



Denver City Council

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**Public Works Committee  
Summary**

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**Wednesday, April 26, 2006, 10:30 a.m.**

**Location: Council Conference Room**

**Committee Members Present:** Brown, Chair; Montero, Vice-Chair; Johnson, Lehmann, Robb

**Committee Members Absent:** Hancock

**Other Council Present:** Boigon, Faatz

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**1) Public Service Company of Colorado (PSCo) Franchise Agreement:**

Committee Action:

The Committee approved filing the following ordinances on Thursday, April 27, 2006:

- A) A bill referring a measure to the registered electors of the City and County of Denver at the August 8, 2006 election the question of granting a non-exclusive 20 year franchise for use of City and County rights-of-way to Public Service Company of Colorado for the purpose of providing utility services to the City and County of Denver and its residents.
- B) A companion bill to the referred measure related to the August 8, 2006 election whereby, if the franchise is approved by the City and County of Denver registered electors granting a franchise to Public Service Company of Colorado, approval of an Operating Agreement that would provide for certain performance terms and obligations of Public Service Company of Colorado in providing utility services and the performance of other related functions for the operation of City facilities.
- C) A companion bill to the referred measure related to the August 8, 2006 election whereby, if the franchise is approved by the City and County of Denver registered electors granting a franchise to Public Service Company of Colorado, approval of an Operating Agreement that would provide for certain performance terms and obligations of Public Service Company of Colorado in providing utility services and other related functions specifically for the operation of Denver International Airport facilities.
- D) A companion bill to the referred measure related to the August 8, 2006 election whereby, if the franchise is approved by the City and County of Denver registered electors granting a non-exclusive 20 year franchise to Public Service Company of Colorado, approval of a Street Lighting Agreement that Public Service Company of Colorado would provide street lighting service for the City and commits Public Service Company of Colorado to service performance standards that will include upgrades, reporting measures, and outage standards and penalties for street light services provided in the City.

- E) A companion bill to the referred measure related to the August 8, 2006 election whereby, if the franchise is approved by the City and County of Denver registered electors granting a non-exclusive 20 year franchise to Public Service Company of Colorado, commits Public Service Company of Colorado to provide contributions and matching opportunities to the City for low-income energy assistance programs.

Councilmember Boigon announced for public disclosure that her husband works for Hogan & Hartson, the law firm that represents PSCo. She will be abstaining from a position until she receives opinions from the City Attorney's Office and Ethics Board whether or not her vote on this matter would be a conflict of interest. Councilmember Faatz abstained from the decision to move the franchise measure for the August 8 election and related agreements out of Committee. Councilmembers Brown, Johnson, Montero, and Lehmann approved filing the legislation.

### Committee Discussion

Cole Finegan, City Attorney's Office, explained that Colorado Statute (C.R.S. § 40-5-103(1)) requires that a public utility must provide evidence that a local government has authorized its operation to serve customers in a particular area. The local government enters into a franchise agreement to authorize the public utility operations. A franchise agreement is a grant to operate and maintain public utilities in rights-of-way (ROW). The current franchise, a 20-year agreement, was approved in 1986 and is scheduled to expire on December 31, 2006. Section 1.1.13 of the Charter requires that all public utility franchises be approved by the voters of the City. A new franchise must be approved by January 1, 2007. In order to assure that the City would continue to receive franchise fees and other funds paid annually by Public Service Company (PSCo) and to provide the company the authority it requires to operate, the City agreed to an August 8, 2006 election date to allow adequate time for the City to seek approval. If the August election franchise proposal is rejected by the voters, the City would propose a Charter revision at the November 2006 election to allow the City to continue to collect franchise fees. Currently, the City pays approximately \$40 million annually to PSCo for gas, electric, and steam utilities. In addition, the proposed franchise would include chilled water services.

Scott Johnson, City Attorney's Office, outlined the terms and objectives of the proposed Franchise Agreement. He noted that all the agreements are a packaged deal based on months of negotiations and reflects unprecedented standards that allows for predictability of performance and commitment. Highlights of the contract include (see attachment):

- ✚ The proposed Franchise is a non-exclusive agreement with PSCo and would authorize a 20-year term. It is not an agreement to provide power. It was clarified that PSCo is a subsidiary of Xcel Energy (main offices in Minnesota). Xcel Energy generates the billing services for PSCo, but the City contracts with PSCo for the franchise agreement.
- ✚ In addition to the proposed franchise agreement four agreements would also become effective: Two Operating Agreements specific to the City and DIA,

Street Lighting, and Low Income and Energy Conservation Contribution Agreements.

- ✚ Franchise Fee: The City receives 3% of PSCo's gross revenue on all gas and electric bills above \$12.50. The proposed franchise would eliminate the \$12.50 exclusion and would improve the revenue audit that would increase revenues to the City estimated at \$2 million per year – revenues that would go into the General Fund for possible use in energy conservation and low income programs. Additionally, PSCo would be subject to ROW permit requirements and fees that would total approximately \$1 million per year.
- ✚ Low Income Programs: PSCo committed to participate in a Low Income Demand Side Management program (DSM – activities involving planning, implementing, and monitoring electric utilities designed to encourage consumers to modify their level and pattern of electricity usage. This includes measures such as lighting, boiler replacement, and green building certification.). PSCo commits to donating money for low income programs in the amount of \$100,000 per year for the first five years and will match City donations up to \$100,000 per year from years 6 through 20. Seventy-five percent of funds would assist Denver low-income residents with energy assistance and 25% of the funds would be used to assist non-profit organizations with energy efficiencies. The intent is to utilize and/or enhance established low income programs (e.g. LEAP and BEST).
- ✚ The Manager of Public Works would be designated as the franchise administrator. An employee would be dedicated to perform the day to day functions for contract management. PSCo also commits to improving communications by designating a point of contact for City issues. Both parties commit to the coordination of all street activities/projects.
- ✚ Facility relocation: PSCo commits to relocating its facilities at no cost to the City that includes City projects and other public projects that are 50% funded by governmental agencies (e.g. FasTracks and Denver Urban Renewal projects).
- ✚ Undergrounding of facilities: PSCo is required to continue its 1% (approximately \$4 million per year) of its electric gross revenue to underground overhead facilities in the ROW. This includes commitment to an underground audit every three years to maximize funds for City underground projects. It was clarified by a Public Service representative that less outages occur with underground lines, but overhead lines tend to be more reliable and more accessible to locate and easier to correct problems compared to undergrounded lines. The Manager of Public Works determines where the undergrounding occurs. Bill Vidal, Manager of Public Works, noted that the \$4 million is strategically used for a long list of construction projects. More projects involving undergrounding beyond the \$4 million would come out of the Capital Improvement Projects (CIP) budget. Councilmember Robb requested assurances that the Manager of Parks & Recreation would have an opportunity to weigh in on undergrounding possibilities in park areas.
- ✚ Performance standards: Related to relocation of facilities, undergrounding of facilities, traffic signal installations, etc. The performance standards obligate PSCo to perform timely and critical work requested by the City. Failure to comply with the standards results in PSCo paying damages and or other compensation.

- ✚ Reliability standards: Assures that the City and its citizens would have a steady source of power. These standards include performance measures and penalties. PSCo would incur a \$50 penalty per customer for outages longer than 24 hours and a \$50 penalty per customer experiencing more than five outages per year. The penalties would be distributed as follows: customers will receive a \$50 bill credit if they have outages longer than 24 hours and a \$50 bill credit if they experience more than 5 outages in a year. PSCo would upgrade facilities as one way to assure more reliability for the consumer. **(Special Note: Additional information was provided after the meeting to clarify that the performance measurements related to penalties is not in the franchise agreement. This information is memorialized in the Public Utilities Commission document dated March 22, 2006, Docket No. 05A-288E).**

Councilmember Montero asked if other agency staff were involved in the coordination for the energy assistance planning. She also suggested that the marketing for the franchise should make it clear that the agreement is for access to City rights-of-way and should not interchange the name of Xcel and PSCo. Councilman Brown noted that there shouldn't be any "scare tactics" used in the marketing campaign to insinuate that customers would lose their service if they don't vote in support of the franchise. He also commented that a Councilmember's weekly poll on the website was incorrect regarding the type of contract the franchise is. He noted the Councilmember stated it was an exclusive agreement which is incorrect. It was suggested that absentee ballots would be a useful tool in the marketing plan. Mr. Vidal indicated City staff is working on creating a "utility unit". The purpose would be to retain knowledge over the length of the contract and to coordinate on internal goals and planning. Staff is planning on having something finalized on the structure of the unit within the next three months. Councilmember Boigon questioned how air quality provisions were being addressed. Mr. Johnson indicated these issues were covered in the Operating Agreement, Article 7, Section D, where it outlines the goal to reduce the green house gas emissions. Pat Vincent, PSCo, noted that conservation strategies help to deter from power plant building.

Mr. Finegan pointed out that rejection of the proposed franchise would not mean PSCo would stop serving its customers. Primarily, if the voters reject the franchise, it puts the franchise fees and other funds paid annually to the City at risk. It also places at risk PSCo's authority to operate. Councilmember Faatz said she has concerns with approving a 20-year franchise. Additionally, she has a philosophical issue with rights-of-way fees/taxes becoming a social services issue. The Councilwoman does not feel that consumers should pay for unrelated operational functions. Mr. Finegan reminded the Committee that the \$12.50 exclusion in the current franchise was a decision made 20 years ago by the voters and generally represents 75 cents per month or \$9 per year to the consumer. The \$12.50 exclusion is eliminated in the proposed franchise. The 3% of Gross Revenue is maintained in the proposed franchise and could be used for energy and low income programs, but Mr. Finegan indicated he is respectful of the Councilwoman's opinion. Pete West, PSCo, explained that the current exclusion fee is the first \$12.50 from each customer and is subtracted from all charges then the remaining amount applies for billing.

Based on Charter requirements (five publications are required), the City Attorney's Office is proposing the following schedule for legislative approval:

- 📅 First Reading – May 1
- 📅 Mayor Council – May 2
- 📅 May 22 – Courtesy Public Hearing
- 📅 Second and Final Reading – June 5
- 📅 August 8 election

Mr. Finegan indicated that City staff would be scheduling various community meetings to provide information to the public. There is an INC meeting scheduled for May 13. He asked Councilmembers to call if they have any questions. Except for Councilmember Faatz who abstained from the decision to move the requests out of Committee, Councilmembers in attendance approved filing the franchise measure for the August 8 election and related agreements.