

143 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Cheyenne Light, Fuel and Power Company

Docket No. ER13-1070-000

ORDER AUTHORIZING POWER SALES TRANSACTION

(Issued May 10, 2013)

1. In this order, we authorize Cheyenne Light, Fuel and Power Company's (Cheyenne Light) proposed power sales transaction (proposed Transaction) with Basin Electric Power Corporation (Basin Electric). The Commission finds that the proposed Transaction is a simultaneous exchange transaction that requires Commission authorization. Based on the specific information provided by Cheyenne Light, the Commission finds that the proposed Transaction does not raise the types of open access transmission service concerns that were described in *Puget Sound Energy, Inc.*¹ and thus the Commission authorizes the proposed Transaction.

I. Background

2. Cheyenne Light, a wholly-owned subsidiary of Black Hills Corporation, is a jurisdictional public utility that serves retail electric customers in and around Cheyenne, Wyoming. Cheyenne Light serves its customers using capacity and energy from its own generating facilities supplemented with long-term purchased capacity and energy and short-term purchased energy. Cheyenne Light owns limited transmission facilities, which it uses to interconnect its service area with the transmission system owned and operated by the Western Area Power Administration – Loveland Area Project (Western). Cheyenne Light also has an open access transmission tariff (OATT) on file for its system. Cheyenne Light is affiliated with Black Hills Power, Inc. (Black Hills Power), Black Hills/Colorado Electric Utility Company, L.P. (Black Hills Colorado Electric), and Black Hills Wyoming, L.L.C. (Black Hills Wyoming), each of which also is a subsidiary

¹ *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121, at P 14 (2012) (*Puget Sound Energy*).

of Black Hills Corporation.² Black Hills Power provides transmission service on its transmission system under the joint open access transmission tariff (Joint Tariff) of Black Hills Power, Basin Electric, and Power River Energy Corporation.

3. In addition to the jurisdictional facilities described above, Cheyenne Light owns generating facilities located near Gillette, Wyoming, which are interconnected with the transmission system owned and operated by Black Hills Power. According to Cheyenne Light, these generating facilities are approximately 200 miles from its service territory in Cheyenne, Wyoming. Basin Electric serves load in a service area that is interconnected to the Stegall Substation, which is jointly owned by Black Hills Power, Basin Electric, and Tri-State Generation and Transmission Association.

4. Cheyenne Light and Basin Electric previously engaged in an energy swap transaction with essentially the same terms as the proposed Transaction that expired March 31, 2013. Cheyenne Light states that in the previous energy swap transaction, Cheyenne Light sold and delivered 40 MW of electric capacity and energy from its generating resources to Basin Electric at the Stegall Substation. At the same time, Basin Electric sold and delivered 40 MW of electric capacity and energy from its resources to Cheyenne Light at the Ault Substation, owned by Western.

II. Instant Filing

5. On March 11, 2013, Cheyenne Light filed a request for approval of the proposed Transaction with Basin Electric that it believes bears similar characteristics to a simultaneous exchange transaction as described in *Puget Sound Energy*.

6. Under the proposed Transaction, Cheyenne Light will sell and deliver to Basin Electric 40 MW of capacity and energy at the Stegall Substation, from Cheyenne Light's generating resources located on the transmission system of its affiliate, Black Hills Power. Cheyenne Light has obtained point-to-point transmission service under the Joint Tariff to deliver its energy to the Stegall Substation. Basin Electric will utilize the capacity and energy from Cheyenne Light to serve its customers located in the vicinity of Stegall Substation. During the same hours, Basin Electric will sell 40 MW of capacity and energy to Cheyenne Light at the Ault Substation, owned by Western, from Basin Electric generating resources located on the Basin Electric transmission system. Cheyenne Light proposes to designate the Basin Electric purchase as a network resource

² Black Hills Power serves retail and wholesale electric customers in South Dakota and Montana. Black Hills Colorado Electric serves retail and wholesale electric customers in Colorado. Black Hills Wyoming generates power and sells capacity, energy, and ancillary services at wholesale.

under its OATT. Cheyenne Light will utilize the capacity and energy from Basin Electric to serve its customers located on the Cheyenne Light transmission system, which is interconnected with the Western transmission system.

7. Cheyenne Light will sell capacity and energy to Basin Electric pursuant to Cheyenne Light's market-based rate authority, with the terms and conditions for the proposed Transaction established by the Western System Power Pool (WSPP) Agreement.³ Specifically, Cheyenne Light will charge Basin Electric \$33.50/MWh for on-peak energy and \$23.50/MWh for off-peak energy delivered in the proposed Transaction. Basin Electric will charge Cheyenne Light \$36/MWh for on-peak energy and \$26/MWh for off-peak energy. The delivery periods for each party's deliveries to the other will overlap.

8. Cheyenne Light states that it is unclear whether the proposed Transaction is a simultaneous exchange transaction requiring prior Commission approval. Cheyenne Light is seeking Commission approval of the proposed Transaction "out of an abundance of caution."⁴

9. Cheyenne Light requests expedited action on the proposed Transaction by March 26, 2013, so service can commence on April 1, 2013. The term of the proposed Transaction will expire on September 30, 2014.

III. Notice of Filing

10. Notice of Cheyenne Light's filing was published in the *Federal Register*, 78 Fed. Reg. 16,848 (2013), with interventions and protests due on or before April 1, 2013. No comments or protests were filed.

IV. Discussion

11. As discussed below, the Commission finds Cheyenne Light's proposed Transaction to be just and reasonable and not unduly discriminatory. We will therefore authorize the proposed Transaction. In doing so, the Commission finds that the proposed Transaction is a simultaneous exchange transaction as defined by *Puget Sound Energy*, and is the type of simultaneous exchange transaction that requires prior Commission authorization.

³ Cheyenne Light and Basin Electric are members of the WSPP and utilize the standard form WSPP Agreement to establish the terms and conditions for power sales transactions. The WSPP Agreement is on file with the Commission.

⁴ Cheyenne Light Transmittal Letter at 1.

12. In *Puget Sound Energy*, the Commission defined a simultaneous exchange transaction as follows:

Simultaneous exchanges occur when a pair of simultaneously arranged (i.e., part of the same negotiations) wholesale power transactions between the sale counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.⁵

Under the proposed Transaction, Cheyenne Light proposes to provide capacity and associated energy to Basin Electric at the Stegall Substation utilizing transmission service of Black Hills Power, Cheyenne Light's affiliate, while receiving the same amount of capacity and associated energy from Basin Electric's resource located outside Cheyenne Light's transmission system. Such power sales occur during overlapping delivery periods. Based on these facts, the Commission finds that Cheyenne Light's proposed Transaction involves a simultaneously arranged power sale transaction between the same counterparties that falls within the definition of a simultaneous exchange transaction.

13. As further explained in *Puget Sound Energy*, a simultaneous exchange transaction requires the Commission's prior authorization when it involves the marketing function of a transmission provider and its affiliated transmission provider's transmission system.⁶ Specifically, the Commission held that "we will not permit the marketing function of a transmission provider to engage in simultaneous exchanges involving that transmission provider's system absent prior Commission authorization as evaluated on a case-by-case basis."⁷

14. As part of the proposed Transaction, Cheyenne Light is selling energy and capacity for resale, thus engaging in marketing function activities, and "marketing

⁵ *Puget Sound Energy*, 138 FERC ¶ 61,121 at P 12.

⁶ *Id.* P 11.

⁷ *Id.* P 14.

function” is defined to include public utilities and affiliates making sales for resale.⁸ Under the proposed Transaction, Cheyenne Light is a marketing function of Black Hills Power when using Black Hills Power’s transmission system to make sales for resale of electric energy and capacity.⁹ As the proposed Transaction involves the marketing function (Cheyenne Light) of a public utility transmission provider (Black Hills Power) and involves a marketing function’s sale of capacity and energy utilizing its affiliated transmission provider’s system, the Commission finds that the proposed Transaction requires prior Commission authorization.

15. In *Puget Sound Energy*, the Commission identified information that applicants seeking approval of simultaneous exchange transactions should provide to support their applications.¹⁰ We find that Cheyenne Light has provided sufficient information regarding the proposed Transaction to allow the Commission to fully evaluate the proposed Transaction. Specifically, Cheyenne Light describes: the parties participating in the proposed Transaction; the locations of the simultaneous exchange; the terms, conditions, and financial charges associated with the proposed Transaction; the sources and sinks of power; and alternative options for transmitting power.

⁸ Marketing function is defined as, “in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) in their POLR capacity.” 18 C.F.R. § 358.3 (2012).

⁹ 18 C.F.R. § 358.1(b) (2012).

¹⁰ For instance, the Commission stated that:

[I]n such a filing, Puget could (1) identify all the parties to the transaction, (2) specify the delivery and receipt points involved, (3) describe the terms and conditions, including any charges or compensation, (4) provide details of ultimate power sources and sinks, (5) identify available competitive alternatives (accounting for physical constraints or whether transmission service for a related transaction has previously been denied), (6) describe the operational implications, including any potential reliability and curtailment issues; (7) provide the power levels of the exchange, and (8) specify the desired dates and times for the exchange. 138 FERC ¶ 61,121 at P 19.

16. The Commission's primary concern in *Puget Sound Energy* was that a simultaneous exchange transaction may be utilized to circumvent Commission open access regulations by enabling a marketing function of a transmission provider to provide what is, in essence, transmission service, without a reservation for service on the system. However, the details of the proposed Transaction diminish those types of concerns. Specifically, the proposed Transaction does not appear to involve the implicit provision of transmission service between the two points of delivery in the simultaneous exchange transaction (i.e., between the Ault and Stegall Substations) without a reservation for such service. In particular, both parties own the physical resources involved in the proposed Transaction and these resources are electrically close to the physical loads receiving electricity under the Transaction. Furthermore, Cheyenne Light explains that it will maintain firm transmission on the Black Hills transmission system for the delivery of energy to Basin at the Stegall Substation. Thus, the proposed Transaction is beneficial to both parties by allowing them to serve their respective loads more reliably, without increasing transmission flows across a constraint.

17. Accordingly, we find Cheyenne Light's proposed Transaction to be just and reasonable and not unduly discriminatory. Therefore, we will authorize the proposed Transaction effective as of the date of issuance of this order.

The Commission orders:

(A) Cheyenne Light's proposed Transaction is a simultaneous exchange transaction as defined by *Puget Sound Energy*, and is the type of simultaneous exchange transaction that requires prior Commission authorization.

(B) Cheyenne Light's proposed Transaction is hereby authorized effective as of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.