

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF)
BLACK HILLS ENERGY, A DIVISION OF)
CHEYENNE LIGHT, FUEL AND POWER)
COMPANY FOR AN ACCOUNTING ORDER TO)
ESTABLISH A REGULATORY ASSET FOR)
TRANSITION COSTS)

DOCKET NO. 30003-67-GA-16
RECORD NO. 14320

PRE-FILED DIRECT TESTIMONY OF

Denise Kay Parrish

On Behalf of the Office of Consumer Advocate

In Support of Stipulation and Agreement

Testimony Filed: October 26, 2016

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Denise Kay Parrish and my business address is 2515 Warren Avenue,
3 Suite 304, Cheyenne, Wyoming 82002.

4
5 **Q. ARE YOU THE SAME PERSON WHO PRE-FILED DIRECT TESTIMONY**
6 **IN THIS PROCEEDING ON SEPTEMBER 2, 2016?**

7 A. Yes, I am.

8
9 **Q. WHO DO YOU REPRESENT IN THIS PROCEEDING?**

10 A. As a member of the Office of Consumer Advocate, I represent the interests of
11 Wyoming citizens and all classes of utility customers in this public utility matter, as
12 required by W.S. § 37-2-401. It is neither my intent nor my charge to represent the
13 position of any individual, group, municipality, or corporation.

14
15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of my testimony is to provide support for the Stipulation and Agreement
17 the OCA has entered into with Black Hills Energy, A Division of Cheyenne Light,
18 Fuel and Power Company (Northeast Black Hills Energy). This Stipulation and
19 Agreement is intended to resolve the entirety of the issues raised by the OCA in its
20 earlier provided comments and pre-filed direct testimony in this proceeding. The
21 OCA asks that the Commission approve it in total, as a package and without
22 modification. We believe that approval of the Stipulation and Agreement is in the
23 public interest.

24
25 It is the intent of my testimony, offered below, to explain why the public interest
26 standard is met through the provisions of the Stipulation and Agreement. It is also
27 the intent of this testimony to address each of the OCA's concerns as set forth in my
28 earlier testimony and explain why the OCA identified issues are no longer being
29 advocated at this time.

30
31 **Q. WHAT IS THE OVERARCHING ISSUE IN THIS PROCEEDING?**

1 A. The primary issue in this proceeding is whether Northeast Black Hills Energy should
2 or should not be permitted to record as a regulatory asset the transition costs
3 associated with Cheyenne Light, Fuel and Power's purchase of MGTC, Inc.'s assets
4 and the change in the provider of utility service to customers previously served by
5 MGTC, Inc. If the Commission grants approval of the deferral, Northeast Black
6 Hills Energy would then be permitted to seek recovery of those costs in a future rate
7 proceeding. However, it has been the general practice of the Commission that when
8 approval to defer costs is granted, such approval is not accompanied by any
9 assurance of future recovery of those costs in the calculation of retail rates.

10

11 **Q. WHAT WAS THE OCA'S INITIAL REACTION TO THIS DEFERRAL**
12 **REQUEST?**

13 A. The OCA raised a number of concerns in response to the application to defer the
14 transition costs. These concerns fell into several categories that are summarized
15 below:

- 16 1. The delayed timing of the filing of the application, given that Northeast Black
17 Hills Energy filed it more than one year after it began providing service to the
18 former MGTC, Inc. customers, even though it has been characterized as one
19 of the conditions of the purchase of the MGTC, Inc. assets.
- 20 2. The delayed timing of the filing of the application, given that it was filed after
21 all of the expenditures related to the transition had already been incurred.
- 22 3. The delayed timing of the filing of the application, given that the expenditures
23 for which a deferral is sought have already been treated as a current expense
24 for the reporting of current income.
- 25 4. The nature of some of the costs that Northeast Black Hills Energy proposed to
26 include in the deferral (or regulatory asset) since they did not appear on the
27 face to be incremental costs not otherwise already being recovered through
28 rates, or they did not appear to be beneficial to customers as part of the
29 transition.

30 As a result of these concerns, the OCA was initially unwilling to support Northeast
31 Black Hills Energy's request to defer the transition costs as set forth in its

1 application. As a secondary position, the OCA recommended that if a deferral was
2 granted, the utility be required to put systems and recordkeeping into place now, so
3 that there would be some support and documentation available if rate recovery of the
4 deferred costs is sought in a future proceeding.

5
6 **Q. GIVEN THE OCA'S INITIAL LACK OF SUPPORT FOR THE REQUESTED**
7 **COST DEFERRAL, WHY ARE YOU NOW SUPPORTING THE APPROVAL**
8 **OF A REGULATORY ASSET FOR A PORTION OF THE COSTS RELATED**
9 **TO THE TRANSITION?**

10 A. As with any Stipulation and Agreement entered into by the OCA, compromises have
11 been reached on agreed upon actions without compromising the overall public
12 interest or harming the interests of the general body of ratepayers. The Stipulation
13 and Agreement allows for a fair and equitable resolution of this matter without the
14 need for a contentious hearing. Contested facts – such as what constitutes transition
15 costs that are reasonably recovered from customer revenues in the future – will be set
16 aside for now and debated at another time where more information is expected to be
17 provided.

18
19 **Q. IN EARLIER TESTIMONY, THE OCA EXPRESSED CONCERN ABOUT**
20 **THE DELAYED TIMING OF THE FILING, GIVEN THAT A**
21 **REGULATORY ASSET APPLICATION WAS EXPECTED IN RESPONSE**
22 **TO THE APPROVAL OF THE PURCHASE OF THE MGTC ASSETS.**
23 **WHAT IS THE OCA'S CURRENT POSITION ON THIS MATTER?**

24 A. While the OCA was, and is, concerned about the timing of the filing, we have now
25 agreed that it should not drive the ultimate decision of whether or not costs are
26 permitted to be deferred in this proceeding. Upon reconsideration of the matter, we
27 agree that there was no timeline included in the order by which the filing was
28 required to be made and while there was certainly an expectation of an earlier filing,
29 no orders or mandates were violated by the delayed filing. Thus, filing later than
30 expected should not determine the overall outcome of the proceeding in this matter.

31

1 However, that does not mean that the utility should use this case as a “how-to” for
2 future filings. In fact, my impression is that there have been many lessons learned –
3 by both the utility and the OCA - from the many procedural processes and missteps
4 in this case, such that it could become a “how-not-to” example for filings. Certainly,
5 from the OCA standpoint, this case has once again reiterated the importance of
6 setting forth expectations and agreements in writing with precise agreed-upon
7 language. This deferral application springs from a case where that was not done, but
8 rather general conceptual agreements were reached and shared verbally at the
9 hearing. This circles us back to the point where expectations for filing dates may
10 have been established that were different for each participant but without a written
11 agreement and thus, ambiguity exists. Thus, we are currently reluctant to establish
12 the outcome of the proceeding on our concern about whether the application was
13 timely filed.

14
15 **Q. THE OCA ALSO EXPRESSED CONCERN IN ITS EARLIER TESTIMONY**
16 **THAT THE APPLICATION WAS NOT FILED UNTIL AFTER ALL OF THE**
17 **EXPENDITURES HAD BEEN INCURRED, AND THAT THIS WAS**
18 **OUTSIDE OF THE NORMAL UTILITY / REGULATORY PRACTICE. HAS**
19 **YOUR THINKING ON THIS MATTER CHANGED?**

20 A. The OCA continues to believe that normal regulatory practice is for the utility to
21 request a deferral of costs prior to or at the time that the subject expenditures are
22 incurred. We also believe that this normal practice is the preferable practice.
23 However, as noted above, the asset purchase case was quite unusual in several ways
24 including the fact that there was reference to deferrals but not a clear request for an
25 approval of a regulatory asset; and there was a promise of a follow-up deferral
26 application that became a condition of the asset purchase decision itself. Thus, the
27 normal practice of wanting to see the deferral request in advance of actually making
28 expenditures that will be deferred may not have been as critical in this proceeding as
29 in some where the deferral would otherwise come as a complete surprise. Frankly,
30 the arguments on both sides of this issue are soft given the facts and circumstances of

1 this case, and thus, it made sense to compromise and again, not make the final
2 determination of the deferrals on simply the matter of the timing of the application.

3
4 However, it should be clear to Northeast Black Hills Energy that we are not
5 conceding the merits of our arguments for future proceedings, and we do have a
6 strong preference that deferral requests be made up-front and not after the
7 expenditures have occurred. The fact is that in at least one acquisition proceeding
8 involving a Black Hills Corporation utility since the MGTC asset purchase, the
9 transition cost deferral request was made as part of the acquisition approval
10 application. So, the *after-the-fact* deferral request appears to have been more of an
11 anomaly than an on-going practice – at least, that is my hope.

12
13 **Q. THE THIRD TIMING CONCERN RAISED BY THE OCA WAS THAT THE**
14 **EXPENDITURES HAD ALREADY BEEN RECORDED ON THE**
15 **FINANCIAL STATEMENTS AS AN EXPENSE, AND DEFERRING**
16 **PREVIOUSLY RECOGNIZED EXPENSES IS NOT A COMMON**
17 **PRACTICE. IS THIS STILL A CONCERN OF THE OCA?**

18 **A.** Yes, it is still a concern to the OCA that the deferral application was made so late that
19 a decision on the deferral matter could not be made prior to the time that the
20 transition costs ended up being expensed for the purposes of reporting income.
21 However, as with our other timing issues, we have decided that this matter should not
22 be a deciding factor for the determination of whether transition costs should now be
23 allowed to be deferred.

24
25 One of the primary reasons that the OCA determined that it could accept the non-
26 traditional practice was the fact that doing so was not likely to have any material
27 impact on any other regulatory decisions that had occurred to date for Northeast
28 Black Hills Energy. Specifically, I looked at the impact that removing the expense
29 from earnings would have on the utility if, for instance, recent income had to be
30 restated. I found that Northeast Black Hills Energy would still be earning at a level
31 far below its authorized return, all other things being equal. This simple calculation

1 is shown in the table below using pro forma adjusted information for the 12 months
 2 ended December 31, 2015, taken from Exhibit D of the pass-on application filed on
 3 July 29, 2016 (Docket No. 30003-70-GP-16).
 4

5 **Table 1: Adjusted Return if Expenses Deferred**

	Pro Forma from Docket 30003- 70-GP-16	Removal of Costs Stipulated for Deferral Approval	As Adjusted if Expenses Removed and Deferred
Total Revenue	\$2,168,662	\$0	\$2,168,662
Total O&M Expenses	\$1,716,694	(\$322,376)	\$1,394,318
Total Depreciation and Taxes Other than Income	\$359,981	\$0	\$359,981
Income Tax Expense	<u>(\$25,830)</u>	<u>\$112,832</u>	<u>\$87,002</u>
Total Operating Expense	\$2,050,845	(\$209,544)	\$1,841,301
Utility Operating Income	\$117,817	\$209,544	\$327,361
Rate Base	\$6,529,131		\$6,529,131
Rate of Return on Rate Base	1.80%		5.01%
Rate of Return on Equity	(1.36%)		4.67%
Authorized Return on Rate Base	7.98%		7.98%

6
 7 As shown on Table 1, removing \$322,376 of costs claimed to be transition related
 8 and deferring them would change the earned return on rate base from 1.8% to 5.01%.
 9 Yet, this adjusted rate of earnings is still far below the authorized return on rate base
 10 of 7.98%. Thus, no earnings above those authorized would have been reported and it
 11 is likely that no different regulatory decisions (such as those related to approval of
 12 the pass-on) would have been different.

13
 14 Hence, it does not seem unreasonable to set aside the OCA's concern about the
 15 timing of the filing in this instance, in exchange for other provisions of the
 16 Stipulation and Agreement that are beneficial to customers and in the public interest.
 17 Specifically, the benefit of reducing the amount of deferred expenses that Northeast

1 Black Hills Energy may request be included in future customer rates is significant but
 2 it comes only with the agreement of the OCA to set aside the timing issues that it
 3 initially raised.
 4

5 **Q. THE FINAL CATEGORY OF CONCERN RAISED BY THE OCA RELATED**
 6 **TO THE NATURE OF THE COSTS NORTHEAST BLACK HILLS ENERGY**
 7 **IS SEEKING TO DEFER, AND WHETHER THOSE ARE APPROPRIATELY**
 8 **LABELED AS EITHER INCREMENTAL COSTS OR TRANSITION COSTS.**
 9 **IS THIS CONCERN MITIGATED BY THE PROVISIONS OF THE**
 10 **STIPULATION AND AGREEMENT, AND IF SO, HOW?**

11 A. Yes, the Stipulation and Agreement mitigates this concern of the OCA through two
 12 of the substantive provisions of the agreement. First, Northeast Black Hills Energy
 13 agreed to remove \$269,054 of administrative and general costs from the amount of
 14 transition costs for which it seeks deferral. This addresses one of the OCA’s
 15 concerns about the nature of the costs – particularly the administrative and general
 16 costs - and whether they were truly incremental or solely related to the transition.
 17

18 Second, the OCA is not restricted by the Stipulation and Agreement from exploring
 19 the nature of the remaining costs and questioning whether they are appropriately
 20 categorized as transition costs. Furthermore, nothing in the Stipulation and
 21 Agreement restricts the OCA from challenging the recovery of the deferred costs
 22 through rates in a future rate proceeding. This provision is important since the
 23 immediate docket does not include a full explanation of the types of costs that we do
 24 not object to being deferred. It is likely that the OCA will seek additional
 25 information about the nature of these costs (such as those that seem to be Cheyenne
 26 Light, Fuel and Power personnel costs) in a future proceeding before recommending
 27 their rate recovery.
 28

29 **Q. ARE THERE OTHER PROVISIONS OF THE STIPULATION AND**
 30 **AGREEMENT THAT ARE IMPORTANT TO PROTECT THE PUBLIC**
 31 **INTEREST?**

1 A. Yes. Through the Stipulation and Agreement, Northeast Black Hills Energy
 2 explicitly agrees that it has the burden of proof regarding the recovery of the deferred
 3 costs in any future proceeding. While the utility always has the burden of proof of its
 4 rate recovery request in a rate proceeding, the explicit acknowledgement in this
 5 agreement removes any doubt about whether allowing the deferral creates some
 6 presumptive rate recovery. Clearly, no such presumption is present in this
 7 agreement.

8

9 **Q. PLEASE SUMMARIZE WHY YOU BELIEVE THE STIPULATION AND**
 10 **AGREEMENT IS IN THE PUBLIC INTEREST AND WHY IT SHOULD BE**
 11 **APPROVED BY THE COMMISSION IN ITS ENTIRETY AS SUBMITTED.**

12 A. The essence of the Stipulation and Agreement is quite simple. The OCA sets aside
 13 its objections to the creation of a regulatory asset consisting of deferred transition
 14 related expenses. In exchange, Northeast Black Hills Energy agrees to reduce the
 15 amount of expenses being deferred, explicitly take on a future burden of proof in any
 16 request for recovery of the deferred expenses, and agree that the existence of a
 17 deferral does not guarantee that future recovery of these costs will ultimately be
 18 granted.

19

20 This simple but important agreement is in the public interest because the amount of
 21 transition-related costs that could potentially flow into Wyoming customers' rates has
 22 already been substantially reduced from the original request. Furthermore, the
 23 removal of the administrative and general costs from the deferral limits the scope of
 24 any future inquiry into the transition costs. Finally, allowing rate recovery of the
 25 deferred costs, disallowing them, or sharing them, all remain options to be addressed
 26 in a future rate proceeding under the Stipulation and Agreement.

27

28 **Q. DOES THAT COMPLETE YOUR PREFILED DIRECT TESTIMONY IN**
 29 **SUPPORT OF THE STIPULATION AND AGREEMENT?**

30 A. Yes, it does.

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AFFIDAVIT, OATH AND VERIFICATION

Denise Kay Parrish (Affiant) being of lawful age and being first duly sworn, hereby deposes and says that:

Affiant is the Deputy Administrator of the Wyoming Office of Consumer Advocate which is a party intervener in this matter pursuant to its Notice of Intervention filed on March 8, 2016.

Affiant prepared and caused to be filed the foregoing testimony. Affiant has, by all necessary action, been duly authorized to file this testimony and make this Oath and Verification.

Affiant hereby verifies that, based on Affiant’s knowledge, all statements and information contained within the testimony are true and complete and constitute the recommendations of the Affiant in her official capacity as Deputy Administrator of the Wyoming Office of Consumer Advocate.

Further Affiant Sayeth Not.
Dated this 21st day of October, 2016.

Denise Kay Parrish, Deputy Administrator
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 304
Cheyenne, WY 82002
(307) 777-5743

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

The foregoing was acknowledged before me by Denise Kay Parrish on this 21st day of October, 2016.
Witness my hand and official seal.

My Commission Expires: