

**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**

In the Matter of the Proposed Revision of )  
§§ 249 and 250 of the Commission’s )  
Procedural Rules and Special Regulations )

**SECOND SET OF COMMENTS OF THE  
WYOMING OFFICE OF CONSUMER ADVOCATE**  
(Filed April 18, 2005)

The Wyoming Public Service Commission (Commission) has stated its intention to modify §§ 249 and 250 of its Procedural Rules and Regulations. In anticipation of a formal rulemaking proceeding, and at the Commission’s invitation to interested parties, the Wyoming Office of Consumer Advocate (OCA) filed its initial comments and proposed language on January 27, 2005. On March 28, 2005, the Commission informally issued draft Rules 249 and 250, and invited interested parties to comment on its draft proposal. The OCA again appreciates the opportunity to provide input to the Commission while the rule revisions are being formulated prior to formal proceedings. Our specific suggested modifications to the most recent Commission draft of Rules 249 and 250 are attached to these comments and are also cited within each explanatory section. The comments themselves contain the underlying rationale regarding our suggested revisions.

Section 249

Section 249. Electric, Gas and Water Public Utility ~~Wholesale Commodity Purchase~~ Pass On Procedure. Pursuant to W.S. § 37-3-106 and the rate filing requirements of this Chapter, a public utility may file an application to pass on to its utility customers in rates, known commodity or commodity related cost increases or decreases. A public utility shall file an application to pass on projected or estimated commodity related cost increases or decreases under this section only if it has in place tariffs that comply with Section 250.

The OCA is suggesting minor wording changes to the title of this section, in order to more properly represent what the rule proposes to allow as part of the pass-on mechanism. The rules, as proposed, address much more than “Wholesale Commodity Purchases,” and the section title should more aptly describe the proposed rule changes.

As we noted in our initial comments, we are very pleased that the suggested rules continue to make a specific reference to the requirements of W.S. § 37-3-106. This is an important reminder to the utilities that they continue to bear the burden of proof in each pass-on case. This is particularly important as the Commission continues to use the *notice and order* process, as we described in our initial comments filed January 27, 2005.

Finally, we want to assure that our reading of the proposed rule is correct relative to when a Commodity Balancing Account is required and when it is not. The rule appears to differentiate between “known” and “estimated” cost increases. With this difference, it appears that when a Generation and Transmission Cooperative announces a definitive rate change to its member distribution cooperatives, the distribution cooperatives will be able to pass-on this rate change without an accompanying balancing account. This is different and distinct from the “estimates” used by natural gas utilities who project what the market prices will be for an upcoming period and pass-on that estimated price . It is also different and distinct from the instances in which PacifiCorp attempted to pass-on modeled, projected costs rather than actual, historic expenditures. Both the natural gas and PacifiCorp examples would require Commodity Balancing Accounts under our reading of the proposed rule. If this is not correct, we would appreciate a clarification of the rule proposal and the distinction that the Commission is seeking to - make. Furthermore, it may also be necessary to clarify if both companies using known and companies using projected costs will be able to use projected volumes in their pass-on applications, or whether the company using known costs must also use known (i.e., historic) volumes when determining the per unit change in cost to be billed to customers.

#### Section 249(a)(1)

- (a) Pass on applications for public utilities subject to an explicit Commission authorized rate of return may be authorized, subject to public

notice, opportunity for hearing and refund, if the evidence of record shows:

(1) That allowing the recovery of the costs would be in the public interest and the pass on is for prudently incurred wholesale utility commodity cost increases or decreases not under this Commission's jurisdiction or other commodity related costs explicitly requested and supported by the public utility and deemed appropriate by the Commission such as interstate or intrastate transmission or transportation costs, storage costs, fuel costs, hedging costs, or other commodity-related costs. ~~authorized by appropriate regulatory agencies or courts.~~

The OCA is proposing minor wording changes to this section in order to allow the Commission the proper flexibility regarding the items to be included in pass-on rates. It appears that the proposed wording wants to leave the impression that the type of commodity-related charges that may be included, but are not listed, must be narrowly defined 'mandated' charges. However, this is inconsistent with the remainder of the rule language which includes a wide variety of items, including several that are within the utility's control or discretion, and some that are subject to contract negotiations rather than filed tariffs with regulatory oversight.

As we have previously expressed to the Commission, it is important for the Commission to keep as much discretion as necessary to assure that the pass-on provisions of rates result in just and reasonable rates, and that these provisions do not provide improper incentives to the utilities. Repeating the PacifiCorp example included in our initial comments, if purchased power costs are allowed but fuel costs related to self-generation are not, there could be disincentives to run company-owned generation plants. Even if the production costs of self-generation were less expensive than the costs of purchasing power, the decision could be swayed by the ease of recovery of one set of costs versus another. Disincentives of this nature should be avoided as much as possible.

In looking at this from another direction, we are also troubled by the words "other...authorized by appropriate regulatory agencies or courts." The word *other* implies that list of commodity-related items, such as fuel and transportation and hedging, are costs authorized by these other governmental entities, and that these unspecified costs

are just more of the same. The problem is that many of the listed costs are not subject to any regulatory or governmental oversight, and it is important that any impressions to the contrary be eliminated.

Section 249(a)(2)

(2) That the pass on will not increase the public utility's rate of return and its normalized rate of return on equity for its Wyoming regulated operations is at or below that last authorized by the Commission. If the public utility is exceeding its authorized rate of return on equity, the Commission may, upon proper notice, modify the public utility's request in order to eliminate the amount by which earnings exceed the previously authorized return on equity, may initiate a rate investigation on its own motion to have the public utility show why its base rates should not be adjusted, or may take any other duly authorized regulatory action to assure that rates and earnings remain just and reasonable.

- (i) A pass on application filed under this section shall include documentation showing the public utility's normalized, Wyoming regulated annual earnings, and rate of return, return on rate base, and return on equity, comparing the rate of return and return on equity to that last authorized by the Commission.
- (ii) Such documentation shall be filed with each pass-on application, but no more frequently than annually. at least annually with a pass on filing. ~~The amount of detail and supporting documentation included shall be described in the public utility's tariff approved by the Commission. The appropriate form and level of detail of the required supporting documentation shall be determined by the Commission, on a case-by-case basis, in consideration of the public utility's size, complexity, nature of operations, corporate structure, and other relevant factors.~~ The public utility shall be responsible for providing accurate, reliable, and supportable documentation that accurately portrays its earnings.

This provision of the pass-on rules is particularly important and the OCA is suggesting several wording additions and changes to the Commission's draft language. This importance exists whether a utility is passing-on commodity and commodity related costs with or without a Commodity Balancing Account. While some have tried to argue that the financial showing loses its importance if there is a cost tracking and true up

mechanism, the OCA disagrees. The tracking and true up mechanism only provides comfort regarding the comparison of *actual* versus *projected* costs and revenues. It does nothing to assure that the utility is not earning at excessive or unreasonable levels.

One of the more simple changes we suggest is that the rule specify that the earnings to be presented are for Wyoming regulated operations. Many of Wyoming's utilities have multistate operations and many are engaged in businesses not subject to the Commission's jurisdiction. In this context, the Commission's focus on earnings and returns is a narrow one, looking only at Wyoming public utility operations. Yet, in the past, some of the financial statements and annual reports received by these same companies have not reported in a manner where the Commission is able to ascertain the results of only those operations for which it has oversight responsibilities. Thus, we suggest adding the phrase "for its Wyoming regulated operations."

The OCA's next suggestion is likely to be much more controversial. The Commission's proposed rules use the phrase "rate of return" without any specificity as to whether that is rate of return on investment or rate of return on equity. This leaves the rules in an ambiguous position and subject to a great deal of continuing argument, where none need exist. The OCA very strongly believes that the appropriate earnings measurement in the context of the pass-on should be return on equity.

While the OCA has a difficult time understanding how the earnings test could be measured on anything other than return on equity for most investor owned utilities, companies occasionally offer a different point of view, suggesting that return on rate base (or investment) is the more appropriate measurement. Given the disagreement on this point, it is important that the Commission utilize this rulemaking opportunity to provide clarity to the issue. In doing so, we strongly urge the Commission to consider the clear and commonly used meaning of the terms "return" and "earnings", as those meanings arise within the accounting and financial communities.

It is common that the word *earnings* – a word that is used in the proposed rule – refers to *earnings per share*. Earnings per share is the income that is available to shareholders – that is the revenue that is left after expenses, including interest, have been paid. Since interest has already been paid from earnings, the amount left is available to equity shareholders. Hence, the term earnings equates to the return on equity. This is also consistent with the definition of earnings found in the Fifth Edition of Black’s Law Dictionary:

**Earnings and profits.** A tax concept peculiar to corporate taxpayers which measures economic capacity to make a distribution to shareholders that is not a return of capital. Such a distribution will result in dividend income to the shareholders to the extent of the corporation’s current and accumulated earnings and profits.

When a corporation discusses *earnings* (such as releasing its latest earnings report to investment analysts), it is also generally referring to *earnings per share*.

It is also common to see the word earnings defined as *net income*. This is more of an accounting term that refers to the profit of the corporation that remains after all expenses have been paid – including expenditures related to debt. So again, it comes back to being return available to equity investors, rather than debt holders – or return on equity. This should all lead the Commission to a clear meaning of return and earnings as relating to return on equity. Thus, when the Commission in its proposed rule requires a public utility to provide documentation “showing the public utility’s normalized, annual earnings” and requires a comparison of “the rate of return to that last authorized by the Commission” it should be indisputable that the utility is asked to provide its return on equity. Yet, given the disputes that have previously arisen, we ask for more clarity in the language of the rule itself, and propose some language to assist in this regard. We also refer the Commission, its technical staff, and other interested parties to the OCA’s initial comments on the draft rules, wherein we explain why a return on equity must be considered a cap and is the proper test to use when measuring the reasonableness of a public utility’s earnings. We refer to this section of our earlier comments, rather than repeating them here, but continue to support and incorporate our earlier reasoning in this matter.

The Commission should also not limit its options regarding addressing any apparent over earnings in the context of a pass-on application, as it does in its proposed rules. The Commission should also not consider a rule that is more beneficial to the utilities, to the detriment of customers, such as that contained in its latest draft issued for comment. The Commission's current rule allows it to reduce the pass-on by the amount of over earnings. This is an *efficient and timely* way to allow expedited rate treatment of changes in a narrowly defined set of costs while still assuring that customers do not pay rates allowing excessive returns to utilities' shareholders. The Commission's draft rule does not contain this same option, and it should. The OCA's suggested language adds back the current option to the rule, while keeping the alternative action proposed by the Commission of opening an investigation into the utility's base rates.

It is possible that there could also be other solutions in addition to the two specifically listed, and the OCA's recommended language would allow the Commission the discretion to consider these other alternatives. For example, we remember a number of years ago when it appeared that a public utility was over earning and, instead of entering into a show cause and rate reduction, the utility committed to certain system improvements and investments. In another example, it might be that a utility agrees to enter into an investigation of the on-going appropriateness of its rates (i.e., a proceeding to determine whether it is over earning) but in order to buy time to fully prepare for such an investigation, the utility would agree to a reduction in its pass-on rates on a temporary basis to avoid continued arguments about its earnings in multiple proceedings. We also recall several proceedings in which a utility has agreed, *for practical reasons*, to eliminate a portion of its proposed pass on increase as a way of satisfying the concerns of an intervening party because the amount of the debated excess earnings was quite small and less than the cost of litigating the matter. It would be a shame for the Commission to eliminate an administratively efficient and cost effective alternative that has been a valuable tool in overseeing the reasonableness of earnings. It would also be a regulatory step backward if the only way that the Commission left itself to address real reported over earnings were to **allow rates to increase on an expedited basis** (on 30 days or less

notice) while taking months or years to determine if the company's overall rates and profit should be reduced. All of these are appropriate, but different, ways to handle the same responsibility of assuring that rates and earnings remain just and reasonable. We discourage the Commission from limiting itself to only one of these solutions.

We also wish to head off the erroneous notion that it would be illegal for the Commission to eliminate the over earning dollar amount from the requested pass-on. The pass-on is not a mandate of law. Instead it is another form of ratemaking that is permitted under the Commission's general authority. As such, the Commission has the ability to include reasonableness checks and oversight features. The Commission would actually be remiss in its duties if it gave a *carte blanche* to increasing rates in the form of an expedited single issue rate case without some check on whether that process resulted in overall *just and reasonable rates*. Furthermore, in prior challenges to cases where the Commission did reduce rates to eliminate over earnings, the court upheld the Commission's right to do so as long a proper notice was given. Prior court decisions on this topic reflected the Commission's failure to give proper notice and related to the Commission's attempt to reduce **base rates** within the context of a pass on case without proper notice. The court has not overturned the Commission's ability to reduce the pass-on rate to reflect over earnings. In fact, the existing rules, which allow such a procedure, have been properly formulated, thus having the same legal effect as would a statute enacted by the legislature. It is nonsense for someone to say that the option of reducing the pass on is outside of the Commission's authority.

The OCA also suggests some changes to the proposed frequency with which utilities must make their financial showing. The draft rules indicate that the documentation should be filed at least annually. However, there are a number of utilities who do not file a pass-on application each year. Some of the electric cooperatives only file pass on applications when its supplier changes its rates, which is not generally annually. Some of the water companies only file pass-on applications when their wholesale water suppliers changes their rates, and that is not necessarily done annually. The OCA's suggested revisions acknowledge and address these situations.

Finally, the OCA recommends that there is no need to describe the details of the financial filing to accompany the pass-on application in a utility's tariffs. Again, we see this solution as too limiting, in that a tariff description may not adequately accommodate changed circumstances. Additionally, we don't see the need for such a description, as most of the utilities are currently providing the appropriate type of financial information. But, most importantly, we are concerned that such a description may stilt the discussions that have freely gone on between the utilities and interested parties when parties have requested additional information or explanation. We are concerned that utilities may argue that if they have provided the type of information described in their tariff, they have met their obligation under the rules, leaving interested parties -- who may have otherwise been able to informally discuss a concern or misunderstanding -- the sole option of intervening, doing formal discovery, and perhaps even asking for hearing. The OCA would prefer that the Commission and its staff have the discretion of determining the appropriateness of the financials for each company on a case-by-case basis, knowing that most of the utilities are already used to providing the required and necessary information under the current rules.

Section 249(b)(1)

(b) Public utilities not subject to an explicit Commission authorized rate of return shall submit documentation showing its recent level of normalized annual earnings for its Wyoming regulated operations compared to the financial parameters established by the Commission as a measure of the public utility's earnings. Pass on applications for these public utilities may be authorized, subject to public notice, opportunity for hearing and refund, if the evidence of record shows:

(1) That allowing the recovery of the costs would be in the public interest and the pass on is for prudently incurred wholesale utility commodity cost increases or decreases not under this Commission's jurisdiction or other commodity related costs explicitly requested and supported by the public utility and deemed appropriate by the Commission such as interstate or intrastate transmission or transportation costs, storage costs, fuel costs, hedging costs, or other commodity-related costs. ~~authorized by appropriate regulatory courts or agencies.~~

As explained above in the discussion about utilities subject to authorized rates of return, it is important that Companies that do not have authorized rates of return report their earnings in terms of whatever financial parameter has been used to establish and measure the reasonableness of their rates. Thus, the same reasoning used above for measuring earnings applies, even though a parameter such as times interest earned ratio, debt service coverage, operating ratio, or other may have been used in lieu of a return on equity. The Commission still has the responsibility to assure that rates are reasonable, and this is a reasonable way to do so. Just as with the investor owned utilities discussed above, some of the utilities without an authorized return (cooperatives and water companies primarily) have multiple businesses that are not subject to Commission jurisdiction (construction, satellite television, etc.). Thus, the rule should assure that only the earnings related to the provision of public utility services should be reported. However, these earnings reports should not be required in years in which a company is not requesting a pass-on, as described more fully above.

Similarly, our comments above regarding the suggested deletion of the phrase “authorized by appropriate regulatory courts or agencies” apply to this section. There should be no pretense given that certain of the costs included in the pass-on are outside of the company’s control or subject to oversight other than by the Commission. We simply reference the above discussion rather than repeating it.

#### Section 249(b)(2)

(2) That the pass on will not increase the public utility’s authorized earnings and its normalized annual earnings are at or below that last authorized by the Commission. If the public utility is exceeding its authorized earnings, using the financial parameter authorized by the Commission in the most recent determination of earnings, the Commission may, upon proper notice, modify the public utility’s request in order to eliminate the amount by which the financial parameter exceeds the authorized level, may initiate a rate investigation on its own motion to have the public utility show why its base rates should not be adjusted, or may take any other duly authorized regulatory action to assure that rates and earnings remain just and reasonable.

(i) A pass on application filed under this section shall include documentation showing the public utility's Wyoming-regulated normalized annual earnings, comparing and a comparison of the normalized and Commission authorized earnings to the financial parameters last authorized by the Commission.

(ii) Such documentation shall be filed ~~at least annually with a pass on filing~~ with each pass on application, but no more frequently than annually. The amount of detail and supporting documentation included shall be described in the public utility's tariff approved by the Commission. The public utility shall be responsible for providing accurate, reliable, and supportable documentation that accurately portrays its earnings.

The changes in draft Section 249(b)(2) are all similar to those found in earlier sections of the draft rules. The same explanations given in the earlier sections of the rules also apply here. Even though a utility is a partnership, sole proprietorship, or cooperative, it does not change the Commission's obligation to assure that the rates charged are just and reasonable. It is still important to make sure that rates are not being increased on an expedited basis at the same time that earnings are higher than necessary to provide safe, adequate, and reliable service.

#### Section 249(c)

(c) The pass on shall be allocated to all retail rate classes and contract customers on an equal or proportionate basis. ~~The Commission may consider special circumstances related to the allocation of costs to contract customers if dedicated commodity resources serve them and are not available to retail rate classes or are not a contributing factor to the pass on applications.~~ Exceptions to the equal or proportionate class allocation may be permitted if specifically requested and justified, but only if such an exception is found to be in the public interest and necessary to preserve the long-run interest of all customer classes.

The OCA agrees that, in general, pass-on rates should be allocated equally or proportionately among customer classes. We also agree that there are times where exceptions are warranted. In fact, there have been a number of requested exceptions over the years. However, it is rare when these exceptions are related solely to dedicated resources. In fact, it is not really clear what would constitute a dedicated resource for any

customer or customer class. Rather, one of the primary exceptions requested in recent years has been by companies who have rates substantially different from those that would match their class cost of service. Other exceptions could be easily imagined – such as a contract rate that is meant to retain load or drive economic development. It could be in the public interest to allow an exception to any of these items, but that decision should be fact based on a case-by-case basis. Without a specific exception spelled out in the rules, the Commission would be prohibited from allowing one, even if it were in the public interest.

#### Section 249(d)

(d) All pass on rates shall be filed as a cumulative rate rider or surcharge separate from base rates, which may be blended into and consolidated with base rates in general rate case proceedings or as otherwise ordered by the Commission.

The OCA has no recommended modifications to the draft language for Rule 249(d).

#### Section 249(e)

(e) As part of all pass on filings under this rule, including all balancing account applications under Section 250, the public utility shall provide supporting documentation that the gas, electric or water commodity costs included in the pass on application are the most reasonable option practically available to the public utility for safe, adequate and reliable service to retail customers, including, but not limited to:

(1) Documentation demonstrating the efforts taken by the public utility to serve its customers result in the most reasonable rate available consistent with safe, adequate and reliable service. ~~A public utility may file integrated resource plans or commodity acquisition plans for Commission review and approval and such plans shall comply with this requirement.~~

(2) Physical hedging costs ~~requested to be included in the pass on application~~ that the public utility seeks to include in its pass-on rates, such as diversified contract terms and conditions, storage management, or other measures shall be documented in the application and ~~will~~ shall be considered by the Commission on a case-by-case basis and may be approved if shown to result in just and reasonable rates.

(3) Financial hedging costs ~~requested to be included in the pass-on application that the public utility seeks to include in its pass-on rates~~, such as costs related to futures contracts, price caps, financial derivatives, swap agreements, collars, and other measures to achieve price stability or reduce price volatility shall be documented in the application and ~~will~~ shall be considered by the Commission on a case-by-case basis and may be approved if shown to result in just and reasonable rates.

(4) Records of all physical and financial hedging costs incurred by the public utility for purposes of securing its commodity portfolio shall be maintained by the public utility and included in the supporting documentation supplied with the pass on application.

The OCA is suggesting a few wording changes in this section, each of which is intended to enhance the intent of the draft rule. The first of the suggestions is to add the word *practically* relative to the available options that the utility must show that it examined when selecting the costs and showing that the selected cost option is the most reasonable. Without this modifier, utilities could be put in the position of having to explain away an option that is very unlikely or very eccentric. The purpose of this rule is not to test and trick the utilities, but rather, to provide assurance that all reasonable and normal options were considered before choosing a course of action that underlies the cost change.

The second suggested change is to eliminate the language that specifically refers to integrated resource plans. As the rule is drafted, integrated resource plans could be submitted as a showing of the reasonableness of the utility's course of action, but once submitted, would be subject to Commission review and approval. To date, very few integrated resource plans submitted by utilities have been *approved* by the Commission; most have simply been treated as informational filings with their submission acknowledged by the Commission. Approval brings on a new series of questions: does that mean if the plan is followed, any cost associated with it is now pre-approved? What if the plan incorporates the building of a new power plant or gas field? Will further approvals of cost recovery be necessary or will further prudence tests be permitted upon completion of the construction? How can a review of a major multi-hundred page

integrated resource plan, like the one recently submitted by PacifiCorp, be accomplished within the 30 day notice given most pass-on applications? Instead of specifically stating that integrated resource plans may be used to meet the prudence requirement included in the draft rule, utilities should implicitly know that they have the option of submitting their integrated resource plan as the justification required by this rule, if that plan contains all of the necessary information. If not, then the utility could either supplement its plan, or find other documentation that meets the requirement. It is simply too complicated and confusing to introduce the concept of filing *and approving* integrated resource plans as part of the pass on rules. The OCA would be pleased to work with industry and the Commission on integrated resource plan rules and filing requirements as a separate project.

The next remaining two wording changes in this section are simply revisions of the intended concept of the draft rules, as we read them. The draft rule contains the phrase *requested to be included in the pass-on application*. However, the request is not to include it in the application but rather, to include the item or cost in rates resulting from the application. The OCA suggested language addresses this point.

#### Section 249 (f) and (g)

(f) Every four years, each public utility who has sought a change in its rates pursuant to these pass-on provisions during the prior four year period, shall submit for Commission review, a description and explanation of the public utility's incentives for efficient use of resources, including, but not limited to information and incentives relative to: losses and company use of energy; demand-side management programs offered in its service territory, subscription rates, and estimated costs and savings associated with the programs; the use of off-peak pricing, demand meters and rate designs, or other pricing techniques related to more limited or more economical purchases and use of fuel; and the use of storage, batteries, fuel cells, or other techniques that allow for more efficient use of energy.

(g) For each public utility that utilized these pass-on procedures within the past two years, the Commission shall biennially initiate an investigation, to determine that the use of these pass-on procedures allows for the maximum economies of the public utility's operations and

purchases. Such investigation shall include an examination of the practices of the public utility relating to costs subject to the pass-on.

In its initial comments, the OCA included an extensive discussion regarding the Public Utility Regulatory Policy Act of 1978. We suggested language that would be consistent with PURPA, particularly as it is intended to apply to the electric public utilities. While none of our initial suggestions made it into this March draft of the rules, we again urge the Commission to carefully consider the federal statutory language and how it fits in with the goals of the rules. PURPA would have the Commission periodically review and audit the practices that underlie the costs being passed-on in an expedited manner. It would also require the Commission to periodically review the process to assure that efficiencies are present and appropriate. In a time of extreme national resource limitations, rising fuel prices, economic uncertainties, and international conflict, it behooves the Commission to assure that resources are being obtained and utilized wisely by Wyoming's utilities. Our suggested rule provisions would greatly assist in this regard. Additionally, we think that the Commission is required to include these review processes in its procedures pursuant to federal law.

#### Section 250

Section 250. Electric, Gas, and Water Public Utility ~~Wholesale~~ Commodity Balancing Account as the Basis for Periodic Pass On Filings. This section shall apply when a public utility seeks to periodically increase or decrease rates to reflect the projected or estimated wholesale commodity cost increases or decreases not under the Commission's jurisdiction or other prudently incurred commodity related costs deemed appropriate by the Commission and when a public utility seeks to increase or decrease rates to reflect the difference between previously projected commodity and commodity related costs and actual, prudent commodity or commodity related expenditures. ~~such as interstate or intrastate transmission or transportation costs, storage costs, fuel costs, hedging costs, refunds or other commodity related costs authorized by appropriate regulatory agencies or courts are proposed to be passed on by a public utility to its customers on a regularly scheduled basis.~~

The OCA's suggested wording changes are meant to assist in distinguishing a pass-on from a Commodity Balancing Account. While it is true that there are cost

differences accumulated in a Commodity Balancing Account that end up in rates via the pass-on mechanism, this does not make a pass-on and a Commodity Balancing Account the same item. However, one would be hard pressed to understand these differences from the reading of the language in the draft rule. The OCA's language is meant to be clarifying in this context.

#### Section 250 (a)

(a) Any public utility may file for a proposed Commodity Balancing Account tariff pursuant to the provisions of this Section and the tariff filing provisions of this Chapter. Such application shall only be approved if the Commission finds it to be in the public interest. If approved, the utility records related to the ~~maintenance of the~~ Commodity Balancing Account ~~tariff~~ shall be available for audit by the Commission at any time

The OCA language suggestions in this section are both of a clarifying nature and to remind the Commission of its public interest obligations. Striking the few words in the draft rule is meant to be clarifying. For example, it is difficult to know what was meant by the phrase *maintenance of the Commodity Balancing Account*. The most logical meaning is that this relates to all aspects of the tariff including the entries resulting from the tariff, including the underlying costs and their measurement and accounting. However, it is possible, under another reading, that one could argue that *maintenance of the tariff* refers to only to the cost and process of actually writing, filing, and process the actual tariff language, and not the costs that are accounted for pursuant to that language filed with the Commission. Thus, to avoid any disagreement, the OCA suggests that the wording be clarified.

The second portion of the OCA's suggested rewrite is the addition of new language related to the public interest. It is clearly within the Commission's general powers and discretion to allow for the addition of a Commodity Balancing Account in a utility's overall rate scheme. But, it is just as clearly in the Commission's powers to deny such a request if it finds that the public interest is not present. This should be explicitly stated, as some utilities are still seeking Commodity Balancing Accounts and others are being directed by the Commission to implement such tariff provisions – all based on

individual, case-by-case circumstances. Since this is the Commission's practice, it should be included in the rules.

#### Sections 250(b) and (c)

(b) The Commodity Balancing Account is a tariff mechanism designed to account for the difference between commodity or commodity related revenues collected based on estimated or projected wholesale costs and actual, prudently incurred commodity or commodity related revenues incurred by the public utility.

(c) The Commodity Balancing Account tariff shall address and describe in detail how the public utility will account for the major components of a Commodity Balancing Account, including the following: (1) The schedule or frequency with which the public utility will file proposed rate adjustments to reflect wholesale commodity or commodity related cost changes; (2) The planned method, supporting basis, and time period for projecting wholesale commodity or commodity related costs; (3) The procedure and recordkeeping measures for tracking the difference between commodity or commodity related revenues collected based on estimated or projected wholesale costs and actual, prudently incurred commodity or commodity related revenues incurred by the public utility; (4) The time period for amortizing the balance of any over or under recovery in the Commodity Balancing Account; (5) The procedure for calculating increases or decreases in wholesale commodity or commodity related purchases using a measurement unit consistent with the utility's billing practices and tariff provisions; (6) The procedure for calculating and collecting interest on any over or under collected balance in the Commodity Balancing Account.

The OCA is proposing no changes to these sections of the proposed rules at this time.

#### Section 250(d)

(d) All pass on applications that reflect a change in wholesale commodity or commodity related ~~costs~~ rates through resulting from the pass-on of under or over collections accumulated in the Commodity Balancing Account must conform to the provisions of: Section 249 (a) and (b) pertaining to submission of earnings documentation that provides substantiation the public utility is earning at or below its Commission authorized rate of return on equity or other authorized financial parameter; ~~and~~ Section 249(c) pertaining to the allocation of the commodity or commodity related increase or decrease among customer classes; Section

249 (e) pertaining to submission of documentation that the commodity and commodity related costs included in the application are the most reasonable option available to the public utility for the provision of safe, adequate and reliable service to retail customers; and Sections 249 (f) and (g) pertaining to periodic reviews of efficiencies and incentives.

In this section, the OCA's suggestions include several minor wording changes that are meant to make the language read better and be consistent with other wording changes suggested in other sections of the draft rules. In addition, there are some more significant suggested wording additions. Specifically, we believe that utilities utilizing the Commodity Balancing Account procedure should be required to not only abide by the financial reporting provisions whether based on authorized returns or other financial parameters. We also believe that they must be required to conform to the provisions PURPA that are mandated by federal law for electric companies and are good regulatory policy for electric, natural gas, and water companies who are allowed to utilize the expedited pass-on rate change procedures.

#### Section 250(e)

(e) The public utility must make a showing of need and obtain Commission approval before charging interest on any under-collected balance in the Commodity Balancing Account. Interest on any over or under-collected balance in the Commodity Balancing Account shall be computed at the rate specified in Section 241.

The OCA is proposing no changes to the suggested language at this time. We find the draft language to be an acceptable compromise between not allowing any interest to be paid on under collections and allowing interest on under collections as a standard policy. By considering the matter on a case-by-case basis, the Commission can further consider when this is warranted and whether there might be some disincentives created by allowing interest on under collections for some, or all, utilities.

#### Section 250(f)

(f) The utility may apply to the Commission for approval to include other costs and revenues in the Commodity Balancing Account such as federal agency or court authorized or mandated refunds, penalties, assessments or other commodity related costs not under the jurisdiction of this Commission. The Commission shall approve the request only if it finds it to be in the public interest and the resulting rates to be just and reasonable.

With some reluctance we support the draft language that permits utilities to seek permission to include “other” items in the Commodity Balancing Account. Our reluctance is driven by the fear that this will be taken as an opportunity by the utilities to try to pass on everything, including the kitchen sink, through the pass-on, a regulatory process that, according to the Commission’s draft, includes expedited rate changes, expedited cost recovery, and little to no in-depth prudence reviews of the costs and underlying utility decisions. However, our support of the opportunity to seek special treatment of special costs (e.g., the Kansas ad valorem tax refund) should be met with a public interest test. The utilities will then bear the burden of showing why this special, expedited rate treatment should be further expanded to more costs than were originally defined for inclusion.

#### Sections 250(g) and (h)

(g) Nothing in this rule shall preclude the public utility from applying for or the Commission from approving an out-of-period adjustment as may be necessary to meet special circumstances or wholesale commodity market events. Any out-of-period adjustment shall fully comply with all filing requirements and supporting documentation of Sections 249 and this section of the Commission’s rules.

(h) In addition to the Commodity Balancing Account tariff which defines the operation and function of the Commodity Balancing Account, the public utility shall file a retail rate summary tariff that shows for each class of service, the commodity rate approved by the Commission pursuant to this section of its rules and the non-commodity or distribution rate component.

The OCA is proposing no language changes to these suggested sections of the rules at this time.

## Conclusion

The Commission has a statutory obligation to assure that rates remain just and reasonable. There is nothing in the statute that obligates the Commission to create and allow single issue rate reviews in the form of a commodity pass-on or Commodity Balancing Account. Such mechanisms are permissive and within the Commission's discretion. Thus, it is important that the Commission consider the content of these mechanisms within their overall obligation to assure that the public interest is protected and rates remain just and reasonable. Any mechanism that allows for expedited rate recovery of a significant portion of a public utility's cost must be balanced with public interest oversight provisions, such as earnings reviews, periodic audits and investigations of the process, and a careful consideration and examination of the types of costs to be incorporated into this process. We urge the Commission to incorporate the OCA's language suggestions into the next round of draft rules to be issued for formal comment. In the meantime, we would be pleased to answer any questions the Commission or its staff may have about our suggestions and comments.

Respectfully Submitted,

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