

Wyoming Office of Consumer Advocate

Agency Information:

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Bryce Freeman

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Statutory References:

W.S. § 37-2-401 through § 37-2-404 authorize the Office of Consumer Advocate (OCA) to intervene in proceedings before the Wyoming Public Service Commission (WPSC) representing the public interest.

Basic Information:

Number of Employees:

6

Clients Served:

The OCA advocates utility rates and terms of service that are consistent with the provision of safe, adequate, reliable and affordable utility service. The OCA represents the interest of all utility ratepayers and all citizens of the state in discharging its statutory duties.

Budget Information/Expenditures for FY16: (Please use whole dollar amounts.)

The OCA had a 2015-2016 Biennium Budget of \$1,956,155. Funding for the OCA (and the WPSC) is derived entirely from a special assessment on the gross intrastate revenue of utilities subject to WPSC jurisdiction. No state general funds nor any federal funds are appropriated to the OCA. During fiscal year 2016 the OCA expended \$849,501 or 43.4% of its authorized biennium budget.

Primary Functions:

Contested Cases: Provide formal recommendations and supporting evidence, as well as informal comments to the WPSC for consideration in its determination of just and reasonable utility rates and adequate service in contested proceedings; enter into settlement agreements with utility companies that serve the interests of ratepayers as well as utilities.

Advocacy: Represent the interests of Wyoming utility consumers in matters involving utility and energy policy at the state, regional and national levels.

Public Outreach: Promote increased public awareness of utility issues and their impact on Wyoming utility consumers; support and promote the efficient use of energy resources by Wyoming utility customers; respond to customer inquiries regarding rate setting and rate design issues.

Performance Highlights/Major Accomplishments of FY2016:

During fiscal year 2016 the OCA participated in several important proceedings before the WPSC. Following is a list of major proceedings in which the OCA appeared as a party in contested cases before the WPSC. The list is not exhaustive; the OCA also intervened in other cases before the WPSC and undertook many other activities on behalf of Wyoming utility ratepayers during FY16.

- **Rocky Mountain Power General Rate Case:** On October 26, 2015, the WPSC convened a public hearing to consider a request by RMP to increase its annual revenues by approximately \$32.4 million or 4.5%. RMP subsequently revised its filing to reflect a reduced request of approximately \$26.9 million based on updated information and forecasts for load growth, fuel prices and purchased power costs, among others. Wyoming Industrial Energy Consumers (WIEC) and the Northern Laramie Range Alliance (NLRA) were also interveners in the proceeding. In its direct and cross-answer testimony the OCA advocated for a total annual revenue increase of \$13.4 million. In its final order in this matter, after a fully contested proceeding, the WPSC approved an annual revenue increase of approximately \$16 million or 2.3%. The WPSC's order incorporated all or part of most of the recommended adjustments offered by the OCA. WIEC, the only other party in the proceeding to offer a full revenue requirement analysis, recommended that the Commission deny RMP any increase in revenues as a result of this application. Although the WPSC did not adopt all of the OCA's proposed adjustments, the OCA is confident that the final increase granted by the Commission is fair and reasonable to customers and will allow the utility the financial resources to continue providing safe, adequate and reliable service. The OCA does not believe that the revenue requirement offered by WIEC would satisfy this standard.
- **Rocky Mountain Power QF/PURPA Case:** In August of 2015, RMP filed an application for Commission approval seeking, among other things, to reduce the standard contract term contained in Schedules 37 and 38 of its Wyoming tariff, Avoided Cost, from a maximum term of 20 years to a maximum term of 3 years. RMP argued in its application that the current 20 year term encourages developers to develop an unsustainable amount of independent generation capacity in Wyoming and exposes RMP's Wyoming customers to unacceptable long term market price risk. While the Commission has the authority under the federal Public Utilities Regulatory Policies Act (PURPA) to set avoided cost rates for utilities within its jurisdiction, it must do so according to the guidelines contained in PURPA. PURPA requires that utilities purchase the output of qualifying independent generation resources at a price equal to the price that the utility would pay to generate the same amount of power from utility owned resources or that it would pay to acquire the power from another source. In addition to the OCA, WIEC, NLRA, Chevron U.S.A., Inc., Renewable Energy Coalition, Rocky Mountain Coalition for Renewable Energy and EverPower Wind Holdings intervened in this proceeding. While the OCA ultimately recommended that the Commission deny RMP's proposed changes to its Avoided Cost tariffs, it also found some merit in RMP's arguments and concluded that RMP had failed to carry its burden of proof in the main. Instead of an outright rejection of the application, the OCA called for the Company, as well as interested parties and stakeholders to convene a collaborative dialog to discuss the magnitude of the QF problem, its impact on RMP's Wyoming customers, and potential revisions to RMP's Avoided Cost schedule that would be satisfactory to all parties. In its decision the Commission denied RMP's request but directed the Company to convene the collaborative proposed by the OCA.
- **Cheyenne Light, Fuel & Power (CLF&P), Power Cost Adjustment (PCA) case:** On October 31, 2015, CLF&P filed an application to adjust its base power cost rate used to quantify the amount of net power costs CLF&P is allowed to "pass through" to customers through its PCA. Adjustment of the base power cost rate was necessitated by an undiscovered error in the calculation of that rate in CLF&P's 2014 general rate case. Failing to correct the error would result in CLF&P under-recovering its net power costs by approximately \$6.0 million per year. The OCA did not oppose correction of the error finding that it was simply an oversight in preparing the calculations and tariffs in the rate case. However, interveners Dyno Nobel, Inc. and Holy Frontier did oppose correction of the error in the PCA application, arguing that such a

correction could only be accomplished within the context of a general rate case. The interveners recommended that the Commission direct CLF&P to file another rate case if it wished to correct the error. Although the intricacies of the calculations were complex and the procedural process unusual, ultimately Dyno, Holy Frontier and CLF&P came to an agreement to resolve their dispute, which did provide some benefits to all customers. But, because the agreement provided unjustified additional benefits to Dyno and Holy Frontier, in our view, the OCA declined to sign the agreement and elected instead to provide testimony not objecting to its adoption by the Commission.

- **Black Hills (BH) Cost of Service Gas Hedge Program:** On September 30, 2015, CLF&P, Black Hills Power and Black Hills Northwest Wyoming Gas Utility Company, LLC, filed an application for approval of a Cost-of-Service-Gas (COSG) program. All three jurisdictional Wyoming utilities are subsidiaries of Black Hills Corporation. Under the program BH, through two additional unregulated subsidiaries, Black Hills Utility Holdings Company (BHUH) and Cost of Service Gas Company (COSGCO) would acquire gas reserves sufficient to provide 50% of the firm gas requirements for all of BH's electric and gas customers in Wyoming, South Dakota, Nebraska, Iowa, Kansas and Colorado. Identical applications were filed in the other states contemporaneously with the Wyoming application. After considerable review and analysis, the OCA determined that the COSG program was not in the best interests of BH's Wyoming ratepayers or the public interest. Our conclusion was based on a complete failure to quantify any benefits that would accrue to customers under the program as well as the fact that BH's shareholders appeared to benefit disproportionately regardless of whether or not the program was successful in providing benefits to customers. Shortly after BH filed its application in Colorado, the Colorado Commission dismissed the case as incomplete. In July the Nebraska Public Service Commission issued its order rejecting the application, without prejudice. Then, on July 26, 2016, BH filed its motion to withdraw its Wyoming application and to shorten procedural schedule which was approved at a Commission open meeting held on July 28, 2016. BH also moved to withdraw its pending applications in the remaining states in which it was originally filed.
- **Cheyenne Light, Fuel & Power (CLF&P) Large Power Contract Service Tariff:** On October 1, 2015, CLF&P filed its application for approval of a new Large Power Contract Service (LPCS) tariff. In its application CLF&P proposed a new tariff for large new loads coming onto the CLF&P system such that new large loads coming onto the system will not impose additional risks on CLF&P's existing customer base. Although the tariff is applicable to all new large loads in excess of 13 MWs, it was specifically developed to accommodate the load growth of Microsoft at its data center complex west of Cheyenne. Microsoft anticipates that its data center load will grow substantially over time but is unable to predict the timing and full extent of that load growth. In order for CLF&P to serve this new load under existing tariffs it would need to build or purchase substantial additional amounts of new electric generation capacity. If Microsoft's load growth (or any other large new load) is delayed or simply does not materialize as planned, the additional generation capacity would then be stranded and the responsibility for recovering the cost of that new generation would fall to CLF&P's remaining customers causing rates to increase. Instead, CLF&P proposes to provide customers who qualify for the LPCS tariff all of their energy requirements on a pass-through basis, while the customer would be responsible for providing on-site generation to satisfy their capacity needs, plus a required reserve margin of 15%. This on-site generation will also help provide the 99.999% reliability required by Microsoft. This arrangement eliminates the risk that stranded investments in generation capacity will be borne by CLF&P's existing customers. After a full review and analysis of the application, the OCA recommended that the Commission approve the proposed tariff without modification. Dyno Nobel, Inc. and Holy Frontier, both interveners in the proceeding, recommended that the proposed tariff be rejected arguing that the proposal did not benefit them and that it would cause CLF&P to earn more than its authorized rate of return. After a contested hearing the Commission determined the arguments advanced by Dyno and Frontier were without merit and that the proposed tariff is in the public interest and should be approved. The Commission approved the proposed tariff with minor revisions and clarifications, as recommended by Dyno and Holy Frontier.
- **Black Hills Acquisition of Source Gas:** On August 10, 2015, Black Hills Utility Holding (BHUH) Company filed an application for approval of its acquisition of Source Gas Holdings, of which Source Gas Distribution (SGD) is a regulated gas distribution subsidiary in Wyoming. BHUH and its subsidiaries operate jurisdictional gas and electric systems in and around Cheyenne, New Castle and Cody. SGD operates gas distribution systems in and around Casper, Laramie, Torrington and Gillette. As required by

statute, the OCA reviewed the application to ensure that SGD's acquisition by BHUH would not adversely impact the ability of Black Hills and its subsidiaries to continue providing safe, adequate and reliable service to the customers of SGD or its own customers. Pursuant to this review the OCA recommended that the Commission not approve the acquisition without strict enforcement of certain conditions recommended by the OCA. Specifically, the acquisition included a premium over book value of approximately \$950 million. The OCA sought to ensure that this acquisition premium would not be recovered from customers in future rates. Additionally, the OCA was concerned that BHUH intended to finance the acquisition with a large amount of debt that could potentially impact the cost of and access to capital for Black Hills in the future. Finally, the OCA expressed concern regarding the lack of any quantified benefits to customers or of any meaningful customer protections. Following the filing of its direct testimony the OCA engaged in discussions with the Company and ultimately reached an agreement that resolved all of the OCA's contested issues and concerns. In, particular, pursuant to the agreement, Black Hills agreed not to seek recovery of the acquisition premium. Black Hills further agreed to certain ring fencing provisions and credit support provisions designed to ensure that retail gas customers would not be harmed by the operations of Black Hills' unregulated subsidiaries and that if Black Hills' credit standing declined as a result of the transaction, retail utility customers would be held harmless. Wyoming Community Gas and Constellation New Energy Services, both interveners in the proceeding, reached their own agreements with Black Hills primarily related to the continued operation of SGD's Wyoming Choice Gas Program. The OCA did not oppose either of those agreements.

Organizational Chart:

