

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE PROPOSED)
REVISION OF §§ 241 AND 504 OF THE)
COMMISSION’S PROCEDURAL RULES)
AND SPECIAL REGULATIONS)
REGARDING THE PAYMENT OF) Docket No. 90000-XR-03-90
INTEREST ON CUSTOMER DEPOSITS) Record No. 8712
HELD BY GAS, ELECTRIC, WATER, AND)
TELEPHONE UTILITIES IN THE STATE)
OF WYOMING)

**COMMENTS OF THE ADMINISTRATOR OF THE
OFFICE OF CONSUMER ADVOCATE**

(Filed: August 22, 2005)

Pursuant to the Commission’s request, I Bryce J. Freeman, the Administrator of the Office of Consumer Advocate (OCA), hereby provide comments and recommendations regarding the proposed amendment of Sections 241 and 504 of the Commission’s Procedural Rules and Special Regulations dated June 22, 2005.

Section 241(a) (see also corresponding Section 504(f)(i)(D) and (E))

I recommend eliminating the proposed rule Section 241(a)(iv) and (v). These proposed provisions state:

- (iv) The applicant is applying for service for the first time with that utility;*
- (v) The applicant did not have service with the utility for a period of at least twelve consecutive months during the last four years;¹*

I recommend instead that the functions of these two criteria be served by a single criterion, which states:

¹ See OCA Exhibit 1, Page 1, Lines 35 through 39 and OCA Exhibit 2, Page 1, Lines 36 through 39.

*The applicant does not pass a reasonable and objective credit screen;*²

Allowing a solitary criterion to permit utilities to require security deposits from applicants or customers, such as in Section 241(a)(iv)³ merely because the customer is applying for service from that utility for the first time is *not* rationally related to a legitimate business purpose, and is contrary to the public interest. This language would allow a utility to procure deposits from every customer that has not had a previous business relationship with the utility regardless of a would-be customer's credit worthiness. The Commission proposed language does not institute a uniform, reasonable credit assessment to determine whether a deposit is required.

Although every new applicant *could be* required to make a security deposit, which is a *seemingly* consistent mechanism by which a utility *can* require a security deposit, the language does *not* dictate that the utility *must* require a deposit from every new applicant. The language states that, the utility *may* require a security deposit from a customer that is applying for service for the first time with that utility. However, in the case of a particular applicant, a utility *may not* require a security deposit from a customer applying for service with that utility for the first time. Thus, a *potential* for *inconsistent application* of the rule is created because there is no mechanism for consistent assessment of the would-be customer. The Commission proposed language does not require that the assessment of the new applicant be conducted in a uniform and consistent manner. The OCA proposed language provides basic and fair consistency of application without barring a utility from exercising its own good judgment based on an applicant or customer's credit screening results.

In addition, I recommend eliminating the criterion in Section 241(a)(v).⁴ The statement that the applicant did not have service with the utility for at least twelve consecutive months during the last four years is simply a variant of the proposed criterion that the applicant is applying for service for the first time and is unnecessary

² See OCA Exhibit 1, Page 1, Lines 41 and 42 and OCA Exhibit 2, Page 1, Lines 41 and 42.

³ See also Section 504(f)(i)(D)

⁴ See also Section 504(f)(i)(E)

and, again, contrary to the public interest because the language allows for the potential of an inconsistent or unreasonable assessment.

My recommendation to include the standard that the utility must conduct a *reasonable* and *objective* credit screen allows the utility flexibility in the methodology under which it conducts an assessment of the need to collect a security deposit from a prospective applicant or customer, while exercising a reasonable business judgment. The OCA proposed language also ensures that the utility *is required* to conduct an assessment of a new applicant that is reasonable, unbiased, undistorted, rational, and appropriate if none of the other criteria in Sections 241(a) or 504(f)(i) apply. The OCA proposed language protects the current ratepayers, the utility, and potential customers and allows the utility due consideration of the applicant or customer's rate class, the potential risk of nonpayment, and other objective credit screening information. By eliminating Sections 241(a)(iv) and (v) (and Sections 504(f)(i)(D) and (E)) in the Commission proposed rules, and replacing those sections with the OCA recommended language ("*The applicant does not pass a reasonable and objective credit screen*") the utility would be allowed to assert a *certain* amount of flexibility, but would still be obligated to conduct a reasonable and objective credit screen in a uniform manner for similar customers and ensures that the applicant or customer is protected from an action *unrelated* to creditworthiness such as would be allowed by the Commission proposed language, which *could be* applied by a utility inconsistently.

The Commission Rules should balance the public interest as well as the interest of the utility. In doing so, the Commission should ensure that the utility is required to *make a determination* of the need to collect a security deposit from an applicant or customer based on uniform, reasonable and objective criteria. This protects the interest of the utility as well as the consumer because the utility is not able to collect a deposit from every customer regardless of credit status (which protects the customer), yet the utility is allowed flexibility in the mechanics of a credit screen that will allow it to properly assess the risk the customer poses to the utility (which protects the utility as well as its current ratepayers).

Section 241(c) (see also corresponding Section 504(f)(iii))

In its previous comments in this docket, the OCA outlined its concerns and recommendations regarding the interest rate that utilities are required to pay to customers for holding customer security deposits. The OCA recommended that a utility's avoided cost (each utility's weighted average cost of capital) be adopted as the most appropriate interest rate a utility should be required to pay on customer security deposits. I continue to believe that a utility's avoided cost is the appropriate cost that the utility evades when it is able to use funds provided by customer security deposits, rather than securing other funding for the operation of the utility by issuing debt or equity, procuring a loan, or drawing on a line of credit. The OCA also identified in its past testimony that there is a significant difference between an average Wyoming utility's weighted average cost of capital and allowing a utility to obtain low-cost financing at low short-term interest rates by acquiring deposits from customers. In addition to the significant difference between the costs, allowing the procurement of long-term liabilities at a low short-term interest rate creates an undesirable incentive for the utility to secure as many low-cost deposits from customers as possible. The use of a low short-term rate is mismatched with the highly consistent amount and long-term holding period of the aggregate deposits included on Wyoming utilities' balance sheets.⁵ In addition, the low short-term rate poses a mismatch between the amount of interest a customer earns on that deposit and the value of the customer's next highest alternative, or opportunity cost.

In its previous comments and testimony in this docket, the OCA recommended an alternative to each utility's avoided cost, or weighted average cost of capital, due to the cumbersome nature of annually assessing each utility's current weighted average cost of capital. This alternative was the 12-month average of the long-term 10-year U.S. Treasury Constant Maturity Rate. Although this rate is not, from a financial perspective, the optimal rate (as is each utility's avoided cost) that a utility could be

⁵ In its previous testimony in this docket, the OCA presented data that illustrated that most of Wyoming utilities maintain a noticeably consistent amount of customer deposits year-over-year. The data demonstrated that customer deposits are a consistent percentage of liabilities on the utility's balance sheet. The consistent amount of customer deposits held by Wyoming utilities demonstrates that utilities are continually able to utilize customer cash for the operation of the utility and, therefore, the deposits are long-term liabilities.

required to pay on customer security deposits, the 10-year rate more closely reflects the long-term nature of the consistent aggregate amount of customer deposits typically held by a Wyoming utility and is easily ascertained.

The current proposed Commission Rules, utilizing the average of (1) the computed 12-month average of the 1-year U.S. Treasury Constant Maturity Rate and (2) the September 30th prime interest rate does not recognize each utility's avoided cost of procuring long-term debt. However, the inclusion of the prime interest rate does recognize that there is a cost above the short-term risk free rate of the 1-year U.S. Treasury rate that the utility would incur to procure funds for operation if not for the effectively long-term access to customer deposit funds.

The OCA recognizes the inclusion of the prime interest rate in the annual interest on deposit calculation as a reasonable compromise between the utility's cost of procuring long term financing (or the 10-year U.S. Treasury Constant Maturity Rate) and the risk-free rate of the short-term U.S. Treasury. In addition, the proposed Commission annual interest rate calculation recognizes a *portion* of the customer's opportunity costs and serves to *aid* in discouraging unnecessary procurement of deposits from customers, which is in the public interest. Therefore, I support the Commission proposed calculated interest rate on deposits for those proposed rules issued June 22, 2005.

I also reiterating a prior OCA recommendation in this docket that includes the language "*The interest rate computed on each deposit will reflect the Commission assigned interest rate that is in effect in each respective month that the deposit is held*" in the Commission proposed rule Sections 241(c) and 504(f)(iii) of the proposed rules.⁶ It is important that the proposed rules include language that requires that the appropriate interest rate computed on customer deposits coincide with the appropriate Commission approved interest rate in effect during each month that the deposit is held. For example, suppose that the interest rate that is in effect for the year 2005 is 3% and the interest rate that is in effect for the year 2006 is 4%. If a customer is required to make a deposit for utility services in August 2005 and

⁶ See OCA Exhibit 1, Page 2, Lines 35 through 37, and OCA Exhibit 2, Page 2, Lines 32 through 34.

that deposit is returned to the customer in August 2006 (the deposit would be computed through July 2006, or 12 months), the appropriate interest rate computed on that deposit should be the interest rate that was in effect from August 2005 through December 2005, which is 3%, and from January 2006 through July 2006, it is 4%.

If this timing issue is not clarified in the rules, utilities may pay the interest rate on the deposit that is in effect either at the time that the interest payment is calculated and return to the customer *or* the interest rate at the time the deposit was made. Using the interest rates from the example above, the interest payment could be \$4 on a \$100 deposit if it is computed based on the interest rate at the time the interest payment and deposit is return to the customer (the interest rate in effect as of July 2006, 4%) *or* the interest payment could be \$3 on a \$100 deposit if it is computed based on the interest rate at the time the deposit was made (August 2005, 3%). If the OCA recommended language that clarifies that the rate computed on each deposit will reflect the Commission assigned interest rate that is in effect in the respective month that the deposit is held is inserted into the proposed rules, the interest payment calculation on the \$100 deposit held from August 2005 through July 2006 would be \$3.58. This could be quite significant for a large commercial customer required to make a substantial deposit.

The Commission's proposed rule should reflect that the appropriate interest rate in effect in each month that the deposit is held and the appropriate interest rate that should be used to compute the simple interest on deposits in the respective month. Otherwise, a utility has the discretion of choosing which interest rate it will use in its interest rate calculation. Including this language in the proposed rules ensures that there is *certainty* in the interest rate that applies to the deposits held by the utility in each respective month that deposits are held. This protects the utility as well as the customer. This *certainty* also solidifies the intent of the Commission Rule and minimizes the potential for disputes regarding this issue.

Other Recommendations

In addition to the changes noted above, the OCA has also included several other revisions to the proposed rules intended to clarify the rules and improve the format. These suggestions are illustrated on OCA Exhibits 1 and 2.

In one such revision, I recommend that the Commission eliminate language in the beginning of Sections 241 and 504 that states that a utility may refuse service to a customer or applicant or terminate service to a customer upon failure of the applicant or customer to *comply* with the rules.⁷ The OCA has inserted alternative language intended to clarify the rule. The rules do not require customers to *comply*, rather the rules govern the circumstances under which *a utility* may require or deposit and what action *a utility* may take if a customer fails to provide a security deposit.

In addition, I recommend that in the proposed Section 241(a)(vii) and Section 504(f)(i)(E) the language address *current* as well as former customers to address the situation where a roommate becomes delinquent, but has not yet had service terminated and another roommate attempts to change service into his name to avoid the disconnection.⁸ The point of the OCA recommendation is that the delinquent customer is not necessarily a "former" customer at the time when an attempt to change service to a different applicant or customer's name, may be made. The inclusion of the language protects a utility and its current ratepayers from a potential loophole in the rule.

⁷ See OCA Exhibit 1, Page 1, Lines 8 through 11, and OCA Exhibit 2, Page 1, Lines 9 through 12.

⁸ See OCA Exhibit 1, Page 1, Lines 44 through 46, and OCA Exhibit 2, Page 1, Lines 44 through 46.

Conclusion

I urge you to incorporate these recommendations into the final rules that conclude this docket in order to promote the public interest by ensuring that proper incentives are established and that the interest of customers and the utilities are balanced in the rules. In the meantime, I and the OCA staff would be pleased to answer any questions that the Commission or the Commission Technical Staff may have regarding our suggestions and comments.

Respectfully Submitted,

A handwritten signature in black ink on a light gray background. The signature reads "Bryce J. Freeman" in a cursive script.

Bryce J. Freeman, Administrator
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