

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0618FG

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. D/B/A BLACK HILLS ENERGY FOR AN ORDER GRANTING TO IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE NATURAL GAS FRANCHISE RIGHTS IN THE CITY OF OURAY, COLORADO.

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

Mailed Date: January 24, 2024

Adopted Date: January 24, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application filed by Black Hills Colorado Gas, Inc. (Black Hills or Company) on December 21, 2023, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the City of Ouray, Ouray County, in the State of Colorado (Ouray or City).

2. The Commission provided notice of this Application on December 22, 2023, to all interested persons, firms, and corporations. 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 1403, 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure.

3. Black Hills is engaged in, *inter alia*, the sale, distribution, and transportation of natural gas service in its certificated areas in the State of Colorado. The City is located within such certificated areas.

4. Black Hills requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Ouray. Pursuant to Ordinance No. 10 (Series 2023), adopted September 5, 2023, the City granted Black Hills a 15-year franchise to provide natural gas service within the City of Ouray, that will take effect the first day of the month the date the Application is approved by the Commission.

5. On August 4, 2003, Ouray passed and adopted Ordinance No. 8, 2003, granting Black Hills' predecessor, Kinder Morgan, Inc. a franchise to provide natural gas service within Ouray. On March 24, 2004, the Commission, in Decision No. C04-0299, Application No. 04A-095FG, granted Kinder Morgan, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 8, 2003.

6. 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.

7. 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.

8. According to the franchise agreement, as consideration for the franchise rights granted and in recognition of Black Hills' right to use the City streets, the City requires Black Hills to collect and remit to the City a franchise fee equal to \$0.0215 per therm for all revenues received from the sale of natural gas service within the City, excluding revenues received from the City for the sale of natural gas service to the City.

9. No other utility is authorized to provide natural gas utility service within the areas for which Black Hills seeks a certificate in this application.

10. 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.

11. Black Hills, and its predecessors, have provided gas service in the City of Ouray since 2004, subject to a relevant franchise agreement. Because the areas encompassed by the above-referenced franchises are currently served by Black Hills, the Company is not required to provide a feasibility study for each area as set forth in Rule 4100(b)(VI), 4 CCR 723-4 of the Commission's Rules Regulating Gas Utilities.

12. We find that Black Hills has the financial ability and is qualified and competent to conduct the utility operations sought under its application.

13. Black Hills' natural gas service tariffs, currently on file with the Commission, will be used for service under this application.

14. Providing uninterrupted service to the residents of Ouray 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 Black Hills Colorado Gas, Inc., for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 10 (Series 2023) in the City of Ouray 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 shall remain in effect for a period of 15 years and will become effective on the first day of the month following Commission approval.

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' DELIBERATIONS MEETING
January 24, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners