

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0213FE

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, L.P., 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 WESTCLIFFE, COLORADO.

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

Mailed Date: April 17, 2014
Adopted Date: April 16, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application filed by Black Hills/Colorado Electric Utility Company, L.P. (Black Hills Energy or Company) on March 4, 2014, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Westcliffe, in Custer County, Colorado (Westcliffe or the Town).

2. On March 17, 2014, Black Hills Energy filed an amendment to the Application, which included Ordinance No. 3-2014, to adjust the franchise fee.

3. The Commission provided notice of this application on March 10, 2014, 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. Finding and Conclusions

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

5. Black Hills Energy requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in the Town. On October 2, 2012, the Town passed Ordinance No. 4-2012, granting Black Hills Energy a franchise to provide electric service within Westcliffe for 20 years, taking effect 60 days following the passage of the ordinance, beginning December 1, 2012, and terminating December 1, 2032. In addition, the Town passed Ordinance No. 5-2012 on October 2, 2012 setting the franchise fee to zero.

6. On February 3, 1987, the Town granted Centel Corporation, a predecessor of Black Hills Energy, a 25-year franchise to provide electric service to the Town in Ordinance No. 1-1987. On April 20, 1987, the Commission, in Decision No. C87-530, Application No. 38338, granted Black Hills Energy a CPCN to exercise franchise rights as described in Ordinance No. 1-1987.

7. Centel transferred assets to Utilicorp United Inc. (Utilicorp) in Proceeding No. 91A-159E, Decision No. R91-1077, mailed August 16, 1991. In Proceeding No. 01A-582EG, Decision No. C02-106, mailed January 31, 2002, Utilicorp changed its Corporate name to Aquila, Inc. Black Hills Energy acquired Aquila Inc., in Proceeding No. 07A-108EG, Decision No. C08-0204, mailed February 29, 2008.

8. 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.

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. Originally filed with the Application was Ordinance No. 5-2012 which required Black Hills Energy to collect and remit to the Town, a franchise fee equal to 3 percent for residential customers and 2.5 percent for commercial customers of all revenues received from the sale of electric service within the Town, excluding revenues received from the Town for the sale of electric service to the Town.

11. Subsequently, on March 5, 2014, the Town passed Ordinance No. 3-2014, to suspend the obligation set forth in Ordinance No. 5-2012 of Black Hills Energy to bill, collect, and pay the franchise fees to Westcliffe, unless the fees are reinstated by the Board of Trustees. All other terms and conditions of Ordinance No. 5-2012 remain in full force and effect. The suspension of the franchise fees was determined due to financial consideration for the people of the Town. If the Board of Trustees does reinstate the franchise fees it will be considered as amending the franchise and the Company shall obtain authorization from the Commission to implement the franchise fees.

12. No other utility is authorized to provide electric service within the area for which Black Hills Energy 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 electric and natural gas service adjustment, refund, or rate case proceedings.

14. Black Hills Energy has provided electric service in the Town since 1987, through its predecessors, subject to a relevant franchise agreement. Because the area encompassed by the Westcliffe franchise was previously served by Black Hills Energy, 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.

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

16. Black Hills Energy's electric service tariffs, currently on file with the Commission, will be used for service under this application.

17. Providing uninterrupted service to the residents of Westcliffe 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, as amended, by Black Hills/Colorado Electric Utility Company, L.P. (Black Hills Energy), for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance Nos. 2-2012, 5-2012, and 3-2014 in the Town of Westcliffe, Colorado is deemed complete and granted.

2. The grant of the CPCN to operate under the terms of the franchise agreements are in the public interest and in accordance with the terms of § 40-5-102, C.R.S.

3. The franchise agreement between Black Hills Energy and the Town of Westcliffe and the rights and obligations associated therewith is scheduled to expire on December 1, 2032.

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
April 16, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.