

Decision No. C23-0587

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0377FE

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC D/B/A BLACK HILLS ENERGY FOR AN ORDER GRANTING TO IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS IN THE TOWN OF ORDWAY, COLORADO

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

Mailed Date: September 19, 2023
Adopted Date: August 30, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application filed by Black Hills Colorado Electric, LLC. (BHCOE or Company) on July 19, 2023, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Ordway, Crowley County, Colorado (Ordway or Town).

2. The Commission provided notice of this Application on July 25, 2023, to all interested persons, firms, and corporations. The Company provided notice of the Application on July 25, 2023, and August 1, 2023 in The Ordway New Era. 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. BHCOE is engaged in, *inter alia*, the generation, transmission, purchase, distribution, and sale of electric service in its certificated areas in the State of Colorado. The Town is located within such certificated areas.

4. BHCOE requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Ordway. Pursuant to Ordinance Nos. 550 and 551, adopted December 22, 2022, and May 8, 2023 the Town granted BHCOE a 10-year franchise to provide electric service within Ordway. This franchise will take effect the first day of the month following the date this Application is approved by the Commission.

5. On March 20, 1972, Ordway passed and adopted Ordinance No. 288, Series of 1972, granting BHCOE's predecessor, Central Telephone & Utilities Corporation, a franchise to provide electric service within Ordway. On September 26, 1972, the Commission, in Decision No. 81373, Proceeding No. 26004 granted Central Telephone & Utilities Corporation a CPCN to exercise franchise rights as described in Ordinance No. 288, Series of 1972.

6. On March 17, 1997, Ordway passed and adopted Ordinance No. 439, Series of 1997, granting BHCOE's predecessor, Westplains Energy, a franchise to provide electric service within Ordway. On September 19, 1997, the Commission, in Decision No. C97-951, Proceeding No. 97A-351F granted Westplains Energy a CPCN to exercise franchise rights as described in Ordinance No. 439, Series of 1997.

7. 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.

8. 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.

9. According to the franchise agreement, as consideration for the franchise rights granted and in recognition of BHCOE's right to use the Town streets, the Town requires BHCOE to collect and remit to the Town, a franchise fee of 3.5 percent derived from the sale, distribution, or transportation of electricity for all customers, the Town is exempt from the franchise fee.

10. No other utility is authorized to provide electric utility service within the areas for which BHCOE seeks a certificate in this application.

11. 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. BHCOE or its predecessors have provided electric service in the Town since the early 1900's. Because the areas encompassed by the above-referenced franchises are currently served by BHCOE, the Company is not required to provide a feasibility study for each area as set forth in Rule 3100(b)(VI) of the Rules Regulating Electric Utilities, 4 CCR 723-3.

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

13. BHCOE's electric service tariffs, currently on file with the Commission, will be used for service under this application.

14. Providing uninterrupted service to the residents of Ordway 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 Electric, LLC on July 19, 2023, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance Nos. 04-22 and 05-22, in the Town of Ordway 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 10 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 Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 30, 2023.**

(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

TOM PLANT

Commissioners