

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0072SG

IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AUTHORIZING A STOCK PLEDGE AND DEBT REFINANCE PURSUANT TO SECTION 40-1-104 C.R.S. AND SECTION 40-5-105 C.R.S.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING OCC'S UNOPPOSED
MOTION FOR LATE-FILED INTERVENTION**

Mailed Date: April 26, 2021

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I. STATEMENT

A. Background

1. On February 9, 2021, Colorado Natural Gas, Inc. (CNG) filed an Application requesting authorization for its parent company, Summit LDC Holdings, LLC (Midco), to refinance and restructure three credit facilities, pursuant to §§ 40-1-104 and 40-5-105, C.R.S.,

and Rules 4002, 4104, and 4105¹ of the Gas Rules, 4 CCR 723-4 (Application). In Proceeding No. 19A-0070SG, the Commission approved CNG's request for a corporate restructuring that resulted in Midco's creation as the direct parent of CNG, and Midco's subsequent pledge of CNG's capital stock as security for the three credit facilities that CNG now seeks permission to restructure in the Application.²

2. On March 3, 2021, the Commission issued Decision No. C21-0122-I that deemed the Application incomplete, vacated the hearing scheduled for March 4, 2021, and extended the deadline for a decision in this proceeding pursuant to Rule 4105(g) of the Commission's Rules Regulating Gas Utilities and Pipeline Operators and § 40-1-104(5), C.R.S., and referred the proceeding to an Administrative Law Judge (ALJ).

3. On March 4, 2021, the ALJ issued Decision No. R21-0127-I that scheduled a remote prehearing conference for March 17, 2021, and ordered the parties to confer regarding a procedural schedule and ordered CNG to file a report of the parties' conferral by March 12, 2021.

4. On March 12, 2021, CNG filed the report of the conferral by the parties, which resulted in a proposed schedule agreed to by the parties (Consensus Schedule).

5. On March 16, 2021, the ALJ issued Decision No. R21-0159-I that, among other things, established a prehearing schedule based on the Consensus Schedule, scheduled the hearing for May 18, 2021, and vacated the remote prehearing conference.

¹ 4 *Code of Colorado Regulations* (CCR) 723-4.

² Decision No. C19-0195 issued in Proceeding No. 19A-0070SG on February 22, 2019.

6. On March 26, 2021, the parties filed a Joint Motion for Partial Suspension of Procedural Schedule and Waiver of Response Time (Joint Motion). In the Joint Motion, the parties state that they

have engaged in preliminary settlement discussions . . . and believe that negotiation may be the best way to explore and resolve the issues in this case with the minimum expenditure of time and resources. . . . The partial suspension of the procedural schedule will give the Parties time to seek a resolution of the issues in this proceeding and to reach a settlement, and if settlement is successful, afford the ALJ an opportunity to hear expert witness testimony about the settlement on May 18, 2021. . . . The Parties propose to report the progress of those settlement discussions to the ALJ on or before April 9, 2021. If settlement appears unlikely to succeed, the Parties' report will propose a procedural path forward so the case can still be adjudicated.³

7. On April 9, 2021, the parties filed the status report (Status Report) promised in the Joint Motion. In the Status Report, the parties stated that they have engaged in settlement discussions and that the discussions remain ongoing. Because the discussions have not yet yielded a settlement agreement, the parties proposed to revise the prehearing schedule and shorten discovery response time, but keep the date of the hearing. CNG filed with the Status Report: (a) "a term sheet reflecting the anticipated scope of its proposed refinancing;" (Term Sheet); and (b) "a resolution of its Board of Directors" (Board Resolution).⁴ While CNG stated that Commission Staff (Staff) had not reviewed the Term Sheet or Board Resolution before their filing with the Status Report and would file a document "opin[ing] whether CNG's new documents provide the missing information noted by Commission Decision No. C21-0122-I,"⁵ CNG requested "a finding that an amended application incorporating the new information would

³ Joint Motion at 2-3 (¶¶ 7-9).

⁴ Status Report at 3 (¶ 9).

⁵ *Id.* at ¶ 10.

be deemed complete under the Commission's Rules."⁶ CNG concluded by requesting that the ALJ grant the Joint Motion and approve the proposed revised prehearing schedule.⁷

8. On April 14, 2021, the ALJ issued Decision No. R21-0230-I that granted the Joint Motion and approved the revised schedule proposed by the parties, with the addition of a deadline for filing responses to prehearing motion and a witness cross-examination matrix.

9. On April 15, 2021, the Office of Consumer Counsel (OCC) filed an Unopposed Motion for Late-Filed Intervention (Unopposed Motion).

10. On April 16, 2021, Staff filed its Review of Documents Filed by Colorado Natural Gas, Inc. concurrently with the April 9, 2021 Status Report (Staff's Review). Staff states that the Term Sheet and Resolution do not satisfy the requirements of Rules 4105(b)(II) and (VII).⁸ Staff thus requests that the Application not yet be deemed complete.⁹

B. Analysis

1. Unopposed Motion

11. The OCC states good cause to grant the Unopposed Motion. Accordingly, the Unopposed Motion will be granted.

2. Amended Application

12. Pursuant to Rule 1303(c) of the Rules of Practice and Procedure, 4 CCR 723-1, an application that fails to meet all applicable requirements of Commission rules may be deemed incomplete. Rule 4105(b)(II) and (VII) requires an application for approval of a securities transaction to include, among other things, "the resolution of the applying utility's board of

⁶ *Id.* (¶¶ 8-9).

⁷ *Id.* at 4 (12).

⁸ 4 CCR 723-4.

⁹ Staff Review at 5.

directors approving the issuance, or assumption of the securities” and “the anticipated interest rate or dividend rate.”¹⁰ The Commission deemed the Application incomplete because it did not include the information specified in Rule 4105(b)(II) and (VII).

13. As noted, CNG filed the Term Sheet and Board Resolution with its Amended Application and requests a determination as to whether an amended application filed with both documents would be deemed complete. Staff states that such an amended application should not be deemed complete because the Term Sheet and Board Resolution do not comply with Rule 4105(b)(II) and (VII), respectively. As to the Term Sheet, Staff notes that it does not specify “the anticipated interest rate or dividend rate” for the proposed refinancing, instead stating that “[t]he interest rate of notes evidencing incremental debt increases will bear interest at a rate consistent with similar securities of comparable credit quality and maturities issued by other companies.”¹¹

14. Staff objects to the Board Resolution for two reasons. First, it is a resolution of the Board of Directors of Summit Utilities, Inc. (Summit), which is the non-regulated parent of Midco, which is the non-regulated parent of CNG. According to Staff, the resolution must be approved by CNG’s Board of Directors.¹² Second, Summit’s resolution provides approval for Midco to “seek to refinance” the three credit facilities. According to Staff, this is insufficient under Rule 4105(b)(VII) because it does not approve “a specific issuance or assumption of securities.”¹³ Staff concludes that “the Application not yet be deemed complete.”¹⁴

¹⁰ Rule 4105(b)(II), (VII), 4 CCR 723-4.

¹¹ Staff’s Review at 4 (¶ 8) (quoting Status Report, Attach. 1 at 2).

¹² *Id.* at 5 (¶ 9).

¹³ *Id.*

¹⁴ *Id.* (¶ 10).

15. The ALJ agrees that the Term Sheet does not comply with Rule 4105(b)(II). The Term Sheet does not provide the anticipated rates of the refinanced credit facilities. It does not even provide a range of interest rates in which it anticipates the rates of the refinanced credit facilities will fall. And, no adequate explanation has been provided as to why Midco/CNG cannot provide more specificity at this point regarding the anticipated interest rates of the refinanced credit facilities. On this last point, the ALJ notes that CNG provided far more specificity regarding the anticipated rates of the credit facilities with its Application seeking permission for Midco to enter into those financial instruments.¹⁵ As a result, an amended application with the Term Sheet cannot be deemed complete.

16. The ALJ withholds judgment on whether the Board Resolution complies with Rule 4105(b)(VII). Based on the current record, it is not clear whether CNG's Board has the authority to approve the refinancing of credit facilities held by CNG's direct parent, Midco. As noted above, the Application requests Commission approval for Midco to refinance the credit facilities that it entered into after the Commission approved Midco to pledge CNG's stock as security therefor in Decision No. C19-0195.¹⁶

17. Accordingly, the ALJ finds and concludes that an amended application filed with the Term Sheet would not be deemed complete.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Late-Filed Intervention filed by the Office of Consumer Counsel on April 15, 2021 is granted.

¹⁵ See Verified Application, Confidential Attach. 7, filed in Proceeding No. 19A-0070SG on January 30, 2019.

¹⁶ Issued in Proceeding No. 19A-0070SG on February 22, 2019.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director