Decision No. C24-0061

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0635G

IN THE MATTER OF ADVICE LETTER NO. 133 FILED BY COLORADO NATURAL GAS, INC. TO ELIMINATE THE CONSTRUCTION ALLOWANCES, TO BECOME EFFECTIVE APRIL 29, 2024.

COMMISSION DECISION SUSPENDING EFFECTIVE DATE OF TARIFF SHEETS, WAIVING DEADLINE IN COMMISSION'S GAS RULES, ESTABLISHING NOTICE AND INTERVENTION PERIOD, AND REFERRING MATTER TO AN ADMINISTRATIVE LAW JUDGE

Mailed Date: January 26, 2024
Adopted Date: January 24, 2024

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH https://puc.colorado.gov/ INDICATING PROCEEDING NO. 23AL-0579G. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. Senate Bill (SB) 23-291 includes provisions that require each of Colorado's four investor-owned gas utilities to file with the Commission, no later than December 31, 2023, an updated tariff to reflect the removal of any incentives for establishing gas service. Specifically, § 40-3.2-104.3, C.R.S., states that a gas utility shall not provide "a person that requests natural gas service and that owns the real property requiring the service" an incentive,

including a line extension allowance, to establish gas service to a property. SB 23-291 further defines a line extension allowance to mean: "a bundle of costs that includes construction allowances for new service lines, meters, and other infrastructure associated with the addition of a new customer to a gas utility's distribution system."

2. On December 29, 2023, Colorado Natural Gas, Inc. (CNG or Company) filed Advice Letter No. 133 with modified tariff sheets addressing the Service Lateral Connection and Distribution Main Extension Policy (Line Extension Policy) within its Rules and Regulations for Natural Gas Service for effect April 29, 2024. The proposed changes to the tariff sheets include: (1) the elimination of the construction allowance generally and (2) the introduction of exceptions that may cause certain new customers to qualify for a construction allowance. CNG states that Advice Letter No. 133 was filed "under protest."

3. This Decision sets for hearing the tariff sheets filed under Advice Letter No. 133 and suspends their effective date to **August 29, 2024**.

4. This Decision further waives, on the Commission's own motion, the December 31, 2024 deadline in paragraph 4210(d) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4 (Gas Rules), consistent with the discussion below

5. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than **February 23, 2024.**

6. This matter is referred to an Administrative Law Judge (ALJ) for a recommended decision pursuant to § 40-6-109(2), C.R.S.

B. Discussion

1. CNG's Advice Letter No. 133

7. CNG's Advice Letter No. 133 provides proposed redlines of the Company's tariff sheets setting forth the Company's Line Extension Policy. The proposed redlines show how the construction allowances for new customers would be eliminated. The redlines also propose to introduce new provisions that set forth the exceptions for certain customers who may remain eligible to receive a construction allowance.

8. CNG states that it filed Advice Letter No. 133 "under protest." CNG argues that the provisions in SB 23-291 requiring the advice letter filing violate certain elements of the United States and Colorado Constitutions.

9. CNG first argues that SB 23-291 violates the Contract Clauses of the United States and Colorado Constitutions because it substantially impairs the Company's contract rights under Commission-approved franchise agreements with municipalities and similar agreements with other entities or political subdivisions. CNG adds that the statute "substantially and unlawfully impairs CNG's rights under these agreements because it deprives the Company its contractual prerogative to make capital investments necessary to serve new customers and the opportunity to earn a fair return on those rate-base investments in exchange for an obligation to pay a portion of the gross revenues it earns by providing service throughout the municipality or political subdivision."

10. CNG further argues that SB 23-291 also violates the Takings Clauses of the United States and Colorado Constitutions because it "significantly impairs, if not eliminates, the Company's right to invest in system expansions necessary to offer service to new customer premises in previously unserved territories located within its certificated areas. By prohibiting any

Company investment in the form of line extension construction allowances, the Statute dismantles the Company's protected property right to invest in its system in furtherance of expanding service in its certificated areas – areas where it possesses the exclusive right to serve and also the obligation to serve – and to earn a reasonable investment return on such investments." CNG goes on to state that the "taking" is significant because: (1) it eliminates CNG's ability to earn a return in areas where it previously held reasonable investment-backed expectations; and (2) the cost of new construction must be borne entirely by new customers and thus will not be included in the utility's investment rate base upon which, under fundamental principles of utility law, a utility is afforded an opportunity to earn a fair return.

11. The proposed effective date of CNG's new tariffs is April 29, 2024. CNG states that this extended effective date is intended to allow for the legal issues raised in the advice letter to be addressed in the appropriate forum. CNG states that it fully reserves all of its rights to challenge any and all offending portions of SB 23-291, and waives none, either by filing revised tariff sheets or by complying with SB 23-291 as required unless and until the offending portions are set aside.

12. On January 5, 2024, Staff of the Colorado Public Service Commission (Staff) filed a protest to CNG's Advice Letter No. 133 filing. Staff states that, in its "plain-language reading of the new statute," CNGs construction allowances for service lines and main lines are only one component of the "incentives" that must be removed from the Company's tariff. Staff argues that CNG's proposed tariff revisions do not include removal of the incentives of a utility-provided meter and other infrastructure associated with the addition of a new customer, such as a service regulator. Staff thus states it is concerned that CNG's filing may not satisfy the statutory requirement to file an "updated tariff to reflect the removal of any incentives for an applicant to establish gas service to a property." In addition, Staff suggests that the Commission would benefit

from additional legal analysis and briefing regarding CNG's claims that SB 23-291 violates the United States and Colorado Constitutions.

13. On January 18, 2024, the Colorado Office of the Utility Consumer Advocate (UCA) filed an intervention as of right into this Proceeding and request for hearing. UCA states that it shares the concerns raised by Staff in its protest.

2. Commission Rules Addressing Line Extension Policies

14. The Commission recently examined gas utility line extension policies in its comprehensive rulemaking in Proceeding No. 21R-0449G.

15. By Decision No. C22-0760, issued on December 1, 2022, and Decision No. C23-0117, issued on February 24, 2023, the Commission modified its Gas Rules by adding two new paragraphs under Rule 4210 Line Extensions. Paragraph 4210(c) states: "Line extension policies, procedures, and conditions shall be based on the principle that the connecting customer pays its share of the estimated full incremental cost of growth, including any costs associated with increases in design day peak demand." Paragraph 4210(d) states: "Line extension allowances shall be updated pursuant to paragraph 4210(c) in a base rate proceeding, or in a separately filed application, as required, but should be implemented no later than December 31, 2024. If a utility utilizes standardized costs in calculating one or more portions of its line extension policies, the standardized costs must be updated in a base rate proceeding, utilizing the average actual cost across the applicable customer class and line extension type for the most recent consecutive 12-month period for which compiled cost data is available. Exemptions from updated line extension allowances and standardized costs shall not extend to applications for line extensions submitted after May 1, 2023."

16. The Commission explained that these new rules were not intended to result in the immediate elimination of construction allowances for line extensions or for the imposition of any barriers to the installation of gas service lines to any new structure. The Commission further stated that a utility's line extension policies, procedures, and conditions would continue to be administered through tariff filings and that such tariff filings will now be considered as Colorado progresses towards meeting its greenhouse gas reduction goals. [1]

17. With respect to the new provision in paragraph 4210(c), the Commission explained that the intent was to ensure that when the Commission reviews for approval the utility's tariffs for their line extension policies, procedures, and conditions—most likely in a base rate proceedings—the Commission will base its review, in part, on the principle that new customers will be responsible for covering their contribution towards the cost of growth and in a way that also incorporates the additional net revenues associated with new customer growth with appropriate consideration of the impacts of policy and efficiency on those projections. The Commission further explained that when line extension policies are examined in a rate proceeding, the presentation of incremental costs of growth will include the additional net revenues as well as all the costs of new services, meters, and certain other distribution system costs. The Commission concluded that limiting the scope of costs to only the most locationally or temporally adjacent infrastructure upgrades likely obscures the total costs of growth, which cumulatively lead to system capacity expansions and drive investments that may not have previously been included in the calculations but should rightfully be considered.[2]

[1] Decision No. C22-0760, issued December 1, 2022, ¶ 101, p. 45.

[2] Decision No. C22-0760, issued December 1, 2022, ¶¶ 110-112, pp. 50-51.

18. With respect to the new provision in paragraph 4210(d), the Commission concluded that, as a general matter, each gas utility must update its line extension policies in accordance with all of the provisions in Rule 4210 through a tariff filing submitted for effect no later than January 1, 2025. The Commission further concluded that standardized costs used in a line extension policy also must be updated in each base rate proceeding and should be calculated using the most recent consecutive 12 months of data that is available to the utility at the time of the calculation.[3]

C. Conclusions and Findings

19. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. We find good cause to suspend the tariff sheets submitted with Advice Letter No. 133 for 120 days through **August 29, 2024,** and set the matter for hearing. In accordance with Staff's protest, the principal purpose of the suspension is so that the Commission has sufficient time to review the advice letter filing further to ensure that the tariffs fully implement the statutory requirement that new gas utility customers no longer receive an "incentive" as specifically defined by the term "line extension allowance" in SB 23-291.

20. Due to the passage and enactment of SB 23-291 following the promulgation of the new provisions governing line extensions in the Gas Rules, we also find good cause to waive the December 1, 2024 deadline in 4 CCR 723-4-4210(d)) pursuant to Commission Rule 4 CCR 723-4-1003(a). The statutory requirement for gas utilities to eliminate incentives for establishing gas service is a continual process best examined in base rate proceedings, and certain provisions related to new gas services in SB 23-291 do not neatly match the December 31, 2024 deadline contemplated in paragraph 4210(d) of the Commission's Gas Rules. The Commission therefore

[3] Decision No. C22-0760, issued December 1, 2022, ¶¶ 120-121, pp. 53-54.

finds good cause to waive the December 1, 2024 deadline because it will allow for more effective implementation of the policies found in Rule 4 CCR 723-4-4210(d) and in SB 23-291.

21. We clarify, however, that the waiver of the December 31, 2024 deadline does not affect the purpose of or other requirements in paragraphs 4210(c) and (d) such that a complete review CNG's Line Extension Policy remains a requirement in any base rate proceeding in accordance with both the Gas Rules and the requirements in SB 23-291.

22. We refer this matter to an ALJ for a recommended decision pursuant to § 40-6-109(2), C.R.S. We encourage the assigned ALJ to adopt procedures that support the issuance of a recommended decision that addresses whether the Advice Letter No. 133 filing fully implements the statutory requirement that new gas utility customers no longer receive an incentive relative to the costs of new service lines, meters, and other infrastructure when establishing gas service pursuant to the Company's Line Extension Policy. Except for the "grandfathering" provisions in § 40-3.2-104.3(2)(d), C.R.S., the December 31, 2023 filing deadline in SB 23-291 reflects an expectation that incentives that offset the costs of new service lines, meters, and other infrastructure are removed from CNG's Line Extension Policy as promptly as possible.

23. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

II. ORDER

A. The Commission Orders That:

1. The proposed April 29, 2024 effective date of the tariff sheet filed with Advice Letter No. 133 by Colorado Natural Gas, Inc. (CNG) on December 29, 2023, is suspended until **August 29, 2024**, or until further order of the Commission.

2. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than **February 23, 2024,** and shall serve a copy of the notice or motion on CNG's Attorney of Record.

3. Consistent with the discussion above, the December 1, 2024 deadline in 4 Co*de of Colorado Regulations* 723-4-4210(d) is waived with respect to CNG.

4. This matter is referred to an Administrative Law Judge, consistent with the discussion above.

5. This Decision is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 24, 2024.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners