

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF)
CHEYENNE LIGHT, FUEL AND POWER)
COMPANY d/b/a BLACK HILLS ENERGY)
FOR AUTHORITY TO INCREASE ITS POWER)
COST ADJUSTMENT BY \$0.00246 PER)
KILOWATT HOUR EFFECTIVE JULY 1, 2021)

Docket No. 20003-202-EM-21
(Record No. 15776)

APPEARANCES

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

JANA SMOOT WHITE, Associate General Counsel, Rapid City, South Dakota

For the Intervenor, Microsoft Corporation (Microsoft):

O’KELLEY H. PEARSON, Hickey & Evans, LLP, Cheyenne, Wyoming
and

CAMERON L. SABIN, Stoel Rives LLP, Salt Lake City, Utah

For Intervenor Dyno Nobel, Inc. (Dyno):

RICK THOMPSON, Hathaway & Kunz, LLP, Cheyenne, Wyoming

For Intervenor HollyFrontier Cheyenne Refining LLC (HollyFrontier):

RONNIE LOPEZ and DALE COTTAM, Bailey Stock Harmon Cottam Lopez LLP, Cheyenne, Wyoming

HEARD BEFORE

Chairman CHRISTOPHER B. PETRIE
Deputy Chairman MICHAEL M. ROBINSON
Commissioner MARY A. THRONE

IVAN WILLIAMS, Commission Counsel,
Presiding pursuant to a *Special Order* of the Commission

MEMORANDUM OPINION, FINDINGS AND ORDER APPROVING APPLICATION
(Issued February 28, 2022)

This matter is before the Wyoming Public Service Commission (Commission) upon the Application of CLFP for authority to implement a Power Cost Adjustment (PCA) increase of \$0.00246 per kWh effective July 1, 2021, for those customers participating in the PCA; and upon the Interventions of Dyno, HollyFrontier and Microsoft (collectively with CLFP, the Parties).

The Commission, having reviewed the Application and attached exhibits, the Parties’ prehearing filings, the evidence introduced at the public hearing held on November 22, 2021, its

files regarding CLFP, applicable Wyoming utility law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

Issue

1. Whether approval of the Application and certain agreements of the Parties serve the public interest as an appropriate means to dispose of this matter pursuant to Wyo. Stat. §16-3-107(n) and Commission Rule Chapter 2, Section 25.

Summary of Decision

2. The Commission finds the Application and agreements of the Parties are in the public interest and, therefore, approves the Application.

Introduction and Course of Proceedings

3. CLFP is a Wyoming corporation and wholly owned subsidiary of Black Hills Corporation engaged in the business of supplying electric utility service to customers in Wyoming under its trade name Black Hills Energy. (Ex. 1, pp. 1-2). CLFP 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.

4. On April 26, 2021, CLFP filed an Application, along with supporting testimony and exhibits, requesting authority to implement a PCA increase of \$0.00246 per kWh, effective July 1, 2021. CLFP also submitted a *Petition for Confidential Treatment of Schedule A-2, Schedule F and Workpaper 1 of Exhibit 6*.

5. On April 27, 2021, the Commission issued a *Suspension Order*. Pursuant to Wyo. Stat. § 37-3-106, the Application was suspended for the six-month term prescribed by subsection (c) commencing after the 30-days' notice term provided by subsection (b).

6. On April 29, 2021, the Commission issued a *Notice of Application*, which set an intervention deadline of May 27, 2021.

7. On May 18, 2021, Dyno filed a *Petition to Intervene*.

8. On May 25, 2021, Microsoft filed a *Petition to Intervene*.

9. On May 27, 2021, HollyFrontier filed a *Petition to Intervene*.

10. On June 10, 2021, the Commission issued a *Special Order Authorizing One Commissioner and/or Presiding Officer to Conduct Public Hearing*.

11. On June 10, 2021, the Commission issued three *Orders* authorizing the interventions of Microsoft, HollyFrontier, and Dyno.

12. On June 11, 2021, Hickey & Evans, LLP filed a *Motion for Admission Pro Hac*

Vice of Cameron Sabin, on behalf of Microsoft.

13. On June 16, 2021, Cheyenne Light filed its *Unopposed Motion for Protective Order*.

14. On June 17, 2021, the Commission issued an *Order Granting Motion for Admission Pro Hac Vice for Cameron Sabin*.

15. On July 7, 2021, the Commission issued an *Order Granting Motion for Protective Order*.

16. On June 25, 2021, the Commission Staff issued a *Memorandum*. This *Memorandum* addressed the proposed PCA rate, the derivation of the proposed rate, the impact on Wyoming customers, the Company's reported earnings, and the request for confidential treatment.

17. On June 29, 2021, the Commission heard Cheyenne Light's request for interim rates during its Open Meeting. The Commission approved an Interim PCA rate of \$0.00809 effective for usage on and after July 1, 2021.

18. On July 19, 2021, the Commission issued an *Order Approving Interim Rates*.

19. On August 26, 2021, the Commission issued a *Scheduling Order* setting forth procedural deadlines and a hearing date of November 22, 2021.

20. On August 31, 2021, Sean Larson filed an *Entry of Appearance* on behalf of Dyno.

21. On September 24, 2021, Dyno and HollyFrontier filed their *Joint Motion to Compel*.

22. On October 1, 2021, Dyno and HollyFrontier filed the *Direct Testimony of Greg R. Meyer*.

23. On October 7, 2021, CLFP filed *CLFP Response to Joint Motion to Compel*.

24. On October 7, 2021, Microsoft filed its *Response in Opposition to Dyno Nobel's and HollyFrontier's Joint Motion to Compel*.

25. On October 13, 2021, CLFP filed *Kyra Coyle Rebuttal Testimony*.

26. On October 14, 2021, Microsoft filed *Cross Answer Testimony of Jim Collins*.

27. On October 19, 2021, Dyno and HollyFrontier filed their *Joint Reply in Support of Motion to Compel*.

28. On October 21, 2021, the Commission heard Dyno and HollyFrontier's *Joint Motion to Compel* at its Open Meeting and denied it, without prejudice.

29. On October 27, 2021, the Commission issued a *Notice and Order Setting Public Hearing*.

30. On November 22, 2021, the Commission held an exhibit conference and received the following into evidence:

- Commission Exhibits Nos. 101 through 105 (Tr., p. 7);
- CLFP's Exhibit Nos. 1 through 9 (*Id.* at p. 4);
- Dyno Nobel Exhibit Nos. 200 through 208 (*Id.* at p. 6);
- HollyFrontier Exhibit Nos. 300 through 308 (*Id.* at p. 6); and
- Microsoft Exhibit Nos. 400 and 402 (*Id.* at p. 6).

31. The Commission held a public hearing on November 22, 2021. Jana Smoot White presented the Application on behalf of the Company. Cameron Sabin commented on behalf of Microsoft. Rick Thompson commented on behalf of Dyno. Dale Cottam commented on behalf of HollyFrontier.

32. Following the hearing, the Commission held public deliberations, pursuant to Wyo. Stat. § 16-4-403, and directed the preparation of an order consistent with its decision.

Findings of Fact

Background

33. The PCA is a nontraditional ratemaking mechanism, established pursuant to Wyo. Stat. § 37-2-121, which provides for the inclusion of costs and the sharing of risks not contemplated by the requirements of Commission Rule Chapter 3, Section 26. The PCA mechanism allows for the adjustment of a balancing account for deviations from the per-kWh base energy costs established in the Company's most recent general rate case (GRC). Each year, CLFP's PCA automatically reverts to zero, on and after July 1, unless the Commission orders otherwise.

Application

34. On April 26, 2021, CLFP filed its Application requesting Commission approval to implement a PCA increase of \$0.00246 per kWh effective July 1, 2021, for those customers who participate in the PCA. The Application requested a final PCA rate of \$0.00809 per kWh.

35. CLFP calculated the proposed rate by running its PCA model, utilizing the four-step process outlined in the Company's Wyo. P.S.C. Tariff No. 13, Sheet Nos. 49-54, and also incorporating stipulation provisions and Commission directives from previous dockets:¹ 1) a customer credit of \$500,000, which is reflected in the PCA commodity balancing account (CBA) in June 2020; 2) customer credits of \$574,237 and \$77,443 related to the HollyFrontier reduction in load, which is reflected in the PCA CBA in June 2021; 3) costs related to the stipulated and approved governmental impositions: CO/O2 Grid and Boiler Tuning, Wygen I SO2 Startup

¹ The Commission approved four stipulations that affect the 2021 PCA filing and rate calculation: Docket No. 20003-163-ET-18 (Record No. 14926); Docket No. 20003-170-EP-18 (Record No. 14992); Docket No. 20003-169-EA-18 (Record No. 14972); and Docket No. 20003-194-EP-20 (Record No. 15507).

Removal (Dry Scrubber Injection), Wygen I Mercury Permeation Source, and Mercury Sorbent; 4) the stipulated methodology for the calculation of the Wygen I power purchase agreement (PPA) governmental imposition pricing segment, including the removal of the income tax calculation; 5) the Wygen I PPA variable cost segment included in the 2021 PCA Rate calculation of \$52.98 per MWh; and 6) utilization of the load forecast information received from Microsoft, HollyFrontier and Dyno in the total forecasted energy sales. The Company proposed a final PCA rate of \$0.00809 per kWh, which is a 1.64% increase in residential customer bills and a 1.61% increase in commercial customer bills. (Ex. 1, pp. 3-5).

Positions of the Parties

36. Dyno and HollyFrontier did not oppose the Company's PCA Rate proposal. They did, however, request highly confidential information, through discovery, in order to verify the accuracy of the allocation of transmission and purchased power costs between the PCA and the Large Power Contract Service (LPCS) customer class. (Ex. 200 and 300, p. 5).

37. Microsoft did not oppose the Company's PCA Rate proposal. It did, however, oppose Dyno and HollyFrontier's request for highly confidential information related to the transmission and purchased power costs allocation between the PCA and the LPCS customer class. (Ex. 401, p. 8).

38. CLFP also opposed the request by Dyno and HollyFrontier related to the allocation of transmission and purchased power costs as the information sought relates to a single customer. (Ex. 104). However, CLFP agreed to provide the Commission Staff with the requested information to perform an analysis of the appropriateness of the allocations included in the PCA calculation. (Open Meeting, October 21, 2021).

39. CLFP provided Commission Staff with the 2020 transmission cost allocations between the LPCS customer class and the PCA participating customers as well as the power purchases made by CLFP in the day-ahead and real-time markets for the LPCS customer class and non-LPCS (PCA participating) customers for every hour in 2020.

40. Commission Staff conducted an analysis of the allocation issue using the information provided and issued a *Staff Memorandum* summarizing the findings on November 12, 2021. After discussion with the parties, Commission Staff issued an *Amended Memorandum (Confidential)* on November 18, 2021, incorporating additional calculations supporting the analysis.

Commission Staff Request

41. Commission Staff requested that future PCA applications include the monthly generation from the Company's Corriedale wind facility, including the number of customers subscribed to the Renewable Ready Service Tariff each month, their respective share of the wind capacity, and the term length of each subscriber. (Tr., p. 20). Counsel for the Company stated that the Company would be willing to provide this information. (*Id.*)

The Parties' Agreements

42. The Parties came to an agreement in principle to resolve the outstanding issues on November 19, 2021, and notified the Hearing Officer.

43. The Parties agreed to the proposed PCA Rate of \$0.00809 per kWh as contained in the Application. (Tr., p. 16).

44. The Parties agreed that each party reserves the right to present arguments regarding the transmission cost allocation and PCA purchased power cost allocation issues that were raised in the docket in any future proceeding before the Commission. (Tr., p. 17).

45. CLFP agreed to provide the two calculations, as set forth in Commission Staff's *Amended Memorandum (Confidential)*, regarding the allocation of 2021 purchased power costs to the Parties and Staff as part of its 2022 PCA filing and its 2022 rate case filing. (Tr., pp. 16-17).

46. CLFP, Dyno and HollyFrontier further agreed that Microsoft's load and pricing information is highly confidential and that they will not seek its production in future dockets. (Tr., p. 17).

Principles of Law

47. 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.

48. The Commission's overriding obligation is to reach a decision that is in the public interest. The Wyoming Supreme Court requires the Commission to "give paramount consideration to the public interest" in performing its duties, bearing in mind that "the desires of the utility are secondary." *PacifiCorp v. Pub. Serv. Comm'n of Wyo.*, 2004 WY 164, ¶ 13, 103 P.3d 862, 867 (Wyo. 2004) (citation omitted).

49. In ratemaking, the Commission's objective is to ensure just and reasonable rates as required under Wyo. Stat. § 37-3-101:

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. ...

50. The Commission may suspend rates for a total of ten months under the provisions of Wyo. Stat. § 37-3-106(b) and (c), which require thirty days' notice to the Commission of a

change in rates and thereafter allow the Commission to suspend those rates for an initial period of six months with an extension of an additional three months.

51. Wyo. Stat. § 37-2-121 authorizes a utility to “apply to the commission for its consent to use innovative, incentive or nontraditional ratemaking methods.” The Commission may approve such rates if the proposal “can be shown by substantial evidence to support and be consistent with the public interest.” Once the innovative rate is incorporated into the utility’s tariff, the Commission’s task is to ensure adherence to its terms and results consistent with the public interest.

52. Wyo. Stat. § 37-2-122(b) grants broad latitude to the Commission to investigate utility services:

If, upon hearing and investigation, any service or service regulation of any public utility shall be found by the commission to be unjustly discriminatory or unduly preferential, ..., or any service regulation shall be found to be unjust or unreasonable, or any ... service regulation shall be found otherwise in any respect to be in violation of any provisions of this act, the commission may prescribe and order substituted therefor such ... service regulation, as it shall determine to be ... just and reasonable, as the case may be and otherwise in compliance with the provisions of this act, It shall be the duty of the public utility to comply with and conform to such determination and order of the commission.

53. The Commission, in determining just and reasonable rates, is free to develop a methodology for rates, so long as the results are fair, reasonable, uniform and not unduly discriminatory. *Mountain Fuel Supply Co. v. Pub. Serv. Comm'n of Wyo.*, 662 P.2d 878, 1983) at 883–85 (construing Wyo. Stat. § 37-3-101). Further, “discretion is vested in the PSC in establishing [a] rate-making methodology so long as the result reached is reasonable.” *Union Telephone Co. v. Pub. Serv. Comm’n* 821 P.2d 550, 563. (Wyo. 1991) (citing *Mountain Fuel Supply Co.*, *supra*); *see also Great Western Sugar Co. v. Wyo. Public Service Comm’n and MDU*, 624 P.2d 1184 (Wyo. 1981).

54. 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 (WAPA). In addition to WAPA, the Commission’s governing statute and Commission Rules establish general procedures for rate cases, including the giving of reasonable notice. Wyo. Stat. § 16-3-107; Wyo. Stat. §§ 37-2-201, 37-2-202, and 37-3-106; Commission Rule Chapter 2, Sections 11, 22 and 23. The burden of proof in this hearing rests with the utility. Where, as in the statutes applicable here, 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).

55. The Commission may approve a stipulation or agreed upon settlement as a means of disposing of any matter coming before it at hearing pursuant to Commission Rule Chapter 2, Section 25 and Wyo. Stat. § 16-3-107(n).

Conclusions of Law

56. CLFP provides retail electric public utility service in its Wyoming service territory under certificates of public convenience and necessity issued and amended by the Commission. CLFP is an electric public utility as defined by Wyo. Stat. § 37-1-101 (a)(vi)(C). The Commission, therefore, has general and exclusive jurisdiction to regulate CLFP as a public utility pursuant to Wyo. Stat. § 37-2-112.

57. The Application and public hearing were publicly noticed in accordance with the WAPA, Wyo. Stat. § 37-2-203 and Commission Rule Chapter 2, Section 5. The Commission held and conducted the public hearing pursuant to Wyo. Stat. §§ 16-3-107, 16-3-108, 37-2-203, and applicable sections of the Commission's Rules. The Commission granted the interventions of Dyno, HollyFrontier and Microsoft consistent with applicable Commission Rules.

58. When the parties to a contested case proceeding reach a settlement, the Commission holds a public hearing to examine the terms of the agreement, motivations of the parties, and transparency of the process in order to determine whether the settlement is in the public interest. The Commission seeks to understand the terms of the settlement and to confirm that it completely addresses the requirements of the case, in order to ensure that the settlement includes all the necessary determinations of fact that may be required for subsequent enforcement proceedings, such as determinations of whether a utility earns more than the Commission has authorized. The Commission examines the motivations of the parties to review whether some aspect of the settlement, by inattention or design, has done a disservice to all or a subset of the utility's ratepayers. Any settlement must result in just and reasonable rates. The Commission also conducts other examinations as the public interest may require. The Commission can and does reject all or part of a proposed settlement if it fails to serve the public interest.

59. CLFP, Dyno, HollyFrontier and Microsoft provided information on how the Agreement resolves the issues presented. Although there was not written Agreement, the Parties put the terms of their settlement on the record as discussed above and agreed that those terms should be made part of this *Order*. The Commission's general aversion to "black box" settlements, which, because of their opacity, prevent the Commission from determining how the parties reached the settlement is not present here. The Parties resolved procedural issues and ultimately did not dispute the substance of the Application.

60. The Parties have all presented the Agreement, the process used to reach it, and were available for questioning by the Commission. The Commission finds the Parties' presentation credible and persuasive.

Commission Deliberations

61. The Commission finds the evidence in the record supports the Parties' agreements

and further finds approval of the Application, specifically its PCA increase, is sufficiently supported by evidence in the record, serves the public interest and should be approved. However, nothing in the agreements serve as a limitation on the jurisdiction of the Commission in this or any other proceeding.

62. The Commission recognizes the Company's current PCA calculation relies on allocations that involve the highly confidential information of a single customer. The Commission finds the Parties' agreements to be an effective resolution of the issues presented in this matter.

63. The Commission approves the Company's Application and finalizes the interim rates currently in effect for usage on and after July 1, 2021. The proposed rate and agreements serve the public interest and constitute an appropriate means of resolving this matter pursuant to Commission Rule Chapter 2, Section 25 and Wyo. Stat. § 16-3-107(n). Nothing in this Order shall abrogate the Commission's duty to continue to act in the public interest of the people of Wyoming under Wyoming law and on the evidence then before it.

IT IS THEREFORE ORDERED:

1. Pursuant to the Commission's deliberations held on November 22, 2021, the Application of Cheyenne Light, Fuel and Power Company d/b/a Black Hills Energy for authority to implement a Power Cost Adjustment (PCA) increase of \$0.00246 per kWh effective July 1, 2021, for those customers who participate in the PCA, is hereby approved along with the commitments and agreements set forth in Paragraphs 42 - 46 of this *Order*.

2. The *Petition for Confidential Treatment of Schedule A-2, Schedule F and Workpaper 1 of Exhibit 6* is granted.

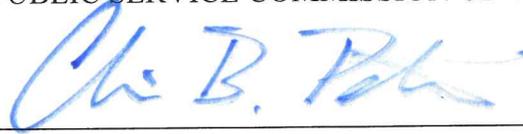
3. In future PCA filings, the Company shall file information regarding the monthly generation from its Corriedale wind facility, including the number of customers subscribed to the Renewable Ready Service Tariff each month, their respective share of the wind capacity, and the term length of each subscriber.

4. This *Order* is effective immediately.

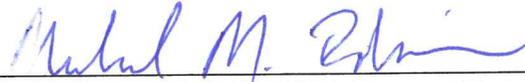
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MADE and ENTERED at Cheyenne, Wyoming on February 28, 2022.

PUBLIC SERVICE COMMISSION OF WYOMING



CHRISTOPHER B. PETRIE, Chairman



MICHAEL M. ROBINSON, Deputy Chairman



MARY A. THRONE, Commissioner



IVAN H. WILLIAMS, Assistant Secretary