

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF BLACK)
HILLS POWER, INC., FOR AUTHORITY TO)
ESTABLISH THE CHEYENNE PRAIRIE GENERATING)
STATION RIDER TARIFF AND CURRENT RECOVERY)
OF CONSTRUCTION FINANCING COSTS)

Docket No. 20002-84-ET-12
(Record No. 13336)

ORDER
(Issued November 7, 2012)

This matter is before the Wyoming Public Service Commission (Commission) upon the application of Black Hills Power, Inc. (BHP or the Company) for authority to establish the Cheyenne Prairie Generating Station (CPGS) rate rider tariff and provide for current recovery of construction financing costs, as more fully described below. The Commission, having reviewed the application and attached exhibits, its files regarding BHP, applicable Wyoming utility law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

1. BHP is a public utility as defined by W.S. § 37-1-101(a)(vi)(C), subject to the Commission's jurisdiction under W.S. § 37-2-112.

2. On August 31, 2012, BHP applied for authority to establish a rate rider tariff (Rate Rider) to recover the cost of financing the construction of the CPGS, contemporaneously with the construction, i.e., for a period commencing on or about November 1, 2012, and concluding on or about October 1, 2014. BHP suggests that its proposed Rate Rider is permissible as innovative rate making under W.S. § 37-2-121. BHP expects the Rate Rider to save its customers money because financing costs would be paid during construction rather than being included in rate base when the CPGS is placed in service, an expected rate base reduction of approximately \$10 million. (BHP Exhibit 1, p. 3; and Exhibit 2, p. 7.) The Rate Rider is to be a quarterly increase in BHP's electric rates over the approximately two-year construction period of the CPGS. The graduated increase in rates is expected to mitigate the impact BHP customers would otherwise experience by avoiding a larger increase in electric rate base when the CPGS is placed in service on or about October 1, 2014. (BHP Exhibit 2, p. 2.) The CPGS itself would be placed in rate base, but the construction financing costs, having already been paid, would not. The first quarterly Rate Rider increase will be effective for the period November 1, 2012, through January 31, 2013. Thereafter, BHP will file to adjust the Rate Rider each quarter, not less than 30 days prior to the requested effective date. The Company requests the rates be considered permanent 45 days after the effective dates, unless the review period is extended by Commission order. (*Id.*, p. 9.)

3. BHP explains that there are three steps in calculating the Rate Rider: [i] determine the quarterly revenue requirement, [ii] which is then assigned to customer classes based on a demand allocator, [iii] and calculated on a per-kWh basis for each class. A monthly revenue requirement is established based on forecasted construction costs, the Rate Rider rate of return, an allowance for federal income taxes and municipal franchise fees. The Rate Rider rate of return is based on the capital structure, the cost of short term debt, and the return on equity approved in BHP's last general rate case. Debt costs are updated quarterly to reflect the effect of

the forecasted short-term rates of Black Hills Corporation's (BHC) London Interbank Offered Rate (LIBOR) borrowing rate under a revolving credit agreement. The short term debt cost of 1.82% for the first quarter is the forecasted LIBOR rate of 0.32% plus BHC's borrowing cost of 1.50%. The cumulative monthly forecasts of construction costs are multiplied by the Rate Rider rate of return. The equity portion of this amount is grossed up for federal income taxes. Franchise fees are added to the tax adjusted return to yield the total monthly revenue requirement. Monthly revenue requirements are summed to establish the quarterly revenue requirement. (BHP Exhibit 3, pp. 6-9.)

4. The impact of the first quarterly Rate rider on residential customers whose average monthly usage is 830 kWh will be an increase of \$0.37 or approximately 0.44%. Small general service customers whose average monthly usage is 3,301 kWh would experience a monthly increase of \$1.32 or approximately 0.45%. (*Id.*, p. 11.) The estimated impact on residential and small general service customers over the life of the Rate Rider is set forth in Tables 1 and 2 below:

Table 1: BHP Proposed and Estimated Residential Rate Rider*

Effective Date	Estimated Residential Class Revenue Requirement	Forecast kWh Usage	Estimated Residential Rate Rider	Monthly Residential Customer Impact †
November 1, 2012	\$2,716	6,036,893	\$0.00045	\$0.37
February 1, 2013	\$5,523	6,036,893	\$0.00091	\$0.76
May 1, 2013	\$10,007	6,036,893	\$0.00166	\$1.38
August 1, 2013	\$13,973	6,036,893	\$0.00231	\$1.92
November 1, 2013	\$16,587	6,036,893	\$0.00275	\$2.28
February 1, 2014	\$19,589	6,036,893	\$0.00324	\$2.69
May 1, 2014	\$36,380	10,061,488	\$0.00362	\$3.00
Total	\$104,776	46,282,846		\$43.21 ‡

* Commission Exhibit 4, p. 8
† Based on average monthly usage of 830 kWh.
‡ The total amount an average residential customer would expect to pay over the entire Rate Rider period.

Table 2: BHP Proposed and Estimated Small General Service (SGS) Rate Rider*

Effective Date	Estimated SGS Class Revenue Requirement	Forecast kWh Usage	Estimated SGS Rate Rider	Monthly SGS Customer Impact †
November 1, 2012	\$2,701	6,811,281	\$0.00040	\$1.32
February 1, 2013	\$5,493	6,811,281	\$0.00081	\$2.67
May 1, 2013	\$9,952	6,811,281	\$0.00146	\$4.82
August 1, 2013	\$13,895	6,811,281	\$0.00204	\$6.73
November 1, 2013	\$16,496	6,811,281	\$0.00242	\$7.99
February 1, 2014	\$19,480	6,811,281	\$0.00286	\$9.44
May 1, 2014	\$36,179	11,352,135	\$0.00319	\$10.53
Total	\$104,196	52,219,821		\$151.58 ‡

* Commission Exhibit 4, p. 9.
† Based on average monthly usage of 3,301 kWh.
‡ The total amount an average SGS customer would expect to pay over the entire Rate Rider period.

5. The Commission issued a *Notice of Application* which set a deadline of October 12, 2012, for filing statements, intervention petitions, requests for hearing, or other representations. It was published once per week for two consecutive weeks in the *News-Record* in Gillette, Wyoming, and the *Newsletter Journal* in Newcastle, Wyoming. A Public Service Announcement regarding the application was broadcast on radio five times per week for two consecutive weeks on *KASL-AM* in Newcastle, Wyoming, and *KIML-AM* in Gillette, Wyoming. No intervention petitions or requests for hearing were filed. The Commission received several comments.

6 BHP's application came before the Commission for consideration pursuant to due notice at its open meeting of October 30, 2012. Chris Kilpatrick, Director of Resource Planning and Rates for BHC; Kyle White, Vice President of Regulatory Affairs for BHC, Mark Stege, Vice President of Operations for CLFP; Todd Brink, Senior Counsel for BHC; Wendy Moser, Vice President, - Regulatory Services and Resource Planning for BHC; and John Sundahl, local counsel, appeared in person for BHP. Appearing by telephone for BHP were Mark Lux, Vice President and General Manager of Regulated and Non-Regulated Generation for Black Hills Service Company; and Lee Magnuson, BHP corporate counsel (*pro hac vice*). Also present was Ivan Williams, counsel for the Office of Consumer Advocate (OCA). Written public comments regarding BHP's application were considered by the Commission. BHP Exhibits 1-13 were offered and received into the record, as follows:

- Exhibit 1, Application.
- Exhibit 2, Kyle D. White Direct Testimony.
- Exhibit 3, Christopher J. Kilpatrick Direct Testimony.
- Exhibit 4, Customer Benefit Analysis.
- Exhibit 5, CPGS Tariffs in legislative format.
- Exhibit 6, CPGS Tariffs, clean.
- Exhibit 7, Report of Tariff Change.
- Exhibit 8: Schedule A, CPGS Rider Rate; Schedule B, CPGS Quarterly Revenue Requirement Calculation; Schedule C, Customer Impact; Schedule D, Forecasted Monthly CPGS Construction Costs.
- Exhibit 9, Mark Lux Direct Testimony.
- Exhibit 10 – Stipulation and Agreement dated July 13, 2012, filed in combined Docket Nos. 20003-113-EA-11 and 20002-81-EA-11 (Record No. 13007) (the joint proceeding in which CLFP and BHP obtained certificates of public convenience and necessity for the CPGS).
- Exhibit 11 – Stipulation Testimony of Bryce J. Freeman of the OCA.
- Exhibit 12 – Wyoming Statutes.
- Exhibit 13 – Portion of Memorandum Opinion, Docket 20003-90-ER-07.

Offered and received into the record were Commission Exhibits 1-4, as follows:

- Exhibit 1, CLFP Proposed CPGS Rider Customer Benefit Analysis.
- Exhibit 2: Table 18, Forecast rider Rates of Return (November 1, 2012); Table 19, Monthly Cash Flow Needs for CPGS Construction; Table 20, Operating Cash Flow and Equity Financing Requirement.
- Exhibit 3: Table 11, CLFP Proposed and Estimated Residential Rider Rates; Table 17, Estimated Base Rates Attributable to AFUDC.
- Exhibit 4, Staff Memorandum dated October 26, 2012.

7. BHP representatives provided a summary of the application, answered questions from the Commission and staff and generally provided the information set forth in paragraphs 2 through 4 above. In addition, Company representatives requested the application be approved. Commission Advisory Staff recommended approval of the application for service on and after November 1, 2012.

8. In *Pacific Power & Light Co. v. Public Service Com'n of Wyoming*, 1984 WY 19, 677 P.2d 799 (1984), Chief Justice Rooney, writing for the majority which upheld the Commission, stated that it would be possible for a utility to request and receive a determination of the amount of revenue responsibility that would be attributable to ratepayers if a plant were not actually built. The Chief Justice stated, 1984 WY 19, at ¶ 38:

The utility need not consult PSC before embarking on the project. However, if the utility wishes to involve the consumer and a loss or cost resulting from failure of the project, i.e., if it wishes to have such cost or loss considered in subsequent rates, PSC's prior approval is necessary.

Later, 1984 WY 19, at ¶ 40, Justice Rooney continued:

The requirement for prior approval of the PSC is necessary so that the risk attributable to the consumers can be evaluated and be either rejected or accepted – or, perhaps, the proportion of the risk to be borne by the consumers, if unsuccessful, can be set.

We discussed this matter at some length with BHP, and it assured the Commission that it was not seeking any prior determination or approval in the case of failure of the plant to be built for whatever reason. Therefore, we will make no such determination, and the impact of CPGS on rates, aside from the Rate Rider, must wait until the finished product is brought before the Commission in a general rate proceeding. We also discussed with BHP what might be done with the monies collected under the Rate Rider should the project not be built. If this unlikely event comes to pass, we will expect to see a discussion by the Company in future proceedings setting forth its view of the disposition of these funds.

9. The final in-service date of the CPGS is not the first day upon which it will produce electricity and pass it on to the grid. This testing-phase power has value, albeit not the same value as would be the case if the plant were in commercial operation and generating a

steady, dispatchable flow of power into the grid. BHP said it would dispose of this power, generally at wholesale and certainly not in the form of a “strip” or other product. This means the wholesale prices will probably be rather low but there will be some money to be made from the small amount of power. Therefore, when BHP comes to the Commission to include the CPGS in rates, we will expect to see an accounting for this power as an offset to the ratepayers’ revenue responsibility.

10. W.S. § 37-3-101 states in pertinent part: “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. ...”

11. W.S. § 37-2-121 provides:

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, within the time periods provided under W.S. 37-3-106(c) 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. [Emphasis added.]

12. W.S. § 37-2-122(a) reinforces the Commission’s ability to exercise its sound informed discretion in rate making cases. It states:

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.

13. W.S. § 37-2-122(b) gives latitude to the Commission regarding utility services, stating:

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 or facility shall be found to be inadequate or unsafe, or any service regulation shall be found to be unjust or unreasonable, or any service, facility or 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, facility or service regulation, as it shall determine to be adequate and safe, or just and reasonable, as the case may be and otherwise in compliance with the provisions of this act, including any provisions concerning the availability or reliability of service. It shall be the duty of the public utility to comply with and conform to such determination and order of the commission. [Emphasis added.]

14. Read *in pari materia*, these statutes articulate the basic mechanism of the public interest standard which the Commission is to follow in its decisions. The public interest must come first in the Commission's decisions, as the Wyoming Supreme Court has stated; and the desires of the utility are secondary to the public interest. *Mountain Fuel Supply Company v. Public Service Comm'n*, 662 P.2d 878 (Wyo. 1983). Construing W.S. § 37-3-101, which requires rates to be reasonable, the Court in *Mountain Fuel*, *supra*, at 883, commented:

This court cannot usurp the legislative functions delegated to the PSC in setting appropriate rates, but will defer to the agency discretion so long as the results are fair, reasonable, uniform and not unduly discriminatory.

Later, 662 P.2d at 885, the Court in *Mountain Fuel* observed:

We agree that if the end result complies with the 'just and reasonable' standard announced in the statute, the methodology used by the PSC is not a concern of this court, but is a matter encompassed within the prerogatives of the PSC.

15. In accord are *Great Western Sugar Co. v. Wyo. Public Service Comm'n and MDU*, 624 P.2d 1184 (Wyo. 1981); and *Union Tel. Co. v. Public Service Comm'n*, 821 P.2d 550 (Wyo. 1991), wherein the Supreme Court stated, 821 P.2d at 563, that it ". . . has recognized that discretion is vested in the PSC in establishing rate-making methodology so long as the result reached is reasonable."

16. Because BHP has received a Certificate of Public Convenience and Necessity for the Cheyenne Plains Generating Station in a separate proceeding, it can be said, under W.S. § 37-2-205, our certificate statute, that granting a certificate reflects determinations [i] "that the present or future public convenience and necessity require or will require such construction"; [ii] that the applicant has shown the financial ability and good faith necessary to construct the project and [iii] has demonstrated "the necessity of additional service in the community." [Excerpted from W.S. § 37-2-205(a) and (c).] Because this is the case, we believe that, in combination with the material presented here, BHP has demonstrated that the Rate Rider should be approved because of its potential to save money for BHP's customers.

17. The Commission finds and concludes based upon the Company's application and supporting documentation, its representations to the Commission, and the analysis and recommendations of the Commission Advisory Staff, that the proposed Rate Rider described herein should be approved, that it is just and reasonable and in the public interest. We conclude that a preponderance of the evidence brought before us in this case clearly shows that the Rate Rider should be approved. In the case of an innovative rate proposal, which the Rate Rider surely is, W.S. § 35-2-121 would require us to find only that substantial evidence supports approving the application. We have received more proof than this. Consequently, further formal hearing on the initiation of the Rate Rider would therefore serve no useful purpose. As with all matters coming before us, we retain continuing jurisdiction in this proceeding.

IT IS THEREFORE ORDERED:

1. Pursuant to open meeting action taken on October 30, 2012, the application of Black Hills Power, Inc., for authority to establish the Cheyenne Prairie Generating Station Rider Tariff for current recovery of construction financing costs is approved effective for service on and after November 1, 2012.

2. The issuance of this *Order* shall not be construed as prior approval by the Commission of any expenditure of funds for the CPGS under the Rate Rider and shall not be construed as any evaluation, rejection or acceptance whatsoever of any risk or proportion thereof which may or may not be or become attributable to or borne by the Company's Wyoming customers.

3. This *Order* is effective immediately.


MADE and ENTERED at Cheyenne, Wyoming, on November 7, 2012.

PUBLIC SERVICE COMMISSION OF WYOMING





ALAN B. MINIER, Chairman



STEVE OXLEY, Deputy Chairman

Attest:



JOHN S. BURBRIDGE, Assistant Secretary