

Decision No. R01-113

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
APPROVING PARTIAL STIPULATION
AND SETTLEMENT AGREEMENT AND
GRANTING A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
PEOPLES NATURAL GAS COMPANY
TO PROVIDE NATURAL GAS SERVICE
IN THE DISPUTED DESIGNATED
AREA WITHIN EL PASO COUNTY, COLORADO**

Mailed Date: February 8, 2001

T A B L E O F C O N T E N T S

Appearances	2
<u>I. STATEMENT OF THE CASE</u>	2
<u>II. FINDINGS OF FACT AND CONCLUSIONS OF LAW</u>	4
<u>III. DISCUSSION</u>	13
<u>IV. ORDER</u>	18
A. The Commission Orders That:	18

Appearances

Steven H. Denman, Esq., and Melissa O'Leary, Esq., Denver, Colorado, for Peoples Natural Gas Company, a Division of UtiliCorp United Inc.;

Joseph B. Wilson, Esq., Colorado Springs, Colorado, for Colorado Springs Utilities; and

Anne K. Botterud, Assistant Attorney General, for the Staff of the Colorado Public Utilities Commission.

I. STATEMENT OF THE CASE

A. On November 16, 1999, Peoples Natural Gas Company, a Division of UtiliCorp United Inc. ("Peoples"), filed an application for a certificate of public convenience and necessity to provide natural gas service in a designated area of El Paso County, Colorado. This application was assigned Docket No. 99A-552G. Proper notice of the Application was given.

B. On December 22, 1999, Colorado Springs Utilities ("CSU") filed a Notice of Intervention.

C. On January 10, 2000, Staff of the Public Utilities Commission ("Staff") intervened.

D. On January 10, 2000, CSU filed an application for a certificate of public convenience and necessity to provide natural gas service to additional areas of El Paso County, Colorado. This application was designated as Docket No. 00A-009G. Proper notice of the Application was given.

E. Peoples intervened on January 20, 2000. Colorado Interstate Gas Company ("CIG") filed a Petition to Intervene.

The Petition was granted in Decision No. R00-169-I. The CIG intervention was for the purpose of monitoring the docket.

F. On January 21, 2000, Peoples filed a Motion to Consolidate the Applications. The Motion was granted in Decision No. C00-126 (February 9, 2000). The consolidated docket was assigned the docket number of 00K-072G.

G. On August 8, 2000, CSU filed a Petition for Declaratory Order, pertaining to Peoples construction of the Peyton pipeline. In addition, CSU filed a complaint, concerning Peoples' construction of the Peyton Pipeline. This complaint was designated as Docket No. 00F-446G

H. A prehearing conference was held on August 16, 2000. At the prehearing conference, Peoples, and CSU submitted a Partial Stipulation and Settlement Agreement (Hearing Exhibit No. 1). The Partial Settlement Agreement resolved certain issues, and narrowed the scope of the hearing. Under the terms of the Partial Settlement Agreement, Peoples and CSU agreed to exclusive service territories as shown in Hearing Exhibit No.1A. The only issue remaining was the certification of a 12 square mile area known as Meridian Ranch (See Exhibit 1A) Staff supported the Partial Settlement Agreement. The Partial Stipulation and Settlement Agreement was orally accepted at the prehearing conference. Upon acceptance of the Stipulation, CSU moved to dismiss its Petition for Declaratory Order and Complaint. The motion was orally granted.

I. A hearing was held on the remaining issue concerning the disputed territory on August 24, 2000. At the hearing, testimony was received from witnesses and Exhibits A thru U were marked for identification and admitted into evidence. Exhibit Nos. 1, 1A, 4, and 5 were also marked for identification and admitted into evidence. At the close of the hearing, a briefing schedule was established. Opening briefs were filed by Peoples and CSU on September 29, 2000. Responsive briefs were filed on October 13, 2000 by Peoples and CSU. On October 12, 2000, Staff filed its Closing Statement of Position.

J. Pursuant to § 40-6-109, C.R.S., the record of this proceeding and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Peoples Natural Gas Company is a division of UtiliCorp United, a corporation engaged in gas and electric operations in seven states in the United States as well as Canada, the United Kingdom, New Zealand, and Australia. Peoples Natural Gas Co. is engaged in the distribution and resale of natural gas service in Colorado. Peoples serves portions of the Colorado Counties of Douglas, El Paso, Teller, Elbert, Lincoln, Cheyenne, Kit Carson, and Yuma. It serves the cities and towns of Castle Rock, Monument, Woodland Park, Cascade, Chipita Park, Fountain, Widefield, Palmer Lake, Woodmore, portions of Glen Eagle and Black Forest, Limon, and Burlington. Peoples provides natural

gas service to approximately 42,060 residential customers and approximately 3,000 industrial/commercial customers in Colorado. Peoples is a regulated public utility, subject to the Commission's jurisdiction under the provisions of Articles 1 through 7, Title 40, C.R.S.

B. Colorado Springs Utilities is a municipally owned utility. It provides natural gas service to the City of Colorado Springs and surrounding unincorporated areas of El Paso County. It currently serves approximately 149,000 gas customers. One hundred and thirty-five thousand of these customers are residential customers and 14,000 are commercial/industrial customers. CSU is subject to the limited jurisdiction of this Commission for operations outside of the municipal limits of the City of Colorado Springs pursuant to § 40-3.5-101 (*et seq.*), C.R.S.

C. By their applications, Peoples and CSU request a certificate of public convenience and necessity to extend their service territories as described in the respective applications. The Partial Stipulation and Settlement Agreement (Exhibit No. 1) and Map (Exhibit 1A), resolved many of the issues in this case, and indicates the areas that the Parties agreed to serve.

D. The major parts of the Settlement Agreement are as follows:

1. Peoples agrees to withdraw opposition to CSU's certification of that portion of natural gas service territory that does not duplicate the territory Peoples seeks to certificate, that can

be identified as follows: Township 12S, Range 64W, Sections 33, 34, 35; and Township 13S, Range 64W, Sections 2-4, 9-11, and 14-16. Peoples further agreed not to seek certification of this area in the future, or to provide natural gas distribution service.

2. Peoples agrees not to oppose certification by CSU of natural gas service territory to the south and east of the territory CSU has proposed to certificate in the instant docket described as follows: Township 14S, Range 64W, Sections 1-4; Township 13S, Range 64W, Sections 1, 12, 13, 21-28, and 33-36; and Township 12S, Range 64W, Section 36. The parties agree that within 30 days from the effective date of a final Commission decision in the instant docket, CSU will file an application with this Commission to certificate the above described area. Peoples agrees not to intervene in CSU's application proceeding or oppose the certification in any way. Peoples agrees not to provide natural gas distribution service in the above described area.
3. The parties agree that CSU will withdraw its Petition for Declaratory Order and request dismissal of its complaint against Peoples in Docket No. 00F-446G upon receiving approval of the Stipulation and Settlement agreement.
4. CSU will not oppose People's construction of the Peyton Pipeline, nor will it oppose Peoples natural gas distribution service to SunBlest Farms adjacent to Peyton, Colorado. CSU agrees not to provide natural gas distribution service to customers in an area described as follows: Township 12S, Range 63W, Sections 5, 6, 7 and 8.
5. The parties agree that within 30 days of the effective date of a final Commission decision in the instant docket, Peoples will file an application with this Commission to certificate an area adjacent to the Town of Peyton as follows: Township 12S, Range 63W, Sections 5, 6, 7, and 8. In addition, CSU will not intervene in Peoples' application for certification to provide natural gas distribution service to customers in the area.
6. Peoples agrees to withdraw the portion of its Application in this docket that proposes to

certificate territory located in the Clear Spring Ranch area, identified by the following legal description: Township 17S, Range 65W, Sections 5 and 6; portions of Township 17S, Range 65W, Sections 4, 8, and 9 located within the boundaries of Clear Spring Ranch.

7. Peoples and CSU agree to file within 30 days from the effective date of a final Commission decision in the instant docket, a joint application to transfer Peoples' existing certificated natural gas service territory in Clear Spring Ranch to CSU identified by the following legal description: Township 16S, Range 65W, Sections 31, 32; and those portions of Township 16S, Range 65W, Sections 19, 20, 28, 29, 30, and 33 that lie within the boundaries of Clear Spring Ranch. In the alternative, the Parties will within 30 days from the effective date of a final Commission decision in the instant docket, file separate, simultaneous applications to accomplish Peoples' relinquishment of its existing service territory in Clear Spring Ranch described above and CSU's certification of that territory. After the approval the applications, in the event the City of Colorado Springs sells or leases property in Clear Spring Ranch for uses other than utility service including water, wastewater, natural gas transmission and/or distribution, electric generation and/or transmission, or related uses, CSU agrees to allow Peoples to provide natural gas distribution service to that territory and will not oppose any request by Peoples to certificate the territory.
8. Peoples and CSU agree to negotiate in good faith to clarify, and if necessary, modify their respective natural gas service territory boundaries, which are adjacent to one another, including, but not limited to, Fontaine Boulevard, Fountain, Colorado.

E. In addition to the areas addressed by the Partial Settlement Agreement, Peoples and CSU seek certification of an overlapping ten-square mile area referred to in this docket as "Meridian Ranch". The legal description of the overlapping ten

square miles is Township 12S, Range 64W, Sections 19-23 and 26-30. In addition, Peoples requests certification of an additional two square miles adjacent to the east of the contested 10 square miles, its legal description being Township 12S, Range 64W, Sections 24 and 25. CSU does not seek certification of this two-square mile area, however, it opposes certification by Peoples.

F. The portion of the requested territory by the competing utilities known as the Meridian Ranch area proceeded to hearing.

G. No utility currently serves the Meridian Ranch area with natural gas service. The developers of Meridian Ranch have contacted Peoples and CSU concerning availability of natural gas service to the area. The developers expressed to the utilities a need for natural gas service for a planned development, which will be mostly residential. The developers propose to build residences in the Meridian Ranch area in the near future. In addition, within the disputed territory, a subdivision known as Heritage Ranch Estates contains approximately 60 residences that are served by propane. It is anticipated, that if natural gas facilities were located in the development, the owners would apply for natural gas service. The Meridian Ranch development will have some commercial and possibly light industrial companies.

H. Peoples maintains local offices in Castle Rock, Monument, Woodland Park, Fountain, Limon, and Burlington. These offices provide customer service, emergency response, and

construction. Peoples maintains sufficient equipment to provide construction and emergency response. Peoples has agreements with other utilities in the area. In addition, Peoples in an emergency can request equipment and personnel from WestPlains Energy, a Division of UtiliCorp United, Inc., which provides electric service in the Pueblo and Southeast areas of Colorado.

I. CSU maintains local offices in the greater Colorado Springs area. CSU provides customer services such as emergency response, construction, and repair. CSU has sufficient equipment and personnel to maintain a high level of service. It routinely provides pilot relighting without charge. Unsafe conditions are often identified during the relighting. CSU is capable from a facilities and operational standpoint.

J. Peoples and CSU are both financially fit and operationally capable of providing service to the areas that each utility seeks to have certificated in this consolidated proceeding. Exhibit DAK-5 attached to the direct testimony and exhibits of Peoples' witness, Deborah A. Keim (Hearing Exhibit D) demonstrates that Peoples has sufficient financial resources to serve. Likewise, the financial statements attached to the direct testimony of CSU witness Wayne E. Booker (Hearing Exhibit L) demonstrates that CSU is financially capable of providing service to the areas that it wishes to have certificated.

K. Peoples currently has a distribution natural gas line approximately one mile to the west of Meridian Ranch. Peoples

proposes to serve the Meridian Ranch area by extending its high pressure line to Meridian Ranch. Peoples' existing high pressure line is located approximately 2.5 miles to the west of Meridian Ranch. Peoples proposes to construct a 2.5 mile extension which can be built in six to eight weeks with sufficient capacity to serve 3,266 residences in Meridian Ranch and capacity left over to serve other areas. In addition, Peoples will have available two additional sources of natural gas to serve the Meridian Ranch area. The Meridian Ranch area could be served by a line from the north within Peoples' service territory and from the east by the Peyton gas line. Peoples estimated total cost for the extension of its high pressure line, approximately 2.5 miles from its existing line west of Meridian Ranch is \$231,997.

L. CSU plans to serve the Meridian Ranch area by a high pressure distribution system, known as the Falcon Pressure District. Construction of this line involves a three-phase project. Phases 1 and 2 have been constructed. The three-phase extension of the high-pressure line from CSU's existing line covers nine miles. CSU's witness Pamela N. Brown testified that the total cost of constructing the three phases is approximately \$657,000. (Exhibit O, page 8) CSU believes that the relevant cost is the incremental cost, that is the cost of facilities necessary to serve the Meridian Ranch area, which CSU states is \$150,000. (Exhibit S, Page No.7, rebuttal testimony of Michael J. McFadden) CSU states that the Falcon Pressure District has been in the

planning stages for approximately five years and that construction of the three phases of the Falcon District will serve not only the Meridian Ranch area but also existing CSU service territories.

M. The rates for natural gas charged by Peoples and CSU are contained in Peoples and CSU's tariffs. Although there are different rate structures for the utilities, both have a rate component, which recovers the commodity cost, and one that recovers non-commodity related costs. Both CSU and Peoples have a gas cost adjustment. Peoples has a fixed monthly customer charge of \$5.50 and a volumetric commodity charge of \$.47396 per cf which is applied to the volume of gas consumed by the customer. A pressure base factor is used by Peoples to adjust local pressure to take into account the elevation of customers in a geographic area. CSU does not use a pressure base factor by locations of its customers to reflect different elevations, however, it uses a standard local pressure base of 12.01 psia. CSU calculates its rates based upon an elevation of 6,185 feet. The current rates charged by Peoples are pursuant to tariffs on file with the Public Utilities Commission. (See Exhibit D, DAK-5.) CSU's current rates are lower than Peoples'. (See Exhibit R, Answer testimony of Henry Henderson, HHH-3) This Exhibit compares the current total monthly residential charge for Peoples and CSU customers. The comparison of the rates charged by Peoples and CSU includes the gas commodity charge. The charge assumes that

the residential customer uses 150 ccf. The rate comparison of Mr. Henderson's indicates that the total bill for a Peoples customer would be \$73.52 per month. The total bill for a CSU residential customer would be \$61.74. Peoples witness Deborah A. Keim also performed a rate comparison that is found at page 6 of Exhibit D. In this comparison for a residential customer using an average of 150 ccf per month, Ms. Keim makes an adjustment to Peoples' rates, which includes the pressure base factor used by Peoples. The comparison shows that for a residential customer in the northern part of El Paso County including the Meridian Ranch area, the total monthly rate charged by Peoples is \$61.43 and the rate charged by CSU is \$59.56.

III. DISCUSSION

A. Peoples and CSU request a certificate of public convenience and necessity to exclusively serve the Meridian Ranch area pursuant to the provisions of § 40-5-101, C.R.S. Under this statute, the Commission has the authority to certificate a public utility to provide exclusive service in a geographical area. The statute states:

(1) No public utility shall begin the construction of a new facility, plant, or system or of any extension of its facility, plant, or system without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction . . .

(2) Whenever the commission, after a hearing upon its own motion or upon complaint finds that there is or will be a duplication of service by public utilities in any area, the commission shall, in its discretion,

issue a certificate of public convenience and necessity assigning specific territories to one or to each of said utilities . . .

B. The evidence of record establishes that the Meridian Ranch area is adjacent to both the existing service territories of Peoples and CSU. Peoples existing service territory borders the Meridian Ranch area to the west. Its service territory will border the Meridian Ranch area to the north under the terms of the Settlement Agreement. CSU's existing service territory borders the Meridian Ranch area to the southwest. Its service territory will border Meridian Ranch to the south under the terms of Settlement Agreement.

C. Peoples points out in its closing briefs that the Commission has developed criteria to determine an area to be awarded to competing utilities so as to prevent duplication of facilities. In Decision No. 62653 (April 22, 1964 at pages 25-26), the Commission developed the following criteria to be applied. The Commission stated:

In arriving at its determinations in the instant case, the Commission has considered the factors of priority based on potential available service, priority based on actual service, the financial ability of each utility to serve, the general ability of each utility to serve, the management of each utility, the power supply of each utility, the geographical location of distribution lines, transmission lines, substations and other facilities, the location of natural and man-made barriers such as rivers, mountain, railroads, and highways, and the relationship of such barriers to service areas and the overall electric systems of the parties, the location of offices and service personnel, the number of customers located on lines, where such information was available, the type of service furnished to customers, the desirability of allowing

for the full utilization of existing facilities, the necessity of maintaining the ability of each utility to serve in order to insure adequate future service to all segments of the public, the economic feasibility of future expansion under extension policies as limited by the cost of extensions, the desirability of defining boundaries of areas of service in terms readily convenient for field use, the desirability of eliminating future conflict between the parties hereto, the desirability of minimizing, or eliminating where possible, present conflict, the desirability of providing room for area service expansion, the necessity of maintaining revenues of each utility during any transition period that may be provided for herein, the availability and location of other utility services such as water, sewer, and gas, the desirability of recognizing and maintaining areas of community interest, the relationship of the utility to a municipality which it serves under a franchise and to the perimeter service around such a municipality, the relationship of a utility serving in areas outside but adjacent to a municipality to the municipal utility of such city, and the agreements between cities and utilities.

The Commission in another case involving competing utilities for unserved territory also used the above criteria in determining the utility to be certified. See Decision No. 66075 (October 18, 1965).

D. Witness Michael J. McFadden, who testified on behalf of CSU stated in his direct testimony (Exhibit S), that the Commission should consider the factors which he considers to be the most important in determining which competing utility should be awarded a certificate of public convenience and necessity to serve a territory. The factors are:

Financial and operational capabilities to serve the disputed area;

The cost of extending service to the disputed area;

rates for service including delivery service and cost of gas; and

potential impact on current customers.

Mr. McFadden stated that he believes that both Peoples and CSU have sufficient financial and operational resources to serve the Meridian Ranch area. Mr. McFadden however believes that the operational differences of the utilities such as CSU's pilot relighting service without charge and its placing all of its gas meters at the structure, gives an operational advantage to CSU. Mr. McFadden believes that the Commission should examine CSU's and Peoples's cost of extending service to the Meridian Ranch area and rates for natural gas service. On both counts, Mr. McFadden believes that CSU has the advantage over Peoples, and therefore it should be awarded a certificate to exclusively serve the area.

E. Staff believes that both Peoples and CSU have the financial and operational capabilities to serve the Meridian Ranch area. Staff believes that neither utility is better positioned to serve the Meridian Ranch area. The Staff does not take a position on which utility should be granted a certificate. Staff supports the Settlement Agreement reached in this docket.

F. The evidence of record establishes that there is a need for an extension of natural gas service to the Meridian Ranch area. Currently there is no natural gas service to the area. The existing residences in the area currently use propane.

Developers have contacted both Peoples and CSU concerning the need to serve the area.

G. The evidence further establishes that both Peoples and CSU are financially and operationally fit and capable of serving the Meridian Ranch area. Both have an adequate gas supply to serve the area. Although the competing utilities are fully capable of serving customers in the contested area, only one of the utilities should be granted a certificate to serve the area in order to avoid duplication of service, which is in the public interest.

H. Applying the criteria contained in Commission Decision No. 62653, it is found and concluded that the competing utilities are very nearly equal in their ability to serve the disputed area. However, it is concluded that there 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 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 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.

I. It is found and concluded that the present and future public convenience and necessity requires that Peoples be granted a certificate of public convenience and necessity to serve the 12-square mile Meridian Ranch area, identified by its legal description as: Township 12S, Range 64W, Sections 19-30.

J. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Partial Stipulation and Settlement Agreement filed by Peoples Natural Gas Company and Colorado Springs Utilities on August 16, 2000 (Hearing Exhibit No. 1), attached to and made a part of this Decision, is accepted.

2. The motion of Colorado Springs Utilities to dismiss its petition for declaratory order is granted.

3. The motion of Colorado Springs Utilities to dismiss its complaint in Docket No. 00F-446G is granted. Docket No. 00F-446G is closed.

4. Peoples Natural Gas Company, a division of UtiliCorp United Inc. is granted a certificate of public convenience and necessity to provide natural gas service in the 12 square mile Meridian Ranch area, the legal description being: Township 12S, Range 64W, Sections 19-30.

5. The Commission retains jurisdiction in order that it may enter orders as may be necessary to effectuate this Order. Any area of the requested Certificate of Public Convenience and Necessity not served by Peoples Natural Gas Company within a reasonable time frame will be subject to review, revision, or termination by the Commission.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

WILLIAM J. FRITZEL

Administrative Law Judge