DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 Telephone: (303) 606-2300	DATE FILED May 19, 2026 4:49 PM FILING ID: 9ECEADED4B439 CASE NUMBER: 2026CV31821
COLORADO NATURAL GAS, INC., Petitioner, v. THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO and ERIC BLANK, MEGAN M. GILMAN, and TOM PLANT, Commissioners thereof individually in their official capacity, Respondents.	▲COURT USE ONLY▲
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PETITION FOR WRIT OF CERTIORARI OR REVIEW

Petitioner Colorado Natural Gas, Inc. ("CNG") petitions this Court, pursuant to § 40-6-115, C.R.S., for a Writ of Certiorari or Review ("Writ") to be issued to the Public Utilities Commission of the State of Colorado ("Commission") and the individual Commissioners thereof for the purpose of having the Court review the lawfulness of Commission Decision No. C26-0196, Permanently Suspending Tariff Sheets, Requiring Filing, And Closing Proceeding, Proceeding No. 23AL-0635G (March 30, 2026) ("Final Decision").[1] As grounds for this Petition, CNG states as follows:

I. PARTIES

1. CNG is a Colorado corporation authorized to do business in Colorado, with its principal place of business located at 10825 E. Geddes Ave., Suite 410, Centennial, Colorado 80112. CNG, which is a subsidiary of Summit LDC Holding, LLC, which is in turn a subsidiary of Summit Utilities, Inc., is a public utility that is subject to the Commission's regulatory jurisdiction under the Public Utilities Law, § 40-1-101, C.R.S., *et seq*. CNG provides retail gas utility service to residential and commercial customers located in five service territories covering mountain and rural communities around Denver, including the counties of Adams, Arapahoe, Boulder, Jefferson, Kiowa, Park, Clear Creek, Bilpin, Summit, Pueblo, and Teller.

2. The Public Utilities Commission is an administrative agency of the State of Colorado authorized under Article XXV of the Colorado Constitution and the Public Utilities Law to regulate the rates, terms, and conditions of public utility services in Colorado and the facilities used to provide those services, including gas service provided by CNG. There are three

[1] Attached hereto as Exhibit No. 1.

Commissioners that form the Commission and are parties individually in their official capacity: Eric Blank, Megan M. Gilman, and Tom Plant.

II. JURISDICTION

3. This Court has jurisdiction to issue the Writ and to inquire into and determine the lawfulness of the Commission's Final Decision under the authority of § 40-6-115(1), C.R.S.

III. INTRODUCTION AND BACKGROUND

4. Colorado for the better part of a century has promoted the regulated monopoly system for privately owned utilities. This involves a tradeoff in which private companies agree to be regulated, to charge reasonable rates, and to make public utility service available on a nondiscriminatory basis in exchange for the right to invest in the system infrastructure in an exclusive territory and the opportunity to earn a reasonable return on those investments. To implement this bargain, which is also known as the regulatory compact, private companies are granted Certificates of Public Convenience and Necessity ("CPCNs") by the Commission that give them exclusive rights to provide public utility service in designated territories. Within those territories, the companies have both the right to provide service to anyone who requests it and the obligation to do so within certain bounds. Utilities also enter into franchise agreements with cities and counties within their territories setting terms and conditions for providing service to the residents. Under this system, the State has long supported and promoted gas utility service as essential to Colorado residents.

5. A utility's rates and therefore its revenues are regulated by the Commission through the rate-setting process. As a general matter, most operating costs are pass-through costs and do not earn a return for the company. The foundation for the utility's return for its

shareholders as a private entity is its investments in system infrastructure. Through an extensive and complicated process, the Commission determines what it considers to be just and reasonable rates that provide the company with the opportunity to earn a reasonable rate of return on prudently made investments.

6. A basic premise of the public utility system is that it spreads the costs for a massive infrastructure investment across many customers, which is why economies of scale and having more customers on the system matter. Private companies are induced to make such extensive investments by the promise of an exclusive territory and the guaranteed opportunity to earn a reasonable return. The regulatory structure functions to socialize the cost of expanding the system, allowing the company to invest in the system infrastructure and then allocating that cost plus a reasonable rate of return between new and existing customers.

7. One of the goals of the rate-setting process is to treat existing and new customers fairly, so neither "subsidizes" the portion of the system cost attributable to the other. When a new customer establishes service, the estimated cost is determined, and the customer pays any cost over an "allowance" amount. The amount of the allowance is determined by analyzing the incremental benefit, or value, of adding a new customer to the system. And that amount represents the investment that the company can make in expanding the system infrastructure to add the new customer; the utility's investment plus a reasonable return is then recovered through rates over many years—as many as 40 to 50 years, depending on the life of the assets. The allowance is therefore the means by which the utility establishes a "rate base" upon which it earns a return.

8. Utilities have generally provided two types of allowances to new residential customers: (i) an allowance against the costs of running a service line from the distribution system to the individual customer's property, and (ii) where applicable, an allowance against the costs of extending a distribution main line into a new area. A service line, or service lateral, transports gas from a common source of supply (the distribution main) "to the entrance to a customer's physical location." 4 CCR 723-4, Rule 4001(aaa). That individual customer bears any cost over the allowance for the service line. A distribution main, in contrast, is "a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral." *Id*. Rule 4001(hh). Even where a single property initially pays for a main extension, as additional properties connect service lines to the main, the cost borne by the first customer is refunded proportionately so that the costs over the allowance for the main extension are shared by the customers connecting to the line.

9. The allowance amounts are calculated through a complex process approved by the Commission and then recorded in tariffs published by the utility. The construction allowances are established through an analysis of the expected revenues from adding a new customer and a break-even point. For residential customers, there are service line and main extension allowances set out separately in the tariff. The service line allowance is based on the average estimated cost to connect a new customer. The allowances are set to treat new and existing customers equitably so that each shares fairly in the costs of the system by paying rates over time that compensate the utility for its investment plus a reasonable return.

10. Thus, the allowance is part of the overall rate design for the system. It is the primary means by which the utility invests in the system in order to earn a return, to the extent the investment benefits all customers and treats new and existing customers equitably.

CNG's Gas Utility Operations

11. Colorado Natural Gas has been operating in Colorado under this regulatory structure for more than three decades. It acquired gas utility systems in eastern Colorado and has built other systems up from the ground. CNG has CPCNs granted by the Commission that entitle CNG to install infrastructure and provide gas service within each of its exclusive geographic areas. CNG also entered into Commission-approved franchise agreements with cities and counties in its service territories that establish terms for the obligation to serve, investments made by the utility, and charges to customers, among other things.

12. These agreements, in conjunction with longstanding Colorado statutes, regulations, policies, and practices, form what is sometimes called the "regulatory compact"—the framework that underpins the public utility system. Under that regulated monopoly framework, CNG has been granted exclusive rights to provide service and invest in system infrastructure in its territory along with the promised opportunity to earn a reasonable rate of return on those investments in exchange for the obligation to provide service to customers at reasonable, nondiscriminatory rates.

13. In accord with regulatory practice and Commission rules, CNG's tariffs—approved by the Commission—provide separate construction allowances for service line extensions and for distribution main extensions for residential customers. CNG Tariff CO PUC No. 2, Sheet No. R35.

14. When a new residential customer requests to establish service, CNG will determine the cost of a service line extension and, where applicable, the cost of a main line extension and will inform the customer of those costs including any applicable allowance. The service and main extensions and the corresponding estimated costs and allowances are handled by different CNG departments using different methodologies. CNG's service line extension allowance includes the service lateral, meter, and other related items such as a riser valve and tap—which together represent the estimated costs of connecting a given customer to the main (*i.e.*, to the distribution system).

Colorado Adopts a Statute "Eliminating Incentives for Gas Service to Properties"

15. In 2023, Colorado adopted a statute to eliminate "incentives" for establishing gas service—a marked shift from Colorado's longstanding policy of supporting gas utility service. Section 40-3.2-104.3, C.R.S., is entitled "Eliminating incentives for gas service to properties—gas line extension allowances—exemptions—definitions." It states: "A gas utility shall not provide an applicant an incentive, including a line extension allowance, to establish gas service to a property." *Id.* § 40-3.2-104.3(2)(a). And it defines "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." *Id.* § 40-3.2-104.3(1)(d).

16. The statute also requires gas utilities to file updated tariffs by December 31, 2023 "to reflect the removal of any incentives for an applicant to establish gas service to a property." *Id*. § 40-3.2-104.3(2)(c). The statute exempts projects permitted or requested before the effective date of August 7, 2023. *Id*. § 40-3.2-104.3(2)(d)(I).

17. As required by the statute, CNG filed updated tariffs on December 29, 2023, but it did so under protest. Advice Letter No. 133. CNG objected that the statute violates its rights under the U.S. and Colorado Constitutions' Contracts Clauses and Takings Clauses and impairs the regulatory compact. CNG's amended tariffs removed both types of allowances for any applicants that were not exempt. Tariff Sheet R35.

18. On January 5, 2024, the Commission Staff filed a protest to CNG's Advice Letter No. 133, expressing concerns that CNG's removal of construction allowances for service line and main line extensions from its tariffs (under protest) may not be sufficient to satisfy the statutory requirements. The Staff suggested that the Commission would benefit from legal briefing and analysis regarding CNG's constitutional claims.

19. On January 18, the Colorado Office of the Utility Consumer Advocate ("UCA") intervened and stated it shared the same concerns.

20. On January 24, 2024, the Commission suspended CNG's tariff sheets and referred the proceeding to an Administrative Law Judge. The Commission directed the ALJ to

> address[] 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.

Decision No. C24-0061 at 8.

The ALJ's Recommended Decision

21. The Staff and UCA intervened in the proceeding, and the ALJ granted the Sierra Club's motion to intervene, Decision No. R24-0157-I.

22. The parties filed testimony, participated in an evidentiary hearing on December 3, 2024, and submitted briefing and statements of position. CNG's position was that the best

reading of the statutory text is that service line extension allowances are prohibited but that main extension allowances are not; the statute distinguishes between infrastructure connecting an individual property to the distribution system and shared infrastructure that is part of the distribution system. And to the extent there is any ambiguity as to the scope of the statutory prohibition, constitutional concerns under the Takings and Contracts Clauses counsel in favor of CNG's narrower reading. Respondents' position was that the statutory text prohibits both service line and main extension allowances because both act as "incentives" to establish service, that the Commission need not reach the constitutional concerns because the statute is clear, and that the constitutional claims had not been shown.

23. On October 14, 2025, the ALJ issued a Recommended Decision, concluding that the statute prohibits construction allowances not just for service line extensions but also for distribution main extensions. Decision No. R25-0741, Recommended Decision Permanently Suspending Tariff Sheets, Requiring Filing, and Closing Proceeding, Proceeding No. 23AL-0635G.[2] The ALJ read the statute to "require[] the removal of incentives for the establishment of new gas service that existed at the time of the statute's passage." Recommended Decision ¶ 58 (relying on § 40-3.2-104(2)(c)'s requirement to file an updated tariff). And it held that because all four gas utilities had both service line and main extension allowances at that time, "those are the incentives prohibited by the statute"—and nothing more. *Id.*; *see also id.* ¶ 66 (reiterating this holding as the limiting principle on the statute's scope).

24. In the ALJ's view, the statute's title, the use of the plural "incentives," and the use of "including" to indicate that line extension allowances are an illustrative example all reinforced

[2] Attached hereto as Exhibit No. 2.

this conclusion. Recommended Decision ¶¶ 59-60. The ALJ also read the definition of "line extension allowance" as "expansive," rejecting CNG's argument that *ejusdem generis* required reading the definition's third catch-all phrase to refer to infrastructure of the same type as the first two specific items (service lines and meters). *Id*. ¶¶ 61-64. The ALJ similarly rejected CNG's argument that the statutory language (*e.g.*, "an applicant, "a property," and connecting "to" the "distribution system") distinguished between customer-specific infrastructure and main extensions designed for serving more than one customer or property; the ALJ reasoned that a main extension may initially serve a single property even if others then join and share the cost. *Id*. ¶¶ 65-66.

25. Next, the ALJ turned to CNG's argument that the Commission should employ the canon of constitutional doubt to interpret the statute more narrowly to avoid constitutional concerns under the federal and state Takings and Contracts Clauses. Recommended Decision ¶ 69. The ALJ determined that the canon does not apply because the statute "unambiguously prohibits" the existing construction allowances, yet he went on to address the constitutional issues and concluded that his reading of the statute "does not raise sufficient constitutional concern to warrant adopting CNG's interpretation." *Id*.

26. As to the Takings Clause, the ALJ recognized that CPCNs could create a property interest, but he found there was no property interest here because he characterized CNG's claim as one for future investments. Recommended Decision ¶¶ 79-84. The ALJ went on to consider the elements of a regulatory taking under the *Penn Central* framework and found each lacking. *Id*. ¶¶ 85-88; *see Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978). First, as to the economic impact on CNG, the ALJ minimized CNG's evidence by noting that to date, the

evidence pertained mainly to service line extensions and not main extensions. Second, turning to CNG's reasonable investment-backed expectations, the ALJ dismissed the significance of earlier statutes and regulatory practice promoting the gas system and instead relied on statutes from 2019 and later to conclude that CNG could not have reasonably expected to be able to invest in gas system infrastructure. Recommended Decision ¶¶ 86-87. And third, as to the character of the government action, the ALJ brushed off CNG's claim that the statute disproportionately burdens gas utilities by noting that the three other gas utilities had settled with the Staff. *Id.* ¶ 88.

27. As to the Contracts Clause, the ALJ found, first, that there was no substantial impairment because CNG failed to show that it would not have entered the contracts—ignoring caselaw holding that impairments are substantial if they deprive a party of an important right or alter an essential term of the contract. Recommended Decision ¶ 91. Next, the ALJ concluded that the statute is "narrowly tailored" to help "mitigate the effects of climate change" because it could have been broader and because the State is owed deference. *Id.* ¶¶ 93-95.

28. In sum, the ALJ found the constitutional concerns insufficient and affirmed its broader reading, concluding that the statute prohibits both service line and main extension allowances.

The Commission's Final Decision

29. CNG filed Exceptions, and the Staff, UCA, and Sierra Club responded.

30. The Commission issued its Final Decision on March 30, 2026. Decision No. C26-0196. The Commission described the issue presented as "whether § 40-3.2-104.3, C.R.S., prohibits only construction allowances for service lines, or whether it prohibits allowances for both distribution main extensions and service lines." Final Decision ¶ 1. The

Commission agreed with the ALJ and Staff that "the statutory language prohibits construction allowances for both distribution main extensions and service lines" and therefore affirmed the Recommended Decision. *Id*.

31. The Final Decision began by noting that all parties agreed, as did the Commission, that a "line extension allowance" is "one type of incentive the statute prohibits," but that this example did not limit the prohibited incentives to just that item. Final Decision ¶¶ 37, 42.

32. The Commission rejected CNG's view that the statute distinguishes between customer-specific infrastructure intended to serve one customer or property, such as service line extensions, and infrastructure designed to be shared by multiple customers as part of the distribution system, such as gas main extensions. Final Decision ¶¶ 38-39. Instead, it embraced the view that because service lines "may very well serve more than one customer" while "single customers often fund distribution main extensions," no such distinction could be drawn in interpreting the statute. *Id*. ¶¶ 39-40. The Commission considered it "of no moment" that the normal funding mechanism for main extensions (unlike service line extensions) spreads the costs across customers as they join, and that "in many instances distribution mains will serve multiple customers," because it is still possible for a single customer to be first. *Id*. ¶ 40 & n.51. The Commission therefore concluded that "CNG's attempt to place service lines and distribution mains cleanly into two different categories of its own design falters when considered against how these lines are used and defined in this industry." *Id*. ¶ 40.

33. The Commission also noted that distribution main and service line extension allowances "were the only two construction allowances offered by gas utilities when the bill was

passed"—echoing the Recommended Decision's core holding—and that both "function nearly identically" as relevant here because they both "provide customers who establish new service to a property a discount on the costs of extending pipelines to the property." Final Decision ¶ 42. It agreed with Sierra Club that because eliminating main extension allowances will result in fewer new customers, the allowances "function as an incentive." *Id*. ¶ 43. And because service line extension allowances "illustrate the type of incentive the statute prohibits," the Commission thought main extension allowances must also be "incentive[s]" because they function the same way. *Id*.

34. The Commission dismissed CNG's concern that this reading has no limiting principle, asserting that the phrase "other infrastructure associated with the addition of a new customer" covers distribution mains but not "[u]pstream investments" that are "larger infrastructure projects." Final Decision ¶ 44.

35. The Commission addressed CNG's constitutional concerns in a single paragraph. Final Decision ¶ 46. It declined to apply the canon of constitutional doubt, reasoning that the statute is "unambiguous," and so there is no need to use a canon meant for "interpreting ambiguous statutory language." *Id*. The Commission further reasoned that the canon "serves no purpose" here because CNG's position is that either reading raises constitutional concerns. *Id*. In a footnote, the Commission claimed that if it were to address the constitutional issues, it "would have affirmed" the Recommended Decision. *Id*. ¶ 46 n.60.

36. The Final Decision ordered CNG to refile its tariff sheets in a compliance tariff filing with the decision numbers from the proceeding.

37. CNG refiled its tariff sheets as directed on April 6, 2026. Advice Letter No. 149.

38. This appeal followed. The issue presented on appeal is whether the statute prohibits only service line extension allowances or whether it also prohibits distribution main extension allowances.

IV. CLAIMS ON REVIEW

39. Section 40-6-115(1), C.R.S., permits review by a district court of a "final decision by the commission in any proceeding." The Final Decision here is a final decision of the Commission within the Public Utilities Law.

40. "So far as necessary to the decision and where presented, the district court shall decide all relevant questions of law and interpret all relevant constitutional and statutory provisions." § 40-6-115(3). It shall determine "whether the commission has regularly pursued its authority, including a determination of whether the decision under review violates any right of the petitioner under the constitution of the United States or of the state of Colorado, and whether the decision of the commission is just and reasonable and whether its conclusions are in accordance with the evidence." *Id.*

41. The Commission's findings of fact are final, "except that, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of a petitioner under the constitution of the United States or the constitution of the state of Colorado, the district court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the said constitutional question shall not be final." § 40-6-115(2).

42. Under the Colorado Administrative Procedure Act, the court considers, among other things, whether the Commission acted arbitrarily and capriciously, denied a statutory right,

or acted "[i]n excess of statutory jurisdiction, authority, purposes, or limitations." § 24-4-106(7)(b), C.R.S. "In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply the interpretation to the facts duly found or established." § 24-4-106(7)(d). If the court finds error, it "shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken that has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford other relief as may be appropriate." § 24-4-106(7)(b).

43. In its Final Decision in Proceeding No. 23AL-0635G, the Commission erred in interpreting § 40-3.2-104.3 to require the elimination of gas main extension allowances as well as service line extension allowances. It failed to account for the statutory text and context, ignored canons of statutory construction and governing standards, and gave insufficient weight to the constitutional concerns raised.

A. The Statutory Text Is Best Read to Prohibit Only Service Line Extension Allowances

44. The parties and the Commission agree that § 40-3.2-104.3 prohibits service line extension allowances but does not reach costs upstream of distribution main extensions. Final Decision ¶¶ 37, 44. Thus, the question presented is whether the statute prohibits construction allowances for distribution main extensions. Contrary to the Commission's conclusion, the statute's plain text establishes that it does not.

45. The statute states: "A gas utility shall not provide an applicant an incentive, including a line extension allowance, to establish gas service to a property." § 40-3.2-104.3(2)(a). A "line extension allowance" is defined as "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." § 40-3.2-104.3(1)(d).

46. Under ordinary principles of statutory interpretation, the statute is best read to require each new customer to pay for the infrastructure needed to connect that customer (or property) to the distribution main—leaving the utility to invest in the shared infrastructure, including the distribution main and any upstream costs. That is exactly the line drawn in the "line extension allowance" definition at the heart of the statutory prohibition.

47. The legislature specifically defined "line extension allowance" as a bundle of costs that includes two specific items followed by a catch-all item. This definition takes exactly the form that triggers *ejusdem generis* and therefore requires that "the general terms are applied only to those things of the same general kind or class as those specifically mentioned." *Winter v. People*, 126 P.3d 192, 195 (Colo. 2006); *accord Fischer v. United States*, 144 S. Ct. 2176, 2184 (2024) (similar). Here, only "other infrastructure" that, like the two specific items, connects a particular new customer "to a gas utility's distribution system" (*i.e.*, to the main) falls within the definition.

48. By contrast, infrastructure like distribution mains, regulator stations, and compressor stations are shared infrastructure that makes up the "distribution system" to which a new customer would connect. This infrastructure is essential to the overall utility system's basic operation, and its associated costs reflect more than the cost of connecting one new customer. Nothing in the statute supports, let alone requires, reading "other infrastructure associated with the addition of a new customer to a gas utility's distribution system" to include new distribution mains or any other infrastructure further upstream. Just as the General Assembly specified "new

service lines" as part of the prohibited construction allowances, it easily could have included "new main lines" had it wanted to do so. It did not.

49. Subsection (2)(a)'s prohibition, like the definition of "line extension allowance" at its core, draws the same customer (or property) specific line. It refers to a singular "applicant" and a singular "property": It prohibits giving "*an applicant* an incentive, including a line extension allowance, to establish gas service to *a property*." § 40-3.2-104.3(2)(a) (emphasis added). And "applicant" in turn is defined as "*a person* that requests natural gas service and that owns *the real property* requiring the service," including "*a* developer, builder, legal entity, or other person that has legal authority over *the property*." § 40-3.2-104.3(1)(a) (emphasis added).

50. Thus, the best reading of the statutory text is that it prohibits customer-specific infrastructure including service line extension allowances but does not prohibit main extension allowances. The Commission went astray by failing to parse the statutory text and apply ordinary canons of statutory interpretation, including *ejusdem generis*. This led it to mistakenly read the final phrase of the definition of "line extension allowance" as an expansion of the prohibition's scope, rather than as a limitation.

51. The Commission also erred by concluding that the statute cannot reflect a distinction between service line extensions (property-specific infrastructure) and main extensions (shared infrastructure) because there is no such distinction. That is mistaken. The distinction between service lines and distribution mains is firmly rooted in the statutory scheme, the Commission's own rules, and longstanding regulatory practice, including the statement of allowances as set out in the tariffs. *See, e.g.*, 4 CCR 723-4, Rule 4001(v), (hh), (aaa); *id.* Rule 4210(b); § 40-2-115(2)(e), (h), C.R.S.; 49 C.F.R. § 192.3. That a single customer can

singlehandedly fund a main extension for a single property does not change what kind of infrastructure a distribution main is: a line that "serves, *or is designed to serve*, as a common source of supply for" multiple service lines. 4 CCR 723-4, Rule 4001(hh) (emphasis added). This fundamental error pervades the Commission's analysis. *See* Final Decision ¶¶ 38-43.

52. The Commission also erred in concluding that because a main extension allowance, like a line extension allowance, functions as an "inducement" to establish gas service, it must be an "incentive" under the statute. That logic has no limiting principle. Not charging customers for the cost of upstream infrastructure also lowers their cost to establish service and would therefore be an "inducement" under the Commission's logic. The Commission attempted to preordain its result by calling the allowance a "discount"—yet that is not what it is, as explained above. The allowances are the utility's investment in establishing service for a new customer on which it can earn a return, and they are the mechanism for socializing costs equitably between existing and new customers.

53. Further, the Commission, still searching for a way to distinguish upstream infrastructure investments from its definition of an "incentive," simply declared that upstream investments are different because they are "larger infrastructure projects." Final Decision ¶ 44. That dividing line is neither workable nor supported by the statute. The only line the statute draws is between shared infrastructure that is part of the utility's distribution system and the infrastructure to connect a customer's property to that system.

B. The Final Decision Failed to Address Serious Constitutional Concerns That Counsel in Favor of CNG's Narrower Reading

54. The Commission's lead reason for declining to address the constitutional concerns was that it found the statute unambiguous. The Commission's failure to engage with many of

CNG's arguments, with the statutory text, and with longstanding aspects of the regulatory framework undermines its declaration on ambiguity. CNG's reading is, at the least, plausible, so refusing to address the constitutional concerns on this ground was error.

55. The Commission's second reason, that the canon cannot "render any aid" here because CNG alleges that both readings raise constitutional concerns, is unsupported. If constitutional concerns counsel in favor of a narrower reading, that the narrower reading may still raise concerns is no reason to ignore even greater concerns with a broader reading.

56. The Commission's footnoted suggestion that if it were to reach the constitutional issues, it would affirm the Recommended Decision is not a sufficient or reasoned analysis. It fails to respond to CNG's Exceptions, which explained that the Recommended Decision misapprehended CNG's arguments, the applicable standards, and relevant record evidence. Exceptions 15-30.

57. More specifically, the Commission's statutory interpretation raises concerns under the federal and state Takings Clauses because the statute would effectively deprive CNG of its right to invest in new infrastructure and earn a reasonable rate of return on those investments. Exceptions 15-24. CNG has a property interest in its existing rights in its existing territories granted to it by its CPCNs and franchise agreements. Exceptions 16-17. The Recommended Decision in fact recognized that a utility has a property right to its existing facilities and the CPCNs that allow it to serve customers in its service territory. Recommended Decision ¶ 83 n.152. The Takings Clauses protect that property interest. But the ALJ mistook the legal standard as requiring revocation of the CPCNs, and he mischaracterized CNG's claim as asserting a future property interest. Recommended Decision ¶¶ 80-84. Likewise, the ALJ's

suggestion that the regulatory compact is irrelevant because it provides only the guarantee of an "opportunity" to earn a reasonable return, Recommended Decision ¶ 82, is misplaced—that guarantee is a right that the statute effectively takes away. Exceptions 18-19.

58. CNG provided evidence and argument on each element of a regulatory takings claim under the *Penn Central* framework: (i) the economic impact on CNG, to which several witnesses testified; (ii) CNG's reasonable investment-backed expectations, demonstrated by the longstanding regulatory framework, which are not refuted by the recent shift to a policy intended to discourage gas infrastructure; and (iii) the character of the government action, which here imposes the burden of pursuing a public good on a handful of companies. CNG Statement of Position 5-12 (citing witness testimony); CNG Opening Br. 15; *see also* Exceptions 19-24. The ALJ failed to adequately account for this evidence in assessing the regulatory takings claim, Recommended Decision ¶¶ 85-88, and instead mistakenly relied on irrelevant evidence, *e.g., id*. ¶ 87 (relying on statutes postdating the CPCNs to conclude that CNG could not have had reasonable expectations); *id*. ¶ 88 (suggesting that the other gas utilities' settlements showed a lack of burden).

59. Second, the Commission's statutory interpretation raises concerns under the federal and state Contracts Clauses because it substantially impairs the key benefit of the bargain for CNG and is not reasonably tailored to advance its public purpose. Exceptions 24-30. The statute deprives CNG of essential elements of the regulatory bargain, namely the right to provide service and invest in infrastructure that is the foundation for the opportunity to earn a reasonable return. *Id*. at 24-26. And the statute is not appropriately tailored to its purpose of bringing about a renewable energy transition given the state's current energy mix for electric production. *Id*. at

28-29. Nor is it reasonable to impose the burdens of addressing climate change on a few gas utilities by depriving them of the benefits of existing contracts. *Id*. The ALJ's contrary conclusion misapprehended the standards both for substantial impairment and for reasonable tailoring, mistook CNG's evidence and arguments, and incorrectly afforded the state—which is a party to the contracts—deference. *See* Recommended Decision ¶¶ 89-96; Exceptions at 26-30.

60. In short, the Commission erred in refusing to address the serious constitutional concerns. Those concerns warrant a careful review and counsel strongly in favor of CNG's narrower reading of the statute. Reading the statute to prohibit line extension allowances but not distribution main extension allowances best aligns with the statutory text and context and mitigates these constitutional concerns.

V. REQUESTED RELIEF

For the reasons set forth in this Petition, CNG respectfully requests that:

A. This Court issue a Writ of Certiorari or Review and a citation to show cause for the purpose of having the Final Decision's interpretation of Section 40-3.2-104.3, C.R.S., as part of Proceeding No. 23AL-0635G be inquired into and determined;

B. Such Writ be made returnable not later than thirty (30) days after issuance thereof;

C. Such Writ direct the Commission to certify to this Court the record in Proceeding No. 23AL-0635G;

D. Such Writ direct the Commission to appear pursuant to further orders of this Court and to show cause why the relief requested in this Petition for Writ of Certiorari or Review should not be granted;

E. This Court establish by subsequent order a schedule for briefs and a hearing for the Court to review the lawfulness of the Final Decision;

F. This Court find that in rendering the Final Decision, the Commission has erred in its interpretation of the statute, Section 40-3.2-104.3, C.R.S., and has reached a decision that is either contrary to applicable law, not just and reasonable, arbitrary and capricious, clearly erroneous, or unsupported by substantial evidence when the record is considered as a whole;

G. This Court enter a judgment setting aside or reversing the Final Decision and remanding the case to the Commission with instructions to implement the Court's decision; and

H. The Court grant CNG all other relief provided by law.

Respectfully submitted this 19th day of May 2026.

FAIRFIELD AND WOODS, P.C.

By: */s/ Matthew S. Rork*
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Pursuant to C.R.C.P. 121 § 1-26(7), (8), & (9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2026, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI OR REVIEW** was e-filed and e-served via Colorado Courts E-Filing System, upon the following counsel:

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By: *<u>/s/ Sharon Y. Meyer</u>*
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