

Decision No. C20-0162

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0042FG

IN THE MATTER OF THE 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 DELTA, COLORADO.

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

Mailed Date: March 13, 2020

Adopted Date: March 11, 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. (BH Colorado Gas or Company) on January 30, 2020, for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the City of Delta, Delta County, Colorado (Delta or City).

2. Included in the application is a request for waiver of Rule 4100(a) of the Commission's Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4. When the Company filed for approval of a CPCN in the previous proceeding the application only asked for a ten-year CPCN. However, the actual ordinance was for 20 years. The Company requests a waiver since they were providing service without a CPCN.

3. The Commission provided notice of this application on January 31, 2020, to all interested persons, firms, and corporations. 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. BH Colorado Gas 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 City is located within such certificated areas.

5. BH Colorado Gas requests the Commission issue a Decision granting it a CPCN to exercise franchise rights in Delta. Pursuant to Ordinance No. 8, 2019, adopted October 15, 2019, the City granted BH Colorado Gas a 20-year franchise to provide natural gas service within Delta. The franchise will become effective the first day of the month following the mail date of this Decision.

6. On October 14, 1959, Delta passed and adopted Ordinance No. 5-1959, granting BH Colorado Gas's predecessor, Rocky Mountain Natural Gas Company, Inc. a franchise to provide natural gas service within Delta. On June 27, 1960, the Commission, in Decision No. 54568, Application No. 17688, granted Rocky Mountain Natural Gas Company, Inc. a CPCN to exercise franchise rights as described in Ordinance No. 5-1959.

7. On October 5, 1999, Delta passed and adopted Ordinance No. 24, 1999, granting BH Colorado Gas's predecessor, K N Energy, Inc. a franchise to provide natural gas service within Delta.

8. On May 16, 2000, Delta passed and adopted Ordinance No. 12 to correct a typographical error in Ordinance No. 24. On September 13, 2000, the Commission, in Decision No. C00-994, Proceeding No. 00A-469F, granted K N Energy, Inc. a CPCN to exercise franchise rights as described in amended Ordinance No. 24. The City granted Ordinance No. 12 revising the franchise fee calculation.

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 BH Colorado Gas's right to use the City streets, the City requires BH Colorado Gas to collect and remit to the City, a franchise fee equal to \$0.0282 per therm of gas delivered.

12. No other utility is authorized to provide natural gas utility service within the areas for which BH Colorado Gas 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. BH Colorado Gas or its predecessors have provided gas service in the City since 1960, subject to a relevant franchise agreement. Because the areas encompassed by the above-referenced franchises are currently served by BH Colorado Gas, 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 of the Commission's Rules Regulating Gas Utilities and Pipeline Operators.

15. We find that BH Colorado Gas has the financial ability and is qualified and competent to conduct the utility operations sought under its application.

16. BH Colorado Gas's natural gas service tariffs, currently on file with the Commission, will be used for service under this application.

17. The Commission finds that the grant of a waiver of Rule 4100(a) is reasonable and is in the public interest

18. Providing uninterrupted service to the residents of Delta 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., for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 8, 2019 in the City of Delta 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 request for of waiver of Rule 4100(a), 4 *Code of Colorado Regulations* 723-4, is granted.

4. The franchise shall remain in effect for a period of 20 years and terminates on April 1, 2040.

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 11, 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