

MAR 05 2004

Public Service Commission
Wyoming

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)	

**FORMAL COMMENTS OF THE OFFICE OF CONSUMER
ADVOCATE**

(March 5, 2004)

Pursuant to the Commission's request, the Office of Consumer Advocate (OCA) hereby states its concerns and recommendations regarding the proposed amendment of §§241 and 504 of the Commission's Procedural Rules and Special Regulations.

Although the proposed One-Year Treasury Constant Maturity Rate reflects the interest rates and yield variations for relatively secure short term investments, the OCA is concerned that this interest rate does not properly reflect the opportunity cost of the consumer or the avoided cost of the utility.

The Opportunity Cost to Consumers

The proposed rule change does not recognize the opportunity cost (the value of the next highest alternative) of the consumer. For those consumers required to submit a deposit to the utility, the opportunity cost of the use of those funds is most likely the consumer's cost of revolving credit or loan balances (credit card debt).

Seventy-six percent of Americans carry at least one credit card, and the average credit card debt in the U.S. is \$8,400 per household.¹ The recent average annual percentage rate for a standard credit card is 12.92%.² If consumers are required to make a deposit to obtain utility service, the payment on a revolving credit line that the consumer will forgo is the opportunity cost of that deposit. It is important to align the opportunity cost of the average consumer's deposit with the avoided cost of the utilities' ability to use the funds.

The OCA reviewed several rates associated with the market for revolving credit available to customers. The lower introductory rates available to some consumers have not been used in this analysis because the introductory rates are not standardized and vary in duration, policy regarding qualified applicants, and scope of the various offers. The published standard line of credit for which the majority of consumers will qualify is clearly the most appropriate measure of opportunity cost in this analysis.

Pursuant to §241(b), the deposit required from a consumer may not exceed the average estimated applicants bill for a period of 90 days. In the February 9, 2004 update of the Commissions "Gas Rates for Wyoming Regulated Utilities" report³, a cumulative average of four summer months and eight winter months of a Wyoming customer's average natural gas bill yields an average deposit of \$404.⁴ The annual simple interest accrual on the deposit is \$4.34 at the average of the One-Year Treasury Constant Maturity Rate from November 2002 through October 2003 (1.07%).⁵ The annual simple interest accrual for a deposit of \$404 based on a recent average credit card rate of 12.92% (annual percentage rate per annum) is \$52.18.⁶

If a consumer with a standard credit card at the above-mentioned balance and annual percentage rate has the ability to pay \$404 on his credit card balance instead of making the deposit for utility services, the consumer will save \$596.75 in payments to his credit card company in the long run. It is important to note that the consumer would save \$313 of this money in the first 12 months.⁷

1 www.debtsmart.com

2 www.bankrate.com

3 <http://psc.state.wy.us/htdocs/download/Ratecompweb.pdf>

4 Using a weighted 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).

5 <http://research.stlouisfed.org/fred2/>

6 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 for paying the note. I have used the 10-year term because 53% of the those surveyed in a recent credit card survey (www.consumer-action.org 2003)

The One-Year Treasury Constant Maturity Rate is not mathematically aligned with the opportunity cost of the consumer. Rather, it is roughly equal to a savings or money market account rate. The OCA disagrees with the use of this rate because money market and savings account rates clearly do not represent the value of the "next highest alternative", or opportunity cost of the typical consumer. The opportunity cost is the payment foregone on the consumer's credit balance. The consumer would save more money by making a payment on his revolving credit than depositing his money in a savings account or money market fund over equal periods.

Additionally, the OCA notes that many, if not most, of the utilities have a provision in their tariffs for a fee associated with late payments. If a consumer is late in making a payment, a fee generally in the range of 1 ½ percent per month will be added to the next month's bill. This is equivalent to 18% simple interest annually. It would be unfair for the cost associated with late payments to be several times greater than the interest rate customers would receive for allowing the utility the use of their money for twelve months.

The Avoided Cost and Arbitrage Opportunity for the Utility

The One-Year Treasury Constant Maturity Rate should not be used as the cost to the utility for use the consumer's funds because it creates the opportunity for the utility to arbitrage the funds in order to earn a return on the consumer deposits. A utility's authorized total cost of capital is the appropriate interest rate payable to customers for deposits held by the utility, as this is the cost that access to customers' deposits allows utilities to avoid.

Consumer deposits held by a utility are not segregated in any way. Therefore, the utility can use the deposits for whatever funding needs it has – whether it is to construct plant, purchase equipment, retire debt, or pay dividends to shareholders. The use of the funds in the general course of business would allow the utility to avoid the cost of procuring capital, the ability to invest and earn a return on those funds in the form of new plant and equipment, and take advantage of the tax deduction from the interest paid on those deposits (for those taxable entities only). The consumer deposits held by the utility displaces the need for additional debt and/or equity financing to meet the cash flow requirements of the business. Therefore, the overall return of the utility is arguably more closely aligned with the appropriate interest rate that should be paid on customer deposits.

If the Commission's rules are changed to reflect a cost to the utility for holding deposits to the One-Year Treasury Constant Maturity Rate, the utility

companies will gain the opportunity to arbitrage these funds. The utility companies will be able to collect funds for deposits from customers, pay these customers a low percentage rate (1.07% shown above), invest these funds in plant and equipment and earn a return on the plant and equipment. For example, the authorized return on rate base for several Wyoming utility companies are listed in the following table.

Company	Authorized Return on Rate Base	Nov 2002-Oct 2003 12-month Average⁸	Difference
Montana Dakota Utilities	8.94%	1.07%	7.87%
Cheyenne Light Fuel & Power	8.29%	1.07%	7.22%
Carbon Power	6.05%	1.07%	4.98%
Wyrulec	4.08%	1.07%	3.01%
Wheatland REA	4.50%	1.07%	3.43%
Energy West Wyoming	9.33%	1.07%	8.26%
Pinedale	8.80%	1.07%	7.73%
PacifiCorp	8.45%	1.07%	7.38%

The percentage difference between the overall authorized rate of return on rate base and the recent One-Year Treasury Constant Maturity Rate annual average is quite substantial. This clearly demonstrates that the arbitrage opportunity for the utility is significant and that the use of the One-Year Treasury Constant Maturity Rate does not properly align the consumer's opportunity cost with the utility's ability to invest and earn a return on these funds.

The amount of deposits held by the utilities in Wyoming varies from company to company. For instance, according to 2002 annual reports, Cheyenne Light, Fuel, and Power held \$419, 412 in customer deposits, Energy West held \$74,320, Questar held \$2,958,874, and Wyrulec held \$18,613. Whatever the magnitude, the ability to arbitrage these funds exists as demonstrated in the above table.

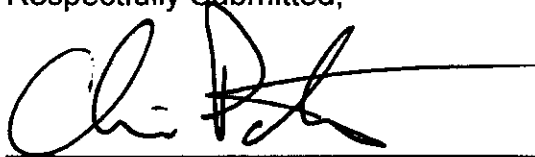
It is imperative to align the interests of the utility and the consumer when determining the proper interest on deposits. The deposit is a valuable tool for the utility to ensure that the utility does not take an avoidable risk on an unknown or unreliable consumer. However, it is not prudent to give utility companies an incentive and opportunity to exploit the consumer who may be required to render

⁸ One-Year Treasury Constant Maturity Rate

a deposit. The consumer's opportunity cost is a large consideration that must be carefully scrutinized in this rulemaking.

The use of the One-Year Treasury Constant Maturity Rate as the interest rate payable to consumers on deposits held by the utility would be unbalanced and should not be adopted by the Commission. Using the utility's authorized overall return as the interest rate on deposits would avoid creating an arbitrage opportunity that would be unfair to consumers, and would recognize the consumers' true opportunity cost.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chris Petrie", with a long horizontal line extending to the right from the end of the signature.

Christopher Petrie
Senior Attorney
Office of Consumer Advocate