

166 FERC ¶ 61,190
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 21, 2019

In Reply Refer To:
Cheyenne Light, Fuel and Power Company
Docket Nos. ER19-654-000
EL18-79-000

Catherine P. McCarthy, Esq.
Bracewell LLP
2001 M Street, NW
Suite 900
Washington, DC 20036

Attention: Catherine P. McCarthy, Esq.

Dear Ms. McCarthy:

1. On December 21, 2018, in Docket No. ER19-654-000, Cheyenne Light, Fuel and Power Company (Cheyenne Light) submitted proposed revisions to its open access transmission tariff (OATT)¹ (December 21 Filing) in response to the Commission's March 15, 2018 tax rate-related order to show cause.² In this order, we accept Cheyenne Light's proposed OATT revisions effective March 21, 2018, as requested, and terminate the proceeding instituted under section 206 of the Federal Power Act (FPA)³ in Docket No. EL18-79-000.

¹ Cheyenne Light, Fuel and Power Company, FERC FPA Electric Tariff, Open Access Transmission Tariff, [Schedule 7, LT/ST Firm PTP Trans Service, 2.0.0](#), [Schedule 8, NF PTP Trans Service, 2.0.0](#), [Attachment H, Annual Trans Rev Req for NITS, 2.0.0](#).

² *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018) (Stated Rate Order to Show Cause).

³ 16 U.S.C. § 824e (2012).

2. On March 15, 2018, the Commission issued several orders to address the effects of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act),⁴ which, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent.⁵ Of relevance here, pursuant to section 206 of the FPA, the Commission issued the Stated Rate Order to Show Cause to public utilities that use stated transmission rates under an open access transmission tariff or transmission owner tariff.

3. In the Stated Rate Order to Show Cause, the Commission stated that the reduced federal corporate income tax rate results in lower income tax expenses for public utilities going forward. The Commission explained that public utilities recover federal corporate income tax expenses in their transmission rates, and that when tax expenses decrease, so does the cost of service.⁶ The Commission continued that it has allowed transmission rates to be established through, among other things, stated rates, which include a fixed income tax component.⁷

4. The Commission identified Cheyenne Light as having stated transmission rates in effect and explained that, absent a change, Cheyenne Light's stated transmission rates may not accurately reflect its cost of service. Accordingly, the Commission found that Cheyenne Light's stated transmission rates appear to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful, and directed Cheyenne Light to either (1) propose revisions to its stated transmission rate under its OATT, or (2) show cause why it should not be required to do so.⁸ The Commission also noted that, under the show cause option, Cheyenne Light may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.⁹

5. On April 30, 2018, Cheyenne Light filed a response (April 30 Response) to the Stated Rate Order to Show Cause stating that it had performed a preliminary review of the stated transmission rates in its OATT and determined that due to several factors, it preferred to make a filing under section 205 of the FPA to respond to the Stated Rate Order to Show Cause, which would allow Cheyenne Light to propose other modifications

⁴ Tax Cuts & Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

⁵ Stated Rate Order to Show Cause, 162 FERC ¶ 61,224.

⁶ *Id.* PP 2-4.

⁷ *Id.* P 3.

⁸ *Id.* P 4.

⁹ *Id.* P 4 n.7.

at the same time. Specifically, Cheyenne Light stated that due to the need to consider the advantages and disadvantages of different rate methodologies (including but not limited to whether to rely on a stated versus formula rate), it committed to filing a transmission rate case under section 205 of the FPA on or before December 28, 2018.¹⁰

6. In an order dated November 15, 2018, the Commission acknowledged that Cheyenne Light submitted a response to the Stated Rate Order to Show Cause and held the section 206 proceeding in abeyance, given Cheyenne Light's commitment to file a transmission rate case with the Commission on or before December 28, 2018, and its justification for why it needed additional time to prepare its filing.¹¹

7. In its December 21 Filing, Cheyenne Light proposes, in response to the Stated Rate Order to Show Cause, revisions to its stated point-to-point transmission rates under Schedules 7 and 8, and to its transmission revenue requirement under Attachment H of its OATT, reflecting the change in the federal corporate income tax rate. Cheyenne Light requests that the Commission accept its proposed revisions with an effective date of March 21, 2018, which is the refund date established in the Stated Rate Order to Show Cause. Cheyenne Light states that it will make the appropriate refunds based on the reduction of its revenue requirement and point-to-point transmission rates to its single OATT customer, Black Hills Power, Inc., within 30 days of an order accepting its filing or as otherwise directed by the Commission.¹² Cheyenne Light also explains that it is separately submitting a rate filing with the Commission pursuant to FPA section 205 in which it proposes to convert its current stated transmission revenue requirement to a forward-looking formula rate. Cheyenne Light states that the new formula rate template will include a populatable field for the current federal corporate income tax rate, which will allow Cheyenne Light to implement the current federal corporate income tax rate.¹³

¹⁰ Cheyenne Light April 30 Response at 1-2.

¹¹ *Cheyenne Light, Fuel and Power Co.*, 165 FERC ¶ 61,099, at P 9 (2018).

¹² Cheyenne Light December 21 Filing at 2.

¹³ *Id.* On December 27, 2018, in Docket No. ER19-697-000, Cheyenne Light submitted its proposed transmission formula rate, consistent with its representations in its April 30 Response and December 21 Filing. By order dated February 21, 2019, the Commission accepted and suspended Cheyenne Light's proposed transmission formula rate, effective January 1, 2019, subject to refund, and established hearing and settlement judge procedures. *Cheyenne Light, Fuel and Power Co.*, 166 FERC ¶ 61,121 (2019).

8. Notice of Cheyenne Light's December 21 Filing was published in the *Federal Register*, 83 Fed. Reg. 67,719 (2018) with interventions and protests due on or before January 11, 2019. None was filed.

9. As described above, in this proceeding Cheyenne Light proposes revisions to its stated transmission rates to reflect the new 21 percent federal corporate income tax rate, which results in rate reductions to customers. Absent a change to Cheyenne Light's stated transmission rates, customers would not receive the benefits of the reduced federal corporate income tax rate, effective March 21, 2018. We therefore accept Cheyenne Light's proposed revisions to its stated transmission rates, effective March 21, 2018, and terminate the FPA section 206 proceeding in Docket No. EL18-79-000. We also direct Cheyenne Light to provide refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a (2018).

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.