



Overview of Colorado Franchise Agreements



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Presentation Overview

- Test your knowledge
- Definition of franchise agreement
- Key definitions in franchise agreements
- Overview of franchise agreement approvals
- Questions

2

Which best describes franchise agreements?

- A. They set rates for service
- B. They set terms and conditions of service
- C. They apply to private property
- D. None of the above
- E. All of the above

3

With whom does PSCo enter into franchise agreements?

- A. Counties
- B. The state
- C. Cities
- D. All of the above
- E. A and C

4

Public Service Company of Colorado

- Public Service Company of Colorado (“PSCo”) is the wholly owned Colorado operating company of Xcel Energy Inc.
- PSCo enters into franchise agreements.

5

So what is a franchise agreement?

- A contract *between a municipality and PSCo* that outlines *certain* terms and conditions related to PSCo’s installation and relocation of “Company Facilities” in municipal streets and, often, certain other property to the extent it is owned (or sometimes controlled) by the municipality, e.g., “Other City Property”
- Provide certain benefits to municipalities, including the payment of a franchise fee to them from PSCo. They also provide certain benefits to PSCo.
- PSCo has more than 130 franchise agreements.

6

What "hat" is municipality wearing when it enters into a franchise agreement?

- As it relates to PSCo, municipalities wear two hats – customer and sovereign governmental entity.
- The municipality enters into franchise agreements with PSCo *not as a PSCo customer, but rather in its capacity as a governmental entity.*
- This is an important distinction because when the municipality is acting in its capacity as a customer, it is treated like other customers and subject to PSCo's terms of service, etc.

7

What *doesn't* a franchise agreement cover?

- A franchise agreement *does not* govern PSCo's right and obligation to provide service to customers in a municipality, nor does it govern the terms and conditions of PSCo's service.
- Since Article XXV of the Colorado Constitution was amended in 1954, these functions are within the jurisdiction of the Colorado Public Utilities Commission (CPUC). PSCo's retail terms of service are set forth in:
 - ◆ state public utilities law;
 - ◆ the CPUC rules and regulations;
 - ◆ PSCo's tariffs on file with the CPUC; and
 - ◆ any applicable orders issued by the CPUC.

8

Who negotiates and administers franchise agreements?

- Community Affairs with Legal, as needed
- Community Affairs members:
 - ◆ Hollie Velasquez Horvath, Director
 - ◆ Todd Anderson, Serving the Plains (1-76 Corridor, Logan and Morgan Counties)
 - ◆ Craig Eicher, Boulder County & Mountains
 - ◆ Kelly Flenniken, Western Slope
 - ◆ Preston Gibson, North Denver Metro (Adams, Jefferson, Clear Creek, Gilpin, and Broomfield Counties)
 - ◆ Tom Henley, South Denver Metro (Arapahoe, Douglas, and Elbert Counties)
 - ◆ Tyler Smith, Denver
 - ◆ Ashley Valdez, Pueblo & San Luis Valley
- https://www.xcelenergy.com/community/contact_your_community_relations_manager

9

Franchise agreements: term & types

- Typically, 20 years, unless a municipal *Charter* requires it to be for a different term.
- PSCo enters into *three* types of franchise agreements, depending upon the type of service it provides the municipality, as follows:
 - ◆ combination electric *and* gas franchises (where PSCo provides gas and electric service);
 - ◆ gas only franchises (where PSCo only provides gas service). Gas franchises do not include certain terms, e.g., the 1% underground program, that are found in the combination and electric only franchises; and
 - ◆ electric only franchises (where PSCo only provides electric service).

10

Key franchise agreement provisions

- Definitions – usually Article 1: Defines critical terms such as “Company Facilities,” “Streets,” “Public Projects,” “Revenues,” etc.
- Granting clause – usually Article 2
- Franchise fees – usually Article 4
- Relocation of Company Facilities – usually Article 6
- Undergrounding program - usually Article 11 – *in electric franchise agreements only*
- Others

11

Municipal Franchise Agreement Approval Process

- Municipal Charter governs process.
- For some municipalities, a franchise agreement can be approved by the governing legislative body (e.g., City Council, Board of Trustees, etc.).
- For others, a majority vote of the electors is required. Costs associated with the election are often paid for by PSCo, but PSCo does not pay for any municipal legal fees associated with negotiating or administering the agreements.
- Certain public notifications are required.

12

CPUC Approval of franchise agreements

- Each franchise agreement must be submitted to the Colorado Public Utilities Commission ("CPUC") for approval.
- This process is known as an application for a "Certificate of Public Convenience and Necessity to Exercise Franchise Rights."
- On average, it takes 2 months to complete the process.

13

Questions



14

Working with your gas/electric utility: relocations, light poles, undergrounding, and more October 8, 2016

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• Franchise Agreement

Key Issues

- Term
- Franchise Fees
- Relocations
- Undergrounding
- Audits
- Information to be provided
- Default/Remedies



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• What Controls - Franchise or PUC Tariff?

- Tariff (not a complete list)
 - Performance standards for street lighting/traffic signal lighting
 - Rates for service
 - Privacy rights
- Issues raised in Quality of Service Proceeding (QSP) in 2005-06, PUC Docket No. 05A-288E
- Settlement approved by PUC September 27, 2006



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• Should Your Municipality Acquire the Street Lights – What’s Involved?

Massachusetts Town Buys 1,682 Streetlights for \$1 Each, Paves Way for LED Conversion

<http://www.govtech.com/fs/Massachusetts-Town-Buys-1682-Streetlights-for-1-Each-Paves-Way-for-LED-Conversion.html>

• Hint: easier said than done ...



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• Should Your Municipality Acquire the Street Lights – What’s Involved?

- Some cities that have studied this have determined it can save a significant amount of money
- It provides the benefit of municipal control
- It allows for other uses of the street light assets, such as small wireless facilities and sensors for smart city applications



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• Should Your Municipality Acquire the Street Lights – What’s Involved?

- You’ll need to inventory and identify all street lights in the municipality
- Obtain an appraisal
- Discuss conditions under which PSCo will negotiate
- Remember, you have eminent domain authority under state law, and probably in your franchise



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