

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT)
APPLICATION OF CHEYENNE LIGHT)
FUEL AND POWER COMPANY AND) Docket No. 20003-EA-04-75
BLACK HILLS CORPORATION FOR) (Record No. 8984)
AUTHORITY TO TRANSFER ALL OF THE)
ISSUED AND OUTSTANDING STOCK IN) Docket No. 30005-GA-04-97
CHEYENNE LIGHT, FUEL AND POWER) (Record No. 8985)
COMPANY TO BLACK HILLS)
CORPORATION)

STIPULATION AND AGREEMENT

This Stipulation and Agreement (Stipulation) is agreed to and entered into between the Office of Consumer Advocate (OCA), Cheyenne Light, Fuel and Power Company (Cheyenne Light) and Black Hills Corporation (Black Hills). Cheyenne Light and Black Hills shall be referred to hereinafter as the “Applicants.” OCA and the Applicants shall be referred to hereinafter as the “Parties.”

BACKGROUND

1. On March 22, 2004, Cheyenne Light and Black Hills filed a joint application with the Wyoming Public Service Commission (Commission) requesting authority to transfer all of the issued and outstanding stock of Cheyenne Light from Xcel Energy Inc. (Xcel Energy) to Black Hills.

2. On April 16, 2004, the Commission issued a Notice of Application establishing May 17, 2004, as the deadline for any person seeking to file a statement regarding the Application, or to make a comment, protest or request to intervene or for a hearing with respect to the Application. As of May 17, 2004, the only intervenors were The Frontier Oil and Refining Company, and The International Brotherhood of Electrical Workers, Local No. 111.

4. On June 11, 2004, the Commission issued an Order Setting Pre-Hearing Conference. On June 25, 2004, the Commission issued its Pre-Hearing Conference Order establishing a hearing date of August 24, 2004.

DESCRIPTION OF THE PARTIES

5. The Office of Consumer Advocate was created by W. S. § 37-2-401 as a separate division within the public service commission to represent the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. The OCA has the authority to enter into stipulations with other parties in any proceeding. W. S. § 37-2-402(d).

6. Cheyenne Light is a public utility as defined by W.S. § 37-1-101(a)(vi)(C) and (D), and, as such, is subject to the Commission's jurisdiction pursuant to the provisions of W.S. § 37-2-112. Pursuant to W.S. § 37-1-104, the Commission has jurisdiction over the transfer of control of Cheyenne Light to Black Hills.

7. On July 19, 2004, Black Hills filed an Application-Declaration on Form U-1 with the Securities and Exchange Commission (SEC) under the federal Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§ 70a et seq. (PUHCA) requesting authorization and approvals required under PUHCA to operate as a registered holding company system. Upon the closing of the proposed transaction, Cheyenne Light will become a wholly-owned public utility subsidiary of Black Hills.

AGREEMENT

8. The OCA reviewed the joint application and supporting documents. Additionally, the OCA conducted discovery and the Applicants' representatives had discussions with members of the OCA on several occasions, in person and via telephone, to address questions and concerns of the OCA concerning the above-entitled docketed proceedings. The following Stipulation is the result of the Parties' discussions:

9. Cheyenne Light and Black Hills agree to the following jurisdictional parameters regarding affiliate transactions and common costs:

a. The SEC has jurisdiction to regulate affiliate transactions and assure that common costs (such as service company costs) are fairly and equitably allocated among a registered holding company and its subsidiaries pursuant to PUHCA.

b. Pursuant to W. S. § 37-2-112, the Commission has exclusive jurisdiction for ratemaking purposes to determine whether or not to allow the inclusion in rates of those costs that the SEC may find to be fairly and equitably allocated among the registered holding company and its subsidiaries.

c. Therefore, the applicants agree that they shall not assert that compliance with SEC requirements with respect to cost allocations and affiliate transactions (excluding transactions between Cheyenne Light and Black Hills Corporation or its affiliates entered into prior to March 22, 2004, the date the Application in this docket was filed with the Commission) constitutes an approval for state ratemaking purposes or constitutes a determination that costs can automatically be recovered through the rates of any public utility in the state of Wyoming.

10. In the event that PUHCA is repealed, revised or reformed, Cheyenne Light will provide written notification to and meet with the Commission and the OCA to discuss any changes which Black Hills intends to make regarding the allocation of common costs or the pricing of transactions with its affiliates.

11. Consistent with SEC requirements, Black Hills' cost allocation procedures will provide that (i) costs incurred by one entity for the benefit of another will be directly charged to the entity that benefits from the cost, and (ii) if more than one entity causes a cost to be incurred or benefits from a cost, then that cost will be fairly and equitably allocated among each entity that causes the cost to be incurred or benefits from the cost.

12. Subject to applicable rules of civil procedure and the rules of the Commission, Black Hills will provide access, in the context of a Cheyenne Light existing docket in which rates are at issue, to the books and records of the service company and affiliates who have entered into transactions with Cheyenne Light to the extent necessary to enable the OCA to verify or examine common cost allocations to Cheyenne Light and affiliate transactions affecting Cheyenne Light's regulated retail utility operations.

13. Subject to applicable rules of civil procedure and the rules of the Commission, Black Hills will provide access, in the context of a Black Hills Power (BHP) existing docket in which rates are at issue, to the books and records of the service company and affiliates who have entered into transactions with BHP to the extent necessary to enable the OCA to verify or examine common cost allocations to BHP and affiliate transactions affecting BHP's Wyoming regulated retail utility operations.

14. No later than three months after the closing of the transaction, Black Hills and Cheyenne Light will, in conjunction, file with the Commission a confidential narrative and illustrative update on the transition plan. Black Hills and Cheyenne Light will also notify the OCA and provide, on a confidential basis, a copy of the update filed with the Commission. The update shall include, but is not limited to:

- a. Those services referenced in Schedule 9.10 of the Stock Purchase Agreement in this docket;
- b. The formal transition services agreement executed by Xcel Energy and Black Hills;
- c. The cost allocation methodology approved by the SEC, for all of Black Hills' subsidiaries;
- d. The current status of the services being performed by Black Hills and those being performed by Xcel Energy entities;

- e. The time lines to completion of the transition of those services;
- f. Any anticipated or known changes in reference to the course of action for the transition of those services or operations;
- g. The status of the overall operations of Cheyenne Light;
- h. An updated organizational chart for Black Hills;
- i. A report regarding the results of the SEC review of Black Hills' application to acquire Cheyenne Light and a report on how the acquisition was financed.

Cheyenne Light shall organize the content of this filing separately for gas and electric operations, where applicable.

15. Fifteen months after the closing of the transaction, Black Hills and Cheyenne Light will, in conjunction, file with the Commission a second confidential narrative and illustrative update regarding the completion of the transition plan. Black Hills and Cheyenne Light will also notify the OCA and provide, on a confidential basis, a copy of the update filed with the Commission. The content of this filing will address the same topics as the filing described in paragraph 14 of this stipulation (except subparagraph 14.i.).

16. In connection with the proposed transaction, Black Hills is not proposing any changes in local management, employee levels, and administrative and technical services for Cheyenne Light. Additionally Black Hills is not proposing any changes in quality of service, reliability, operations, maintenance or construction that will adversely affect the customers of Cheyenne Light or any of the Wyoming retail customers of BHP. It is recognized that over time Black Hills Corporation will review the best practices of BHP and Cheyenne Light and may make changes it believes will result in improvements in these areas. Furthermore, Cheyenne Light and BHP reserve the right to make such changes in their operations as they would otherwise make in the normal course of business.

17. Upon expiration of the existing annual requirement to file an electric resource plan, Cheyenne Light will provide to the Commission and the OCA, on a confidential basis, an annual electric demand and energy forecast and the existing resources available to meet the forecasted power requirements.

18. Applicants agree that Cheyenne Light will continue to contribute to Energy Share of Wyoming in a manner consistent with its current practices.

19. Consistent with Wyoming law, Black Hills affirms that the transaction costs related to the stock acquisition will not be recovered in Wyoming rates through the inclusion in rate base or expenses used to calculate the revenue requirement in any future rate case.

20. The Applicants acknowledge that (i) the acquisition of Cheyenne Light is not changing current rates for either Cheyenne Light or the Wyoming customers of BHP, and (ii) any proposed rate change for Wyoming retail customers would require a separate application to be filed with the Commission.

21. Cheyenne Light agrees to a moratorium on the increase of retail rates for its electric and natural gas operations until January 1, 2006. Cheyenne Light may file an application to increase gas or electric rates prior to January 1, 2006, provided that the effective date of any such increase shall not be earlier than January 1, 2006. Nothing in this paragraph 21 shall limit the right of Cheyenne Light to file wholesale commodity cost pass on applications pursuant to Sections 249 and 250 of the Commission's Rules with effective dates prior to January 1, 2006.

GENERAL PROVISIONS

22. The Parties agree that the terms and conditions of this Stipulation shall not become effective until the date upon which both of the following have occurred:

a. The proposed transaction described in the joint application becomes effective; and

b. A final decision of the Commission approving this Stipulation becomes effective without modification of any material term, which is unacceptable to any Party.

23. In the event that this Stipulation does not become effective pursuant to paragraph 22, the prior Stipulation and Agreement between Cheyenne Light and the Consumer Advocate Staff adopted by the Commission in Docket Nos. 20003-EA-99-53 and 30005-GA-99-69 shall remain in full force and effect with no amendments thereto and shall not be superseded by this Stipulation.

24. Should Black Hills merge, be assigned or otherwise combine or consolidate with another entity, the successor of Black Hills and all companies within the successor's system shall be bound by this Stipulation. The Applicants and their successors will support this Stipulation before all regulatory agencies with jurisdiction and before all state and federal courts.

25. Nothing in this Stipulation shall preclude the Commission from participating in any related proceedings before the SEC.

26. The Parties agree that this Stipulation represents a compromise in the positions of the Parties.

27. In the event that the Commission modifies any material term of this Stipulation, which modification is unacceptable to any party hereto, that Party shall so notify the other Party within ten (10) days after the decision becomes effective. In that event, this Stipulation shall be considered null and void and of no force and effect in this or any other proceeding. In that event, this Stipulation, its terms and conditions, and the negotiations or discussions undertaken in conjunction with this Stipulation shall not be admissible in evidence in this or any other proceeding.

28. The Parties agree that this Stipulation represents a just, equitable and reasonable resolution of all issues, which were or could have been contested by the Parties in these dockets.

29. Except as otherwise specifically agreed upon in this Stipulation, nothing contained herein shall be deemed to constitute a settled regulatory practice for the purposes of any other proceeding.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation and Agreement:

OFFICE OF CONSUMER ADVOCATE:

By: _____
Date _____
Title: _____

CHEYENNE LIGHT, FUEL AND POWER COMPANY:

By: _____
Richard L. Kaysen
Date _____
Title: _____

BLACK HILLS CORPORATION

By: _____
Date _____
Title: _____

Black Hills Power, Inc. hereby joins in the provisions of paragraphs 13, 16 and 20 of this Stipulation and Agreement insofar as they pertain to Black Hills Power, Inc.:

BLACK HILLS POWER, INC.

By: _____

Date

Title: _____