

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-024SG

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC.
FOR AN ORDER AUTHORIZING COLORADO NATURAL GAS, INC. TO IMPLEMENT
A \$12,000,000 SHELF REGISTRATION FOR DEBT AND EQUITY FINANCING.

**ORDER OF THE COMMISSION
GRANTING APPLICATION**

Mailed Date: February 4, 2004

Adopted Date: February 4, 2004

I. BY THE COMMISSION

A. Procedure and Record

1. Colorado Natural Gas, Inc. (CNG or the Company), a Colorado corporation, filed with the Colorado Public Utilities Commission (Commission) on January 14, 2004, an Application, along with exhibits required under Rule 56 of the *Commission's Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* (CCR) 723-1. The Application seeks an Order from this Commission authorizing CNG to implement a \$12,000,000 shelf registration for debt and equity financing to be utilized by the Company within three years after the effective date of a Commission Order approving the Application. The Application also seeks a waiver of 4 CCR 723-1-56, with regard to the requirement that financial statements accompanying applications, such as CNG has filed in this docket, encompass a reporting period that does not exceed six months before the date of the filing of the application.

2. Notice of this Application was issued by the Commission on January 15, 2004, allowing entities until January 26, 2004 to intervene or participate as a party in this proceeding

and setting this matter for hearing on February 9, 2004. In addition, the Company published a notice of the Application in the legal notices of *The Denver Post* on Thursday, January 15, 2004. An Affidavit of Publication issued by *The Denver Newspaper Agency* was filed with the Commission on January 26, 2004, and reflects that *The Denver Post* is a newspaper of general circulation under Rule 4(b)(1) of the Commission's Rules of Practice and Procedure, 4 CCR 723-

1. No one sought intervention or opposed the granting of the Application.

3. The Company has requested this Commission determine this matter without hearing and on modified procedure. Because no one has intervened in connection with the Application, it is appropriate that this Commission consider this matter in accordance with § 40-6-109(5), C.R.S., and 4 CCR 723-1-24.

B. Findings of Fact

4. CNG is a Colorado corporation qualified to do business within the State of Colorado. Its Articles of Incorporation have been filed with this Commission and it is in good standing with the Colorado Secretary of State. The Company provides gas utility service to various areas in the State of Colorado. The Application has been filed in accordance with § 40-1-104, C.R.S., which requires a public utility to obtain the approval of this Commission before it issues securities such as Common Stock or assumes debt.

5. As of the date of the Application, the Company had 10,000,000 shares of Common Stock authorized. As of June 30, 2003, the Company had 1,108,204 shares of Common Stock outstanding.

6. For the 12 months ended June 30, 2003, the Company paid \$279,440 in preferred stock dividends. Of this amount, \$248,472 was paid in cash and \$30,968 was paid in common stock.

7. For the 12 months ended June 30, 2003, the Company's unaudited balance sheets showed \$27,329,486 in net property, plant, and equipment, \$34,006,468 in total assets, \$20,422,217 in long-term debt obligations, and \$12,818,898 in stockholders' equity. The Company cannot currently state how the proposed \$12,000,000 or any part thereof will be divided between equity and debt financing. The Company believes that it is important to maintain the flexibility necessary to allow it to utilize the most favorable financing option in terms of debt or equity at a particular time.

8. The purpose of the Application is to obtain an order authorizing the Company to implement a \$12,000,000 shelf registration for debt and equity financing to be utilized by the Company within three years after the effective date of a Commission Order approving the Application. The Company indicates that proceeds from such debt and/or equity financings are to be used primarily to finance certain expansion projects for which CNG received Certificates of Public Convenience and Necessity from the Commission in Docket Nos. 03A-326G, 03A-150G, 00A-507G, and 99A-313G. The Application also provides a breakdown of anticipated plant expenditures. The Company states that it may also use a portion of such proceeds for general corporate purposes.

9. The Company represents that any debt or equity securities issued under the proposed shelf registration will be offered under an exemption from the Securities and Exchange

Commission (SEC). Accordingly, the issuance of such securities will not be registered with the SEC.

10. The Company estimates that the aggregate cost associated with the debt and equity shelf registration described in the Application, including legal, administrative, filing, and mailing costs, will be approximately \$850,000.

11. By written consent of the Company's Board of Directors on January 13, 2004, the Board of Directors authorized, among other matters, its proper officers to execute and file the Application or to cause the Application to be filed.

12. The Application contains all of the information required under 4 CCR 723-1-56. We note that the financial statements accompanying the Application relate to the 12-month period ending June 30, 2003, which ending period is 14 days beyond the period required under Rule 56.

13. The Company, and the issuance of debt and equity Securities by the Company, are subject to the jurisdiction of this Commission in accordance with § 40-1-104, C.R.S.

14. The implementation of a shelf registration for debt and equity financing as requested in the Application will be consistent with the provisions of the public utilities law, is for a lawful purpose, and is not inconsistent with the public interest.

15. The Application should be granted and the implementation of a shelf registration for debt and equity financing referenced therein should be authorized and approved.

II. ORDER**A. The Commission Orders That:**

1. The Application of Colorado Natural Gas, Inc., is deemed complete and granted.
2. Colorado Natural Gas, Inc., is hereby authorized to implement a \$12,000,000 shelf registration for debt and equity financing as stated in the Application. The shelf registration shall remain in effect for a period of three years after the effective date of this Order.
3. In the event that the credit rating backing of Colorado Natural Gas, Inc.'s now-existing bonded indebtedness is downgraded to a level that is below investment grade, the authority of Colorado Natural Gas, Inc., to thereafter issue any further securities under this shelf registration without further order or approval of the Commission shall be suspended until such time as the credit rating backing of Colorado Natural Gas, Inc.'s bonded indebtedness is restored to investment grade level. Colorado Natural Gas, Inc., shall notify the Commission immediately of such downgrade and concurrently comport with the suspension in shelf-registration authority. This provision is intended to be self-executing with no additional action of the Commission being necessary in order to effectuate the suspension of authority described. During the period of any suspension, Colorado Natural Gas, Inc., shall be required to make any such filings for authorization and approval of any and all security issuances as may be required under applicable law at the time of such issuance. Any suspension of authorization to issue securities under the shelf registration shall not effect the authorization and validity of any securities issued prior to such suspension.

4. Nothing contained herein shall be construed to imply any recommendation or guaranty of any obligation with regard to Colorado Natural Gas, Inc.'s securities issued pursuant to the shelf registration approved under the Application on the part of the State of Colorado.

5. The February 9, 2004, hearing on this matter is vacated.

6. Colorado Natural Gas, Inc.'s request that the Commission waive the requirement under 4 *Code of Colorado Regulations* 723-1-56, regarding the time period covered by financial statements accompanying applications such as Colorado Natural Gas, Inc.'s Application in this docket is granted.

7. Colorado Natural Gas, Inc., shall immediately report to the Staff of the Commission the occurrence of an event that triggers the suspension of authority described in Ordering Paragraph No. 3 above. In addition, Colorado Natural Gas, Inc., shall report to the Staff of the Commission within 60 days after the issuance of debt and/or equity securities pursuant to the shelf registration authorized herein. Such report shall identify, as applicable, the number of equity shares issued, the amount of any bonds, the principle terms thereof, and the associated costs incurred for the securities issuance under this shelf registration up to that point in time.

8. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 4, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners