeeting.

8. As noted in Decision No. R20-0766-I, CNG's exhibits and attachments failed to comply with numerous requirements in Decision No. R20-0633-I and Attachment B thereto. For that reason, CNG was ordered to refile exhibits and attachments that did not comply with those requirements and to ensure that any other exhibits and attachments that it files complies with those requirements. Despite this, many of the exhibits and attachments that CNG filed on November 17, 2020 fail to comply with Decision No. R20-0633-I and Attachment B thereto.¹

9. From the start, the ALJ explained that the hearing would be held by video-conference, and that to facilitate the remote hearing, all exhibits would be presented electronically. Decision No. R20-0633-I, ¶¶ 10-13. The ALJ explained that before the hearing, Commission support staff will provide the parties a linked spreadsheet identifying each pre-filed hearing exhibit as it exists in the administrative record and that during the hearing, Commission support staff will display pre-filed electronic filings using this spreadsheet. *Id.* To ensure that Commission support staff is able to identify which pre-filed electronic exhibits should be included in the spreadsheet, and to ensure that staff is able to display the correct exhibits and navigate them during the hearing, the ALJ established detailed procedures relating to the formatting and filing of exhibits. Decision No. R20-0633-I, ¶¶ 10-13, and Attachment B thereto.

¹ The ALJ notes that CNG's exhibit and attachment filings were made one day after the November 16, 2020 deadline and were not accompanied by a motion to accept the late-filed exhibits. This Decision renders that failure moot.

10. As mentioned, CNG's November 17, 2020 exhibits and attachments include numerous errors. For example, nearly all the attachments to Hearing Exhibit 105 are incorrectly marked and titled. Specifically, Hearing Exhibit 105 is the Supplemental Direct Testimony of Matthew S. Kaply, but all attachments except for one are marked and titled in E-filings using the initials of different witnesses. Attachments to Hearing Exhibit 105 should have been marked for identification and titled in E-filings (when filed) as "Hearing Exhibit 105, Attachment MSK-[insert sequential attachment number]." Attachment B, ¶ 16 to Decision No. R20-0633-I.

11. Adding to those issues, CNG filed multiple versions of attachments, which are marked and titled in E-Filings identically. This means that without significant investigation, it is not possible to determine which versions of the attachments that CNG intends to offer into evidence, and therefore, which versions that OCC and Staff should focus on in preparing their testimony. For example, CNG filed multiple versions of Hearing Exhibit 105, Attachments SG-2 Rev. 2, Attachments HCD-1 Rev. 2 through Attachments HCD-3 Rev. 2, and Attachments HCD-6 Rev. 1. In some instances, the versions include minor, non-substantive differences while in others, the differences are substantial. *See e.g.*, two versions of Hearing Exhibit 105, Attachment HCD-3 Rev. 2 and two versions of Hearing Exhibit 105, Attachment HCD-1 Rev. 2, all filed on November 17, 2020.

12. CNG also entered the identical title for four attachments when filing them in the Commission's E-filing System. Specifically, CNG filed four documents that it titled in E-filings as Hearing Exhibit 105, Attachments HCD-1 Rev. 2. Two of those documents are marked for identification as titled in E-Filings while two are marked for identification as Hearing Exhibit 105, Attachments HCD-2 Rev. 2.

13. There are other less significant errors with CNG's filings. For example, CNG's executable and confidential attachments to exhibits are incorrectly marked and titled in E-Filings. *See* Attachment B, ¶¶ 17, 22-23, and 34-46 to Decision No. R20-0633-I. As explained in Attachment B to Decision No. R20-0633-I, the title of an executable attachment must mirror the title identifying the pre-filed version and include the word "Executable" after the hearing exhibit number. *See* Attachment B, ¶¶ 17, and 22-23 to Decision No. R20-0633-I. Thus, for example, the executable version of CNG's Hearing Exhibit 104, Attachment HCD-2 Rev.1 should be marked for identified and titled in E-Filings as "Hearing Exhibit 104, Executable Attachment HCD-2 Rev. 1" *Id.* And, confidential exhibits and attachments must be pre-marked for identification by the same hearing exhibit number within the assigned block with a "C" following the number of the hearing exhibit or attachment. *See* Attachment B, ¶¶ 17 and 34-46 to Decision No. R20-0633-I. Thus, for example, the confidential version of CNG's Hearing Exhibit 102, Attachment HCD-1 should be marked and titled in E-Filings as "Hearing Exhibit 102, Attachment HCD-1C." CNG consistently failed to do this.

14. The ALJ understands that there are numerous requirements relating to exhibits and attachments and that this may have contributed to CNG's repeated failure to follow the requirements. However, none of these requirements are new. These are the same requirements that the Commission has used for years when conducting a hearing using electronic exhibits. At this point, CNG should already be familiar with the requirements and should have no difficulty complying with them. But, this requires more attention to detail.

15. The ALJ is always hesitant to require parties to re-file exhibits and attachments, as this requires parties to expend additional resources redoing work. The ALJ is especially reticent to do so given that CNG has already been ordered to do this once. If CNG's errors were limited to

less significant errors, such as marking a confidential or executable exhibit incorrectly, the ALJ would not order CNG to refile the exhibits. But, that is simply not the case here. The nature of CNG's errors create significant confusion that will disrupt the smooth function of the hearing and may cause the OCC and Staff to respond to the wrong exhibits and attachments in their answer testimonies. The issues also creates confusion or problems for the administrative record in this proceeding. These problems are substantial enough that they cannot be overlooked. As such, to eliminate or reduce confusion in the administrative record, the ALJ will strike all of CNG's exhibit and attachment filings made after June 27, 2020.² In addition, except as noted below, CNG will be ordered to refile any exhibits and attachments which fail to comply the requirements relating to exhibits and attachments, including the exhibits or attachments filed with its Application.³ Those requirements are restated in Attachment B to this Decision.

16. To minimize additional confusion, CNG will only be required to refile the versions of an exhibit or attachment which it intends to offer into evidence. Thus, for example, if CNG filed multiple revised versions of an exhibit or attachment, CNG must only refile the version of the exhibit or attachment which it intends to offer into evidence, which presumably, should be the most recently filed version. Put differently, if CNG revised an exhibit twice, it does not need to refile the original exhibit and first revised exhibit; instead, CNG will refile the second revised version only. But, CNG must ensure that it correctly marks and titles that exhibit or attachment in E-Filings to include the revision number. For the same reasons, when refiling revised exhibits,

² This is the day after CNG filed its Application and exhibits. Thus, the ALJ does not strike CNG's exhibits or attachments filed with its Application.

³ The ALJ has not reviewed CNG's filings to determine whether they fail to comply with other requirements, such as page-numbering each page of an exhibit or attachment, regardless of content. Thus, the ALJ encourages CNG to carefully review each exhibit or attachment to ensure that they comply with *all* requirements for exhibits and attachments before refiling them.

CNG will not be required to follow other requirements relating to revised exhibits or attachments (such as filing a red-lined version or a notice identifying the changes). CNG is only exempt from this requirement for the exhibits and attachments that this Decision requires it to refile. As such, this exemption does not apply to rebuttal testimony and attachments.

17. Finally, given the issues with CNG's filings to date, CNG will also be required to make a filing with its refiled exhibits and attachments with a certification that CNG's counsel has reviewed each refiled exhibit and attachment and confirmed that they comply with the requirements of this Decision, and Attachment B hereto.

II. ORDER

A. It Is Ordered That:

1. Colorado Natural Gas Inc.'s (CNG) "Notice of Filing of Proposed Procedural Schedule, Unopposed Motion to Change Filing Date for Answer Testimony, and Request for Waiver of Response Time," (Motion) filed on November 20, 2020 is granted consistent with the above discussion.

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

DATES AND TIMES: February 16, 2021 starting at 9:00 a.m.

February 17, 2021 starting at 10:00 a.m.

METHOD: Join by video-conference online at the meeting link to be sent to parties before the hearing.

3. 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.

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

5. **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.

6. CNG's exhibits and attachments filed on or after June 27, 2020 are stricken from the record.

7. By December 9, 2020, CNG must refile all exhibits and attachments which do not comply with Decision No. R20-0633-I and Attachment B thereto. Except as otherwise stated, CNG must ensure that all of its refiled exhibits and attachments comply with this Decision and Attachment B hereto. Contemporaneous with those filings, CNG must also make a filing described in ¶ 17 above.

8. **Written Testimony Deadlines.** Answer testimony and attachments thereto must file and served by January 8, 2021. Rebuttal and cross-answer testimony must be filed and served by January 29, 2021.

9. **Non-Testimony Exhibit Deadline.** Exhibits which are not written testimony or attachments thereto must be filed and served by February 5, 2021. The parties are 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.

10. 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 February 5, 2021, the parties must file and serve any corrected, modified, or amended exhibits, (including written testimony and attachments thereto). Such filings must comply with the specific requirements in Attachment B.

11. Stipulations and Settlement Agreements. The parties must file and serve stipulations and settlement agreements by February 5, 2021.

12. Joint Witness Testimony Matrix. On or by February 9, 2021, 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.

13. 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 February 9, 2021. Exhibits 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. 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, attachment number, the title of each hearing exhibit, and a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing.

14. **Prehearing Motions.** The parties must file and serve pre-hearing motions by February 10, 2021.

15. **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 March 8, 2021.

16. 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