

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION  
OF COLORADO NATURAL GAS, INC.  
FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO  
PROVIDE NATURAL GAS SERVICE IN  
DESIGNATED AREAS WITHIN SUMMIT  
AND PARK COUNTIES, COLORADO.

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Docket No. 07A-246G

**STIPULATION AND AGREEMENT IN RESOLUTION OF PROCEEDING**

This Stipulation and Agreement in Resolution of Proceeding ("Stipulation") is entered into by and between Colorado Natural Gas, Inc. ("CNG" or "Company") and the Staff of the Public Utilities Commission of the State of Colorado ("Staff"). CNG and Staff are referred to herein collectively as the "Parties" and individually as a "Party." This Stipulation sets forth the terms and conditions by which the Parties have agreed to resolve all outstanding issues presented by CNG's application in the above-captioned matter that have or could have been contested in this proceeding. <sup>1</sup>

The Parties state that the settlement reached in this proceeding constitutes a just and reasonable resolution of this proceeding and that avoiding litigation in this docket through a negotiated settlement is in the public interest. The Parties further state that approval and implementation of the settlement embodied in this Stipulation will result in substantial savings to all concerned. Each Party to this Stipulation pledges its support of this Stipulation and states that each will defend the settlement reached by the Parties as reflected herein.

<sup>1</sup> While Public Service Company of Colorado ("Public Service") is not a signatory to this Stipulation, the Parties are authorized to state that Public Service does not oppose the agreements reached by CNG and Staff as reflected herein, nor does it oppose the Commission's approval of such agreements.

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The Parties respectfully request that the Public Utilities Commission of the State of Colorado ("Commission") approve this Stipulation, without modification.

### **I. PROCEDURAL BACKGROUND**

1. On or about June 22, 2007, CNG filed its Verified Application seeking the issuance of a Certificate of Public Convenience and Necessity ("CPCN") to provide natural gas service in designated areas within Summit and Park Counties, Colorado.

2. On June 26, 2007, the Commission issued its Notice of Application Filed. Such Notice established, among other things, dates by which interventions were to be filed, as well as dates by which testimony should be filed by the Parties. Except for these filing dates, the Commission's Notice did not establish any other procedural dates in this docket.

3. On July 26, 2007, Public Service filed its motion to intervene, protest and request for hearing in this proceeding.

4. On July 27, 2007, CNG filed its motion to hold docket in abeyance for approximately thirty (30) days in order that CNG might compile certain financial and other information necessary in order for the Commission to deem the application complete. CNG's motion was granted by the Commission on August 8, 2007 pursuant to Decision No. C07-0694.

5. On August 7, 2007, Staff filed its notice of intervention, entry of appearance and request for hearing.

6. On August 20, 2007, CNG filed its motion to amend verified application so as to include the information that it had been working to compile and that was the subject of CNG's earlier motion to hold the docket in abeyance.

CNG's motion to amend verified application was granted by the Commission on August 29, 2007 pursuant to Decision No. R07-0728-I. Decision No. R07-0728-I also granted Public Service's motion to intervene.

7. On September 21, 2007, CNG filed its motion for an order establishing a procedural schedule and waiving response time.

8. Subsequent to the filing of its application, as amended, CNG discussed the relief it seeks in this proceeding with Staff and Public Service.

9. Those discussions and associated negotiations have resulted in the Parties resolving all issues that were or could have been raised in this proceeding. This Stipulation represents the results of those negotiations.

## **II. TERMS OF SETTLEMENT**

10. The Parties acknowledge that natural gas service is not currently available in the service areas for which CNG is requesting a CPCN as described in its application. The Parties further acknowledge that CNG is ready, willing and able, financially and otherwise, to design, own, operate and maintain a natural gas system in the areas that are included within the terms of this Stipulation and that CNG has demonstrated that the construction, operation and maintenance of facilities by CNG necessary to provide natural gas utility service within such areas is economically feasible.

Consequently, subject to the terms and conditions of this Stipulation, the Parties agree that public convenience and necessity is served by the issuance of a CPCN to CNG authorizing it to construct, own, operate and maintain a natural gas mainline and distribution system and to provide natural gas sales and transportation services to customers within the territory more particularly

described in Exhibit No. 1 attached hereto and incorporated herein by reference and referred to herein as the "South Park Area." A map identifying generally the area to be certificated to CNG is attached hereto and incorporated herein by reference as Exhibit No. 2. The areas described in Exhibit No. 1 and depicted generally in Exhibit No. 2 include the incorporated towns of Blue River, Alma and Fairplay, Colorado.

Exhibit Nos. 1 and 2 represent a smaller territory than that proposed in CNG's initial Application in this Docket. The revised area more closely follows the pattern of existing development in the area, and all sections which are included in the legal description have potential residential or commercial customers located within the section. The agreement by CNG to reduce the size of territory requested satisfactorily addressed the concerns raised by Public Service in its motion to intervene, protest and request for hearing in this proceeding.

11. The Parties further agree that a CPCN is properly issued to CNG authorizing it to construct, own, operate and maintain a six inch high density polyethylene mainline beginning at an approximate point along Public Service's existing system located in Section 18, Township 7S, Range 77W, and proceeding through private rights-of-way and along state highways and county roads in a generally south direction through the towns of Blue River, Alma, and ending at the town of Fairplay, Colorado. For informational purposes only, the anticipated total length of this mainline will be approximately 131,000 feet and the proposed route of the mainline is as set forth on Exhibit No. 2.

12. The Parties likewise agree that a CPCN is properly issued to CNG authorizing it to construct, own, operate and maintain natural gas distribution facilities within the areas described in Exhibit No. 1 and as depicted generally on Exhibit No. 2, including, but not limited to, those necessary to provide natural gas sales and transportation service to customers within the towns of Blue River, Alma and Fairplay, Colorado. For informational purposes only, it is anticipated that such natural gas distribution facilities will consist of approximately 65,000 feet of four inch polyethylene gas line and approximately 340,000 feet of two inch polyethylene gas line, along with  $\frac{3}{4}$  inch and  $1\frac{1}{4}$  inch service laterals.

13. Subject to the provisions in Paragraph 22, the Parties agree that a preliminary order for a CPCN authorizing CNG to exercise franchise rights within the towns of Blue River, Alma and Fairplay, Colorado, is in the public interest and should be approved. Further, the Parties agree that a CPCN authorizing CNG to provide natural gas service within the South Park Area should be approved. Although the facts in each case are unique, the areas described in described in Exhibit No. 1 and depicted generally in Exhibit No. 2 are within the service area corridor concept approved by the Commission by Decision No. R03-0212 in Docket No. 02A-548G.<sup>2</sup> CNG may further extend its facilities and service into contiguous areas beyond this specifically defined certificated area in the ordinary course of business.

14. The Parties agree that rolled-in rate treatment of the South Park Area into CNG's existing Bailey Rate Division is justified based on CNG's

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<sup>2</sup> The areas covered under the Certificate of Public Convenience and Necessity, pursuant to the Stipulation & Agreement in Docket No. 02A-548G, are within five (5) horizontal sections (beyond each section in which the pipeline right-of-way is located) on both sides of the proposed pipeline extending from Montrose to Ouray.

feasibility study. Therefore, CNG shall provide natural gas sales and transportation service to customers within the South Park Area pursuant to the rates identified for the Bailey Rate Division in CNG's Colorado PUC No. 1 Gas Tariff on file with and approved by the Commission, as same may change from time to time.

CNG agrees that in the event CNG's forecast regarding the penetration rate for connecting customers, i.e., customer counts, to the South Park Area described in Exhibit No. 1 turns out to be overly optimistic such that CNG is unable within 5 years after commencement of construction to recover the cost of expanding facilities into the area described in Exhibit 1, CNG shall not seek to recover its investment for such expansion from the remaining customers within the CNG Bailey Rate Division, but rather shall file to establish the South Park Area as a separate rate division, all as more particularly described in Paragraphs 15 through 18.

15. CNG is required by the Stipulation and Agreement in Docket 06S-394G to file a rate case in 2009 using either calendar year 2008 or the CNG 2009 fiscal year (which ends March 31, 2009), as the test year. Either of these prospective test years will cover the projected construction period for the South Park Area. In order to avoid the inevitable mismatching of leading construction costs and the lagging revenues attendant with the anticipated customer counts and billing determinants for a new area such as this, CNG agrees that for the 2009 rate case, rates for the Bailey Rate Division will be set using the rate base, operating expenses and rate determinants from the remainder of the Bailey Rate Division, excluding the South Park Area. This will ensure that the balance of the

Bailey Rate Division customers (excluding those served from the South Park Areas facilities) are not affected by the South Park expansion. Subject to Paragraphs 14 and 16 through 18, rates for the South Park Area will nevertheless continue to be the rates, albeit new rates established by that rate case, for the Bailey Rate Division.

16. Subject to the provisions of Paragraph 18, the Parties agree that South Park Area rate base, operating expenses and rate determinants shall be included in any rate case filing subsequent to CNG's required 2009 rate case filing only if a cost of service study comparing rates for the South Park Area on a stand-alone basis with the then-effective Bailey Rate Division rates demonstrate rate parity as defined in Paragraph 18, below.

17. Subject to the provisions of Paragraph 18, if CNG does not initiate a rate case between the conclusion of its 2009 rate case and September 30, 2013, CNG agrees that no later than September 30, 2013, it shall file a report with Staff that includes a cost of service study comparing what rates for the South Park Area would be on a stand-alone basis with the then-effective Bailey Rate Division rates derived in CNG's most recent rate case proceeding.

18. In the event such comparison indicates that rate parity could not be sustained as the concept was first demonstrated in the original feasibility study, in order to avoid inappropriate cross subsidy of the customers within the South Park Area by the balance of the customers within the Bailey Rate Division, CNG agrees to remove the South Park Area from CNG's Bailey Rate Division. For the purpose of this Agreement, rate parity is defined as rate differential where stand-alone rates for the South Park Area are no more than five (5) percent greater

than the the-effective Bailey Division rates derived in CNG's most recent rate case proceeding. In the event such comparison indicates that stand-alone rates for the South Park Area are less than the then-effective Bailey Rate Division rates, CNG shall have no obligation to remove the South Park Area from CNG's Bailey Rate Division.

19. CNG agrees to track in detail the accounting of all costs associated with the mainline and distribution system constructed to serve the South Park Area in order to facilitate the use of such data in CNG's rate case proceedings or the stand-alone cost of service study discussed in Paragraphs 15 through 18.

20. Nothing herein shall, however, prohibit or otherwise limit or restrict CNG's ability to seek rate relief from the Commission regarding CNG's investment in facilities constructed to serve customers within the South Park Area from customers in the South Park Area.

21. Construction of the mainline and distribution system required to provide service to the South Park Area can be segregated into two discrete phases. Phase I consists of facilities north of Hoosier Pass. Phase II consists of facilities over and south of Hoosier Pass. In order to ensure minimal rate disparity between CNG's current Bailey Rate Division and the would be stand-alone rate for the South Park Area, CNG agrees not to start construction on Phase I and subsequently on Phase II (as defined herein) of the mainline and distribution system until it has met certain benchmarks regarding connection commitments from residential and/or commercial customers located within the South Park Area. The agreed-upon benchmarks are as follows:



- Before construction begins within the area north of Hoosier Pass, CNG will have received commitments from 350 potential customers within this area. This figure represents 50% of the potential customers in this area in the first year of operation. This area includes the town of Blue River, Colorado.
- Before construction begins within the area encompassing Hoosier Pass and south, into the towns of Alma and Fairplay, Colorado, CNG will have received an additional 658 commitments from potential customers located south of Hoosier Pass. This figure likewise represents 50% of the potential customers in the area south of Hoosier Pass in the first year of operation.
- The Parties agree that CNG should have the flexibility to construct the entire system within one construction season if CNG receives the combined number of commitments for Phases I and II, regardless of whether the customer location is north or south of Hoosier Pass.

22. CNG is currently pursuing franchise agreements with the towns of Blue River, Alma and Fairplay, Colorado. CNG understands that, before it begins natural gas service in these towns, it shall have received all necessary Commission authorizations for the exercise of franchise rights granted by such municipalities.

23. CNG agrees that within thirty (30) days of the issuance of a final Commission order approving this Stipulation without modification, CNG shall file an advice letter, as a compliance filing on not less than one day's notice, for the

purpose of amending its Colo. PUC No. 1 Tariff so as to include the South Park area within CNG's general service area.

## **II. IMPLEMENTATION**

24. This Stipulation shall not become effective until the issuance of a final Commission order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket under a new procedural schedule. The withdrawing Party shall notify the Commission, and the other Party to this Stipulation, in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation (such notice being referred to as the "Notice"). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation. Hearing shall be scheduled on an expedited basis, as soon as practicable.

25. In the event that this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding.

26. Notwithstanding the resolution of issues that were or could have been raised in this proceeding, nothing herein shall constitute a waiver by any Party with respect to any matter not specifically addressed herein. Except as

otherwise specifically set forth herein, by entering into this Stipulation, no Party shall have deemed to have agreed to any principle or method of ratemaking.

27. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in this proceeding, except as otherwise specifically noted in this Stipulation.

28. Evidence of conduct or statements made in negotiations and discussions in connection with this Stipulation shall not be admissible in any proceeding, except as may be necessary to enforce the provisions of this Stipulation or any Commission decision approving this Stipulation.

29. This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire agreement between the Parties with respect to the issues addressed by this Stipulation.

30. The Parties agree to a waiver of compliance with any requirement of the Commission's Rules and Regulations to the extent necessary to permit all provisions of this Stipulation to be carried out and effectuated.

Dated this 28<sup>th</sup> day of November, 2007.

APPROVED:

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Dated this 28<sup>th</sup> day of November, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28<sup>th</sup> day of November, 2007, an original and 10 true and correct copies of the foregoing document entitled STIPULATION AND AGREEMENT IN RESOLUTION OF PROCEEDING was hand-delivered to:

Doug Dean, Director  
Colorado Public Utilities Commission  
1560 Broadway, Suite 250  
Denver, CO 80202

And a copy was placed in the United States Mail, postage prepaid and addressed to:

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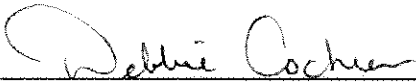
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## EXHIBIT 1



#### Legal Description for Proposed CPCN Territory

In T7S R78W Sections 24, 25, 36.

In T7S R77W Sections 19, 30, 31.

In T8S R78W Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36.

In T8S R77W Sections 6, 7, 18, 19, 30, 31.

In T9S R78W Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36.

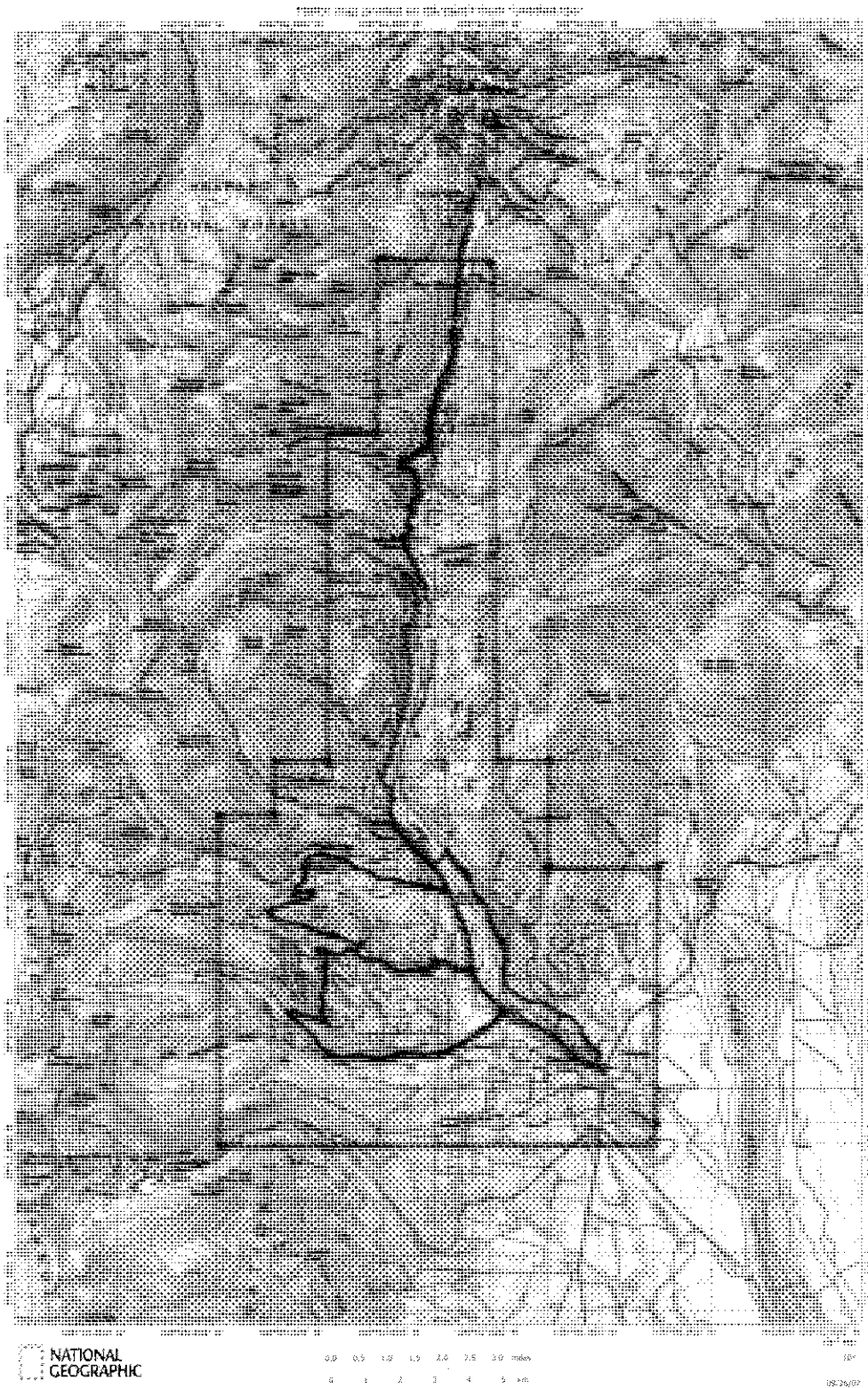
In T9S R77W Sections 5, 6, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34.

In T10S R78W Sections 1, 2, 3, 4.

In T10S R77W Sections 3, 4, 5, 6.

## EXHIBIT 2

# Fairplay CPCN



Red Lines: 6"PE100 Main Line  
Green Lines: 4"PE100 Main Line  
Blue Lines: CPCN Territorial Boundaries