

(Decision No. C92-1039)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF THE JOINT )  
APPLICATION OF GRAND VALLEY )  
RURAL POWER LINES, INC., AND )  
PUBLIC SERVICE COMPANY OF )  
COLORADO FOR: (1) COMMISSION )  
AUTHORIZATION TO TRANSFER )  
CERTAIN CERTIFICATES OF PUBLIC )  
CONVENIENCE AND NECESSITY AND TO )  
TRANSFER CERTAIN ASSETS PURSUANT )  
TO §§ 40-5-105, 40-9.5-105, )  
C.R.S.; (2) COMMISSION GRANT OF )  
CERTIFICATES OF PUBLIC )  
CONVENIENCE AND NECESSITY TO )  
EXERCISE FRANCHISE RIGHTS )  
GRANTED OR APPROVAL OF THE )  
ASSIGNMENTS OF ALL OR A PORTION )  
OF EXISTING FRANCHISE RIGHTS; )  
AND (3) COMMISSION APPROVAL AND )  
ORDER FOR IMPLEMENTATION OF AN )  
AGREEMENT DATED DECEMBER 16, )  
1991, IMPLEMENTING THE )  
FOREGOING. )

DOCKET NO. 92A-328E

COMMISSION DECISION AND  
AND ORDER GRANTING  
APPLICATION

- - - - -  
Mailed Date: August 19, 1992  
Adopted Date: August 12, 1992  
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STATEMENT

BY THE COMMISSION:

On June 9, 1992, Grand Valley Rural Power Lines, Inc. (Grand Valley), and Public Service Company of Colorado (Public Service) filed the within joint application for: (1) Commission authorization to transfer certain certificates of public convenience and necessity and to transfer certain assets pursuant to §§ 40-5-105, 40-9.5-105, C.R.S.; (2) Commission grant of certificates of public convenience and necessity to exercise franchise rights granted or approval of the assignment of all or a portion of existing franchise rights; and (3) Commission approval and order for implementation of an Agreement dated December 16, 1991, implementing the foregoing.

In addition to being filed in compliance with the foregoing statutory references, the Application was also filed in compliance

with Rule 55 of the Commission's Rules of Practice and Procedure relating to the transfer of certificates of public convenience and necessity, including the authority to exercise franchise rights, and asset transfers.

Notice of the within Application was given to interested persons, firms, and corporations by the Commission on June 12, 1992. No motions to intervene or statements in opposition to the Application have been filed by any party. Accordingly, the within Application is not contested and is unopposed and may be determined by the Commission, without a formal oral hearing, pursuant to the provisions of § 40-6-109(5), C.R.S.

#### FINDINGS OF FACT

##### A. Several Facts

1. Grand Valley is a cooperative electric association as defined in § 40-9.5-102, C.R.S., and is a public utility as defined in § 40-1-103, C.R.S. Grand Valley voted to exempt itself from Commission regulation under Part 1 of Article 9.5 of Title 40, Colorado Revised Statutes on August 23, 1983; and the exemption began on September 23, 1983, when the election results were filed with the Commission. Grand Valley's restated articles of incorporation are filed with the Commission.

2. Public Service is, among other things, an electric corporation that is a public utility as defined in § 40-1-103, C.R.S. Public Service's articles of incorporation are filed with the Commission.

3. The Commission has no jurisdiction over Grand Valley and Public Service with respect to the provision of electric service to the public within certain territory of the State of Colorado. The Commission has jurisdiction over the issuance, modification, and transfer of certificates of public convenience and necessity to provide exclusive electric service to the public within defined territory pursuant to § 40-5-105, C.R.S., and § 40-9.5-105, C.R.S.

##### B. Approval of Agreement and Certificate Rights

4. Grand Valley and Public Service are neighboring electric utilities on the Western Slope. On October 26, 1973, Grand Valley and Public Service entered into an agreement pertaining to the provision of electrical service by each of them. (Hereinafter, the October 26, 1973, agreement will be referred to as the "Prior Agreement.") The Prior Agreement was approved by the Public Utilities Commission of the State of Colorado in Decision No. 85379 and Decision No. 85380, both dated July 15, 1974.

5. Decision No. 85380 dated July 15, 1974, granted Grand Valley a certificate of public convenience and necessity to render

electric service within certain described areas of Mesa, Garfield, and Delta Counties. Grand Valley's certificated areas were further amended by Decision No. C80-17 dated January 3, 1980; Decision No. C80-105 dated January 15, 1980; Decision No. C82-18 dated January 5, 1982; Decision No. C82-1539 dated September 28, 1982; Decision No. C84-368 dated March 27, 1984; and Decision No. C84-634 dated May 30, 1984.

6. Decision No. 85379 dated July 15, 1974, granted Public Service a certificate of public convenience and necessity to render electric service within certain described areas of Mesa County. Public Service's certificated areas were amended from time to time, most recently in Decision No. C84-431 dated April 10, 1984. Exhibit B of said Decision No. C84-431 describes Public Service's currently certificated electric service areas.

7. Grand Valley and Public Service have been engaged, during the last several years, in intermittent discussions concerning the termination or amendment of the Prior Agreement. On December 16, 1991, Grand Valley and Public Service entered into an agreement and a supplemental agreement for the purpose of resolving differences between Grand Valley and Public Service by agreement rather than by expensive and time-consuming litigation. Grand Valley and Public Service have intimate familiarity with the service areas involved and the electric public utility business and, accordingly, believe the December 16, 1991, agreement and the supplemental agreement (collectively hereinafter referred to as the "1991 Agreement") to be in the best interest of the public being served as well as Grand Valley and Public Service themselves.

The purpose of the 1991 Agreement is to set forth firm territorial boundaries wherein Grand Valley and Public Service shall serve in exclusive service areas of each without duplication or intermingling.

8. Attached to the Application are Appendices I and II each of which contains certain specific information and exhibits which are incorporated therein. Appendix I is a copy of the 1991 Agreement which, as indicated above, consists of an agreement and a supplemental agreement (Appendix II is described in paragraph 17 below). Exhibit A of the 1991 Agreement is the agreed upon territory to be served exclusively by Public Service. Exhibit B is the exclusive territory to be served by Grand Valley. Exhibit C is a map which delineates the service territory boundaries. Exhibit D is a map of the overall area which makes it more readily apparent to the observer which areas are to be served by Grand Valley and Public Service respectively.

9. A general description of the territory and number of customers that Public Service shall receive from Grand Valley in Mesa County is described in paragraph 5.1 of the 1991 Agreement.

A general description of the territory and delivery point in Mesa County that Grand Valley shall receive from Public Service, without charge, is set forth in paragraph 5.2 of the 1991 Agreement. The Prior Agreement gave Public Service the right to serve industrial electric loads in excess of 1,000 kw within Grand Valley's exclusive service territory and also gave Public Service the right to serve extractive industry electrical loads in excess of 100 kw in Grand Valley's exclusive territory. Under the 1991 Agreement, these specific rights heretofore granted to Public Service are eliminated and the 1991 Agreement provides that Grand Valley and Public Service are given exclusive rights to serve all loads within their service territories. See paragraph 5.3 of the 1991 Agreement.

10. Paragraph 5.4 of the 1991 Agreement provides that Grand Valley and Public Service will enter into joint use agreements and wheeling agreements for areas where they, under reasonable electric utility practices, can reduce or eliminate the duplication of pole lines and other facilities and equipment, all of which may best serve the public interest and which may be necessary for the efficient delivery of electric service to the public.

11. The 1991 Agreement provides for the transfer and conveyance of all electrical distribution facilities, easements, rights-of-way, and other occupancy rights necessary to maintain the facilities in or on the lands which are located within the territories being transferred, but shall exclude meters, transformers, auto boosters, and reclosers. In addition, all fee simple land, if any, is excluded from the transfers as well as all other facilities necessary for the operation of the balance of Grand Valley's and Public Service's respective systems, including all distribution lines. The transfer of facilities is for no cost to either Grand Valley or Public Service. The 1991 Agreement also provides that the facilities which are transferred shall be accepted by the Transferee, regardless of whether they are deemed useful to the Transferee.

12. Grand Valley and Public Service have agreed that they shall approach the Cities of Grand Junction, Fruita, and DeBeque to explain the 1991 Agreement and to propose and support, in good faith, the granting of a franchise to Grand Valley to serve that portion of its territory set forth in Exhibit B to the 1991 Agreement which is currently in one of the cities or which may be annexed into one of the cities in the future. Alternatively, if those cities preferred assignment of the Public Service franchise to Grand Valley to serve portions of Grand Valley's territory (as set forth in Exhibit B) which is now in the Cities of Grand Junction, Fruita, or DeBeque, or which may subsequently be annexed into the cities, Grand Valley and Public Service have agreed to work to obtain approval of the assignment of Public Service's franchise for that portion of Grand Valley's territory. If any other municipality now served by one of the parties or which may



subsequently be created in the territory of either party annexes or has immediate plans to annex a part of the exclusive territory of the other, Grand Valley and Public Service will jointly approach that municipality upon the request of the certificated party to explain the Agreement and absence of any objection to the municipality granting to the certificated utility a franchise to serve within its certificated territory. Upon any involved municipality's request, the party holding a franchise from that municipality shall assign that portion of its electric franchise, including all the attendant rights and obligations contained in the franchise, to the other utility to enable the other utility to serve within the territory as set forth in Exhibits A and B which are exclusively certificated by this Commission. Such an assignment will be for the remaining term of the franchise.

13. In summary, the 1991 Agreement, attached to the application as Appendix I provides for the transfer of certificates of public convenience and necessity whereby Grand Valley and Public Service will be enabled to render exclusive electric service within certain territories as defined in the Agreement. The Agreement also provides for the transfer of certain facilities and customers between Grand Valley and Public Service and for the assignment of certain franchise rights to Grand Valley which franchise rights heretofore had been granted by the Cities of Grand Junction, Fruita, or Debeque. Grand Valley and Public Service submit that the 1991 Agreement will work to the mutual benefit not only of Grand Valley and Public Service, but ultimately to their respective ratepaying customers.

14. Article XXV of the Colorado Constitution and the Public Utilities Law adopted by the Colorado General Assembly provide that this Commission has statewide control of the boundaries of exclusive electric service to be provided by electric utilities within this state subject to the jurisdiction of the Commission. Grand Valley and Public Service each state that it is ready, willing, and able to serve exclusively all electric requirements of the areas sought to be transferred to each of them pursuant to the 1991 Agreement.

#### CONCLUSIONS

The Commission finds and concludes that the within Application is reasonable, is in the public interest, and should be granted.

#### THEREFORE THE COMMISSION ORDERS THAT:

1. The joint application filed by Grand Valley Rural Power Lines, Inc., and Public Service Company of Colorado on June 9, 1992, which seeks: (1) Commission authorization to transfer certain certificates of public convenience and necessity and to transfer certain assets pursuant to §§ 40-5-105, 40-9.5-105, C.R.S.; (2) Commission grant of certificates of public convenience

and necessity to exercise franchise rights granted or approval of the assignment of all or a portion of existing franchise rights; and (3) Commission approval and order for implementation of an Agreement dated December 16, 1991, implementing the foregoing, is granted.

2. Grand Valley Rural Power Lines, Inc., and Public Service Company of Colorado reciprocally are authorized to transfer certificates of public convenience and necessity and to transfer certain assets pursuant to §§ 40-5-105 and 40-9.5-105, C.R.S., to the end that Grand Valley Rural Power Lines, Inc.'s exclusive territory shall be as described on Exhibit B to an Agreement dated December 16, 1991, by and between Grand Valley Rural Power Lines, Inc., and Public Service Company of Colorado, and that Public Service Company of Colorado's exclusive territory shall be as described on Exhibit A to the same Agreement.

3. To the extent that Grand Valley Rural Power Lines, Inc., holds a franchise from a municipality authorizing the exercise of franchise rights within that municipality which is territory now certificated to Public Service Company of Colorado pursuant to ordering paragraph 2 herein, Grand Valley Rural Power Lines, Inc., is authorized to assign said franchise rights to Public Service Company of Colorado for the remaining term of the franchise, and Public Service Company of Colorado is authorized to exercise said franchise rights as assigned.

4. To the extent that Public Service Company of Colorado holds a franchise from a municipality authorizing the exercise of franchise rights within that municipality which is in territory now certificated to Grand Valley Rural Power Lines, Inc., pursuant to ordering paragraph 2 herein, Public Service Company of Colorado is authorized to assign said franchise rights to Grand Valley Rural Power Lines, Inc., for the remaining term of the franchise, and Grand Valley Rural Power Lines, Inc., is authorized to exercise said franchise rights as assigned.

5. The Agreement dated December 16, 1991, by and between Grand Valley Rural Power Lines, Inc., and Public Service Company of Colorado is approved and this Decision and Order shall be authorization to implement said Agreement in accordance with its terms.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING August 12, 1992.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

*Robert E. Semmer*

*Larry J. Nakarado*

*Christine E. M. Alvar*

Commissioners