

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0029FG

IN THE MATTER OF THE APPLICATION OF COLORADO SPRINGS UTILITIES
FOR AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO EXERCISE NATURAL GAS FRANCHISE RIGHTS GRANTED
BY THE CITY OF FOUNTAIN, COLORADO.

**DECISION GRANTING APPLICATION
TO EXERCISE FRANCHISE RIGHTS**

Mailed Date: January 23, 2014

Adopted Date: January 22, 2014

I. BY THE COMMISSION

A. Statement

1. On January 6, 2014, Colorado Springs Utilities (CSU) filed an application seeking a Public Utilities Commission (Commission or PUC) decision granting it a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the City of Fountain, Colorado (Fountain or City).

2. On January 6, 2014, CSU also, filed a motion requesting that the Commission shorten the notice and intervention period set forth in Commission Rules 1206(a) and (d) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 for the application. The Commission waived response time to the Motion and granted the Motion on January 15, 2014 by Decision No. C14-0057-I.

3. The Commission noticed this application on January 15, 2014 to all interested persons, firms, and corporations. In addition, CSU noticed this application in *The Colorado Spring Gazette* on January 10, 2014. No petition to intervene or notice of intervention has been

filed, and thus the application is uncontested. Accordingly, the application will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

4. CSU is engaged in *inter alia*, the generation, transmission, purchase, distribution, and sale of electricity and the purchase, distribution, transportation, and sale of natural gas in El Paso County, Colorado. CSU is a part of the City of Colorado Springs, a Colorado home rule city and municipal corporation, and is an enterprise defined by the Taxpayer's Bill of Rights, Colorado Constitution, Article X, Section 20 and City Charter Article VII, Section 7-90. CSU operates as a municipal utility within the municipal boundaries of the City of Colorado Springs and as a public utility in certificated areas subject to the jurisdiction of this Commission. All operations to be conducted by CSU under the CPCN sought in the instant application shall be under the name of Colorado Springs Utilities.

5. CSU requests that the Commission issue a decision granting it a CPCN to exercise franchise rights in Fountain. On November 12, 2013, the City of Fountain City Council awarded franchise rights to CSU to provide natural gas service to the City, pursuant to Ordinance No. 1610. The City approved a 20-year franchise from, November 26, 2013 through November 25, 2033 to provide natural gas service within the City.

6. CSU has provided uninterrupted natural gas service to portions of what were originally unincorporated El Paso County and which were annexed into the City through a series of annexations the first of which occurred in 1973.

7. In reviewing Commission records and as represented in its application, CSU has not filed an application with the Commission for a CPCN to exercise franchise rights for limited areas within its CPCN area previously included within the City in a timely manner;

CSU is working to ensure its future compliance with PUC Rules and Regulations pertaining to franchise requirements.

8. A utility wishing to exercise any franchise agreement or privileges entered 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.

9. 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 a new franchise agreement. The Commission has a statutory obligation to review franchise agreements. 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.

10. According to the franchise agreement presented in this application, in exchange for the franchise granted the Grantee shall pay to the Grantor an amount equal to 3 percent of gross receipts derived from the sale, distribution, or transportation of natural gas delivered within the Franchised Area.

11. No other utility is authorized to provide natural gas service within the area for which CSU seeks a certificate in this application.

12. 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 electric adjustment, refund, or rate case proceedings.

13. No other natural gas utility is authorized to provide gas utility service within the area for which CSU seeks a certificate in this application.

14. As noted, CSU has been providing natural gas service to residents of Fountain pursuant to various franchise agreements, since 1973. Because the area encompassed by the Fountain franchise has previously been served by CSU, the requirement to provide a feasibility study as set forth in Rule 4100(b)(VI) of the Rules Regulating Gas Utilities and Pipeline Operators 4 CCR 723-4, can be satisfied by alternatively utilizing CSU's financial statements. Accordingly, the Commission will grant CSU's request that the financial statements submitted as part of this application be accepted in lieu of a feasibility study.

15. CSU has the financial ability and is qualified and competent to conduct the utility operations sought under its application.

16. CSU's natural gas tariffs, currently on file with the Commission, will be used for services under this application.

17. Despite our concerns regarding the untimely filing of these franchise agreements, we nonetheless find that providing uninterrupted service to the citizens of Fountain 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 filed by Colorado Springs Utilities for a Certificate of Public Convenience and Necessity to exercise franchise rights pursuant to Ordinance No. 1610 in the City of Fountain, Colorado is deemed complete and granted.

2. The granting of this Certificate of Public Convenience and Necessity to exercise the referenced franchise agreement is in accordance with § 40-5-102, C.R.S.

3. The franchise agreement between Colorado Springs Utilities and the City of Fountain and the rights and obligations therewith is scheduled to expire on November 25, 2033.

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
January 22, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners