

Decision No. C20-0909

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0511FG

IN THE MATTER OF THE VERIFIED 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 CITY OF YUMA, COLORADO.

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

Mailed Date: December 23, 2020
Adopted Date: December 23, 2020

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. d/b/a Black Hills Energy (BHCG or Company) on November 18, 2020, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Yuma, Yuma County, Colorado (Yuma or Town).

2. BHCG also, requests a waiver of Commission Rule 4100(b)(IV) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4.

3. The Commission provided notice of this application on November 11, 2020, to all interested persons, firms, and corporations. BHCG noticed this application by publication in *The Yuma Pioneer* a newspaper circulated within all areas that would be impacted by the application, on November 26, 2020 and December 3, 2020. 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 CCR 723-1 of the Commission's Rules of Practice and Procedure.

4. BHCG 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. BHCG requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Yuma. Pursuant to Ordinance No. 7, Series 2020, adopted September 12, 2020, the Town granted BHCG a 15-year franchise to provide natural gas service within Yuma, that will take effect the first day of the month following the date the Commission approves the Application.

6. On July 6, 1955, Yuma passed and adopted Ordinance No. 195, granting BHCG's predecessor, Kansas-Nebraska Natural Gas Company, Inc. (KN Gas Company), a franchise to provide natural gas service within Yuma. On July 25, 1955, the Commission, in Decision No. 44443, Application No. 13516, granted KN Gas Company a CPCN to exercise franchise rights as described in Ordinance No. 195.

7. On August 5, 1980, Yuma passed and adopted Ordinance No. 2, Series 80, granting BHCG's predecessor, KN Gas Company, a franchise to provide natural gas service within Yuma. On December 9, 1980, the Commission, in Decision No. C80-2316, Application No. 33282, granted KN Gas Company a CPCN to exercise franchise rights as described in Ordinance No. 2, Series 80.

8. On May 3, 2005, Yuma passed and adopted Ordinance No. 7, Series 2005, granting BHCG's predecessor, Kinder Morgan, Inc., a franchise to provide natural gas service within Yuma. On September 2, 2005, the Commission, in Decision No. C05-1056, Proceeding

No. 05A-340FG, granted Kinder Morgan, Inc., a CPCN to exercise franchise rights as described in Ordinance No. 7, Series 2005.

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 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.

11. According to the franchise agreement, as consideration for the franchise rights granted and in recognition of BHCG's right to use the Town streets, the Town requires BHCG to collect and remit to the Town a franchise fee equal to three 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. The previous franchise fee was \$0.0121per therm.

12. No other utility is authorized to provide natural gas utility service within the areas for which BHCG 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. BHCG or its predecessors have provided gas service in the Town since 1955 subject to relevant franchise agreements. Because the areas encompassed by the above-referenced franchises are currently served by BHCG, 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.

15. Yuma's Home Rule Charter does not require publication of the franchise agreement and therefore BHCG's request for a waiver of Rule 4100(b)(IV) to provide proof of publication of the franchise agreement is granted.

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

17. BHCG's natural gas service tariffs, currently on file with the Commission, will be used for service under this application.

18. Providing uninterrupted service to the residents of Yuma 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. (BHCG), for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 7, Series 2020 in the Town of Yuma 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 BHCG and the Town of Yuma and the rights and obligations associated therewith is scheduled to expire on January 1, 2036.

4. The new franchise fee can begin with the granting of the instant application.

5. The request by BHCG to waive Rule 4100(b)(IV) to provide proof of publication of the franchise agreement due to Yuma's Home Rule Charter not requiring publication is granted.

6. 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.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 23, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners