

RECEIVED
STATE OF COLORADO
PUBLIC UTILITIES COMM.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE COLORADO
2003 DEC 18 PM 1:21

IN THE MATTER OF THE APPLICATION)
OF COLORADO NATURAL GAS, INC.)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) Docket No. 03A-326G
PROVIDE NATURAL GAS PUBLIC UTILITY)
SERVICE IN DESIGNATED AREAS WITHIN)
JEFFERSON COUNTY, COLORADO.)

STIPULATION AND AGREEMENT IN RESOLUTION OF PROCEEDING

This Stipulation and Agreement in Resolution of Proceeding ("Stipulation" or "Agreement") 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 issues presented by CNG's application that have or could have been contested in this proceeding.

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. 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 July 28, 2003, CNG filed an application seeking the issuance of a Certificate of Public Convenience and Necessity ("CPCN") for authorization to construct and operate a natural gas distribution system and to provide natural gas delivery services in designated areas within Jefferson County, Colorado. The area for which CNG seeks a CPCN is generally referred to herein by the Parties as the Conifer Area.

2. On or about August 29, 2003, Public Service Company of Colorado ("Public Service") filed a Petition to Intervene and Request for Hearing. In its petition, Public Service alleged that a portion of the area for which CNG seeks a CPCN overlapped with area that Public Service either served or intended to serve in the future, based upon the location of its existing facilities.

3. On or about September 12, 2003, Staff submitted its Notice of Intervention, Entry of Appearance and Request for Hearing. In its notice, Staff raised five general concerns about the relief that CNG requested in its application.

4. On September 26, 2003, Public Service filed its Notice Withdrawing Opposition and Request for Hearing. In that notice, Public Service stated that it had had an opportunity to review CNG's application more thoroughly and had determined that

there was in fact no overlap or conflict between the area for which CNG seeks a CPCN and that for which Public Service may ultimately seek such a CPCN.

5. On October 6, 2003, representatives of CNG and Staff met to discuss the five general concerns articulated by Staff in its notice. Thereafter, the Parties held additional discussions in an effort to resolve any concerns that the Staff had regarding the issuance of a CPCN to CNG to serve the area included within CNG's July 28, 2003 application in this docket.

6. Those discussions and 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

7. The Parties acknowledge that natural gas service is not currently available in the service areas for which CNG is requesting a CPCN pursuant to its application. The Parties agree that public convenience and necessity is served by the issuance of a CPCN to CNG authorizing it to construct, 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. 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, but are not limited to the subdivisions of Conifer Mountain, Evergreen Meadows, Conifer Meadows, Black Mountain Estates, Brook Forest, Evergreen Hills,

Buffalo Park, Piano Meadows, Rampart Highlands, Shiloh, Wamblee Valley, Glen Elk and Alpine Hills.

8. The Parties further agree that a CPCN is properly issued to CNG authorizing it to construct, own, operate and maintain a six inch mainline beginning at an approximate point along the Xcel Energy system located in Section 3, Township 6S, Range 71W, and proceeding through private rights-of-way and along the county roads within the Evergreen Meadows West Subdivision. For informational purposes only, the anticipated total length of this mainline will be approximately 41,700 feet. The proposed route of this mainline as well as the 4" portion of the distribution system is as set forth on Exhibit No. 2.

9. 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, as well as in and around the area adjacent to the above-described mainline facilities, including but not limited to those necessary to provide natural gas sales and transportation service to customers within the subdivisions of Conifer Mountain, Evergreen Meadows, Conifer Meadows, Black Mountain Estates, Brook Forest, Evergreen Hills, Buffalo Park, Piano Meadows, Rampart Highlands, Shiloh, Wamblee Valley, Glen Elk and Alpine Hills. For informational purposes only, it is anticipated that such natural gas distribution facilities will consist of approximately 105,000 feet of four inch polyethylene gas line and approximately 424,000 feet of two inch polyethylene gas line, along with $\frac{3}{4}$ inch and $1\frac{1}{4}$ inch service laterals.

10. CNG agrees to maintain separate accounting (that is, sub-accounts) and related records to track revenues and expenses for each service area – Bailey, Cripple Creek, and the new service territory in Conifer. For example, Account 480, Residential Sales of Gas, would reflect total sales dollars, while sub-accounts 480.1, 480.2 and 480.3 would reflect the accounting recording of sales in Bailey, Conifer and Cripple Creek. To this end, CNG agrees to maintain sufficient documentation consistent with the requirements of the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USoA) to support all rate base and expense (whether direct assigned or allocated) items by service area. For example, work orders and continuing property records will be established on a service area basis. For expenses that are not directly assignable, the records of CNG will provide information identifying how the item was allocated among the three areas. The parties agree that the appropriateness of the allocation may be subject to review at any future rate case proceeding.

11. CNG agrees that the accounting and related records identified in Paragraph No. 11 above are to be maintained as part of the permanent accounting records for CNG.

12. In discussions with CNG, Staff has advised CNG that Staff believes CNG's expansion into the Conifer Area should be self sustained, meaning the expansion will pay its own way without leveraging on existing customers in the Bailey or Cripple Creek areas. CNG has advised Staff that CNG's business objective relative to its expansion into the Conifer Area is that such expansion will be self-sustained, meaning that the expansion will pay its own way without leveraging on existing customers in the Bailey and/or Cripple Creek areas. Notwithstanding Staff's above-stated belief and CNG's

above-stated business objective, nothing herein, however, shall limit, restrict or otherwise bind either CNG or Staff with regard to any position that either might choose to assert on this issue in any future proceeding in which rates and terms and conditions of service are determined relative to CNG's Bailey, Cripple Creek and/or Conifer areas.

13. CNG affirms that to the best of its knowledge, information and belief, the projections in its multiple year Feasibility Study for the Conifer Project submitted to Staff in response to audit and attached hereto as Exhibit No. 3 are reasonable in light of the information currently known to CNG. In discussions with Staff, CNG indicated the Feasibility Study represents that projected operating revenues derived from projected number of customers and utility services purchased would exceed anticipated operating expenses in the third full year in operation. CNG acknowledges Staff has reasonably relied on the multiple year projections in the Feasibility Study and exhibits attached to its application for a CPCN in this docket. Staff acknowledges that while CNG believes the projections contained therein are reasonable, they are, nevertheless, projections that are based on estimated information and the historic cost of construction.

14. Rates for prospective customers in the Conifer service area shall be the same as present rates for the customers in the Bailey service area. CNG and Staff agree that the rates for Bailey, Conifer and Cripple Creek may be adjusted following the conclusion of any rate case proceeding before the Commission. Prospective customers in Conifer shall be advised that any interrelationship between rates charged to Conifer and Bailey may or may not remain the same. The issue of combining the rates for Bailey and

Conifer into one rate area, as opposed to two separate "rate" areas, may be addressed in a future rate case proceeding.

III. IMPLEMENTATION

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY

Dated this 15th day of December, 2003.

APPROVED:

COLORADO NATURAL GAS, INC.

By: 

Timothy Johnston, Vice President
7810 Shaffer Parkway
Littleton, CO 80127
(303) 979-7680

APPROVED AS TO FORM:

HOLLAND & HART LLP

By: 

Thomas R. O'Donnell, Reg. #15185
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 295-8291
ATTORNEYS FOR COLORADO
NATURAL GAS, INC.

APPROVED:

STAFF OF THE PUBLIC UTILITIES
COMMISSION

By: 

Randy Garrouette
Financial Analyst
1580 Logan St., OL2
Denver, CO 80203
(303) 894-2000

APPROVED AS TO FORM:

KENNETH L. SALAZAR
Attorney General

By: 

Michael J. Santisi, #29673
Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203
(303) 866-5267
ATTORNEYS FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of December, 2003, an original and 5 true and correct copies of the foregoing document entitled Stipulation and Agreement in Resolution of Proceeding was hand-delivered to:

Bruce Smith, Director
Colorado Public Utilities Commission
1580 Logan OL2
Denver, CO 80203

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

Kenneth V. Reif, Director
Office of Consumer Counsel
1580 Logan Street, Suite 740
Denver, CO 80203

Randy Garrouette
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

Billy Kwan
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

Anthony M. Marquez, Esq.
State Services Section
1525 Sherman Street, 6th Floor
Denver, Colorado 80203

Robert Bergman
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

Michael J. Santisi
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

Thomas R. O'Donnell

EXHIBIT I

In T6S, R70W, Sections 30 and 31 and the N ½ and SE ¼ of Section 5

In T7S, R70W, Section 6

In T5S, R71W, Sections 30 and 31, the SW ¼ of Section 29 and the W ½ of Section 32

In T6S, R71 W, Sections 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 25 and 36, the S ½ of Sections 4, 33, 34 and 35, the SE ¼ of Section 32 and portions of the N ½ of Sections 20 and 21 north of the following line:

Beginning at the east ¼ corner of Section 21, thence west along the ½ section line a distance of approximately 2400 feet to the intersection point of the ½ section line and the centerline of Conifer Mountain Drive, thence south and west along said centerline of Conifer Mountain Drive approximately 500 feet to a point defined as the intersection of said centerline of Conifer Mountain Drive and a line extending into the road from the property line between Lot 24 and Lot 25 of Conifer Mountain Unit 6, thence N53°02'14"W 634.15 feet, thence N0°24'31"W 528.45 feet, thence N27°21'00"E 326.5 feet, thence N67°51'52"W 636.94 feet, thence N55°31'49"W 587.11 feet, thence S54°09'13"W 283 feet, thence N39°13'14"W 25 feet, thence S49°30'29"W 428.46 feet, thence S57°41'42"W 363.87 feet to the centerline of Timothy's Drive, thence approximately 400 feet north along said centerline of Timothy's Drive to the intersection with the centerline of Bea's Drive, thence northwest approximately 245 feet along the centerline of Bea's Drive to a point defined as the intersection of said centerline of Bea's Drive and a line extending into the road from the property line between Lot 30 and Lot 31 of Conifer Mountain Unit 5, thence S37°09'00"W 455.45 feet, thence S50°02'33"E 91.35 feet, thence S62°51'01"W 438.29 feet, thence N38°29'07"W 700.72 feet, thence S49°17'21"W 335 feet, thence N43°21'48"W 247.59 feet, thence S57°46'50"W 548.07 feet to the centerline of Conifer Mountain Road, thence northwest along said centerline of Conifer Mountain Road approximately 175 feet to a point defined as the intersection of said centerline of Conifer Mountain Road and a line extending into the road from the property line between Lot 6 and Lot 7 of Conifer Mountain Unit 8, thence S86°59'12"W 473.65 feet, thence S53°38'48"W 139.54 feet, thence S22°57'26"E 116.76 feet, thence N77°15'24"W 454.36 feet, thence N49°35'22"W 333.09 feet to a point along the west line of Section 20.

In T7S, R71W, Sections 1, 2, 3, and 4 and the E ½ of Section 5

In T5S, R72W, Sections 25 and 36

In T6S, R72W, Section 1

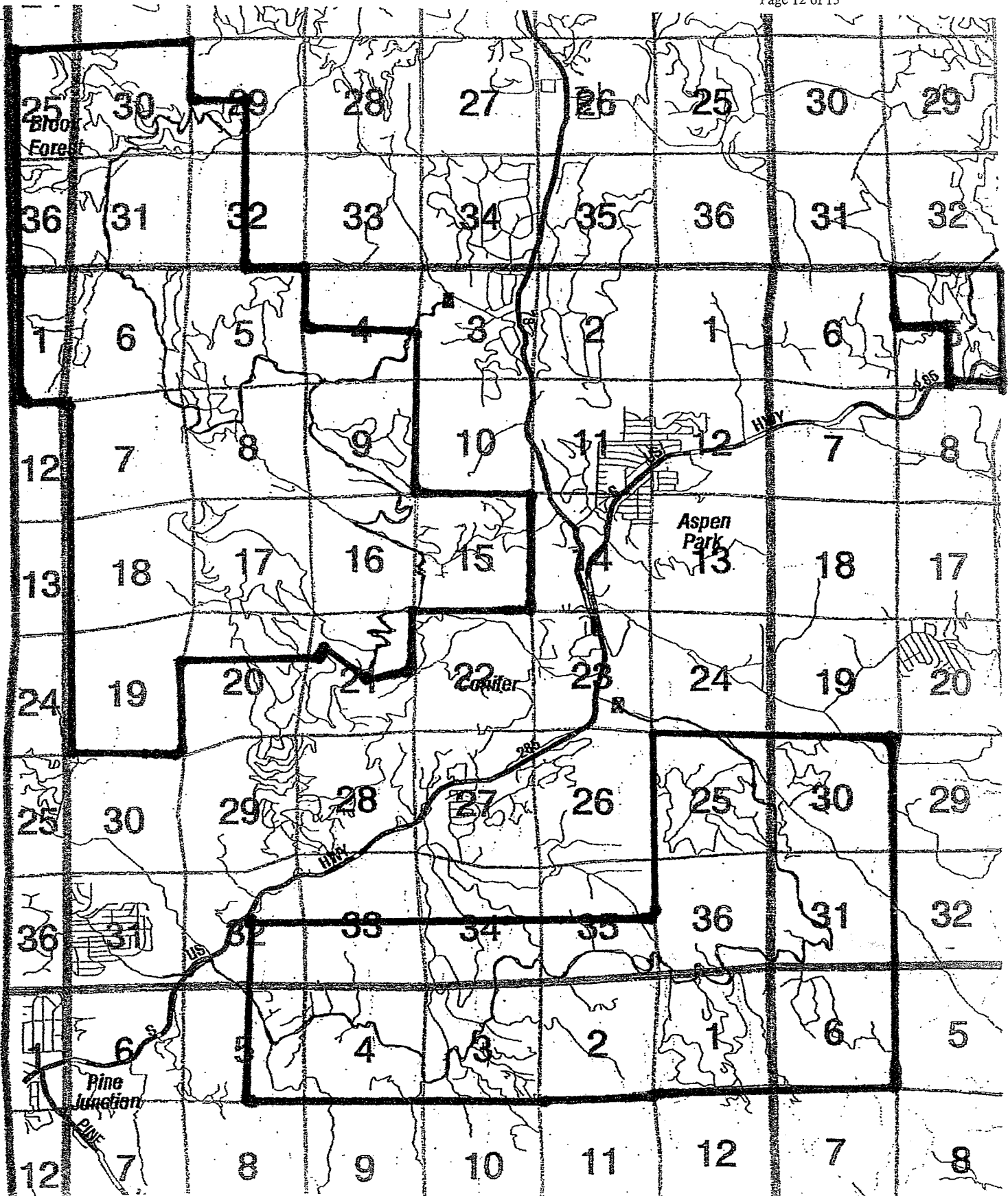


Exhibit 2
Colorado Natural Gas, Inc.
Conifer CPCN Application Map

Boundary of Proposed Territory
4" & 6" Mainline
TBS From Xcel Energy

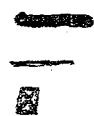


EXHIBIT 3

Attachment
Docket No. 03A-326G
Decision No. R03-1453
December 29, 2003
Page 13 of 13

Feasibility Study for the Conifer Project

Rate Study:

Estimated number of customers for the Rate Determination **1911**

Estimated Direct Costs, from Exhibit 5 of the Filing **\$6,055,647**

Total Cost per Customer **\$3,169**

CNG's assumed rate of return on rate base **11.14%**

Based on this return, and a tax rate of , **23%**

CNG is entitled to recover, per customer. **\$459**

Estimated Annual Operating and Maintenance Expense per Customer **\$246**

Total Annual Revenue needed per customer **\$705**

CNG's estimate for normalized usage in this area is **130 Dth/year**

Based on the Total Annual Revenue needed per customer and the usage, and allowing for annual revenue of **\$120** from Facilities Charges, the Distribution Charge for the Conifer Area should be **\$4.504** per Dth. The current Bailey Distribution Charge is **\$4.40** per Dth. Based on proximity of these rate numbers, CNG proposes to apply the Bailey Distribution Charge and Facility Charge for the Conifer project.