

Decision No. C01-615

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00K-072G

DOCKET NO. 99A-552G

APPLICATION OF PEOPLES NATURAL GAS COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE NATURAL GAS SERVICE IN A DESIGNATED AREA WITHIN EL PASO COUNTY, COLORADO,

DOCKET NO. 00A-009G

IN THE MATTER OF THE APPLICATION OF THE CITY OF COLORADO SPRINGS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE NATURAL GAS SERVICE IN ADDITIONAL AREAS IN EL PASO COUNTY, COLORADO.

DECISION DENYING EXCEPTIONS

Mailed Date: June 13, 2001
Adopted Date: April 4, 2001

I. BY THE COMMISSION

A. Statement and Findings of Fact

This matter comes before the Commission for consideration of Exceptions to Decision No. R01-113 ("Recommended Decision") filed by Colorado Springs Utilities ("CSU"). In that decision, the Administrative Law Judge ("ALJ") recommended that the Commission grant a certificate of public convenience and necessity ("CPCN") to Peoples Natural Gas Company ("Peoples") permitting it to provide natural gas service

in the Meridian Ranch area within El Paso County. In a competing application in this docket, CSU had itself requested a CPCN to serve Meridian Ranch. In its Exceptions, CSU objects to the ALJ's recommendation. Peoples has filed its Response to the Exceptions ("Response"). Now being duly advised in the matter, we deny CSU's Exceptions and affirm the Recommended Decision.

B. Discussion

1. This proceeding involves competing applications by CSU and Peoples¹ for CPCNs to provide natural gas service in certain areas within El Paso County. Peoples filed its application on November 16, 1999 (Docket No. 99A-552G), and CSU filed its application on January 10, 2000 (Docket No. 00A-009G). After consolidation, the applications were assigned to the ALJ for further proceedings. Before hearing, the two parties entered into a Settlement Agreement which resolved most of the issues in this consolidated docket. That Agreement assigns certain territory in El Paso County to either CSU or Peoples. The parties continued to dispute which utility should be

¹ CSU is a municipally owned utility operated by the City of Colorado Springs. Peoples is an investor-owned utility and a division of Utilicorp United, a corporation engaged in gas and electric operations in the United States and abroad.

certificated to serve the Meridian Ranch area.² This is the one issue addressed at hearing before the ALJ.

2. The ALJ issued Decision No. R01-113 recommending that Meridian Ranch be certificated to Peoples. The Recommended Decision noted that both Peoples and CSU are financially and operationally fit to serve the Meridian Ranch area. The ALJ concluded, the two utilities "are very nearly equal in their ability to serve the disputed area." Recommended Decision, page 16. The ALJ did find some difference in the two applications to serve Meridian Ranch:

[T]here is one important distinguishing factor that is persuasive in leading the undersigned to a conclusion that Peoples should be granted a certificate of public convenience and necessity to serve the Meridian Ranch area. *Peoples' existing facilities are closer to the Meridian Ranch area than the CSU facilities.* The evidence establishes that Peoples can serve the area in a more cost effective and expeditious manner. Peoples' existing distribution lines are located less than one mile to the western border of Meridian Ranch. The lines can be immediately extended to serve customers in the area. In addition, Peoples' existing high pressure natural gas line is located approximately 2.5 miles to the western border of Meridian Ranch. The record indicates that Peoples would need to extend the high pressure line approximately 2.5 miles. This can be accomplished within six to eight weeks. In addition, since the Peyton high pressure line will be constructed pursuant to the terms of the Stipulation, Peoples will have an alternate supply point to Meridian Ranch from the east. On the other hand, CSU needs to extend its high

² Meridian Ranch is an approximate 12-square-mile development in the Black Forest area of El Paso County. Peoples seeks certification for the 12-square-mile area. CSU only seeks certification for a ten-square-mile area, but also opposes Peoples' request for certification in the remaining area.

pressure line approximately nine miles in three phases, at a total cost greater than Peoples' total cost. Although two phases of the three-phase construction has (sic) been completed, Phase 3 is necessary to extend the line to Meridian Ranch. Phase 3 is scheduled to be completed in the summer of 2001. The evidence further demonstrates that Peoples' extension will have the available capacity to serve all of Meridian Ranch. The record is unclear whether CSU would have the necessary capacity to serve all of Meridian Ranch with the completion of its three-phase project.

Recommended Decision, pages 16 and 17. (emphasis added) CSU
excepts to these findings and conclusions.

C. CSU's Exceptions

1. CSU argues that the ALJ's conclusions regarding the location of the applicants' facilities, the timing of construction, and the "dual feed" capabilities of the competing applicants are incorrect. According to the Exceptions, CSU is already expanding its system near Meridian Ranch to meet unrelated demand for service through the Falcon Pressure District Project. That project, as the Recommended Decision found, involves three phases, two of which have already been completed. Because the Falcon Pressure District construction is necessary to provide service in CSU's existing service territory, CSU will complete the project regardless of which applicant serves Meridian Ranch. With this project in place, CSU contends, its facilities will be located closer to Meridian Ranch than Peoples'.

2. CSU further contends that Peoples' ability to complete construction of its high-pressure extension to Meridian Ranch within six to eight weeks is irrelevant. The record fails to indicate when service to Meridian Ranch will be necessary. Therefore, CSU suggests, the decision as to which applicant should be certificated for this area should not be affected by this finding.

3. As for Peoples' dual feed to Meridian Ranch, CSU notes: The Recommended Decision makes no finding regarding the additional expense associated with providing this dual feed from the Peyton pipeline. Moreover, Peoples does not propose a dual feed, but simply stated that this was possible. In addition, CSU itself will have a dual feed capability to Meridian Ranch.

4. Peoples disagrees with these arguments. First, Peoples contends that the ALJ correctly found that its facilities are closer to the disputed territory. The ALJ found that Peoples' existing distribution lines are located less than one mile from Meridian Ranch, and these lines immediately could be extended to serve the area. The ALJ's findings that Peoples' high-pressure line is located 2.5 miles from Meridian Ranch and could serve all of Meridian Ranch is also supported by the record (e.g., Exhibits I and K). In contrast, Peoples argues, the record indicates that CSU will need to complete all three phases of the Falcon Pressure District Project plus additional

construction to provide service to Meridian Ranch. This evidence fully supports the ALJ's conclusion that Peoples' facilities are located closer to the disputed area.

5. As for the ALJ's observation that Peoples could complete construction of its high-pressure extension to Meridian Ranch within six to eight weeks, the Response suggests: The ALJ appropriately distinguished between the two applications on this basis. The record indicates that the first homes in Meridian Ranch were (at the time of hearing) expected to be built in mid-2001. Additionally, the record indicates that, in order to allow for the most efficient development of distribution lines in the area, it is important for a natural gas utility's extensions to be completed prior to development and construction of homes. Therefore, Peoples argues that it is relevant that Peoples could complete construction of its high-pressure extension within six to eight weeks.

6. Finally, the Response suggests that the ALJ properly differentiated between the two applications based upon Peoples' potential access to an alternate supply point for Meridian Ranch. CSU, the Response points out, proposes two feeds into Meridian Ranch; however, both feeds will rely on gas

from the same source.³ In contrast, Peoples would have two sources of gas supply for Meridian Ranch.

7. We deny the Exceptions. The Response correctly notes that the record supports the ALJ's findings that Peoples' facilities capable of serving Meridian Ranch are located closer to the area. The ALJ found that Peoples' existing distribution lines are now located less than one mile from Meridian Ranch and these lines could be immediately extended to serve the area. Testimony offered by Peoples witness Peterson supports this finding. CSU relies on its construction of the Falcon Pressure District to argue that the ALJ's findings were incorrect. While the record does indicate that CSU intends to complete the Falcon Pressure District Project the record also indicates that all three phases of that project would need to be completed before CSU could serve Meridian Ranch. Even then, CSU would be required to construct additional facilities in order to serve the area. Further, we agree with the ALJ's conclusion that proximity of existing facilities capable of serving the disputed territory is good reason to distinguish between the two applications. This is especially so where the competing

³ The Response also states that neither of CSU's proposed feeds is a high-pressure feed, and neither by itself has sufficient capacity to serve the entirety of Meridian Ranch.

applicants are otherwise "nearly equal" in their ability to provide service.

8. We also agree with the ALJ's determination that Peoples' ability to extend its existing facilities within six to eight weeks is, contrary to CSU's arguments, further cause for differentiating between the applications. This fact suggests that Peoples is better situated to serve Meridian Ranch.

9. Peoples' superior proximity with expeditious construction schedule justify the selection of Peoples over CSU. However, we also agree with Peoples' characterization of the record concerning the "dual feed" capabilities of the competing applications. The evidence indicates that Peoples, unlike CSU, would have potential access to an alternate supply point for Meridian Ranch.⁴ In general, the ALJ's findings concerning the differences between Peoples' and CSU's proposals for Meridian Ranch are fully supported by the record. And those findings fully support the recommendation to certificate Meridian Ranch to Peoples.

⁴ We place less weight upon this factor inasmuch as Peoples is not now proposing to extend the Peyton pipeline, but simply pointed out that this would be possible in the future.

D. Cost and Rate Criteria

1. CSU argues that various cost analyses indicate that it will be less costly for CSU to serve the Meridian Ranch area. For example, the Exceptions suggest that an incremental cost comparison is the most appropriate. CSU contends that we should examine only the costs of facilities directly related to serving Meridian Ranch, and thus exclude the costs from CSU's Falcon Pressure District Project. An incremental-cost comparison indicates that CSU is the least cost provider to Meridian Ranch. Alternatively, CSU suggests that a cost per customer served analysis favors their proposal, with CSU's costs being \$69.35 per customer while Peoples' are \$71.03 per customer.

2. Peoples responds that CSU's cost comparisons, especially its incremental-cost analysis, are improper. Peoples emphasizes that Meridian Ranch will be served by facilities put in place in the Falcon Pressure District Project even if the development at Meridian Ranch is not the direct cause of the project. Indeed, CSU could not serve the disputed territory unless the project is completed. Additionally, Peoples asserts, an incremental-cost analysis is subject to manipulation as illustrated by CSU's advocacy here. Peoples advocates considering total, not incremental, costs.

3. We deny CSU's Exceptions on this point. CSU's suggested cost comparisons and the results are dependent upon the assumptions going into the analysis. CSU's incremental cost analysis, for example, assumes that no costs associated with the Falcon Pressure District project should be allocated to the cost calculation for serving Meridian Ranch, notwithstanding that end-users at Meridian Ranch would be served over these facilities. Furthermore, the results of its costs-per-customer-served analysis depend on assumptions about the number of customers to be served. Under one of the cost calculations discussed in the Exceptions, CSU assumes that its proposed facilities (*i.e.*, the Falcon Pressure District expansion and the extension to Meridian Ranch) will serve not only a certain projected number of customers in the Meridian Ranch area, but also a projected number of customers in the Falcon Pressure District and the areas subject to settlement between the parties in this case. Finally, differences in the competing proposals are minor.

4. Given variability in the cost analyses, the known differences between the two proposals (discussion *supra*) carry more weight than any estimated and projected cost differences presented here. The cost analyses presented by CSU are not persuasive enough to prevail over those other considerations.

5. The Exceptions also suggest that CSU's rates for serving end-users at Meridian Ranch will be significantly lower than those of Peoples based upon the applicants' current rates. However, Peoples points out that this argument is mistaken. In part, a good portion of the suggested rate differentials are based upon current commodity costs for gas. There is nothing in the record to show that any such differences will likely continue in the future. In addition, the non-gas-cost-related rates for residential customers are relatively minor today. There is no reason to conclude that any current differences in rates would necessarily persist in the future. For this reason, we conclude that those factors relied upon by the ALJ are the most appropriate ones to consider in this case.

E. Conclusion

For the reasons discussed above, we affirm the Recommended Decision.⁵ The Settlement Agreement between CSU and Peoples (Exhibit No. 1) is approved. The area described as Meridian Ranch is certificated to Peoples.

⁵ CSU also excepts to the ALJ's conclusion that it is "unclear" whether CSU would have the necessary capacity to serve all of Meridian Ranch with completion of the Falcon Pressure District project. However, we do not rely on this finding by the ALJ in affirming the Recommended Decision.

II. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R01-113 by Colorado Springs Utilities are denied. Decision No. R01-113 is affirmed.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 4, 2001.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith
Director

Commissioners

COMMISSIONER ROBERT J. HIX'S TERM
EXPIRED EFFECTIVE MAY 9, 2001.