

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0700FE

IN THE MATTER OF THE 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 CITY OF CRIPPLE CREEK, COLORADO.

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

Mailed Date: January 10, 2020

Adopted Date: January 8, 2020

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 (Black Hills Electric or Company) on December 6, 2019, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the City of Cripple Creek, in Teller County, Colorado (Cripple Creek or the City).

2. The Commission provided notice of this application on December 6, 2019, to all interested persons, firms, and corporations. No petition to intervene or notice of intervention has been filed, and thus the application is uncontested. As such, the application will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

B. Findings and Conclusions

3. Black Hills Electric is engaged in, *inter alia*, the generation, transmission, purchase, distribution, and sale of electric service in its certificated areas in the State of Colorado. Cripple Creek is located within one such certificated area.

4. Black Hills Electric requests the Commission issue a decision granting it a CPCN to exercise franchise rights in the City. On October 2, 2019, the City passed Ordinance No. 2019-06, granting Black Hills Electric a franchise to provide electric service within Cripple Creek for ten years, taking effect October 2, 2019 and terminating October 2, 2029.

5. On January 2, 1991, the City granted Black Hills Electric's predecessor, Centel Corporation, a franchise to provide electric service to the City in Ordinance No. 1990-3. On April 24, 1991, the Commission, in Decision No. C91-552, Proceeding No. 91A-274F, granted Black Hills Electric a CPCN to exercise franchise rights as described in Ordinance No. 1990-3.

6. A utility wishing to exercise any franchise agreement or privileges entered 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 presented in this application, as consideration for the franchise rights granted and in recognition of Black Hills Electric's right to use City streets, the City requires Black Hills Electric to collect and remit to the City, a franchise fee equal to 3 percent of all revenues received from the sale of electric service within the City, excluding revenues received from the City for the sale of electric service to the City.

9. No other utility is authorized to provide electric service within the area for which Black Hills Electric 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 electric service adjustment, refund, or rate case proceedings.

11. Stated within the Company's Application Black Hills Electric or its predecessors have provided electric service in the City since 1966. Because the area encompassed by the Cripple Creek franchise was previously served by Black Hills Electric, the Company is not required to provide a feasibility study as set forth in Rule 3100(b)(VI) of the Rules Regulating Electric Utilities, 4 CCR 723-3.

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

13. Black Hills Electric'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 Cripple Creek 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 (Black Hills Electric) on December 6, 2019, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 2019-06, in the City of Cripple Creek, Colorado 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 Electric and the City of Cripple Creek and the rights and obligations associated therewith are scheduled to expire on October 2, 2029.

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' WEEKLY MEETING
January 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners