

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0214FE

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 SILVER CLIFF, 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 Silver Cliff, in Custer County, Colorado (Silver Cliff or the Town).

2. On March 17, 2014, Black Hills Energy filed an Errata to its Application correcting the date reference of its most recent corporate information.

3. The Commission provided notice of this application on March 11, 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. Silver Cliff 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 1, 2012, the Town passed Ordinance No. 2-2012, granting Black Hills Energy a franchise to provide electric service within Silver Cliff for 20 years, taking effect 60 days following the passage of the ordinance, beginning November 30, 2012 and terminating November 30, 2032.

6. On September 8, 1986, the Town granted Black Hills Energy's predecessor Centel Corporation (Centel), a 25-year franchise to provide electric service to the Town in Ordinance No. 86-07. On December 23, 1986, the Commission, in Decision No. C86-1717, Application No. 38038, granted Centel a CPCN to exercise franchise rights as described in Ordinance No. 86-07.

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. According to the franchise agreement presented in this application, as consideration for the franchise rights granted and in recognition of Black Hills Energy's right to use Town streets, the Town requires Black Hills Energy to collect and remit to the Town, a franchise fee equal to 3 percent 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. No other utility is authorized to provide electric service within the area for which Black Hills Energy 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 electric and natural gas service adjustment, refund, or rate case proceedings.

13. Black Hills Energy has provided electric service in the Town since 1986 subject to a relevant franchise agreement. Because the area encompassed by the Silver Cliff 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.

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

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

16. Providing uninterrupted service to the residents of Silver Cliff 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 No. 2-2012, in the Town of Silver Cliff, 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 Energy and the Town of Silver Cliff and the rights and obligations associated therewith is scheduled to expire on November 30, 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.