

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF WYOMING

IN THE MATTER OF THE JOINT FILING OF THE INTERGRATED RESOURCE PLAN FOR CHEYENNE LIGHT, FUEL AND POWER COMPANY d/b/a BLACK HILLS ENERGY AND BLACK HILLS POWER, INC. d/b/a BLACK HILLS ENERGY	) ) ) ) ) ) )	Docket No. 20003-__-EG-21 Docket No. 20002-__-EG-21 (Record No. _____)
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**PETITION FOR CONFIDENTIAL TREATMENT OF APPENDICES C AND H**

Pursuant to Wyoming Statute § 16-4-203 (d)(v), Chapter 2, Section 30 (Confidentiality of Information) of the Wyoming Public Service Commission’s Rules of Practice and Procedure, and relevant Wyoming court decisions, Cheyenne Light, Fuel and Power Company d/b/a Black Hills Energy (“Cheyenne Light”) and Black Hills Power, Inc. d/b/a Black Hills Energy (“Black Hills Power”) respectfully request the Wyoming Public Service Commission (“Commission”) issue an order granting highly sensitive confidential treatment for the entirety of Appendix H and highly sensitive confidential treatment for Schedule C-3 in Appendix C attached to the Integrated Resource Plan submission.

**A. Statutory Support in Favor of Confidentiality Protection**

W.S. § 16-4-203 provides for the right of inspection, grounds for denial, access of news media and orders permitting or restricting disclosure exceptions. This statute provides the legal basis for protection from disclosure of confidential information submitted by a party to a governmental agency (“Custodian”). W.S. § 16-4-203(d)(v) identifies categories of records that are exempt from public disclosure: “[t]rade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person.”

**B. Rule and Regulatory Support in Favor of Confidentiality Protection**

The Commission's rules and regulations also provide for the protection of confidential data submitted to the Commission. Chapter 2, Section 30 of the Commission rules and regulations provides as follows:

Upon petition, and for good cause shown, the Commission shall deem confidential any information filed with the Commission or in the custody of the Commission or staff which is shown to be of the nature described in Wyoming Statute § 16-4-203(a), (b), (d), or (g). All information for which confidential treatment is requested shall be treated as confidential until the Commission rules whether, and to what extent, the information shall be given confidential treatment.

The information contained in Appendix H and Schedule C-3 of Appendix C is confidential, proprietary pricing and economic data from outside entities which Cheyenne Light and Black Hills Power have contractually agreed to maintain as confidential and contains confidential commercial and financial data which fits squarely within the protection provided under Chapter 2, Section 30.

**C. Relevant Case Law Support in Favor of Confidential Protection.**

In *Sublette County Rural Health Care Dist. v. Miley*, 942 P.2d 1101 (Wyo. July 18, 1997(WL 401323) (hereafter referred to as *Sublette County*), the Wyoming Supreme Court addressed confidential commercial data. In *Sublette County* the Wyoming Supreme Court looked to federal law under the Freedom of Information Act. *Id.* The Court noted the parallel language of Wyoming's statute and the federal statute, and found it is appropriate for the Court to examine persuasive authority, particularly pertinent federal cases and adopted the two-factor test as set forth in *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C.Cir.1974). The *National Parks and Conservation Ass'n*, two-factor test protects information from disclosure under the Freedom of Information Act when the information is likely to either: (1) impair the government's future ability to obtain necessary information; or (2)

cause substantial harm to the competitive position of the persons providing the information.  
*National Parks*, 498 F.2d at 770.

A review of Commission decisions also demonstrates that Petitions for Confidential Treatment are granted for a variety of reasons, including protection of commercial data.<sup>1</sup> In this petition, Cheyenne Light and Black Hills Power are seeking the protection of commercial and financial data included in the entirety of Appendix H and Schedule C-3 in Appendix C. Further, Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information.

#### **D. Required Information**

As the entirety of Appendix H contains highly confidential proprietary information and Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information, Cheyenne Light and Black Hills Power are requesting highly sensitive confidential treatment of the entire document.

Schedule C-3 in Appendix C contains highly confidential proprietary information and Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information, Cheyenne Light and Black Hills power are requesting highly sensitive confidential treatment of the entire Schedule.

As required by Chapter 2, Section 30(b)(iii), the confidential documents contain margin numbers that correspond with the explanations below:

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<sup>1</sup> See, e.g., *In Re Cheyenne Light Fuel and Power*, Docket No. NG 3005-224-GA-17 (Record No. 14672)(2017)(natural gas supply agreements and other commercial data); *In Re Petition of Energy West et al*, Docket No.30011-73-GA12 et al (Record No. 13111)(2012) (data responses containing financial information); *In Re Joint Application of SourceGas Distribution et al* , for transfer of utility assets from MGTC to SourceGas Distribution (Docket No. 30003-49-GA-10 (2010) (Record No. 12484)(protective order for transfer of assets).

**Appendix H:** Cheyenne Light and Black Hills Power request that the entirety of this Appendix receive highly sensitive confidential information treatment because it is not information that is disclosed publicly without payment of a subscription fee. Therefore, Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information.

**Margin 1: Appendix C, Schedule C-3 on p. 12:** Cheyenne Light and Black Hills Power request that this information receive highly sensitive confidential treatment because it is not information that is disclosed publicly without payment of a subscription fee. Therefore, Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information.

**Margin 2: Appendix C, Schedule C-3 on pp. 125-126:** Cheyenne Light and Black Hills Power request that this information receive highly sensitive confidential treatment because it is not information that is disclosed publicly without payment of a subscription fee. Therefore, Cheyenne Light and Black Hills Power are contractually obligated to request confidential protection related to this information.

## **CONCLUSION**

For the reasons stated herein, Cheyenne Light and Black Hills Power respectfully request that the Commission enter an order pursuant to Chapter 2, Section 30 prohibiting the disclosure of the confidential information identified herein. In the event written notice of an intent to disclose is provided, Cheyenne Light and Black Hills Power request a hearing prior to disclosure and the opportunity to defend the confidentiality of the information.

In order to facilitate its ongoing regulatory responsibility, the Commission may retain this confidential information subject to Chapter 2, Section 30(b)(iv).

Dated this 30th day of June, 2021.



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**CERTIFICATE OF SERVICE**

I certify that on this 30<sup>th</sup> day of June, 2021, the foregoing document was filed in the docket and served on the following:

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