

Decision No. R24-0405-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0418G

ARM, LLC, and HEARTLAND INDUSTRIES, LLC

COMPLAINANTS,

V.

COLORADO NATURAL GAS, INC. and WOLF CREEK ENERGY, LLC,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING THIRD MOTION TO AMEND PROCEDURAL
SCHEDULE, RESCHEDULING REMOTE PREHEARING
CONFERENCE, AND RESCHEDULING EVIDENTIARY
HEARING**

Mailed Date: June 13, 2024

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I. BACKGROUND**A. Procedural Background**

1. On August 16, 2023, Arm, LLC and Heartland Industries, LLC (collectively, Complainants) filed a Formal Complaint (Complaint) against Colorado Natural Gas, Inc. (CNG) and Wolf Creek Energy, LLC (Wolf Creek) (collectively, Respondents) that initiated this proceeding.

2. On August 30, 2023, the Commission referred the matter by minute entry to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

3. On October 11, 2023, the ALJ issued Decision No. R23-0679-I that scheduled a remote prehearing conference for October 19, 2023, and required the parties to confer regarding a procedural schedule and for Complainants to file a report of the conferral by October 17, 2023.

4. On October 17, 2023, Complainants filed a Report of Conferral. In it, Complainants reported that the parties had agreed to the following procedural schedule (Consensus Schedule):

| <u>Event</u> | <u>Deadline</u> |
|--|------------------------|
| Answer to Amended Complaint Discovery Commences | November 10, 2023 |
| Complainants' Direct Testimony | March 4, 2024 |
| Respondents' and Intervenor's Answer Testimony | April 15, 2024 |
| Rebuttal/Cross-Answer Testimony | May 22, 2024 |
| Prehearing Motions | May 27, 2024 |

| <u>Event</u> | <u>Deadline</u> |
|--|------------------------|
| Corrections to Testimony and Exhibits | May 31, 2024 |
| Hearing Witness Matrix Stipulation(s) and Settlement Agreement(s) | June 6, 2024 |
| Prehearing Conference | June 7, 2023 |
| Hearing | June 11-14, 2024 |
| Statements of Position | July 2, 2024 |

5. On October 25, 2023, the ALJ issued Decision No. R23-0724-I that adopted the procedural schedule proposed by the parties, with one modification to the deadline for Complainants' direct testimony, which was changed to March 8, 2024.

6. On January 30, 2024, the ALJ signed a Subpoena Duces Tecum sought by the Utility Consumer Advocate (UCA) and directed to Summit Utilities, Inc, (Summit Utilities) to produce documents at a deposition scheduled for February 9, 2024.

7. On February 8, 2024, Summit Utilities filed a Motion to Quash Subpoena Duces Tecum to Summit Utilities for Production of Certain Documents (Motion to Quash). On February 22, 2024, Complainants, Staff, and UCA filed responses to the Motion to Quash.

8. In their response to the Motion to Quash, Complainants repeatedly referenced a Motion to Compel that they contended had been filed on February 13, 2024. Because no such Motion to Compel appeared in the Commission's e-filing system, the ALJ sent an email to Complainants (and copied counsel for the other parties) on February 23, 2024 stating that the referenced Motion to Compel did not appear to have been filed with the Commission.

9. On February 23, 2024, Complainants filed: (a) a Motion to Compel Discovery from Respondents (Motion to Compel); and (b) an Unopposed Motion to Amend Procedural Schedule and Motion to Waive Response Time (Unopposed Motion) as follows:

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|---|--------------------------------|----------------------------|
| Complainants' Direct Testimony | March 8, 2024 | April 8, 2024 |
| Respondents' and Intervenor's Answer Testimony | April 15, 2024 | May 16, 2024 |
| Rebuttal/Cross-Answer Testimony | May 22, 2024 | June 24, 2024 |
| Prehearing Motions | May 27, 2024 | June 28, 2024 |
| Corrections to Testimony and Exhibits | May 31, 2024 | July 1, 2024 |
| Hearing Witness Matrix Stipulation(s) and Settlement Agreement(s) | June 6, 2024 | July 8, 2024 |
| Remote Prehearing Conference | June 7, 2023 | July 9, 2024 |
| Hearing | June 11-14, 2024 | July 15-18, 2024 |
| Statements of Position | July 2, 2024 | August 5, 2024 |

Complainants stated that the Motions to Quash and Compel necessitated the amended schedule. Specifically, the resolution of both motions was necessary before the parties could move forward with discovery and, to the extent either is granted and Respondents and/or Wolf Creek were required to produce additional documents, “sufficient time [was] needed to analyze the documents and schedule one or more depositions in advance of the filing of Complainants’ direct testimony.”¹

¹ Unopposed Motion at 3.

10. On February 26, 2024, Complainants filed a Motion to Shorten Response Time to the Motion to Compel and to Waive Response Time to this Motion (collectively, Combined Motion).

11. On February 27, 2024, Respondents filed a Response to the Combined Motion (Response).

12. On February 28, 2024, the ALJ issued Decision No. R24-0123-I that granted the Unopposed Motion, granted-in-part and denied-in-part the Combined Motion, and shortened response time to the Motion to Compel to March 4, 2024.

13. On March 4, 2024, Respondents filed a Response to Complainants' Motion to Compel.

14. On March 7, 2024, Complainants filed a Motion for Leave to Reply and Reply in Support of Motion to Compel (Motion for Leave). Complainants state that Respondents oppose, and Staff and UCA take no position with respect to, the Motion for Leave.

15. On March 25, 2024, Arm and Heartland filed an Unopposed Second Motion to Amend Procedural Schedule and Motion to Waive Response Time requesting that the schedule be extended by approximately two months (Unopposed Second Motion) as follows:

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|--|-------------------------|---------------------|
| Complainants' Direct Testimony | April 8, 2024 | June 10, 2024 |
| Respondents' and Intervenors' Answer Testimony | May 16, 2024 | July 18, 2024 |
| Rebuttal/Cross-Answer Testimony | June 24, 2024 | August 12, 2024 |
| Prehearing Motions | June 28, 2024 | August 26, 2024 |
| Corrections to Testimony and Exhibits | July 1, 2024 | September 2, 2024 |

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|---|--------------------------------|----------------------------|
| Hearing Witness Matrix Stipulation(s) and Settlement Agreement(s) | July 8, 2024 | September 9, 2024 |
| Remote Prehearing Conference | July 9, 2024 | September 10, 2024 |
| Hearing | July 15-18, 2024 | September 16-18, 2024 |
| Statements of Position | August 5, 2024 | October 2, 2024 |

According to the Unopposed Second Motion, “[t]he requested extension to all deadlines is intended to allow time to resolve the pending discovery disputes, enable sufficient discovery prior to the deadlines for written testimony (including 30(b)(6) depositions of Respondents in mid-April to early May), and accommodate parties’ existing schedule conflicts.”²

16. On April 3, 2024, the ALJ issued Decision No. R24-0209-I that granted-in-part and denied-in-part the Motion to Quash, granted the Motion to Compel, ordered Summit Utilities and Respondents to supplement their responses to the discovery addressed in the decision within two weeks, and granted the Unopposed Second Motion.

17. On April 18, 2024, Respondents filed a Motion for Extension to Respond to Certain Requests in Subpoena Duces Tecum (Motion for Extension).

18. On April 18, 2024: (a) the ALJ issued Decision No. R24-0248-I that denied without prejudice the Motion for Extension for failure to comply with Rule 1400(a) of the Commission’s Rules of Practice and Procedure;³ and (b) Respondents filed a First Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information for documents and

² Unopposed Second Motion at 4.

³ 4 *Code of Colorado Regulations* 723-1.

categories of information that it plans to produce in response to the Motion to Quash and the Motion to Compel (First Motion).

19. On April 19, 2024: (a) the ALJ issued Decision No. R24-0249-I that shortened response time to the First Motion to April 24, 2024; and (b) Respondents filed an Unopposed Revised Motion for Extension of Time to Respond to Certain Requests in the Colorado Office of the Utility Consumer Advocate's Subpoena Duces Tecum (Unopposed Motion) requesting a one-week extension, to and including April 26, 2024, to respond to requests 14, 22, and 23 in the Subpoena.

20. On April 24, 2024: (a) the ALJ issued Decision No. R24-0273 that granted the Unopposed Motion (the ALJ had sent an email to counsel for the parties on April 19, 2024 informing them that the Unopposed Motion would be granted, but it was unclear when the written decision granting the Unopposed Motion would be filed); (b) Complainants filed a response to the First Motion; and (c) UCA filed a Motion to Compel and Request for Shortened Response Time (Second Motion to Compel) to April 25, 2024. The subject of the Second Motion to Compel was approximately 4,000 pages of documents that are "the general SUI board minutes and materials for other utility company subsidiaries operating in other states, and general company operations"⁴ that are responsive to the subpoena.

21. On April 26, 2024, the ALJ issued Decision No. R24-0276-I that granted-in-part and denied-in-part the request to shorten response time in the Second Motion to Compel. As a result, response time to the Second Motion to Compel was shortened to April 29, 2024.

22. On April 29, 2024: (a) the ALJ issued Decision No. R24-0283-I granting the First Motion; and (b) Respondents filed their response to the Second Motion to Compel (Response).

⁴ Response to Second Motion to Compel at 4 (¶ 13) (filed by Respondents on April 29, 2024).

23. On May 2, 2024, the ALJ issued Decision No. R24-0296-I that granted-in-part and denied-in-part the Second Motion to Compel. Decision No. R24-0296-I ordered:

Respondents and/or Summit Utilities to produce the documents with redactions for legal privilege and a privilege log consistent with C.R.C.P. 26(b)(5) by May 17, 2024. To the extent Respondents and/or Summit Utilities do not assert that the entirety of the produced documents is highly confidential, Respondents and/or Summit Utilities should then take the requested three weeks to highlight the documents to identify confidential and/or highly confidential material contained therein. The highlighted documents will then be produced by May 24, 2024, and the parties possessing the produced documents must rely on the highlighted documents to determine what portions of those documents must be redacted if any of them are filed or presented at the hearing.⁵

24. On May 24, 2024, Respondents and Summit Utilities filed a Motion Contesting Interim Decision Nos. R24-0209-I and R24-0296-I requesting the ALJ to certify both decisions for interlocutory review by the Commission.

25. On May 30, 2024, Complainants filed an Unopposed Third Motion to Amend Procedural Schedule and Motion to Waive Response Time (Unopposed Third Motion to Amend).

⁵ Decision No. R24-0296-I at 5 (¶ 15).

B. Unopposed Third Motion to Amend

26. In the Unopposed Third Motion to Amend, Complainants request to amend the procedural schedule as follows:

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|---|-------------------------|----------------------|
| Complainants' Direct Testimony | June 10, 2024 | August 12, 2024 |
| Respondents' and Intervenor's Answer Testimony | July 18, 2024 | September 19, 2024 |
| Rebuttal/Cross-Answer Testimony | August 12, 2024 | October 14, 2024 |
| Prehearing Motions | August 26, 2024 | October 28, 2024 |
| Corrections to Testimony and Exhibits | September 2, 2024 | November 4, 2024 |
| Hearing Witness Matrix Stipulation(s) and Settlement Agreement(s) | September 9, 2024 | November 11, 2024 |
| Remote Prehearing Conference | September 10, 2023 | November 12, 2024 |
| Hearing | September 16-18, 2024 | November 18-21, 2024 |
| Statements of Position | October 2, 2024 | December 4, 2024 |

27. Complainants assert that three developments justify the further extension of all deadlines. First, Respondents and Summit Utilities have not produced either the privilege log or the documents that they were ordered to produce in Decision Nos. R24-0209-I and R24-0296-I. Complainants state that they have delayed taking depositions of Respondents until they receive the documents that are the subject of Decision Nos. R24-0209-I and R24-0296-I. As a result, they are unprepared to file and serve their direct testimony by the current June 10, 2024 deadline.

28. Second, Complainants state that Wolf Creek informed them in May that “it is ceasing operations at the end of October 2024. Complainants are not only assessing the implications of this news for its claims in this case, but now must also arrange for alternative gas supply before the fall, an unexpected and potentially timely endeavor.”⁶

29. Third, the hearing in Proceeding No. 23A-0570G in which CNG has proposed a new Cost Allocation and Assignment Manual and Fully Distributed Cost Study was just continued to early August. Complainants believe that “[t]he record in this case and the public interest could potentially benefit from inclusion of pertinent portions of the record in” Proceeding No. 23A-0570G because there is an overlap of issues in the two proceedings. As a result, Complainants request that the deadline for the filing of direct testimony in this proceeding follow the conclusion of the hearing in Proceeding No. 23A-0570G.

C. Analysis

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|---|--------------------------------|----------------------------|
| Complainants’ Direct Testimony | June 10, 2024 | August 12, 2024 |
| Respondents’ and Intervenor’s Answer Testimony | July 18, 2024 | September 19, 2024 |
| Rebuttal/Cross-Answer Testimony | August 12, 2024 | October 14, 2024 |
| Prehearing Motions | August 26, 2024 | October 28, 2024 |
| Corrections to Testimony and Exhibits | September 2, 2024 | November 4, 2024 |
| Hearing Witness Matrix Stipulation(s) and Settlement Agreement(s) | September 9, 2024 | November 5, 2024 |

⁶ Unopposed Third Motion to Amend at 5.

| <u>Event</u> | <u>Current Deadline</u> | <u>New Deadline</u> |
|------------------------------|--------------------------------|----------------------------|
| Remote Prehearing Conference | September 10, 2023 | November 6, 2024 |
| Hearing | September 16-18, 2024 | November 18-21, 2024 |
| Statements of Position | October 2, 2024 | December 4, 2024 |

30. Complainants have established good cause to grant the Unopposed Motion with two modifications. The ALJ is unavailable from November 7 to 15, 2024. As a result, the remote prehearing conference will be scheduled for November 6, 2024 and the deadline for the hearing witness matrix, stipulations, and settlement agreements will be moved to November 5, 2024. As a result, the procedural schedule will be amended as follows:

31. Because no party opposes the Unopposed Motion, response time shall be waived. The schedule shall be amended as stated above.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Third Motion to Amend Procedural Schedule and Motion to Waive Response Time filed by Arm, LLC and Heartland Industries, LLC on May 30, 2024, is granted.
2. The schedule in this proceeding is amended as stated in paragraph 30 above.
3. The remote prehearing conference in this proceeding currently scheduled for September 10, 2024 is vacated and reset as follows:

DATE: November 6, 2024

TIME: 1:30 p.m.

WEBCAST: Commission Hearing Room

METHOD: Join by videoconference using Zoom at the link to be provided in an email from the Administrative Law Judge⁷

4. Nobody should appear in-person for the remote prehearing conference.
5. The hybrid hearing currently scheduled for September 16-18, 2024, is vacated, and

rescheduled as a hybrid hearing as follows:

DATE: November 18-21, 2024

TIME: 9:00 a.m. to 5:00 p.m.⁸

PLACE: In-person: Commission Hearing Room, Suite 250, 1560 Broadway, Denver, Colorado

By videoconference: using the Zoom web conferencing platform at a link to be provided to the participants by email.⁹

⁷ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

⁸ The hybrid hearing will commence on November 20, 2024 after the completion of the Commissioners' Weekly Meeting.

⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All participants are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

6. 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 "Rebecca E. White".

Rebecca E. White,
Director