

Decision No. C23-0561

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0373FG

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR AN ORDER GRANTING TO IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE NATURAL GAS FRANCHISE RIGHTS IN THE TOWN OF FREDERICK, COLORADO.

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

Mailed Date: September 1, 2023

Adopted Date: August 23, 2023

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 July 18, 2023, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Frederick, Weld County, Colorado (Frederick or Town).

2. The Commission provided notice of this Application on July 19, 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 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. Black Hills requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Frederick. Pursuant to Ordinance No. 1381, adopted March 28, 2023, the Town granted Black Hills a 15-year franchise to provide natural gas service within Frederick, that will take effect the first day of the month the date the Application is approved by the Commission.

5. On July 11, 1959 Frederick passed and adopted Ordinance No. 80, granting Black Hills' predecessor, Rocky Mountain Natural Gas Company, Inc. a franchise to provide natural gas service within Frederick. On July 26, 1961, the Commission, in Decision No. 18584, Application No. 56884, granted Rocky Mountain Natural Gas Company, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 80.

6. On June 14, 1984 Frederick passed and adopted Ordinance No. 244, granting Black Hills' predecessor, K N Energy, Inc. a franchise to provide natural gas service within Frederick. On April 15, 1987, the Commission, in Decision No. C87-503, Application No. 38343, granted K N Energy, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 244.

7. On August 10, 2006 Frederick passed and adopted Ordinance No. 850, granting Black Hills' predecessor, Kinder Morgan, Inc. a franchise to provide natural gas service within Frederick. On December 6, 2006, the Commission, in Decision No. C06-1419, Proceeding No.

06A-527FG, granted Rocky Mountain Natural Gas Company, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 850.

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 Black Hills' right to use the Town streets, the Town requires Black Hills to collect and remit to the Town a franchise fee equal to two percent of all revenues received from the sale of natural gas service within the Town, excluding revenues received from the Town for the sale of natural gas service to the Town. Additionally, the franchise fee will now also be assessed to transport customers. These transport customers were duly noticed by mail on May 11, 2021.

11. No other utility is authorized to provide natural gas utility service within the areas for which Black Hills 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. Black Hills, and its predecessors, have provided gas service in the Town since 1966, 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.

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

15. Black Hills' 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 Frederick 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. 1381 in the Town of Frederick 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
August 23, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners