

1 **Q Please state your name, address, and occupation.**

2 A My name is Marci L. Norby. My business address is 2515 Warren Ave., Suite 304,  
3 Cheyenne, Wyoming, 82002. I am employed as a Senior Rate Analyst with the Office  
4 of Consumer Advocate.

5  
6 **Q Please describe your educational background, occupation, and experience.**

7 A I received a Master of Science degree in Finance from the University of Wyoming in  
8 1999. The area of emphasis in my graduate work was the value of timing options in  
9 capital budgeting using the Black-Scholes model. After graduating I was employed as  
10 a financial analyst in the banking industry, where my duties included accounting,  
11 capital budgeting, financial budgeting, bond portfolio management and administration,  
12 institutional investing, economic analysis, and financial operations. I came to the  
13 Wyoming Public Service Commission in August of 2000 and then to the Office of  
14 Consumer Advocate in May of 2003.

15  
16 **Q Have you testified before the Commission in previous proceedings?**

17 A Yes. I have testified in twelve previous proceedings before the Commission.

18  
19 **Q On whose behalf do you appear today?**

20 A I appear in this case on behalf of the Office of Consumer Advocate (OCA).

21  
22 **Q As a member of the OCA do you advocate the interests of certain groups of  
23 consumers over others?**

24 A No. As a member of OCA it is my obligation to represent the interests of all Wyoming  
25 citizens and all classes of utility customers in the state.

26  
27 **Q What is the purpose of your testimony in this proceeding?**

28 A The purpose of my testimony is to present evidence supporting the OCA's concerns  
29 and recommendations regarding the proposed changes to the Commission Rule §§

1 241 and 504.

2  
3 **Q Do you sponsor any exhibits in this proceeding?**

4 A Yes, I sponsor OCA Exhibits MLN-1 through MLN-7 in this proceeding. I will refer to my  
5 exhibits throughout my testimony.

6  
7 **Q How is your testimony organized?**

8 A First I will present a brief overview of the proposed rule changes in this docket. I will  
9 then present the OCA concerns and recommendations regarding specific language  
10 changes in this docket. Finally, I will present other OCA comments.

11  
12 **I THE PROPOSED RULE CHANGES**

13  
14 **Q Please provide a brief overview of the proposed rule changes.**

15 A The Commission's proposed changes to the rules §§241 and 504 are shown in OCA  
16 Exhibit MLN-1 and 2 respectively. The proposed changes includes the addition of  
17 specific criteria under which a utility can demand a deposit from a customer as a  
18 condition of service, which includes a provision that the criteria must be applied  
19 uniformly among customers, a revised annual interest cost on consumer deposits while  
20 held by a utility, and a provision that a customer may request payment of interest  
21 accrued on a deposit on an annual basis.

22  
23 **II THE OCA CONCERNS**

24  
25 **Q What are the OCA's concerns and recommendations regarding the proposed  
26 rule changes?**

27 A The OCA concerns and recommendations are outlined in the following testimony. I  
28 have provided the outline is separated into each section of the proposed rules for  
29 Commission Rule § 241. The testimony below follows OCA Exhibit MLN-3, in which

1 §241 is provided in its entirety for convenience. I have provided the OCA proposed  
2 changes to Commission Rule § 504 in OCA Exhibit MLN-4. I have not provided a  
3 point-by-point review of § 504 below as the proposals are similar and there is no need  
4 to redundantly provide a separate analysis.  
5

## 6 **A Commission Rule § 241**

### 7 8 **1. The first paragraph in § 241.**

9  
10 Customer Deposits, Gas, Electric and Water Utilities. Each gas,  
11 electric and water utility may require from any customer or prospective  
12 customer a deposit intended to guarantee payment of current bills.  
13 This required deposit shall not be considered as an advance payment  
14 of bills for service to be rendered, but shall be held as security for  
15 payment of bills for service rendered. ~~and may be applied in payment~~  
16 ~~of such bills only in the event service is discontinued.~~  
17

18 The last sentence above directly contradicts §241.g.(ii), which states the deposit  
19 can be credited or refunded after the consumer has demonstrated 12 consecutive  
20 months of credit reliability, not *only in the event service is discontinued*. This  
21 language referring to the application of the deposit to customer bills is unnecessary  
22 because the proposed language in §241.g. and i. set forth when and how the  
23 deposit may be refunded.  
24

### 25 26 **2. Section 241.a.**

27  
28 a. A utility shall not demand or hold a deposit as a condition of  
29 service from any customer ~~service~~ unless one or more of the following  
30 criteria apply.  
31

32 (i) The Customer or applicant has outstanding a prior ~~residential~~  
33 service account with the utility that accrued within the last four  
34 years and at the time of application for service remains unpaid and

1 not in dispute.

2  
3 (ii) The customer's or applicant's service from the utility has been  
4 terminated within the last four years for one or more of the  
5 following reasons:

6  
7 A. Nonpayment of any undisputed delinquent bill;

8  
9 B. Misrepresentation of the customer's or applicant's  
10 identity for the purpose of obtaining utility service;

11  
12 C. Failure to reimburse the company for damages due to  
13 negligent or intentional acts of the customer;

14  
15 D. Obtaining, diverting, or using service without the  
16 authorization or knowledge of the utility.

17  
18 (iii) Information provided by the applicant upon application for  
19 services is materially false or materially misrepresentative of the  
20 applicant's true status.

21  
22 (iv) The applicant did not have service with the utility for a period of  
23 at least twelve consecutive months during the last four years, and  
24 does not pass an objective credit screen.

25  
26 (v) The applicant requests service at a residence location where a  
27 former customer who owed a past due balance for service incurred  
28 still resides or conducts business at that location.

29  
30 (vi) ~~A~~ The Applicant ~~that~~ will be receiving service as a  
31 nonresidential customer and is applying for service for the first  
32 time from that utility and cannot present documentation assembled  
33 by another utility in the same industry to the utility in which the  
34 applicant is applying for service that provides reasonable  
35 assurance of the applicants credit history and demonstrates an  
36 acceptable level of credit worthiness.

37  
38 (vii) If an applicant for service, or a customer, has sought any form  
39 of relief under the Federal Bankruptcy Laws, has been brought  
40 within the jurisdiction of the bankruptcy court for any reason in an  
41 involuntary manner, or has had a receiver appointed in a state  
42 court proceeding, then deposit may be demanded as allowed by  
43 the Federal Bankruptcy Act of 1978, as amended, and, in  
44 particular, 11 USC 366, or as directed by the state court.

1  
2 The OCA is recommending these changes to eliminate the unnecessary references to  
3 certain classes of customers in §241.a.(i) and (v) as proposed by the Commission.  
4 The reference to certain classes of customers in these two instances is unnecessary  
5 as the language is applicable to all customer classes.  
6

7 The inclusion of the last sentence in Section 241.a.(vi) above ensures that if  
8 nonresidential customer that is applying for service with the utility for the first time has  
9 an opportunity to present documentation written by another utility in the same industry  
10 that provides reasonable assurance of the nonresidential applicant's credit worthiness.  
11

12  
13 **3. Section 241.b.**  
14

15 b. If one or more of the criteria outlined in section A above apply to  
16 the applicant the utility may require a deposit. The required deposit  
17 shall not exceed the amount of an applicant's average estimated  
18 applicant's bill for a period of ninety (90) days. ~~, provided, however, a~~  
19 ~~minimum deposit of five dollars (\$5) may be required.~~ A utility shall not  
20 require a deposit or other guarantee as a condition of new or  
21 continued residential utility service based upon residential ownership  
22 or location, income level, source of income, employment tenure,  
23 nature of occupation, race, creed, sex, age, national origin, marital  
24 status, number of dependents, or any other criterion not authorized by  
25 these rules. Rules governing deposits shall be applied uniformly.  
26

27 The provision regarding the minimum \$5 deposit is unnecessary. It is likely that the  
28 administrative costs of the collection of the \$5 deposit, the compilation of interest, and  
29 the final disbursement of a \$5 deposit would outweigh the \$5 deposit itself. In addition,  
30 a \$5 deposit is not adequate consideration to be held by the utility and paid by the  
31 customer for payment of bills for service rendered, unless the customer lives in a  
32 matchbox that is heated by a wood fueled stove. It is more appropriate that the  
33 amount of deposit be tied to an average of a dollar amount of bills for a time certain,

1 such as a maximum of 90-day period maximum.

2  
3 In addition, the OCA recommends the removal of the term “residential” above in the  
4 language referring to that fact that discrimination is prohibited in the rule. The term  
5 “residential” should be omitted from the rule above as the prohibition of discrimination  
6 practices should be universal to all consumers, not just the residential consumers.

7  
8  
9 **4. Section 241. c.**

10 Simple interest on the deposit shall be ~~collected~~ calculated by the  
11 utility on the deposits at the rate that is assigned by the Commission.  
12 The Commission assigned interest rate ~~will be computed by dividing~~  
13 ~~the sum of the twelve monthly 1-year U.S. Treasury Constant maturity~~  
14 ~~rates by twelve will be equal to each utility’s weighted average cost of~~  
15 ~~capital computed to the nearest tenth of one percent for the previous~~  
16 ~~twelve-month period ending October 31<sup>st</sup>, as published in the Federal~~  
17 ~~Reserve Economic Data available at [www.FederalReserve.gov](http://www.FederalReserve.gov).~~ The  
18 Commission assigned interest rate shall be in effect for the following  
19 calendar year beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>. Each  
20 utility shall report its computed annual rate of interest payable on  
21 deposits as an attachment to its annual report to the Commission.  
22 ~~The Commission will provide notice of the assigned interest rate by~~  
23 ~~November 30th of each year. The Commission will periodically~~  
24 ~~compare the assigned interest rate and the 12-month average of the~~  
25 ~~monthly 1-year U.S. Treasury Constant maturity rates and may make~~  
26 ~~out-of-period adjustments to the assigned interest rate if~~  
27 ~~circumstances warrant. The interest rate computed on each deposit~~  
28 will reflect the interest rate in each month that has been determined by  
29 the Commission to be in effect in each month in which the deposit is  
30 held.

31  
32 The OCA is recommending that the word calculated be substituted for the word  
33 collected above because the utility is not going to collect interest from the consumer.

34  
35 The OCA asserts that the avoided cost of the utility is the most appropriate interest rate  
36 to require utilities to pay on consumer deposits. The proposed 12-month average of

1 the 1-year U.S. Treasury Constant Maturity Rate fails to recognize the avoided cost of  
2 the utility, which is the utility's weighted average cost of capital (WACC). The utility's  
3 avoided cost, or its WACC, is the weighted average of the cost of equity and debt of  
4 the utility. It is the cost in which the utility can procure funds used in the operation of  
5 the utility and in obtaining assets. The use of the 12-month average of the 1-year U.S.  
6 Treasury Constant Maturity Rate creates an opportunity for arbitrage<sup>1</sup> and incentive for  
7 potential abuse in procuring deposits from consumers because it is significantly lower  
8 that the average utility's avoided cost.

9  
10 The utility's avoided cost is the cost that the utility evades when it is able to use the  
11 funds provided by consumer deposits rather than secure other funding for the  
12 operation of the utility by issuing debt or equity, procuring a loan, or drawing on a line  
13 of credit. Allowing the utility to pay simple interest on deposits at the 12-month  
14 average of the 1-year U.S. Treasury Constant Maturity Rate allows the utility to procure  
15 funds from consumers at a rate substantially lower than the rate the utility is able to  
16 obtain funds on average. For example, the average weighted average cost of capital  
17 (WACC) of a sample of Wyoming utilities in OCA Exhibit MLN-5 is 7.93%, which is  
18 significantly higher than the average of the 1-year U.S. Treasury Constant Maturity  
19 Rate of 1.07%<sup>2</sup>. This significant difference creates an opportunity and incentive for the  
20 utility to obtain low cost financing by obtaining deposits from customers rather than  
21 obtain financing from debt or equity.

22  
23 **Q How do the utilities have access to the consumer deposits in its day-to-day**  
24 **operations?**

25 **A** The current Commission Rules, as well as those proposed in this proceeding, do not  
26 require that the customer deposits held by the utility be segregated in any way from  
27 other funds within the utility. The utility does, however, track the amount of deposits

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1 Attempting to profit by exploiting price differences of identical or similar financial instruments, on different markets or in different forms.

1 from customers collectively and for each individual customer. However, the lack of  
2 physical separation of the funds allows the utility use of the funds.

3  
4 The utility can use the deposits to construct plant, purchase equipment, retire debt, pay  
5 dividends to shareholders, or any other purpose. The use of the funds in the general  
6 course of business allows the utility to avoid the cost of procuring capital, invest in  
7 assets, and to earn a return on those funds that might take the form of new plant and  
8 equipment. The consumer deposits held by the utility displaces the need for additional  
9 debt and/or equity financing to meet the cash flow requirements of the business.  
10 Therefore, the utility's WACC is the appropriate interest rate that should be paid on  
11 customer deposits.

12  
13 The point is that the cash obtained from consumer deposits is pooled with all other  
14 utility funds. Even though the utility tracks the deposits separately, the cash is still  
15 available for unrestricted use by the utility. The use of those funds, like all other utility  
16 funds, should be at the utility's avoided cost, or WACC.

17  
18 The OCA is recommending the same timing scheme as proposed by the Commission,  
19 as noted in the OCA's proposed language above. The OCA recommends that the rate  
20 be computed as October 31<sup>st</sup> of each year and that the rate should go into effect from  
21 January 1<sup>st</sup> through December 31<sup>st</sup> of the following year.

22  
23 **Q How much money, in the form of deposits, does a utility have available that**  
24 **could be used to substitute for needed capital?**

25 **A** The amount of deposits held by the utilities in Wyoming varies from company to  
26 company as shown in OCA Exhibit MLN-6. Whatever the magnitude, the ability to  
27 arbitrage these funds still exists if the cost of those funds is significantly less than the  
28 utility's avoided cost, or WACC.

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2 The 12-month average from November 2003 through October 2003.

1  
2 The net avoided cost column (E) of the OCA Exhibit MLN-6 illustrates the amount of  
3 annual avoided cost that each utility would avoid each year by paying the rate of  
4 interest on deposits at the 1-year U.S. Treasury Constant Maturity Rate (1.07%). The  
5 amount of money each utility would avoid is significant, even for those smaller utilities.  
6 The utilities have access to the deposits and should not be given the opportunity to  
7 exploit customers in order to obtain improperly low cost customer funds.

8  
9 **Q Is the OCA recommending that the average of the Wyoming utilities WACC of**  
10 **7.983% mentioned above should be the rate of interest paid on deposits?**

11 A No. The OCA is recommending that the appropriate rate of interest paid on deposits is  
12 each specific utility's *actual* WACC. The OCA is using the authorized WACC above for  
13 illustrative purposes only. The authorized total return (WACC) for each utility is the  
14 amount of return that it has the opportunity to earn. The use of the authorized return  
15 illustrates the avoided cost of the utility if it is earning its authorized rate of return. In  
16 other words, this is the highest authorized avoided cost of the utility.

17  
18 **Q In its March 5, 2004 comments to the Commission, didn't the OCA recommend**  
19 **the rate of interest to be paid on deposits to be the *authorized* overall return?**

20 A Yes. The OCA initially recommended that each utility pay a rate of interest equal to its  
21 authorized WACC.

22  
23 **Q Has the OCA's position changed since its initial comments were filed?**

24 A Yes, but not fundamentally. After further consideration of the proposed rules, the OCA  
25 is still recommending that the avoided cost of the utility is the appropriate interest rate  
26 paid on customer deposits. That hasn't changed. However, the use of the *authorized*  
27 WACC, or rate of return on rate base, is only changed if and when a utility files a  
28 general rate case. Many utility companies file rate cases infrequently. In addition,  
29 many of the telecommunications companies (§504) in Wyoming are not rate of return

1 regulated and, therefore, do not have an authorized rate of return, or authorized  
2 WACC.

3  
4 It is important that the interest paid on deposits parallel the actual avoided cost of the  
5 utility as it varies over time. Otherwise, the avoided cost used in paying interest on  
6 deposits could, over time, vary significantly from the utility's current avoided cost. In  
7 addition, the utility's avoided cost changes with market (economic) fluctuations.  
8 Therefore, the OCA is recommending that the rate of interest paid on deposits change  
9 as the WACC of the utility changes, thus eliminating the opportunity for arbitrage by the  
10 utility.

11  
12 **Q Would'n't it be easier to assign one rate of interest paid on deposits for all**  
13 **utilities in Wyoming?**

14 **A** It would be easier, but it wouldn't recognize each utility's avoided cost. Each utility  
15 secures capital at different rates depending on the market fluctuations and the industry  
16 it does business. For example, telecommunication providers predominately have  
17 significantly higher costs of capital than rural electric companies because rural utilities  
18 are able to obtain lower cost financing. Thus, a one-size-fits all approach is not  
19 appropriate. Just because something is easier to track, doesn't mean that it is better or  
20 even correct.

21  
22 **Q Isn't it good for all ratepayers if the utility can procure low-cost financing like the**  
23 **12-month average of the 1-year U.S. Treasury Constant Maturity Rate on at least**  
24 **part of its operating funds?**

25 **A** Yes. Generally, low cost financing is good for the utility and its ratepayers. However,  
26 the significant disparity between the average utility's avoided cost and the 12-month  
27 average of the 1- year U.S. Treasury Constant Maturity Rate creates the opportunity  
28 and incentive for a utility to obtain more funds from customers than necessary rather  
29 than obtaining the funds from its bank or issuing debt or equity. This incentive needs

1 to be addressed in this proceeding and minimized to the largest extent it is reasonably  
2 possible to do so.

3  
4 **Q Doesn't the additional criteria set forth in the proposed Commission Rule §241.a.  
5 help to ensure that incentives for abuse are eliminated?**

6 A The criteria in the proposed §241.a. will aid in decreasing the opportunity for procuring  
7 unnecessary deposits from customers. However, customers are at the mercy of the  
8 utility because the utility is a monopoly, it is the only place where the consumer can  
9 obtain the commodity, and the utility has a certain amount of discretion over which  
10 consumers are required to pay a deposit and in the majority of instances. For  
11 instance, the proposed language in §241.a.(vi) still allows for a certain amount of  
12 discretion in obtaining the deposit from the nonresidential customer. Because of this  
13 advantage, the elimination of the incentive to procure low cost funding needs to be  
14 addressed in this docket.

15  
16 **Q Should additional criteria be added to the proposed Commission Rule §241.a. to  
17 maximize the restrictions on demanding deposits from customers instead of  
18 changing the proposed rate of interest paid on deposits?**

19 A No. The standard should be adequately stringent as well as understandable.  
20 However, if more elaborate criteria were adopted that creates an unnecessary burden  
21 on the utility, a point of diminishing returns<sup>3</sup> may be reached where the criteria is a  
22 burden to the utility and its ratepayers. The criteria, with the changes proposed by the  
23 OCA is stringent, yet does not reach a point of diminishing return.

24  
25 In addition, merely changing the proposed criteria in §241.a. does not address the  
26 avoided cost of the utility. More importantly, consider the fact that the proposed use of  
27 the 12-month average of the 1-year U.S. Treasury Constant Maturity Rate creates a  
28 mismatch between long-term and short-term costs, or rates.

---

<sup>3</sup> A point beyond which the application of additional resources yields less than proportional increases in output

1  
2 **Q Isn't the proposed 12-month average of the 1-year U.S. Treasury Constant**  
3 **Maturity Rate a short-term rate that matches the short-term 1-year period in**  
4 **which a utility holds a consumer deposit?**

5 A The proposed 12-month average is a short-term rate and it appears to equate with the  
6 1-year holding period of consumer deposits. However, as illustrated in OCA Exhibit  
7 MLN-7 most Wyoming utilities maintain a noticeably consistent amount of customer  
8 deposits year-over-year. The data in the exhibit demonstrates that the consumer  
9 deposits are a consistent liability on the utility's balance sheet not only in dollar  
10 amount, but also in the percentage of the total liabilities of each company. The  
11 Wyoming utilities hold consistent dollar amounts of customer deposits, which  
12 represents that the utilities are continually able to utilize customer cash for the  
13 operation of the utility. The deposits are long-term liabilities on the utility's balance  
14 sheet. Therefore, it is appropriate to utilize a long-term instrument, the WACC, rather  
15 than a short-term instrument such as the 1-year U.S. Treasury Constant Maturity Rate  
16 as the determined cost to the utility for holding consumer deposits.

17  
18 **Q If a consumer is required to make a deposit for obtaining utility service, is the**  
19 **consumer merely prevented from earning an interest rate equal to a passbook**  
20 **savings account?**

21 A No. There is an opportunity cost to the consumer in providing a deposit to the utility in  
22 order to receive service. The consumer's opportunity cost, is the value of the next  
23 highest alternative or the opportunity foregone. The value of the next highest  
24 alternative to most consumers is the cost of foregoing a payment on a revolving line of  
25 credit. The rate of interest of a passbook savings account does not constitute the  
26 value of the next highest alternative (the opportunity cost of the consumer). In  
27 addition, as stated several times above, the lower rate of interest does not reflect the  
28 utilities avoided cost of procuring funds. The utilities have access to those funds on  
29 deposit from consumers and are able to avoid obtaining that amount of capital at the

1 WACC.

2  
3 **Q Please give an example of the consumer's opportunity cost.**

4 A Pursuant to §241.b., the deposit required from a consumer may not exceed the  
5 average estimated applicant's bill for a period of 90 days. In the February 9, 2004  
6 update of the Commission's "Gas Rates for Wyoming Regulated Utilities" report<sup>4</sup>, a  
7 cumulative average of four summer months and eight winter months of Wyoming  
8 customer's average natural gas bill yields an average deposit of \$404.<sup>5</sup> The annual  
9 simple interest accrual on the deposit at the 12-month average of the 1-year U.S.  
10 Treasury Constant Maturity Rate of 1.07% is \$4.32. The annual simple interest accrual  
11 for a deposit of \$404 based on a recent average credit card rate of 12.65% (annual  
12 percentage rate) is \$52.20.<sup>6</sup>

13  
14 If a consumer with a standard credit card at the above-mentioned balance and annual  
15 percentage rate has the ability to pay \$404 on his credit card balance instead of  
16 making the deposit for utility services, the consumer will save \$438.24 in payments on  
17 his credit card debt in the long run. It is important to note that the consumer would  
18 save \$327 of his money in the first 12-months.<sup>7</sup>

19  
20 **Q Why is the OCA using the standard credit card rate as the consumers  
21 opportunity cost?**

22 A Seventy-six percent of Americans carry at least one credit card, and the average credit  
23 card debt in the U.S. is \$8,400 per household.<sup>8</sup> The OCA reviewed several rates  
24 associated with the market for revolving credit available to consumers. The lower

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4 <http://psc.state.wy.us/htdoc/download/Ratecompweb.pdf>

5 Using a cumulative average of summer months, 4, and winter months, 8 for all companies in the report (134.63 monthly average multiplied by 3 months is \$403.88)

6 [www.bankrate.com](http://www.bankrate.com) weekly average fixed rate on a standard or basic credit card for the week of February 25, 2004.

7 Based on a 10-year term note. I have used a 10-year term note because 53% of those surveyed in the recent credit card survey ([www.consumer-action.org](http://www.consumer-action.org)) pay off their cards in 10-years.

8 [www.debtstmart.com](http://www.debtstmart.com)

1 introductory rates available to some consumers have not been used in this analysis  
2 because the introductory rates are not standardized from company to company and  
3 vary in duration, policy regarding qualified applicants, and scope of the various offers.  
4 The published standard line of credit for which the majority of consumers will qualify is  
5 the most appropriate measure of opportunity cost.  
6  
7

## 8 **5. Section 241. G.**

9 g. Interest on customer deposits shall be calculated ~~and~~ upon return  
10 of the deposit, for the time the deposit is held by the utility. Interest  
11 will be computed to the date the payment of the deposit is personally  
12 returned to or mailed to the customer. Payment to the customer may  
13 be made either by a check or by a credit made to the balance of the  
14 customer's account, or both.

15  
16 (i) The customer may request to have the interest earned  
17 on the deposit paid to ~~them~~ that customer or applied to that  
18 customer's bill on an annual basis.  
19

20 (ii) When the customer has ~~had~~ received twelve (12)  
21 consecutive months of service, and there ~~has~~ been no cause to  
22 disconnect, and bills have been paid by the payment due date,  
23 the customer will be considered to have demonstrated his  
24 credit reliability. At that time the deposit plus interest will be  
25 ~~refunded promptly~~ refunded to the customer or applied to the  
26 customer's balance by the utility.  
27

28 The additions above simply clarifies the proposed language and allows for the return  
29 payment of the money held as a deposit by a credit to the customer's final bill, a check  
30 to the customer, or both.  
31

32 **Q Are there other provisions in the utility tariffs that you reviewed in your**  
33 **analysis?**

34 **A** The OCA notes that many, if not most, of the utilities have a provision in their tariffs for  
35 a fee associated with late payments. If a consumer is late in making a payment, a fee

1 generally in the range of 1 ½ percent *per month* will be added to the next month's bill.  
2 This is equivalent to 18% simple interest annually. It would not be prudent for the cost  
3 associated with late payments to be many time greater than the interest rate customers  
4 would receive for allowing the utility the use of the customer's money for twelve  
5 months. If the consumer is late in making a payment, in essence, the consumer is  
6 using the utility's funds, therefore a fee, or cost is assessed to the consumer. In the  
7 matter of the utilization of the consumer funds by the utility, there is a fee. This fee  
8 should equate to the long-term avoided cost of the utility, which is considerably lower  
9 than that cost the consumer must pay for the use of the utility funds.

10  
11 In addition, the question of timing should be addressed in the proposed rule changes.  
12 For example, if a consumer is required to make a deposit for utility service in the month  
13 of May 2004. The proper interest rate the consumer would pay from May 2004 through  
14 December 2004 of that year is the interest rate put in place for that year (for example,  
15 5.1%, or 0.425% per month). However, in the next year, a new interest rate will be  
16 determined for deposits. Since the consumer (if the consumer is refunded his money  
17 at the end of 12-months) will have a deposit that is held at the utility from January 2005  
18 until May 2005 (for example 5.2%, or 0.433% per month). It is appropriate that from  
19 the time period of May 2004 through December 2004, the consumer will earn the  
20 simple interest rate of 0.425% per month on the deposit and from the time period of  
21 January 2005 until May of 2005 the consumer will earn the simple interest rate of  
22 0.433% per month on the deposit. The OCA is recommending specific language as  
23 shown in the last sentence of §241.c. (page 6, lines 27 through 30 above) in the  
24 proposed rules to address this timing issue.

25  
26 **Q Why are the OCA's concerns important in the consideration of this rule change?**

27 **A** It is imperative to balance the interests of the utility and the consumer when  
28 determining the proper interest on deposits. The deposit is a valuable tool for the utility  
29 to ensure that the utility does not take an avoidable risk on an unknown or unreliable

1 consumer. However, it is not prudent to give utility companies an incentive and  
2 opportunity to arbitrage the funds of those consumers who are required to render a  
3 deposit. A utility's avoided cost and the consumer's opportunity cost should be an  
4 important consideration that must be carefully examined in this rulemaking.  
5

6 The purpose of regulation of public utilities is to serve as an efficient substitute for  
7 competition.<sup>9</sup> In doing so, there should be a balance between the interests of the  
8 ratepayers and the utility that would mimic an equalization of those interests that would  
9 result from market forces in a competitive market. We want to ensure that the utility  
10 remains healthy so that it can serve the public as well as compete for capital in the  
11 market in which it does business. However, ratepayer's interests should be considered  
12 as well. Ratepayers do not have a choice of different utilities in the market in which  
13 they take service. Therefore, the Commission must protect the interests of the  
14 ratepayers in this proceeding.  
15

16 **Q Did the OCA consider alternative recommendations in this case?**

17 **A** Yes. The OCA considered the separation of the funds held by the utility as customer  
18 deposits. However, in the case of non-payment by a customer whose deposit is held  
19 by the utility, those funds are used by the utility for operational purposes of, for  
20 example, payment to its wholesale supplier of natural gas. This helps alleviate a  
21 portion of the utility's burden of working capital and delayed payment or non-payment  
22 from a customer. The separation of funds and the payments of interest at the 1-year  
23 U.S. Treasury Constant Maturity Rate also don't solve the disparity between the lower  
24 interest rate and the consumer's opportunity cost of the money deposited. Therefore,  
25 the OCA does not recommend the separation of funds.  
26

27 **Q Is the OCA making any alternative recommendations in this case?**

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9 Phillips, Charles, F. The Regulation of Public Utilities. Public Utility Reports, Inc., 1993. Pp. 8.

1 A Yes. The OCA recognizes that its recommendation of the use of each utility's actual  
2 WACC, while the most appropriate measure of the utility's avoided cost, is relatively  
3 cumbersome for the Commission to track. As an administratively simpler alternative to  
4 using each utility's WACC, the OCA suggests a 12-month average of the 10-year U.S.  
5 Treasury Constant Maturity Rate as an appropriate measure of avoided cost. Although  
6 this is not an optimal rate paid on consumer utility deposits, the 10-year rate more  
7 closely parallels the long-term nature of the consistent amount of consumer deposits  
8 held by a Wyoming utility. It also closes the gap between a utility's avoided cost and  
9 the consumer's opportunity cost.

10  
11 As stated above, the one-size-fits-all approach is not the optimum solution for reflecting  
12 the avoided cost of each utility, however, the use of a long-term rate appropriately  
13 reflects the term of the deposits held at the utility and the rate at which companies can  
14 obtain funds. The rate will also change to reflect current economic conditions.  
15 Currently the 10-year U.S. Treasury Constant Maturity Rate is 4.50%. The 12-month  
16 average of the 10-year rate (from November 2003 through October 2004) is 3.97%.

17  
18 The average of the difference between the A-rated Utility Bond and the 10-year rate  
19 equals 2.51% over the past 4½ years. Thus, the 10-year rate is lower than the yield on  
20 the average A-rated<sup>10</sup> utility bond. The 10-year rate is also lower than the average  
21 WACC illustrated in OCA Exhibit MLN-5, as the 10-year rate is not company specific  
22 and only reflects a debt cost thus does not include the cost of equity like the WACC.  
23 As an alternative to OCA's WACC recommendation above, the 10-year rate adequately  
24 reflects the long-term duration of the deposits held by the utility and allows for  
25 fluctuation with the economy.

26  
27 The appropriate language in §241.c. pertaining to the appropriate interest rate should  
28 state:

---

10 S & P rating.

1  
2 Simple interest on the deposit shall be ~~collected~~ calculated by the  
3 utility on the deposits at the rate that is assigned by the Commission.  
4 The Commission assigned interest rate will be computed by dividing  
5 the sum of the twelve monthly 10-year U.S. Treasury Constant  
6 maturity rates by twelve computed to the nearest tenth of one percent  
7 for the previous twelve-month period ending October 31<sup>st</sup>, as  
8 published in the Federal Reserve Economic Data available at  
9 [www.FederalReserve.gov](http://www.FederalReserve.gov). The Commission assigned interest rate  
10 shall be in effect for the following calendar year beginning January 1<sup>st</sup>  
11 and ending December 31<sup>st</sup>. The Commission will provide notice of the  
12 assigned interest rate by November 30th of each year. The  
13 Commission will periodically compare the assigned interest rate and  
14 the 12-month average of the monthly 10-year U.S. Treasury Constant  
15 maturity rates and may make out-of-period adjustments to the  
16 assigned interest rate if circumstances warrant. The interest rate  
17 computed on each deposit will reflect the interest rate in each month  
18 that has been determined by the Commission to be in effect in the  
19 month in which it was computed.  
20

#### 21 22 **IV OTHER OCA COMMENTS**

23  
24 **Q Have you reviewed the comments filed by other parties?**

25 **A** Yes. I have reviewed the comments made by Qwest, Questar, AT&T Communications  
26 of the Mountain States, MCI WorldCom, Inc., Montana Dakota Utilities, and Cheyenne  
27 Light, Fuel & Power Company (Cheyenne Light) that were filed with the Commission  
28 prior to March 9, 2004.

29  
30 **Q What are the OCA's concerns regarding those comments filed by other parties?**

31 **A** In its comments filed with the Commission on March 8, 2004, Questar suggests that it  
32 is unnecessary to require the utility to issue a non-assignable certificate of deposit or  
33 receipt to those customers from whom a deposit is received (proposed Commission  
34 Rule §241.e.). It is the contention of the OCA's that this language is important and  
35 should remain. This language does not specifically designate the form of the receipt

1 that shall be issued from each utility. Rather it imply requires a receipt to be issued to  
2 the customer, which ensures that some form of written form of communicated record is  
3 presented to the customer. The proposed language gives the utility the option to either  
4 issue a certificate of deposit or a receipt. A receipt is merely a writing acknowledging  
5 the receiving of goods or money.<sup>11</sup> A certificate of deposit is a receipt that also  
6 illustrates the interest rate paid on the deposit and the maturity of the deposit. It is the  
7 opinion of the OCA that any written form of confirmation that the utility is holding a  
8 deposit of a customer, which is presented to a consumer, is adequate as a form of  
9 receipt.

10  
11 **Q Please provide a summary of your recommendations in this case.**

12 **A** The OCA recommends that the Commission approve the OCA proposed rule changes  
13 in OCA Exhibit MLN-3 and MLN-4. The recommendation also includes the elimination  
14 of the \$5 minimum deposit, as well as further clarification of the language in the  
15 proposed rules as well as other wording changes and corrections to the proposed  
16 rules.

17  
18 The OCA recommends that specific provisions be added to the proposed language that  
19 address the timing of the deposits and the proration of differing interest rates to be  
20 accrued on a consumer's deposit throughout the year. If this item is not addressed in  
21 the language each utility could calculate the interest differently by either applying the  
22 interest rate to each month depending on when the customer made the deposit, or  
23 conversely when the interest and deposit is paid back to the consumer. Including  
24 language that states that the deposit will accrue simple interest by applying the  
25 appropriate interest rate that is in effect for the respective month is imperative so that  
26 all utilities calculate the interest in the same manner.

27  
28 The OCA is recommending that the avoided cost of the utility, or each utility's WACC,

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11 Webster's Ninth New Collegiate Dictionary, 1984, page 982.

1 is the appropriate interest rate to be paid on consumer deposits. The utility is able to  
2 utilize these funds throughout the year, thereby avoiding the cost of debt or equity.  
3 This rate addresses the inconsistencies between the rate on interest proposed in this  
4 docket and the avoided cost of the utility. This interest rate should be calculated to the  
5 nearest one tenth of one percent.

6  
7 As an alternative to the use of the WACC, the OCA recommends the use of the 12-  
8 month average of the 10-year U.S. Treasury Constant Maturity Rate as an appropriate  
9 interest rate to be paid on consumer deposits. The 10-year rate recognizes the long-  
10 term duration of the deposit funds held at the utility, will reflect changes in the economy  
11 over time, and is simple for the Commission to track and publish.

12  
13 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A** Yes it does.