

166 FERC ¶ 61,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Cheyenne Light, Fuel and Power Company

Docket Nos. ER19-697-000  
EL19-41-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE FILING,  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND  
INSTITUTING A SECTION 206 PROCEEDING

(Issued February 21, 2019)

1. On December 27, 2018, Cheyenne Light, Fuel and Power Company (Cheyenne Light) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to its Open Access Transmission Tariff (OATT) to change from a stated transmission rate to a formula rate to calculate its annual transmission revenue requirement (ATRR) and associated transmission service rates under its OATT (Proposed Formula Rate). In this order, we accept Cheyenne Light's Proposed Formula Rate and proposed ATRR, suspend them for a nominal period, to be effective January 1, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures. Because Cheyenne Light is proposing an ATRR reduction and a further decrease may be warranted, we also institute an investigation pursuant to section 206 of the FPA<sup>2</sup> in Docket No. EL19-41-000 to determine whether Cheyenne Light's proposed ATRR reduction is just and reasonable, and consolidate the instant proceedings for purposes of hearing and settlement judge procedures.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 16 U.S.C. § 824e.

## **I. Cheyenne Light's Filing**

2. Since 2014, Cheyenne Light has recovered its ATRR under Schedules 7 and 8, and Attachment H of its OATT.<sup>3</sup> Cheyenne Light states that historically its transmission facilities have been used to serve its retail load and to provide service to its affiliate, Black Hills Power, Inc. (Black Hills). However, Cheyenne Light states that it anticipates expanding and potentially transitioning its system to one that is capable of providing increased energy transfer capability to the region it serves.<sup>4</sup> According to Cheyenne Light, converting from stated rates to forward-looking formula rate mechanisms provides transmission owners with the flexibility to adjust their ATRRs based on project costs and other expenses, to more closely align expenditures with collections, and to pursue transmission and energy market opportunities that could provide benefits for their customers.<sup>5</sup>

3. Cheyenne Light's Proposed Formula Rate consists of two components: (1) a formula rate template (Template); and (2) formula rate protocols (Protocols). Cheyenne Light states that the Template is the set of calculations that Cheyenne Light must follow in calculating its ATRR. Cheyenne Light states that the Protocols set forth process-related items, such as the annual update filing timeline, as well as various requirements that Cheyenne Light must meet in annual update informational filings while the Proposed Formula Rate is in effect. Cheyenne Light incorporates the two components of the Proposed Formula Rate in Attachment H of its OATT.

4. Cheyenne Light states that the Template provides for the recovery of a return on rate base, taxes other than income taxes, depreciation and amortization expense, operation and maintenance expense, and administrative and general expense, less any revenue credits. Cheyenne Light proposes to use projected values to populate the Template for each calendar year (Rate Year) in order to calculate the ATRR.<sup>6</sup> Cheyenne Light states that it will use 13-month average balances in the Template for transmission and general plant balances, land held for future use, materials and supplies, and prepayments. Cheyenne Light will use the average of beginning and end year balances for accumulated deferred income taxes. Cheyenne Light states that it is not requesting any incentive rate treatment in its filing. However, Cheyenne Light states that it includes

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<sup>3</sup> See *Cheyenne Light, Fuel and Power Co.*, Docket Nos. ER14-1425-000 and ER14-1425-001 (Apr. 25, 2014) (delegated order); *Cheyenne Light, Fuel and Power Co.*, Docket No. ER14-1981-000 (July 16, 2014) (delegated order).

<sup>4</sup> Cheyenne Light Transmittal at 2; Ex. No. CLP-300 at 6-7.

<sup>5</sup> Cheyenne Light Transmittal at 3; Ex. No. CLP-300 at 7.

<sup>6</sup> Cheyenne Light Transmittal at 5-6.

placeholders in the Template for construction work in progress, unamortized abandoned plant, and incentive return on equity (ROE) adders, whose values will remain set to zero until Cheyenne Light seeks and receives authorization from the Commission for such incentives.<sup>7</sup>

5. Cheyenne Light states that after the end of the Rate Year it will true up the projected values based on Cheyenne Light's actual costs using primarily FERC Form No. 1 data, and any difference between the projected ATRR and actual ATRR, along with interest based on section 35.19a of the Commission's regulations,<sup>8</sup> will be rolled into the formula rate calculation that determines the subsequent year's projected ATRR.<sup>9</sup>

6. Cheyenne Light also proposes revisions to the Table of Contents, section 34, and Schedules 1, 7, and 8 of its OATT to calculate and update the transmission rates for scheduling, system and dispatch service, and point-to-point transmission service based upon the projected ATRR in accordance with the Proposed Formula Rate for a given Rate Year.<sup>10</sup>

7. Cheyenne Light states that the Proposed Formula Rate is modeled on the forward-looking formula rate templates and protocols accepted by the Commission for the Midcontinent Independent System Operator, Inc.'s transmission owners.<sup>11</sup> Cheyenne Light also states that many of the administrative features and the overall substance of its Protocols are modeled on Black Hills' Commission-accepted formula rate protocols.<sup>12</sup>

8. Cheyenne Light states that the Proposed Formula Rate produces a projected ATRR of \$4,543,117 for the 12-month period ending December 31, 2019, which amounts to an approximate 33.7 percent decrease to its current ATRR of \$6,848,030.<sup>13</sup> In addition, Cheyenne Light proposes an ROE of 10.4 percent, which it states is a reduction

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<sup>7</sup> *Id.*

<sup>8</sup> 18 C.F.R. § 35.19a (2018).

<sup>9</sup> Cheyenne Light Transmittal at 5.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.*, Ex. No. CLP-106; *Cheyenne Light, Fuel and Power Co.*, Docket No. ER14-1981-000 (July 16, 2014) (delegated order).

from its current electric transmission ROE of 10.6 percent.<sup>14</sup> Cheyenne Light states that it employs the four model approach referenced under the Commission's guidance on ROE to derive its proposed ROE: (1) the Commission's two-step discounted cash flow model; (2) the capital asset pricing model; (3) the expected earnings approach; and (4) the risk premium method.<sup>15</sup> Cheyenne Light concludes that an ROE of 10.4 percent is consistent with the 10.16 percent and 10.6 percent average median and midpoint values produced by the four financial models considered under the ROE methodology.<sup>16</sup>

9. Cheyenne Light's filing provides testimony explaining that the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act) reduced the federal corporate tax rate from 35 percent to 21 percent, effective January 1, 2018, and how the income tax calculation in the Template accounts for the effect of this change.<sup>17</sup> Cheyenne Light states that its Template includes lines 24a and 26a to reflect the excess deferred income taxes and excess deferred income tax adjustment, respectively, among other changes due to the Tax Cuts and Jobs Act.

10. Finally, Cheyenne Light requests waiver of the Commission's 60-day prior notice requirement for the Proposed Formula Rate to become effective on January 1, 2019.<sup>18</sup> Cheyenne Light asserts that no customer will be harmed by this earlier effective date as the Proposed Formula Rate will result in an immediate rate decrease for 2019, and that the requested effective date is necessary to appropriately apply the mechanics of the Proposed Formula Rate and avoid delaying the implementation of the Proposed Formula Rate until January 1, 2020.<sup>19</sup>

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of Cheyenne Light's filing was published in the *Federal Register*, 84 Fed. Reg. 696 (2019), with interventions and protests due on or before January 17, 2019. None was filed.

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<sup>14</sup> Cheyenne Light Transmittal at 7.

<sup>15</sup> See *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018); *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018).

<sup>16</sup> Cheyenne Light Transmittal, Ex. No. CLP-200 at 21.

<sup>17</sup> Cheyenne Light Transmittal, Ex. No. CLP-100 at 18-19.

<sup>18</sup> See 18 C.F.R. § 35.3(a)(1) (2018).

<sup>19</sup> Cheyenne Light Transmittal at 10.

### III. Discussion

12. Our preliminary analysis indicates that Cheyenne Light's Proposed Formula Rate and proposed ATRR have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.<sup>20</sup> We find that Cheyenne Light's filing raises issues of material fact, including but not limited to the justness and reasonableness of Cheyenne Light's proposed formula rate inputs, including ROE and deferred income taxes, that cannot be resolved based on the record before us and are more appropriately addressed through hearing and settlement judge procedures. Therefore, we will accept Cheyenne Light's Proposed Formula Rate and proposed ATRR for filing, suspend them for a nominal period to be effective January 1, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures, as discussed below.

13. In addition, because Cheyenne Light is proposing a rate reduction to its ATRR, and a further decrease may be warranted, we are instituting an FPA section 206 investigation in Docket No. EL19-41-000 with respect to the justness and reasonableness of Cheyenne Light's proposed ATRR reduction. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. We will establish a refund effective date at the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL19-41-000 is published in the *Federal Register*.

14. In light of the common issues of law and fact presented in Docket Nos. ER19-697-000 and EL19-41-000, we consolidate the two proceedings for purposes of hearing and settlement judge procedures.

15. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within approximately 12 months of the commencement of hearing procedures, or February 29, 2020. Thus, we estimate

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<sup>20</sup> Cheyenne Light's proposed revisions to Schedules 7 and 8 for Daily – Off Peak, Daily – On-Peak, Hourly – Off-Peak, and Hourly – On-Peak appear to reference incorrect lines on Attachment H-1, Projected Attachment H, Page 1. For instance, Schedule 7, line 4 (Daily - Off Peak) references Attachment H-1, Projected Attachment H, Page 1, Line 14 rather than Line 15.

that, absent settlement, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by December 31, 2020.

16. While we are setting this matter for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures are commenced. To aid the participants in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>21</sup> If the participants desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirement which determine judges' availability.<sup>22</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment the case to a presiding judge.

The Commission orders:

(A) Cheyenne Light's Proposed Formula Rate and proposed ATRR are accepted for filing and suspended for a nominal period to become effective January 1, 2019, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held in Docket Nos. ER19-697-000 and EL19-41-000 concerning the justness and reasonableness of Cheyenne Light's Proposed Formula Rate and proposed ATRR, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this

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<sup>21</sup> 18 C.F.R. § 385.603 (2018).

<sup>22</sup> If the participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Any interested person desiring to be heard in Docket No. EL19-41-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), within twenty-one (21) days of the date of issuance of this order.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL19-41-000.

(H) The refund effective date in Docket No. EL19-41-000 established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

(I) Docket Nos. ER19-697-000 and EL19-41-000 are hereby consolidated for purposes of hearing and settlement judge procedures, as discussed in the body of this order.

By the Commission.  
( S E A L )

Kimberly D. Bose,  
Secretary.