

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF ROCKY MOUNTAIN NATURAL GAS)
COMPANY, INC., FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT AND OPERATE AN APPROX-)
IMATELY FORTY-TWO MILE EXTENSION OF)
ITS EXISTING "BIG HOLE" TRANSMISSION)
LINE FOR THE TRANSMISSION AND DIS-)
TRIBUTION OF GAS, EITHER NATURAL,)
ARTIFICIAL, OR MIXED, ALONG A DES-)
CRIBED ROUTE THROUGH PORTIONS OF)
RIO BLANCO, GARFIELD AND MESA COUNTIES,)
TYING ITS EXISTING PIPELINE TO ITS)
EXISTING SYSTEM AT A POINT NEAR DE)
BEQUE, COLORADO.)

APPLICATION NO. 32437-
EXTENSION

RECOMMENDED DECISION OF
EXAMINER LOYAL W. TRUMBULL

GRANTING APPLICATION

- - - - -
June 12, 1980
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Appearances: John P. Thompson, Esq., Denver,
Colorado, of Thompson & Kelley,
for Applicant Rocky Mountain
Natural Gas Company, Inc.;

Charles N. Haas, Esq., Denver,
Colorado, for Intervenor Trans-
Colorado Pipeline Company;

Donald D. Cawelti, Esq., Denver,
Colorado, of Kelly, Stansfield &
O'Donnell, for Intervenor Western
Slope Gas Company;

James R. McCotter, Esq., Denver,
Colorado, of Kelly, Stansfield &
O'Donnell, and
Stephen K. Schroeder, Esq., Salt Lake
City, Utah, for Intervenor Mountain
Fuel Resources, Inc.;

Marshall A. Snider, First Assistant
Attorney General, Denver, Colorado,
for the Staff of the Commission.

STATEMENT

On January 7, 1980, Rocky Mountain Natural Gas Company, Inc., hereinafter referred to as "Applicant," filed the above-captioned application with this Commission. On January 14, 1980, the Executive Secretary of the Commission issued notice of such application to all interested persons, firms or corporations, as required by the provisions of 40-6-108, CRS 1973. On February 13, 1980, petitions for leave to intervene in this matter were filed on behalf of the following entities which shall be referred to as indicated in quotation marks:

1. Trans-Colorado Pipeline Company "Trans-Colorado"
2. Western Slope Gas Company "Western Slope"
3. Mountain Fuel Resources, Inc. "Mountain Fuel"

All three requests for permission to intervene were granted by this Commission in Decision No. C80-299, issued February 20, 1980. The matter, although originally set for hearing on April 29, 1980, was later reset for hearing on April 28, 1980, at 10 a.m., in the Fifth Floor Hearing Room, 1525 Sherman Street, Denver, Colorado.

On April 15, 1980, Intervenor Mountain Fuel filed a motion that either Northwest Pipeline Corporation (Northwest) be required to be joined as a party to this proceeding, in view of its role as a partner with Applicant in the proposed project, or that the application be dismissed. On April 24, 1980, counsel for Applicant filed a reply to such motion and a motion requesting the Commission to reconsider its order allowing the intervention of Mountain Fuel and to "strike the appearance" of such intervenor on the ground that Mountain Fuel, being an interstate pipeline carrier, had no standing to protest this application. These two motions were called on for hearing as preliminary matters upon commencement of the hearing, and both such motions were denied by the Examiner.

During the course of the hearing, testimony was heard from three witnesses and a total of 16 exhibits were offered and admitted into evidence. The matter was taken under advisement upon conclusion of the hearing, pending receipt of statements of position which the parties were allowed to file within two weeks after conclusion of hearing. Such statements of position have been received and have been duly considered.

Pursuant to the provisions of 40-6-109, CRS 1973, Examiner Loyal W. Trumbull now submits the record and exhibits of this proceeding to the Commission together with this recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

The Examiner has found the following facts to exist, based upon all the evidence of record, and has arrived at the following conclusions based upon such facts:

1. Applicant Rocky Mountain is a distributor of natural gas, all of such operations being conducted wholly within the State of Colorado. Gas is sold to small and moderate-sized communities in eastern Colorado and in mountainous areas in the western part of the state. The eastern and western systems are not interconnected. In Western Colorado, Applicant has two non-interconnected systems, one serving Dove Creek and the other being the Western Slope System, which serves 85% of Applicant's customers. The distribution system generally extends from the City of Montrose on the southwest to Glenwood Springs and Aspen on the northeast. The northernmost point of the Western Slope System in the latter part of the system is at De Beque, between Grand Junction and Rifle.

2. By this application, Applicant requests authority to construct an eight-inch diameter pipeline from "Rock School," which would run south a distance of 41.6 miles to a point west of De Beque. The line would have a maximum daily capacity of 15,000 Mcf.

One of Applicant's main sources of wellhead supply are the so-called "Big Hole" and "Blue Gravel" fields which are located respectively about 66 miles north and 68 miles north and east of Rock School. Applicant

was authorized by this Commission to construct its present six inch Big Hole line from the Big Hole Field to Rock School (See Decision No. 83544, issued August 17, 1973). Applicant was thus able to connect at Rock School with the fourteen inch Cascade Natural Gas Company line which is now owned by Intervenor Mountain Fuel, and which terminates at Divide Creek, near the Town of Silt. Applicant also purchases gas from the Black Sulphur Creek area, west of Rock School; this gas is transported east to Rock School for consolidation and onward delivery through the Mountain Fuel line. Applicant also purchases gas from Bar X - South Canyon area northwest of Grand Junction, and transports this gas through a gathering line to a point on the Mountain Fuel line between Rock School and Collbran. Applicant injects large quantities of gas in its Wolf Creek Storage Field, east of Divide Creek, for withdrawal during high use months.

3. Mountain Fuel's only pipeline transportation customer on the Cascade line, besides Applicant, is Mountain Fuel's parent company, Mountain Fuel Supply, which distributes natural gas only to customers in the State of Utah. Mountain Fuel is naturally concerned that the loss of Applicant as a pipeline customer will result in all the fixed costs of the pipeline having to be borne by its parent initially and Utah ratepayers ultimately.

The Cascade line runs a distance of 121.2 miles commencing at Bonanza, Utah, and terminating at Applicant's Divide Creek delivery point. The system delivers purchased gas from the Bonanza Field and transports Applicant's gas from two sources in addition to the Big Hole line. The system has a design capacity of 60,000 Mcf per day at 14.73 p.s.i.a. but has apparently never operated at design capacity. Average daily deliveries are now 14,000 Mcf per day with peak day deliveries of 22,000 Mcf per day.

Under the existing transportation service agreement, Mountain Fuel has reserved to Applicant 6,500 Mcf maximum daily quantity (MDQ) of capacity which it will transport for Applicant, and for which capacity Applicant must pay if such quantities are not tendered to the line. This agreement contains a requirement of 12 months advance notice of cancellation; Applicant has given such notice and desires to terminate the agreement effective November 15, 1980. One of Applicant's main reasons for desiring to build the proposed line, in addition to obtaining total system control of their own transportation operations, is that Mountain Fuel's rates for such services are subject to regulation by the Federal Energy Regulatory Commission (FERC).

4. Intervenor Western Slope is a public utility subject to the jurisdiction of this Commission by virtue of its purchase, transmission and sale of natural gas within this state. It has natural gas pipeline facilities located in Rio Blanco, Garfield and Mesa Counties. The proposed pipeline would go through the middle of a vast area which is presently devoid of pipeline facilities but is literally surrounded by the pipeline facilities of Western Slope.

While Western Slope takes no position on the feasibility or prudence of granting this application, such intervenor professes to be concerned that "conflicts may arise regarding service of natural gas in the vicinity of the pipeline if such construction is allowed." To minimize such potential problems, it is contended that that any grant of this application should be conditioned upon a restriction that natural gas service from the subject line to potential customers be rendered only after receiving disclaimers of desire to serve from other potential suppliers or an order from this Commission that such service was or would be required by public convenience and necessity.

5. Intervenor Trans-Colorado supplies gas to Applicant at a delivery point near Delta, which gas comes from Southwest Colorado and Southeastern Utah. Applicant is required by its agreement to take or pay for a maximum daily deliveries of up to 10,000 Mcf per day. Trans-Colorado

deliveries have increased in the last year from an average of 4,000 Mcf per day to about 8,000 Mcf per day, which rate of increase should decline in the foreseeable future.

6. Applicant proposes to construct the subject line in conjunction with Northwest Pipeline Corporation (Northwest), which is a Delaware corporation. The terms of the operating agreement entered into between the two parties requires that Applicant:

- a. Obtain all necessary rights of way, licenses and permits in its own name and contribute same to the venture at cost plus overhead.
- b. Contribute 75,769 lineal feet of pipe to the venture at present fair market value.
- c. Design the pipeline, conduct bidding procedures, select contractor and supervise construction.
- d. Act as operator of the pipeline, being paid monthly one-half of the operating cost of the line, plus overhead, according to the previous year's costs, which shall be fixed at \$3,330 per month in 1980.

Northwest is obligated to:

- a. Provide one-half of construction costs, including rights of way and material; however, its contributions to construction are limited to a maximum of \$2,000,000.

Upon completion, each party shall own an undivided one-half interest in the joint venture. Each shall have the right to use one-half of the pipeline capacity for transportation of its own gas, and the right to contract with the other party for the unused part of its entitlement. Transportation agreements may be entered into with third parties with the agreement of both joint ventures.

7. The total cost of the project was estimated to be \$2,825,775 as of November 1, 1979, consisting of the following:

Contract Labor	\$1,077,391
Materials	1,223,175
Applicant's Labor	268,320
Overhead (10%)	<u>256,889</u>
	\$2,825,775

Inasmuch as Applicant would get a substantial credit for the value of its pipe on hand and much of the work can be done by Applicant's employees, its projected cash outlay for this project would be about \$875,000 instead of one-half of the above figure.

8. About 34% of the proposed pipeline route traverses Bureau of Land Management (BLM) land and the balance is across private land. A right of way across the BLM land has been obtained and rights of way or entry have been obtained on sufficient private land to account for an additional 2% of the route. Environmental considerations have been given due consideration and do not pose any substantial grounds that might warrant prevention of the proposed project. Applicant does not anticipate any necessity of condemnation

in order to obtain the remaining rights of way. Apparently no other permits or licenses will be required for construction or operation of the proposed pipeline.

9. As of the end of the calendar year 1979, Applicant had total assets of \$18,918,733 and total liabilities of \$11,438,460, indicating stockholders' equity of \$7,361,824.

Applicant has a line of unsecured credit at Central Bank of Denver in the amount of \$5,000,000 with an interest rate of one-half point over the prime rate. Applicant and Northwest are financially capable of undertaking and completing construction of the proposed pipeline.

10. Applicant desires to begin construction in sufficient time to be able to have it in operation by November 15, 1980, which is the beginning of the next heating season and the effective date of Applicant's notice to Mountain Fuel of termination of their transportation agreement. Applicant needs to be able to begin construction by August 1, 1980, in order to have sufficient allowance for unavoidable delays and weather problems.

11. In considering the application, it is critical to consider the revenue requirements of the proposed project. The proposed project would involve an annual cost of service of about \$388,400, which includes the following:

Depreciation at 1.2%	\$ 68,000
Federal and State Income Taxes	142,000
Property Taxes	16,000
11.6% Rate of Return on Additional Rate Base of \$1,400,000	<u>162,400</u>
	\$388,400

On the other hand, Applicant would be relieved of its \$250,000 annual expense to Mountain Fuel for transportation services, and it would be paid about \$40,000 per year by Northwest for operating the new line. After making the associated changes in income taxes, depreciation and interest which result from the termination of the Mountain Fuel contract and building the new line, it appears that Applicant's net operating deductions would decrease by about \$170,000. Inasmuch as the project will eventually be financed by long-term debt upon completion, a slight increase in imbedded cost of debt in Applicant's capital structure will result.

The net result of this project is rather speculative in terms of effect upon Applicant's rates, considering variables such as Mountain Fuel's future rates and income from transportation for others.

12. A couple of issues have been raised by the fact that the proposed project is to be jointly used by a public utility subject to the jurisdiction of this Commission and by a natural gas company which is subject to the jurisdiction of F.E.R.C. First, the only suggested authority for Northwest to undertake this project is a so-called "general" authority which Rocky Mountain suggests Northwest has as an interstate natural gas company to engage in such limited projects or to transport through intrastate pipelines limited amounts of gas which is being sold or transported in intrastate commerce. It does appear to the Examiner that it would be incumbent upon Northwest to at least file an abbreviated "budget-type" application with FERC for permission to construct or extend gas purchase facilities, as provided for in Section 157.7 of Title 18 of the United States Code of Federal Regulations. However, the proper concern of this Commission is whether or not

the project would result in unnecessary duplication of, or conflict with, existing intrastate facilities, and whether or not Applicant should be allowed to incur such expenses. If there is any legal bar to Northwest's involvement, Applicant has an adequate remedy at law for breach of contract. Furthermore, there does not appear to be any reason why the proposed project would result in a situation which would interfere with this Commission's regulation of Applicant's activities as a public utility in the distribution of natural gas.

13. Mountain Fuel has pointed out that Northwest sells about 10% of its supply to Colorado Interstate Gas (CIG), which is the major wholesale supplier of natural gas along the Front Range of Colorado, and argues that 10% of the increased costs incurred by Northwest will ultimately be passed on to and paid by Colorado consumers. While this may well be true, it is not the function of this Commission to interfere in a matter subject to federal regulation merely because the matter is incidentally involved with a jurisdictional utility and a slight increase in cost to Colorado customers may indirectly result from the proposed project.

14. One of the major reasons Applicant asserts for its desire to construct the subject pipeline is the problem of Mountain Fuel's rates apparently being subject to the jurisdiction of FERC as to the rates it charges Applicant for transportation through the Cascade line. Prior to August of 1979, Applicant had a monthly annual charge of \$191,000 with a maximum daily quantity (MDQ) of 9,180 Mcf. Early in 1979, the Staff of FERC proposed that Applicant's cost for use of such line be increased to \$506,000. With the assistance of Mountain Fuel, Applicant was able to negotiate a settlement of the matter on the basis of annual cost being increased only to \$250,000 and Applicant accepting a reduced MDQ of 6,500 Mcf. Although Applicant does not doubt that it would continue to have the use of a part of the capacity of the Cascade line in the foreseeable future, it is desirous of not being subject to the possibility of substantial increases in cost on a frequent basis.

15. Mountain Fuel, in attempting to demonstrate that Applicant does not even need to move gas from the Big Hole area to Divide Creek, points out that Applicant has not tendered any such gas to Mountain Fuel since January of 1980. However, this is attributable to the fact that the last winter was somewhat warmer than normal, reducing heating demand, and Applicant wanted to sell as much gas as possible out of storage in the Wolf Creek Field so that it would not have to continue to pay interest on such inventory. The excess gas that Applicant was not taking at Divide Creek was thus sold to Mountain Fuel as short-term gas until April 15, 1980. However, Applicant will resume injecting gas during the summer when necessary to assure sufficient volumes in storage for on-peak withdrawal during the winter.

16. Although this application states that the purpose of the project is to obtain an economical means to move gas from northern source to southern destination, the project obviously plays a more complex role than that in Applicant's plans. With the proposed pipeline, Applicant will be able to buy, sell and deliver gas at various parts of its system by means of exchange or displacement arrangements, as opposed to conventional transportation, which are not feasible if north-south movements are limited to the Cascade line. In fact, the subject pipeline is needed by Applicant largely because the Blue Gravel Field, which supplies about a third of the production from the northern area, is declining rapidly and will soon be totally depleted for all practical purposes unless the producer chooses to provide compression, which is unlikely.

17. Turning to the proposal of Western Slope that any grant of this application be restricted as described in Finding No. 4, it should be noted that territorial natural gas service areas on the Western Slope have generally not been "certificated" to public utilities by this Commission.

Utilities are thus entitled to compete on an equal footing to provide service to unserved areas. The provisions of 40-5-101, CRS 1973, provide the framework for resolving problems pertaining to extensions of service into contiguous areas not served by a similar public utility or for extension necessary in the normal course of business within or to territory already served by the extending utility. Such statute further authorizes this Commission to anticipate such problems and place appropriate restrictions or provisions in a certificate defining conditions of rendering service or constructing extensions.

In spite of Western Slope's being first in time to provide service to some areas in the general area, if not contiguous to, the area to be traversed by the proposed line, Western Slope only has some vested rights in those areas to which it is providing complete and adequate distribution service at the time of the desired extension. It would presumably be obvious to Applicant's officers and employees that many possible areas were being adequately and completely served by Western Slope. However, it is the nature of such matters that there are "grey areas" or areas where the two companies might view a particular situation with drastically different points of view. Inasmuch as these areas appear to be relatively few in comparison to the total area, it is unreasonable to require Applicant to get a concurrence or a certificate any time that it desires to serve a retail customer. However, there should be some provisions to encourage orderly extension, and the burden of avoiding infringement should not be entirely upon Applicant. Provisions should be made for Applicant to give timely warning of intended extensions under the conditions hereinafter recommended to be ordered.

18. The granting of this application will not result in an unnecessary duplication of service by public utilities, as defined by 40-1-103, CRS 1973.

19. The proposed project will assist in the development of natural gas production from a remote area of this state which has not previously had ready access to a pipeline system. While it is true that much of this gas may go out of state, the basic question is one of whether or not the construction of the proposed pipeline represents a reasonable exercise of managerial discretion on the part of the officers of a Colorado public utility responsible for providing natural gas distribution service to a large part of Western Colorado, and is otherwise in the public interest. The Examiner concludes that the affirmative has been demonstrated to be true.

20. The public convenience and necessity requires, and will in the future require, the construction of the eight-inch pipeline which Applicant proposes to add to its system between Rock School and De Beque.

21. Pursuant to the provisions of 40-6-109, CRS 1973, it is recommended that the Commission enter the following Order.

O R D E R

THE COMMISSION ORDERS THAT:

1. Rocky Mountain Natural Gas Company, Inc., is hereby authorized to construct and operate a 41.6 mile long, eight-inch diameter, extension of its existing "Big Hole" line for the transmission and distribution of gas, either natural, artificial or mixed, from Rock School in Rio Blanco County to a point west of De Beque, and this Order shall be a Certificate of Public Convenience and Necessity therefor.

2. Not later than 30 days after completion of the construction of the proposed pipeline, Rocky Mountain Natural Gas Company, Inc., shall file with this Commission a detailed map of the right-of-way accurately depicting the location of the pipeline; Rocky Mountain Natural Gas Company, Inc., shall also file with this Commission within the prescribed time a list of the journal entries to be made upon its books of account reflecting the actual cost of construction.

3. Upon determining that it may undertake to provide any natural gas service to any location within three (3) miles of any line of Western Slope Gas Company, as indicated on Exhibit 11 in this proceeding, Rocky Mountain Natural Gas Company shall advise Western Slope Gas Company of such intent and of the name and service location of the intended customer. If Rocky Mountain Natural Gas Company has not been advised by Western Slope Gas Company within ten (10) days that it objects to such service on the grounds that it is already completely and adequately serving such area, such service may be undertaken. If such notice is given by Western Slope Gas Company, and Western Slope Gas Company has not filed a complaint with this Commission within twenty (20) days thereafter requesting that Rocky Mountain Natural Gas Company be ordered not to provide such service, Rocky Mountain Natural Gas Company may proceed to provide such service. Notice may be given by any reasonable means.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

5. As provided by 40-6-109, CRS 1973, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of 40-6-114, CRS 1973.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner
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