

Decision No. C22-0784

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0486FEG

IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER GRANTING TO IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE ELECTRIC AND NATURAL GAS FRANCHISE RIGHTS IN THE CITY OF FRUITA, COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING THE APPLICATION**

Mailed Date: December 7, 2022
Adopted Date: December 7, 2022

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application filed by Public Service Company of Colorado (Public Service) on November 1, 2022, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the City of Fruita, Mesa County, Colorado (Fruita or City).

2. On November 17, 2022, Public Service filed an Amendment to the Application to correct the referenced proceeding number of the application filed in 2003.

3. The Commission provided notice of this Application on November 2, 2022, to all interested persons, firms, and corporations. No petition to intervene or notice of intervention has been filed, and thus the Application is uncontested. As such, the Application will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure.

B. Findings and Conclusions

4. Public Service is engaged in, *inter alia*, the transmission, purchase, distribution, and sale of electric and natural gas service in its certificated areas in the State of Colorado. The City is located within such certificated areas.

5. Public Service requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Fruita. Pursuant to Ordinance No. 2022-15, adopted July 19, 2022, the City granted Public Service a 20-year franchise to provide electric and natural gas service within Fruita, taking effect September 16, 2022, and expiring on September 16, 2042.

6. On September 25, 2002, Fruita passed and adopted Ordinance No. 2002-20, granting Public Service a franchise to provide electric and natural gas service within Fruita. On May 16, 2003, the Commission, in Decision No. C03-0532, Proceeding No. 03A-166FEG, granted Public Service a CPCN to exercise franchise rights as described in Ordinance No. 2002-20.

7. On October 10, 1977, Fruita passed and adopted Ordinance 371, granting Public Service a franchise to provide electric and natural gas service within Fruita. The ordinance was amended May 20, 1985 by Ordinance 1985-12, and further amended September 25, 1989 by Ordinance 1989-12.

8. On November 2, 1936, Fruita passed and adopted Ordinance No. 137, granting Public Service a franchise to provide electric and natural gas service within Fruita. On January 13, 1937, the Commission in Decision 9235, Application 3682 granted Public Service a CPCN to exercise franchise rights in the City.

9. A utility wishing to exercise any franchise agreement or privileges entered into with a municipality must obtain a CPCN from the Commission pursuant to § 40-5-102, C.R.S. When the municipality and utility enter into a franchise agreement, that agreement must be submitted to the Commission for approval. *See* § 40-5-102, C.R.S. Such applications allow the Commission to review franchise agreements to ensure that the terms are reasonable and in the public interest.

10. The Commission understands the utility and the municipality may want to revise the terms established in a franchise agreement at some point in the future and that existing franchise agreements have scheduled expiration dates. Upon negotiation of a new or amended franchise agreement, the utility shall return to the Commission in a timely manner to obtain authorization to implement the provisions of the new franchise agreement. In the event that this franchise is not renewed at the expiration of its term or is terminated for any reason, the Company is directed to notify the Commission in a timely manner.

11. According to the franchise agreement presented in this Application, as consideration for the franchise rights granted and in recognition of Public Service's right to use the City streets, the City requires Public Service to collect and remit to the City, a franchise fee of 3 percent derived from the sale, distribution or transportation of electricity and gas for all customers, excluding revenues received from the City for the sale of electric and natural gas service to the City.

12. No other utility is authorized to provide electric and natural gas utility service within the areas for which Public Service seeks a certificate in this Application.

13. We find the franchise is required by public convenience and necessity and the terms of the franchise agreement are just, reasonable, and in the public interest.

However, in the event that issues of revenue requirement, cost allocation, and rate design are implicated by any provision of the franchise agreement, those issues will be analyzed in an appropriate Commission proceeding. Approval of the franchise agreement does not constitute approval of, or precedent regarding any principle or issue in revenue requirement, cost allocation, or rate design in any natural gas adjustment, refund, or rate case proceedings.

14. Public Service has provided electric and gas service in the City since 1937, subject to relevant franchise agreements. Because the areas encompassed by the above-referenced franchises are currently served by Public Service, the Company is not required to provide a feasibility study for each area as set forth in Rule 3100(b)(VI) of the Rules Regulating Electric Utilities, 4 CCR 723-3, and Rule 4100(b)(VI), 4 CCR 723-4 of the Rules Regulating Gas Utilities.

15. We find that Public Service has the financial ability and is qualified and competent to conduct the utility operations sought under its Application.

16. Public Service's electric and natural gas service tariffs, currently on file with the Commission, will be used for service under this Application.

17. Providing uninterrupted service to the residents of Fruita is in the public interest. Therefore, the Commission finds that the application is in the public interest and should be granted.

II. ORDER

A. The Commission Orders That:

1. The Application, as amended, filed by Public Service Company of Colorado on November 1, 2022, for a Certificate of Public Convenience and Necessity (CPCN) to exercise

franchise rights pursuant to Ordinance No. 2022-15, in the City of Fruita is deemed complete and granted.

2. The grant of the CPCN to operate under the terms of this franchise agreement is in the public interest and in accordance with the terms of § 40-5-102, C.R.S.

3. The franchise agreement between Public Service and the City of Fruita and the rights and obligations associated therewith are scheduled to expire on September 16, 2042.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 7, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners