

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0372FG

IN THE MATTER OF THE 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 TOWN OF STRATTON, COLORADO.

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

Mailed Date: September 28, 2022

Adopted Date: September 28, 2022

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. d/b/a Black Hills Energy (BHCG or Company) on August 22, 2022, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Stratton, Kit Carson County, Colorado (Stratton or Town).

2. The Commission provided notice of this application on August 22, 2022, to all interested persons, firms, and corporations. The Company provided notice of the Application in *The Burlington Record* on September 1, 2022. 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. BHCG is engaged in, *inter alia*, the transmission, purchase, distribution, and sale of natural gas service in its certificated areas in the State of Colorado. The Town is located within such certificated areas.

4. BHCG requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Stratton. Pursuant to Ordinance No. 72B, adopted , June 9, 2022, the Town granted BHCG a 20-year franchise to provide natural gas service within Stratton. This franchise will take effect the first day of the month following the date this agreement is approved by the Commission.

5. On October 11, 2001, Stratton passed and adopted Ordinance No. 2-B, granting BHCG's predecessor, Aquila, Inc. a franchise to provide natural gas service within Stratton. On June 24, 2005, the Commission, in Decision No. C05-0790, Proceeding No. 05A-146FG, granted Aquila, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 2-B.

6. The Town granted Black Hills Colorado Gas' predecessor, Aquila Inc., a franchise to provide natural gas service to the Town in Ordinance No. 24A. Due to a weather-related incident at Aquila's offices during the early 1980s, certain regulatory records were either destroyed or lost. As a result, Aquila could not locate or identify the previous CPCN for the uncontested record in this Application.

7. On January 19, 1962, the Commission in Decision 57914, Application 18608 granted BHCG Predecessor Kansas-Colorado Utilities, Inc., a CPCN to exercise franchise rights in the Town.

8. 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.

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 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.

10. According to the franchise agreement, as consideration for the franchise rights granted and in recognition of BHCG's right to use the Town streets, the Town requires BHCG to collect and remit to the Town, a franchise fee of 5% derived from the sale, distribution, or transportation of gas for all customers, the Town is exempt from the franchise fee.

11. No other utility is authorized to provide natural gas utility service within the areas for which BHCG 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 natural gas adjustment, refund, or rate case proceedings.

13. BHCG or its predecessors have provided gas service in the Town since the 1960's, subject to relevant franchise agreements. Because the areas encompassed by the above-referenced franchises are currently served by BHCG, 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 Rules Regulating Gas Utilities.

14. We find that BHCG has the financial ability and is qualified and competent to conduct the utility operations sought under its applications.

15. BHCG's natural gas service tariffs, currently on file with the Commission, will be used for service under this application.

16. Providing uninterrupted service to the residents of Stratton 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. d/b/a Black Hills Energy on August 22, 2022, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 72B, in the Town of Stratton 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 take effect on the first day of the month following the date the Commission approves the franchise for a period of 20 years from that date.

4. The increased franchise fee shall become effective on the date the franchise becomes effective.

5. 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.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 28, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners