

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF)
CHEYENNE LIGHT, FUEL AND POWER) DOCKET NO. 20003-156-EP-17
COMPANY D/B/A BLACK HILLS ENERGY FOR) (RECORD NO. 14649)
AUTHORITY TO INCREASE ITS POWER COST)
ADJUSTMENT BY \$0.00468 PER KWH FOR)
THE PERIOD APRIL 1, 2017, THROUGH)
MARCH 31, 2018)

APPEARANCES

For the Applicant, Cheyenne Light, Fuel & Power Company d/b/a Black Hills Energy (BHE or Company):

TODD L. BRINK, Associate General Counsel, Rapid City, South Dakota
HEATHER McDOWELL, Associate General Counsel, Rapid City, South Dakota

For the Office of Consumer Advocate (OCA):
CHRISTOPHER LEGER, Counsel, Cheyenne, Wyoming.

For Dyno Nobel, Inc. (Dyno Nobel):
RICK A. THOMPSON, Counsel, Hathaway & Kunz, LLP, Cheyenne, Wyoming.

For HollyFrontier Cheyenne Refining LLC (HollyFrontier):
DALE W. COTTAM, Counsel, Bailey | Stock | Harmon | Cottam P.C., Cheyenne, Wyoming
RONALD J. LOPEZ, Counsel, Bailey | Stock | Harmon | Cottam P.C., Cheyenne, Wyoming

For Microsoft Corporation (Microsoft):
Cameron L. Sabin, Counsel, Stoel Rives, LLP, Salt Lake City, Utah
O'Kelley H. Pearson, Local Counsel, Hickey & Evans, LLP, Cheyenne, Wyoming

HEARD BEFORE

Chairman WILLIAM F. RUSSELL
Deputy Chair KARA BRIGHTON FORNSTROM
Commissioner ROBIN SESSIONS COOLEY

KATIE J. KOSKI, Assistant Secretary,
Presiding pursuant to a *Special Order* of the Commission

MEMORANDUM OPINION, FINDINGS AND ORDER DENYING APPLICATION
(Issued December 18, 2017)

This matter is before the Public Service Commission of Wyoming (Commission) upon the Application (Ex. 1) of Cheyenne Light, Fuel and Power Company d/b/a Black Hills Energy for authority to increase its Power Cost Adjustment (PCA) by \$0.00468 per kilowatt hour (kWh) for the period April 1, 2017, through March 31, 2018, together with the Interventions of the OCA, Dyno Nobel, HollyFrontier, and Microsoft.

The Commission, having reviewed the Application and attached exhibits, the Parties' pre-hearing and post-hearing filings, the evidence introduced at the public hearing held on September 6, 2017, its files regarding BHE, applicable Wyoming utility law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

Summary of Decision

1. The Commission denies BHE's Application on the basis the Company failed to show by a preponderance of the evidence that the requested PCA rate increase is just and reasonable and in the public interest as BHE is earning above the Commission authorized rate of return. Consequently, the Commission directs the Company to refund the Commission approved interim PCA rate increase in accordance with the Commission's *Order Approving Rates on an Interim Basis, Granting Request for Hearing and Granting Amended Petition for Confidential Treatment*, issued on April 13, 2017. The Commission further finds the Company recovered governmental imposition costs in 2015 contrary to the language set forth in its PCA tariff. Accordingly, the Company is further directed to refund the 2015 governmental imposition costs previously recovered through the PCA mechanism in accordance with Wyo. Stat. § 37-2-218. The Company is directed to submit a compliance filing within thirty (30) days of November 7, 2017, setting forth the Company's proposal for resetting the PCA rate and refunding the interim PCA rates and the 2015 governmental imposition costs.

2. The Commission reserves ruling on the issues raised by Dyno Nobel regarding dual meter billing and power outage costs until either a general rate case is filed or Dyno Nobel files a formal complaint.

Contentions of the Parties and Resulting Issues

3. The Company requests a PCA rate increase of \$0.00468 per kilowatt hour (kWh), recovery of the governmental imposition costs and variable segment costs through its Power Purchase Agreement, and recovery of all costs associated with its Generation Dispatch and Energy Management Agreement. The Company contends Dyno Nobel's dual-meter billing issue is not properly before the Commission and Dyno Nobel's request for the Company to refund costs associated with power outages is inconsistent with the Company's tariffs. Lastly, the Company proposes to address its over-earnings as follows:

- BHE will not make any application to the Commission requesting recovery of transition costs of the SourceGas acquisition. BHE indicates its share of these costs is approximately \$3.3 million.
- BHE will ensure that an application for a Certificate of Public Convenience and Necessity ("CPCN") for exercise of the Wygen I ownership option is filed no later than March 31, 2018. The Company is currently preparing an Integrated Resource Plan ("IRP") to determine the Company's long term resource needs. The Company states if the Wygen I purchase option is not supported by the IRP, it would seek a waiver from the commitment to file a CPCN for Wygen I.
- BHE agrees to a base rate moratorium through July 1, 2020, by committing to file a base rate review no later than September 1, 2019.

- BHE guarantees a \$2,250,000 benefit to customers from the SourceGas acquisition, to be realized through the following PCA Credits: (1) \$500,000 to 2017 PCA costs, to be included in the Company's February 2018 PCA Application; (2) \$1,000,000 to 2018 PCA costs, to be included in the Company's February 2019 PCA Application; and (3) \$750,000 to 2019 PCA costs, to be included in the Company's February 2020 PCA Application.

(Cheyenne Light, Fuel and Power Company's Post-Hearing Brief, pp. 21-22).

4. The OCA argues that BHE's current and requested rates are not just and reasonable, nor are they in the public interest. The OCA proposes the Commission approve an interim rate to address the current unjust and unreasonable rates, and order a rate case at the earliest opportunity. Further, the OCA asks the Commission to make a finding that the tiered pricing pursuant to the Generation Dispatch and Energy Management Agreement is contrary to the agreement and the Company's tariffs, and is unjust and unreasonable. The OCA additionally requests the Commission deny recovery of the governmental imposition costs and that the Commission make a finding that the Company's tariffs require Commission approval prior to recovery of those costs. Last, the OCA states the Company's proposal outlined in paragraph 3 above is not acceptable, in whole or in part, as it is inadequate to render fair, just, or reasonable rates.

(Post-trial Brief of the Wyoming Office of Consumer Advocate).

5. Dyno Nobel and HollyFrontier request that the Commission deny BHE's requested PCA increase due to BHE's failure to correctly interpret and apply the variable cost segment of the Wygen I Power Purchase Agreement, resulting in distorted and unreasonable price increases. Additionally, Dyno Nobel and HollyFrontier argue BHE is currently earning above its Commission authorized return and the Company has failed to provide assurances it will correct these over-earnings in the near future. Accordingly, both Dyno Nobel and HollyFrontier request a refund for all amounts improperly passed through the PCA rate and that the Company be required to file a general rate case. Dyno Nobel and HollyFrontier also argue the Commission should reject the Company's proposal outlined in paragraph 3 above addressing its over-earnings.

(Dyno Nobel, Inc. and HollyFrontier Cheyenne Refining, LLC's Post Hearing Brief, pp. 13-19).

6. Dyno Nobel requests BHE be required to file a general rate case to address the issue of Dyno Nobel being separately billed for its two meters, which is contrary to the Company's billing for other customers within the same rate class. Further, Dyno Nobel requests refund of the costs Dyno Nobel incurred due to power outages.

(Dyno Nobel, Inc. and HollyFrontier Cheyenne Refining, LLC's Post Hearing Brief, pp. 14-16).

7. Microsoft Corporation asks the Commission to adopt BHE's proposal and not order a general rate case at this time. Microsoft acknowledged the risks associated with BHE's current over-earnings, but stated the benefits defined in BHE's proposal to address its over-earnings outweigh the risks associated with the filing of a general rate case.

(Microsoft Corporations Post-Hearing Brief, pp. 2, 6).

8. The Commission must decide the following issues:

- Whether to approve the Company's Application requesting authority to implement a PCA rate increase of \$0.00468 per kilowatt hour (kWh) for its retail electric service customers for the period of April 1, 2017, through March 31, 2018, in accordance with the procedures set forth in the Company's Power Cost Adjustment tariff;
- Whether to approve the Company's requested recovery of costs associated with the Variable Cost Segment of the Wygen I Power Purchase Agreement;
- Whether the Company complied with its Power Cost Adjustment tariff when it failed to request Commission approval before seeking recovery of governmental imposition costs from 2015 and 2016;
- Whether the currently applied methodology for distributing costs under the Generation Dispatch and Energy Management Agreement violates Article 3.05 and Schedule C of the Agreement;
- Whether BHE is in compliance with its tariffs in billing Dyno Nobel separately for its two meters; and
- Whether BHE should be responsible for the costs Dyno Nobel incurred for increased energy use due to power outages associated with BHE's system.

Course of Proceedings

9. On February 15, 2017, in compliance with its Power Cost Adjustment tariff, BHE filed its Application requesting authority to implement a PCA rate increase of \$0.00468 per kilowatt hour (kWh) for its retail electric service customers effective for the period of April 1, 2017, through March 31, 2018. The current PCA rate, effective December 1, 2016, is (\$0.00218) per kWh and the proposed PCA rate is \$0.00250 per kWh. The Company requested an effective date of April 1, 2017, or in the alternative, that the Commission grant approval of the proposed PCA rate on an interim basis, effective April 1, 2017, subject to refund, review, and hearing. (Ex. 1).

10. BHE also filed a *Petition for Confidential Treatment of Customer Usage, Cost, and Revenue Data in PCA Model and Workpapers (Petition)* pursuant to Commission Rule Chapter 2, Section 30. The Company requested the redactions of Schedule A-2, Notes 1 and 2, Schedule F, Line 16, Workpaper 1, Lines 16, 24 and 42–46, and Workpaper 2, Line 15, be kept confidential because “the redactions at issue are portions of the Company's PCA model and supporting workpapers that generally relate to the usage, particularized cost data, and revenues related to Microsoft.” Additionally, BHE stated “[c]onfidential treatment is appropriate, because the identified segments contain confidential customer usage, cost, and revenue data that, if disclosed, would likely cause harm to the Company and its customer.”

11. On February 23, 2017, the OCA filed its *Notice of Intervention* pursuant to Wyo. Stat. § 37-2-402(a). The OCA is an independent division within the Commission that represents the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. Wyo. Stat. § 37-2-201.

12. On March 8, 2017, the Commission issued a *Notice of Application* setting a deadline of March 27, 2017, for interested persons to file a statement, intervention petition, protest, or request for a public hearing. A public notice was published in newspapers in BHE's service territory. (Ex. 101).

13. On March 8, 2017, the Commission issued a *Suspension Order* suspending the Application for the purpose of investigation for the initial six-month period provided in Wyo. Stat. § 37-3-106(c). (Ex. 102).

14. On March 22, 2017, BHE amended its *Petition for Confidential Treatment* filed on February 15, 2017, and filed an *Amended Petition for Confidential Treatment of Customer Usage, Cost, and Revenue Data in PCA Model and Workpapers and Exhibit 4 (Normalized Earnings Report) (Amended Petition)* pursuant to Commission Rule Chapter 2, Section 30. In its *Amended Petition*, BHE requests the redactions of Schedule A-2, Notes 1 and 2, Schedule F, Line 16, Workpaper 1, Lines 16, 24 and 42–46, Workpaper 2, Line 15, and the Normalized Earnings Report, Exhibit 4, page 2 be kept confidential for the same reasons set forth in its *Petition* and paragraph 10 of this Order.

15. On March 23, 2016, Dyno Nobel filed a *Petition to Intervene*, which was granted by *Order* of the Commission issued on April 5, 2017. (Ex. 106). On March 24, 2017, Microsoft filed a *Petition to Intervene*, which was granted by *Order* of the Commission issued on April 5, 2017. (Ex.103). On March 24, 2016, HollyFrontier filed a *Petition to Intervene*, which was granted by *Order* of the Commission issued on April 5, 2017. (Ex. 105). Also on March 24, 2017, Microsoft filed a *Motion for Admission Pro Hac Vice of Cameron L. Sabin*, which was granted by *Order* of the Commission issued on April 5, 2017. (Ex. 104).

16. On March 27, 2017, the OCA filed its *Request for Hearing*.

17. The request for interim approval of rates, *Request for Hearing, Petition and Amended Petition* came before the Commission for consideration pursuant to due notice at its Open Meeting on March 30, 2017. Heather McDowell, Associate General Counsel, appeared in person and Jason Keil, Manager, Regulatory, appeared by telephone, on behalf of BHE; Christopher Leger, Counsel, appeared in person on behalf of the OCA; Rick A. Thompson, Hathaway & Kunz, LLP, appeared by telephone and Lucas Buckley, Hathaway & Kunz, LLP, appeared in person on behalf of Dyno Nobel; Dale W. Cottam, Bailey | Stock | Harmon | Cottam LLP, appeared by telephone on behalf of HollyFrontier; Stefanie L. Boster, Hickey & Evans, LLP, appeared in person and Cameron L. Sabin, Stoel Rives LLP, appeared by telephone on behalf of Microsoft. Based on Commission Staff recommendations, the Commission granted the *Petition* filed on February 16, 2017, the *Amended Petition* filed on March 22, 2017, and granted OCA's *Request for Hearing*. The Commission further approved BHE's request for interim rates for use on and after April 1, 2017, subject to notice, protest, intervention, refund, change, further investigation, opportunity for hearing, and such other orders the Commission may deem appropriate.

18. On April 13, 2017, the Commission issued an *Order Approving Rates on an Interim Basis, Granting Request for Hearing and Granting Amended Petition for Confidential Treatment*, approving BHE's request for interim approval of the PCA rate increase of \$0.00468 per kWh, effective April 1, 2017, subject to notice, protest, intervention, refund, change, further

investigation, opportunity for hearing, and such other orders the Commission may deem appropriate. (Ex. 107).

19. On May 1, 2017, the Commission issued its *Special Order Authorizing One Commissioner and/or Presiding Officer to Conduct Public Hearing*. (Ex. 108).

20. On May 3, 2017, BHE filed a revised Exhibit 4, Normalized Earnings Report and its *Second Amended Petition*. In its *Second Amended Petition*, BHE requested confidential treatment of the revised page 2 of the Normalized Earnings Report. On May 11, 2017, following discussions between the Parties, BHE filed its *Third Amended Petition*, requesting designation of only one column on page 2 of Exhibit 4 of the Normalized Earnings Report as confidential. BHE requested the information in the redacted column receive “confidential treatment because it is not information Microsoft discloses publicly, and disclosure could negatively impact [Microsoft’s] business and operations.”

21. On May 24, 2017, the Commission issued a *Notice Setting Scheduling Conference* for May 30, 2017. (Ex. 109). On May 31, 2017, the Commission issued its *Scheduling Order* establishing the procedural schedule and setting a public hearing for September 6, 2017. (Ex. 110).

22. BHE’s *Second Amended Petition* and *Third Amended Petition* came before the Commission for consideration pursuant to due notice at its Open Meeting on June 8, 2017. Heather McDowell, Associate General Counsel, participated by telephone. The Commission by Order issued on July 27, 2017, denied the *Second Amended Petition* and granted the *Third Amended Petition*. (Ex. 111).

23. On June 23, 2017, OCA filed confidential and public versions of the direct testimony and exhibits of Denise Kay Parrish. (Exs. 200-200.8). Dyno Nobel and HollyFrontier filed confidential and public versions of the direct testimony and exhibits of Kathryn E. Iverson (Exs. 300-300.8; 400-400.8) and Douglas Chandler (Exs. 301-301.5; 401-401.5). Microsoft did not file direct testimony or exhibits.

24. On June 29, 2017, BHE filed a *Petition for Confidential Treatment of Discovery Documents and Protective Order* which was granted by *Order Granting Confidential Treatment and Protective Order* issued on September 7, 2017.

25. On July 6, 2017, Dyno Nobel and HollyFrontier filed the corrected direct testimony and exhibits of Kathryn E. Iverson.

26. On July 28, 2017, BHE filed the rebuttal testimony and exhibits of Kyle White (Ex. 22), Chris Kilpatrick (Exs. 15-18), Eric Egge ((Ex. 14), and Shirley Welte (Exs. 19-21). On August 9, 2017, BHE filed corrected rebuttal testimony of Kyle White, correcting page 15.

27. On August 3, 2017, the Commission issued a *Notice and Order Setting Public Hearing* commencing on September 6, 2017. A public notice was published in newspapers in BHE’s service territory. (Ex. 112).

28. On August 21, 2017, the Company filed its prehearing reports and exhibits (Exs. 1-23); OCA filed its prehearing reports and exhibits (Exs. 200-200.8); and Dyno Nobel and

HollyFrontier filed their respective prehearing reports and exhibits (300-301.8 and 400-400.8). Microsoft filed its prehearing reports, but did not file exhibits, reserving the right to supplement with exhibits to the extent necessary.

29. On August 31, 2017, HollyFrontier and Dyno Nobel filed an updated exhibit list with Exs 300.13, 300.16, 300.18, 301.6, 301.7 and 301.8.

30. On August 31, 2017, BHE filed a *Motion for Admission Pro Hac Vice* of Todd L. Brink, which the Commission granted by an *Order* issued on September 6, 2017.

31. On September 6, 2017, the Exhibit Conference was held and the following Exhibits were received into evidence then, or during the subsequent hearing.

- BHE's Exhibit Nos. 1 through 24 (Tr., pp. 8 and 107).
- Commission Exhibit Nos. 101 through 120 (Tr., p. 8).
- Dyno Nobel Exhibit Nos. 300 through 301.8 (Tr., p. 8).
- HollyFrontier Exhibit Nos. 400-400.18 (Tr., p. 8).

32. The Commission held a public hearing September 6–7, 2017, pursuant to the Wyoming Administrative Procedure Act at Wyo. Stat. § 16-3-101 through 112. Kyle White, Chris Kilpatrick, Eric Egge and Shirley Welte testified on behalf of the Company. Kathryn Iverson testified on behalf of Dyno Nobel and HollyFrontier, and Douglas Chandler testified on behalf of Dyno Nobel. Denise Parrish testified on behalf of the OCA. Microsoft did not call any witnesses.

33. On September 7, 2017, the Commission issued an *Order Granting Petition for Confidential Treatment and Protective Order*.

34. On September 15, 2017, the Commission issued a second *Suspension Order* suspending the Application for the purpose of investigation for the final three-month period provided in Wyo. Stat. § 37-3-106(c).

35. On October 10, 2017, the Commission issued its *Order Setting Briefing Schedule and Deliberations* setting a deadline of October 20, 2017, to file all post-hearing briefs, and scheduling deliberations for November 7, 2017.

36. On October 20, 2017, BHE, OCA, Microsoft, and HollyFrontier and Dyno Nobel filed their respective post-hearing briefs.

37. On November 7, 2017, the Commission held public deliberations pursuant to Wyo. Stat. § 16-4-403. Following deliberations, the Commission directed the preparation of an order consistent with its decision.

Findings of Fact

Introduction

38. BHE provides electric service to approximately 41,531 retail customers in Laramie

County, Wyoming, in Cheyenne, Burns, Carpenter and Pine Bluffs.¹ (Ex. 4.0).

39. On February 15, 2017, BHE filed its Application requesting authority to revise its PCA tariffs relating to the provision of retail electric services, effective April 1, 2017. (Exs. 1–10). BHE included with its Application clean and legislative versions of its revised PCA tariffs (Exs. 2–3). The PCA permits the utility to request recovery of fuel, purchased electricity and other specified variable costs subject to market forces over which the utility has no or materially diminished control. (Ex. 1.0, p. 2).²

40. In its Application, BHE requested authority to implement a PCA increase of \$0.00468 per kWh to its retail electric service customers effective for the period of April 1, 2017, through March 31, 2018. The current PCA rate, effective December 1, 2016, is (\$0.00218) per kWh and the proposed PCA rate, beginning April 1, 2017, is \$0.00250 per kWh. (Ex. 1, p. 7). If approved, the proposed PCA rate results in an approximate 3.10% increase in Residential customer bills and a 3.15% increase in Commercial customer bills. (Ex. 10). The proposed increase will produce an approximate annual increase in the Company’s revenues of \$705,000. (Ex. 4.0).

Background – Power Cost Adjustment Mechanism

41. The PCA is a balancing account mechanism applied to BHE’s Net Power Costs (NPC) which “trues up” any deviations from the calculated Base Energy Cost per kWh established in the Company’s most recent General Rate Case. The Company’s PCA is an annual calculation based on actual steam plant power production costs (FERC 501), defined as Category 1 Costs on the Company’s Tariff Sheet 44A, and actual delivered power costs (purchase capacity and purchase power costs (FERC account 555), transmission expense (FERC account 565), fuel-other plant costs (delivered natural gas cost) (FERC account 547), which are reduced by sales for resale). These costs are defined as Category 2 Costs on the Company’s Tariff Sheet 44B, for the previous calendar year, as compared to an established Base Energy Cost for steam plant power costs and delivered power costs. The Base Energy Cost per kWh is a calculated figure of all electric power costs divided by total kWh sold. It establishes the average cost per kWh and sets the baseline for comparison of later deviations. The PCA calculation of the Base Energy Cost per kWh should reflect load and corresponding costs in order to accurately establish the Base Energy Cost per kWh baseline. For Category 1 costs, the sharing mechanism is 85% to BHE’s customers and 15% to BHE for both increases and decreases from base costs. For Category 2 costs, the sharing mechanism is 95% to BHE’s customers and 5% to BHE for both increases and decreases from base costs. (Ex. 6.0, p. 3, Docket No. 20003-142-ET-14 (Record No. 14016), *Findings of Fact, Conclusions of Law, Decision and Order*, p. 2, issued August 11, 2015).

42. BHE was authorized to implement its PCA mechanism in its most recent General Rate Case, Docket No. 20003-132-ER-13, as an innovative ratemaking measure pursuant to Wyo. Stat. § 37-2-121. The PCA tariff was set forth in a *Stipulation and Agreement* between BHE and the Rate Case Intervenors and was approved by this Commission in its *Order Approving Stipulation and Agreement* issued on September 29, 2014 (*GRC Order*). The *GRC Order* established the PCA Base Energy Cost per kWh for Category 1 as \$0.00858 per kWh and for

1 Cheyenne Light, Fuel and Power Company, 2016 Wyoming Public Service Commission Utility Annual Report – Electric Investor Owned.

2 Cheyenne Light, Fuel and Power Company Tariff P.S.C. Wyo. No. 12, Power Cost Adjustment, Fourth Revised Sheet No. 44–44E.

Category 2 as \$0.04148 per kWh. (Docket No. 20003-142-ET-14 (Record No. 14016), *Findings of Fact, Conclusions of Law, Decision and Order*, Appendix A at pp. 11–13, issued August 11, 2015).

43. On October 31, 2014, in Docket No. 20003-142-ET-14, the Company requested authority to revise its PCA Base Energy Cost per kWh, claiming the calculation approved in Docket No. 2000-132-ER-13 erroneously omitted the proper inclusion of the Microsoft contribution toward kWh sold. The costs to service the Microsoft 17 MW load were included in calculating the Rate Case PCA, but the corresponding kWh for that load was not. Since the basic PCA formula is Base Energy Cost per kWh is equal to the costs per kWh sold, exclusion of the Microsoft kWh caused the denominator to decrease, and caused the resulting Base Energy Cost per kWh to increase. With the Base Energy Cost per kWh overstated (i.e. the start point set too high) the PCA was flawed in its ability to correctly track and recover/refund changes in the energy costs to customers. (Docket No. 20003-142-ET-14 (Record No. 14016), *Findings of Fact, Conclusions of Law, Decision and Order*, ¶¶ 20–21, issued August 11, 2015).

44. To correct the erroneous PCA calculation, the Company proposed in Docket No. 20003-142-ET-14 to revise the Base Energy Cost per kWh stated in its current PCA tariff for Categories 1 and 2 from \$0.00858 to \$0.00783/kWh and from \$0.04148 to \$0.03786/kWh, respectively. The Company's proposed revision would produce an increase of approximately \$5.1 million in annual revenue for BHE. In addition, the Company proposed to provide a one-time customer credit of \$1.0 million in 2014. BHE stated that its proposed PCA revision was necessary to correct an error in the calculation of the per kWh base energy costs included in the *Stipulation and Agreement* filed in the Company's recent Docket No. 20003-132-ER-13 and approved by the Commission. The Parties in Docket No. 20003-142-ET-14 entered into a Stipulation agreeing to a method to calculate Microsoft load in the PCA Base Energy Cost for Category 1 and Category 2 costs. The Parties agreed the PCA rates from April 1, 2015, through December 31, 2016, will be calculated using the Microsoft load at 13 MW and that effective December 1, 2014, the Base Energy Cost would be: (1) \$0.00783/kWh for the Category 1 Base Energy Cost; and (2) \$0.03786/kWh for the Category 2 Base Energy Cost. The Parties further agreed that effective January 1, 2017, the Base Energy Cost would be calculated using a 17 MW Microsoft load at 90% capacity factor and the Base Energy Cost would be: (1) \$0.00766/kWh for the Category 1 Base Energy Costs; and (2) \$0.03705/kWh for the Category 2 Base Energy Costs. The Commission approved the Stipulation on March 19, 2015, effective April 1, 2015. (Docket No. 20003-142-ET-14 (Record No. 14016), *Findings of Fact, Conclusions of Law, Decision and Order*, issued August 11, 2015).

45. On March 31, 2015, the Commission by *Notice and Order* approved BHE's application to pass on a PCA decrease of \$0.00121 per kWh to its retail electric service customers effective for the period of April 1, 2015, through March 31, 2016. (Docket No. 20003-143-EP-15 (Record No. 14067), *Notice and Order*, issued April 16, 2015).

46. In Docket No. 20003-148-EP-16, the Company filed an application on February 18, 2016, to decrease the PCA rate by \$0.00214/kWh for the period of April 1, 2016, through March 31, 2017. On March 22, 2016, Dyno Nobel and HollyFrontier intervened in the docket, resulting in the suspension of the PCA decrease and setting the proceeding for a hearing. During the hearing, it was revealed that the Company's failure to establish interim rates, coupled with Microsoft's early business development contract termination and new participation in the PCA

effective August 1, 2016, had given rise to a significant forecasted over-collection in BHE's 191 Account balance. Accordingly, in the Commission's initial deliberations it ordered BHE to submit additional updated calculations of the forecasted 191 Account, and requested the Parties' input on how the over-collection should be handled. (Docket No. 20003-148-EP-16 (Record No. 14324), *Memorandum Opinion, Findings and Order Approving Application*, issued December 15, 2016).

47. Upon review of the Company's submitted calculations, the Commission adopted BHE's "Approach No. 2" to calculate and set the PCA rate and to resolve the forecasted over-collection in the Company's 191 Account. BHE's updated calculations illustrated over-collection and attendant customer rate changes were minimized if the PCA rate decreased from \$0.00468 per kWh to (\$0.00218) per kWh for the period of December 1, 2016, through March 31, 2017. The updated calculation illustrated that if customers were given the credit PCA rate of (\$0.00218) per kWh for the period of December 1, 2016, through March 31, 2017, the 191 account was projected to have an under-collection of \$326,198, allowing for minimal forecasted carryover of a 2015 deferred balance into future recovery periods. Accordingly, the Commission approved a PCA decrease of \$0.00686/kWh for the period December 1, 2016, through March 31, 2017. (Docket No. 20003-148-EP-16 (Record No. 14324), *Memorandum Opinion, Findings and Order Approving Application*, ¶¶ 82–84, issued December 15, 2016).

Instant PCA Calculations

48. The proposed 2017 PCA is a \$0.00468 per kWh increase. (See Table 1, below). The current rate, (\$0.00218) per kWh, was effective December 1, 2016. The current rate was implemented to reduce the anticipated over-collection resulting from the April 1, 2016, originally proposed rate of \$0.00254 per kWh. (Docket No. 20003-148-EP-16). The originally proposed 2016 PCA rate was a decrease from the 2015 PCA rate, but the 2016 PCA rate did not go into effect on an interim basis, leading to an over-recovery. (Ex. 1.0, pp. 7–8). Table 1 illustrates the components of the current and proposed PCA rate applicable to the residential rate class.

Table 1: Current vs. Proposed Residential Rates

Rate Component	Current (\$/kWh)	Proposed (\$/kWh)	Difference (\$/kWh)
Power Cost Adjustment	(0.00218)	0.00250	0.00468
Residential Base Energy Charge	0.12839	0.12839	0.00
DSM Surcharge	0.00282	0.00282	0.00
Total Rate	0.12903	0.13371	0.00468

(Ex. 13, p. 4)

49. The proposed PCA rate in this case recovers the calendar year 2016 costs and the amount of the commodity balancing account from the prior year, over the projected retail energy sales for the period of April 1, 2017, through March 31, 2018. Table 2 depicts the proposed total PCA rate calculation of \$0.00250 per kilowatt-hour (line K). Calculation of the PCA combines the values of the Category 1 and Category 2 costs, and applies any residual Balancing Account values. The projected retail energy sales of 1,397,217,177 kWh are used to calculate the PCA rate, and includes an additional \$400,000 credit to Participating PCA customers. The proposed Total PCA rate of \$0.00250 applies to participating retail customer sales. (Ex. 6, pp. 5–7; Ex. 9, p. 2).

Table 2: Total PCA Rate Calculation

Line		Amount
A	Category 1 Amount to be Recovered (Refunded)	\$ (653,075)
B	Category 2 Amount to be Recovered (Refunded)	\$ 4,392,717
C	2014 Credit	\$ -
D-1	Non-participating Amount	\$ -
D-2a	Balancing Account (+ or -) 2016 Projected Ending Balance	\$ 63,898
D-2b	Balancing Account (+ or -) 2016 Compound Interest	\$ 36,424
D-2c	Balancing Account (+ or -) 2017 Projected Compound Interest	\$ 51,857
E	Power Cost Adjustment (Sum: Line A through Line D-2c)	\$ 3,891,820
F	Projected Retail Energy Sales (kWh) (Excluding LPCS Tariff and Non-Participating Customers)	1,397,217,177
G	PCA Rate Prior to Customer Credit (Line E ÷ Line F)	\$ 0.00279
H	Customer Credit	\$ (400,000)
I	Projected Retail Energy Sales for participating PCA customers (kWh)	1,397,217,177
J	Customer Credit Rate (Line H ÷ Line J)	\$ (0.00029)
K	Total PCA Rate (Line G + Line J)	\$ 0.00250

(Ex.2, B.S. 25).

50. The Company states that the Category 1 steam plant costs have increased by 6.96% over the prior year and Category 2 costs increased by 6.8% over the prior year. The total PCA costs (Category 1 and 2) increased by 6.83%. BHE indicates that the 6.83% increase in total costs is offset by a 7.76% increase in kWh usage.³ BHE indicates that the proposed PCA rate in this Application, \$0.00250 per kWh, is a modest decrease from the prior year's requested rate of \$0.00254. (Ex. 6, p. 5).

Calculation of Category 1 Costs

51. In Docket 20003-132-ER-13 (Record No. 13751), the Commission accepted the settlement that established Category 1 costs and sharing for FERC Account 501. For these costs, the sharing mechanism was set at 85% to customers, and 15% to BHE for both increases and decreases from the established base. For this Application, total Category 1 costs are (\$768,324), 85% of which is directed to customers or, (\$653,075), as shown below:

³ CLFP indicates Microsoft's increased load from 2015 to 2016 is responsible for the increased retail energy sales. Microsoft kWh usage increased more than 103,000,000 kWh, while the net change in usage for all other customers was a decrease of approximately 3,000,000 kWh.

Table 3: Category 1 Costs

Line No.	FERC Acct. #	CATEGORY 1	Amount
1	501	Power Costs - Steam Plant	\$ 10,171,038
2		Retail Energy Sales (kWh) (Excluding LPCS Tariff)	1,396,952,558
3		Category 1 Cost per kWh (line 1 ÷ line 2)	\$ 0.00728
4		Base Energy Cost per kWh	\$ 0.00783
5		Difference from Base Cost per kWh (line 3 - line 4)	\$ (0.00055)
6		Total Change from Base (line 2 * line 5)	\$ (768,324)
7		Category 1 Amount to be Recovered (Refunded) from Customers (line 6 * 85%)	\$ (653,075)

(Ex. 2, B.S. 23).

Calculation of Category 2 Costs

52. In Docket 20003-132-ER-13 (Record No. 13751), the Commission accepted a settlement that established Category 2 Costs and sharing of costs. Category 2 Costs are those costs that are recovered 95% from customers and 5% from BHE. These costs include: FERC Account 555, Purchased Capacity and Purchased Power; FERC Account 565, Transmission Expense; and FERC Account 547, Fuel Other Plant. The summation of those account balances, offset by any off system sales, provide the Total Category 2 cost of energy. The Category 2 amount directed to retail customers at 95% is \$4,392,717 as shown in the calculation in Table 4, below.

Table 4: Category 2 Costs

Line No.	FERC Acct. #	CATEGORY 2	Amount
8	555	Purchased Power Costs (Note 1)	\$ 45,534,769
9	565	Transmission Expense (Note 2)	\$ 16,912,037
10	547	Delivered Fuel - Other Plant	\$ 1,876,080
11		Category 2 Delivered Power Cost	\$ 64,322,886
12		Less: Sales for Resale	\$ 5,478,033
12a		Less: Delivered Power Revenues - LPCS Tariff	\$ 1,339,229
13		Total Category 2 Cost of Energy (line 11 - line 12 - line 12a)	\$ 57,505,624
14		Retail Energy Sales (kWh) (Excluding LPCS - Tariff)	1,396,952,558
15		Category 2 Cost per kWh (line 13 / line 14)	\$ 0.04117
16		Base Energy Cost per kWh	\$ 0.03786
17		Difference from Base per kWh (line 15 - line 16)	\$ 0.00331
18		Category 2 Amount to be Recovered (Refunded) from Customers (line 14 * line 17)*95%	\$ 4,392,717

(Ex. 2, B.S. 24).

Black Hills Energy Overearnings

53. In BHE’s most recent General Rate Case, Docket No. 20003-132-ER-13, the Rate Case Intervenor stipulated to and the Commission approved an authorized return on equity of 9.90% and a rate of return on rate base of 7.98%. (Appendix A, *Order Approving Stipulation and Agreement*, Docket No. 20003-132-ER-13, issued September 29, 2014). In the instant Application, the Company reports that its earnings on an *actual basis* with a rate of return on rate base is 8.49% and its rate of return on equity is 11.04%, for year-end December 31, 2016. BHE normalized those earnings resulting in a rate of return on rate base of 8.37% and a rate of return on equity of 10.63%. (Ex. 23). Based upon the Company’s reported actual and normalized earnings, BHE is overearning by \$1.797 million on an actual basis and \$1.399 million on a normalized basis as of December 31, 2016. (Ex. 23; Ex. 114). Table 5 provides BHE’s earnings in excess of its authorized returns for its 2016 actual and normalized earnings.

Table 5: BHE Reported Amended Earnings v. Authorized Earnings

	2016 Amended Actual	2016 Amended Normalized
Rate Base	\$ 354,579,230	\$ 358,299,994
Reported RRB	8.49%	8.37%
Reported ROE	11.04%	10.63%
Reported Earnings (\$)	\$ 30,092,907	\$ 29,991,227
Authorized RRB	7.98%	7.98%
Authorized Earnings (\$)	\$ 28,295,423	\$ 28,592,340
Excess Earnings (\$)	\$ 1,797,484	\$ 1,398,887

(Ex. 23, p. 1)

54. The Company agrees it is overearning, but states the primary reason for these earnings was its successful integration with SourceGas Holdings LLC (SourceGas) in February 2016. (Tr., Vol. 1, pp. 57–58; Ex. 22, pp. 15–16).

55. BHE proposed a solution to mitigate its overearnings, which evolved through the course of these proceedings. The final version of BHE’s proposal is as follows:

- BHE will not make any application to the Commission requesting recovery of transition costs from the SourceGas acquisition. BHE’s indicates its share of these costs is approximately \$3.3 million;
- BHE will ensure that an application for a Certificate of Public Convenience and Necessity (“CPCN”) for exercise of the Wygen I ownership option is filed no later than March 31, 2018, if supported by the Company’s Integrated Resource Plan (IRP). If the purchase option is not supported by the IRP, it would seek a waiver from the commitment to file a CPCN for Wygen I;

- BHE agrees to a base rate moratorium through July 1, 2020, and committed to file a base rate review no later than September 1, 2019, with a proposed rate-effective date of July 1, 2020;
- BHE guarantees a \$2,250,000 benefit to customers from the SourceGas acquisition, to be realized through the following PCA Credits:
 - \$500,000 to 2017 PCA costs, to be included in the Company's February 2018 PCA Application;
 - \$1,000,000 to 2018 PCA costs, to be included in the Company's February 2019 PCA Application; and
 - \$750,000 to 2019 PCA costs, to be included in the Company's February 2020 PCA Application.

(Tr. Vol. II, pp. 402–404; Cheyenne Light, Fuel and Power Company's Post-Hearing Brief, pp. 21–22).

56. The Company states its proposal is conditioned upon its PCA Application being approved as filed. (*Id.*). Additionally, the Company would retain all remaining overearnings until any new base rates go into effect on or before July 1, 2020. (Tr., Vol. I, p. 83; Tr. Vol. II, pp. 402–404; Ex. 22, pp. 16–17; Cheyenne Light, Fuel and Power Company's Post-Hearing Brief, pp. 21–22).

Costs Related to Wygen I Power Purchase Agreement

57. On July 29, 2009, BHE and Black Hills Wyoming, LLC, entered into a Power Purchase Agreement (PPA) for the continued purchase and sale of electric capacity and energy from Black Hills Wyoming's undivided 76.5% interest in an existing eighty-five megawatt (85 MW) coal-fired electric generating facility located in the general vicinity of Gillette, Wyoming, known as the Wygen I Plant (Wygen I). BHE, pursuant to the PPA, agreed to purchase the lesser of 75% or 60 MWh of capacity and energy from the output of Wygen I through December 31, 2022. (Ex. 6, p. 6; Ex. 7).

58. On October 1, 2009, the Federal Energy Regulatory Commission (FERC) approved the sale of electric capacity and energy between BHE and Black Hills Wyoming, LLC. Additionally, FERC accepted the PPA for filing. (Ex. 8, pp. 6–7).

59. The price for Wygen I energy and capacity is the sum of a Fixed Cost Segment (\$15.00/MWh for the term of the agreement), a Variable Cost Segment (including fuel costs and variable operating expenses) and a Governmental Imposition Segment (allowing for the pass through of any costs associated with new environmental regulations effective after the start of the PPA). (Ex. 6, p. 7; Ex. 7, pp. 5–6).

Variable Cost Segment

60. The Variable Cost Segment had an initial rate of \$31.40 per MWh and is adjusted annually on January 1 of each year. The variable cost segment is adjusted to:

[A] rate equal to the higher of: a) three percent (3%), or b) the actual percentage increase in the fuel and variable operating expense, including labor, of the Wygen I Plant (“Wygen I Variable Expenses”), but such Wygen I Variable Expenses shall exclude any costs charged to [BHE] under the Governmental Imposition Segment of the Price to the extent such costs would otherwise be included in the Wygen I Variable Expenses.

(Ex. 7, p. 5).

61. With regard to the Variable Cost Segment, Dyno Nobel and HollyFrontier propose disallowing \$4,054,365 of the purchased power expenses associated with Wygen I. Specifically, Dyno Nobel and HollyFrontier claim the Company’s method of applying the higher of 3% or the actual percentage results in a pricing adjustment that is fundamentally flawed and grossly distorts the PPA price escalator. (Ex. 300, pp. 2-3). Dyno Nobel and HollyFrontier argue the Company’s interpretation of the PPA language gives BHE an average annual expense increase of 9.24% and has grossly raised the price for customers. (Id. at p. 6; Tr., Vol. II, pp. 246–47). Dyno Nobel and HollyFrontier’s expert witness, Kathryn E. Iverson, testified that BHE is incorrectly calculating the Variable Cost Segment by using the expense component as the denominator, instead of the price, to derive the adjustment to the variable cost. (Tr., Vol. II, p. 246).

62. BHE claims the calculation of the Variable Cost Segment is a matter of contract interpretation and the contract language is not ambiguous. BHE states that the Variable Cost Segment of the Wygen I price is determined annually by: (1) the prior year’s Wygen I Variable Expense total by comparing it to the current year total to determine the percentage change in expenses; (2) if the percentage increase is greater than 3% then that percentage is applied to the Variable Cost Segment of the Wygen I Price; and (3) if the percentage increase calculated in step one is not greater than 3%, then the Variable Cost Segment of the Price is increased by 3%. (Cheyenne Light, Fuel and Power Company’s Post-Hearing Brief, p. 7; Tr., Vol. I, pp. 128; Vol. II, pp. 386–87). Additionally, BHE states the purchase clause in the Wygen I Agreement provides customers with valuable protection when the PPA price begins to escalate by allowing the Company the option to purchase the generation unit when the cost of power pursuant to the Wygen I Agreement is no longer beneficial. (Ex. 15, pp. 10–11).

63. Neither the OCA nor Microsoft asserted a position on the calculation of the Variable Cost Segment pursuant to the Wygen I PPA. (Post-Trial Brief of the Wyoming Office of Consumer Advocate, p. 21; Microsoft Corporation’s Post-Hearing Brief, p. 5).

Government Imposition Costs

64. The Company’s PCA Tariff provides that for Category 1 costs: “[p]rior to including any new governmental impositions in the Power Costs – Steam Plant, the Company will receive approval from the Commission.”⁴ Additionally, for Category 2 Costs, the Company’s PCA Tariff provides: “[p]rior to including any new governmental impositions in the Delivered Power Costs,

⁴ Cheyenne Light, Fuel and Power Company Tariff P.S.C. Wyo. No. 12, Power Cost Adjustment, Fourth Revised Sheet No. 44A.

the Company will receive approval from the Commission.”⁵ (Ex. 2, B.S. 23-24).

65. The OCA argues BHE failed to follow the Commission PCA Tariff by not seeking Commission approval before including these costs in the PCA calculation. Accordingly, the OCA recommends excluding the governmental imposition costs from the calculation of the PCA in this matter. (Tr., Vol. II, pp. 338–39; Ex. 200, p. 16).

66. The OCA states that governmental imposition costs were included in the PCA calculation for the 2014 and 2015 net power costs. Consequently, the OCA recommends correcting inclusion of these costs for 2014 and 2015 through utilization of the PCA balancing account. (Ex. 200, p. 16).

67. BHE asserts the OCA is incorrect in its interpretation of the PCA Tariff regarding the need for prior Commission approval of government imposition costs associated with the instant docket through a PPA. Specifically, the Company argues pre-approval of governmental imposition costs under the tariff only applies to charges directly levied on the purchaser of power by a governmental entity, as opposed to charges incurred by the seller of power and passed through a contractual provision. (Ex. 15, p. 16).

Generation Dispatch and Energy Management Agreement (GDEMA)

68. The Generation Dispatch and Energy Management Agreement (GDEMA) is an agreement, effective January 1, 2008, between BHE and its affiliate company Black Hills Power. The GDEMA identifies services that Black Hills Power provides to BHE with respect to generation dispatch and energy management. (Ex. 200.2). Originally, the GDEMA was executed because of the expiration of the all-requirements contract between BHE and Xcel Energy at the end of 2007, immediately prior to the commissioning of the BHE 90 MW Wygen II coal-fired power plant. These significant resource changes led BHE to procure generation dispatch and energy management services from its affiliate, Black Hills Power, rather than forming its own generation dispatch or power marketing function at a higher cost. The agreement requires Black Hills Power to: (1) forecast BHE’s load requirements; (2) manage the dispatch of BHE’s generating resources and power purchase agreements; and (3) purchase wholesale energy and capacity, if needed, to serve BHE’s load reliably and economically. In addition, Black Hills Power arranges for ancillary services from Western Area Power Administration. The services offered to BHE from Black Hills Power are provided to BHE at cost, without any profit component. (Tr., Vol. I, p. 171; Ex. 14, pp. 4–5; Cheyenne Light, Fuel and Power Company’s Post-Hearing Brief, p. 12). Black Hills Power provides these same services to four other companies, two of which are affiliated. (Ex. 14, p. 5).

69. Article 3.05 of the GDEMA provides:

[BHE] shall reimburse Black Hills Power pursuant to Schedule C for Black Hills Power’s purchases and outlays on behalf of [BHE] for the capacity, energy, and ancillary services purchasing services specified in this Article III of the Agreement. For Black Hills Power’s purchase capacity, energy, and ancillary services to serve

⁵ Cheyenne Light, Fuel and Power Company Tariff P.S.C. Wyo. No. 12, Power Cost Adjustment, Fourth Revised Sheet No. 44B.

both Parties' Load in any hour, the costs of such purchases shall be apportioned on the basis of the relative demands on each Party's portion of the System.

(Ex. 200.2, B.S. 40).

70. Schedule C of the GDEMA provides:

The price of capacity and energy secured by Black Hills Power on behalf of [BHE] shall be based on Black Hills Power's incremental cost if supplied by Black Hills Power, and based on Black Hills Power's actual cost if secured from a third party, plus applicable taxes. The price of transmission secured by Black Hills Power on behalf of [BHE] shall be based on Black Hills Power[s]' actual cost, plus applicable taxes.

(Ex. 200.2, B.S. 48).

71. According to BHE, each company pays Black Hills Power a share of the costs associated with the generation dispatch and energy management services provided. Each company's share of the cost is based on the generator capacity managed for each party. Purchased energy costs are allocated to each participating company by ordering, or stacking, the energy used to serve Black Hills Power and GDEMA load and obligations each hour from the lowest cost to the highest cost. Black Hills Power is allocated the lowest costs in the stack. Accordingly, once Black Hills Power's retail loads and obligations are met, the remaining energy costs in the stack are allocated to the remaining GDEMA loads and obligations. (Ex. 14, p. 6).

72. The OCA argues that BHE's methodology for allocating the GDEMA costs on a stacking basis violates Article 3.05 and Schedule C of the GDEMA. Specifically, the OCA claims that Black Hills Power's methodology results in an assignment of the cheaper priced energy to itself at the expense of BHE customers. The OCA states that pursuant to the GDEMA, each utility should be paying for a portion of what the company purchased to meet its needs for that particular hour, and that the cost a company pays should not be different depending on which utilities were in need of the power. (Ex. 200, pp. 11–12).

Dyno Nobel, Inc. and BHE's Billing Practices

73. Dyno Nobel claims BHE is utilizing discriminatory and unreasonable billing practices and requests the Commission order the filing of a rate case. (Ex. 301, p. 9). Specifically, Dyno Nobel testified that it is billed separately for the two meters in its service from BHE, whereas other Industrial Contract Service (ICS) customers are allowed to combine multiple meters into one billing, decreasing the amount billed from BHE. (Tr., Vol. II, p. 290–94). Additionally, Dyno Nobel claims BHE receives a benefit at the expense of Dyno Nobel every time there is a power outage. (Tr., Vol. II, p. 304–05).

Dual Meter Charges

74. Dyno Nobel claims that it is billed differently than the two other customers in the ICS class. Dyno Nobel states that all three customers have multiple meters at their respective plants, but BHE treats Dyno Nobel differently by considering Dyno Nobel's two meters as separate accounts and billing each meter separately. Since Dyno Nobel is billed separately for its two meters, it pays two demand charges and pays for energy at the highest cost energy block rate twice under the ICS class tiered pricing structure, which forces Dyno Nobel to pay significantly more than the other two ICS class members for the same amount of energy consumed. (Tr. Vol. II, p. 290–94).

75. In Docket No. 20003-146-ET-15, Dyno Nobel raised the same issue and the Commission found:

Finally, the Commission agrees with the OCA and the Applicant that the complaints raised by Dyno about its own specific billing arrangements and metering are not related to the application [to approve implementation of a Large Power Contract (LPCS) tariff]. (Tr. Vol. II, p. 425). Because adjustments to Dyno's specific billing arrangements and metering may have implications for costs that might be born by other customers, they may best be addressed in a subsequent general rate case. However, we have no reason to determine such relief to be exclusive. (Tr. Vol. II, p. 425). It is enough to conclude this is not the appropriate docket.

76. Kathryn Iverson, Dyno Nobel and HollyFrontier's expert witness, testified that the meter summing for Dyno Nobel impacts the rate design by affecting how many billing units are in each tier. Nevertheless, Ms. Iverson testified that the dual metering issue could be addressed outside the rate case. (Tr. Vol. II, p. 276–78).

77. Doug Chandler, a former employee and consultant to Dyno Nobel, testified Dyno Nobel met with BHE on several occasions to address the dual meter billing issue, but BHE continually took the position it is a rate design issue and cannot be addressed until a future rate case. (Tr. Vol. I, pp. 191–99; Tr. Vol. II, 276–78, 295).

Power Outage Cost Implications

78. BHE's Electric Service Standards Rules and Regulations tariff provides:

The Company will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to Customer and to avoid any shortage or interruption in delivery of same. However, Company will not be liable for interruption, shortage or insufficiency in the supply of electric service, or for any injury, loss, or damage occasioned thereby, if same is due to accidents, acts of God, floods, fires, strikes, riots, wars, authority and orders of government, or any other causes and contingencies

beyond its control.⁶

79. Dyno Nobel witness Doug Chandler testified about charges in Dyno Nobel's bills concerning force majeure power outages on the BHE system. Specifically, Mr. Chandler testified about a power outage occurring on January 4, 2017, which forced Dyno Nobel to have an unplanned startup resulting in a major peak load of almost 3,000 kW. Dyno Nobel believes that the peak had no cost effect to BHE due to the unlikelihood of the startup occurring on the exact hour of the system transmission peak for the utility. Dyno Nobel calculates the billed difference in demand due to this spike at \$64,372.25. (Tr. Vol. II, p. 304-07; Ex. 301.4, p. 3).

80. The Company states that the power outage was the result of a voltage dip on WAPA's 115kV line near the Happy Jack substation. Dyno Nobel utilizes a 5,000 HP motor to assist the plant when it trips off-line. BHE believes this was the cause of the increased energy usage on January 4, not the voltage dip, and it is not responsible for increased energy use due to Dyno Nobel's operational configuration. BHE also believes that the voltage dip was out of its control as it was on a WAPA line. (Ex. 19, p. 5-8; Tr. Vol. I, pp. 199-205).

Principles of Law

81. The Commission has the "general and exclusive power to regulate and supervise every public utility within [Wyoming] in accordance with the provisions of [the Wyoming Public Utilities Act]." Wyo. Stat. § 37-2-112.

82. The Commission's basic and overriding standard in this matter is the public interest and the desires of the utility are secondary. In *PacifiCorp v. Public Service Commission of Wyoming*, 2004 WY 164, ¶ 13, 103 P.3d 862, 867 (Wyo. 2004), the Wyoming Supreme Court stated:

Speaking specifically of PSC, we have said that PSC is required to give paramount consideration to the public interest in exercising its statutory powers to regulate and supervise public utilities. The desires of the utility are secondary. [Citation omitted.]

83. Wyo. Stat. § 37-3-101 requires that:

All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited. A rate shall not be considered unjust or unreasonable on the basis that it is innovative in form or in substance, that it takes into consideration competitive marketplace elements or that it provides for incentives to a public utility.

* * *

The commission may determine that rates for the same service may vary depending on cost, the competitive marketplace, the need for universally available and affordable service, the need for contribution to the joint and common costs of the public utility, volume and other discounts, and other reasonable business practices.

⁶ Cheyenne Light, Fuel and Power Company Rules and Regulations Tariff P.S.C. Wyo. No. 12, Electric Service Standards, R34, 1.a).

84. The Wyoming Supreme Court in *Mountain Fuel Supply Company v. Public Service Commission of Wyoming*, construed Wyo. Stat. § 37-3-101, requiring rates to be just and reasonable, to allow the PSC to develop a methodology for rates, so long as the results are fair, reasonable, uniform and not unduly discriminatory. *Id.*, 662 P.2d 878, 883–85 (Wyo. 1983).

85. In accord, the Wyoming Supreme Court in *Union Telephone Co. v. Public Service Commission* “recognized that discretion is vested in the PSC in establishing [a] rate-making methodology so long as the result reached is reasonable.” 821 P.2d 550, 563. (Wyo. 1991) (citing *Mountain Fuel Supply Co.*, 662 P.3d 878 (Wyo. 1983)).

86. Wyo. Stat. § 37-3-106(b) and (c) allow the Commission to suspend rates for a total of ten months:

(b) Unless the commission otherwise orders, no public utility shall make any change in any rate which has been duly established except after thirty (30) days’ notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. . . .

(c) Whenever there is filed with the commission by any public utility any application or tariff proposing a new rate or rates, the commission may, either upon complaint or upon its own initiative, initiate an investigation, hearing, or both, concerning the lawfulness of such rate or rates. Pending its decision thereon, the commission may suspend such rate or rates, before they become effective but not for a longer initial period than six (6) months beyond the time when such rate or rates would otherwise go into effect. If the commission shall thereafter find that a longer time will be required, the commission may extend the period of suspension for an additional period or periods not exceeding in the aggregate, three (3) months.

87. The Commission has broad powers to inquire into the facts surrounding the determination of rates. They include Wyo. Stat. § 37-2-119, which states that:

In conducting any investigation pursuant to the provisions of this act the commission may investigate, consider and determine such matters as the cost or value, or both, of the property and business of any public utility, used and useful for the convenience of the public, and all matters affecting or influencing such cost or value, the operating statistics for any public utility both as to revenues and expenses and as to the physical features of operation in such detail as the commission may deem advisable; the earnings, investment and expenditures of any such corporation as a whole within this state, and as to rates in plants of any water, electric, or gas corporations, the geographical location thereof shall be considered as well as the population of the municipality in which such plant is located.

88. Wyo. Stat. § 37-2-120 prohibits the Commission from making any order “which requires the change of any rate or service. . . unless or until all parties are afforded an opportunity for a hearing in accordance with the Wyoming Administrative Procedure Act.” The Act establishes

general procedures for Commission cases, including the provision of reasonable notice. Wyo. Stat. § 16-3-107; in accord are Wyo. Stat. §§ 37-2-201, 37-2-202, and 37-3-106. *See also*, Commission Rule Chapter 2, Sections 5 and 23.

89. Wyo. Stat. § 37-2-121 gives the Commission latitude to determine the actual rates to be charged by a utility and allows public utilities to present innovative regulatory forms, policies, and rate making methods, stating that:

If upon hearing and investigation, any rate shall be found by the commission to be inadequate or unremunerative, or to be unjust, or unreasonable, or unjustly discriminatory, or unduly preferential or otherwise in any respect in violation of any provision of this act, the commission . . . may fix and order substituted therefor a rate as it shall determine to be just and reasonable, and in compliance with the provisions of this act. The rate so ascertained, determined and fixed by the commission shall be charged, enforced, collected and observed by the public utility for the period of time fixed by the commission. The rates may contain provisions for incentives for improvement of the public utility's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

90. Similarly, the Commission has broad powers to inquire into the facts surrounding the determination of rates. Wyo. Stat. § 37-2-119 articulates the "used and useful" test and allows wide latitude in the Commission's investigation of rate-related matters. It states, in part:

In conducting any investigation pursuant to the provisions of this act the commission may investigate, consider and determine such matters as the cost or value, or both, of the property and business of any public utility, used and useful for the convenience of the public, and all matters affecting or influencing such cost or value, the operating statistics for any public utility both as to revenues and expenses and as to the physical features of operation

91. Wyo. Stat. § 37-2-122(a) provides further direction to the Commission for the determination of just and reasonable rates:

In determining what are just and reasonable rates the commission may take into consideration availability or reliability of service, depreciation of plant, technological obsolescence of equipment, expense of operation, physical and other values of the plant, system, business and properties of the public utility whose rates are under consideration.

92. “At any hearing . . . involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.” Wyo. Stat. § 37-3-106(a). Where, as in the referenced statute, the evidentiary standard is not specifically stated, that burden can be met by the “preponderance of the evidence” standard customarily used in civil cases. *Willadsen v. Christopoulos*, 731 P.2d 1181, 1184 (Wyo. 1987).

Conclusions of Law

93. The facts found *supra* are incorporated into these conclusions and will not be restated here.

94. BHE is a public utility as defined by Wyo. Stat. § 37-1-101(a)(vi)(C), subject to the Commission’s jurisdiction pursuant to Wyo. Stat. § 37-2-112.

95. The contested case hearing, properly noticed to all interested persons, was conducted pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. §§ 37-2-201 through 203, and applicable sections of the Commission’s Rules. The interventions of the Parties were properly granted and the entities that intervened became parties to the case for all purposes.

96. The PCA mechanism is an innovative ratemaking tool authorized by the Commission pursuant to Wyo. Stat. § 37-2-121. The PCA is an annual calculation of specified energy costs for the previous calendar year as compared to previously established base energy costs. The PCA allows BHE to recover prudently incurred energy and other variable costs subject to market forces beyond its control. In this matter, BHE seeks an increase to its PCA of \$0.00468 per KWH for the period of April 1, 2017 through March 31, 2018. On March 30, 2017, the Commission approved the increase on an interim basis subject to notice, protest, intervention, refund, change, further investigation, and possible hearing.

97. BHE requested the increase in rates despite the fact it is already overearning, and expects to continue overearning for the next several years. BHE’s currently authorized return on rate base is 7.98%. In its Application, BHE reports that, as of December 31, 2016, its actual return on rate base was 8.49% and its normalized return on rate base was 8.37%. To mitigate its overearning, BHE offered, among other things, customer credits totaling \$2,250,000 over a three year period, and a promise to not request recovery of \$3.3 million in transition costs associated with the SourceGas acquisition. BHE’s offer was contingent on approval of its Application.

98. The Commission denies BHE’s Application for an increase in its PCA rates. In light of its current and predicted overearnings, we find BHE failed to demonstrate by a preponderance of the evidence that an increase is just, reasonable, or in the public interest. We also find that BHE shall refund, through the PCA, the interim rates collected from its customers since April 1, 2017. We note that our denial of the rate increase operates to reject BHE’s proposal to mitigate its overearnings.

99. The Commission finds that the plain language of the Company’s PCA tariff requires BHE to receive approval from the Commission prior to including any new governmental impositions in the PCA rate. Because the record supports the conclusion that BHE failed to seek Commission approval prior to including governmental impositions in the 2015 and 2016 PCA, we

deny recovery of those costs. The refund of interim rates in this docket operates to refund the 2016 costs. BHE shall also refund the 2015 governmental imposition costs through the PCA going forward.

100. Dyno Nobel and Holly Frontier request that the Commission deny the PCA increase due to BHE's failure to correctly interpret the variable cost segment of the Wygen I Agreement resulting in distorted and unreasonable price increases. They also request that BHE refund the overcharges in prior PCA rates since 2013 due to incorrect interpretation of the Wygen I Agreement. Our denial of BHE's Application will mitigate any potential overcharges in this PCA filing. We decline to act now regarding prior PCA rates. We reserve for consideration possible flaws in the design or operation of the Wygen I Agreement for a future PCA or rate case.

101. The Commission finds allocation of costs to BHE pursuant to the GDEMA is ambiguous, but declines to take action at this time. However, the Commission directs the Company to work with the OCA, Dyno Nobel and HollyFrontier to determine how costs pursuant to the GDEMA should be properly allocated prior to the filing of the next general rate case. The Commission will review issues regarding cost allocations at the next general rate case.

102. The Commission is sympathetic to Dyno Nobel's claim that it's treated differently than other customers in the ICS class because of its dual meter billing. However, we agree with BHE that this is a rate design issue. If the billing policy is changed outside a rate case, revenues anticipated from the ICS class in the last general rate case may not be recovered. We therefore find the dual meter billing issue can only be addressed in a general rate case.

103. The power outage costs Dyno Nobel incurred as a result of a voltage dip beyond the Company's control is an issue that may require further investigation, and can be addressed through the Commission's complaint process. Accordingly, the Commission reserves ruling on Dyno Nobel's contentions about the power outage cost implications and finds this issue may best be addressed through the Commission's complaint process rather than a PCA proceeding.

104. The Commission's decision, summarized in this *Order*, is supported by the evidence presented in the record of this case. We conclude that the effects of our decision will produce rates that are just and reasonable and will produce no undue burden upon BHE's customers. The current rates that remain in place upon the Commission's denial of the Company's application will further allow the Company to provide adequate and reliable service to its customers.

105. The Commission's conclusions set forth hereinabove are supported by a preponderance of the evidence.

IT IS THEREFORE ORDERED

1. Pursuant to the Commission's deliberations held on November 7, 2017, the Application of Cheyenne Light, Fuel and Power Company d/b/a Black Hills Energy for authority to increase its Power Cost Adjustment (PCA) by \$0.00468 per kilowatt hour (kWh) for the period April 1, 2017, through March 31, 2018, is denied.

2. BHE is directed to refund the interim PCA rate increase of \$0.00468 per kWh,

approved for use on and after April 1, 2017, pursuant to the Commission's *Order Approving Rates on an Interim Basis, Granting Request for Hearing and Granting Amended Petition for Confidential Treatment* issued on April 13, 2017.

3. BHE is further directed to refund the 2015 governmental imposition costs previously recovered through the PCA pursuant to Wyo. Stat. § 37-2-218.

4. BHE shall submit a compliance filing within thirty (30) days of November 7, 2017, setting forth the Company's proposal to refund the interim PCA rates and the 2015 governmental imposition costs. BHE shall further file its proposal for resetting the PCA rate within thirty (30) days of November 7, 2017.

5. The Parties shall promptly manage all confidential information in their possession in accordance with, and at the time specified, in paragraph 8(e) of the *Order Granting Petition for Confidential Treatment and Protective Order* issued September 7, 2017.

6. This *Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on December 18, 2017.

PUBLIC SERVICE COMMISSION OF WYOMING

WILLIAM F. RUSSELL, Chairman

KARA BRIGHTON FORNSTROM, Deputy Chair

ROBIN SESSIONS COOLEY, Commissioner



KATIE J. KOSKI, Assistant Secretary