

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0140FG

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 OLATHE, COLORADO.

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

Mailed Date: May 12, 2021
Adopted Date: May 5, 2021

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 Colorado Gas or Company) on March 30, 2021 for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Olathe, Montrose County, Colorado (Olathe or Town).

2. The Commission provided notice of this application, on March 31, 2021, to all interested persons, firms, and corporations. Black Hills Colorado Gas noticed this application by publication in the *Montrose Daily Press* a newspaper circulated within all areas that would be impacted by the application, on April 6 and 13, 2021.

3. 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.

4. Black Hills Colorado Gas 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.

5. Black Hills Colorado Gas requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Olathe. Pursuant to Ordinance No. 2020-09, adopted January 11, 2021, the Town granted Black Hills Colorado Gas a 15-year franchise to provide natural gas service within Olathe, that will take effect the first day of the month following Commission approval of the instant application.

6. On June 27, 1960, the Commission in Decision No. 54575, Application No. 17694, granted Black Hills' predecessor, Rocky Mountain Natural Gas Company, Inc, a CPCN to exercise franchise rights to provide natural gas service to the Town.

7. On September 10, 1984, the Town granted Black Hills Colorado Gas' predecessor, Kinder Morgan, Inc., a 20-year franchise to provide natural gas service to the Town in Ordinance No. 5-1984.

8. The Town granted Black Hills Colorado Gas' predecessor, Kinder Morgan, Inc., a 15-year franchise a to provide natural gas service to the Town in Ordinance No. 2004-05. On October 5, 2005, the Commission, in Decision No. C05-1206, Proceeding No. 05A-287FG, granted Kinder Morgan, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 2004-05.

9. 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.

10. 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 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.

11. According to the franchise agreement, as consideration for the franchise rights granted and in recognition of Black Hills Colorado Gas' right to use the Town streets, the Town requires Black Hills Colorado Gas to collect and remit to the Town, a franchise fee of \$0.0426 per therm of gas delivered to all customers. The previous franchise fee was \$0.0233 per therm.

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

13. 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.

14. Black Hills Colorado Gas states it or its predecessors have provided gas service in the Town since 1960, subject to relevant franchise agreements. Because the areas encompassed by the above-referenced franchises are currently served by Black Hills Colorado Gas, 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.

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

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

17. Providing uninterrupted service to the residents of Olathe 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. (Black Hills Colorado Gas) on March 30, 2021, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 2020-09 in the Town of Olathe 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 agreement between Black Hills Colorado Gas and the Town of Olathe and the rights and obligations associated therewith are scheduled to expire on April 30, 2036.

4. The new franchise fee can begin June 1, 2021.
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
May 5, 2021.**

(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