

Decision No. C23-0207

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0086FE

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 BROOKSIDE, COLORADO.

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

Mailed Date: March 29, 2023

Adopted Date: March 29, 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 February 21, 2023, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Brookside, Fremont County, Colorado (Brookside or Town).

2. The Commission provided notice of this application on February 23, 2023, to all interested persons, firms, and corporations. The Company provided notice of the Application in *The Canon City Daily Record* on February 24, 2023, and March 3, 2023. 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 Brookside. Pursuant to Ordinance Nos 04-22 and 05-22, adopted December 13, 2022 and December 19, 2022, the Town granted BHCOE a 20-year franchise to provide electric service within Brookside. This franchise will take effect the first day of the month following the date this agreement is approved by the Commission.

5. On June 10, 2002, Brookside passed and adopted Ordinance No. 1, Series 2002 granting BHCOE's predecessor, Aquila, Inc. a franchise to provide electric service within Brookside. On June 8, 2005, the Commission, in Decision No. C05-0789, Proceeding No. 05A-145FE, granted Aquila, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 1, Series 2002.

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 BHCOE's right to use the Town streets, the Town requires BHCOE to collect and remit to the Town, a franchise fee of 5% derived from the sale, distribution, or transportation of electricity for all customers, the Town is exempt from the franchise fee.

9. No other utility is authorized to provide electric utility service within the areas for which BHCOE 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. BHCOE or its predecessors have provided electric service in the Town since the early 1900s. 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 Brookside 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 February 21, 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 Brookside 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
March 29, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners