

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

2009 APR 28 PM 3: 24

DOCKET NO. 09A-016G

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO IN THE MATTER OF THE APPLICATION OF COLORADO NATURAL GAS, INC. FOR AN ORDER AMENDING ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE NATURAL GAS SERVICE IN DESIGNATED AREAS WITHIN PUEBLO COUNTY, COLORADO

STIPULATION AND SETTLEMENT AGREEMENT

COME NOW Colorado Natural Gas, Inc. (CNG or Company) and Public Service Company of Colorado (PSCo) (collectively referred to as "the Parties") and submit this Stipulation and Settlement Agreement (Stipulation) for consideration by the Commission in resolution of all issues that have been or could have been raised in the above-referenced application proceeding and in support thereof state as follows:

PRELIMINARY STATEMENT

1. On January 14, 2009, CNG filed this Application requesting an Order from the Commission amending its Certificate of Public Convenience and Necessity (CPCN) issued to CNG by the Commission in Decision No. R08-0080. CNG requests designation as the exclusive public utility to provide natural gas sales, distribution and transportation service to customers within the territory referred to in this application as the Pueblo West Area. In addition, CNG requests that the Commission grant CNG a CPCN authorizing CNG to construct, own and operate a natural gas transmission and distribution system in certain parts of Pueblo County, Colorado as more fully described herein.

2. On January 15, 2009, the Commission issued its Notice of Application Filed providing notice to all interested parties of the filing of this Application. Pursuant to the Notice, on February 9, 2009, Public Service filed its Petition to Intervene and Request for Hearing in this docket.

3. The Parties have engaged in extensive discussions regarding the issues raised by the instant application. As a result of those discussions the Parties have reached an agreement whereby this Application can be granted by the Commission pursuant to the terms and conditions set forth in this Stipulation and Settlement Agreement and the intervention of PSCo can be withdrawn leaving this Application uncontested. In support of the Settlement Agreement the Parties hereby set forth the terms and conditions under which this Application can be granted by the Commission.

TERMS AND CONDITIONS

4. CNG is engaged in the sale, distribution and transportation of natural gas to the public within the State of Colorado, including in and in the vicinity of the municipalities of Bailey, Conifer, Cripple Creek and Pueblo West, Colorado. CNG currently serves approximately 10,000 residential and commercial customers within its service territories within the State of Colorado. By this Application CNG seeks to expand the service territory within which it is certificated to serve in Colorado.

5. CNG seeks to amend its existing CPCN issued in Docket No. 07A-495G covering its Pueblo West service area as well as the CPCN issued to it authorizing CNG to construct the necessary natural gas distribution facilities to provide natural gas sales, distribution and transportation service to customers located generally within the Pueblo West Area. The

amended area for which CNG seeks a CPCN in this proceeding extends from its existing system on the south side of U.S. Highway 50 north to the limits of the Pueblo West Municipal District. Accompanying the original Application, which commenced this docket, is a map which generally contains a description of the territory for which CNG seeks to extend its CPCN. A legal description of the territory to be certificated to CNG by a grant of this Application has been negotiated by the Parties and is attached hereto as Exhibit 1 and incorporated herein by reference.

6. CNG's intention is to complete construction of the initial phase of the extension of its system prior to the 2009/2010 heating season. Due to the elevation and location of the involved service territory, CNG anticipates construction will need to be substantially complete by November 30, 2009 in order to avoid adverse weather and ground conditions.

7. CNG estimates the cost of construction of the system needed to service the Pueblo West Area including the distribution mains and service laterals at \$9,626,000. This estimate is based on the actual construction costs for various sizes and types of mains and service laterals incurred by CNG in construction of its other distribution systems over the past several years.

8. Regarding the physical operation of the proposed extension to CNG's existing system, CNG will receive gas for the Pueblo West system from PSCo's two proposed new receipt points, the location of which have been negotiated by the Parties and is described in the attached Exhibit 2. The location of the two new receipt points to be used for the purpose of servicing the new customers which CNG will provide service for as a result of the Commission's approval of this Application, was negotiated by the Parties under a ten-year amendment to the Firm Transportation Agreement between PSCo and CNG to accommodate the needs of the

public for distribution service. Natural gas needed to serve the area involved in the Application will be purchased as specified in the Company's applicable annual Gas Purchase Plan filing and will be based upon a competitive bid process.

9. Upon the Commission's approval of this Stipulation and Settlement Agreement and the grant of this Application, CNG will offer natural gas sales, distribution and transportation service to customers within the Pueblo West Area. CNG will provide sales service to residential and commercial customer classes. CNG will also provide firm and interruptible transportation service, and an interruptible back-up supply service as required by customers in the service territory. The rates and terms of conditions of the services to be provided for the Pueblo West Area are contained in the existing CNG tariff sheets for the CNG Pueblo West Territory as previously approved by the Commission in Decision No. C08-0080 in Docket No. 07A-495G.

10. PSCo intervened in this Application in order to obtain a determination from the Commission regarding the provision of natural gas service to customers within the same uncertificated geographic area where CNG seeks to extend its CPCN. While Public Service currently serves certain natural gas customers and has facilities within the same uncertificated geographic area, it intends to file an application with the Commission for a certificated service area in order to continue to serve its existing and future customers near the territory for which CNG seeks to extend its CPCN. The Parties have engaged in extensive negotiations for the purpose of defining the appropriate boundaries for the new CPCN sought by CNG, while taking into account the existing customers being served by Public Service. As described in the attached Exhibit 1, the service territory of CNG, if this Application is approved, would include the new boundaries described therein.

11. In addition to the description of the negotiated service territory boundaries set forth in Exhibit 1, the Parties have resolved the transfer of a single customer, the Pueblo West Fire Department Building, located at 729 E. Gold Drive. PSCO extended service to this customer in February 2008. At this time, the Pueblo West Fire Department Building is the only customer utilizing the facilities installed to service the fire station. The Parties submit that the transfer of this single customer and the cut over of facilities from the PSCo system to CNG's system is in the ordinary course of business, if not covered by the requested extension of CNG's facilities and the CPCN sought in this application. Public Service has met with this customer and provided them with a summary of the rate impacts that will result from this transfer of service and the difference in rates between Public Service and CNG. In order to mitigate these rate impacts, Public Service has proposed to refund to the customer the unused portion of the Construction Payment made by the customer at the time these facilities were constructed. Public Service has provided written notice of this proposed transfer to the customer which sets forth the information described herein, an executed copy of which is attached hereto as "Exhibit 3". The terms of this letter agreement are subject to the Commission's approval of this Stipulation and Settlement Agreement and CNG's application in this docket.

12. On February 23, 2009, CNG submitted certain amended exhibits, which changed the proposed territorial boundaries in an attempt to resolve the differences with Public Service over the territory which is the subject of this Application. The proposed revisions to the CNG CPCN described in Exhibit 1 attached hereto supersede and replace the previously submitted amended exhibits referred to herein.

13. On March 3, 2009, CNG filed additional amended exhibits revising the proposed service territory to be added to the CNG territorial CPCN. The legal description of the

boundaries attached hereto in Exhibit 1 is also intended to supersede and replace the amendment proposed in the March 3, 2009 supplement filed by CNG in this docket.

14. The Parties submit that the public convenience and necessity requires the construction and operation of the Pueblo West Area system in the performance of natural gas utility service proposed by CNG. The public convenience and necessity requires this extension since with the exception of the aforementioned Fire Station, no customers are currently receiving natural gas service within the service territory sought by CNG. CNG can provide natural gas to this service territory at a rate competitive with the cost of other fuels such as propane, fuel oil and wood pellets. Consistent with the service provided by CNG in other portions of its service territory, CNG will provide customers located in its newly extended service territory with a clean, safe and convenient source of energy. The presence of natural gas distribution within the proposed added service territory will contribute to the economic wellbeing and safety of the residents within these areas.

GENERAL PROVISIONS

15. This Stipulation is a settlement of disputed and compromised claims and accordingly this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission Order concerning this Stipulation, shall be attached to any principle or methodology contained in this Stipulation.

16. All witnesses of the Parties will support all aspects of the Stipulation and Settlement Agreement embodied in this document and any hearing conducted to determine

whether the Commission should approve this Stipulation. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding which would have the effect directly or indirectly of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of or enforce the Stipulation or a Commission Order approving the Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

17. This Stipulation shall not become effective until the Commission issues a final Order approving the Stipulation, which Order does not contain any modification of the terms and conditions of the Stipulation that is unacceptable to any of the Parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, the Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within ten (10) days of the date of the Commission Order. In the event a Party exercises its right to withdraw from the Stipulation, the Stipulation shall be null and void and of no effect in this or any other proceedings.

18. In the event this Agreement becomes null and void, or in the event the Commission does not approve this Stipulation, this Stipulation as well as the negotiation undertaken in conjunction with this Stipulation, shall not be admissible into evidence in these or any other proceedings.

19. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest and that the results reflected in this Stipulation are just,

reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues which were or could have been contested by the Parties with respect to the Application.

20. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any Party.

21. This Stipulation may be executed in separate counterparts including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement. The Parties represent that the signatories to the Stipulation have full authority to bind their respective Parties to the terms of the Stipulation.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 24th day of April, 2009.

APPROVED:

COLORADO NATURAL GAS, INC.

By: 

Timothy R. Johnston
Vice President
7810 Shaffer Parkway, Suite 120
Littleton, Colorado 80127-0868
(303) 838-6388

APPROVED AS TO FORM:

HOLLAND & HART LLP

By: 

Mark A. Davidson, Reg. #10364
555 Seventeenth Street, Suite 3200
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ATTORNEYS FOR COLORADO
NATURAL GAS, INC.

APPROVED:

PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation

By: Tim E. Taylor
Tim E. Taylor
President and CEO
Public Service Company of Colorado,
A Colorado corporation
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Denver, CO 80203

APPROVED AS TO FORM:

PUBLIC SERVICE COMPANY OF
COLORADO

By: Larry Cowger
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REVIEWED
LEGAL

LMC 4-24-09

CERTIFICATE OF SERVICE

I hereby certify that on this ^{28th} 24th day of April, 2009, an original and four copies of the foregoing document entitled STIPULATION AND SETTLEMENT AGREEMENT was hand-delivered and electronically mailed to:

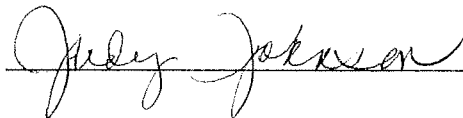
Doug Dean, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

Copies were delivered by electronic mail or by U.S. Mail where indicated to:

Timothy R. Johnston
Vice President
Colorado Natural Gas, Inc.
7810 Shaffer Parkway, Suite 120
Littleton, Colorado 80127-0868

Larry Cowger
Assistant General Counsel
Public Service Company of Colorado
1225 Seventeenth St., Suite 900
Denver, CO 80203

4468542_1.DOC



Pueblo West Phase 2

20 South	66 West	Beginning at a point of intersection of the North section Line of Section 2 Township 20 South Range 66 West and the extend West property line of LOT 1 BLK 1 TR 244, thence South to Northeastern corner of LOT 3 BLK 6 TR 244 , thence West to the Northwestern corner of LOT 3 BLK 6 TR 244 thence in a Southwestern direction to the Southwestern corner of Parcel D TR 244, thence in a Northwestern direction along the extend Southern property line of Parcel D TR 244 to a point of intersection with the Eastern ROW of Watusi Dr, thence south along the east ROW of Watsui Dr to the North ROW of Industrial Blvd., thence west along the North ROW of Industrial Blvd. to the Southeast corner of LOT 24 BLK 3 TR 245, thence in a Southwestern direction to the Southeast corner of LOT 1 BLK 5 TR 245, thence in a Southwestern direction along the extended Eastern Property Line of LOT 1 BLK 5 TR 245 to a point of intersection with the North ROW of US Highway 50, thence in a Northwestern direction along the North ROW of US Highway 50 to the Western Section Line of Section 2 township 20 South Range 66 West, thence North to the Northwest corner of Section 2 township 20 South Range 66 West, thence East along the North Section Line of Section 2 township 20 South Range 66 West to the point of Beginning at the intersection of the North section Line of Section 2 Township 20 South Range 66 West and the extend West property line of LOT 1 BLK 1 TR 244
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Location of Additional CNG Delivery Points for Pueblo West – Phase II

Two new delivery points are to be constructed by Public Service Company of Colorado ("PSCo") to provide gas deliveries into the gas distribution system of Colorado Natural Gas Company ("CNG") in Pueblo West, Colorado.

The name and location of these additional CNG delivery points are as follows:

The "Wildhorse" delivery point will be located at: 19S, 66W, Section 13, Pueblo County, Colorado.

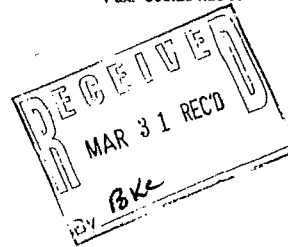
The "Purcell" delivery point will be located at: 19S, 65W, Section 29, Pueblo County, Colorado.



Cheryl Campbell
Vice President
Gas System Design, Operations & Maintenance

1225 17th Street, Suite 1200
Denver, CO 80202-5533
Phone: 303.294.2071
Fax: 303.294.2880

March 24, 2009



Mr. Brian Caserta
Acting District Manager
Pueblo West Metro District
P.O. Box 7005
51 E. Hahns Peak Avenue
Pueblo West, Colorado 81007

Re: Memorandum of Understanding Regarding the Transfer of Natural Gas Utility Service from Public Service Company of Colorado to Colorado Natural Gas, Inc. for service to 729 East Gold Drive, Pueblo West, Colorado.

Dear Mr. Caserta,

The purpose of this letter is to provide you with written notice of the proposed transfer of your natural gas utility service from Public Service Company of Colorado ("Public Service"), your current provider of natural gas utility service, to Colorado Natural Gas, Inc. ("CNG") and to memorialize our agreements regarding the specific steps that we have agreed upon to mitigate the rate impacts to the Pueblo West Metro District that result from this transfer.

On January 14, 2009, CNG filed an Application requesting an Order from the Colorado Public Utilities Commission ("PUC") amending its Certificate of Public Convenience and Necessity ("CPCN") issued to CNG by the Commission in Decision No. R08-0080. CNG requests designation as the exclusive public utility to provide natural gas sales, distribution and transportation service to customers within the territory referred to in its application as the Pueblo West Area.

On January 15, 2009, the PUC issued its "Notice of Application Filed" providing notice to all interested parties of the filing of this Application (attached). On February 9, 2009, Public Service filed its Petition to Intervene and Request for Hearing in the docket because Public Service currently serves natural gas utility customers in and around the area for which CNG has requested a certificate, which includes service to the Pueblo West Metro District facilities at 729 East Gold Drive, Pueblo West, Colorado.

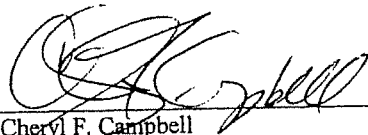
Because of the location of the Pueblo West Metro District facilities in relation to the proposed boundaries for the area CNG seeks to have certificated by the PUC, operational and safety issues have led to the conclusion that it would be in the best interest of the Pueblo West Metro District to be served by CNG, as they propose in their PUC filing.

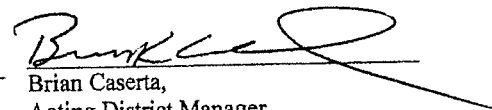
Due to the fact that CNG has different natural gas utility rates and terms and conditions of service than Public Service, your customer representative, Ms. Kathy Worthington met with you to discuss the proposed transfer of service and provided you with the rate comparison, Attached, which shows the difference in the rates for service charged by Public Service and CNG. Ms. Worthington also explained to you Public Service's proposal to mitigate the rate impact to the Pueblo West Metro District by refunding the unused portion of the "Construction Payment" that was made by the Pueblo West Fire District at the time the facilities currently serving your facilities at 729 East Gold Drive were constructed. The remaining unused portion of this Construction Payment that would be refunded to you upon the switch over to CNG is \$32,922.49.

Public Service and CNG have executed a "Stipulation and Settlement Agreement" in PUC Docket No. 09A-016G, the CNG CPCN Application asking to be certificated as your natural gas utility service provider and has asked the PUC to approve the terms and conditions of the agreement and to approve the sale and transfer of the facilities currently providing natural gas utility service to the Pueblo West Metro District facilities at 729 East Gold Drive, Pueblo West, Colorado. In order to assure the PUC that the Pueblo West Fire District is in agreement with the terms of the transfer to CNG, please have an authorized representative execute two copies of this Memorandum of Understanding and return one executed copy to the address listed below.

For Public Service Company of Colorado

For Pueblo West metro District


Cheryl F. Campbell
Vice President, Gas Systems Design
Operation and Maintenance


Brian Caserta,
Acting District Manager
Pueblo West Metro District
P.O. Box 7005
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Pueblo West, Colorado 81007