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Thomas L. Mumaw
Senior Attorney
(602) 250-2052
Direct Line

AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

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DOCKETED BY

November 18, 2004

Ms. Lyn Farmer
Chief Administrative Law Judge
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

RE: Docket Nos. E-01345A-03-0775 and E-01345A-04-0657; Commission Decisions on Arizona Public Service Company ("APS" or "Company") Estimation Practices

Dear Judge Farmer:

At the October 14, 2004 Procedural Conference in the above dockets, I agreed to provide you with Arizona Corporation Commission ("Commission") orders addressing the Company's estimation practices other than the *Ciccone* decision [Decision No. 59919 (May 20, 1996)] previously cited by APS in its pleadings. After carefully reviewing my files, I have found the attached 15 decisions, including the *Ciccone* decision, involving APS bill estimation over the past 20 years or so, which is as far back as I have records. As you can see, the *Ciccone* decision appears to be the only Commission pronouncement on this subject since the 1980s.

I have done as diligent a search as possible, but I cannot state with absolute certainty that I have found every relevant decision during that 20-year period. And because some, but not all of these decisions will be cited in the Company's pre-hearing legal brief, which will be submitted Friday in conformance with your Procedural Order of November 2, 2004, I am as a professional courtesy concurrently providing all parties of record and Commission Staff with copies of these orders.

Sincerely,

Thomas L. Mumaw

Thomas L. Mumaw

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Christopher Kempley, Esq.
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APS • APS Energy Services • Pinnacle West Energy • SunCor • El Dorado

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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

SEP 20 1983

DOCKETED BY

DIANE B. MCCARTHY
CHAIRMAN
RICHARD KIMBALL
COMMISSIONER
JUNIUS HOFFMAN
COMMISSIONER

DOCKET NO. U-1345-83-079

KENNETH E. KARY AND FRANCES I. KARY, HUSBAND AND WIFE, D/B/A/ TAMPICO APARTMENTS,

COMPLAINANTS,

VS.

ARIZONA PUBLIC SERVICE COMPANY, AN ARIZONA CORPORATION,

RESPONDENT.

IN RE THE MATTER OF

A.P.S. BACKBILLINGS

DECISION NO. 53741

OPINION AND ORDER

DATE OF HEARING: July 8, 1983

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Thomas L. Mumaw

APPEARANCES: Patrick C. Williams, Inspector, Utilities Division, on behalf of the Arizona Corporation Commission staff

Duecy, Moore, Robinson & Bennett, by William F. Bennett, on behalf of the Complainants

Janice G. Harrison, House Counsel, Arizona Public Service Company, on behalf of the Respondent

BY THE COMMISSION:

On April 22, 1983, Kenneth E. Kary and Frances I. Kary ("Complainants") filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS"). Therein, Complainants alleged that APS had tendered Complainants a bill for gas service in violation of A.C.R.R. R14-2-310. On May 12, 1983, APS filed an Answer denying that its billing of Complainants violated any rule or regulation of the Commission.

Pursuant to Notice dated June 8, 1983, this matter came on for hearing before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona, on July 8, 1983. Both Complainants and APS appeared and were represented by counsel. A representative of the Commission's Utilities Division Staff also entered an appearance. Complainants and APS introduced evidence concerning the Complaint. After a full public hearing, the proceeding was adjourned pending submission of a Recommended Opinion and Order by the Hearing Officer to the Commission.

The Complaint herein centers on a bill for $10,342.46 tendered to Complainants in January of 1983. Said bill covers the period from August, 1981, to December, 1982. Complainants contend that such a rebilling is prohibited by A.C.R.R. R14-2-310(E)(1). They further allege that APS is estopped by its own negligence from rebilling Complainants under the circumstances.

There can be little doubt that Complainants' gas meter began to malfunction during the summer of 1981. As was noted by Complainants' counsel, it may have been May or June rather than July as is contended by APS, but the fact remains that APS has taken a suitably conservative posture by refraining from rebilling any months prior to August, 1981. APS testified that it has established the date of the error within the meaning of A.C.R.R. R14-2-310(E)(1)(b), and that APS is required to rebill all previously underbilled customers by virtue of A.R.S. Section 40-374 and Article XV, Section 12 of the Arizona Constitution.

The Commission can find no Arizona decision precisely on point with the situation presented herein. However, the overwhelming majority of jurisdictions follow the rule set down in Louisville & Nashville R.R. v. Maxwell, (1915) 237 U.S. 94. That admittedly harsh rule is that nothing, not mutual mistake or even intentional misrepresentation, can estop a utility from

collecting its posted rate for all service provided. Indeed, it has often been said that the concepts of negligence, estoppel, laches, misrepresentation, accord and satisfaction, etc., are all inapplicable to a utility if as the result of their application, a utility charged less than its approved rate. In Op. Atty. Gen. No. I79-9, the Attorney General of Arizona cites Louisville & Nashville R. R. v. Maxwell, supra, with approval in interpreting A.R.S. Section 40-374. Moreover, A.C.R.R. R14-2-310(E)(1) states two (2) tests as to what is the permissable length of rebilling in cases of meter error. Subparagraph 2 thereof clearly sets forth the general rule, i.e., that a public service gas corporation shall rebill for the entire period if the date of the error can be "definitely fixed." In this context "definitely fixed" does not mean proven to a scientific certainty, but does require a public service corporation to establish by a preponderance of evidence that the error could not have occurred at some later date than that chosen for rebilling purposes. Under circumstances which render it impossible to ascertain when the meter error began, Subparagraph 1 creates a species of "liquidated damage" provision by arbitrarily setting the rebilling period at three (3) months. Any other interpretation of the rule would place an unreasonable limitation on the rebilling of undercharged customers in contradiction to the strong public policy enunciated by A.R.S. Section 40-374 and Section 12 of Article XV. Finally, there has been no contention that a general statutory provision limits APS' recovery under its tariffs in the instant situation, or that the tariff itself contains provisions effectively limiting rebilling.

* * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

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. . .

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public within various portions of Arizona pursuant to authority granted by this Commission.

2. On April 22, 1983, Complainants filed a Complaint with the Commission against APS wherein it was alleged that APS had rendered a bill for gas service in violation of A.C.R.R. R14-2-310(E).

3. After proper notice, a hearing on the Complaint was held at the Commission's offices in Phoenix, Arizona, on July 8, 1983.

4. Complainants own a master-metered apartment complex known as Tampico Apartments at 2727 North 32nd Street, Phoenix, Arizona, which complex receives gas service from APS.

5. On January 18, 1983, APS tendered a bill to Complainants for $10,342.46.

6. Said bill covered gas service for the period August 1, 1981, to December 3, 1982, for which period Complainants had been previously billed by APS.

7. The bill referred to in Findings of Fact Nos. 4 and 5, hereinabove, is based upon Complainants' consumption for the identical period during 1980-81.

8. Complainants dispute the accuracy of this amount because of differences in the level of unit occupancy during the two (2) time periods.

9. Despite repeated requests, Complainants have not furnished APS with occupancy figures for the entire disputed period.

10. Except for the period in question, Complainants' gas consumption since 1977 has followed a regular pattern and has never fallen below 950 therms per month (summer) or 2350 therms (winter).

11. For the period beginning August 1, 1981, and ending December 3,

1982, Complainants' highest recorded consumption was 680 therms.

12. Complainants' gas meter became defective no later than July of 1981, and was finally repaired on December 21, 1982.

13. There is no evidence of meter tampering or any fraudulent intent on the part of the Complainants.

14. The evidence is contradictory as to whether or not Complainants informed an employee of APS (rather than a City of Phoenix meter reader) concerning suspected problems with Complainants' gas meter, but in any event, APS concedes knowing of such problems since October of 1982.

15. APS does not contest that the defect in the meter was its responsibility.

16. APS has offered Complainants at least sixteen (16) months to pay off any deficiency and has not assessed an interest charge on the unpaid balance.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint herein.

3. APS' gas billing of January 18, 1983, is permitted under A.C.R.R. R14-2-310(E)(1)(b).

4. APS' then effective gas tariff did not place any limitation on APS' rebilling of customers as a result of meter errors.

5. APS' claim is not barred by any applicable statute of limitations.

6. APS is not estopped from rebilling customers for meter errors by its negligence, if any, in discovering and/or repairing such meter errors.

7. A.R.S. Sections 40-374 and Section 12 of Article XV of the Arizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to rebill

customers who have been erroneously unmetered for gas service.

8. APS' present policy of permitting customers an extended period of time in which to repay rebilled amounts without interest is reasonable and should be followed in this instance.

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Kenneth E. Kary and Francis I. Kary against Arizona Public Service Company on April 22, 1983, be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that Arizona Public Service Company shall resubmit its bill of January 18, 1983, to the Complainants herein using such occupancy data as is furnished by them to the company.

IT IS FURTHER ORDERED that Arizona Public Service Company shall grant Complainants herein at least eighteen (18) months in which to pay said bill, as resubmitted, and shall not charge interest on any unpaid balance unless at the request of Complainants, Arizona Public Service Company permits payment to be made over a period in excess of eighteen (18) months.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall prepare a Complaint and Order to Show Cause directing Arizona Public Service Company to show cause why its failure to promptly detect malfunctioning gas meters and repair or replace same does not constitute a violation of A.C.R.R. R14-2-308 and A.R.S. Section 40-361.

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IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

Diane B McCarthy — Jennifer Hyman — R S Kirkpatrick

CHAIRMAN — COMMISSIONER — COMMISSIONER

IN WITNESS WHEREOF, I, LORRIE DROBNY, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of September, 1983.

Lorrie Drobny
LORRIE DROBNY
Executive Secretary

DISSENT_____
TLM/jg

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

AUG 1 1984

DOCKETED BY

RICHARD KIMBALL
Chairman
JUNIUS HOFFMAN
Commissioner
MARIANNE M. JENNINGS
Commissioner

IN THE MATTER OF THE COMPLAINT OF WILLIAM HENDERSON AND R. C. HENDERSON AGAINST THE ARIZONA PUBLIC SERVICE COMPANY.	DOCKET NO. U-1345-83-235 DECISION NO. 54126 OPINION AND ORDER

DATE OF HEARING: January 23, 1984

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Thomas L. Mumaw

APPEARANCES: Steven Schneider for the Complainant;

Janice G. Harrison, Arizona Public Service Company Law Department for Arizona Public Service Company;

BY THE COMMISSION:

On September 29, 1983, William A. Henderson and R. C. Henderson ("Complainants") filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS"). Therein, Complainants alleged that they had been improperly billed for electric service by APS. Said Complaint was duly served on APS on October 12, 1983. APS filed an Answer to the Complaint on October 31, 1983, wherein APS generally denied that its bill was improper and further stated that a revised billing had already been sent to Complainants.

Pursuant to notice, the Complaint came on for hearing before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona, on January 23, 1984. Complainants and APS appeared and were represented by counsel. Evidence was presented

by William A. Henderson on behalf of Complainants and by Paul Brown and Thomas York on behalf of APS. At the conclusion of a full public hearing, this matter was adjourned pending submission by the Presiding Officer of a Recommended Opinion and Order to the Commission.

DISCUSSION

Complainants were originally tendered an electric bill of $2,739.31. Prior to the hearing, this was revised to $902.22. At the hearing, it was indicated that a further revision to $664.04 had been made by APS. All three (3) billings relate to allegedly unmetered consumption by Complainants of electric service during the period from May of 1982 to July of 1983.[1] It is APS's position that the electricity was unmetered due to its meter being inverted by Complainants. Complainants do not deny that the meter was inverted, or that they were responsible for such condition. Complainants do contend that their actions were reasonable under the circumstances, that there was no intent on their part to divert or steal energy from APS, and that APS's estimated billing was incorrect in that it did not properly consider the size of Complainant's equipment and Complainants' relative lack of use of the subject property.

We find that this matter is governed by APS Tariff Sheet No. 3645, Paragraph 6.3.3 This provision was effective during the period of alleged unmetered consumption and also at the time the revised bill was rendered. Under its terms, APS may render an

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[1] A portion of the disputed amount is attributable to APS's rebilling of Complaintants at commerical, rather than residential rates.

estimated billing whenever its meter has stopped or has failed to register. There is no doubt that APS's meter on Complainants' property failed to register in the inverted position. Indeed, it would run backward in such a state. Moreover, the meter's failure to properly register was not in any way the fault of APS. Whatever Complainants' motivation, the removal of APS's meter and its subsequent inversion by Complainants was unauthorized. Complainants were fully aware that the meter would not properly function in such a mode. Under these circumstances, APS is authorized to render an estimated billing for the period during which the meter failed to properly record consumption.

Neither APS's tariffs nor the Commission's rules indicate that any specific method for such estimation is necessary. In this instance, APS rejected using prior period consumption because the Complainants have testified that their usage was far less than that of previous owners due to their lack of use of the property. Instead, APS has used degree day analysis which relates electricity consumption to temperature. In doing so, APS disregarded any base (non-air conditioning) load, even though this tended to understate probable consumption. APS also utilized the capacity of a three (3) ton air conditioner.[2] It would appear that APS has given Complainants every benefit of the doubt in producing its latest revised billing. However, evidence revealed at the hearing (and not contradicted by APS) indicates that the billing should be further revised to reflect the usage of a two (2) ton air conditioner

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[2] The first revised billing of $902.22 was premised on a four (4) ton unit. APS later inspected the property and determined that a three (3) ton unit was more likely given the size of the unit's motor.

APS will be instructed to submit an amended billing to Complainants which reflects this lesser amount of estimated consumption.

* * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public pursuant to authority granted by this Commission.

2. On September 29, 1983, Complainants filed a Complaint against APS wherein it was alleged that APS had improperly tendered an estimated bill of $2,739.91 to Complainants for unmetered electric consumption at 969 East Curry Road, Phoenix, Arizona, during the period from May of 1982 to July of 1983.

3. Complainants' electric meter was found to be running from 15-17% slow and was also discovered in an inverted position.

4. Complainant William A. Henderson admitted that he had inverted the meter in question, and that he knew that this would prevent it from accurately recording electric consumption.

5. Based upon the representations of Complainants, APS revised the bill from $2,739.91 to $902.22, and then to $664.04.

6. APS's estimated bill was based upon an analysis of degree days and also assumed the use of a three (3) ton air conditioning unit.

7. APS's estimate did not include any allowance for base consumption.

8. Upon discovering that Complainants had used the premises

for the commercial exhibition of films, portions of APS's estimated bill were recomputed at the commercial rate.

9. The evidence indicates that Complainants utilized a two (2) ton air conditioning unit at 969 East Curry Road.

10. Prior usage during similar time periods would indicate that even more electrical usage had gone unmetered, but this method was disregarded by APS as a basis for estimating consumption since Complainants had indicated that the premises were unoccupied during part of the period in question.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Section 40-246.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint.

3. Complainants' meter at 969 East Curry Road failed to register within the meaning of the applicable Tariff Sheet No. 3645, and thus APS was entitled to submit an estimated billing to Complainants.

4. There is no evidence that APS's use of degree day analysis was unreasonable or prejudicial to Complainants in arriving at said estimated billing.

5. APS should revise its estimate to reflect the consumption of a two (2) ton air conditioning unit rather than a three (3) ton unit.

6. Except as set forth hereinafter, Complainants' Complaint should be denied.

ORDER

IT IS THEREFORE ORDERED that Arizona Public Service Company

be, and the same is hereby, directed to submit a further revised estimated billing to William A. Henderson and R. C. Henderson in accordance with Finding of Fact No. 9 and Conclusion of Law No. 5 hereinabove.

IT IS FURTHER ORDERED that except as set forth hereinabove, the Complaint of William A. Henderson and R. C. Henderson against Arizona Public Service Company be, and the same is hereby denied.

IT IS FURTHER ORDERED that this Decision be, and the same is hereby effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, LORRIE DROBNY, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 1st day of August, 1984.

LORRIE DROBNY
Executive Secretary

DISSENT: _____
TLM/djp

Arizona Corporation Commission
DOCKETED
FEB 14 1985
DOCKETED BY C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

RICHARD KIMBALL
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

IN THE MATTER OF THE COMPLAINT BY CHARLES URREA & SONS AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-84-115

DECISION NO. 54374

OPINION AND ORDER

DATE OF HEARING: December 20, 1984

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Theodore L. Humes

APPEARANCES: Ellis & Baker, P.C., by Paul R. Orme, on behalf of the Complainants

Raymond S. Heyman and Janice G. Harrison, Attorneys, on behalf of the Respondent

BY THE COMMISSION:

On May 8, 1984, Charles Urrea & Sons ("Complainant") filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS"). Therein, Complainant alleged that it had been improperly billed for electric service by APS. Said Complaint was duly served on APS, and APS filed an Answer to the Complaint on June 1, 1984, wherein APS generally denied that the bill was improper, and contended that its demand for payment was lawful. Evidence was presented by Mary Urrea on behalf of the Complainant and by D. L. Wilson, senior service specialist in Parker, on behalf of APS. At the conclusion of a full public hearing, this matter was adjourned pending submission by the Presiding Officer of a Recommended Opinion and Order to the Commission.

DISCUSSION

The Complainant grows cotton in the general vicinity of Parker, Arizona, and one of the wells utilized for irrigation purposes is pumped by a 450

horsepower electric motor.

In February of 1984, while reviewing a 13 month consumption history for the Urrea account--which had been requested by the Complainant--APS concluded that the measured kilowatt demand for August and September 1983, was approximately one-third of the normal demand for this account. A meter change and test was then performed which indicated that the meter had an "open potential coil" which caused it to register energy usage less than that actually used. The only exhibit introduced and admitted to the record is an APS memo dated February 23, 1984, to D. L. Wilson, the APS Senior Customer Service Representative in Parker, from the company's electric meter shop in Phoenix, certifying that the meter was found to have an "open potential coil which would cause low consumption on the meter."

The aggregate bill for August and September 1983, as originally tendered to the Complainant amounted to $3,496.17. Upon discovering the error in billing demand on March 22, 1984, APS sent a revised bill seeking an upward adjustment in the amount of $2,555.42. It appears however that this amount was also tendered in error and that the actual deficiency amounted to $6,162.56.

The Respondent contends that the Complainant is indebted to it for the sum of $6,162.56 because the specific provisions of paragraph 6.3.3 of its tariff filed with the Commission provide that: In the event of stoppage or failure of any meter to register, the customer will be billed for the estimated consumption that would have been metered had the meter been registering properly.

The Complainant does not dispute the principal issues of law here, i.e., that in the case of a meter defect APS is permitted to submit an estimated bill, but that because of the confusion surrounding the resolution of the final bill, it entertains serious doubt that a proper billing had in fact been made

by APS. The Complainant professes a lack of understanding of the formula and methodology by which APS arrived at a final calculation of billing, and alleges that it did not take into consideration such operational factors as rainfall, cropping patterns, well usage, and the Federal Government's Payment in Kind Program.

In response, APS contends that in "dead" meter cases, the estimates of actual consumption are based on a comparison of the customer's past history of usage, and that such estimates may be adjusted for factors that may change from year to year such as rainfall, crop patterns, and well usage. However, in the matter of a defective meter which had been registering some energy usage but less than the amount actually used by the customer, the determination of percentage of use, in this case one-third less, provides sufficient basis from which to derive reliable estimates of actual usage.

Under the provisions of APS Tariff Sheet No. 3645, 6.3.3., the company may render an estimated billing whenever its meter has stopped or has failed to register. Under the circumstances, APS was authorized to render an estimated billing for the period during which the meter was defective and when it failed to properly record consumption.

At the same time the Commission is impressed by the Complainant's argument that an improper billing had in fact been rendered which did not recognize the unique characteristics of Complainant's irrigation usage, changing crop patterns, well usage and meterological conditions. These concerns combined with the confusion occasioned by a second erroneous billing, prompted a good faith filing by the Urrea Company, the burden of which should not in its entirety be borne by the Complainant.

Under the circumstances, any doubt should be, at least partially, resolved in favor of the customer.

. . .

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric service to the public pursuant to authority granted by this Commission.

2. On May 8, 1984, Complainant filed a Complaint against APS wherein it was alleged that APS had improperly tendered an estimated bill of $6,162.56 representing unmetered electric consumption for the Complainant's farming enterprise near Parker, Arizona for the periods August and September 1983 respectively.

3. Complainant's electric meter was removed, and the APS Phoenix repair shop discovered that as a result of a broken open potential coil, the meter registered approximately one-third lesser energy for those months than would normally have been recorded.

4. APS's estimated bill was based upon an average of the five prior months measured demand as being most representative of this installation for this irrigation season combined with a formula applicable to the particular meter defect, in this case the open potential coil. The narrative and calculations have been incorporated into the record as late filed exhibt R-2.

5. The $6,162.56 amount was, in fact, the third of a series of bills which had been rendered covering the August and September 1983 usage raising serious doubts in the minds of Complainant about the accuracy of the bill. Additionally, Complainants allege that the many variables involved in its farming operations did not admit of accurate estimating.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint.

3. Complainant's meter at the Urrea farm in Wenden, Arizona, failed to register within the meaning of the applicable Tariff Sheet No. 3645, and thus APS was entitled to submit an estimated billing to Complainants.

4. The Commission is entitled to conclude however that both the manner of estimating and billing raised sufficiently legitimate doubts to warrant filing of a Complaint by the Urrea Company.

ORDER

WHEREFORE, IT IS ORDERED that Arizona Public Service Company be required to refund an amount of $500 to the Urrea & Sons Company, or, in the alternative, a credit in that amount shall be applied upon the rendering of its next bill.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, G. C. ANDERSON, JR., Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 14th day of February, 1985.

G. C. ANDERSON, JR.
Executive Secretary

DISSENT_____
jg

Arizona Corporation Commission
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C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

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APS
LAW DEPT.

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
SHARON B. MEGDAL
COMMISSIONER

IN THE MATTER OF THE COMPLAINT OF BY DANA W. WALKER AGAINST ARIZONA PUBLIC SERVICE.

DOCKET NO. U-1345-85-262

DECISION NO. 54809

OPINION AND ORDER

HEARING DATE: October 11, 1985

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Theodore L. Humes

APPEARANCES: Raymond S. Heyman, Attorney on behalf of Arizona Public Service Company

Steven J. Glaser, Staff Attorney, Legal Division, on behalf of the Arizona Corporation Commission

Dana W. Walker, in propria persona

BY THE COMMISSION:

On August 21, 1985, Dana W. Walker ("Complainant" or "Walker") filed a Complaint with the Arizona Corporation Commission ("Commission") against the Arizona Public Service Company ("APS" or "Respondent"). Therein Complainant alleged that the Respondent's bill for services provided for the month ending July 15, 1985, was excessive, and was in error.

Whereupon the Complaint seeks as relief a cancellation of $90.63, which he terms as an excessive charge in his electric bill dated July 15, 1985.

The Complainant Dana W. Walker and his wife occupy a residence at 9401 Arrowhead Drive in Sun City, Arizona. The Respondent read the meter on July 15, 1985, and subsequently tendered a bill for $240.63, representing a 32 day billing period beginning June 14, 1985 and ending July 15, 1985.

The Complainant asserts that the occupants of the home were gone for 4 of the 32 days, and that in their absence the thermometer regulating the air

conditioner had been set at 85 degrees.

Upon receipt of the bill, for $240.63, the Complainant contacted t Respondent's billing department and tendered a payment of $150 to Respondent with the advice that it represented what he termed his "average bill" based upon his 1984 average utility bill for the year, which he calculated at $120.46 per month, and the monthly average for 1985, to September 15, of $160.67. Since then, the Complainant has tendered the balance of $90.63, the amount which he seeks to be refunded.

Subsequent to his initial contact with APS, the Respondent dispatched two service personnel to examine the meter at the Walker residence. According to the Complainant the service personnel devoted the better part of an hour examining and removing the meter and testing it for malfunction. According to the service report the meter tested out as normal, and a copy of the inspection report was made available to the Complainant. [Exh. R-4]

Service to the Complainant's residence is guided by APS Tariff Schedul E-10, effective October 12, 1984, which sets forth the charges, and which provided the basis upon which the Complainant's usage and charges were calculated. [Exh. R-1] The billing worksheet provided by the Respondent shows that for the 32 day billing period ended July 15, 1985, the Complainant had consumed 2,658 kilowatt hours, and that his aggregate bill including taxes and regulatory assessment totalled $240.63. The Complainant's bill was subsequently reviewed by the Respondent's supervisor of rate administration who testified that the calculations and the reading was verified and found to be accurate. The APS witness also testified that the period mid-June to mid-July 1985 was hotter than the identical period in 1984, and that a hotter than usual month would account for a higher usage than normal.

The Complainant also admitted that his monthly consumption for Novem 1984, when he was operating heating equipment, was in excess of the consumption

utilized during the period in question in these proceedings.

The Respondent also testified that it has in place an informal as well as formal mechanism for resolving disputed billings, and that after explaining to customers how billings are estimated and calculated, how meters are read, and what guidelines are used, the great bulk of potential disputes are generally resolved.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric service to the public pursuant to authority granted by this Commission.

2. On August 21, 1985, the Complainant filed a Complaint against APS wherein it was alleged that APS had charged him excessively for electric consumption for the Complainant's residence covering the period June 14 through July 15, 1985.

3. The Complainant's electric meter was inspected by service personnel of APS and was certified by the Respondent to be accurate.

4. In addition, the Complainant's bill was reexamined by the APS billing department and and calculations contained in the original billing were verified and found to be accurate.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Application.

3. The allegations contained in the Complaint have not been established by the evidence herein, and said Complaint should be dismissed.

ORDER

WHEREFORE, IT IS ORDERED that the Complaint of Dana W. Walker aga Arizona Public Service Company be and the same is hereby dismissed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 12 day of December, 1985.

JAMES MATTHEWS
Executive Secretary

DISSENT _____
TLH/jg

FEB 12 1986

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
FEB 11 1986
DOCKETED BY dmk

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
SHARON B. MEGDAL
COMMISSIONER

IN THE MATTER OF THE COMPLAINT FILED BY DONALD E. COLLICOTT AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-85-188

OPINION AND ORDER

DECISION NO. 54890

DATE OF HEARING: August 15, 1985

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Theodore L. Humes

APPEARANCES:

Janice G. Harrison, Attorney, on behalf of Arizona Public Service Company:

Donald E. Collicott, in propia persona.

BY THE COMMISSION:

On June 14, 1985, Donald E. Collicott, ("Complainant"), filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS or Respondent"). Therein, Complainant alleged that the Respondent had advised him that it had discovered evidence of tampering with the electric meter installed at the Collicott residence based upon the meter's removal on December 21, 1984 and subsequent testing in the Respondent's testing facility and that the Respondent rendered to Complainant an estimated billing purporting to register an accurate estimate of Complainant's actual usage, amounting to $787.86.

Complainant denied any knowledge or liability for the meter tampering and on June 14, 1985, filed a formal Complaint with the Commission asking for relief in the nature of a disallowance of the claim or a substantial reduction thereof.

. . .

DISCUSSION

Complainant rented the premises at 11821 N. 42nd Drive, Phoenix, Arizona in January 1984. On November 9, 1984, in the course of the routine reading of the meter, it was observed that the outer seal was missing. Because of the inordinate number of monthly reports received by APS regarding missing seals, the particular meter was not removed and replaced until December 21, 1984, the earliest opportunity that the meter could be inspected by Respondent.

An inspection of the meter at the Respondent's laboratory revealed that in addition to the missing outer seal, the "T" seal (internal seal) was also broken. The meter had also been adjusted internally by the insertion of a screwdriver so as to reduce the speed of the meter's drive and thus render an inaccurate consumption (low) of electricity.

The Complainant responded that the meter is located in the side yard and is quite accessible from the street, and that he had no control over who goes in the area. The Complainant disavowed any knowledge of the meter tampering.

In accordance with procedure contained in Article 6.3.3 of the Respondent's tariff filed with the Commission, APS determined the base load readings from the new meter in use as of April 1985 and used the "degree-day" method to estimate additional loads, most importantly air conditioning. The Complainant's power consumption for 1984 was then compared with 1985. From those comparisons, Respondent determined that the abnormally low consumption attributed to energy tampering began in February 1984 and continued through December 1984.

The Commission's Rule 14-2-201 (26) describes meter tampering "as a situation where a meter has been illegally altered; common examples are meter by-passing, use of magnets to slow the meter, and broken meter seals", while Rule 14-2-208B(4) provides that "each customer shall be responsible for payment

for any equipment damage and/or estimated unmetered useage resulting from unauthorized breaking of seals, interfering, tampering or by-passing the utility meter." Neither Rule requires a utility to "prove" that the customer of record was responsible for such unauthorized tampering.

* * * * * * * *

Having considered the entire record hearing and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. APS is an Arizona Corporation engaged in providing electric service to the public pursuant to authority granted by this Commission.

2. On June 14, 1985, the Complainant filed a Complaint against APS wherein and it was alleged that APS had improperly rendered an estimated bill of $783.16 representing erroneously metered electric consumption for the Complainant's residence for the period February through December 1984.

3. The Complainant's electric meter showed evidence of tampering and was removed to APS's Phoenix repair shop where it was discovered that the T-Seal (internal seal) had been broken, that the glass had been removed from the meter and that a screwdriver had been inserted, and that an adjustment had been made to the meter reducing it to a 2.4% slow on full load and 7.6% slow on lighter load, the effect of which was to cause abnormally low electricity usage.

4. APS's estimated bill, was based upon load readings from the new meter and utilizing the degree-day method to estimate additional loads, most importantly air conditioning, the Complainant's history of usage for 1984 was compared with 1985.

5. From these comparisons, Respondent determined that the abnormally low consumption attributed to energy tampering began in February 1984 and continued through December of 1984.

6. The Respondent's terms and conditions governing the sale of electric and gas service, Schedule No. 1, (5.1.4), in effect during the relevant time that the billing was calculated, states:

> Customer shall be responsible for payment for any equipment damage and/or estimated unmetered usage resulting from unauthorized breaking of seals, interfering, tampering or by-passing Company's meter.

7. This language is essentially that contained in Commission Rule R14-2-208B(4).

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. SS 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Complainant.

3. The Complainant's meter located at 11821 N. 42nd Drive, Phoenix, Arizona showed clear evidence of tampering within the meaning of 14-2-201 (26), and thus APS was entitled to submit an estimated billing to complainant.

4. This was no evidence that APS's use of the formula in arriving at the said estimated billing was unreasonable or prejudicial to Complaint.

5. Under the circumstances set forth for herein, Complainant's complaint should be denied.

ORDER

WHEREFORE IT IS ORDERED THAT the Complaint of Donald E. Collicott against Arizona Public Service Company be and the same is hereby denied.

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IT IS FURTHER ORDERED that this Decison shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 11 day of February, 1986.

JAMES MATTHEWS
Executive Secretary

DISSENT
TH/br

Arizona Corporation Commission
DOCKETED
MAR 26 1986
DOCKETED BY C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
SHARON B. MEGDAL
Commissioner

MAR 1986 RECEIVED LAW DEPT

IN THE MATTER OF THE COMPLAINT OF AUDREY I. DIETZ AGAINST ARIZONA PUBLIC SERVICE COMPANY

DOCKET NO. U-1345-85-349

DECISION NO. 54952

OPINION AND ORDER

DATE OF HEARING: January 21, 1986

PLACE OF HEARING: Phoenix, Arizona

HEARING OFFICER: Marc E. Stern

APPEARANCE: Lallis, Jensen, Trompeter & Hulse, by Keith R. Lallis, on behalf of the Complainant;

Bruce A. Gardner, Attorney, on behalf of Arizona Public Service;

Steven J. Glaser, Attorney, Legal Division, on behalf of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 27, 1985, Mrs. Audrey I. Dietz ("Mrs. Dietz" or "Complainant") filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS" or "Respondent"). Therein, Complainant alleged that APS had demanded payment of $4,070.54 for unpaid electrical usage from May, 1981, through October, 1984. The Complainant also alleged that the Respondent had threatened to terminate her present electrical service with APS because of an unpaid balance due APS for service at her residence which balance had accrued during her former marriage to Mr. Robert T. Tuey, the prior APS customer of record at said residence. The Complainant has subsequently remarried Mr. Edward E. Dietz, and he is presently the customer of record. Complainant requested that the Commission prevent APS from terminating her service and determine whether she owed any amount to the Respondent due to

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the alleged meter tampering which gave rise to the outstanding balance. On December 20, 1985, APS filed an Answer denying any wrongdoing on its part and indicated that it was complying with the rules and regulations of the Commission and its tariffs then on file and in effect. This matter was originally scheduled for Hearing on January 17, 1986, but was continued upon Oral Motion of Complainant's counsel. It came on for Hearing before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona on January 21, 1986. Both the Complainant and APS appeared and were represented by counsel. The Commission was represented by a Staff attorney. Both the Complainant and APS introduced evidence concerning the Complaint. After a full public Hearing, the proceeding was adjourned pending submission of a Recommended Opinion and Order by the Hearing Officer to the Commission.

DISCUSSION

The Complainant was previously married to Mr. Tuey, and for a period of time during this marriage they resided together at 10611 East Mary Catherine Drive, Scottsdale, Arizona. The Respondent's master billing history revealed that Mr. Tuey became a customer at that address on December 12, 1978. According to the Complainant's testimony, she resided at that address with her former husband and her children until approximately August 6, 1984, at which time she moved out of the premises when her husband acquired her interest in the residence during a then pending divorce proceeding. The Complainant was divorced from her former husband in approximately November, 1984. From the date that the Complainant moved from the residence, her former husband resided there until approximately mid-April, 1985. However, in April, 1985, the Complainant repurchased the house from her former husband and, according to theRespondent's records, had the electrical service changed over to her name to indicate that she was the customer of record. Mr. Tuey continued to reside in the house until approximately June, 1985, when he moved out. Thereafter, the

residence remained unoccupied until the Complainant moved into it with her present husband. On or about July 1, 1985, the Complainant moved back into her former residence with her present husband, Edward E. Dietz. Electrical service remained in her name until October 30, 1985, at which time she terminated service in her name and placed it in the name of her present husband, Mr. Dietz.

While the residence was unoccupied, a meter reader reported that there was a broken glass housing on the meter attached to the Complainant's residence on June 29, 1985. Further, on July 8, an anonymous caller contacted APS and disclosed that the caller had overheard the Complainant and her present husband laughing about their low utility bills and urged the Respondent to investigate. In response to this telephone call, an investigation was begun, and on July 26, 1985, one of the Respondent's employees inspected the meter and found that the meter glass was cracked and the internal T-seal was cut. The meter was removed, tagged, and sent to the Respondent's meter shop for testing to further develop evidence of meter tampering. A new meter was installed, and service was continued at that time.

As a result of its testing on July 29, 1985, APS found that the meter had been adjusted internally causing it to fail to accurately record the actual consumption used at the residence. The test confirmed that the glass cover had been broken and the internal T-seal cut. The internal blades were worn, and the high and low voltage settings had been adjusted out of alignment along with the guides having been bent so as to slow down the disc which rotates within the meter. The evidence clearly established that meter tampering as defined by the Commission's Rule R14-2-201 (26) had taken place.

APS then set about determining the beginning of the abnormally low consumption attributable to this meter tampering. The Respondent has no records which go back beyond the calendar year 1979. A review of the billing

history for the customer in this case revealed that in May, 1981, a substantial reduction in the amount of electrical consumption began to show up in the customer's account which indicated to the Respondent that this was when the tampering initially took place. It continued until the meter was replaced on July 26. In order to arrive at the correct billing, the Respondent determined the baseload readings using the degree/day method with additional loads, most importantly air conditioning and heating. This process has been accepted by the Commission and found reasonable in the vast majority of other jurisdictions where this problem has arisen. As a result of its investigation, and recomputations of the past billing for that residence, the Respondent sent a corrected billing to the Complainant on October 22, 1985, for electricity which had been used but not billed for $4,070.54. This billing was in accordance with the Company's tariff on file with the Commission at that time which states as follows:

> "5.1.4 Customers (emphasis added) shall be responsible for payment for any equipment damage and/or estimated unmetered usage resulting from unauthorized breaking of seals, interfering, tampering or bypassing Company's meter."

Prior to the Hearing, the unmetered billing was adjusted to reflect the correct tonnage of the residence air conditioning unit and the baseload was lowered from 2100 KWH per month to 1500 KWH per month. A revised adjusted billing statement was then sent to the Complainant which also reflected usage only through October, 1984. (This was when APS thought that the Complainant had originally moved from the residence.) The revised statement called for payment of $3,741.95 for the period May, 1981, through October, 1984. The Company has elected to pursue her former husband for any unbilled service from

October, 1984, through the time that he moved out of the residence. Along with requesting this payment, APS was also threatening to terminate the complainant's electrical service at her residence with her present husband. (This caused her to terminate electrical service in her own name and have it re-established in Mr. Dietz's name.)

The evidence was uncontroverted that meter tampering had taken place. However, there was no evidence presented, nor was an allegation made that the Complainant herself had tampered with the meter. However, APS's witness indicated that the Company position was that it would attempt to disconnect the service if the Commission ruled that the bill was due and owing as a last resort even if the current service was in the name of the Complainant's present husband. In response to the allegation of meter tampering by parties unknown, the Complainant denied any knowledge that anyone did anything to the Respondent's meter. The witness for the Respondent also indicated that it was attempting to secure payment from the Complainant's former husband, but had been unsuccessful in its attempts to locate him.

In conclusion, we must agree that a preponderance of the evidence establishes that meter tampering took place at or about the time determined by the Respondent. However, with such drastic drops in electrical usage (as reflected by the usage in July, 1982, of only 17 KWH) and with such noticable tampering signs on the meter, we must also wonder about the Respondent's failing to detect the meter tampering earlier than it did. Delays in securing revenues to which the Respondent is lawfully entitled affect all rate-payers. It would appear that the Respondent's meter readers need more training and supervision in this area, so that other APS customers are not adversely affected by unknown parties tampering with the Respondent's meters. According to Commission Rule R14-2-201, a customer is defined as follows:

> "'Customer'. The person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for that service, or by the receipt and/or payment of bills regularly issued in his name regardless of the identity of the actual user of the service."

The Commission's rules regarding termination of service further provide at Rule R14-2-211 as follows:

> "A. Nonpermissable reasons to disconnect service.
>
> 1. A utility may not disconnect service for any of the reasons stated below:
>
> a. Delinquency in payment for services rendered to a prior customer at the premises where service is being provided, <u>except in the instance where the prior customer continues to reside on the premises.</u>" (emphasis added)

In this instant case, Complainant resided in the house during the period in question (December 1978 through August 1984). During this time she was married to the account obligor. Upon cross-examination, complainant admitted that she had submitted payments to Respondent for electric service.

It is well established in Arizona that where either spouse incurs an obligation during marriage for the benefit of the community, that debt is presumed to be a community obligation. <u>Garrett v. Garrett</u> (App. 1983) 140 Ariz. 564, 683 P.2d 1166 (see also A.R.S. § 25-211 et seq.)

Complainant has presented no evidence that the debt incurred during the marriage was anything but a community debt. To the contrary, Complainant admitted that both spouses wrote checks as payment for APS service. Further, Complainant has presented no evidence that as a result of her divorce that any community debt incurred during the marriage was in anyway affected or altered.

We believe that electricity was used at the premises which was not billed for as a result of meter tampering. The debt which arose occurred at the time when the Complainant was married to Mr. Tuey. The debt is a community debt,

which under applicable Arizona law, Complainant is under a legal obligation to satisfy.

We do not believe, however, that this debt can be extended to the Dietz's, since this marriage is a separate community and as such was not the customer of record during the period of unmetered electrical usage. Therefore, we shall not permit a termination of service in this instance to the present customer of record.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric service to the public pursuant to authority granted by this Commission.

2. On November 27, 1985, Complainant filed a Complaint against APS wherein it was alleged that APS had threatened to terminate service to her present residence which receives electrical service in her present husband's name because of an amount due and owing of $3,741.95 from her former husband who was the prior customer of record at the same residence for unmetered electric consumption at 10611 East Mary Catherine Drive, Scottsdale, Arizona, during the period from May, 1981, to October, 1984.

3. Complainant had resided at that residence while married to her former husband from December, 1978, until approximately August 6, 1984.

4. The Respondent's investigation of the unmetered electric consumption at that residence revealed that the meter had been blatantly tampered with and during periods of low consumption indicated higher usage, and during periods of high consumption indicated lower usage which had been caused by internal blades which were worn; and high and low voltage settings which had been adjusted out

of alignment and also because guides had been bent which slowed down the rotating disk inside of the meter.

5. Complainant, Audrey I. Dietz, denied that she had any knowledge of the meter tampering.

6. APS's estimated bill was based upon a degree/day analysis and baseload readings and other acceptable industry principles and practices which the Commission and our Courts and the majority of other jurisdictions follow in establishing estimated billings when such incidents occur.

7. The amount of the backbill, $3,741.95, is a reasonable estimate of what is owed to APS for the time period May 1981 through August 1984.

8. Complainant has presented no evidence that the debt incurred was anything but a community debt.

9. Complainant has presented no evidence that as a result of her divorce that her legal obligations relating to community debts incurred during marriage had been altered.

10. Neither the Complainant nor her present husband were the customers of record during the period for which the Complainant is being held liable for the unmetered electrical usage.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of ARticle XV of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint.

3. Complainant's meter at 10611 East Mary Catherine Drive, Scottsdale, Arizona failed to adequately register electrical consumption due to the aforementioned meter tampering, and the customer shall be responsible for payment as reflected by an estimated billing pursuant to the Respondent's applicable tariff then in effect at the time the tampering was discovered.

4. There is no evidence that the Respondent's use of degree/day analysis was unreasonable or prejudicial to Complainant in arriving at said estimated billing.

5. The State of Arizona is a community property state wherein a debt or obligation incurred during the marriage for the benefit of the community is presumed to be a community obligation.

6. The Complaint filed by Mrs. Dietz against APS has been sustained by a preponderance of the evidence, and the relief requested therein should be granted to the extent set forth hereinafter.

ORDER

IT IS THEREFORE ORDERED that Arizona Public Service Company be, and the same is hereby prohibited from terminating the provision of electrical service to the residence of the Complainant for the reason set forth hereinabove.

IT IS FURTHER ORDERED that Mr. Robert Tuey and Mrs. Audrey Dietz shall owe to APS the sum of $3,741.95.

IT IS FURTHER ORDERED that Mr. Robert Tuey and Mrs. Audrey Dietz shall be permitted to submit forty (40) monthly payments with no interest accruing over the life of the debt.

IT IS FURTHER ORDERED that this Decision be and the same is hereby effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 26 day of March, 1986.

JAMES MATTHEWS
Executive Secretary

DISSENT

MES/djp

Arizona Corporation Commission
DOCKETED
APR 21 1986
DOCKETED BY C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
SHARON B. MEGDAL
COMMISSIONER

APR 1986 RECEIVED APS LAW DEPT.

IN THE MATTER OF THE COMPLAINT BY JASPER SIMMONS AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-85-149

DECISION NO. 54976
OPINION AND ORDER

DATE OF HEARING: October 25, 1985

PLACE OF HEARING: Yuma, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh

APPEARANCES: Raymond S. Heyman, Attorney, Legal Division, on behalf of Arizona Public Service Company'

Steven J. Glaser, Attorney, Legal Division, on behalf of Arizona Corporation Commission Staff;

Jasper Simmons, inpropria persona:

On May 13, 1985, Jasper Simmons ("Complainant") filed a formal Complaint against Arizona Public Service Company (APS). Complainant alleged that APS was backbilling him for errors of APS.

Pursuant to Notice dated August 30, 1985, as amended by Procedural Order dated September 27, 1985, this matter came before a duly authorized Hearing Officer of the Commission at the Yuma County Board of Supervisors Meeting Room in Yuma, Arizona, on October 25, 1985. The Complainant appeared on his own behalf, and APS and the Commission were represented by counsel. Complainant and APS introduced evidence concerning the Complaint. This matter was adjourned pending submission of a recommended Opinion and Order by the Presiding Officer to the Commission.

DISCUSSION

Complainant was backbilled for $4,172.16 for a 32-month period from February 1982 through September 1984. On September 16, 1984, an APS meter

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reader noticed that even though the air conditioner was running at Complainant's residence, the electric meter (No. 79654) had not registered consumption since the previous reading. As a result, the above meter No. (79654) was replaced by a new meter on September 17, 1984. Meter No. 79654 was subsequently tested by APS and found not to be registering full consumption. The meter disk rubbed on the magnets when the amperage was over twenty (20) amps resulting in the meter stopping. The meter would not start again unless the load was completely dropped off.

With the new meter in place for less than 24 hours, Complainant consumed more kilowatt hours (206) than he had been billed in total for the previous month (168). For the twenty three (23) days billed in October 1984, Complainant used 3526 kilowatt hours. The consumption history of Complainant indicated that each of the previous billings since February 1982 were less than 1000 kilowatt hours. Additionally, there were numerous months at or near usage from February 1982 until the new meter was installed. In order to determine a base load on which to estimate Complainant's usage, APS waited until after the summer months. The January 1985 average usage of forty-one (41) kilowatt hours was used for the base load. For each month of the backbill period, the number of cooling-degree days was determined and an estimated usage for each month was calculated. The result was the $4,172.16 backbill.

Subsequent to the aforementioned backbill, there was a newspaper article published in a local Yuma newspaper. As a result of that and the realization that Complainant would probably not be able to pay the original backbill, APS decided to again review the backbill. APS determined that although they could determine that Complainant's meter was probably malfunctioning in February 1982, they could not "definitely fix" the date the meter first malfunctioned. Accordingly, APS determined pursuant to A.C. R14-2-210(E)(1)(a) that the backbill should be reduced to a three (3) month

period. As a result of the above, APS delivered a revised backbill to Complainant on March 22, 1985 for $855.12. Additionally, APS gave Complainant 24 equal monthly installments on which to pay the bill without interest.

Complainant asserted that the meter problem was not his fault and he should not have to pay any backbill. It is noted that Complainant offered very little testimony at the hearing and was unable to identify his type-written Complaint.

We concur with APS that Complainant's meter was malfunctioning and a backbill was appropriate. In addition, we are concerned with the fact that Complainant's most recent usage is very high which indicates a need for some energy conservation practices. Although Complainant failed to respond to APS' previous offer for help in reducing his consumption, we would recommend that APS and the Commission's Utilities Division Staff make a joint effort to provide education on energy conservation to Complainant.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On February 7, 1985, APS back billed Complainant for electric service in the amount of $4,172.16.

3. On May 13, 1985, Complainant filed a formal Complaint with the Commission against APS, wherein it was alleged that APS was backbilling him for errors of APS.

4. Complainant was backbilled for electric usage for the 32 month period from February 1982 through September 1984.

5. A new meter was installed at Complainant's residence on September 17, 1984.

6. Meter number No. 79654 was removed from Complainant's residence on September 17, 1984 and subsequently tested and found not to be registering full consumption.

7. APS was unable to determine the date that meter number No. 79654 malfunctined.

8. APS estimated a usage of 41 kilowatt hours per day for Complainant's base load usage during the back bill period.

9. On March 22, 1985, APS sent a revised backbill to Complainant to for $855.12 for the period of July through September 1984.

10 APS has offered Complainant twenty four (24) months to pay off any deficiency and has not assessed any interest on the unpaid balance.

11. In each month during the period of July through September, 1 Complainant used approximately 6,000 kilowatt-hours of electricity.

12. There were eight months during the February 1982 through September 1984 period in which Complainant's meter registered approximately zero usage.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint herein.

3. APS' backbilling of March 22, 1985, is permitted pursuant to A.C.R.R. R14-2-210 (E).

4. A.R.S. Sections 40-374 and Section 12 of Article XV of the ARizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to r customers who have been erroneously underbilled for electric service.

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Jasper Simmons against Arizona Public Service on May 13, 1985, be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that Arizona Public Service Company shall grant Complainant herein twenty four (24) months in which to pay said revised bill in approximately equal payments, and shall not charge interest on any unpaid balance.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 21 day of April, 1986.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT _____
JR/br

Decision No. 54976

Arizona Corporation Commission
DOCKETED
APR 21 1986
DOCKETED BY C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
SHARON B. MEGDAL
COMMISSIONER

APR 1986 RECEIVED APS LAW DEPT.

IN THE MATTER OF THE COMPLAINT BY B. J. SHADDY AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-85-207

DECISION NO. 54982

OPINION AND ORDER

DATE OF HEARING: October 25, 1985

PLACE OF HEARING: Yuma, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh

APPEARANCES: Raymond S. Heyman, Attorney, Legal Division, on behalf of Arizona Public Service Company;

Steven J. Glaser, Attorney, Legal Division, on behalf of Arizona Corporation Commission Staff;

Burvell J. Shaddy, in propria persona;

BY THE COMMISSION:

On July 2, 1985, Burvell J. Shaddy ("Complainant") filed a formal Complaint against Arizona Public Service Company ("APS"). Complainant alleged that APS was backbilling him for errors of APS.

Pursuant to Notice dated August 30, 1985, as amended by Procedural Order dated September 27, 1985, this matter came before a duly authorized Hearing Officer of the Commission at the Yuma County Board of Supervisors Meeting Room in Yuma, Arizona, on October 25, 1985. The Complainant appeared on his own behalf, and APS and the Commission were represented by counsel. Complainant and APS introduced evidence concerning the Complaint. This matter was adjourned pending submission of a recommended Opinion and Order by the Presiding Officer to the Commission.

. . .

DISCUSSION

Complainant was backbilled $622.24 for a 8-month period from August 1984 through March 1985. On March 6, 1985, an APS meter reader reported that Complainant's meter was not working properly. A work order was issued as a result, and the meter (No. 401501) was inspected and found to be dead. On March 11, 1985, the aforementioned meter was replaced by a new meter. After nine (9) days (March 20, 1985), the new meter indicated 200 kilowatt/hours had been consumed.

Based on the consumption recorded by the new meter, APS calculated a base load for Complainant of 22 kilowatt hours per day. In reviewing Complainant's billing history for January 1980 through May 1985, APS determined a billing adjustment would be appropriate for the eight (8) month period August 1984 through March 1985. The heating and cooling degree day requirements were added to the previously estimated base load for each month. On April 9, 1985, Complainant was backbilled for $662.24 for that period. It is noted that for the last seven (7) months of the period in question, Complainant was billed for no consumption.

Subsequent to sending out the backbill, meter No. 401501 was inspected and tested by APS on July 29, 1985. The results of that test indicated that although the meter was operating within the limits of the Commission's Rules, it also had been tampered with pursuant to Commission Regulation R14-2-201 (26). The meter's T-seal was broken and the underload blades had burn spots and scratches. APS concluded that someone had been removing the meter from the socket so that it would not register total consumption. Schedule No. 1, Paragraph 5.1.4 states that the customer is responsible for the estimated bill when meter tampering is shown:

. . .

. . .

> Customer shall be responsible for payment for any equipment damage and/or estimated unmetered usage resulting from unauthorized breaking of seals, interfering, tampering or by-passing Company's meter.

Complainant did not dispute the amount of the backbill, in fact, he testified it was a reasonable amount for the period, but believed any error as a result of a malfunctioning meter should be the responsibility of APS. Complainant acknowledged that his bill for August 1984 usage indicated no consumption even though he was using electricity. Complainant stated he didn't believe it should be his responsibility to contact APS regarding the billings for zero consumption.

We concur with APS that Complainant was consuming electricity that he was not being billed for. Since Complainant was consuming electricity during the period September 1984 through March 1985, and was not billed for such, we believe a backbill is appropriate for that time period. However, we are not convinced the amount of kilowatt hours billed for August 1984 was in error. For that reason, we will not approve the rebilling for the month of August 1984.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On April 9, 1985, APS backbilled Complainant for electric service in the amount of $622.24.

3. On July 2, 1985, Complainant filed a formal Complaint with the Commission against APS wherein it was alleged that APS was backbilling him for

errors of APS.

4. Complainant was backbilled for electric usage for the 8 month period from August 1984 through March 1985 in the amount of $662.24.

5. Meter number No. 401501 was replaced with a new meter at Complainant's residence on March 11, 1985, as it was not registering any consumption.

6. From March 11 to March 20, 1985, the new meter at Complainant's registered 200 kilowatt hours of electricity consumed.

7. For the seven (7) month period from September 1984 through March 1985, Complainant consumed electricity, but was billed for no consumption.

8. APS estimated a base load for Complainant of 22 kilowatt hours per day.

9. The heating and cooling degree day requirements were added to the base load to determine the full amount of the backbill.

10. Meter number 401501 was inspected and tested by APS on July 29, 1985 and found to be operating within the limits of the Commission's regulations.

11. Meter number 401501 was found to have a broken T-seal and the underload blades had burn spots and scratches.

12. Complainant testified that the amount of the backbill was reasonable.

13. There was little evidence to show Complainant's billings prior to September 1984 were in error.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter

of the Complaint herein.

3. APS' backbilling of March 22, 1985, except as modified by our Finding of Fact No. 13 hereinabove, is permitted pursuant to A.C.R.R. R14-2-210 (E).

4. A.R.S. Sections 40-374 and Section 12 of Article XV of the Arizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to rebill customers who have been erroneously underbilled for electric service.

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by B. J. Shaddy against Arizona Public Service Company on July 2, 1985, be, and the same is hereby sustained to the extent set forth hereinabove.

IT IS FURTHER ORDERED that Arizona Public Service Company resubmit its backbill to B. J. Shaddy for the time period September 1984 through March 1985.

IT IS FURTHER ORDERED that Arizona Public Service shall grant B. J. Shaddy at least seven (7) months to pay said bill, as resubmitted, in approximately equal payments and shall not charge interest on any unpaid balance.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 21 day of April, 1986.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT _____
JR/br

MAY 1 1986
Arizona Corporation Commission
DOCKETED

BEFORE THE ARIZONA CORPORATION COMMISSION

APR 23 1986

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
SHARON B. MEGDAL
COMMISSIONER

RECEIVED APS LAW DEPT. APR 1986

DOCKETED BY C.M.

IN THE MATTER OF THE COMPLAINT BY RICHARD S. MARTINEZ AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-85-197

DECISION NO. 54989

OPINION AND ORDER

DATE OF HEARING: October 25, 1985

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh

APPEARANCES: Raymond S. Heyman, Attorney, Legal Division, on behalf of Arizona Public Service Company;

Steven J. Glaser, Attorney, Legal Division, on behalf of Arizona Corporation Commission;

Richard S. Martinez, in propria persona;

BY THE COMMISSION:

On June 24, 1985, Richard S. Martinez ("Complainant") filed a formal Complaint against Arizona Public Service Company ("APS"). Complainant alleged that APS was backbilling him for the billing errors of APS.

Pursuant to Notice dated August 30, 1985, as amended by Procedural Order dated September 27, 1985, this matter came before a duly authorized Hearing Officer of the Commission at the Yuma County Board of Supervisors Meeting Room in Yuma, Arizona, on October 25, 1985. The Complainant appeared on his own behalf, and APS and the Commission were represented by counsel. Complainant and APS introduced evidence concerning the Complaint. This matter was adjourned pending submission of a recommended Opinion and Order by the Presiding Officer to the Commission.

DISCUSSION

Complainant was backbilled for $2,580.96 for a 38-month period from

August 1981 through September 1984. On September 20, 1984 an APS meter reader reported that the meter (No. 349104) at Complainant's residence was working. As a result, the above meter was replaced by a new meter on September 25, 1984. Meter No. 349104 was subsequently tested by APS and found to have both potential coils open and hence inoperative.

The consumption history indicated that one or both coils were opening at random depending upon the temperature. As a result, the hot summer months were more apt to have both coils open than were the cooler winter months. For the summer months (July through September) of 1982, 1983, and 1984, Complainant was billed for zero (0), forty-three (43), and zero (0) kilowatt hours respectively. APS asserts that it was difficult for their meter readers to catch any error because there are numerous accounts in Yuma with no summer usage. In comparison, the same three months for 1985 (after installation of a new meter) had billings totaling 4,650 kilowatt hours. This much high reading occurred in spite of the fact that Complainant had drained his pool in July 1985. Complainant testified that during the 38-month backbilling period, he used his pool pump approximately one (1) to one and one half (1 1/2) hours per week.

After installing the new meter at Complainant's residence, APS monitored the amount of consumption and compared it to Complainant's past billings to determine if an adjustment was warranted. APS concluded that the meter had been malfunctioning because of the erratic consumption shown for the account as well as the fact that no consumption was shown for the final four or five months the meter was used. APS further concluded, based on the consumption history, that the meter had malfunctioned prior to August 1981 (the date the account was first placed in Complainant's name) and an adjustment back to that date was therefore warranted.

APS asserts that Paragraph 6.3.3 of its Tariff Number 3937, Schedule

000001290

Number one provides for an estimate of consumption when a meter does not register properly. After monitoring Complainant's consumption with a new meter and holding discussions with Complainant, APS estimated a base load usage of 14.2 kilowatt hours per day. (We note the base load usage amount would include pool pump usage although the APS representative that made the estimate could not recall Complainant telling him that he only used the pump approximately sixty (60)to (90) ninety minutes per week. Further, the time estimated for pool pump usage could not be verified, since the base usage calculation was never put in writing.) To the base load was then added cooling degree day requirements in order to arrive at Complainant's total estimated usage during the backbilling period.

Complainant had paid several months on the backbill until he heard about the Arizona Residential Utility Consumer Office ("RUCO"). In response to a request for forms by Complainant, RUCO sent him information indicating he should only pay for up to three (3) months. Consequently, Complainant stopped paying the backbill and filed his Complaint with this Commission. Complainant argues that since the slow running meter was APS's fault, he should not have to pay any of the backbill. Although Complainant did use electricity during the months he was billed for zero (0) usage, he did not believe it was his responsibility to notify APS of any discrepancy.

A.C.R.R. R14-2-210(E)(1)(b) requires a public service electric corporation to backbill for the entire period if the date of the error can be "definitely fixed". In this case, the evidence indicates that the meter was in error some time prior to August 1981. Although the exact date has not been determined, this is not necessary, since it occurred prior to the August 1981 date. Hence, we do concur that the backbilling for the period August 1981 through September 1984 was proper with the exceptions noted below.

Although the issue of any general statutory limitation was not raised in

this case, that does not preclude its applicability. We find that APS is limited to rebilling for a three (3) year period pursuant to A.R.S. § 12 and Biddle v. Mountain States Telephone and Telegraph Company, 629 F2d 571 (9th Cir. 1980). Further, we find that APS can backbill for the three-year (3) period going back from the date (November 1984) it notified Complainant of the billing error. Thus, the appropriate backbill period would be from November 1981 through September 1984.

Additionally, we believe the estimated base load usage of 14.2 kilowatt hours per day is too high. Page 3 of APS Exhibit No. 4 indicates that in all six (6) months from November 1984 through April 1985, Complainant used less electricity than the base load estimated by APS. For that reason, we believe it would be more appropriate to estimate a base load for the backbill period by using the actual average usage for the six-month period from November 1984 through April 1985.

* * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On November 1, 1984, APS backbilled Complainant for electric service in the amount of $2,580.96.

3. On June 24, 1985, Complainant filed a formal Complaint with the Commission against APS wherein it was alleged that APS was backbilling him for errors of APS.

4. Complainant was backbilled for electric usage for the 38-m period from August 1981 through September 1984.

5. Complainant was using electricity during the period from August 1981 through September 1984.

6. During the months of July, August, and September of 1982 and 1984, Complainant was billed for zero (0) kilowatt hours of consumption.

7. For the months of July, August, and September of 1983, Complainant was billed for two (2), twenty-four (24), and seventeen (17) kilowatt hours of consumption respectively.

8. Complainant was billed for 87 and 40 kilowatt hours for the respective months of August and September, 1981.

9. A new meter was installed at Complainant's residence on September 25, 1984.

10. For the months of July, August, and September, 1985, Complainant was billed for 1491, 2208, and 951 kilowatt hours respectively.

11. Meter number 349104 was removed from Complainant's residence on September 25, 1984 and subsequently tested and found to have both potential coils open.

12. During the period August 1981 through September 1984, Complainant used his pool pump approximately one (1) to one and one half (1 1/2) hours per week.

13. Meter number 349104 began to malfunction prior to August 1981.

14. APS estimated a usage of 14.2 kilowatt hours per day for Complainant's base load during the backbill period.

15. Complainant's actual average usage for the period November 1984 through April 1985 was less than the base load estimated by APS for the backbill period.

16. APS has offered Complainant at least thirty eight (38) months to pay of any deficiency and has not assessed an interest charge on the unpaid balance.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Articl of the Arizona Constitution and A.R.S. Sections 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint herein.

3. APS' backbilling of November 1, 1985, is permitted pursuant to A.C.R.R. R14-2-210 (E).

4. A.R.S. Sections 40-374 and Section 12 of Article XV of the Arizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to rebill customers who have been erroneously underbilled for electric service.

5. APS' estimate for Complainant's base load usage was excessive.

6. APS is limited to rebilling for a three (3) year period pursuant t A.R.S. § 12-543 and Biddle v. Mountain States Telephone and Telegraph Comp 629 F2d 571 (9th Cir. 1980).

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Richard S. Martine against Arizona Public Service Company on June 24, 1985, be, and the same i hereby sustained to the extent set forth hereinabove.

IT IS FURTHER ORDERED that Arizona Public Service Company is t recompute its backbill using Complainant's average usage for October 15 throu December 15, 1984 and March 1 through April 15, 1985 to determine the ba load.

IT IS FURTHER ORDERED that Arizona Public Service Company resubmit backbill to Richard S. Martinez for the time period November 1981 throu September 1984.

IT IS FURTHER ORDERED that APS shall grant Complainant at least six (36) months in which to pay said revised bill in approximately equ payments, and shall not charge interest on any unpaid balance.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 23 day of April, 1986.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT _____
JR/br

MAY 14 1986

Arizona Corporation Commission
DOCKETED

MAY 15 1986

DOCKETED BY C.M.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
SHARON B. MEGDAL
Commissioner

IN THE MATTER OF THE COMPLAINT BY DAVID AND MICHELLE LEVANDOWSKY AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-85-255

DECISION NO. 55033

OPINION AND ORDER

DATE OF HEARING: October 9, 1985

PLACE OF HEARING: Phoenix, Arizona

HEARING OFFICER: Jerry L. Rudibaugh

APPEARANCES: Raymond S. Heyman, Attorney, on behalf of Arizona Public Service Company;

Bendheim & Mote, P.C., by Theodore D. Mote, on behalf of David and Michelle Levandowsky;

Steven J. Glaser, Attorney, Legal Division, on behalf of the Arizona Corporation Commission Commissioners.

BY THE COMMISSION:

On August 22, 1985, Mr. and Mrs. Levandowsky ("Complainants") filed a formal Complaint against Arizona Public Service Company ("APS"). Complainants alleged that APS was erroneously "backbilling" them.

Pursuant to Notice dated September 26, 1985, this matter came before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona, on October 9, 1985. Complainant, APS, and the Commission were represented by counsel. Complainant and APS introduced evidence concerning the Complaint. Further, the record was kept open at the request of the Commission until a generic proceeding could be held on backbilling cases. This matter was adjourned pending submission of a Recommended Opinion and Order by the Presiding Officer to the Commission.

On July 16, 1985, APS received a telephone call from a woman identify herself only as a "neighbor" of Complainants. She allegedly told APS that of the Complainants was tampering with the meter installed at Complainants' residence (15426 North 47th Street). On July 17, 1985, APS conducted a field inspection of Meter No. 592236 at Complainants' residence. The results of that inspection indicated that the ring seal had been cut, the T-seal had been cut, and the meter panel seal was missing. The meter was replaced and tested at the APS meter shop. The test results indicated that the meter was registering within the allowable deviations; however, one of the hands was out of sync. APS concluded that this was further evidence of tampering. In addition, APS held investigatory interviews with each of the Complainants. We note that both Complainants worked for APS at the time of the alleged meter tampering.

As a result of the above, APS reviewed Complainants' usage and determined that their consumption and demand patterns were unusual for the size of house. Accordingly, APS determined that a backbill was required. We note that Complainants are on the EC-1 billing rate in which they are billed not only for Kwh consumption, but also for KW demand. APS determined that the October, 1984, billing for Complainants of 488 kilowatt hours was representative of Complainants' base load. To that base load, APS used the degree/day method of determining usage for the remaining months in question. Further, they took into consideration the size of the air conditioner but not its SEER rating and the size of the house but not its orientation, landscaping, insulation, or its occupants' life style.

Complainants admitted that on July 23, 1984, they had a contractor install a load controller on their residence. Further, the contractor cut the meter panel seal, ring seal, and T-seal at that time. Both the contractor and Complainants testified that they had verbally told APS of the cut seals requested that they be repaired. We note that APS asserted that its policy for

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telephone calls is to fill out a service order. In reviewing its records for the period July through September, 1984, APS could find no service orders for reseals at the Complainants' address. In addition to cutting the seals, Complainants testified that the contractor reset the demand back to zero at least two and maybe three times. In fact, one of the Complainants testified as follows concerning a conversation with the contractor:

"He had called me at work on the day of my meter read, that August 6 read, and told me that he had reset the demand. He also gave me an indication that the meter reader was hot on his tail, and this upset me considerably. I remember whispering through my mouth, 'Are you trying to get me fired?'"

Complainants argued that if the period in question is compared to their usage at their previous residence or to its use after a new meter was installed, it will be seen to be reasonable. Further, they argued that they live conservatively, and their usage is low because they both work. We note that Complainants' prior home had natural gas heating versus electric heating at their current residence. Additionally, Complainants' current residence has a solar hot water heater. Hence, direct comparisons are difficult.

There is no doubt that Meter No. 592236 was tampered with. This was admitted by the contractor, as well as the Complainants. We also believe that the Complainants, as employees of APS, should have been aware that the meter needed to be resealed. Although they indicated that they had notified APS several times, there was never any attempt to put the notification in writing. Further, the APS record check did not produce any evidence of attempted notification. We must conclude that there was meter tampering but with no intent to defraud. Therefore we will allow backbilling for the 3-month period of April 1985 through June 1985, for a total of $87.67.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the

premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric and gas service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On August 22, 1985, Complainants filed a formal Complaint with the Commission against APS wherein it has alleged that APS was erroneously backbilling them.

3. On August 2, 1985, APS backbilled Complainants for electric service in the amount of $616.24.

4. Complainants were backbilled for electric usage from the date Meter No. 592236 was installed, July 2, 1984, to the date it was removed, July 17, 1985.

5. On July 23, 1984, a contractor cut three seals on Complainants' Me No. 592236 in order to install a load controller.

6. The contractor reset the demand on Meter No. 592236 on one or two occasions subsequent to July 23, 1984.

7. A field inspection of Meter No. 592236 on July 16, 1985, indicated that the ring seal had been cut, the T-seal had been cut, and the meter panel seal was missing.

8. Meter No. 592236 was tested on July 18, 1985, and found to have its T-seal broken and one of the hands out of sync.

9. Complainants' July, 1984, read date occurred prior to the time the seals on Complainants' meter were cut, and there was no additional evidence to show it was in error.

10. APS estimated a base load for Complainants of 488 kilowatt hours per month.

11. The heating and cooling degree/day requirements for average users of

a home and air conditioner similar to Complainants' were added to the base load to determine the full amount of the backbill.

12. The July, 1985, backbill by APS is excessive when compared to the July, 1984, usage.

13. APS's backbilling of August 2, 1985 will be modified to backbill for the 3-month period of April 1985 through June 1985, for a total of $87.67.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint.

3. APS's backbilling of August 2, 1985, except as modified by our Finding of Fact Nos. 13 hereinabove, is permitted pursuant to A.C.R.R. R14-2-208(B)(4).

4. A.R.S. §40-374 and §12 of Article XV of the Arizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to rebill customers who have been erroneously underbilled for electric service.

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Mr. and Mrs. Levanowsky against Arizona Public Service Company on August 22, 1985, be, and the same is hereby sustained to the extent set forth hereinabove.

IT IS FURTHER ORDERED that Arizona Public Service Company re-submit its backbill to Mr. and Mrs. Levanowsky for the billing period April 1984, through June, 1985.

IT IS FURTHER ORDERED that Arizona Public Service shall grant Mr. and Mrs. Levanowsky at least three (3) months to pay said bill, as re-submitted, in approximately equal payments and shall not charge interest on any unpaid balance.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 15 day of May, 1986.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT Sharon B Megdal
JLR/sks

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APR 29 1987

BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
Chairman
RENZ D. JENNINGS
Commissioner
DALE H. MORGAN
Commissioner

Arizona Corporation Commission
DOCKETED
APR 23 1987
DOCKETED BY

APR 1987 RECEIVED APS LEGAL DEPT.

IN THE MATTER OF THE COMPLAINT BY GEORGE C. WADSWORTH AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-86-244

DECISION NO. 55544

OPINION AND ORDER

DATE OF HEARING: November 24, 1986

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh

APPEARANCES: George C. Wadsworth, in propia persona;

Bruce A. Gardner, Attorney, on behalf of Arizona Public Service Company.

BY THE COMMISSION:

On October 3, 1986, Mr. George C. Wadsworth ("Complainant") filed a formal Complaint against Arizona Public Service Company ("APS"). Complainant alleged that APS was "backbilling" him for an excessive amount.

Pursuant to Notice dated November 4, 1986, this matter came on for hearing before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona, on November 24, 1986. The Complainant appeared on his own behalf, and APS was represented by counsel. Complainant and APS introduced evidence concerning the Complaint. This matter was adjourned pending submission of a Recommended Opinion and Order by the Presiding Officer to the Commission.

DISCUSSION

On May 8, 1986, a meter reader for APS discovered magnets situated on the rectangular can ("meter can") to which the meter is attached servicing Complainant's residence at 12431 North 39th Way, Phoenix, Arizona. On that

same day a revenue protection serviceman ("serviceman") was sent out to investigate this matter. The aforementioned meter (No. 490169) was replaced on that same day with another meter. When removing the meter, the serviceman found there was an internal T-seal missing. Meter no. 490169 was tested by the APS meter shop on May 9, 1986, wherein it was found that both the full and light voltage load settings had been adjusted to slow the meter's function.

Based on the above, APS concluded that meter no. 490169 had been tampered with in violation of A.A.C. R14-2-201(26). Specifically, 14-2-201(26) states as follows:

> Meter tampering is a situation where a meter has been illegally altered. Common examples are meter bypassing, <u>use of magnets to slow the meter recording, and broken meter seals.</u> (Emphasis added.)

As a result of the above-described events, APS reviewed Complainant's usage and determined that meter tampering began in approximately June, 1982. It is noted that although the June degree/days were higher than the previous three (3) months, it had the smallest number of kilowatt hours billed. Further, the June, 1982, usage was less than the base load estimated by APS for Complainant's residence. To arrive at an estimated base load, APS reviewed the usage at the residence in November, 1981 (that month had zero degree/days) and the usage during the first month (May, 1986) the new meter was in place (after backing out the cooling requirements). APS used the smallest of these two numbers (1,100 kilowatt hours for May, 1986) for its estimated base load. We note that Complainant's three level house has a solar hot water tank and a swimming pool. To that base load, APS used the degree/day method of determining usage for the remaining months in question. Lastly, APS limited its backbilling to a three (3) year period in arriving at a total backbill of $1,975.48. After receiving additional information from Complainant regarding . . .

his residence and energy consumption, APS reduced the backbill by 20% to $1,580.38.

Complainant did not dispute that the meter had been tampered with nor that the speakers found on the meter were his. However, Complainant did assert that he was not the one who tampered with the meter. Further, Complainant was of the opinion that any meter tampering did not occur until approximately May, 1984, and the backbill should only be approximately $900.00.

There is no doubt that tampering had taken place on meter no. 490169. We concur with Complainant that APS did not prove he was the one who actually did the tampering. However, it is also clear that any benefits derived from meter tampering would have gone to Complainant. Hence, we must conclude a backbill to Complainant was appropriate. Further, we believe the method employed by APS in arriving at its estimate was reasonable. Accordingly, we approve the backbill submitted by APS in this matter.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On July 2, 1986, APS backbilled Complainant for electric service in the amount of $1,975.48.

3. On August 22, 1986, APS sent a revised backbill to Complainant for electric service in the amount of $1,580.38.

. . .

. . .

4. On October 3, 1986, Complainant filed a formal Complaint with the Commission against APS wherein it has alleged that the August 22, 1986, backbill was too high.

5. Complainant was backbilled for the three (3) year period June, 1983, through May, 1986.

6. On May 8, 1986, an APS meter reader discovered magnets on the meter can servicing Complainant's residence at 12431 North 39th Way, Phoenix, Arizona.

7. On May 8, 1986, meter no. 490169 was removed from Complainant's residence by an APS serviceman.

8. A field inspection of meter no. 490169 on May 8, 1986, indicated that the internal T-seal was missing.

9. Meter no. 490169 was tested at the APS meter shop on May 9, 1986, wherein it was found that the glass cover was on crooked and that both the full and light voltage load settings had been adjusted to slow the meter's function.

10. APS estimated a base load for Complainant's residence of 1,100 kilowatt hours per month.

11. The heating and cooling degree/day requirements for average users of a home and air conditioner similar to Complainant's were added to the base load to determine the full amount of the backbill.

12. APS reduced the estimated backbill by 20% in order to take into consideration the fact that Complainant was working out-of-state during the backbilling period.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-246 and 40-374.

2. The Commission has jurisdiction over APS and of the subject matter of the Application.

3. Meter tampering is in violation of A.A.C. R14-2-201(26).

4. APS's revised backbilling of August 22, 1986, is permitted pursuant to A.A.C. R14-2-208(B)(4).

5. A.R.S. §40-374 and §12 of Article XV of the Arizona Constitution prohibit APS from charging less than the amount set forth in its lawful tariffs and place upon APS an absolute affirmative duty to rebill customers who have been erroneously underbilled for electric service.

ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Mr. George C. Wadsworth against Arizona Public Service Company on October 31, 1986, be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that Arizona Public Service Company shall grant Mr. George C. Wadsworth at least thirty-six (36) months to pay said bill in approximately equal payments and shall not charge interest on any unpaid balance.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 23 day of April, 1987.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT _____
JLR/sks

BEFORE THE ARIZONA CORPORATION COMMISSION

OCT 1987
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APS
LEGAL DEPT.

Arizona Corporation Commission
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MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

IN THE MATTER OF THE COMPLAINT OF SAM DI GUISEPPE AGAINST ARIZONA PUBLIC SERVICE COMPANY.

DOCKET NO. U-1345-87-147

DECISION NO. 55748

OPINION AND ORDER

DATE OF HEARING: August 28, 1987

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh

APPEARANCES: Bruce A. Garner, Arizona Public Service Law Department, on behalf of Arizona Public Service Company

Law Offices of Glynn W. Gilcrease, Jr., by Joel H. Hoffman, on behalf of Sam Di Guiseppe

BY THE COMMISSION:

FINDINGS OF FACT

1. Arizona Public Service ("APS") is an Arizona corporation engaged in providing electric service to the public within portions of Arizona pursuant to authority granted by this Commission.

2. On June 15, 1987, Sam Di Guiseppe ("Complainant") filed a Complaint with the Arizona Corporation Commission ("Commission") wherein it was alleged that APS had over estimated a backbill for unmetered energy usage.

3. A hearing was set on the Complaint at the Commission's office in Phoenix, Arizona on August 28, 1987.

4. At the time set for hearing, Complainant and APS were able to agree on a settlement in this matter.

5. As a result of the settlement, Complainant requested his Complaint be withdrawn.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-246 and 40-361.

2. The Commission has jurisdiction over APS and of the subject matter herein.

3. The withdrawal request of Complainant is well taken, and the Complaint should be dismissed.

ORDER

IT IS THEREFORE ORDERED that the June 15, 1987 Complaint filed by Sam Di Guiseppe against Arizona Public Service Company, be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 7 day of October, 1987.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT _____
JLR/djp

OCT 1987
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Decision No. 55748

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

LEILA O. GIRARD Complainant vs. ARIZONA PUBLIC SERVICE COMPANY Respondent	DOCKET NO. U-1345-86-096 DECISION NO. 55983 OPINION AND ORDER

MAY 1988
RECEIVED
APS
LEGAL DEPT.

DATE OF HEARING: February 18, 1987

PLACE OF HEARING: Yuma, Arizona

PRESIDING OFFICER: Cheryl K. Hachman

APPEARANCES: Bruce A. Gardner, Law Department, on behalf of Arizona Public Service Company

Leila O. Girard, in propria persona

BY THE COMMISSION:

FINDINGS OF FACT

1. On April 15, 1986, the Complainant, Leila O. Girard, filed a formal complaint against Arizona Public Service Company ("APS") in which she alleged that her July, 1985 electric bill was incorrect and that APS does not read many of its meters in the Yuma area but estimates monthly usage; she therefore asked that she not be required to pay the disputed amount of her bill and that the entire APS billing process in the Yuma area be thoroughly investigated.

2. APS is an Arizona corporation engaged in providing electric service to the public within portions of Arizona pursuant to authority granted by this Commission.

3. Notice of the complaint and the hearing thereon was served on APS

in accordance with A.R.S. § 40-246(C).

4. On May 8, 1986, APS filed an answer in which it alleged, among other things, that Ms. Girard had refused to pay, or make arrangements to pay, $443.84, which is the bill for her July and August 1985 usage, that her meter was tested and found to be well within the required accuracy limits established by this Commission, and that APS reads the meters in the Yuma area each month and the error rate is only 1.2 errors for every 1000 reads; APS therefore asked that the Commission order Ms. Girard to pay APS $443.83.

5. On August 1, 1985, APS sent Ms. Girard a bill in the amount of $338.16 for 3755 kilowatt hours ("kwh") of electricity used during July, 1985 (the "July bill"), and on August 30, 1985, it sent her a bill of $105.67 for 1077 kwh used during August, 1985 (the"August bill").

6. Ms. Girard believes that the July bill is too high because she was on vacation during all of July and the first week of August, 1985, during that time her air conditioning was set at 90-95 degrees, and she could not have used the kwh shown on the July bill, particularly when her August bill was substantially lower.

7. In August, 1985, APS read Mrs. Girard's meter twice, to make sure the August reading was accurate.

8. After reviewing Mrs. Girard's July and August usage in prior years, APS recalculated the July and August 1985 bills, by shifting 1,000 kwh from July to August, and sent Mrs. Girard an adjusted bill for $443.84 for those two months.

9. Initially, Mrs. Girard refused to allow APS to test the meter, but in May, 1986, after the formal complaint was filed, the meter was tested and found to be 100 percent accurate on full load and 99.9 percent accurate on light load.

10. Based on Mrs. Girard's usage during July and August in 1982, 1983,

1984, 1985 and 1986, it appears that the July, 1985 meter reading was incorrect, however, since the meter progressively registered cumulative usage, the total usage registered during July and August, 1985 (4832 kwh) and the total bill for that usage ($443.84) are correct.

11. APS attempts to obtain an actual meter read before a bill is mailed to a customer, and in 1985 only 85 of the approximately 500,000 bills sent in the Yuma area were computer estimated.

12. Mrs. Girard may qualify for the discounted rates or the Low Income Energy Management Program authorized by this Commission in Re Arizona Public Service Co., Decision No. 55931 (April 1, 1988).

13. Based on the evidence presented in this proceeding APS's meter reading practices in Yuma, Arizona are reasonable.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over APS and the subject matter of the complaint.

3. APS' readjusted bill of $443.84 to Mrs. Leila O. Girard for service rendered in July and August, 1985, is based on a verified, accurate reading of an accurate meter and is not in violation of any provision of law or any order or rule of this Commission.

4. In accordance with the provisions of A.A.C. R14-2-211(A)(f), APS may terminate service to Mrs. Girard for failure to pay a delinquent bill for utility service.

5. Pursuant to A.A.C. R-14-2-211(A)(g), APS can require Mrs. Girard to enter into a deferred payment agreement for payment of the delinquent bill.

6. A public service corporation should advise its customers of any discounted rates or special programs approved by this Commission which they

may be qualified to receive.

7. This Commission can not order a customer to pay his/her bill, and collection actions for non-payment of utility bills should be pursued in a court having jurisdiction.

8. Based on the evidence presented in this proceeding, further investigation into APS' meter reading practices and billing procedures in Yuma, Arizona is unwarranted.

ORDER

IT IS THEREFORE ORDERED that relief sought by the Complainant, Leila O. Girard, be and hereby is denied.

IT IS FURTHER ORDERED that the request of Arizona Public Service Company for an order requiring Leila O. Girard to pay $443.83 be, and hereby is, denied.

IT IS FURTHER ORDERED that Arizona Public Service Company determine whether the Complainant meets the criteria for the discounted rates for low income residential customers or the Low Income Energy Management Program and, if so, offer and explain them to her.

IT IS FURTHER ORDERED that Arizona Public Service Company meet regularly with the Complainant and offer to provide her with energy audits (at no charge), counseling and advice on how to reduce her electric usage and bills, particularly during the air conditioning season.

IT IS FURTHER ORDERED that, APS, in accordance with requirements of A.A.C. R14-2-210(H) and R14-2-211(A)(g) offer Complainant a deferred payment agreement for monthly payments towards her delinquent bill.

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IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 26 day of May, 1988.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT Dale H. Morgan
CKH/djp

Arizona Corporation Commission
DOCKETED
AUG - 3 1988
DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

IN THE MATTER OF THE COMPLAINT FILED BY RONALD R. METZLER AGAINST ARIZONA PUBLIC SERVICE COMPANY.	DOCKET NO. U-1345-87-275 DECISION NO. 56072 OPINION AND ORDER

DATE OF HEARING: January 28, 1988

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Marc E. Stern

APPEARANCES: Ronald R. Metzler, in propria persona; and

Bruce A. Gardner, Attorney, Arizona Public Service Company Law Department, on behalf of Arizona Public Service Company.

BY THE COMMISSION:

On November 12, 1987, Mr. Ronald R. Metzler ("Mr. Metzler" or "Complainant") filed a complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Company ("APS" or "Respondent") alleging that he was being over billed for electrical service in the amount of $2,645.36 for the period from May, 1985 through February, 1987. The balance in dispute had arisen because of the Respondent's discovery on February 19, 1987 that Metzler's electric meter had been by-passed to a subpanel box which was wired to provide power to a number of major appliances which normally drew large amounts of electrical power.

Upon its initial discovery, APS recalculated the Complainant's bills and originally determined the balance due to be $3,007.54, but upon being informed that the Complainant had installed evaporative cooling at his residence, APS recalculated the balance due to be $2,645.36 based on the use of the

"degree-day" method of calculating electrical usage.

On December 3, 1987, APS filed an answer denying Mr. Metzler's complaint and indicating that it was complying with the Commission's Rules and its tariffs on file at the Commission. This matter came on for hearing on January 28, 1988 before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona. The Complainant appeared in propria persona. APS was represented by counsel. Both the Complainant and APS introduced evidence concerning the complaint. After a full public hearing, the proceeding was adjourned pending submission of a Recommended Opinion and Order by the Hearing Officer to the Commission.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is an Arizona corporation engaged in providing electric service to the public pursuant to authority granted by this Commission.

2. On November 12, 1987, Mr. Metzler filed a complaint against APS wherein it was alleged that APS had over billed the Complainant for previously unbilled electrical usage as the result of Respondent's discovery of a meter bypass and energy diversion that had occurred at the Complainant's residence, 10417 East Larkspur Drive, Scottsdale, Arizona, during a 22-month period (from May, 1985 through February, 1987) in the amount of $3,007.54 which sum was subsequently reduced to $2,645.36.

3. The Complainant and his family have resided at this residence (a 2,275 square foot home with a swimming pool) since mid-January, 1985.

4. On or about April 29, 1986, one of the Respondent's servicemen reported that the lead seal that was supposed to seal the electric service entrance panel (located beneath the Complainant's meter) was missing from the

panel at the Complainant's residence.

5. Subsequently, on or about November 25, 1986, another APS serviceman was sent out to the Complainant's residence to recheck the electric service entrance panel and he found that it had been riveted shut which was not a standard company procedure.

6. Over the years missing seals from service panels have had a lower priority than the problems with missing seals from meters in cases of energy diversion, although the Respondent is presently emphasizing that its meter readers should watch out for all tell-tale signs of energy diversion.

7. Following the November, 1986 visit by APS's serviceman to the Complainant's residence, an energy diversion serviceman was sent out to the residence on February 19, 1987.

8. On that date, the APS serviceman found that the lead seal was missing from the service panel and that it was still riveted shut.

9. The serviceman had to forcibly remove the rivets from the panel to remove its cover in order to examine the Complainant's service line before it entered the meter.

10. After removing the cover of the panel, the serviceman found that thick "jumper cables" had been attached to the 220 volt lines, thereby by-passing the meter and leading to a separate circuit breaker panel ("the subpanel") from which the Complainant's major appliances such as his air-conditioner, heat-pump, swimming pool pump and hotwater tank were being supplied with power which was not registering on the Complainant's meter.

11. Normally in an energy diversion situation, the serviceman would have immediately contacted the police, but due to the fact that he felt it was a hazardous situation, he elected to remove the jumper cables at once.

12. The Respondent's serviceman disconnected and removed the jumper

cables together with the slit bolts with connected them to the power lines in order to divert energy around the meter.

13. Before disconnecting the jumper cables, the Respondent's serviceman photographed them for the Respondent's records (See Tr. Ex. R-1).

14. On February 20, 1987, another APS investigator visited the Complainant's residence and photographed the subpanel into which power had been diverted by the jumper cables (See Tr. Ex. R-3).

15. After reviewing the facts, APS notified the Scottsdale Police Department concerning the theft of electrical energy with a value in excess of $100.

16. The Scottsdale Police Department was unable to prosecute the Complainant due to the lack of evidence concerning who installed the jumper cables.

17. Following its discovery of energy diversion at the Complainant's residence, APS reviewed the electrical usage for which it had previously billed the Complainant and in its judgment determined that between May and June, 1985 an unusual drop in the residential consumption occurred and caused APS to compute a corrected billing starting with May, 1985 and continuing through February 5, 1987.

18. In issuing its corrected billing to the Complainant, APS used the degree-day method in order to estimate the amount of electricity that was used at the residence for the period in question.

19. On August 26, 1987, APS sent the Complainant an adjusted billing statement in the total amount of $3,007.54 for unbilled energy usage at his residence from May, 1985 through February 5, 1987.

20. Subsequently, based on information provided by the Complainant to the Respondent on September 17, 1987, APS adjusted the Complainant's account and rebilled him on September 25, 1987 for the reduced amount of $2,645.36 to

take into account evaporative cooling for all but two months of each summer season involved in the bill.

21. During the hearing, it was shown that the Complainant had originally been billed for 1,794 kilowatt-hours used in May, 1985, and that his June billing then decreased to 1,193 kilowatt-hours followed by a July billing of only 997 kilowatt-hours.

22. Prior to May, 1985, Mr. Metzler had usage reflecting 1,863 kilowatt-hours during March and April, 1985.

23. The highest recorded electrical usage following May, 1985, occurred during July, 1986, when the Complainant's residence consumed 1,288 kilowatt-hours of electricity according to APS's original billing.

24. Electrical usage by prior customers at this residence appears to have been substantially higher than the Complainant's except when the residence appears to have been unoccupied.

25. Mr. Metzler contends that he was unaware of any energy diversion taking place at his residence until he was contacted by a detective from the Scottsdale Police Department concerning APS's complaint.

26. The Complainant also contends that the amount allegedly owed is excessive because he has taken steps to conserve energy usage at his home by using timers and installing evaporative coolers at the time that he moved into the residence.

27. It is noted that the Complainant had a copy of the Scottsdale Police Department's investigation of this incident entered into evidence which contains a reference to a next door neighbor who stated that the subpanel, to which the energy was diverted, was placed on Mr. Metzler's residence after the Complainant moved into the home (See Tr. Ex. M-1).

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article

XV of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over APS and of the subject matter of the complaint.

3. The record did not establish that the Complainant had been incorrectly billed by the Respondent upon its discovery of the jumper cables by-passing its meter at the Complainant's residence.

4. The complaint filed by Mr. Metzler against APS has not been sustained by a preponderance of the evidence, and the complaint should be dismissed.

5. Mr. Metzler is liable for the actual electricity consumed at his residence regardless of who installed the jumper cables which by-passed his meter, otherwise he would be unjustly enriched at the expense of other APS customers.

6. The degree-day-method of computing electrical usage has been determined to be an accurate guage of electrical usage when a meter is defective or has not correctly measured electrical usage.

ORDER

IT IS THEREFORE ORDERED that the complaint of Mr. Ronald R. Metzler be, and is hereby, dismissed.

IT IS FURTHER ORDERED that Arizona Public Service Company be, and is hereby, directed to provide Mr. Ronald R. Metzler with a period of 30 days from the effective date of this Order to pay off his overage.

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IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 3 day of August, 1988.

James Matthews
JAMES MATTHEWS
Executive Secretary

DISSENT_____

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

ROBERT A. CICCONE, Complainant, vs. ARIZONA PUBLIC SERVICE CO., Respondent.	DOCKET NO. U-1345-96-162 DECISION NO. 59919 **OPINION AND ORDER**

DATE OF HEARING: May 20, 1996

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Scott S. Wakefield

APPEARANCES: Mr. Robert A. Ciccone, in pro personia; and

Mr. Bruce A. Gardner, Senior Attorney, on behalf of Arizona Public Service Company.

BY THE COMMISSION:

On March 18, 1996, Robert A. Ciccone filed a Complaint with the Arizona Corporation Commission ("Commission") against Arizona Public Service Co. ("APS"). On April 12, 1996, APS filed its Answer to the Complaint. The Commission scheduled a hearing on the matter for May 20, 1996. The hearing was held as scheduled before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona. Mr. Ciccone appeared on his own behalf, and APS appeared through counsel. At the conclusion of the hearing, the Hearing Officer took the matter under advisement pending submission of a Recommended Opinion and Order to the Commission.

DISCUSSION

Mr. Ciccone is a residential customer of APS. Since 1989, Mr. Ciccone has received electric service from APS under its Demand Advantage Rate (EC-1). Under the Demand Advantage Rate, customers are billed based upon two components of their electric usage: (1) the kilowatt hours (kWh)

used (the "usage portion") and (2) the highest 60 minute use of kilowatts (kW) during the month (the "demand portion"). Both components are determined by readings of APS's meter.

The demand portion of APS's meters registers the highest kW usage during any single hour-long period since the meter was last reset. To insure an accurate bill for the each billing period, the meter dials (or digits if meter is electronically read) which record the demand portion of electric usage must be reset by APS's meter reader at the beginning of the billing period. In his Complaint, Mr. Ciccone alleged that APS on a number of occasions failed to reset the demand portion of his meter, resulting in over billings in the months following the alleged failures to reset.

Demand Advantage Rate customers can minimize their electric bills by spreading out electric usage so that no one hour's consumption is greater than any other hour in the month. Demand can be managed by (1) use of a load controller, (2) using timers on household appliances, (3) manually controlling when appliances are allowed to run, or (4) having a lifestyle that is conducive to an even consumption of electricity.

Mr. Ciccone has no load controller to manage his electricity usage. His primary electric appliances include air conditioning, a pool pump, and the usual household appliances. His home is heated by gas. Mr. Ciccone and his family do not use a timer to regulate their electric usage, except on the pool pump, which is set to run in the middle of the night. During most of the time periods relevant to Mr. Ciccone's Complaint, there were three people living in Mr. Ciccone's home.

Mr. Ciccone has had two types of meters measure his electric usage since he has been billed under the Demand Advantage Rate. From 1989 until October 1995, APS used an analog meter to measure Mr. Ciccone's electricity usage. The analog meter required APS's meter reader to manually record the meter's cumulative kWh and peak demand readings in his hand held computer, to break the seal on the demand portion of the meter, and to manually reset the dials on the demand portion of the meter to zero. Immediately upon resetting the demand dial, the meter begins to return to a reading reflecting the kW demand for the current hour. The meter reader then inserts a new seal of a different color on the meter. APS uses seals of three different color in rotation. By monitoring whether the seals are changed, customers or APS can confirm that the meter had been reset by the meter reader each month.

On October 30, 1995, APS replaced Mr. Ciccone's analog meter with a digital meter, due to the

concerns he had expressed about the reading and resetting of his meter. To read the digital meter, APS's meter reader inserts a probe, which is connected to his hand held computer, into the meter. The probe automatically reads the meter and resets the demand portion of the meter. There is no seal on the digital meter which needs to be broken to reset the meter.

On occasion, a Demand Advantage Rate customer will call APS to complain that the demand portion of his meter has not been reset. APS has a policy of resetting the meter for such a customer, without attempting to determine whether the meter was in fact reset at the regularly scheduled meter reading.

Mr. Ciccone alleged that APS failed to reset the demand portion of his meter on numerous occasions. Mr. Ciccone claimed that he had direct evidence of three such occasions. On two of those occasions, APS reset the meter after Mr. Ciccone complained to APS that the meter had not been reset. Mr. Ciccone agreed that no over billing resulted from those two alleged failures to reset the meter because the meter was later reset.

In addition, Mr. Ciccone offered circumstantial evidence which he claimed proved that APS failed to reset his meter on 13 other occasions. Mr. Ciccone asked that the Commission award him $538 to compensate for over billings resulting from those 13 alleged failures to reset his meter, plus accrued interest of $115. Mr. Ciccone's Complaint indicated that the relief he is seeking is primarily the assurance that APS is properly resetting his demand meter, without his having to monitor its performance every month. We will discuss each of the alleged failures to reset separately.

Alleged "Direct" Evidence of Failures to Reset

February 1995

Pat Ciccone, Mr. Ciccone's wife, testified that in February 1995, she observed the APS meter reader come into her yard to read the meter. Because she had suspicions about whether the meter had been properly reset in prior months, as soon as the meter reader left, Mrs. Ciccone read the meter herself. Mrs. Ciccone said that she observed the meter less than one minute after the APS meter reader finished reading it. She observed that the dials which measured the electric demand did not read zero. She did not recall what they did read, but said that "it was not low, it was something very high." Mrs. Ciccone said that she did not notice what color the seal on the meter was at that time, and did not know if the seal

color had changed. Mrs. Ciccone called APS to complain that the meter had not been reset. APS sent someone out to reset the meter.[1]

Cynthia Singley, a Consumer Advocate with APS, testified that the fact that dials on the meter did not register zero at the time Mrs. Ciccone observed them did not necessarily indicate that the meter had not been reset. Ms. Singley indicated that the dials would begin to return to a position indicating the average electricity demand for the current hour immediately upon their being reset to zero. According to Ms. Singley, before the meter reader is able to attach the new seal to the meter, the dials could be registering some demand. Ms. Singley said that the fact that Mrs. Ciccone observed the dials registering something other than zero would not be unexpected, even if the demand meter was reset by the meter reader only moments before.

We do not find that Mr. Ciccone has sufficiently proven that APS failed to reset his meter in February 1995. Mrs. Ciccone did not notice whether the seal had been changed by the meter reader. Further, the demand reading which Mrs. Ciccone observed did not necessarily indicate that the meter reader failed to reset the meter.

September 1995

Mr. Ciccone also alleged that APS failed to reset his demand meter in September 1995. He testified that the seal color on the demand portion of the meter did not change after the scheduled meter reading on September 19, 1995. According to Ms. Singley, APS used grey seals when they reset demand meters in August. In September, they used blue seals. Mr. Ciccone testified that after the scheduled September reading, the seal was still grey. After noticing that the seal color had not changed, Mr. Ciccone called APS to complain that the meter had not been reset. APS sent someone out to reset the meter. Because APS reset the meter before the October reading, Mr. Ciccone has not claimed that the October bill was in error due to APS's failure to reset the meter on September 19, 1995.

Based on Mr. Ciccone's testimony that the seal on the meter after the September 19, 1995 reading was grey, we find that APS failed to reset Mr. Ciccone's demand meter on September 19.[2] Because the

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[1] Mr. Ciccone did not include this instance of APS's alleged failure to reset the meter in his computation of overcharges, presumably because APS reset the meter after Mrs. Ciccone complai

[2] *See infra.* for discussion of when the grey seal was installed.

meter was reset after Mr. Ciccone alerted APS to the problem, however, Mr. Ciccone's October 1995 bill would not have been in error, and we need not order APS to refund any over billed amount for its failure to reset the meter.

On October 30, 1995, APS replaced Mr. Ciccone's analog meter with a digital meter programmed to record both the usage and demand components. APS replaced the meter in response to Mr. Ciccone's repeated concerns that his meter was not being properly reset. With the electronic meter, APS cannot take a reading of the demand component without automatically resetting the demand portion of the meter. If a problem exists which prevents APS's meter reader from obtaining a reading for the demand component, the reader's hand held computer records a code which automatically generates a follow-up visit by an APS "trouble man" to attempt to secure a reading and to perform any necessary repairs to the meter.

January 1996

Mr. Ciccone also alleged that APS failed to read and/or reset his meter in January 1996. Mr. Ciccone testified that he learned from APS that they would be reading the digital meter on January 19, 1996. He monitored his meter that day, and observed that the cumulative kWh reading was 3331 at 10:48 a.m. and 3349 at 7:53 p.m. He also observed that the demand indicator read 7.0 all day. On January 23, 1996, Mr. Ciccone spoke with Ms. Singley and asked her to confirm whether APS had in fact read his meter on January 19. Ms. Singley consulted APS's Meter Route Activity Report, which indicated that the meter reader inserted his probe into Mr. Ciccone's meter at 9:11 on January 19, 1996. Ms. Singley therefore informed Mr. Ciccone that the meter had been read at that time. Later in the day on January 23, Ms. Singley learned that when APS's meter reader attempted to obtain a reading on January 19, his hand held computer was unable to obtain a reading from Mr. Ciccone's meter. Ms. Singley contacted Mr. Ciccone that day to inform him of the problem, and said that an APS "trouble man" would attempt to read the meter and perform any necessary repairs on January 24, 1996.

The meter reader was unable to obtain a reading on January 19 due to a "clock error." Clock errors occur for one of two reasons: either the clock in the meter is malfunctioning, or there is more than a ten minute difference between the clock in the meter and the clock in the meter reader's hand held computer. When the meter reader's hand held computer detects a clock error, it records a code indicating

that the account needs to be reviewed manually, and it does not reset the demand portion of the meter.

Ms. Singley testified that APS recognized that they were receiving a significant number of clock errors. In an effort to reduce the number of clock error its meter readers received, APS initiated a change in the procedures by which meter readers set the clock in their hand held computers. Previously, each meter reader set the clock in his hand held computer daily based on any clock. APS changed its procedure to require meter readers to call APS's electric meter shop and to set the clock in their hand held computers based on the clock located there. Ms. Singley was unsure whether APS initiated that change in procedure before or after January 19, 1996.

On January 24, 1996, the APS "trouble man" arrived at Mr. Ciccone's residence. Mr. Ciccone accompanied him to the meter, and observed him insert the probe and obtain a reading from the meter, with no clock error. The "trouble man" obtained a reading of 3575 kWh total usage and a demand reading of 7.0 kW. Upon the successful reading of the meter by the "trouble man", the probe automatically reset the demand portion of the meter.

Later, Mr. Ciccone received a bill from APS dated January 25, 1996, which indicated that January 19, his meter had read 3359 kWh and the demand reading was 7.0 kW. Mr. Ciccone complained that APS could not have obtained such a reading from his meter, and that APS therefore failed to read his meter on January 19.

APS does not deny that it was unable to obtain a successful reading from Mr. Ciccone's meter on January 19, 1996. APS claims that it properly billed Mr. Ciccone based on the information it obtained when it successfully read Mr. Ciccone's meter on January 24, 1996.

APS had previously read Mr. Ciccone's meter on December 19, 1995, which was 36 days before the January 24, 1996 reading. A.A.C. R14-2-210(A)(1) requires APS to read meters and bill customers for periods of 25 to 35 days. Therefore, APS issued Mr. Ciccone a bill for his prorated consumption between December 19 and January 19, computing an estimated kWh figure of 3359 as of January 19. The bill sent to Mr. Ciccone did not disclose that it was prorated based on the reading obtained on January 24. Instead, it stated that Mr. Ciccone's meter reading on January 19 was 3359. APS's failure to indicate that the bill was an estimate of consumption through January 19, based on a prorating of January 24 reading, was a violation of A.A.C. R-14-2-210(A)(6), which requires that estimated bills be

designated as such.

We cannot conclude that APS failed to properly read and reset Mr. Ciccone's meter in January 1996. When APS was unable to obtain a reading on January 19, it followed reasonable procedures to obtain a reading, and issued a bill for a period which complied with A.A.C. R14-2-210(A)(1). APS's failure to indicate that the bill was an estimate of consumption through January 19, however, caused Mr. Ciccone to question the accuracy of the bill.

Circumstantial Evidence of Previous "Over Billings"

In October 1995, Mr. Ciccone reviewed all his previous bills since he began on the Demand Advantage Rate in 1989. Upon examining those bills, Mr. Ciccone discovered thirteen additional instances in which he alleged that APS failed to reset his demand meter. In each of those instances, APS billed Mr. Ciccone for the same demand as it had in the prior month.

Mr. Ciccone computed the overcharges for these alleged over billings to be $538. For the purpose of computing the over billing, Mr. Ciccone assumed that the proper demand reading was 4.0 kW, which was the lowest demand Mr. Ciccone has experienced since he has been on the Demand Advantage Rate. Mr. Ciccone further claims that APS should pay interest of 8.5 percent per year on the over billed amounts. Mr. Ciccone computed interest to be $115, and the total refund to be $653. In addition, Mr. Ciccone argued that APS should be ordered to make a refund of $653 to each of its Demand Advantage Rate customers, or in the alternative, APS should be ordered to pay to Mr. Ciccone 100 times his alleged over billing, or $65,300, as "retribution" for APS's failure to properly reset demand meters.

APS responded that the consistent demand patterns indicated on several of Mr. Ciccone's bills do not indicate a failure to reset the demand meter. Instead, APS claimed, consistent billings are logical and even expected under the Demand Advantage Rate, which promotes consistent use of electricity throughout the month.

APS has a computer program which it uses to estimate customer's demand when it is unable to read a customer's meter for some reason. The computer program estimates a customer's kW demand based on the customer's actual kWh usage, his previous months' usage, and kW demand readings for other customers with similar kWh usage. APS used that computer program to estimate what Mr. Ciccone's demand readings may have been in the 13 months Mr. Ciccone claims his meter was not reset.

Based on the computer model, APS computed that it may have over billed Mr. Ciccone by $223.69 if. in fact, it had failed to reset Mr. Ciccone's meter as he alleged.

Because the Demand Advantage Rate is designed to promote an even consumption of electricity, we cannot conclude that two or three months of consistent demand readings necessarily indicate that APS failed to reset Mr. Ciccone's demand meter. We will, however, evaluate each instance in which Mr. Ciccone has identified a pattern of consistent demand readings.

January 1992

Mr. Ciccone alleged that APS failed to reset his demand meter in January 1992, resulting in an over billing in February 1992. APS billed Mr. Ciccone for demand of 6.6 in both January and February 1992. Billing for the same demand in two consecutive months is not sufficient evidence that APS failed to reset the demand meter in January 1992.

August - December 1992

Mr. Ciccone further alleged that APS failed to reset his demand meter from August 1992 to December 1992, resulting in over billings in each month from September 1992 to January 1993. Mr. Ciccone offered evidence that APS billed him for demand of 7.7 kW in each of the six months from August 1992 to January 1993. Mr. Ciccone also offered evidence that APS billed his neighbor, Mr. Hinchion, who is also on the Demand Advantage Rate, for demand of 5.0 kW in each of those months. We note that Mr. Ciccone and Mr. Hinchion both had relatively high electricity usage in August 1992, as would be expected in the summer. Both of the neighbors experienced substantial decreases in usage over the next six months, but neither had a decrease in peak demand. Because the pattern of consistent peak demand spans such a long period of time (six months), that period of time is historically one in which electric demand decreases as the weather cools, and both Mr. Ciccone and his neighbor experienced the same billing pattern, we find that APS failed to reset Mr. Ciccone's[3] demand meter from August to December 1992.

Mr. Ciccone alleged that APS should refund him $242 for over billing from September 1992 to January 1993, including interest. Mr. Ciccone claims that, because APS failed to reset his demand meter,

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[3] It also appears that Mr. Hinchion's demand meter was not reset during the same time period.

it should compute his bill for those months as if his demand had been 4.0 kW. Based on APS's computer estimates of Mr. Ciccone's demand during the period September 1992 to January 1993, it claims that it may have over billed Mr. Ciccone $100.06.

We will order APS to refund $100.06 to Mr. Ciccone for the estimated over billing from September 1992 to January 1993. We reject Mr. Ciccone's argument that a refund should be based on an estimate that the proper bill would have been for a demand of 4.0. We believe that APS's computer program, which is based on actual data of Mr. Ciccone's usage patterns and usage of other similar customers, results in a more accurate estimate of Mr. Ciccone's actual demand during the period when APS failed to reset the meter. We also reject Mr. Ciccone's claim that APS should pay interest on the over billed amounts. The Commission has historically declined to order customers who had been undercharged for their utility services to pay interest on the difference between the amounts they actually paid and the amounts for which they should have been billed.[4] To remain consistent with the practice in those cases, we will not order APS to pay interest on its over billings.

March 1993

Mr. Ciccone alleged that APS failed to reset his demand meter in March 1993, when the meter registered demand of 4.0 kW. APS also billed Mr. Ciccone for demand of 4.0 kW in April 1993. These two occasions where APS billed Mr. Ciccone for demand of 4.0 kW were the lowest demand readings ever billed on Mr. Ciccone's account. APS's meter readings in March and April 1993 indicated nearly identical usage of electricity (776 kWh in March, 773 kWh in April). Mr. Ciccone has not shown by a preponderance of the evidence that APS failed to reset his demand meter in March 1993.

June 1993

Mr. Ciccone also alleged that APS failed to reset his demand meter in June 1993, when it registered 8.0 kW demand. APS billed Mr. Ciccone for the same demand in July 1993, although his electric usage increased from 2,036 to 2,620 during that period. We do not find that Mr. Ciccone has established by the preponderance of the evidence that APS failed to reset his meter in June 1993.

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[4] *See, e.g.*, In the Matter of Gold Coast Construction, Inc. Against Citizens Utilities Company (Mohave Electric Division), Decision No. 58082, Nov. 12, 1992; Advantage Boats, Inc. vs. Citizens Utilities Company, Decision No. 59101, May 23, 1995.

December 1993 - February 1994

From December 1993 to March 1994, APS billed Mr. Ciccone for demand of 7.0 kW. Mr. Ciccone alleges that this proves that APS failed to reset his meter from December 1993 to February 1994. The mere fact that APS billed for exactly the same demand for four consecutive months does not sustain Mr. Ciccone's burden of proof. We therefore cannot conclude that APS failed to reset Mr. Ciccone's meter during that time.

June - July 1994

Mr. Ciccone also alleges that APS failed to reset his demand meter in June and July 1994. APS billed Mr. Ciccone for demand of 9.0 kW in June, July and August 1994. Mr. Ciccone's electric usage increased by 33 percent in July from his usage in June, at the same time his demand remained constant. August's kWh usage was 23 percent higher than June's usage, yet the demand remained constant. We do not find the consistency in demand readings to substantiate Mr. Ciccone's claim that APS failed to reset his demand meter in June and July 1994.

August 1995

Mr. Ciccone further alleged that APS failed to reset his demand meter in August 1995, resulting in an over billing in September 1995. In August, APS billed Mr. Ciccone for demand of 11.3 kW. In September, APS billed Mr. Ciccone for demand of 11.2 kW.[5] In October 1995, APS credited Mr. Ciccone's account to adjust the September billing to reflect a demand of 10.5 kW. APS offered no explanation why it adjusted Mr. Ciccone's September bill. Apparently, APS recognized that it had failed to reset Mr. Ciccone's meter in August and adjusted the September bill accordingly.

APS rotates the seal colors installed on demand meters. Mr. Ciccone testified that in September 1995, both before and after the scheduled meter reading on September 19, the seal on his meter was grey. APS installs grey seals in February, May, August and November. Initially, one would expect that the grey seal Mr. Ciccone observed in September had been installed after the meter was read and reset in August. APS's conduct, in adjusting the September billing, suggests that it was aware that the meter had

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[5] Mr. Ciccone indicated that in September 1995, the meter read between 11.2 and 11.3. Ciccone apparently assumes that the meter read the same in August 1995, and that the meter rea... rounded that reading up to 11.3, but in September the meter reader rounded it down to 11.2.

not been reset in August. If that is so, the grey seal must have been installed on the meter in May 1995.[6] We therefore find that APS failed to reset Mr. Ciccone's demand meter every month from June to August 1995.

Each month from May until August, Mr. Ciccone's peak demand was higher than it had been the prior month. Therefore, APS's failure to reset Mr. Ciccone's demand meter during these months did not result in over billings in July or August. In September, however, APS initially billed Mr. Ciccone for demand of 11.2, after it had billed for demand of 11.3 in August. In October, APS adjusted the September bill to reflect a demand of 10.5 kW. On its computer-generated estimate of Mr. Ciccone's demand, however, APS estimated that Mr. Ciccone's demand in September 1995 was 8.9 kW. Because APS offered no explanation of its use of 10.5 kW on the October adjustment, we find 8.9 kW to be the appropriate demand estimate for the September 1995 bill, because it is based on APS's estimation model which considers such factors as Mr. Ciccone's actual kWh used in September 1995, his previous months' demands and the peak demand of other customers with similar kWh usage. We will therefore order APS to credit Mr. Ciccone an additional $19.22 to adjust the September 1995 billing to a demand component of 8.9 kW.

Assurance of Future Accuracy

Mr. Ciccone indicated in his Complaint that the primary relief he is seeking is the assurance that his demand meter is properly reset, without having to monitor APS's performance each month. APS's installation of the digital meter should provide such assurance. With the digital meter, APS is not able to obtain any demand reading unless it is also able to reset the demand meter. The resetting of the demand meter is automatic upon the meter reader's hand-held computer obtaining a reading. Therefore, APS would be unable to obtain the data necessary to generate a bill unless it also reset Mr. Ciccone's demand meter. APS's installation of the digital meter on Mr. Ciccone's premises should help rebuild his confidence in its billings after a history of failures to reset his demand meter.

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[6] The grey seal could not have been on the meter since February 1995. The April billing had indicated a reading of 8.0 kW; the May billing indicated a demand reading of 5.4 kW. The meter reading could not have decreased from 8.0 kW in April to 5.4 kW in May unless the seal had been changed in April.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. APS is engaged in the business of providing electric utility service to the public in Maricopa County, Arizona.

2. On March 18, 1996, Robert A. Ciccone filed a Complaint with the Commission against APS.

3. On April 12, 1996, APS filed its Answer to the Complaint.

4. The Commission issued a Procedural Order scheduling the hearing on this matter for May 20, 1996.

5. The hearing was held as scheduled and Mr. Ciccone and APS both presented evidence.

6. APS failed to reset Mr. Ciccone's demand meter each month from August to December 1992.

7. APS's failure to reset Mr. Ciccone's demand meter from August to December 1992 resulted in over billings from September 1992 to January 1993 totaling an estimated $100.06.

8. APS failed to reset Mr. Ciccone's demand meter each month from June to September 1995.

9. In both July and August 1995, Mr. Ciccone's peak demand increased over his peak demand in the preceding months.

10. No over billing resulted in July and August 1995 from APS's failure to reset Mr. Ciccone's demand meter in June and July 1995.

11. APS's failure to reset Mr. Ciccone's demand meter in August 1995 resulted in an over billing in September 1995 of an estimated $27.62.

12. In October 1995, APS credited Mr. Ciccone for $8.40 as an adjustment to his September 1995 bill.

13. APS has not credited Mr. Ciccone for the remaining $19.22 estimated over billing on his September 1995 bill.

14. APS reset Mr. Ciccone's demand meter in early October 1995, after Mr. Ciccone

complained about the failure to reset the meter in September 1995.

15. APS did not over bill Mr. Ciccone for demand in October 1995.

16. In October 1995, APS replaced Mr. Ciccone's analog meter with a digital meter.

17. The digital meter cannot be read by APS without automatically resetting the demand meter.

18. Due to a clock error, APS was unable to read and reset Mr. Ciccone's meter on January 19, 1996.

19. APS read Mr. Ciccone's meter on January 24, 1996 and reset his demand meter at that time.

20. APS issued a bill to Mr. Ciccone in January 1996 which did not indicate that it was based on a prorating of his consumption through January 24, 1996.

21. APS changed its policy to require its meter readers to set the clocks in their hand held computers based on the clock in its electric meter shop.

22. APS has agreed to refund $653.00 to Mr. Ciccone.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-246.

2. The Commission has jurisdiction over APS and of the subject matter of the Complaint.

3. APS has agreed to refund $653.00 to Mr. Ciccone.

4. APS should not pay interest on any amounts it refunds to customers due to over billings due to failures to reset customers' demand meters.

5. APS issued a bill to Mr. Ciccone in January 1996 which violated A.A.C. R14-2-210(A)(6).

6. Mr. Ciccone has failed to show by a preponderance of evidence that APS failed to reset his demand meter in January 1992, March 1993, June 1993, December 1993 to February 1994, June and July 1994, and February 1995.

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ORDER

IT IS THEREFORE ORDERED that Arizona Public Service Company shall refund $653.00 Robert A. Ciccone.

IT IS FURTHER ORDERED that when a bill is based on estimated usage, Arizona Public Service Company shall clearly indicate on the bill that it is an estimated bill.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 10 day of December, 1996.

JAMES MATTHEWS
EXECUTIVE SECRETARY

DISSENT 59919
SSW:dap

SERVICE LIST FOR: ROBERT A. CICCONE vs. ARIZONA PUBLIC SERVICE CO.

DOCKET NO.: U-1345-96-162

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