

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

INTEREST ON CUSTOMER)
DEPOSITS DRAFT OF NEW) PSC No. 03-127
LANGUAGE FOR RULE 241(a))

**FORMAL COMMENTS OF
THE OFFICE OF CONSUMER ADVOCATE**
(July 25, 2003)

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

The OCA generally agrees that the change from a fixed 6% interest rate currently payable on utility security deposits to an annually variable rate equal to the average of the preceding 12 months One Year Treasury Constant Maturity Rate more accurately reflects interest rates and yield variations in short-term secure investments. However, we believe the Commission should consider utilities' total cost of capital when determining the appropriate interest rate to be paid on security deposits, since this is the cost that access to customers' deposits allows utilities to avoid. Furthermore, the OCA is concerned that the proposed rule change will create an incentive for utilities to alter their practices toward requiring security deposits from a greater proportion of customers without proper justification. In addition, the proposed amendment omits other related desirable changes in the rules governing utility security deposits that might best be addressed simultaneously.

The OCA is concerned that the proposed amendment will create a consumer-adverse incentive for utilities to require deposits from customers in order to obtain low cost financing from its customer base. The creation of such an incentive is particularly troublesome under the other existing provisions of §241, which permit utilities to "require from *any* customer or prospective customer a deposit intended to guarantee payment of current bills." (Emphasis added.) Considered in conjunction with §241(e), each new customer could be required to post a security deposit during the first 12 months of service. In effect, a utility could obtain 12-month low interest financing from these customers in the amount equal to the estimated charges for 90 days of service.

Other jurisdictions utilizing the One Year Treasury Constant Maturity Rate index limit the imposition of security deposits to those circumstances where it is fair and reasonable to do so. By setting forth conditions for requiring security deposits, the Commission could avoid the creation of the undesirable consumer-adverse incentive for utilities to procure low cost financing at the expense of consumers without unduly burdening utilities or exposing them to excessive credit risk. An example of rules governing the imposition of security deposits where the interest rate payable is based on the One Year Treasury Constant Maturity Rate is found at §100.01 of Idaho's Utility Customer Relations Rules, which prohibits utilities from demanding or holding a security deposit from a residential customer or applicant unless one or more of the following criteria applies:

- a. The Customer or applicant has outstanding a prior residential service account with the utility that accrued within the last four years and at the time of application for service remains unpaid and not in dispute.
- b. The customer's or applicant's service from the utility has been terminated within the last four years for one or more of the following reasons:
 - i. Nonpayment of any undisputed delinquent bill;
 - ii., Misrepresentation of the customer's or applicant's identity for the purpose of obtaining utility service;
 - iii. Failure to reimburse the company for damages due to negligent or intentional acts of the customer;
 - iv. Obtaining diverting or using service without the authorization or knowledge of the utility,
- c. Information provided by the application upon application for services is materially false or materially misrepresentative of the applicant's true status.
- d. The applicant did not have service with the utility for a period of at least twelve consecutive months during the last four years, and does not pass an objective credit screen.
- e. The applicant requests service at a residence where a former customer who owed a past due balance for service incurred at that location still resides.
- f. The utility has given the customer two or more written final notices of termination within the last twelve consecutive months.

Small commercial customers are similarly protected from unreasonable imposition of security deposit requirements.

If the Commission adopts the proposed amendment to §241(a), the OCA encourages the simultaneous adoption of provisions establishing standards for requiring security deposits in order to restrain utilities from acting on the financial incentive to obtaining low interest financing at consumers' expense. Such standards would reduce or eliminate the undesirable financial incentive by allowing utilities to require customers to post security deposits only when it is objectively justifiable.

Absent appropriate standards for requiring security deposits, replacement of the 6% interest rate currently payable on security deposits with the 12-month average of the One Year Constant Maturity Rate might adversely effect consumers, and is not recommended by the OCA. Instead, we recommend that the current 6% interest rate remain in place, since it is potentially less harmful to customers than would be the proposed rule. While it is difficult to tie the 6% rate directly to any specific financial index, it is a reasonable rate in light of the rates of return authorized and earned by

Wyoming utilities. According to the Commission's records, in 2000, Kinder Morgan earned a return of 9.87% and Cheyenne Light Fuel and Power's electric operations earned a return of 7.16%. In late 2002, the Commission authorized Montana-Dakota Utilities Company an overall return of 8.94%. Turning to representative electric cooperatives, in 2001, Carbon Power and Light was granted an overall return on rate base of 6.05%, and in 2002, Wheatland Rural Electric Association's return after the granted increase was computed to be more than seven percent. PacifiCorp was recently authorized an overall cost of capital of 8.447%.

These overall returns are arguably more reflective of the interest rate that should be paid to customers on deposits than a short-term interest rate. When a deposit is received by a utility, the funds are not segregated in any way. Rather, the utility is able to access that money for whatever funding needs it has – whether it is to construct plant, retire debt, or pay dividends to shareholders. This money displaces the need for additional debt and/or equity financing to meet the utility's cash flow requirements. Therefore, the OCA recommends that the Commission consider the total cost of capital to utilities, rather than assuming that security deposit funds are deposited in a savings account or money market fund bearing minimal interest in today's financial market.

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 the customer 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 the equivalent of 18% simple interest annually. It is curious to the OCA that the cost associated with late payments is proposed to be several times greater than the interest rate customers would receive for allowing the utility the use of their money for twelve months.

We also note that customers asked to pay the deposit are often those least able to afford the lost opportunity cost of the money. Customers with good credit and/or payment histories often have their deposits waived, while customers who struggle more to pay their bills are more likely to be required to post a deposit. The opportunity cost to these customers is arguably 18%+, since they may have to borrow from a credit card for the deposit, or forego an additional payment to another creditor. This weighs in favor of maintaining the current interest rate of 6%, rather than reducing the rate in reaction to current financial market conditions.

In addition, the OCA urges the Commission to consider additional amendments to §241(a). Specifically, the OCA recommends that the language providing that no interest will be required to be paid on deposits if the deposit is held for less than 6 months be eliminated. There is no apparent rational justification for this language. The fact that a deposit is held for less than 6 months does not signify that the customer's opportunity cost is different than if the deposit is held for six months and one day. The inclusion of this language creates an incentive for a utility to hold security deposits for less than six months at no cost to the utility, but at a real opportunity cost to the customer posting the deposit. Eliminating this language would remove this undesirable incentive, and enhance the fairness of the rules governing security deposits.

Further, the Commission should consider amending §504(f), which governs the security deposits practices of telecommunication utilities. This rule provides for an

interest rate of 6% on security deposits, and for no payment of interest on deposits held for less than 6 months. Amendment of §241 without corresponding revision of §504 would create a difference between the rules applicable to the same practice for different types of utilities. There is no apparent rational for such a distinction. Therefore, the OCA urges the Commission to amend §504 as might be necessary to preserve consistency within the rules.

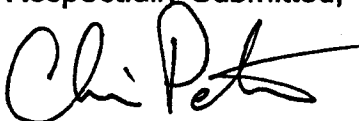
The Commission should also consider amending §241(e), which requires a utility to refund a deposit "promptly" after 12 consecutive months of good credit on the part of the customer, and §241(g), which requires issuance of a refund "forthwith" after final discontinuance of service. The OCA recommends that the Commission require utilities to refund security deposits plus interest within 30 days after the customer has had 12 consecutive months of good payment history or final discontinuance of service.

Finally, §241(g) should be amended to replace "If the utility finds it impossible to make the refund due to lack of knowledge of the customer's whereabouts, . . ." with less absolute language, as "impossible" is not an appropriate standard to govern utilities' efforts to locate customers entitled to a security deposit refund.

To summarize, the OCA recommends that the 6% fixed interest rate payable on customer security deposits remain in effect unless appropriate safeguards against consumer-adverse financial incentives are provided, and that the payment of interest be required on all security deposits including those held for less than six months. Further, the OCA recommends that the rules pertaining to telecommunications utilities security deposits be amended to preserve their consistency with the rules governing gas, water and electric utilities security deposits, and that additional amendments to improve and clarify the rules be made as discussed above.

We hope that the Commission will take these comments into consideration when preparing any formal rule changes on this matter, noting that the recommendations of the OCA are intended to take into account the long-term economic impacts on customers and utilities, while providing a reasonable result during unusual financial market conditions. We hope the Commission will look not only at current short-term interest rates, but also at utilities' total cost of capital, which security deposit funds could displace. We also urge the Commission to consider §241 in its entirety, as there are issues presented beyond the interest rate itself. We look forward to opportunities to further explain our position to the Commission or to answer any questions the Commission may have regarding our comments.

Respectfully Submitted,



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