

Decision No. R14-0129

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13AL-1355G

IN THE MATTER OF ADVICE LETTER NO. 71 TARIFF NO.2 FILED BY COLORADO NATURAL GAS INC. TO MODIFY THE COMPANY'S NATURAL GAS DISTRIBUTION RATES IN THE EASTERN COLORADO DIVISION RATE AREA, TO BECOME EFFECTIVE JANUARY 20, 2014.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ACCEPTING STIPULATION,
PERMANENTLY SUSPENDING TARIFFS, AND
REQUIRING THE FILING OF NEW TARIFFS**

Mailed Date: February 4, 2014

I. STATEMENT

1. On December 20, 2013, Colorado Natural Gas (CNG) filed Advice Letter No. 71. The purpose of the advice letter was to implement a reduction in distribution rates in its Eastern Colorado Division (ECD) rate area. The change in rates was proposed pursuant to Decision Nos. R13-1090 and C13-1304 in Proceeding No. 13AL-0153G, the Company's recent base rate proceeding.

2. Decision No. R13-1090, issued on September 3, 2013, approved a Stipulation and Settlement Agreement (Rate Case Stipulation) addressing most of the contested issues in the rate case. Paragraphs 30 through 38 of that decision addressed the provisions in the Rate Case Stipulation governing the treatment of the costs of investments CNG intended to make in its ECD by November 1, 2013.

3. In accordance with the approved Rate Case Stipulation, the investment costs that CNG was allowed to recover for upgrades to the ECD facilities was capped at \$2,961,856. However, as the final investment costs through November 1, 2013 were unknown at the time the evidentiary record in Proceeding No. 13AL-0153G was closed, CNG agreed to file a report that would include: (1) bid schedules tied to master service agreements; (2) work orders; (3) change orders authorized between CNG and contractors; (4) invoices from contractors and subcontractors and for material purchased; (5) commissioning documents; and (6) general ledger support for overhead, consistent with CNG's Cost Allocation and Assignment Manual (CAAM). The report was intended to support a new revenue requirement for the ECD rate area if the amount invested in upgrades was less than the \$2,961,856 cap.

4. On December 2, 2013, CNG submitted the compliance report as required by Decision No. R13-1090. Because the reported costs were less than the cap, CNG proposed a negative rate rider to lower rates for customers in the ECD rate area.

5. On December 16, 2013, Staff of the Colorado Public Utilities Commission (Staff) filed a response to CNG's compliance report, objecting to the level of CNG's proposed rate reduction and recommending that rates be reduced further so as not to include certain allocated costs.

6. On January 17, 2014, by Decision No. C14-0062, the Commission set the tariff sheets filed under Advice Letter No. 71 for hearing and suspended their effective date. The Commission also referred the matter to an Administrative Law Judge (ALJ) for a recommended decision.

7. On January 23, 2014, by Decision No. R14-0090-I, the undersigned ALJ scheduled a prehearing conference in the above captioned proceeding for February 11, 2014.

8. On January 24, 2014, Staff of the Colorado Public Utilities Commission (Staff) timely intervened by right in the proceeding. CNG and Staff are therefore the parties in this proceeding.

9. On January 28, 2014, the parties filed a Stipulation and Settlement Agreement (ECD Stipulation). In the ECD Stipulation, the parties state they have resolved the disputed issues in the proceeding.

10. Upon reaching agreement on the issues in the proceedings, the parties now request that the Commission approve the ECD Stipulation and grant CNG relief consistent with the ECD Stipulation.

II. FINDINGS AND DISCUSSION

A. Burden of Proof

11. The parties have the burden of proving by a preponderance of the evidence that the ECD Stipulation is just and reasonable.¹ In reviewing the terms of the ECD Stipulation, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259.

12. Section 40-3-101, C.R.S., contains the standard against which the Commission judges proposed rates and charges: All rates and charges must be "just and reasonable."

In addition, the Colorado Supreme Court lists these factors:

Those charged with the responsibility of prescribing rates have to consider the interests of both the investors and the consumers. Sound judgment in the balancing of their respective interests is the means by which a decision is reached rather than by the use of a mathematical or legal formula. After all, the final test is whether the rate is "just and reasonable." And, of course, this test includes the constitutional question of whether the

¹ Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786 at ¶ 40 & n.23.

rate order "has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation."

Public Utilities Commission v. Northwest Water Corporation, 168 Colo. 154, 173, 451 P.2d 266, 276 (Colo. 1969) (*Northwest Water*) (citations omitted). Further, the Commission must consider whether the rates and charges, taken together, are likely to generate sufficient revenue to ensure a financially viable public utility, which is in both the ratepayers' interest and the investors' interest. Finally, the Commission must consider the ratepayers' interest in avoiding or minimizing rate shock because the monopoly which a utility enjoys cannot be exerted, to the public detriment, to impose oppressive rates. *Northwest Water*, 168 Colo. at 181, 451 P.2d at 279. The Commission balances these factors and considerations when reviewing proposed rates and charges.

B. Terms of ECD Stipulation

13. The ECD Stipulation, attached to this decision as Attachment A, explains that the parties propose a negotiated resolution of the disputed issues in the case. The ECD Stipulation resolves all of the issues which have been raised by CNG and Staff.

14. The parties agree that the actual amount invested in the ECD system was less than estimated in Proceeding No. 13AL-0153G and totaled \$2,285,479. They further agree that CNG shall implement revised distribution rates for all customer classes for the ECD with a reduced distribution rate based upon this investment. The parties agree to reduce the ECD rate area distribution rate from \$0.3360 per therm to \$0.3079 per therm.

15. The parties agree that the ECD Stipulation is just and reasonable and in the public interest and is intended to comply with the provisions of Rule 1408 of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations (CCR) 723-1*.²

C. Findings and Conclusions

16. The ECD Stipulation is just and reasonable, therefore good cause is found to accept the ECD Stipulation without modification.

17. The undersigned ALJ does not find it necessary to hold an evidentiary hearing in the above captioned proceeding.

18. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Stipulation and Settlement Agreement (Stipulation) filed by Colorado Natural Gas Inc. (CNG) on January 28, 2014 and attached to this Decision as Attachment A, is approved without modifications.

2. The prehearing conference scheduled for February 11, 2014 is vacated.

3. The effective date of the tariff sheets filed on December 20, 2013 with Advice Letter No. 71 is permanently suspended.

4. No more than two business days after this Recommended Decision becomes the Decision of the Commission, if that is the case, the Company shall file a new advice letter and

² Rule 1408 states: The Commission encourages settlement of contested proceedings. Any settlement agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. The Commission shall enter a decision approving or disapproving the settlement, or recommend a modification as a condition for approval. Parties are encouraged to provide comprehensive reasoning regarding the terms of a settlement. The Commission may hold a hearing on the motion prior to issuing its decision. An agreement that is disapproved shall be privileged and inadmissible as evidence in any Commission proceeding.

tariff on not less than two business days' notice. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this decision in order to be filed as a compliance filing on shortened notice.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

8. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director