

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Application of Black)
Hills/Kansas Gas Utility Company, LLC, d/b/a)
Black Hills Energy ("Black Hills") for an)
Extension of its Certificate of Convenience and) Docket No. 17-BHCG-511-ACQ
Authority to Operate as a Natural Gas Public)
Utility in an Area Heretofore Served by the)
City of Attica, Kansas, a Municipally Owned)
Natural Gas Utility.)

ORDER AND CERTIFICATE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. On May 19, 2017, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills), filed an Application requesting an extension of its Certificate of Convenience and Authority to operate as a natural gas public utility in the area presently served by the City of Attica, Kansas, a municipally owned natural gas utility (City of Attica).¹ Black Hills submitted this Application in conformance with the Order issued by the Commission on December 18, 2007, in Docket No. 08-ATMG-182-ACQ (08-182 Docket), which approved a program and filing template for natural gas public utilities to acquire Kansas municipal gas systems.²

¹ Application for Black Hills/Kansas Gas Utility, LLC, p. 1 (May 19, 2017) (Application).

² *Id.* at p. 1.

2. On July 18, 2017, Commission Staff (Staff) submitted its Report and Recommendation.³ Staff recommended, among other things, the Commission grant the necessary approvals for Black Hills to execute the proposed acquisition of the City of Attica's natural gas distribution facilities.⁴

II. DISCUSSION

3. Black Hills has entered into an Agreement with the City of Attica to purchase all of the City's properties and facilities used for the distribution of natural gas in the city.⁵ The actual purchase price for this transaction is \$300,000, and does not exceed Black Hills' average per customer embedded cost.⁶ Pursuant to K.S.A. 15-809, the citizens of the City of Attica voted to sell the system to Black Hills.⁷ Black Hills states it is currently in negotiations with the City of Attica to obtain a franchise agreement and Black Hills will file an executed copy of the franchise agreement with the Commission upon its execution pursuant to the Commission's order relating to the notice-filing of franchise agreements.⁸

4. As part of Black Hills' request, Black Hills is seeking to change the rates currently charged to the City of Attica's customers to Black Hills' statewide rates currently on file with the Commission.⁹ Black Hills intends to render efficient and sufficient service to the City of Attica's customers.¹⁰ Immediate improvements to the acquired distribution assets will include approximately \$50,000 in year one to upgrade service regulators and attach ERTs to meters, however there is no surcharge being requested as part of this Application.¹¹

³ Notice of Filing of Staff's Report and Recommendation (Jul. 27, 2017) (R&R).

⁴ *See id.* at p. 5.

⁵ *See* Application, pp. 1-2.

⁶ *Id.* at pp. 1-2.

⁷ *Id.* at p. 2.

⁸ *See id.*

⁹ *See id.* at pp. 2-3.

¹⁰ *See* Application, p. 3.

¹¹ *See id.*

5. Upstream transportation capacity contracts will be assigned to Black Hills at the time of closing, and existing supply contracts with the West Wichita Gas Gathering System (WWGGS) will be terminated and Black Hills will purchase supply in accordance with its normal purchasing practices.¹²

6. As part of this Application Black Hills requested it be allowed, for accounting and ratemaking purposes, to record the purchase price of the system assets at Black Hills' current distribution system average per customer embedded cost for meters, services and mains on an original cost basis.¹³

7. Staff submitted a Report and Recommendation (R&R) on Black Hills' Application.¹⁴ In support of its recommendation to grant the requested Certificate of Convenience and Authority and ancillary approvals, Staff cites to a Commission Order in the 08-182 Docket.¹⁵ In the 08-182 Docket, the Commission approved a program put forth by Atmos Energy that laid out the process for acquisitions of Kansas municipal natural gas public utilities.¹⁶ This process includes provisions for determining a purchase price, voting procedures as required by K.S.A. 15-809, noticing affected customers, and assumption of supply and transportation contracts as appropriate.¹⁷ The program also set forth a separate set of regulatory terms and conditions that govern the recording of the transaction, ratemaking procedures for any required system improvements, and provisions for the transfer of certificated territory.¹⁸ Incorporated in Staff's R&R for the instant proceeding, Staff references paragraph 13 of the Commission's Order in the 08-182 Docket which stated, "Staff believes the process submitted by

¹² See *id.*

¹³ See *id.*

¹⁴ See R&R.

¹⁵ See *id.* at p. 3.

¹⁶ See *id.*

¹⁷ See *id.*; See also, Order Approving Application, Docket No. 08-ATMG-182-ACQ, pp. 3-5 (Dec. 18, 2007).

¹⁸ See R&R, p. 3.

Atmos to be a good template for any public utility and municipality considering the sale of a municipal system.”¹⁹ Staff states Black Hills’ Application to acquire the gas distribution system facilities of the City of Attica comports in all material respects with the program approved by the Commission in the 08-182 Docket.²⁰

8. Staff’s R&R provides an in-depth analysis of Black Hills and the company’s Application. In further support of Staff’s recommendation to grant Black Hills’ Application, Staff asserts:

- a. Black Hills, as a certificated natural gas public utility in Kansas, is a qualified purchaser and operator of the system.²¹ Further, Black Hills has both the financial resources and technical expertise to provide sufficient and efficient service to the City of Attica’s natural gas customers.²² Staff also notes the City of Attica approved the sale of its facilities to Black Hills by a majority vote and desires to free itself from the financial and technical responsibilities of operating a natural gas distribution system.²³
- b. The purchase price of \$300,000 is reasonable.²⁴ This equates to approximately \$800 per customer, which is well below Black Hills’ average per customer embedded cost of \$1729.²⁵
- c. The terms and conditions approved during the 08-182 Docket as applied to this proceeding would require Black Hills to make any necessary improvements at its own expense until the sum of such improvements and purchase price of the City of

¹⁹ *See id.*

²⁰ *See R&R*, p. 3.

²¹ *See id.*

²² *Id.*

²³ *Id.*

²⁴ *See id.*

²⁵ *See R&R*, p. 3.

Attica's facilities equals Black Hills' average per customer embedded cost.²⁶ Should additional improvements be required beyond this amount, the 08-182 Docket's framework would require Black Hills to recover such overages via a surcharge to the municipal customers and agreed to prior to the system's purchase.²⁷ Black Hills has stated only minor improvements to the system are necessary, and therefore Black Hills has not requested a surcharge be implemented as part of this Application.²⁸

- d. Black Hills will continue to utilize the WWGGS, which supplies unprocessed natural gas, as the source of gas for the City of Attica.²⁹ Staff notes relying on this source of gas could require substantial capital expenditures from Black Hills in the event the WWGGS is unable to provide a sufficient supply of gas for the City of Attica.³⁰ Staff noted this point simply to raise awareness, and indicated there was no evidence the City of Attica's supply of gas was in danger of disruption.³¹
- e. Black Hills will use its statewide approved rates established in Docket No. 14-BHCG-502-RTS and intends to render sufficient and efficient service to the present customers of the City of Attica.³²
- f. Black Hills will consolidate existing transportation capacity and supply contracts with Black Hills' contracts at the first available opportunity.³³
- g. The City of Attica approved the sale of its facilities to Black Hills as evidenced by the certified results of a special election, attached as Exhibit 1 to Black Hills' Application.³⁴

²⁶ See R&R, p. 4.

²⁷ See R&R, p. 4.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.*

³¹ See *id.*

³² See R&R, p. 4.

³³ See *id.*

- h. Black Hills provided an Affidavit of Mailing of Notice to each City of Attica customer advising them of the proposed sale of the natural gas system and comparing the rates of the City of Attica and Black Hills.³⁵ The notice directed comments to the Commission.³⁶ Staff is not aware of any comments being filed, nor has it received any objections to the Application.³⁷
- i. As a result of its analysis, Staff recommends the following Commission action:
 - i. Approve the Asset Purchase Agreement for the sale of the City of Attica's natural gas distribution facilities to Black Hills;
 - ii. Grant the requested enlargement of Black Hills' Certificate of Convenience and Authority in the territory described in Exhibit 3 of the Application;
 - iii. Permit Black Hills to put into effect, and charge the customers being acquired from the City of Attica, Black Hills' current statewide rates and tariff on file with the Commission; and
 - iv. Allow Black Hills to record the purchase price of the system assets at its current distribution system average per customer embedded cost for meters, services, and mains, for accounting and ratemaking purposes.³⁸

9. The requested enlargement of Black Hills' Certificate of Convenience and Authority in the territory included in Exhibit 3 of Black Hills' Application is described as follows:

HARPER COUNTY, KANSAS

Sections 19, 20, 29 and 30, Township 32 South, Range 8 West.³⁹

³⁴ See *id.*

³⁵ See R&R, p. 5.

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

III. FINDINGS AND CONCLUSIONS

10. The Commission has reviewed Staff's R&R submitted in this matter and finds the analysis and recommendations contained therein to be reasonable. Accordingly, the Commission hereby adopts Staff's recommendations as its own.

11. Pursuant to K.S.A. 66-1,201 *et seq.* the Commission is given full power, authority and jurisdiction to supervise and control the natural gas public utilities, as defined in K.S.A. 66-1,200, doing business in Kansas. Black Hills is a certified natural gas public utility serving approximately 114,000 residential, commercial, industrial and public authority customers in Kansas.⁴⁰ Therefore, the Commission finds and concludes it has jurisdiction over Black Hills in the instant proceeding.

12. Pursuant to K.S.A. 66-131, no person or entity shall transact the business of a public utility in the state of Kansas until it shall have obtained a certificate from the Commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state. Black Hills is a limited liability company organized under the laws of the State of Kansas, is authorized to do business as a public utility and is conducting business in the State of Kansas.⁴¹ Black Hills is not presently certified to transact the business of a public utility in the area presently served by the City of Attica. Black Hills requests an extension of its certificate of convenience and authority to do so. Accordingly, the Commission finds and concludes it has jurisdiction over the subject matter of Black Hills' request.

³⁹ See Application, Exh. 3.

⁴⁰ Application, p. 1.

⁴¹ See *id.*

13. Based on Black Hills' Application and Staff's R&R, the Commission finds Staff's recommendations to be reasonable and are in the public interest. The Commission finds the public convenience and necessity will be promoted by allowing Black Hills to acquire natural gas facilities and assume service obligations from the City of Attica. Therefore, the Commission concludes the transaction should be approved in accordance with the Application submitted by Black Hills and R&R submitted by Staff.

THE COMMISSION THEREFORE CONSIDERS AND CERTIFIES:

The Application of Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy to extend its Certificate of Convenience and Authority to operate as a natural gas utility in Harper County is granted and Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, is permitted to transact the business of a natural gas public utility in the additional service territory requested. Correspondingly, Black Hills' certificate is hereby revised and enlarged to include the additional territory described in paragraph 9, above.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Asset Purchase Agreement for the sale of the City of Attica's natural gas distribution facilities to Black Hills is approved.

(B) The tariff rates, rules and regulations, and terms and conditions applicable to Black Hills' newly acquired service territory shall be the same as those under Black Hills' statewide approved rates, which were set in Docket No. 14-BHCG-502-RTS, and as may be amended periodically.

(C) Black Hills may record the purchase price at Black Hills' current distribution system average per customer embedded cost for meters, services and mains on an original cost basis. No separate accounting is required.

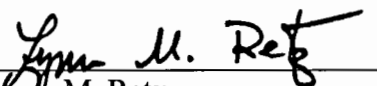
(D) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.⁴²

(E) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED AND CERTIFICATED.

Apple, Chairman; Shari Feist Albrecht, Commissioner; Emler, Commissioner

Dated: JUL 25 2017


Lynn M. Retz
Secretary to the Commission

REV/JF

Order Mailed Date

JUL 26 2017

⁴² See also K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

17-BHCG-511-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on JUL 25 2017.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

JUL 26 2017