BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF CHEYENNE LIGHT, FUEL AND POWER COMPANY d/b/a BLACK HILLS ENERGY FOR A DEFERRED ACCOUNTING ORDER ALLOWING TO RECORD AND PRESERVE COSTS RELATED TO THE COVID-19 PANDEMIC	))))))))	DOCKET NO. 20003-192-EA-20 RECORD NO. 15492

COMMENTS OF THE WYOMING OFFICE OF CONSUMER ADVOCATE

The Wyoming Office of Consumer Advocate ("OCA") is the State of Wyoming's statutorily authorized representative of all utility consumers.[1] The OCA represents the interests of approximately 200,000 Wyoming utility customers in proceedings before state and federal administrative agencies and the courts. The OCA is an active participant in numerous state and federal regulatory proceedings, and represents consumers in many organizations within the larger western interconnect region as well.

The current Covid-19 pandemic is certainly unprecedented. However, instances of economic downturn, decreased demand and increased expenses are not new to utilities or regulators. Addressing them requires a reasoned and thorough approach. It is against this backdrop that the OCA offers the comments that follow in order to ensure that Covid-19 related costs deferred by Cheyenne Light, Fuel and Power Company (CLFP) are, among other things, measurable and well defined.

[1] Wyoming Statutes §37-2-401 and §37-2-402.

The Commission's decision to approve Cheyenne Light, Fuel and Power Company's deferral application on April 16, 2020, did not create a rebuttable presumption that those expenses or lost revenues will be eligible for recovery from customers at some point in the future. As CLFP acknowledged in its deferral application, "the Commission's approval of deferred accounting treatment for Covid-19 related costs will not constitute approval of ultimate recovery of those costs."[2] Therefore, CLFP should not allow the acceptance of this deferral to diminish and distort its incentives to prudently and efficiently manage related expenses. The incurrence of unnecessary costs should still be avoided.

Utilities are regulated monopolies which are granted the opportunity to earn an allowed return by the regulator and enjoy other protections against revenue shortfalls. In contrast, unregulated firms have little choice under the present circumstances but to manage expenses in order to simply survive. Many firms that operate in competitive markets are currently laying off workers, cutting non-essential expenses, delaying payments, and even suspending dividends. There is no ratepayer backstop for companies operating in competitive markets.

Conversely, utilities are regulated monopolies for a reason. If the local electric, gas or water utility cannot generate enough cash to pay its bills, it cannot go out of business as there are no alternatives to which consumers may turn. Putting the utility in the position of operating under extreme financial duress is not good for customers either, since the utility will be forced to cut expenses and investments to a point that may endanger the public health and safety. In addition to potential endangerment of the public health and safety, financial duress

[2] *Application of Cheyenne Light, Fuel and Power Company D/B/A Black Hills Energy for a Deferred Accounting Order Allowing to Record and Preserve Costs Related to the Covid-19 Pandemic* (April 3, 2020), 3.

ultimately leads to an increased cost of capital financing that will be passed on to customers. Still, we want to ensure that utilities do not use the Covid-19 pandemic, as an opportunity to earn profits that they would otherwise be unable to realize under normal circumstances.

In light of the foregoing, the OCA believes that any alleged extraordinary expenses or revenue shortfalls as a result of the Covid-19 pandemic which CLFP seeks recovery for in the future should: 1) be targeted, 2) be specific, 3) be measurable, 4) be auditable, 5) be material, 6) be beyond the utility's control, 7) account for offsetting expense reductions or revenue increases, and 8) be time-limited. The following discussion offers a detailed description of each of these principles.

TARGETED

The initial utility response to the Covid-19 pandemic was a voluntary moratorium on disconnections for non-payment and a waiver of late payment and reconnection fees by most, but perhaps not all, Wyoming utilities. It is unclear whether or not this payment moratorium and fee waiver applies to all customers, to residential customers only, to residential and small commercial customers, or to some other subset of customers. Under current ratemaking practice, average uncollectible accounts expense is typically included in the revenue requirement used to set base rates and then assigned to each respective class based on a cost of service study. To the extent that the moratorium and fee waiver does not apply to all customer classes, it would be unfair to include bad debt expense arising from the Covid-19 pandemic in the rates of customer classes that were not eligible for relief in the first place. Additionally, depending on the magnitude of the deferral, recovery of bad debt expense could later prove to be extremely problematic for certain customer classes. For example, if a utility were to experience large uncollectible account balances attributable to industrial customers, including those deferred amounts in the rates of residential customers at a later date may create an extreme hardship for residential customers. The same is also true for large residential uncollectible balances that are shifted, at least in part, to commercial and industrial customers. Cheyenne Light, Fuel and Power Company's deferrals should be targeted to solve the problem that is actually occurring without unnecessarily or inadvertently causing harm to other ratepayers.

SPECIFIC

The economy is affected by numerous variables that are effectively impossible to analyze independently. While the Covid-19 pandemic will continue to have far-ranging and significant impacts on the economy, it is not the only driver of the current economic downturn. The oil price war of the last few months and continued depressed coal prices, for example, have also contributed negatively to Wyoming's economy. In light of these factors, utilities have an obligation to show that deferred lost revenue and incurred expenses are directly attributable to the impact of the Covid-19 pandemic and associated social distancing measures. Capturing the revenue decline caused by low oil prices, and all other revenue declines without a clear causal relationship with Covid-19 for later recovery from customers may violate the rule against retroactive ratemaking. The OCA urges the Commission to use extreme caution when allowing utilities the opportunity to defer and recover lost revenues of any kind. The concern here is that the concept of deferring lost revenues is extremely general. As a result, lost revenue recovery may not be supported with enough detail by the utilities to demonstrate fairness to customers. This concern is enhanced when a given utility may have received prior authority to implement some form of revenue decoupling.

Cheyenne Light Fuel and Power is unspecific as to what Covid-19 related lost revenue and costs it is seeking to defer and how it will account for those deferrals. As stated in the deferral application, "Cheyenne Light requests deferred accounting treatment with the establishment of a regulatory asset to record and preserve these costs with disposition to be determined at a later date. The regulatory asset would cover **all COVID-19 related costs** [emphasis added], including increased amounts of bad debt and other COVID-19 related lost revenue beginning on March 1, 2020." [3] The Commission should ensure that any deferred costs by CLFP are causally linked to the Covid-19 pandemic.

<u>MEASURABLE</u>

Any costs or revenues allowed by the Commission to be deferred should be measureable and attributable to the Covid-19 pandemic. Any baseline used to calculate deferred amounts should be well defined, in advance, and reflect the actual ongoing level of expense or revenue for a specific account. Additionally, the utility should be required to fully support why the proposed baseline is appropriate for that account.

In its deferral application, Cheyenne Light, Fuel and Power Company did not mention the baseline it will use to compare costs and revenues during the deferral period. As a threshold matter, all utilities seeking approval to defer costs or revenues associated with the Covid-19 pandemic should be required to explain and support how the deferred amounts will be determined. The Commission should direct utilities to preserve all accounting information necessary to evaluate the use of other baselines at the time the utility requests recovery of the deferred amounts, i.e. bad debt expense currently included in rates or average actual bad debt expense over a historic period.

[3] *Application of Cheyenne Light, Fuel and Power Company D/B/A Black Hills Energy for a Deferred Accounting Order Allowing to Record and Preserve Costs Related to the Covid-19 Pandemic* (April 3, 2020), 2.

AUDITABLE

Incorporating many of the principles articulated previously, any cost and revenue deferrals related to the Covid-19 pandemic which may be authorized for recovery by the Commission should be easily accessible for review by the Commission, its staff, and other interested parties. To that end, the Commission should require each utility requesting such authority to provide a deferral implementation handbook, manual, or other documentation, similar to a cost allocation manual, that explains exactly what information and methods will be used to quantify the deferrals and the reporting template to be used in keeping the Commission and other parties apprised of the status of the deferrals.

MATERIAL

Prior to authorizing recovery of any previously authorized deferred amounts, the Commission should determine whether or not the deferred amounts are material to the utility in so far as failure to recover those costs or lost revenues would endanger the continued financial viability of the utility. The OCA does not know whether the costs associated with the Covid-19 pandemic will be either "extraordinary" or of long duration. Whatever additional costs or lost revenues Cheyenne Light, Fuel and Power Company incurs that can be directly attributed to the Covid-19 pandemic will be tempered by the extraordinary efforts undertaken by the federal government to blunt the impact of the pandemic on American individuals and businesses. Many of the customers who currently find themselves temporarily unemployed as a result of the pandemic and associated social distancing directives are otherwise solid customers with a long history of paying their bills on time and in full. With the help of the assistance being provided by the federal government, it is likely that most of these customers will find a way to pay their utility bills even under conditions of temporary financial hardship. CLFP can and should play an important role in reminding consumers that they are currently in a period where disconnection and related fees have been temporarily suspended but required payments have not. Customers should not view the moratorium as a utility payment holiday. Rather, customers should be encouraged to stay current on their utility payments, even if they need some help, so that they are not faced with massive unpaid bills when the moratorium is lifted.

It is worth noting that the Coronavirus Aid, Relief & Economic Security (CARES) Act provides incremental funding for the Low Income Home Energy Assistance Program (LIHEAP). Specifically, CARES provides an additional $900 million[4] in grants to states, territories and tribes to support immediate home energy assistance for low-income households affected by coronavirus.

Regulation provides an opportunity for a utility to recover its prudently incurred expenses and earn a fair return on its investment. It is not a guarantee that the utility will recover every penny of its costs and expenses or that it will earn its authorized return. To that extent, the OCA does not believe that a carrying charge, as requested by Cheyenne Light, Fuel and Power Company in its deferral, is appropriate. In fact, the OCA believes that it is distasteful under the circumstances. Utilities are not typically allowed a carrying charge on bad debt expense. Allowing them to do so now creates an opportunity for utilities to profit on the financial hardships of customers during the Covid-19 pandemic. Should CLFP be required to incur debt related expenses, including interest expense, in order to manage the increased bad debt incurred, they are eligible for recovery through the traditional regulatory process.

[4] *Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020).*

BEYOND THE UTILITY'S CONTROL

Any costs authorized for deferral and recovery by the Commission, in addition to being directly attributable to the Covid-19 pandemic, should be reasonable and clearly beyond the control of the utility, similar to the costs incurred in purchasing wholesale natural gas or electricity on behalf of retail customers. If, for example, Cheyenne Light, Fuel and Power Company incurs non-recurring costs associated with procuring personal protective equipment (PPE) for its workforce those costs should be reasonable and the PPE should be obtained using accepted purchasing practices. In addition, the utility should manage and minimize the cost of responding to the Covid-19 pandemic. For example, once the immediate phase of the crisis has passed, utilities should make every effort to recover unpaid bills and thereby minimize the amounts that would then be eligible to be recovered from the general body of ratepayers.

OFFSETTING EXPENSE REDUCTIONS OR REVENUE INCREASES

In its deferral filing Cheyenne Light, Fuel and Power Company states that "Some of the anticipated extraordinary costs include increased cost of operation due to COVID-19 precautions…"[5] In keeping with the auditing and attribution principles articulated above, the Commission should ensure that CLFP accounts for any cost reductions or revenue increases attributable to the Covid-19 pandemic, in addition to cost increases. For example, we know that the social distancing rules currently in place in Wyoming prohibit utilities from undertaking some routine maintenance and may force utilities to defer certain capital expenditures during the pendency of the outbreak. Reduced operating expenses and inputs may offset lost revenues during this crisis that are associated with reduced energy output. Offsetting cost reductions should be included in the deferral calculation as a matter of fairness

[5] *Application of Cheyenne Light, Fuel and Power*, 2.

to customers.

Moreover, since the CARES Act was passed by Congress, it has subsequently appropriated several trillion dollars in additional relief to aid U.S. citizens and businesses in coping with the impacts of the coronavirus crisis and recovering from it. To the extent that Cheyenne Light, Fuel and Power Company benefits from the allocation of funds, the Commission should require it to fully account for any federal recovery money received when assessing amounts to be deferred and recovered from customers. With all of the federal money circulating throughout the economy, there may be less need for expense deferrals.

Finally, the Commission should also satisfy itself that Cheyenne Light, Fuel and Power Company has adequately accounted for the lag associated with bringing a customer account current, if any. When does an account actually become delinquent and subject to classification as uncollectible? We wish to avoid the circumstance in which a customer account is moved into a regulatory asset as uncollectible and is then subsequently collected leading to double recovery by the utility. That would be unfair to customers. At the same time, we remind CLFP that they have a responsibility to make a good faith attempt to recover arrearages from customers.

TIME-LIMITED

In its application Cheyenne Light, Fuel and Power states that it intends that, "the regulatory asset would cover all COVID-19 related costs, including increased amounts of bad debt and other COVID-19 related lost revenue beginning on March 1, 2020." [6] However, we believe that any deferral authorized by the Commission, in addition to conforming to the metrics identified above, should be limited to the time period in which utilities are actually

[6] Ibid., 2.

impacted by the pandemic, primarily through late or uncollectible payments. At the earliest, expenses incurred before a state of emergency was declared in Wyoming on March 13, 2020, should not be attributed to the Covid-19 pandemic and deferred for amortization. Therefore, the OCA agrees with the Commission's decision to limit deferred costs by CLFP to those incurred after March 13, 2020. When CLFP appears before the Commission to determine when the deferral should be terminated, it should prove a direct causal relationship for any costs deferred after the state of emergency is lifted or social distancing guidelines are eased.

Respectfully submitted this 22nd day of April, 2020,

Ivan H. Williams

Ivan H. Williams, Senior Counsel
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 304
Cheyenne, WY 82002
ivan.williams@wyo.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2020, I served the foregoing *Comments of the Wyoming Office of Consumer advocate* by delivering copies thereof to the following individuals/entities below, via e-mail:

Jana Smoot White
Associate General Counsel
Black Hills Service Company, LLC
P.O. Box 1400
Rapid City, SD 57709
Jana.White@blackhillscorp.com

Jerrad Hammer
Director- Regulatory and Finance
Black Hills Service Company, LLC
P.O. Box 1400
Rapid City, SD 57709
Jerrad.Hammer@blackhillscorp.com

Dran H. Williams