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BEFORE THE ARIZONA CORPORATION COMMISSION

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AVIS READ; individually, and on Behalf of All Others Similarly Situated, Complainants, v. ARIZONA PUBLIC SERVICE COMPANY, Respondent.	DOCKET NO. E-01345A-04-0657 Arizona Corporation Commission DOCKETED NOV 23 2004 DOCKETED BY
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A DECLARATORY ORDER REGARDING BILL ESTIMATION PROCEDURES.	DOCKET ~~NO. E-01345A-03-0775~~ **COMPLAINANT'S LEGAL BRIEF PURSUANT TO THE PROCEDURAL ORDER DATED NOVEMBER 2, 2004**

I. INTRODUCTION

Complainant submits this Brief in response to the Procedural Order entered by Chief Administrative Law Judge Farmer on November 2, 2004. It will first provide a general factual introduction to assist the Commission in placing the subsequent legal arguments into context, then take each of the legal issues raised in the November 2, 2004 Order in turn. In sum, it will demonstrate that whether the Commission relies upon its own Rules, Ariz. R. Civ. P. 23(4)(A), its Constitutional mandate under Article XV, Section III of the Arizona Constitution, or upon its inherent Constitutional and statutory powers, the Commission can determine whether, as a class, APS customers have been improperly charged for electricity and can require APS to correct any improper charges.

II. FACTUAL BACKGROUND

Complainant brought this Complaint against Arizona Public Service Company ("APS"), challenging APS' computer-driven, system-wide use of unlawful estimating procedures.

The record in this case establishes that APS has acted with blatant disregard for the Commission and its supervisory authority over all charges for consumption of electricity in this state and its own position as a public service company whose activities are governed by specific statutes and regulations. Instead, APS has systematically overcharged its customers for electricity by failing to follow legally required practices and procedures regarding meter reading, estimating and billing, and made itself answerable to nobody but itself in setting procedures for estimating demand meters and charging its customers.

The record is undisputed in this case that Defendant has used unlawful and unapproved procedures in estimating demand meters. Prior to 1998, Defendant could not automatically estimate demand on its computer system, so billing clerks manually estimated demand using a variety of methodologies. The estimating procedures Defendant has used and the charges it has made to demand customers since it began generating computer-driven estimates of demand in 1998 are uniform, contrary to the law, unapproved by the Commission, and actually created *ad hoc* by APS employees. Further, in the case of the first bill after an estimate or series of estimates, the bill fails to disclose that the demand portion of the bill is an estimate at all, although Defendant has admitted that that is what the demand "reading" really is.

Defendant concedes that it has a single computer system that applies uniform estimating and billing procedures to its customers. Because all estimated bills are rendered using the same system, these uniform billing practices are either lawful or they are not as to every APS demand meter customer who has had his or her bill estimated.

Defendant's estimating procedures are programmed into a computer, and hence they are applied uniformly. The Commission can look at them; place them side-by-side with the governing laws and regulations; and determine whether they comply, as to every APS customer with a demand meter.

III. STATEMENT OF FACTS

APS Estimates Demand and Renders Bills Using Unapproved and Unlawful Procedures

As a public service company, APS is required, by law, to seek approval of its rates, charges, and estimating procedures by the Commission. See, A.R.S. § 40-365. Also, any change in any rate, charge or service by APS is subject to a hearing and approval by the Commission. See, A.R.S. § 40-361, *et*

seq. In principal, this regulatory scheme should result in charges that are the product of uniform, fair, and governmentally and publicly approved standards. However, while APS has implemented a uniform mechanism for billing its customers, the record in this case reveals that APS has, to the extent possible without getting caught, taken the role of fashioning its charges on estimated demand readings upon itself.[1] This is true notwithstanding a robust regulatory scheme that dictates, with great specificity, stringent rules relating to estimating meter reads and rendering bills based upon those estimates. Arizona Administrative Code R14-2-210[2], governing electrical utilities, provides:

> A. Frequency and estimated bills
>
> 1. Unless otherwise approved by the Commission, the utility or billing entity shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and may offer billing options for the services rendered. Meter Readings shall be scheduled for periods of not less than 25 days Or more than 35 days without customer authorization. If the Utility or Meter Reading Service Provider changes a meter reading route or schedule resulting in a significant a alteration of billing cycles, notice shall be given to the affected customers.
>
> 2. Each billing statement rendered by the utility or billing entity shall be computed on the actual usage during the billing cycle. If the utility or Meter Reading Service Provider is unable to obtain an actual reading, the utility or billing entity may estimate the consumption for the billing period giving consideration to the following factors where applicable:
>
> a. <u>The customer's usage during the same month of the previous year</u>.
> b. <u>The amount of usage during the preceding month</u>.
>
> 3. <u>Estimated bills will be issued only under the following conditions</u> unless otherwise approved by the Commission:

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[1] In anticipation of mandatory reporting to the ACC, APS employees have expressed their concern regarding APS' unapproved estimating practices: "I'm concerned that [the ACC] will order us to share the rest of our #'s around estimated reads." <u>See,</u> APS01651, Exhibit 18. In addition, APS employees have admitted that during the class period, apart from estimates that were "beyond APS control, there are a significant amount of estimates that were created by APS." <u>Id.</u>

[2]The history of Regulation R14-2-210 is as follows:

Adopted effective March 2, 1982 (Supp. 82-2). Amended by an emergency action effective August 10, 1998, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 98-3). Emergency amendment replaced by exempt permanent amendment effective December 31, 1998 (Supp. 98-4). Amended by exempt rulemaking at 5 A.A.R. 3933, effective September 24, 1999 (Supp. 99-3). See A.A.C. R14-2-210 (2004).

a. When extreme weather conditions, emergencies, or work stoppages prevent actual meter readings.

b. Failure of a customer who reads his own meter to deliver his meter reading to the utility or Meter Reading Service provider in accordance with the requirements of the utility or Meter Reader Service Provider billing cycle.

c. Provider is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the meter, that is, locked gates, blocked meters, vicious or dangerous animals. If the utility or Meter Reader Service Provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternative to obtain a customer reading of the meter.

d. Due to customer equipment failure, a 1-month estimation will be allowed. Failure to remedy the customer equipment condition will result in penalties for Meter Service Providers as imposed by the Commission.

e. To facilitate timely billing for customers using load profiles.

4. After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance fo service.

5. A utility or billing entity <u>may not render a bill based on estimated usage if;</u>

a. <u>The estimating procedures employed by the utility or billing entity have not been approved by the Commission.</u>

b. The billing would be the customer's 1st or final bill for service.

c. The customer is a direct-access customer requiring load data.

d. The utility can obtain customer-supplied meter readings to determine usage.

6. When a utility or billing entity renders an estimated bill in accordance with these rules it shall:

a. Maintain accurate records for the reasons therefor and efforts made to secure an actual reading;

b. <u>Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation.</u>

(emphasis added).

Further, under A.R.S. § 40-365 and A.R.S. § 40-367, all "charges" for electricity are subject to Commission review and approval, as are any changes to any charge for electricity. A.R.S. § 40-367(A).

APS has utilized only two systems to estimate bills throughout the proposed class period. The first system was in place until September 1998. Under this billing system, when a demand read was

unavailable, the demand calculation was produced using various unapproved methods.[3] See Exhibit 19. In 1998, APS implemented a new computer billing and estimating system, which APS employees refer to as the "Customer Information System," or "CIS." Smith Depo. at p. 24. (See, Exhibits 15, 20). This system replaced the older computerized billing system, which had been used to generate bills for all APS customers prior to the implementation of the new CIS in September 1998. It is uncontroverted that the new CIS was used to automatically generate estimates for all demand customer accounts from the date of its implementation. The procedures used to automatically generate these estimates and to render estimated demand bills were, however, created *ad hoc*, without any Commission involvement, solely by APS personnel.

Thus, APS's conduct with respect to demand meters demonstrates an extraordinary disregard for the regulations governing estimating procedures. As described above, any estimated charge must, under R14-2-210, be based upon the factors stated in Section 2(a) and 2(b): the customer's usage in the same month of the previous year, and the usage during the previous month. The restriction could not be clearer, and self-evidently any variation from it or from any previously approved procedure would require the approval of the Commission under R14-2-210-5 and A.R.S. § 40-367.

The practice under the "old" billing system for estimating demand meters was summarized in a memo dated November 30, 2000 from Janet Smith to Cynthia Janka, another APS employee:

> "I met with Lori and her group yesterday to discuss some estimating issues. One of the items raised was how to properly estimate a demand. After some discussion we arrived at what is the best method, so this is a heads up to you in case you are ever asked by the Commission. As you know the old system did not estimate demands. The billing consultants and associates used various methods to estimate demands when needed (it varied depending upon the person doing the estimating, not the situation)."

From this bizarre arrangement, APS, in September 1998, changed its computer system to allow it to automatically estimate demand for APS' demand customers where no actual demand reading had been

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[3] APS has argued that the Commissions' decision in the Ciccone case in December 1996 tacitly approved its then existing estimating procedures. Assuming, *arguendo*, that that is true, and that approval can be so indirectly construed, that does not excuse or explain the two revisions to the estimation procedures for demand meters described below, which followed the Ciccone "approval"and completely changed the way demand was estimated.

taken. (Exhibit 19).

As Ms. Smith describes in her memo, she and her colleagues "decided" to program in a series of percentage "load factors" that would be determined by meter type. There was no mention of the Section 2(a) and 2(b) factors, and APS, through Ms. Smith, created the formulae and procedures around, rather than through, Commission approval. The only approval of the procedure was provided by "Jana and Cynthia" in a memo dated December 4, 2000, that apparently approves the use of the "Smith formula" for all demand estimates. Thus, the demand estimating formula and procedure were created solely by APS and approved solely by APS. (Exhibit 22).

Incredibly, on June 19, 2002, Smith wrote a memo instructing the technical staff at APS to change the load factors used to generate an estimated demand bill by changing the percentage load factors to be used from those she had initially set. See, Exhibit 21. Again, these changes were made without any Commission involvement. The net result of the change in formula in 2002 was to increase the amounts billed as estimates on demand meters by unilaterally changing the "load factors" used in the formula: in effect, a rate increase. (See, Affidavit of Dr. Mark S. Shirilau, Exhibit 14). In neither instance was there any justification for or Commission approval of the formulae used or the differential treatment of different meter types.

Both versions of the "Smith formula" were created *ad hoc*, internally, by APS. Indeed, in a later memo, Smith describes having created the initial procedure in "20 minutes" (See Smith E-mail, Exhibit 21). Thus, since September 1998, Defendant has been regularly estimating demand under two different procedures, neither of which has been approved by the Commission, in direct violation of the law.

The mis-estimation of demand is particularly egregious because of the doubtful accuracy and non-accountability of the entire process. As all of Defendant's witnesses who have testified in the Maricopa County Superior Court case have agreed, estimated demand cannot be recaptured, because demand is only accurate in the month after a demand meter is "reset". Thus a meter read after three months of estimating will record the highest demand at any point in the previous three months. Further, when the meter is finally read, because there is no way to know when the highest demand occurred, the actual reading is just an estimate. A meter finally read in October will be billed as if the demand had

reached the point shown in October, when that point may have been reached in August and far exceed anything actually reached in October. Thus, with respect to all demand meters, the first actual reading after an estimated month is itself an estimate for that month, although APS represents it as actual demand for that month. As noted above, this is directly contrary to R14-2-210-6 which requires disclosure of all estimates. Crucially, however, because the true demand in the estimated months cannot be recaptured or reconciled in the way that consumption can, the estimated bill is the bill on a demand meter. Thus any change in the demand formula will directly impact the charge for electricity for the month estimated that is ultimately paid by the customer.

Despite the fact that they represent charges for electricity, Defendant's estimating procedures have been and remain an *ad hoc*, unapproved, misrepresented, self-created hodge-podge. That said, it is indisputable that the whole procedure, with its succeeding self-created changes has been reduced to a computer-driven, uniform estimating and billing system using the "Smith formula" for estimating demand. Whether it is lawful is a simple, common question resolved by analysis of the statutes and regulations applied to APS's conduct and procedures, not individual facts.

What actually occurred is summarized in the affidavit of Plaintiffs' expert, Dr. Mark S. Shirilau, P.E. See, Exhibit 14. In short, Defendant formerly used the particular customer's prior history to estimate demand. In 1999, because it was easier for APS, it decided, without Commission approval, to change the load factors in its estimating formula to a generic percentage number arbitrarily assigned to different meter types, rather than the customer by customer estimates based upon account history it previously used and claims was approved by the Commission in Ciccone. As paragraph 7 of Dr. Shirilau's Affidavit makes clear, this change completely altered the outcome of every charge rendered based upon a demand estimate.

In 2002 APS lowered the percentage demand factor without Commission approval. As Dr. Shirilau points out, this gave APS a revenue increase, and customers higher estimated bills, all without regard to A.R.S. § 40-367(A). (Affidavit of Dr. Shirilau, ¶9.)

Obviously, Plaintiffs assert that the trail of exhibits and Ms. Smith's own testimony establish that APS has been making up its own rates and procedures in violation of Arizona law. APS cannot dispute what happened, but will argue that a change in the load factor it used to determine demand was

not really a change at all, even though it did change charges to customers for electricity.

The outcome of this Complaint, therefore, turns on whether these were indeed changes, because Defendant has never suggested that they were authorized. If they were unauthorized, unapproved changes in estimating procedures, they affected every demand meter customer, since as Dr. Shirilau points out, they changed, and in the case of the 2002 action, definitely increased, the amount customers were charged for electricity. The only non-common issue is how much the changes cost consumers, and that is something only APS can and should be required to account for and reimburse.

IV. THE COMMISSION MAY, IF IT SO CHOOSES, PROCEED UNDER ARIZ. R. CIV. P. 23

Complainant has brought this Complaint as a class action under Ariz. R. Civ. P. 23. Specifically, she asserts that the issue of whether APS has unlawfully charged customers using unlawful and unapproved estimating procedures should be certified under Rule 23(c)(4)(A) which provides that:

> A. an action may be brought or maintained as a class action with respect to particular issues.

In this Complaint, Complainant asserts that, regardless of the accounting of amounts by which individual customers were improperly charged and mis-billed by APS, the fact that they were improperly charged and mis-billed is subject to common proof. APS used the same estimating procedure for each estimated demand bill during the class period. This commonly-used, computer-driven procedure was applied to all of the charges at issue and either is, or is not, lawful.

The Rules of Practice and Procedure of the Commission provide at R-14-3-216 that where the Rules of Practice and Procedure are silent, the Arizona Rules of Civil Procedure shall govern. As will be described below, whether the Rules of Practice and Procedure expressly provide for class actions is not entirely clear. There is no exact equivalent to Rule 23 in the Rules of Practice and Procedure, but there are numerous references to proceedings involving "classes" of consumers. R14-3-104C; R14-3-105C. As described below, it is Complainant's position that whether by operation of its inherent power to regulate and provide remedies, or by operation of its Rules, the Commission may reach factual and legal conclusions and fashion appropriate class/systemwide remedies. Complainant simply asserts that even if that is not the case, R-14-3-216's express application of the Arizona Rules of Civil

Procedure, including Rule 23, gives the Commission, even in the absence of other clear authority, complete authority to make classwide determinations.

V. THE COMPLAINT MEETS THE REQUIREMENTS OF ARIZ. R. CIV. P. 23(c)(4)(A), WHICH IS CONSISTENT WITH THE SUPERIOR COURT'S PRIOR ORDER

In her Complaint to the Commission, Complainant moved to certify a class consisting of "all current and former residential and business APS customers in Arizona who, since January 1,1999, have been, or in the future will be, subject to improper estimation and billing procedures on demand meters not approved by the [ACC]". Complaint at ¶ 1. The prayer for relief includes injunctive, declaratory and accounting causes of action. Liability under each of the causes pled will turn upon just two questions: whether APS has charged its customers using estimating procedures not approved by the Commission, and if it has, whether that is a violation of Arizona law. One question is factual; the other, addresses the legal issues raised by the factual finding.

Ariz. R. Civ. P. 23(c)(4)(A) gives the judicial officer considering certification the option to certify less than all of the questions to be answered to fully resolve the litigation. "[A]n action may be brought or maintained as a class action with respect to particular issues." Ariz. R. Civ. P. 23(c)(4)(A). In this case, it can certainly be maintained as a class action as to the "liability" questions described above and as to the consequent equitable and injunctive relief should APS's existing estimating procedures be found to be unlawful. Complainant has asserted, before the Maricopa County Superior Court and the Commission, that upon determination that the estimated charges since January 1, 1999 were billed and collected under an unlawful procedure, a separate accounting of the financial loss to customers would be necessary. That does not, however, alter the fact that whether the charges actually were unlawful turns upon common facts and legal issues.

Under controlling Rule 23 authorities, variations in damage calculation do not defeat certification, as Complainant pointed out to the Superior Court. Indeed, Godbey v. Roosevelt School District No. 66 of Maricopa County, 131 Ariz. 13, 638 P.2d 235, 240 (1981), appears to be on all fours with the Rule 23 issues before the Superior Court. While the Superior Court did not agree, it conceded that the damage issues were the only issues that were individual. That being the case, and APS having made no other challenge to class certification, the elimination of damages from Rule 23 consideration,

and limitation of the class issues to liability issues under Rule 23 (c)(4)(A), leaves the Superior Court's opinion to stand in this forum, while still mandating certification.

> "If the Court assumes that the Plaintiff prevails on that portion of the action wherein the class acts as a private attorney and the acts of the Defendant are found to be unlawful that Court must then turn to a determination of the damage for the individual Plaintiff members of the class, and it is here that the class runs into insurmountable problems."

Judge Albrecht Ruling, May 26, 2004. While the Superior Court's analysis is arguably dead wrong on the law, it does narrow the focus of certification for the Commission and allow it to certify the issue of the lawfulness of the conduct under Rule 23(c)(4)(A), while reserving the issues of remedies for later individual damage resolution or an equitable accounting. The Commission can, therefore, proceed under Rule 23(c)(4)(A) as to the issues that the Superior Court had no concerns regarding, while leaving the issues the Superior Court did have concerns about for resolution outside Rule 23. In short, as long as only the issue of the lawfulness of the estimating procedures is certified, there is no conflict or potential conflict with the Superior Court.

VI. THE COMMISSION ALSO HAS THE AUTHORITY TO MAKE A FINDING AS TO THE SUBSTANTIVE VIOLATION AND THEN ORDER APS TO MAKE APPROPRIATE RESTITUTION

The evidence is virtually undisputed that Defendant has been systematically sending out estimated electricity bills that represent as "Amount Due" sums that are the product of an estimating procedure that it has unilaterally adopted, and then changed to its own benefit, without the approval of its estimating procedures by the Commission mandated by Arizona Administrative Code R-14-2-210-5 and A.R.S. § 40-365 and §40-367.

That the procedures used by APS to estimate demand meters have not been approved by the ACC can hardly be doubted, which, in turn, means that claims of "Amount Due" that are not due at all, are clearly improper.

As described above, the bills rendered by APS using the internally-created, unapproved procedures are called "estimated" bills, but in reality, because demand cannot be recaptured, recreated or reconciled with subsequent demand readings, any reconciliation that is attempted can only reconcile to the estimated outcome, not to actual demand, and in multiple estimating months cannot be reconciled at all. This essentially makes the amount paid under an estimating formula the amount charged and

paid for that month. The formula controls the charge for electricity; and unlike non-demand readings, it cannot be recaptured or reconciled. In short, the estimate becomes the charge; a charge which has not been reached using any procedure approved by the Commission. Article 15, Section 3 of the Arizona Constitution provides unambiguously that:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations...

(Emphasis added).

This broad authority is plainly not limited to formal rate-making and nothing else. The term "rates and charges to be made and collected" clearly encompasses all forms of charge to the consumer for "services rendered". The Constitution further grants the ACC power to make reasonable "rules, regulations and orders" in support of its authority cited above. It is hard to see how R14-2-210, which requires Commission approval of procedures that result in the issuance of charges and bills that are paid by consumers does not fall squarely within the language of Article 15, Section 3 that authorizes the ACC to act legislatively to make rules and regulations in support of its mandate to prescribe charges.

The language of the Constitution also grants the Commission "full power to ...make...orders by which such corporations shall be governed in the transaction of business within the state...". Const. Art. XV, § 3. Hence, the Commission may use its plenary powers to make whatever order it feels is necessary to govern APS's conduct, including ordering a full accounting of improperly collected charges for electricity. The Constitution gives the Commission plenary powers to both approve charges made for electricity and to issue orders in support of that power, as does A.R.S. § 40-367. A.A.C. § R14-2-210 is an example of the exercise of this power. It, like A.R.S. § 40-365 and § 40-367, requires approval of the charges to be made and collected by a public service corporation when there is no available meter reading, and approval of any changes in how those charges are reached. Since the Commission plainly has the power to approve charges and order relief when a reading is available, why would it have any less power over charges and orders for relief when no reading is available?

Obviously, the Commission's power does not turn upon the action or inaction of a meter reader.

Thus, the Commission certainly may exercise its statutory and constitutional jurisdiction to hear this dispute, and issue orders regarding appropriate relief, or it may use its Rules and Ariz. R. Civ. P. 23 to achieve the same result.

VII. BECAUSE THEY WERE ADMITTEDLY NEVER APPROVED, UNDER A.A.C. § R14-2-210 OR A.R.S. § 40-367, THE ESTIMATING PROCEDURES IN USE ARE IMPROPER AS A MATTER OF LAW

It is Complainant's position that any estimating procedure used to create a charge that results in a utility bill to an Arizona consumer by APS is unlawful if it is a charge that could not be billed under A.A.C. § R14-2-210, or is not subject to A.R.S. § 40-365 and § 40-367. Regardless of whether the procedure used might subsequently obtain Commission approval, the charges made without approval are unlawful by operation of the Regulation. Arizona Administrative Code § R14-2-210-5 could not be clearer:

> A utility or billing entity may not render a bill based on estimated usage if:
> a. The estimating procedures employed by the utility or billing entity have not been approved by the Commission.

Thus, the "reasonableness", "appropriateness" and "compliance" of the procedures all turn upon the issue of whether A.A.C. § R14-2-210 has been followed. An unapproved procedure, or one that does not follow the elements of A.A.C. § R14-2-210-2 is *per se* unreasonable, inappropriate and non-compliant because it is in breach of the controlling Regulation. That it might subsequently be found to comply with A.R.S. §40-361 when presented for approval going forward is irrelevant if the charge has not been subject to proper approval to date. A subsequent approval of the procedure cannot repair the breach. Arizona Administrative Code § R14-2-210-5 mandates that the utility <u>may not render a bill</u> based upon an unapproved estimating system, "reasonable", "appropriate" or not. The legal standard to be applied is one involving basic statutory construction rules. Was a bill using estimating procedures rendered? If so, were the estimating procedures approved? If the answer to the first question is "yes", as it obviously is here, the only question under A.A.C. § R14-2-210(2) is whether it was "approved by the Commission". Hence, the only standard that is material in this case is whether the conduct engaged in was or was not compliant with the estimating regulations. APS cannot get a free pass on statutory approval compliance by arguing *ex post facto* that its unlawful acts are "reasonable".

VIII. PENDING A DETERMINATION UNDER ARIZ. R. CIV. P. 23, THE COMMISSION'S NORMAL NOTICE OF A COMPLAINT AND HEARING IS APPROPRIATE

Rule 23, whether it is the federal or Arizona version, requires the best notice practicable upon certification of a class.[4] Until the class is certified, however, the kind of extensive notice envisioned by Rule 23 is premature. Until a class is certified, this case should be treated as a Complaint before the Commission, subject to its normal notice procedures.

Arizona Administrative Code R14-3-109(B) gives the Commission broad discretion to publish notice of the hearing in the form it desires in this case or any particular proceeding. This Complaint is a matter of significant concern to APS customers, and their participation and comments should be encouraged.

Complainant would suggest a conspicuous posting on the Commission website and formal publication of a small, but conspicuous, notice in local newspapers. As described in footnote 4 above, it may also be feasible and inexpensive to require APS to circulate notice to demand meter customer in monthly billings.

VIX. CONCLUSION

The foregoing addresses the issues raised in the November 2, 2004 Procedural Order. As it demonstrates, it is well past time to decide, once and for all, whether APS's computer-driven, automated demand estimates should have been subject to Commission approval when adopted, and the consequences to APS for making charges for electricity to consumers outside the constitutional, statutory and regulatory control of the Commission.

Respectfully submitted,

DATE: November 23, 2004

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[4] In this instance, should it become an issue, written notice included with the monthly APS bill and posted on APS "electronic pay" website would be appropriate.

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COMPLAINANT'S DIRECT TESTIMONY AND EXHIBITS RELATED TO THE COMPLAINT

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BEFORE THE ARIZONA CORPORATION COMMISSION

AVIS READ; individually, and on Behalf of All Others Similarly Situated, Complainants, v. ARIZONA PUBLIC SERVICE COMPANY, Respondent.	DOCKET NO. E-01345A-04-0657
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A DECLARATORY ORDER REGARDING BILL ESTIMATION PROCEDURES.	DOCKET NO. E-01345A-03-0775

COMPLAINANT'S DIRECT TESTIMONY AND EXHIBITS RELATED TO THE COMPLAINT

Document Description **Exhibit No.**

Deposition Transcript of Janet M. Smith taken April 22, 2003. 15

Deposition Transcript of Cynthia Janka taken April 22, 2003 16

Deposition Transcript of Jana K. Van Ness taken April 23, 2003. 17

Electronic correspondence from Jana K. Van Ness dated March 12, 2002. 18

Electronic correspondence from Cynthia Janka dated November 30, 2000 19

Electronic correspondence from Janet M. Smith dated June 19, 2002. 20

Electronic correspondence from Janet M. Smith dated June 18, 2002. 21

Electronic correspondence from Janet M. Smith dated December 4, 2000. 22

Additional electronic correspondence between APS employees. 23

Pinnacle West Capital Corp.'s CIS Compliance to ACC Rules and Regulations Audit. 24

APS Memorandum to Bill Post from Meter Reading/Billing Task Force dated September 3, 1996. 25

APS Review of APS Meter Reading, Metering and Billing Practices. 26

APS - Usage Estimation. 27

APS - BL - 19 Estimating. 28

Letter to George Bien-Willner from Jan H. Bennett, Vice President of Customer Service Arizona Public Service Company, dated September 12, 1994. 29

Check Made Payable to George Bien-Willner from APS dated October 14, 1994. 30

BEFORE THE ARIZONA CORPORATION COMMISSION

AVIS READ; individually, and on Behalf of All Others Similarly Situated, Complainants, v. ARIZONA PUBLIC SERVICE COMPANY, Respondent.	DOCKET NO. E-01345A-04-0657
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Document Description **Exhibit No.**

Letter to George Bien-Willner from Jan H. Bennett, Vice President of Customer Service Arizona Public Service Company, dated November 30, 1994. 31

Letter to George Bien-Willner from Jan H. Bennett, Vice President of Customer Service Arizona Public Service Company, dated October 6, 1994. 32

Summary of Issues Regarding George Bien-Willner. 33

1

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **FIRST AMENDED CLASS ACTION COMPLAINT FOR:** **1. Consumer Fraud (A.R.S. § 44-1522, *et seq.*);** **2. Violation of Arizona Administrative Code R14-2-210;** **3. Unjust Enrichment;** **4. Breach of Fiduciary Duty;** **5. Breach of Contract;** **6. Breach of Express Warranty;** **7. Violation of A.R.S. § 40-361;** **8. Violation of A.R.S. § 40-367;** **9. Negligence; and,** **10. Negligent Misrepresentation.** (Assigned to the Honorable Rebecca A. Albrecht)

Plaintiffs, on behalf of themselves and all other similarly situated, alleges as follows:

NATURE OF THE ACTION

1. This is a class action brought against Arizona Public Service Company ("APS" or the "Company") on behalf of the Plaintiff and a class consisting of all current and former residential and business APS customers in Arizona who have been, or in the future will be, subject to improper estimation and billing procedures by APS (the "Class").

2. APS has systematically deceived and overcharged Plaintiffs and the class in the sale of electricity to them, by systematically failing to follow legally required practices and procedures regarding meter reading, estimating and billing; over-estimating electric consumption and demand; and by billing estimated demand readings as if they were actual readings of demand for the month being billed; and by sending bills to the class that have used estimating procedures not approved by the Arizona Corporation Commission as required by law, but arbitrarily invented by APS employees..

JURISDICTION AND VENUE

3. This Court has jurisdiction over this dispute pursuant to A.R.S. § 12-123.

4. Venue is proper under A.R.S. § 12-401; A.R.S. § 40-334, *et seq.*; and pursuant to Qwest Corporation v. Kelly, 204 Ariz. 25, 59 P.3d 789 (2002); review denied, April 22, 2003.

PARTIES

5. Plaintiff Avis Read ("Read") is a resident of Arizona, and is an APS electric customer.

6. Defendant APS was incorporated in Arizona in 1920 and is headquartered at 400 North Fifth Street, Phoenix, Arizona 85072. It is Arizona's largest utility, with approximately 827,000 customers. It provides retail electric service to the entire state of Arizona, with the exception of Tucson and about one-half of the Phoenix area.

GENERAL ALLEGATIONS

7. APS is Arizona's largest electric utility. APS is a public service company and is regulated and bound by the laws of the State of Arizona.

8. APS is required to bill its electric customers on a monthly basis.. The total amount of electricity consumed, or the number of kilowatt hours (kWh) used during the billing period, is the initial factor in the amount of the bill receded by APS's residential and business customers. Electric meters must be read every month in order to properly assess the number of kilowatt hours consumed by APS's

customers. The actual energy used or consumed during a monthly billing period is determined by the difference between the meter reading for the prior month and the reading for the current month.

9. Some of the rate plans offered by APS also take into account when and how much energy is used at one time, or "demand." The demand portion of the bill is a charge based on the highest average electricity used in any 60-minute period for residences or 15-minute period for businesses during a billing period (i.e., the average kilowatt (kW) supplied during the 60 or 15-minute period of maximum use). This structure is designed to encourage customers to spread out electricity usage. For electric customers with a demand component on their bill, the electric meter must be read every month, because the demand read must be billed as it is read and is not cumulative (unlike the total kWh read which measures the total amount of electricity consumed and is cumulative). The meter reader must reset the demand read back to zero every month after the meter has been read. If the meter is not read, and the demand read on the meter is not reset to zero, the actual kW demand for that customer during the monthly billing cycle cannot be determined. Regardless of whether the customer has a digital meter or a meter with dials, the meter must be reset every month.

10. In order to accurately assess the electricity consumption (kWh) and the electricity demand (kW) (if the customer is on a rate plan with a demand component), electric meters must be read and reset every month. If the meters are not read every month, the bill will not reflect actual consumption and demand during the monthly billing period, and the amount billed will not be accurate. It is impossible to retroactively determine the "demand" component for any month if the meter is not read and reset for that month. When a demand meter that has been estimated is finally read, the "demand" reading will represent the highest peak demand for the entire period from the time the meter was last physically read and reset until the time of the next meter read. Likewise, the "demand" reading cannot, with any certainty, represent the demand only for the last unread period. Instead, it represents the peak demand for the entire period that the meter was not read. Any bill that includes such a reading and represents it as anything but an estimate is thus false.

11. Those within APS's service territories are reliant on APS for electricity, a necessary service. Moreover, in large part because of APS's opposition to proposed deregulation of electrical service providers in Arizona, Arizonans who fall within APS's service territories have no choice as to

the provider of their electricity. Because most APS customers are ignorant of how electric meters are read or how APS calculates the amount of their bills, they depend on APS, as a fiduciary that owns and controls the reading of the meter, to properly bill them for the actual amount of electricity they have consumed and demanded.

12. APS has failed to make the arrangements necessary and required by State law and Regulation to read the electric meters of Plaintiffs and the members of the Class on a monthly basis, and has billed estimated sums for such use without following the procedures provided for in Arizona's Regulatory scheme, resulting in massive over-utilization of estimated, inaccurate bills at great cost and expense to consumers. APS has repeatedly estimated the consumption and demand in ways that are inconsistent with Arizona law and result in overcharges to consumers.

13. Due to the foregoing, APS has violated various laws, including Arizona Administrative Code R14-2-210 governing electrical utilities, which provides:

A. Frequency and estimated bills

1. Unless otherwise approved by the Commission, the utility or billing entity shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and may offer billing options for the services rendered. Meter Readings shall be scheduled for periods of not less than 25 days Or more than 35 days without customer authorization. If the Utility or Meter Reading Service Provider changes a meter reading route or schedule resulting in a significant a alteration of billing cycles, notice shall be given to the affected customers.

2. <u>Each billing statement rendered by the utility or billing entity shall be computed on the actual usage during the billing cycle.</u> If the utility or Meter Reading Service Provider is unable to obtain an actual reading, the utility or billing entity may estimate the consumption for the billing period giving consideration to the following factors where applicable:
   a. The customer's usage during the same month of the previous year.
   b. The amount of usage during the preceding month.

3. <u>Estimated bills will be issued only under the following conditions</u> unless otherwise approved by the Commission:
   a. When extreme weather conditions, emergencies, or work stoppages prevent actual meter readings.
   b. Failure of a customer who reads his own meter to deliver his meter reading to the utility or Meter Reading Service provider in accordance with the requirements of the utility or Meter Reader Service Provider billing cycle.
   c. Provider is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the

meter, that is, locked gates, blocked meters, vicious or dangerous animals. If the utility or Meter Reader Service Provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternative to obtain a customer reading of the meter.

d. Due to customer equipment failure, a 1-month estimation will be allowed. Failure to remedy the customer equipment condition will result in penalties for Meter Service Providers as imposed by the Commission.

e. To facilitate timely billing for customers using load profiles.

4. After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance fo service.

5. A utility or billing entity may not render a bill based on estimated usage if;

a. The estimating procedures employed by the utility or billing entity have not been approved by the Commission.

b. The billing would be the customer's 1st or final bill for service

c. The customer is a direct-access customer requiring load data.

d. The utility can obtain customer-supplied meter readings to determine usage.

6. When a utility or billing entity renders an estimated bill in accordance with these rules it shall:

a. Maintain accurate records for the reasons therefor and efforts made to secure an actual reading;

b. Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation.

(emphasis added).

14. In contravention of the foregoing rules, APS has continued to render estimated bills to class members far beyond the three month limit without having in place any procedure to comply fully with Section 4 above or Section 5d above to obtain actual readings.

15. Additionally, despite the rule requiring APS to specify on the billing statement the reason for its estimation, APS has not abided by the rule consistently.

16. Further, the estimating procedures employed by APS pursuant to which APS rendered estimated bills, including estimated demand bills, have been created on an *ad hoc* basis by APS employees, without adequate notice to and approval by the public and the Arizona Corporation

Commission. APS's estimating procedures regarding demand estimation blatantly contradict relevant Regulations and have never been approved by the Arizona Corporation Commission, and do not take into consideration the factors required by Section 2a and 2b, above.

17. APS's practices pertaining to meter reads have not complied with the binding State laws and Regulations, and its practices have been systematic and widespread, resulting in massive overcharges to its customers, and the unlawful mailing of unauthorized estimated bills.

18. APS has submitted misleading and incomplete reports regarding its estimating and billing practices to the Arizona Corporation Commission notwithstanding its obligations to fairly and accurately report to the Commission.

19. On information and belief, APS fraudulently fails to label bills as "estimated" in the event that its billing system automatically "system" estimates a bill for such invalid reasons as meter readers being unable to complete their routes within their allotted time frames.

20. APS claims to currently employ only 134 meter readers. On information and belief, this constitutes a grossly inadequate number of meter readers to accurately read each of its customer's meters in accordance with Arizona law and Regulations. In reports to analysts and investors, APS actually boasts of its decrease in personnel notwithstanding its increase in customers.

21 APS continuously and systematically estimates meter reads in violation of Arizona law and the Regulations. Customer's electric meters are estimated for months at a time using illegal estimating procedures. This occurs notwithstanding the fact that APS may, at its option, according to the terms and conditions of its service, change the customer's rate plan to a plan that does not require a monthly, manual reset.

22. APS has implemented software systems that have resulted in customer bills being estimated for periods longer than allowed by the Regulations. Despite knowledge of such illegal activities, Defendant APS never informed the public or Arizona Corporation Commission about its software-related estimating problems and never took steps to remunerate its customers for damages caused by its negligent implementation of software that did not conform to Arizona law and regulations.

23. Apart from its obligation to follow Arizona law and regulations, APS warrants, as a term and condition of its service agreement with its customers, that it follows all applicable Regulations.

It does not do so.

INDIVIDUAL PLAINTIFF ALLEGATIONS

24. Plaintiff Read was overcharged by APS for electricity through unauthorized and unlawful estimated billing that extended beyond three consecutive months. One of Read's meters (meter # A93326) was almost never read by APS. Indeed, in violation of the law, APS estimated Read's meter for more than three months in a row while making no arrangements to read the meter pursuant to Regulation. True and accurate copies of Read's bills, along with those for meter #906893, are attached hereto as Exhibit "A".

25. Read's bills show that APS's estimations of her energy consumption were erratic and tended to result in higher bills. Indeed, for the billing periods December 17, 1999 through February 17, 2000, Read received two sets of bills from APS for meter #A93326, one set of which indicated that her meter was read, and the other indicating that her meter was estimated.

26. Another one of Read's meters (meter #906893), with demand as a component of the rate plan, was also estimated for months at a time. True and accurate copies of her bills, along with those for meter #A93326, are attached hereto as Exhibit "B".

27. Plaintiffs Paul and Linda Schaeffer formerly resided at 3688 West Carribean Lane in Phoenix, Arizona. They complained to the Arizona Corporation Commission and to APS when they received excessive energy bills. Upon investigation, it was learned that their meter had not been read in months, and upon information and belief, for years.

28. The estimates far exceeded in number those permitted under the controlling statutes and represented involuntary interest free loans granted to APS by reason of their continued over-estimation of the Schaeffer's energy bills.

29. When the meter was finally read, the Schaeffers had accumulated so much overpayment through estimates that they received no energy bills at all for several months. They received no payment from APS for the use of their funds.

30. Due to the estimated meter readings and purported actual readings where the energy consumption and demand were simply concocted or estimated, but represented by APS to be readings of actual usage and demand, the monthly bills rendered by APS did not approximate actual usage and

demand of electricity by its customers such as Read, were higher than they should have been, and were rendered in a manner inconsistent with binding Regulations.

31. Despite this actual knowledge and awareness of their wrongful and illegal conduct, Defendant continues to engage in the improper and deceptive billing practices.

32. As a result of the Defendant's deceptive business practices and unconscionable commercial practices, which include the making of false and misleading statements on electric bills, Plaintiffs and the other members of the Class paid excessive amounts for electricity, or made interest free, involuntary loans to APS, or received and paid bills that could not have been lawfully sent to them, and thereby suffered actual damages.

33. Plaintiffs and the other members of the Class have and will continue to suffer irreparable damage unless the Defendant is enjoined from continuing their unconscionable and deceptive unauthorized, and illegal estimating and billing practices..

34. Plaintiffs, both individually and for the Class, seek equitable relief and economic and punitive damages on behalf of all Class members, including reimbursement for any and all economic damage sustained as a result of the practices described above.

CLASS ACTION ALLEGATIONS

35. This action is brought and may properly be maintained as a class action pursuant to Rule 23 of the Arizona Rules of Civil Procedure. Plaintiffs bring this action on behalf of themselves and all residential and/or business customers of APS in Arizona who received estimated bills that resulted from the failure of APS to follow mandated practices and procedures before sending estimated bills.

36. The Class for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. While the exact number and identities of individual Class members are unknown at this time, and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe that tens of thousands of individuals have been, and continue to be, subjected to these practices by APS.

37. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members.

38. Among the questions of fact common to the Class are the following:

a. whether APS's estimating and billing practices were and/or remain to the present contrary to controlling State law and Regulations;

b. whether according to Defendant's regularly kept business records, APS read the electric meters of its utility customers on a monthly basis consistent with controlling Regulations;

c. whether APS's customers were being billed for the amount of electricity they actually consumed;

d. whether APS's customers were being billed for the amount of electricity they actually demanded;

e. whether APS's bills were false and misleading;

f. whether APS overcharged customers for electricity;

g. whether APS concealed the illegality of its actions from the consuming public; and,

h. whether Plaintiffs and the other members of the Class have been damaged by way of the aforementioned actions of the Defendant.

39. Among the questions of law common to the Class are the following:

a. whether Defendant has perpetrated consumer fraud in violation of A.R.S. § 44-1522, *et seq;*

b. whether Defendant, by reason of its alleged conduct, has violated Arizona Administrative Code R14-2-210;

c. whether Defendant, by reason of its alleged conduct, has been unjustly enriched;

d. whether Defendant, by reason of its alleged conduct, has breached its fiduciary duties to Plaintiffs and the Class;

e. whether APS, by reason of its alleged conduct, has breached contracts entered with Plaintiff and the Class;

f. whether Defendant, by reason of its alleged conduct, proximately caused injury to Plaintiff and the members of the Class and, if so, what is the proper measure of such damages; and,

g. whether injunctive relief is appropriate to curtail said actions of the Defendant and require it to send estimated bills only upon following the procedures set forth in controlling Regulations.

40. Plaintiffs' claims are typical of the claims of the other members of the Class, in that they arise out of APS's failure to follow the requirements of Arizona law and clearly stated, unambiguous regulations. Plaintiffs have no interests antagonistic to the interests of the other members of the Class.

41. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and consumer litigation. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

42. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because the amount of each individual Class member's claim is small relative to the complexity of the litigation and the financial resources of the Defendant, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein, or seek the necessary injunctive relief. Therefore, absent a class action, the Class members will continue to suffer losses and the Defendant's violations of law will proceed without remedy.

43. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

[Against Defendant for Violation of Arizona Administrative Code R14-2-210]

44. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporates by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

45. APS engaged in practices in violation of Arizona Administrative Code R14-2-210.

46. The bills rendered by APS were not computed based on the actual usage and demand during the billing period, as APS engaged in a systematic and continuous practice of improperly estimating or arbitrarily inventing meter readings to the detriment of its business and residential electric customers.

47. Meters were estimated even after three consecutive months of estimating the customer's bill without regard to the steps required to be taken in order to continue to estimate bills, without taking alternative steps to obtain readings and without attempting to have meters read by consumers as required by Regulation.

SECOND CAUSE OF ACTION

[Against Defendant for Consumer Fraud, A.R.S. § 44-1521, et seq.]

48. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

49. This cause of action is brought pursuant to the Arizona Revised Statutes § 44-1521, *et seq.*

50. In violation of A.R.S. §44-1522, Defendant deceived Plaintiffs and the Class through misstatements and dishonest course of business described in preceding paragraphs, including in particular the misrepresentation of the amounts owed by Plaintiffs and members of the Class for electricity service, and the mailing of false, unauthorized estimated bills contrary to controlling Regulations, and mailing of bills stating demand for particular months that APS knew was a pure guess or estimate, but represented as actual demand.

51. Defendant's conduct constitutes a series of unlawful practices through which statutory "merchandise," *i.e.,* electric power, was sold, advertised, or both, to Plaintiffs and the Class within the meaning of A.R.S. §44-1522.

52. Because of the Defendant's unlawful conduct in violation of the Act, Plaintiffs and members of the Class overpaid APS for their electricity, and provided unlawful, involuntary interest free loans to APS.

53. Because of the Defendant's unlawful conduct in violation of the Act, Plaintiffs and the other members of the Class have suffered losses in amounts to be determined at the time of trial and will continue to do so absent injunctive relief.

54. Defendant's conduct was undertaken in deliberate disregard for the interests of Plaintiff and Class.

THIRD CAUSE OF ACTION

[Against Defendant for Unjust Enrichment]

55. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporates by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

56. As a result of the illegal conduct described above and the relationship between the parties, Defendant has been, and continue to be, unjustly enriched at the expense of Plaintiffs and all others similarly situated. Specifically, Defendant has been, and continues to be, unjustly enriched by its continued practice of over-billing customers. Had Plaintiffs and other members of the Class known that they were being overcharged, they would not have paid the amount they were overbilled. Defendant will be unjustly enriched if it is allowed to retain these funds and not required to refund such funds to the people it wrongfully overbilled.

FOURTH CAUSE OF ACTION

[Against Defendant for Breach of Fiduciary Duty]

57. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

58. By virtue of Plaintiff's position as an electric customer of APS, and APS's position as a monopoly providing electricity for Plaintiff and the members of the Class, and because Plaintiff and the Class reposed trust and confidence in it, Defendant owed to Plaintiff and the members of the Class fiduciary and other common law duties.

59. In taking the wrongful actions heretofore alleged, Defendant violated its fiduciary obligations to Plaintiff.

60. As a proximate result of Defendant's conduct, Plaintiff and the Class suffered damages in amount to be determined at the time of trial.

FIFTH CAUSE OF ACTION

[Against Defendant for Breach of Contract]

61. Plaintiff, on behalf of herself and all others similarly situated, hereby incorporates by

reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

62. Plaintiff is a party to a contract between herself and APS in which APS agreed to provide electric services under certain terms and conditions based on set rates.

63. Defendant APS has breached such contract by failing to provide the services contracted for at the prices contracted for.

64. As a result of the foregoing, Plaintiff and the other members of the Class have suffered, and will continue to suffer, harm.

SIXTH CAUSE OF ACTION

[Against Defendant for Breach of Express Warranty]

65. Plaintiff, on behalf of herself and all others similarly situated, hereby incorporates by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

66. Plaintiff is a party to a contract between herself and APS in which APS agreed to provide electric services under certain terms and conditions based on set rates. Among the terms and conditions of its contracts are certain warranties made by APS.

67. Defendant APS covenants and warrants in its contract with Plaintiff that "APS operations are in compliance with all applicable regulations pursuant to the rules of electric competition. . . .". See Exhibit "C"attached hereto.

68. Defendant APS has breached such warranty by failing to comply with the Regulations that govern its billing and estimating procedures and practices.

69. As a result of the foregoing, Plaintiff and the other members of the Class have suffered, and will continue to suffer, harm.

SEVENTH CAUSE OF ACTION

[Against Defendant for Violation of A.R.S. § 40-361]

70. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

71. This cause of action is brought pursuant to the Arizona Revised Statutes § 40-361.

72. In violation of A.R.S. §40-361, Defendant APS, a public service company, has made

rules and regulations and has demanded and received payment for services that are unjust and unreasonable, within the meaning of A.R.S. §40-361.

73 Because of the Defendant's unlawful conduct in violation of the Statute, Plaintiffs and members of the Class overpaid APS for their electricity and provided unlawful, involuntary interest free loans to APS.

74. Because of the Defendant's unlawful conduct in violation of the Statute, Plaintiff and the other members of the Class have suffered losses in amounts to be determined at the time of trial and will continue to do so absent injunctive relief.

75. Defendant's conduct was undertaken in deliberate disregard for the interests of Plaintiffs and Class.

EIGHTH CAUSE OF ACTION

[Against Defendant for Violation of A.R.S. § 40-367]

76. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

77. This cause of action is brought pursuant to the Arizona Revised Statutes § 40-367.

78. In violation of A.R.S. §40-367, Defendant APS, a public service company, has made changes in its rule, regulations, rates, fares and tolls without providing thirty days notice to the public and the Arizona Corporation Commission as required by A.R.S. §40-361.

79. Because of the Defendant's unlawful conduct in violation of the Statute, Plaintiff and members were damaged by unapproved, unrevealed, unfair and unjust billing and estimating practices by defendant APS.

80. Because of the Defendant's unlawful conduct in violation of the Statute, Plaintiff and the other members of the Class have suffered losses in amounts to be determined at the time of trial and will continue to do so absent injunctive relief.

81. Defendant's conduct was undertaken in deliberate disregard for the interests of Plaintiff and Class.

82. Plaintiffs are authorized to seek redress for such damages in this Court by virtue of

A.R.S. §40-423, as Defendant APS has.

NINTH CAUSE OF ACTION

[Against Defendant for Negligence]

83. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

84. Defendant APS owes a duty to Plaintiffs and its customers to act reasonably and prudently in preparing bills for its services and to follow applicable laws and regulations governing its conduct.

85. By negligently implementing software, information and billing systems that have failed to follow Arizona law and Regulations have resulted in unjust, artificially-inflated bills, and are a result of a lack of reasonable care by APS in preparing such bills. Defendant APS has breached and continues to breach such duties.

86. Defendant APS's conduct was the factual and legal cause for such breach of duty.

87. As a result of the foregoing, Plaintiff and other members of the Class have suffered, and will continue to suffer harm.

TENTH CAUSE OF ACTION

[Against Defendant for Negligent Misrepresentation]

88. Plaintiffs, on behalf of themselves and all others similarly situated, hereby incorporate by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.

89. APS owed a duty to its customers to act reasonably, prudently, and in accordance with controlling law in estimating usage and demand for billing purposes.

90. By failing to put into place procedures, practices, oversight, and management review policies regarding compliance with such duties, APS negligently caused inaccurate and unlawful bills to be sent to consumers, which bills were paid in reliance upon the inaccurate and unlawful bills and estimates contained in such bills.

91. As a result of such negligent misrepresentations regarding the amounts owed by

customers to APS, consumers have overpaid APS to their detriment and financial damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgement against Defendant as follows:

A. For an Order certifying the Class and any appropriate subclasses thereof and appointing Plaintiff and her counsel to represent the Class;

B. For an Order:

1. Determining and declaring the rights of Plaintiff and the other members of the Class and the corresponding responsibilities of Defendant;
2. Requiring Defendant to follow all procedures requiring arranged meter readings, customer meter readings and estimating before sending estimated bills;
3. Requiring the Defendant to read meters on a monthly basis and to cease overcharging customers for their electricity; and
4. Requiring that Defendant disgorge, for the benefit of the Class, their ill-gotten profits received from Plaintiff and the Class and/ or to make full restitution to Plaintiff and the other members of the Class, including all funds received by reason of estimated billings sent out without following the pre-conditions for sending such bills as provided by Regulation.

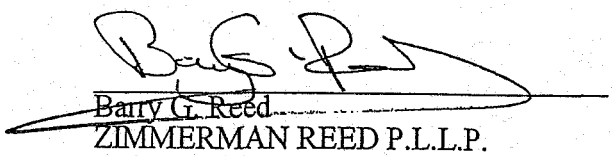
C. For pre- and post-judgement interest;

D. For costs and disbursements incurred in connection with this action, including reasonable attorneys' fees and expert fees and costs advanced; and,

E. For such other and further relief as the Court deems just and proper.

DATED this 1st day of December, 2002.

ZIMMERMAN REED, P.L.L.P.



Barry G. Reed
ZIMMERMAN REED P.L.L.P.
14646 N. Kierland Boulevard, Suite 145
Scottsdale, AZ 85254
(480) 348-6400
(480) 348-6415 Facsimile

David A. Rubin
LAW OFFICES OF DAVID A. RUBIN
3225 N. Central Avenue, Suite 1610
Phoenix, AZ 85012-2413
(602) 235-9525

Jeffrey M. Proper
LAW OFFICES OF JEFFREY M. PROPER
3550 N. Central Avenue, Suite 1200
Phoenix, AZ 85012-2111
(602) 235-9555
(602) 235-9223 Facsimile

Exhibit A & B

APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

March 19

Service Establishe

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Jan 22 your total kWh read was	75829
On Dec 22 your total kWh read was	72645
Your total kWh usage is	3184

Your kW demand read was 8.6

Basic service charge	10.00
Charge for kWh used	110.04
Charge for kW demand	66.05
Sales tax	10.63
Regulatory assessment	0.35
Sub Total	197.07

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Feb 19 your total kWh read was	78689
On Jan 22 your total kWh read was	75829
Your total kWh usage is	2860

This month's read was estimated - LOCKED GATE

Your kW demand read was 8.7

Basic service charge	10.00
Charge for kWh used	98.84
Charge for kW demand	66.82
Sales tax	10.03
Regulatory assessment	0.33
Sub Total	186.02

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Mar 31, 1999	361330282

Accoun 361:

Billin Mar 31,

Your prompt payment is appreciated. Thank you!

EXHIBIT A+B

15 R

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE $2,134.24

KEEP TH: PORTION YOUR RE

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

March 31, 19

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Nov 20 your total kWh read was	69043
On Oct 21 your total kWh read was	66143
Your total kWh usage is	2900
Your kW demand read was	9.7
Basic service charge	10.00
Charge for kWh used	100.22
Charge for kW demand	74.50
Sales tax	10.18
Regulatory assessment	0.36
Sub Total	195.26

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Dec 22 your total kWh read was	72645
On Nov 20 your total kWh read was	69043
Your total kWh usage is	3602
Your kW demand read was	9.5
Basic service charge	10.00
Charge for kWh used	124.49
Charge for kW demand	72.96
Sales tax	11.43
Regulatory assessment	0.40
Sub Total	219.28

Service Address
6702 E MCDONALD DR

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date
Mar 31, 1999

Account Number
361330282

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Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

Mar 31, 1999

DO BUSINESS WITH US ONLINE AT www.apsc.com

Once you have a password you can perform the following activities on-line with APS 24 hours a day, seven days a week:

* connect service
* disconnect service
* check your account balance
* transfer service to another APS location

5 a.m. to 8 p.m. only:

* make payment arrangements
* signup for Equalizer

To receive your password, visit the customer service section of our website and complete an on-line registration form.

We appreciate your business. Thank you!

Please see additional i

THIS MONTH'S ELECTRIC BILLING INFORMATION

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93326

On Mar 19 your meter read was	96665
On Mar 03 your meter read was	96063
Your total kWh usage is	602

Basic service charge	4.00
Charge for kWh used	48.44
Service establishment charge	25.00
Sales tax	4.43
Regulatory assessment	0.15
Sub Total	82.02

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Oct 21 your total kWh read was	66143
On Sep 22 your total kWh read was	62510
Your total kWh usage is	3633
Your kW demand read was	9.9

Basic service charge	10.00
Charge for kWh used	151.31
Charge for kW demand	106.03
Sales tax	14.73
Regulatory assessment	0.52
Sub Total	282.59

SEPT 7

Continued on next page

APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Numbe
361330282

March 3

On Mar 19 your total kWh read was	82266
On Feb 19 your total kWh read was	78689
Your total kWh usage is	3577
Your kW demand read was	11.9

FG

Basic service charge	10.00
Charge for kWh used	123.62
Charge for kW demand	91.39
Sales tax	12.85
Regulatory assessment	0.42
Sub Total	238.28

Billing Summary

Previous Billing as of 11/06/1998	1,228.17
Payment 11/19/1998	-494.45
Total Current Month Billing	1,400.52
Total Amount Due	$2,134.24

THANK YOU FOR YOUR PAYMENT

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Mar 31, 1999	361330282

Accou
361

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Mar 31,

Your prompt payment is appreciated. Thank you!

15 R

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$2,134.24

KEEP THI
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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

DO BUSINESS WITH US ONLINE AT www.apsc.com

Once you have a password you can perform the following activities on-line with APS 24 hours a day, seven days a week:

- connect service
- disconnect service
- check your account balance
- transfer service to another APS location

5 a.m. to 8 p.m. only:

- make payment arrangements
- signup for Equalizer

To receive your password, visit the customer service section of our website and complete an on-line registration form.

We appreciate your business. Thank you!

THIS MONTH'S ELECTRIC BILLING INFORMATION

Please see t
additional in

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93326

On Apr 21 your meter read was	98453	
On Mar 19 your meter read was	96665	
Your total kWh usage is	1788	
Basic service charge		7.50
Charge for kWh used		143.88
Sales tax		8.64
Regulatory assessment		0.28
Sub Total		160.30

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On Apr 21 your total kWh read was	85622	
On Mar 19 your total kWh read was	82266	
Your total kWh usage is	3356	

This month's read was estimated - BLOCKED METER

Your kW demand read was 10.2

Basic service charge	10.00
Charge for kWh used	115.98
Charge for kW demand	78.34
Sales tax	11.67
Regulatory assessment	0.38
Sub Total	216.37

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Apr 23, 1999	361330282

Account
3613

Billing
Apr 23, 1

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING
PAST DUE AFTER
05/06/1999

MAKE CHEC
Arizona Publ

Check No. _

Date paid _

Amount _

AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$2,510.91

KEEP THIS
PORTION
YOUR RECO

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

Billing Summary

Previous Billing as of 03/31/1999	2,134.24
Total Current Month Billing	376.67
Total Amount Due	**$2,510.91**

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Apr 23, 1999	361330282

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3613302

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Apr 23, 1999

Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$2,510.91

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AVIS READ

Your Account Number
361330282

Post Office Box 2907
Phoenix, AZ 85062-2907

LEARNING ABOUT DEREGULATION CAN BE FUN

As Arizona readies itself for electric industry competition, you can learn more about deregulation and have a little fun in the process.

You can become deregulation savvy and have a chance to win Arizona Diamondback tickets by playing Deregulation Dynamo on APS' website, www.apsc.com.

While on the web, also download the "Consumer Guide to Deregulation" - a comprehensive look at the road ahead. You can also get a copy of the guide - available in English and Spanish - by calling APS' Deregulation Hotline at (602) 371-6816 or 1-800 253-9405.

We appreciate your business. Thank you!

Please see ba additional info

THIS MONTH'S ELECTRIC BILLING INFORMATION

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93328

On May 20 your meter read was	1495	
On Apr 21 your meter read was	98453	
Your total kWh usage is		3042

Basic service charge	7.50
Charge for kWh used	369.48
Sales tax	21.52
Regulatory assessment	0.71
Sub Total	399.21

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Your Meter Number 906893

On May 20 your total kWh read was	89244	
On Apr 21 your total kWh read was	85622	
Your total kWh usage is		3622

This month's read was estimated

Your kW demand read was 11.0

Basic service charge	10.00
Charge for kWh used	150.86
Charge for kW demand	117.81
Sales tax	15.91
Regulatory assessment	0.52
Sub Total	295.10

Continued on next page

When paying in person, bring entire bill

APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Numbe
361330282

Billing Summary

Previous Billing as of 04/23/1999	2,510.91
Payment 04/29/1999	-82.02
Total Current Month Billing	694.31
Total Amount Due	**$3,123.20**

THANK YOU FOR YOUR PAYMENT

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number	Accou
May 24, 1999	361330282	361

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May 24,

Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$3,123.20

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

A93326

Your Account Number
361330282

PAY YOUR APS BILL ANYTIME WITH OUR NEW AUTOMATED PAYMENT TERMINALS.

The APS Offices located at 17th Ave. & Bell and 12th St. & Northern now have automated payment terminals (similar to ATM machines) that make it convenient for you to pay your APS bill anytime: 7 days a week, 24 hours a day.

The terminals are easy to use -- you'll receive on-screen, step-by-step instructions (in English or Spanish) to "walk" you through the payment process.

You can pay with cash, check or money order and you'll receive a receipt for your payment.

Note: Be sure to bring your bill.

We appreciate your business. Thank you!

Please see additional

THIS MONTH'S ELECTRIC BILLING INFORMATION

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93326

On May 20 your meter read was	1495
On Apr 21 your meter read was	98453
Your total kWh usage is	3042

Basic service charge	7.50
Charge for kWh used	369.48
Sales tax	21.52
Regulatory assessment	0.71
Sub Total	399.21

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93326

On Jun 21 your meter read was	4988
On May 20 your meter read was	1495
Your total kWh usage is	3493

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	428.34
Sales tax	24.89
Regulatory assessment	0.82
Sub Total	461.55

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date
Jul 22, 1999

Account Number
361330282

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING PAST DUE AFTER 08/04/1999

AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$3,849.08

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Jul 22,

MAKE CHE
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Check No.

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KEEP THI
PORTION
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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

On Jun 21 your total kWh read was	**93392**	
On May 20 your total kWh read was	89244	
Your total kWh usage is		**4148**

This month's read was estimated - BLOCKED METER

Your kW demand read was **12.0**

Basic service charge	10.00
Charge for kWh used	172.76
Charge for kW demand	128.52
Sales tax	17.77
Regulatory assessment	0.58
Sub Total	**329.63**

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

On Jun 21 your total kWh read was	**93392**	
On May 20 your total kWh read was	89244	
Your total kWh usage is		**4148**

This month's read was estimated - BLOCKED METER

Your kW demand read was **12.0**

Basic service charge	0.00
Charge for kWh used	0.00
Charge for kW demand	0.00
Sales tax	0.00
Regulatory assessment	0.00
Sub Total	**0.00**

Service Address
6702 E MCDONALD DR

You are on the DEMAND ADVANTAGE RATE

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Jul 22, 1999	361330282

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Jul 22

Your prompt payment is appreciated. Thank you!

15 R

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$3,849.08

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APS

Post Office Box 29o,
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

On Jul 06 your total kWh read was	97808
On Jun 21 your total kWh read was	93392
Your total kWh usage is	4416
Your kW demand read was	23.6
Basic service charge	5.00
Charge for kWh used	183.93
Charge for kW demand	126.38
Sales tax	18.01
Regulatory assessment	0.59
Sub Total	333.91

Billing Summary

Previous Billing as of 05/24/1999	3,123.20
Payment 06/07/1999	-399.21
Adjustment to prior	-399.21
Total Current Month Billing	1,524.30
Total Amount Due	**$3,849.08**

THANK YOU FOR YOUR PAYMENT

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6661

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Jul 22, 1999	361330282

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Jul 22,

Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$3,849.08

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

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Your Account Numbe
361330282

July 2

PAY YOUR APS BILL ANYTIME WITH OUR NEW AUTOMATED PAYMENT TERMINALS

The APS Offices located at 17th Ave. & Bell and 12th St. & Northern now have automated payment terminals (similar to ATM machines) that make it convenient for you to pay your APS bill anytime: 7 days a week, 24 hours a day.

The terminals are easy to use -- you'll receive on-screen, step-by-step instructions (in English or Spanish) to 'walk' you through the payment process.

You can pay with cash, check or money order and you'll receive a receipt for your payment.

Note: Be sure to bring your bill.

We appreciate your business. Thank you!

THIS MONTH'S ELECTRIC BILLING INFORMATION

Please se
additional

Service Address
6826 E SOLCITO LN

You are on the STANDARD RATE

Your Meter Number A93326

On Jul 21 your meter read was	8213
On Jun 21 your meter read was	4988
Your total kWh usage is	3225

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	393.36
Sales tax	22.89
Regulatory assessment	0.75
Sub Total	424.50

Billing Summary

Previous Billing as of 07/22/1999	3,849.08
Total Current Month Billing	424.50
Total Amount Due	$4,273.58

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date
Jul 23, 1999

Account Number
361330282

Account
3613

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Jul 23, 1

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING PAST DUE AFTER 08/05/1999

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Check No.

Date paid

Amount

AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$4,273.58

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

OUR BILLING ENVELOPES ARE CHANGING

Our brownish-green envelopes made from recycled telephone book yellow pages are no longer available.

So, to continue our strong commitment to the environment, we're changing to envelopes made from recycled undeliverable bulk business mail from the U.S. Postal Service. These envelopes are white with black specks.

Until our current stock of green envelopes is depleted, you may see a mix of green and white envelopes.

YOU CAN HELP PREVENT CHILD ABUSE ...
by checking off a box on your Arizona Tax Return and contributing to the Child Abuse Prevention Fund. This special fund supports community programs that have proven to be effective in educating parents and keeping children safe.

We appreciate your business. Thank you!

Please s
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THIS MONTH'S ELECTRIC BILLING INFORMATION

Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Sep 17 your meter read was	**13330**	
On Aug 18 your meter read was	10924	
Your total kWh usage is		**2406**

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	286.48
Sales tax	16.79
Regulatory assessment	0.55
Sub Total	311.32

Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Oct 18 your meter read was	**16822**	
On Sep 17 your meter read was	13330	
Your total kWh usage is		**3492**

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	424.02
Sales tax	24.63
Regulatory assessment	0.81
Sub Total	456.96

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Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Feb 24, 2000	361330282

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Bill
Feb 24

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING PAST DUE AFTER
03/08/2000

AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$6,336.46

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Check No.

Date paid

Amount

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Nov 17 your meter read was	19723	
On Oct 18 your meter read was	16822	
Your total kWh usage is		2901

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	229.53
Sales tax	13.53
Regulatory assessment	0.44
Sub Total	251.00

Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Dec 17 your meter read was	22623	
On Nov 17 your meter read was	19723	
Your total kWh usage is		2900

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	229.45
Sales tax	13.53
Regulatory assessment	0.44
Sub Total	250.92

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Feb 24, 2000	361330282

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3613

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Feb 24,

Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$6,336.46

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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Numbe
361330282

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Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Jan 19 your meter read was	**25814**	
On Dec 17 your meter read was	22623	
Your total kWh usage is		**3191**

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	252.47
Sales tax	14.84
Regulatory assessment	0.52
Sub Total	275.33

Service Address
6826 E SOLCITO LN

Service Number 8665S10281

You are on the STANDARD RATE

Your Meter Number A93326

On Feb 17 your meter read was	**27827**	
On Jan 19 your meter read was	25814	
Your total kWh usage is		**2013**

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	159.27
Price decrease credit	-12.04
Sales tax	8.85
Regulatory assessment	0.31
Sub Total	163.89

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Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Feb 24, 2000	361330282

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Feb

Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TC AL AMOUNT DUE
$6,336.46

KEEP TI
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APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

Billing Summary

Previous Billing as of 08/23/1999	4,627.04
Total Current Month Billing	1,709.42
Total Amount Due	$6,336.46

If we can help please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Total billing amount due on presentation

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date	Account Number
Feb 24, 2000	361330282

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Your prompt payment is appreciated. Thank you!

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If contributing to S.H.A.R.E.
please enter amount in S.H.A.R.E.
box and add to your total

TOTAL AMOUNT DUE
$6,336.46

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Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

IMPORTANT NOTICE

This month's energy usage was calculated based on a meter read obtained either before or after the meter read date shown on this bill.

IMPORTANT NOTICE

Installation of the Automated Payment Terminal at our North Valley Customer Office, 4612 E. Bell Road, is delayed to April 1st. Please see this month's Outlets newsletter for more Automated Payment Terminal information.

We appreciate your business. Thank you!

Please see bac
additional infor

Service Address	6826 E SOLCITO LN	
Service Number	8665S10281	
Your Service Plan	STANDARD RATE	
Your Meter Number	A93326 Your meter is read in cycle 15	
On Dec 17 your meter read was	24756	
On Nov 17 your meter read was	19723	
Your total kWh usage is		5033
Basic service charge		7.50
Charge for kWh used		398.21
Regulatory assessment		0.76
Sales tax		23.17
Sub Total		429.64

Service Address	6826 E SOLCITO LN	
Service Number	8665S10281	
Your Service Plan	STANDARD RATE	
Your Meter Number	A93326 Your meter is read in cycle 15	
On Jan 18 your meter read was	30292	
On Dec 17 your meter read was	24756	
Your total kWh usage is		5536
Basic service charge		7.50
Charge for kWh used		438.01
Regulatory assessment		0.89
Sales tax		25.44
Sub Total		471.84

Service Address	6826 E SOLCITO LN
Service Number	8665S10281

Continued on next page

APS

Post Office Box 2907
Phoenix, AZ 85062-2907

AVIS READ

Your Account Number
361330282

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Your Service Plan STANDARD RATE

Your Meter Number A93326 Your meter is read in cycle 15

On Feb 17 your meter read was	35157	
On Jan 19 your meter read was	30292	
Your total kWh usage is		4865

Basic service charge	7.50
Charge for kWh used	384.92
Adjustment to prior	-236.95
Adjustment to prior	-259.97
Adjustment to prior	-166.77
Regulatory assessment	-0.51
Sales tax	-15.49
Sub Total	-287.27

Billing Summary

Previous Billing as of 02/24/2000	6,336.46
Total Current Month Billing	614.21
Total Amount Due	$6,950.67
Total billing amount due on Presentation	

If you have questions please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

When paying in person, bring entire bill

APS

Post Office Box 2907
Phoenix, AZ 85062-2907
www.apsc.com

AVIS READ

Your Account Number
361330282

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OUR BILLING ENVELOPES ARE CHANGING

Our brownish-green envelopes made from recycled telephone book yellow pages are no longer available.

So, to continue our strong commitment to the environment, we're changing to envelopes made from recycled undeliverable bulk business mail from the U.S. Postal Service. These envelopes are white with black specks.

Until our current stock of green envelopes is depleted, you may see a mix of green and white envelopes.

We appreciate your business. Thank you!

Please see back additional inform

Service Address 6826 E SOLCITO LN

Service Number 8665S10281

Your Service Plan STANDARD RATE

Your Meter Number A93326 **Your meter is read in cycle** 15

On Mar 21 your meter read was	36399	
On Feb 17 your meter read was	35157	
Your total kWh usage is		1242

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	98.27
Regulatory assessment	6.21
Sales tax	6.04
Sub Total	112.02

Billing Summary

Previous Billing as of 03/07/2000	6,950.67
Payment 03/20/2000	-471.84
Total Current Month Billing	112.02
Total Amount Due	$6,590.85
Total billing amount due on Presentation	

THANK YOU FOR YOUR PAYMENT

If you have questions please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

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When making in person, bring entire bill

APS
Post Office Box 2907
Phoenix, AZ 85062-2907
www.apsc.com

AVIS READ

Your Account Number
361330282

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additional in

We appreciate your business. Thank you!

CELEBRATING OUR CUSTOMERS

New advertisements from APS feature what we value most – our customers. The new ads celebrate the values, culture and history APS shares with the people of Arizona.

HELP PREVENT CHILD ABUSE

Thanks to a partnership between APS, The Arizona Republic, Fry's and the Governor's Division for Children, you can help put an end to child abuse in Arizona by purchasing a CHILD ABUSE PREVENTION LICENSE PLATE for $25.

The entire amount will support primary prevention programs throughout the state -- programs that will stop the pain before it starts.

Order your license plate online at azcentral.com.

Service Address	6826 E SOLCITO LN
Service Number	8665S10281
Your Service Plan	STANDARD RATE
Your Meter Number	A93326 Your meter is read in cycle 15

On Apr 18 your meter read was	38187	
On Mar 21 your meter read was	36399	
Your total kWh usage is		1788

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	141.47
Regulatory assessment	0.30
Sales tax	8.50
Sub Total	157.77

Billing Summary

Previous Billing as of 03/27/2000	6,590.85
Payment 03/31/2000	-112.02
Total Current Month Billing	157.77
Total Amount Due	$6,636.60
Total billing amount due on Presentation	

THANK YOU FOR YOUR PAYMENT

If you have questions please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

Pd 5/2/0
$157.77
CK# 1159 Fm

APS
Post Office Box 2907
Phoenix, AZ 85062-2907
www.apsc.com

AVIS READ

Your Account Number
361330282

NEW OFFICE HOURS

Beginning on July 24, the APS Customer Office located at 7824 N 12th Street will have new business hours. The new hours are 8:30 a.m. to 5 p.m., Monday through Friday.

For your convenience, the Automated Payment Terminal at this location will remain open 24 hours a day, seven days a week.

Also, through BillMatrix, you can pay your APS bill online (www.aps.com) or via phone (1-800-511-2385). Using the FREE check service, your credit card or Star System ATM card, you can pay your bill from the convenience of your home or business.

A fee, which is detailed on the Website, is charged by BillMatrix for credit or ATM card usage.

We appreciate your business. Thank you!

Please see bac
additional infor

Service Address	6826 E SOLCITO LN
Service Number	8665S10281
Your Service Plan	STANDARD RATE
Your Meter Number	A93326 **Your meter is read in cycle** 15

On May 18 your meter read was	41229	
On Apr 18 your meter read was	38187	
Your total kWh usage is		3042

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	363.28
Regulatory assessment	0.74
Sales tax	21.18
Sub Total	392.70

Billing Summary

Previous Billing as of 04/26/2000		6,636.60
Payment	05/04/2000	-157.77
Payment	05/11/2000	-6,478.83
Total Current Month Billing		392.70

Total Amount Due $392.70
Total billing amount due on Presentation

THANK YOU FOR YOUR PAYMENTS

If you have questions please call (602)371-7171
Para servicio en espanol llame al (602)371-6861

APS
Post Office Box 2907
Phoenix, AZ 85062-2907
www.apsc.com

AVIS READ

Your Account Number
361330282

BILL PAYMENT REMINDER

A 1.5 percent late payment fee is charged if APS does not receive your payment within 25 days of the billing date.

An easy way to assure that your payment is received on time and avoid paying the late fee is to sign up for SurePay.

With SurePay your bank automatically pays your APS bill for you – and your money stays in the bank until the day your payment is due.

You'll find a signup form on our website (www.aps.com) or we'll be happy to mail a form to you. Just give us a call at 602-371-7171 (metro Phoenix area) or 800-253-9405 (other areas).

We appreciate your business. Thank you!

Please se
additional

Service Number 8665S10281 Service Address 6826 E SOLCITO LN

Your Service Plan STANDARD RATE

Your Meter Number A93326 Your meter is read in cycle 15

On Aug 18 your meter read was	60333	
On Jul 19 your meter read was	57429	
Your total kWh usage is		2904

This month's read was estimated - LOCKED GATE

Basic service charge	7.50
Charge for kWh used	339.75
Regulatory assessment	0.69
Sales tax	19.84
Sub Total	367.78

Billing Summary

Previous Billing as of 07/25/2000	1,688.10
Payment 08/25/2000	-1,688.10
Total Current Month Billing	367.78
Total Amount Due	
Total billing amount due on Presentation	**$367.78**

Questions? Call 602-371-7171. We're open 24 hours, 7 days a week.
Para servicio en espanol llame al 602-371-6861.

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date
Sep 11, 2000

Account Number
361330282

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AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING PAST DUE AFTER
09/22/2000

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$367.78

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Post Office Box 2907
Phoenix, AZ 85062-2907
www.apsc.com

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Your Account Number
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BILL PAYMENT REMINDER

A 1.5 percent late payment fee is charged if APS does not receive your payment within 25 days of the billing date.

An easy way to assure that your payment is received on time and avoid paying the late fee is to sign up for SurePay.

With SurePay your bank automatically pays your APS bill for you -- and your money stays in the bank until the day your payment is due.

You'll find a signup form on our website (www.aps.com) or we'll be happy to mail a form to you. Just give us a call at 602-371-7171 (metro Phoenix area) or 800-253-9405 (other areas).

Cycle

We appreciate your business. Thank you!

Service Number 8665S10281 **Service Address** 6826 E SOL

Your Service Plan STANDARD RATE

Your Meter Number A93326 **Your meter is read in cycle** 15

On Sep 18 your meter read was	70188
On Aug 18 your meter read was	68333
Your total kWh usage is	9855
Basic service charge	7.58
Charge for kWh used	1,216.69
Regulatory assessment	2.44
Sales tax	69.92
Sub Total	1,296.55

Billing Summary

Previous Billing as of 09/11/2000	367.78
Total Current Month Billing	1,296.55
Total Amount Due	$1,664.33
Total billing amount due on Presentation	

Questions? Call 602-371-7171. We're open 24 hours, 7 days a week.
Para servicio en espanol llame al 602-371-6861.

Continued on next page

Please return lower portion with payment. When paying in person, bring entire bill.

APS

Billing Date
Sep 22, 2000

Account Number
361330282

AVIS READ
6826 E SOLCITO LN
SCOTTSDALE AZ 85253-5345

CA CK GC MO TC

ENTER AMOUNT ENCLOSED

ENTER S.H.A.R.E. AMOUNT

TOTAL CURRENT BILLING PAST DUE AFTER
10/05/2000

If contributing to S.H.A.R.E. please enter amount in S.H.A.R.E. box and add to your total

TOTAL AMOUNT DUE
$1,664.33

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Exhibit C

Contract Provisions and Warranty

APS offers a selection of rate schedules applicable to certain classes of service. Customers have the option of selecting the APS rate schedule they want to be effective initially or after service has been established. Customers who elect to go with an alternate rate schedule after service has been established must submit their request in writing to APS. Billing under the new alternate rate will become effective from or after the next meter reading, or when the appropriate metering equipment is in place. No further changes, however, may be made within the succeeding twelve-month period. Where the rate schedule or contract pursuant to which customer is provided services specifies a set term, the customer may not exercise the option to select an alternate rate schedule until expiration of that term.

Any APS customer who chooses a Direct Access service provider may return to APS full service in accordance with the rules, regulations, and orders of the Arizona Corporation Commission (ACC). However, if the customer returns to APS full service, they will not be eligible to choose to switch back to Direct Access for the succeeding twelve (12) month period. If a customer returning to APS full service, in accordance with the rules, regulations and orders of the ACC, was not given the required notification in accordance with the rules and regulations of the ACC, by their Load Serving ESP of its intent to cease providing competitive services; then the above provision will only apply if the customer fails to select another ESP within sixty (60) days of returning to APS full service.

If the Load Serving ESP, customer, and/or its agent request a joint site meeting for removal of APS metering and associated equipment and/or lock ring, a base charge will be assessed of $30.00 per site for the Phoenix metropolitan area and $75.00 per site for all other areas. APS may assess an additional charge of $30.00 per hour for joint site meetings that exceed thirty (30) minutes. In the event APS must temporarily replace the ESP's meter and/or associated metering equipment as necessary during emergency situations or to restore power to a customer, the above charges may also apply.

The customer and APS each shall save the other harmless from and against all claims for injury or damage to persons or property occasioned by or in any way resulting from the services being provided by APS or the use thereof on their respective sides of the point of delivery. APS shall, however, have the right to suspend or terminate service in the event APS should learn of service use by customer under hazardous conditions. Customer shall exercise all reasonable care to prevent loss or damage to APS property installed on customer's premise for the purpose of supplying service to customer. The customer shall be responsible for payment for loss or damage to APS property on customer's premises arising from neglect, carelessness or misuse and shall reimburse APS for the cost of necessary repairs or replacements. The 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 the meter. Customer shall be responsible for notifying APS of any failure in APS' equipment.

APS shall not be liable to customer for any damages occasioned by Load Serving ESP's equipment or failure to perform, fluctuations, interruptions or curtailment of electric service except where due to APS' willful misconduct or gross negligence. APS may, without incurring any liability therefore, suspend customer's electric service for periods reasonably required to permit APS to accomplish repairs to or changes in any of APS' facilities. The customer needs to protect his/her own sensitive equipment from harm caused by variations or interruptions in power supply.

There are no understandings, agreements, representations or warranties, express or implied (including warranties regarding merchantability or fitness for a particular purpose), not specified herein or in the applicable rules of the ACC concerning the sale and delivery of services by APS to customer. These terms and conditions and the applicable rules of the ACC state the entire obligation of APS in connection with such sales and deliveries.

APS operations are in compliance with all applicable regulations pursuant to the rules of electric competition (Article 2 Electric Utilities R14-2-201 through R14-2-212 and Article 16 Retail Electric Competition R14-2-1601 through R14-2-1618) except where APS has been granted ACC waivers.

The ORIGINAL and two (2) copies of
the foregoing was filed by U.S. Mail
this 18th day of December, 2003.

Clerk of the Court
MARICOPA COUNTY SUPERIOR COURT
101 W. Jefferson
Phoenix, AZ 85003

Copies of the foregoing were sent
by facsimile & U.S. Mail
this 18th day of December, 2003 to:

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Stacy Bethea

Stacy A. Bethea

2

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2929 North Central Avenue
Suite 2100
Phoenix, Arizona 85012-2794
(602) 640-9000

Attorneys for Defendant

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No. CV 2002-010760 **ARIZONA PUBLIC SERVICE COMPANY'S ANSWER TO FIRST AMENDED COMPLAINT** (Assigned to the Honorable Rebecca A. Albrecht)

Defendant Arizona Public Service Company ("APS") answers the First Amended Complaint filed by Avis Read ("Read") and admits, denies and alleges as follows:

1. Answering paragraph 1, APS denies that APS customers have been or will be subject to improper estimation and billing procedures. As to the remaining allegations in paragraph 1 of the First Amended Complaint, APS lacks sufficient information to admit or deny the allegations, and therefore denies same.

3-8-04

2. APS denies the allegations in paragraph 2 of the First Amended Complaint.

3. APS admits the allegations in paragraph 3 of the First Amended Complaint.

4. Answering paragraph 4, APS admits that venue is proper under A.R.S. § 12-401. APS denies the remaining allegations in paragraph 4 of the First Amended Complaint.

5. Upon information and belief, APS admits the allegations in paragraph 5 of the First Amended Complaint.

6. Answering paragraph 6, APS admits that APS is headquartered at 400 N. Fifth Street, Phoenix, Arizona, that it is Arizona's largest utility, and that it had approximately 827,000 customers as of December 31, 1999. APS denies the remaining allegations of paragraph 6 of the First Amended Complaint.

7. APS admits the allegations in paragraph 7 of the First Amended Complaint.

8. Answering paragraph 8, APS denies that electric meters must be read every month to properly assess the number of kilowatt hours consumed by APS's customers. APS admits that for most customers, but not all, the actual energy used or consumed during a monthly billing period is determined by the difference between the meter reading for the prior month and the reading for the current month. APS admits the remaining allegations in paragraph 8 of the First Amended Complaint.

9. Answering paragraph 9, APS admits that it provides a variety of billing plans to its customers. APS admits that APS offers rate plans that take into account when and how much energy is used at one time; that the demand portion of the bill is a charge based upon the electric capacity used in any 60-minute period for a residence or 15-minute period for a business during a billing period; and that this cost structure is designed, in part, to encourage customers to spread out electricity usage. APS denies the remaining allegations in paragraph 9 of the First Amended Complaint.

10. APS denies the allegations in paragraph 10 of the First Amended Complaint.

11. APS denies the allegations in paragraph 11 of the First Amended Complaint.

12. APS denies the allegations in paragraph 12 of the First Amended Complaint.

13. APS denies the allegations in paragraph 13 of the First Amended Complaint.

14. APS denies the allegations in paragraph 14 of the First Amended Complaint.

15. Answering paragraph 15, APS admits that there have been occasions when the reason why a bill was estimated was not clearly stated on the bill.

16. APS denies the allegations in paragraph 16 of the First Amended Complaint.

17. APS denies the allegations in paragraph 17 of the First Amended Complaint.

18. APS denies the allegations in paragraph 18 of the First Amended Complaint.

19. APS denies the allegations in paragraph 19 of the First Amended Complaint.

20. APS denies the allegations in paragraph 20 of the First Amended Complaint.

21. APS denies the allegations in paragraph 21 of the First Amended Complaint.

22. APS denies the allegations in paragraph 22 of the First Amended Complaint.

23. Answering paragraph 23, APS admits that in APS' informational brochure entitled "At Home with APS," APS states that "APS operations are in compliance with all applicable regulations pursuant to the rules of electric competition (Article 2 Electric Utilities R14-2-201 through R14-2-212 and Article 16 Retail Electric Competition R14-2-1601 through R14-2-1618) except where APS has been granted ACC waivers." APS denies the remaining allegations in paragraph 23 of the First Amended Complaint.

24. Answering paragraph 24, APS admits that Exhibits A and B attached to the First Amended Complaint contain copies of some of Read's bills for meters

A93326 and 906893. APS denies the remaining allegations in paragraph 24 of the First Amended Complaint.

25. APS denies the allegations in paragraph 25 of the First Amended Complaint.

26. Answering paragraph 26, APS admits that Exhibits A and B attached to the First Amended Complaint contain copies of some of Read's bills for meters A93326 and 906893. APS denies the remaining allegations in paragraph 26 of the First Amended Complaint.

27. Answering paragraph 27, upon information and belief, APS admits that Plaintiffs Paul and Linda Schaeffer resided for a period at 3688 West Caribbean Lane, Phoenix, Arizona. APS also admits that Paul and Linda Schaeffer complained to the Arizona Corporation Commission and to APS. APS denies the remaining allegations in Paragraph 27 of the First Amended Complaint.

28. APS denies the allegations in paragraph 28 of the First Amended Complaint.

29. APS denies the allegations in paragraph 29 of the First Amended Complaint.

30. APS denies the allegations in paragraph 30 of the First Amended Complaint.

31. APS denies the allegations in paragraph 31 of the First Amended Complaint.

32. APS denies the allegations in paragraph 32 of the First Amended Complaint.

33. APS denies the allegations in paragraph 33 of the First Amended Complaint.

34. Answering paragraph 34, APS denies that Plaintiffs or any purported class members have sustained any economic damage. Moreover, APS denies that Plaintiffs or the purported Class are entitled to equitable relief or economic or punitive damages.

35. APS denies the allegations in paragraph 35 of the First Amended Complaint.

36. APS denies the allegations in paragraph 36 of the First Amended Complaint.

37. APS denies the allegations in paragraph 37 of the First Amended Complaint.

38. APS denies the allegations in paragraph 38 of the First Amended Complaint.

39. APS denies the allegations in paragraph 39 of the First Amended Complaint.

40. APS denies the allegations in paragraph 40 of the First Amended Complaint.

41. APS denies the allegations in paragraph 41 of the First Amended Complaint.

42. APS denies the allegations in paragraph 42 of the First Amended Complaint.

43. APS denies the allegations in paragraph 43 of the First Amended Complaint.

44. APS incorporates its answers to paragraphs 1 through 43 of the First Amended Complaint as though fully set forth herein.

45. APS denies the allegations in paragraph 45 of the First Amended Complaint.

46. APS denies the allegations in paragraph 46 of the First Amended Complaint.

47. APS denies the allegations in paragraph 47 of the First Amended Complaint.

48. APS incorporates its answers to paragraphs 1 through 47 of the First Amended Complaint as though fully set forth herein.

49. Answering paragraph 49, APS admits the First Amended Complaint states that the purported cause of action arises under A.R.S. § 44-1521, *et seq.*, but APS denies that APS violated § 44-1521, *et seq.*

50. APS denies the allegations in paragraph 50 of the First Amended Complaint.

51. APS denies the allegations in paragraph 51 of the First Amended Complaint.

52. APS denies the allegations in paragraph 52 of the First Amended Complaint.

53. APS denies the allegations in paragraph 53 of the First Amended Complaint.

54. APS denies the allegations in paragraph 54 of the First Amended Complaint.

55. APS incorporates its answers to paragraphs 1 through 54 of the First Amended Complaint as though fully set forth herein.

56. APS denies the allegations in paragraph 56 of the First Amended Complaint.

57. APS incorporates its answers to paragraphs 1 through 56 of the First Amended Complaint as though fully set forth herein.

58. APS denies the allegations in paragraph 58 of the First Amended Complaint.

59. APS denies the allegations in paragraph 59 of the First Amended Complaint.

60. APS denies the allegations in paragraph 60 of the First Amended Complaint.

61. APS incorporates its answers to paragraphs 1 through 60 of the First Amended Complaint as though fully set forth herein.

62. APS admits the allegations in paragraph 62 of the First Amended Complaint, as provided for in Schedule No. 1, Terms and Conditions for Standard Offer and Direct Access Services, Bates No. APS03854 – 60, attached as Exhibit A.

63. APS denies the allegations in paragraph 63 of the First Amended Complaint.

64. APS denies the allegations in paragraph 64 of the First Amended Complaint.

65. APS incorporates its answers to paragraphs 1 through 64 of the First Amended Complaint as though fully set forth herein.

66. Answering paragraph 66, APS admits that Plaintiff is a party to a contract between herself and APS in which APS agreed to provide electric service under certain terms and conditions based on set rates, as provided for in Schedule No. 1, Terms and Conditions for Standard Offer and Direct Access Services, Bates No. APS03854 – 60, attached as Exhibit A. APS denies the remaining allegations of paragraph 66 of the First Amended Complaint.

67. Answering paragraph 67, APS admits that in APS' informational brochure entitled "At Home with APS," APS states that "APS operations are in compliance with all applicable regulations pursuant to the rules of electric competition (Article 2 Electric Utilities R14-2-201 through R14-2-212 and Article 16 Retail Electric Competition R14-2-1601 through R14-2-1618) except where APS has been granted ACC waivers." APS denies the remaining allegations in paragraph 67 of the First Amended Complaint.

68. APS denies the allegations of paragraph 68 of the First Amended Complaint.

69. APS denies the allegations of paragraph 69 of the First Amended Complaint.

70. APS denies the allegations of paragraph 70 of the First Amended Complaint.

71. Answering paragraph 71, APS admits that the First Amended Complaint states the purported cause of action arises under A.R.S. § 40-361, but APS denies that APS has violated A.R.S. § 40-361.

72. APS denies the allegations of paragraph 72 of the First Amended Complaint.

73. APS denies the allegations of paragraph 73 of the First Amended Complaint.

74. APS denies the allegations of paragraph 74 of the First Amended Complaint.

75. APS denies the allegations of paragraph 75 of the First Amended Complaint.

76. APS incorporates its answers to paragraphs 1 through 75 of the First Amended Complaint as though fully set forth herein.

77. Answering paragraph 77, APS admits the First Amended Complaint states that the purported cause of action arises under A.R.S. § 40-367, but APS denies that APS has violated A.R.S. § 40-367.

78. APS denies the allegations of paragraph 78 of the First Amended Complaint.

79. APS denies the allegations of paragraph 79 of the First Amended Complaint.

80. APS denies the allegations of paragraph 80 of the First Amended Complaint.

81. APS denies the allegations of paragraph 81 of the First Amended Complaint.

82. APS denies the allegations of paragraph 82 of the First Amended Complaint.

83. APS incorporates its answers to paragraphs 1 through 82 of the First Amended Complaint as though fully set forth herein.

84. APS admits the allegations of paragraph 84 of the First Amended Complaint.

85. APS denies the allegations of paragraph 85 of the First Amended Complaint.

86. APS denies the allegations of paragraph 86 of the First Amended Complaint.

87. APS denies the allegations of paragraph 87 of the First Amended Complaint.

88. APS incorporates its answers to paragraphs 1 through 87 of the First Amended Complaint as though fully set forth herein.

89. APS admits the allegations of paragraph 89 of the First Amended Complaint.

90. APS denies the allegations of paragraph 90 of the First Amended Complaint.

91. APS denies the allegations of paragraph 91 of the First Amended Complaint.

92. APS denies each and every allegation of the First Amended Complaint not expressly admitted herein.

93. As affirmative defenses to the First Amended Complaint, APS alleges that Plaintiff's claims fail to state a claim upon which relief can be granted. Further, Plaintiff's claims are barred in whole or in part by lack of jurisdiction, primary jurisdiction of the Arizona Corporation Commission, statute of limitations, lack of injury and damage, knowledge, waiver, laches, unclean hands and impossibility.

94. This action arises out of contract and APS is entitled to its fees and costs pursuant to A.R.S. § 12-341.01.

WHEREFORE, having fully answered the First Amended Complaint, APS prays as follows:

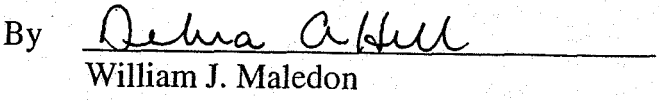
1. For the First Amended Complaint to be dismissed with prejudice;

2. For APS' attorneys fees and costs pursuant to applicable law and A.R.S. § 12-341.01;

3. For such other relief as the Court deems just.

Dated this 8th day of March, 2004.

OSBORN MALEDON, P.A.

By 

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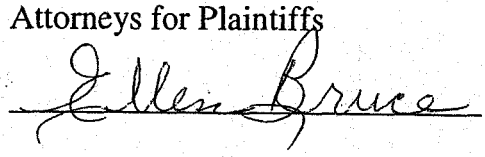

SCHEDULE #1

TERMS AND CONDITIONS FOR STANDARD OFFER AND DIRECT ACCESS SERVICES

The following TERMS AND CONDITIONS and any changes authorized by law will apply to Standard Offer and Direct Access services, under the established rate or rates authorized by law and currently applicable at time of sale.

1. General

1.1 Services will be supplied in accordance with these Terms and Conditions and any changes required by law, and such applicable rate or rates as may from time to time be authorized by law. However, in the case of Customer whose service requirements are of unusual size or characteristics, additional or special contract arrangements may be required.

1.2 These Terms and Conditions shall be considered a part of all Standard Offer and Direct Access rate schedules, except where specifically changed by a written agreement.

1.3 In case of a conflict between any provision of a rate schedule and these Terms and Conditions, the provisions of the rate schedule shall apply.

1.4 The Company will supply electric service at the standard voltages specified in the Electric Service Requirements manual published by the Company and is responsible for distribution services, emergency system conditions, outages and safety situations related to APS' distribution system.

2. Establishment of Service

2.1 Application for Service - Customers requesting service may be required to appear at Company's place of business to produce proof of identity and sign Company's standard form of application for service or a contract before service is supplied by Company.

2.1.1 In the absence of a signed application or contract for service the supplying of Standard Offer and/or Direct Access services by Company and acceptance thereof by Customer shall be deemed to constitute a service agreement by and between Company and Customer for delivery of, acceptance of, and payment for service, subject to Company's applicable rates and rules and regulations.

2.1.2 Where service is requested by two or more individuals, Company shall have the right to collect the full amount owed Company from any one of the applicants.

2.2 Service Establishment Charge - A service establishment charge of $25.00 for residential and $35.00 non-residential for electric service and the appropriate tax adjustment will be assessed each time Company is requested to establish, reconnect or re-establish electric service to Customer's delivery point, or to make a special read without a disconnect and calculate a bill for a partial month. Billing for the service charge will be rendered as part of the service bill, but not later than the second service bill. The service establishment charges above may be assessed when a customer changes their rate selection from Direct Access to Standard Offer.

2.2.1 Customer may additionally be required to pay an after-hour charge of $50.00 should Customer request service be established, reconnected, or re-established during a period other than regular working hours.

2.3 Direct Access Service Request (DASR) - A direct access service request charge of $10.00 and the appropriate tax adjustment will be assessed to the Electric Service Provider (ESP) submitting the DASR each time Company processes a Request (RQ) type DASR as specified in the Company's Schedule 10, Terms and Conditions for Direct Access.

2.4 Grounds for Refusal of Service - Company may refuse to connect or reconnect Standard Offer or Direct Access service if any of the following conditions exist:

2.4.1 Applicant has an outstanding amount due with Company for the same class of service and is unwilling to make arrangements with Company for payment.

2.4.2 A condition exists which in Company's judgment is unsafe or hazardous.

2.4.3 Applicant has failed to meet the security deposit requirements set forth by Company as specified under 2.6.

2.4.4 Applicant is known to be in violation of Company's tariffs.

2.4.5 Applicant fails to furnish such funds, service, equipment, and/or rights-of-way required to serve Applicant and which have been specified by Company as a condition for providing service.

2.4.6 Applicant falsifies his or her identity for the purpose of obtaining service.

2.4.7 Service is already being provided at the address for which Applicant is requesting service.

Ex. A

2.4.8 Service is requested by an Applicant and a prior Customer living with the Applicant owes a delinquent bill.

2.4.9 Applicant is acting as an agent for a prior Customer who is deriving benefits of the service and who owes a delinquent bill.

2.4.10 Applicant has failed to obtain all required permits and/or inspections indicating that Applicant's facilities comply with local construction and safety codes.

2.5 Establishment of Credit or Security Deposit

2.5.1 Residential Establishment of Credit - Company shall not require a security deposit from new Applicant for residential service if Applicant is able to meet any of the following requirements:

2.5.1.1 Applicant has had service of a comparable nature with Company within the past two (2) years and was not delinquent in payment more than twice during the last twelve (12) consecutive months or disconnected for nonpayment.

2.5.1.2 Applicant can produce a letter regarding credit or verification from an electric utility where service of a comparable nature was last received which states Applicant had a timely payment history at time of service discontinuation.

2.5.1.3 In lieu of a security deposit, Company receives deposit guarantee notification from a social or governmental agency acceptable to the Company or a surety bond as security for Company in a sum equal to the required deposit.

2.5.2 Residential Establishment of Security Deposit - When credit cannot be established as provided for in Section 2.5.1 hereof or when it is determined that Applicant left an unpaid final bill owing to another utility company, Applicant will be required to:

2.5.2.1 Place a cash deposit to secure payment of bills for service as prescribed herein, or

2.5.2.2 Provide a surety bond acceptable to Company in an amount equal to the required security deposit.

2.5.3 Nonresidential Establishment of Security Deposit - All nonresidential customers may be required to:

2.5.3.1 Place a cash deposit to secure payment of bills for service as prescribed herein, or

2.5.3.2 Provide a non-cash security deposit in the form of a Surety Bond, Irrevocable Letter of Credit, or Assignment of Monies in an amount equal to the required security deposit.

2.6 Reestablishment of Security Deposit

2.6.1 Residential - Company may require a residential Customer to establish or re-establish a security deposit if Customer becomes delinquent in the payment of two (2) or more bills within a twelve (12) consecutive month period or has been disconnected for non-payment during the last twelve (12) months.

2.6.2 Nonresidential - Company may require a nonresidential Customer to establish or re-establish a security deposit if the Customer becomes delinquent in the payment of two (2) or more bills within a six (6) consecutive month period or if the Customer has been disconnected for non-payment during the last twelve (12) months, or when the Customer's financial condition may jeopardize the payment of their bill, as determined by a credit scoring worksheet. Company will inform all Customers of the Arizona Corporation Commission's complaint process should the Customer dispute the deposit based on the financial data.

2.7 Security Deposits

2.7.1 Company reserves the right to increase or decrease security deposit amounts applicable to the services being provided by the Company:

2.7.1.1 If the Customer's average consumption increases by more than ten (10) percent for residential accounts within a twelve (12) consecutive month period and five (5) percent for nonresidential accounts within a twelve (12) consecutive month period or,

2.7.1.2 If the Customer chooses to change from Standard Offer to Direct Access services, the deposit may be decreased by an amount, which reflects that portion of the customer's service being provided by a load serving ESP. However if the Load Serving ESP is providing ESP Consolidated Billing pursuant to the Company's Schedule 10 Section 7, the entire deposit will be credited to customers account or,

2.7.1.3 If the Customer chooses to change from Direct Access services to Standard Offer service, the requested deposit amount may be increased by an amount pursuant to section 2.5, which reflects that APS is providing bundled electric service.

2.7.2 Separate security deposits may be required for each service location.

2.7.3 Customer security deposits shall not preclude Company from terminating agreement for service or suspending service for any failure in the performance of Customer obligation under the agreement for service.

2.7.4 Cash deposits held by the Company six (6) months/183 days or longer shall earn interest at the established one year Treasury Constant Maturities rate, effective on the first business day of each year, as published on the Federal Reserve Website. Deposits on inactive accounts are applied to the final bill when all service options become inactive, and the balance, if any, is refunded to the Customer of record within thirty (30) days. For refunds resulting from the customer changing from Standard Offer to Direct Access, the difference in the deposit amounts will be applied to the customer's account.

2.7.5 If Customer terminates all service with Company, the security deposit may be credited to Customer's final bill.

2.7.6 Residential security deposits shall not exceed two (2) times Customer's average monthly bill as estimated by Company for the services being provided by the Company.

2.7.6.1 Deposits or other instruments of credit will automatically expire or be returned or credited to customers account after twelve (12) consecutive months of service, provided Customer has not been delinquent more than twice, unless Customer has filed bankruptcy in the last 12 months.

2.7.7 Nonresidential security deposits shall not exceed two and one-half (2-1/2) times Customer's maximum monthly billing as estimated by the Company for the service being provided by the Company.

2.7.7.1 Deposits and non-cash deposits on file with the Company will be reviewed after twenty-four (24) months of service and will be returned provided Customer has not been delinquent more than twice in the payment of bills or disconnected for non-payment during the previous twelve (12) consecutive months unless the Customer's financial condition warrants extension of the security deposit.

2.8 Line Extensions - Installations requiring Company to extend its facilities in order to establish service will be made in accordance with Company's Conditions Governing Extensions of Electric Distribution Lines and Services filed with the Arizona Corporation Commission.

3. Rates

3.1 Rate Information - Company shall provide in accordance to Commission Rule, R14-2-204, a copy of any rate schedule applicable to that Customer for the requested type of service. In addition, Company shall notify its Customers of any changes in Company's tariffs affecting those Customers.

3.2 Rate Selection - Customer's service characteristics and service requirements determine the selection of applicable rate schedule. If the Customer is being served on a Standard Offer rate, the Company will use reasonable care in initially establishing service to Customer under the most advantageous Standard Offer rate schedule applicable to Customer. However, because of varying Customer usage patterns and other reasons beyond its reasonable knowledge or control, Company cannot guarantee that the most economic applicable rate will be applied. Company will not make any refunds in any instances where it is determined that Customer would have paid less for service had Customer been billed on an alternate applicable rate or provision of that rate.

3.3 Standard Offer Optional Rates – Certain optional standard offer rate schedules applicable to certain classes of service allow Customer option to select the rate schedule to be effective initially or after service has been established. Customer desiring service under an alternate rate schedule after service has been established must make such request in writing to Company. Billing under the alternate rate will become effective from or after the next meter reading, or when the appropriate metering equipment is in place. No further changes, however, may be made within the succeeding twelve-month period. Where the rate schedule or contract pursuant to which Customer is provided service specifies a term, Customer may not exercise its option to select an alternate rate schedule until expiration of that term.

3.4 Direct Access rate selection will be effective upon the next regular meter read date if the direct access service request is processed fifteen (15) calendar days prior to that date and the appropriate metering equipment is in place. If a direct access service request is made less than fifteen (15) days prior to the next regular read date the effective date will be at the next meter read date thereafter. The above timeframes are applicable for customers changing their selection of Electric Service Providers or for customers returning to standard offer service in accordance with the rules, regulations, and orders of the Commission.

3.5 Any customer making a Direct Access rate selection may return to standard offer service in accordance with the rules, regulations, and orders of the Commission. However, such customer will not be eligible for Direct Access for the succeeding twelve (12) month period. If a customer returning to standard offer, in accordance with the rules, regulations and orders of the Commission, was not given the required notification in accordance, with the rules and regulations of the Commission, by their Load Serving ESP of its intent to cease providing competitive services then the above provision will only apply if the customer fails to select another ESP within sixty (60) days of returning to standard offer.

4. Billing and Collection

4.1 Customer Service Installation and Billing - Service billing periods normally consist of approximately 30 days unless designated otherwise under rate schedules, through contractual agreement, or at Company option.

4.1.1 The Company normally meters and bills each premise separately; however, adjacent and contiguous premises not separated by private or public property or right of way and operated as one integral unit under the same name and as a part of the same business, will be considered a single premise as specified in Company's Schedule #4.

4.1.2 Customer service installation will normally be arranged to accept only one type of standard service at one point of delivery to enable service measurement through one meter. If Customer requires more than one type of service, or total service cannot be measured through one meter according to Company's regular practice, separate meters will be used and separate billing rendered for the service measured by each meter.

4.2 Collection Policy - The following collection policy shall apply to all customer accounts:

4.2.1 All bills rendered by the Company are due and payable no later than fifteen (15) days from the billing date. Any payment not received within this time frame shall be considered delinquent. All delinquent bills for which payment has not been received shall be subject to the provisions of Company's termination procedure. Company reserves the right to suspend or terminate Customer's service for: i) non-payment of any services provided by Company, including but not limited to ii) delinquent service bills; iii) non-payment of service establishment charges; iv) non-payment of security deposits; v) non-payment of meter test charges; vi) non-payment of any dishonored payment charges; vii) non-payment of late charges, viii) non-payment of collection charges. All delinquent charges will be subject to a late charge at the rate of eighteen percent (18%) per annum.

4.2.2 If customer, as defined in Section R 14-2-201 Definition #9 of the Arizona Administration Code, has two or more services with Company and one or more of such services is terminated for any reason leaving an outstanding bill and Customer is unwilling to make arrangements with Company for payment, Company shall be entitled to transfer the balance due on the terminated service to any other active account of Customer for the same class of service. The failure of Customer to pay the active account shall result in the suspension or termination of service thereunder.

4.2.3 Unpaid charges incurred prior to Customer selecting Direct Access will not delay the customer's request for Direct Access. These charges remain the responsibility of the customer to pay. Normal collection activity, including discontinuing service, may be followed for failure to pay.

4.3 Responsibility for Payment of Bills

4.3.1 Customer is responsible for the payment of bills until service is ordered discontinued and the Company has had reasonable time to secure a final meter reading for those services involving energy usage, or if non-metered services are involved until the Company has had reasonable time to process the disconnect request.

4.3.2 When an error is found to exist in the billing rendered to Customer, Company will correct such an error to recover or refund the difference between the original billing and the correct billing. Such adjusted billings will not be rendered for periods in excess of the applicable statute of limitations from the date the error is discovered. Any refunds to Customers resulting from adjusted billings will be made promptly upon discovery by Company. Underbillings by Company shall be billed to Customer who shall be given an equal length of time such as number of months underbilled to pay the backbill without late payment penalties, unless there is evidence of meter tampering or energy diversion. Except in situations where the account is billed on a special contract or non-metered rate, where service has been established but no bills have been rendered, or where there is evidence of meter tampering or energy diversion, underbillings for residential accounts shall be limited to three months and non-residential accounts shall be limited to six months.

4.3.3 Where Company is responsible for producing the Customer's bill, Company may provide a one time incentive of up to $10.00 maximum to Customers who elect to pay their bills using the Company's SurePay option.

4.4 Dishonored Payments - If Company is notified by the Customer's financial institution that they will not honor a payment tendered by Customer for payment of any bill because: (i) there are insufficient funds; (ii) the account has been closed; (iii) Customer has sent a "stop payment" request; or (iv) any other reason the financial institution will not honor Customer's payment, Company may require the Customer to make payment in cash, by money order, certified check, or other means which guarantee the Customer's payment to the Company.

4.4.1 Customer shall be charged a fee of fifteen dollars ($15.00) for each instance where Customer tenders payment of a bill with a payment that is not honored by Customer's financial institution.

4.4.2 The tender of a dishonored payment shall in no way (i) relieve Customer of the obligation to render payment to Company under the original terms of the bill, or (ii) defer Company's right to terminate service for nonpayment of bills.

4.4.3 Where the Customer has tendered two (2) or more dishonored payments in the past twelve (12) consecutive months, Company may require Customer to make payment in cash, money order or cashier's check for the next six (6) consecutive months.

4.5 Field Call Charge - Company may require payment of a Field Call Charge of $15.00 when an authorized Company representative travels to Customer's premises to accept payment of a delinquent account, notify of service termination, or make payment arrangements or terminate the service. This charge will only be applied for field calls resulting from the termination process.

4.5.1 If a termination is required at the pole, a reconnection charge of $87.50 will be required; if the termination is in underground equipment, the reconnection charge will be $125.00.

4.5.2 To avoid discontinuance of service, Customer may make payment in full, including any necessary deposit in accordance with Section 2.5 or make payment arrangements satisfactory to Company.

4.6 On-site Evaluation – Company may require payment of an On-site Evaluation Charge of $50.00 when an authorized Company field investigator performs an on-site visit to evaluate how the customer may reduce their energy usage. This charge may be assessed regardless of if the customer actually implements the Company suggestions.

5. Service Responsibilities of Company and Customer

5.1 Service Voltage – The Company will deliver electric service at the standard voltages specified in the Electric Service Requirements Manual published by Company and as specified in AAC R-14-208.F.

5.2 Responsibility: Use of Service or Apparatus

5.2.1 Customer and Company each shall save the other harmless from and against all claims for injury or damage to persons or property occasioned by or in any way resulting from the services being provided by the Company or the use thereof on their respective sides of the point of delivery. Company shall, however, have the right to suspend or terminate service in the event Company should learn of service use by Customer under hazardous conditions.

5.2.2 Customer shall exercise all reasonable care to prevent loss or damage to Company property installed on Customer's premise for the purpose of supplying service to Customer.

5.2.3 Customer shall be responsible for payment for loss or damage to Company property on Customer's premise arising from neglect, carelessness or misuse and shall reimburse Company for the cost of necessary repairs or replacements.

5.2.4 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 the meter.

5.2.5 Customer shall be responsible for notifying Company of any failure in Company's equipment.

5.3 Service Interruptions: Limitations on Liability of Company

5.3.1 Company shall not be liable to Customer for any damages occasioned by Load Serving ESP's equipment or failure to perform, fluctuations, interruptions or curtailment of electric service except where due to Company's willful misconduct or gross negligence. Company may, without incurring any liability therefore, suspend Customer's electric service for periods reasonably required to permit Company to accomplish repairs to or changes in any of Company's facilities. Customers need to protect their own sensitive equipment from harm caused by variations or interruptions in power supply.

5.3.2 In the event of a national emergency or local disaster resulting in disruption of normal service, Company may, in the public interest and on behalf of Electric Service Providers or Company, interrupt service to other Customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

5.4 Company Access to Customer Premises - Company's authorized agents shall have unassisted access to Customer's premises at all reasonable hours to install, inspect, read, repair or remove its meters or to install, operate or maintain other Company property, or to inspect and determine the connected electrical load. Neglect or refusal on the part of Customer to provide reasonable and unassisted access shall be sufficient cause for discontinuance of service by Company, or denial of any existing rate options where access is required. However, all conditions existing prior to June 30, 1998 shall be grandfathered. Company verification of unassisted access may be required before service is restored.

5.5 Easements - All suitable easements or rights-of-way required by Company for any portion of the extension which is on premises owned, leased or otherwise controlled by Customer shall be furnished in Company's name by Customer without cost to Company and in reasonable time to meet proposed service requirements. All easements or rights-of-way obtained on behalf of Company shall contain such terms and conditions as are acceptable to Company.

5.6 Load Characteristics - Customer shall exercise reasonable care to assure that the electrical characteristics of its load, such as deviation from sine wave form (a minimum standard is IEEE 519) or unusual short interval fluctuations in demand, shall not impair service to other customers or interfere with operation of telephone, television, or other communication facilities. The deviation from phase balance shall not be greater than ten percent (10%) at any time. The power factor of the load shall not be less than ninety percent (90%) lagging, but in no event leading, unless agreed to by Company. In the event that Customer does not maintain such power factor, at the option of Company, kVa may be substituted for kW in determining the applicable charge for billing purposes for each month in which such failure occurs.

6. Metering and Metering Equipment

6.1 Customer Equipment- Customer shall install and maintain all wiring and equipment beyond the point of delivery. Except for Company's meters and special equipment, Customer's entire installation must conform to all applicable construction standards and safety codes and if an inspection or permit is required by law or by Company, the same must be furnished by Customer.

6.1.1 Customer shall provide in accordance with Company's current service standards and/or Electric Service Requirements manual, at no expense to Company, and close to the point of delivery, a sufficient and suitable space acceptable to Company's representative for the installation of Company's metering equipment. All updates to the Electric Service Requirements manual shall be provided to the ACC Staff in a timely manner.

6.1.2 If telephone lines or any other devices are required to read the meter, the Customer is responsible for the installation and maintenance, at no cost to the Company.

6.1.3 Where a customer requests, and Company approves, a special meter reading device to accommodate the customer's needs, the cost for such additional equipment shall be the responsibility of the customer.

6.2 Company Equipment

6.2.1 A Load Serving Entity or their authorized agents may remove the Company's metering equipment pursuant to the Company's Schedule 10. Meters not returned to the Company or returned damaged will be charged the replacement costs less 5 years depreciation plus an administration fee of fifteen (15)%. Potential transformers (PTs) and current transformers (CTs) not returned to the Company or returned damaged will be charged net book value plus an administrative fee of fifteen (15) %.

6.2.2 The Company will lease lock ring keys to Load Serving Entities and/or their agents authorized to remove Company meters pursuant to the terms and conditions of the Company's Schedule 10 at a refundable charge of $70.00 per key. The charge will not be refunded if a key is lost, stolen, or damaged. If Company must replace ten (10)% of the issued keys within any twelve (12) month period due to loss by the MSP, Company may, rather than leasing additional lock ring keys, require the ESP to arrange for a joint meet. All lock ring keys must be returned to APS within five (5) working days if the load serving entity and/or their authorized agents are:

1) No longer permitted to remove the Company's meters pursuant to conditions of the Company's Schedule 10.
2) No longer authorized by the Arizona Corporation Commission to provide services.
3) Or if the ESP Agreement has been terminated.

6.2.3 If the load serving ESP, customer, and/or its' agent request a joint site meeting for removal of Company metering and associated equipment and/or lock ring a base charge will be assessed of $30.00 per site for the Phoenix metropolitan area and $75.00 per site for all other areas. The Company may assess an additional charge of $30.00 per hour for joint site meetings that exceed thirty (30) minutes. In the event Company must temporarily replace ESP's meter and/or associated metering equipment as necessary during emergency situations or to restore power to a customer, the above charges may apply.

6.3 Service Connections - Company is not required to install and maintain any lines and equipment on Customer's side of the point of delivery except its meter. For the mutual protection of Customer and Company, only authorized employees or agents of the Company or the Load Serving Entity are permitted to make and energize the connection between Company's service wires and Customer's service entrance conductors. Such employees carry credentials which they will show on request.

6.4 Measuring Customer Service - All the energy sold to Customer will be measured by commercially acceptable measuring devices by the Company or the load serving ESP pursuant to the terms and conditions of APS' Schedule 10. Except where it is impracticable to meter loads such as street lighting, security lighting, or special installations in which case the consumption may be calculated.

6.4.1 For Standard Offer Customers, or where Company is the Meter Reading Service Provider, the readings of the meter will be conclusive as to the amount of electric power supplied to Customer unless, there is evidence of meter tampering or energy diversion, or unless a test reveals the meter is in error by more than plus or minus three percent (3%).

6.4.2 If there is evidence of meter tampering or energy diversion, Customer will be billed for the estimated energy consumption that would have been registered had all energy usage been properly metered.

6.4.3 If any meter after testing is found to be more than three percent (3%) in error, either fast or slow, proper correction shall be made of previous readings and adjusted bills shall be rendered or adjusted billing information will be provided to the Electric Service Provider.

6.4.4 Customer will be billed for the estimated energy consumption that would have been registered had the meter been operating properly. Where Company is the Meter Reading Service Provider, Company shall, at the request of Customer or the ESP, reread Customer's meter within ten (10) working days after such request by Customer. The cost of such rereads, which is $10, may be charged to Customer or ESP, provided that the original reading was not in error.

6.4.5 Where the ESP is the Meter Service Provider Or Meter Reading Service Provider, and the ESP and/or its' agent fails to provide the meter read to APS pursuant to the Company's Schedule 10 Section 8.16 Meter Reading Data Obligations, the Company may obtain the read. The cost of such reread, which is $10, may be charged to the ESP.

6.5 Meter Testing - Company tests its meters regularly in accordance with a meter testing and maintenance program as approved by the Corporation Commission. Company will, however, individually test a Company owned/maintained meter upon Customer's or ESP's request. If the meter is found to be within the plus or minus three percent (3%) limit, Company may charge Customer of ESP $25.00 for the costs of the meter test.

6.6 Master Metering

6.6.1 Mobile Home Parks - Company shall refuse service to all new construction and/or expansion of existing permanent residential mobile home parks unless the construction and/or expansion is individually metered by the utility as stated in R14-2-205 of the Corporation Commission's Administrative Rules and Regulations.

6.6.2 Residential Apartment Complexes, Condominiums and Other Multiunit Residential Buildings - Company shall refuse service to all new construction of apartment complexes and condominiums which are master metered unless the building(s) will be served by a centralized heating, ventilation and/or air conditioning system and the contractor can provide to the utility an analysis demonstrating that the central unit will result in a favorable cost/benefit relationship as stated in R14-2-205 of the Corporation Commission's Administrative Rules and Regulations.

7. Termination of Service

7.1 With Notice - Company may without liability for injury or damage disconnect service to any Customer for any of the reasons stated below, provided Company has met the notice requirements established by the Corporation Commission:

7.1.1 Customer's violation of any of Company's tariffs.

7.1.2 Failure of Customer to pay a delinquent bill for services provided by the Company.

7.1.3 Customer's breach of a written contract for service.

7.1.4 Failure of Customer to comply with Company's deposit requirements.

7.1.5 Failure of Customer to provide Company with satisfactory and unassisted access to Company's equipment. However, all conditions existing prior to June 30, 1998 shall be grandfathered.

7.1.6 When necessary to comply with an order of any governmental agency having jurisdiction.

7.1.7 Failure of a prior customer to pay a delinquent bill for utility services where the prior customer continues to reside on the premises.

7.2 Without Notice - Company may without liability for injury or damage disconnect service to any Customer without advance notice under any of the following conditions:

7.2.1 The existence of an obvious hazard to the health or safety of persons or property.

7.2.2 Company has evidence of meter tampering or fraud.

7.2.3 Company has evidence of unauthorized resale or use of electric service.

7.2.4 Failure of Customer to comply with the curtailment procedures imposed by Company during a supply shortage.

7.3 Restoration of Service - Company shall not be required to restore service until the conditions, which resulted in the termination, have been corrected to the satisfaction of Company.

8. Removal of Facilities - Upon the termination of service, Company may without liability for injury or damage, dismantle and remove its facilities installed for the purpose of supplying service to Customer, and Company shall be under no further obligation to serve Customer. If, however, Company has not removed its facilities within one (1) year after the termination of service, Company shall thereafter give Customer thirty (30) days written notice before removing its facilities, or else waive any reestablishment charge within the next year for the same service to the same Customer at the same location.

For purposes of this Section notice to Customer shall be deemed given at the time such notice is deposited in the U.S. Postal Service, first class mail, postage prepaid, to Customer at his/her last known address.

9. Successors and Assigns - Agreements for Service shall be binding upon and for the benefit of the successors and assigns of Customer and Company, but no assignments by Customer shall be effective until Customer's assignee agrees in writing to be bound and until such assignment is accepted in writing by Company.

10. Warranty - THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), NOT SPECIFIED HEREIN OR IN THE APPLICABLE RULES OF THE ARIZONA CORPORATION COMMISSION CONCERNING THE SALE AND DELIVERY OF SERVICES BY COMPANY TO CUSTOMER. THESE TERMS AND CONDITIONS AND THE APPLICABLE RULES OF THE ARIZONA CORPORATION COMMISSION STATE THE ENTIRE OBLIGATION OF COMPANY IN CONNECTION WITH SUCH SALES AND DELIVERIES.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, Individually and on Behalf of Herself and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** (Assigned to the Honorable Rebecca A. Albrecht)

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I. INTRODUCTION

Plaintiffs Avis Read and Paul and Linda Shaeffer have brought this action against Defendant, Arizona Public Service Company ("APS"), challenging APS' computer-driven, system-wide use of unlawful estimating and billing procedures.[1]

The record in this case establishes that APS has acted with blatant disregard for its position as a public service company whose activities are governed by specific statutes and regulations. Instead, APS has systematically deceived and overcharged its customers for electricity by failing to follow legally required practices and procedures regarding meter reading, estimating and billing.

The APS customers affected by these practices can be easily identified and divided into two subclasses: those who received estimates for consumption alone, and those customers who were billed for both consumption and estimated demand. All APS customers who received estimated bills will fall into one group or another, depending upon their meter type and rate plan. It is the estimated billing procedures and practices that will be on trial or ruled upon by motion, making this a perfect case for class-wide resolution.

The record is undisputed in this case that Defendant has used unlawful and deceptive procedures in estimating demand meters. Prior to 1998, Defendant could not automatically estimate demand, so billing clerks manually estimated demand using a variety of unapproved methodologies. The estimating procedures Defendant has used since it began generating computer-driven estimates of demand in 1998 are uniform, contrary to the law, unapproved by the Arizona Corporation Commission ("ACC"), and actually created *ad hoc* by APS employees. Further, in the case of the first bill after an estimate or series of estimates, the bills fail to disclose that <u>the demand</u> portion of the bill is an estimate at all, although Defendant has admitted that that is what the demand reading really is.

With respect to non-demand meters, Defendant's computer program has generated far more consecutive months of estimated bills than the law permits, requiring consumers to pay inflated

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[1] Defendant has stipulated to the proposed Amended Complaint, but no Order has been issued by the Court.

estimated bills that are unlawful. This practice went on unabated from 1998 until late 2002.

Defendant concedes that it has a single computer system that applies uniform estimating and billing procedures to its customers. Because all estimated bills are rendered using the same system, these uniform billing practices are either lawful or they are not as to every APS customer who has had his or her bill estimated. Indeed, the case can be decided as to all APS customers in a single class-wide summary judgment motion post certification.

Defendant's estimating procedures are programmed into a computer, and hence they are applied uniformly. This Court can look at them; place them side-by-side with the governing laws and regulations; and determine whether they comply. This relatively simple comparison will decide these issue as to the entire class. This case is not only appropriate for class certification, it is the kind of case that Rule 23 was designed to efficiently resolve. These are small claims that aggregate to a large sum, involving system-generated bills and narrow legal issues. Rule 23 is not only the best way; it is the only way to resolve them.

The requirements of Ariz. Rule Civ. Pro. 23 are clearly satisfied and this action should be certified as a class action on behalf of the class as defined in Plaintiff's certification motion. Regulation serves as the surrogate guardian of fairness in place of competition for a regulated monopoly: the constraints and supervision mandated by the Regulations are not advisory, nor are they just an administrative nuisance to APS. They govern and must be followed.

II. THE REGULATIONS THAT CONTROL APS' PROCEDURES WITH RESPECT TO ESTIMATING METERS

As described above, APS is a tightly regulated monopoly provider of an essential product. Because of its absolute market power, the people of Arizona, acting through their Legislature and Corporation Commission, have put in place rules to be followed by APS and enforced by both the ACC and the Courts to restrict APS' freedom to operate independently, like any other business. The trade-off for monopoly power is strict regulation.

In the area of meter estimating, APS' procedures are tightly controlled and its freedom to act is severely restricted. It is allowed to estimate meter reads under very limited circumstances, and crucially, it may not render an estimated bill at all, if the procedure by which it was created has not been

approved by the Commission. Further, any estimated bill must clearly state that it is an estimate, and APS may not send estimated bills for more than three consecutive months without taking direct steps to ensure an actual meter reading.

Even if it is justified in sending out an estimated bill, that bill must, in addition, be based solely on the factors set forth in the Regulations, which require specific reference to particular past months' usage.

As the following will describe, Defendant's post-1998 estimating procedures and billing practices have treated the Commission and the Rules as annoyances to be evaded, ignored, or pacified according to need. The result has been a flood of fraudulent, misleading, and unauthorized and excessive estimated bills paid for by class members.

III. STATEMENT OF FACTS

APS Bills Customers Using Unapproved, Unlawful and Deceptive Billing Practices and Procedures

As a public service company, APS is required, by law, to seek approval of its rates, charges, and estimating procedures by the ACC. See A.R.S. § 40- 365. Also, any change in any rate, charge or service by APS is subject to a hearing and approval by the ACC. See A.R.S. § 40-361, *et seq.* In principal, this regulatory scheme should result in bills that are the product of uniform, fair, and governmentally and publicly approved standards. However, while APS has implemented a uniform mechanism for billing its customers, the record in this case reveals that APS has, to the extent possible without easily getting caught, taken the role of fashioning its charges and billing methods upon itself.[2] This is true notwithstanding a robust regulatory scheme that dictates, with great specificity, stringent rules relating to estimating meter reads and billing customers based upon those estimates. Arizona

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[2] In anticipation of mandatory reporting to the ACC, APS employees have expressed their concern regarding APS' unapproved estimating practices: "I'm concerned that [the ACC] will order us to share the rest of our #'s around estimated reads." See APS01651, Exh. 1. In addition, APS employees have admitted that during the class period, apart from estimates that were "beyond APS control, there are a significant amount of estimates that were created by APS." Id.

Administrative Code R14-2-210[3], governing electrical utilities, provides:

A. Frequency and estimated bills

1. Unless otherwise approved by the Commission, the utility or billing entity shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and may offer billing options for the services rendered. Meter Readings shall be scheduled for periods of not less than 25 days Or more than 35 days without customer authorization. If the Utility or Meter Reading Service Provider changes a meter reading route or schedule resulting in a significant a alteration of billing cycles, notice shall be given to the affected customers.

2. Each billing statement rendered by the utility or billing entity shall be computed on the actual usage during the billing cycle. If the utility or Meter Reading Service Provider is unable to obtain an actual reading, the utility or billing entity may estimate the consumption for the billing period giving consideration to the following factors where applicable:

   a. The customer's usage during the same month of the previous year.
   b. The amount of usage during the preceding month.

3. Estimated bills will be issued only under the following conditions unless otherwise appoved by the Commission:

   a. When extreme weather conditions, emergencies, or work stoppages prevent actual meter readings.
   b. Failure of a customer who reads his own meter to deliver his meter reading to the utility or Meter Reading Service provider in accordance with the requirements of the utility or Meter Reader Service Provider billing cycle.
   c. Provider is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the meter, that is, locked gates, blocked meters, vicious or dangerous animals. If the utility or Meter Reader Service Provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternative to obtain a customer reading of the meter.
   d. Due to customer equipment failure, a 1-month estimation will be allowed. Failure to remedy the customer equipment condition will result in penalties for Meter Service Providers as imposed by the Commission.

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[3]The history of Regulation R14-2-210 is as follows:

Adopted effective March 2, 1982 (Supp. 82-2). Amended by an emergency action effective August 10, 1998, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 98-3). Emergency amendment replaced by exempt permanent amendment effective December 31, 1998 (Supp. 98-4). Amended by exempt rulemaking at 5 A.A.R. 3933, effective September 24, 1999 (Supp. 99-3). See A.A.C. R14-2-210 (2004).

e. To facilitate timely billing for customers using load profiles.

4. After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance fo service.

5. A utility or billing entity may not render a bill based on estimated usage if;
   a. The estimating procedures employed by the utility or billing entity have not been approved by the Commission.
   b. The billing would be the customer's 1st or final bill for service.
   c. The customer is a direct-access customer requiring load data.
   d. The utility can obtain customer-supplied meter readings to determine usage.

6. When a utility or billing entity renders an estimated bill in accordance with these rules it shall:
   a. Maintain accurate records for the reasons therefor and efforts made to secure an actual reading;
   b. Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation.

(emphasis added).

APS has utilized only two systems to estimate bills throughout the proposed class period. The first system was in place until September 1998. Under this billing system, when a demand read was unavailable, the demand calculation was produced using unapproved methods. See Exhibit 2. On or about March 1999, APS implemented a new computer billing and estimating system, which APS employees refer to as the "Customer Information System," or "CIS." Smith Depo. at p. 24. (See Exhibit 3). This system replaced an older computerized billing system, which had been used to generated bills for all APS customers prior to the implementation of the "new" CIS in September 1998. It is uncontroverted that the "new" CIS was used to generate bills for all customer accounts relevant to this class action from the date of its implementation. Moreover, it is this system, acting upon parameters created and/or commissioned by APS that is responsible for calculating and producing estimated bills for APS customers whose meters are not read.

APS' conduct with respect to demand meters represents an extraordinary disregard for these regulations. As described above, any estimated bill must, under R14-2-10, be based upon the factors

stated in Section 2(a) and 2(b): the customers usage in the same month of the previous year, and the usage during the previous month. The restriction could not be clearer, and self-evidently any variation from it would, under 5(a), require the approval of the Commission.

The practice under the "old" billing system for estimating demand meters was summarized in a memo dated November 30, 2000 from Janet Smith to Cynthia Janka, another APS employee:

> "I met with Lori and her group yesterday to discuss some estimating issues. One of the items raised was how to properly estimate a demand. After some discussion we arrived at what is the best method, so this is a heads up to you in case you are ever asked by the Commission. As you know the old system did not estimate demands. The billing consultants and associates used various methods to estimate demands when needed (it varied depending upon the person doing the estimating, not the situation)."

Exh. 2.

From this bizarre arrangement, APS, in September 1998, changed its computer system to allow it to automatically estimate demand for APS' demand customers where no actual demand reading had been taken.

As Ms. Smith describes in her memo, she and her colleagues "decided" to program in a series of percentage "load factors" that would be determined by meter type. There was no mention of the Section 2(a) and 2(b) factors, and APS, through Ms. Smith, created them around, rather than through Commission approval. The only approval of the procedure was provided by "Jana and Cynthia" in a memo dated December 4, 2000, that apparently approves the use of the "Smith formula" for all demand estimates.

Incredibly, on June 19, 2002, Smith wrote a memo instructing the technical staff at APS to change the load factors used to generate an estimated demand bill by changing the percentage load factors to be used from those she had initially set. See Exh. 4. Again, these changes were made without any Commission involvement.

The "Smith formula" was created *ad hoc*, internally, by APS. Indeed, in a later memo, Smith describes having created the procedure in "20 minutes" (See Smith E-mail, Exh. 5). Thus, since September 1998, Defendant has been regularly estimating demand under a formula that is completely unlawful under Section 5(a).

The mis-estimation of demand is particularly egregious because of the doubtful accuracy and

non-accountability of the entire process. As all of Defendant's witnesses have agreed, estimated demand cannot be recaptured, because demand is only accurate in the month after a demand meter is "reset". Thus a meter read after three months of estimating will record the highest demand at any point in the previous three months. Further, when the meter is finally read, because there is no way to know when the highest demand occurred, the actual reading is just an estimate. A meter finally read in October will be billed as if the demand had reached the point shown in October, when that point may have been reached in August. In truth, with respect to demand meters, the first actual reading after an estimated month is itself an estimate for that month, although APS represents it as actual demand for that month. As noted above, this is directly contrary to Section 6(b) which requires disclosure of all estimates.

In short, Defendant's estimating procedures have been and remain an *ad hoc*, unapproved, misrepresented, self-created hodge-podge. That said, it is indisputable that the whole procedure, with its succeeding self-created changes has been reduced to a computer-driven, uniform estimating and billing system using the "Smith formula" for estimating demand. Whether it is lawful is a simple, common question resolved by analysis of the regulations applied to the procedures, not individual facts.

Apart from utilizing unapproved and unlawful methodologies for estimating demand reads, the new CIS produced thousands of unlawful bills for those customers who were on a standard, or non-demand rate. When APS purchased its new CIS, APS failed to adjust the new CIS's pre-programmed estimating mechanisms to comply with Arizona law and regulations, notwithstanding the fact that the new CIS's non-compliance with Arizona law was patently evident, even from the CIS's very operating manual. See APS02772 , Exh. 6. ([CIS] will estimate four consecutive months if necessary before requiring the meter be read.") On July 26th, 2002 APS finally corrected this problem with its Customer Information System that was causing the computer billing system, in violation of Arizona law, to automatically estimate electric bills for up to four months. See APS03352, Exhibit 7. The existence of the illegal bills generated by the CIS from September 1998 to July 2002 has, to Plaintiffs' knowledge, never been reported to the ACC or APS customers. This blatant conduct went uncorrected for close to four years and caused APS to generate thousands of bills in violation of Arizona law to the detriment of the members of the class.

IV. PROPOSED CLASS

Plaintiffs seek to certify the following class:

> All persons who, from September 1, 1998, paid estimated bills that were based upon unlawful, unapproved estimating procedures, formulae and practices. Subclass A consists of all those APS customers who were billed for estimated demand readings during the class period. Subclass B consists of all those APS customers, who were not on a "demand" rate, whose bills were estimated for more than three consecutive months during the class period.

A. The Common Factual and Legal Issues in this Action Merit Class Certification

Plaintiffs in this action seek relief for all persons who paid estimated bills that were based upon unlawful, unapproved estimating procedures, formulae and practices. Plaintiffs propose that, for the ease of management of this action and in the interest of justice, the class be divided into two subclasses.

1. Subclass A - Those APS Customers on "Demand" Rates Issued Estimated Bills

As described, *supra*, many APS customers are billed based upon both their usage of Kilowatt hours and peak Kilowatt usage over a specified period, or "demand". Subclass A consists of all those APS customers who were billed for estimated demand readings during the class period.

The interests of Subclass A will be protected adequately and fairly by Avis Read, who was billed repeatedly for estimated demand usage during the proposed class period. Plaintiff Avis Read's demand meter (meter # 90683) had been estimated using unapproved formulae by APS on many occasions relevant to this action. See Exh. A&B from Amd. Complaint. All members of Subclass A premise liability on all ten counts listed in Plaintiff's First Amended Complaint.

2. Subclass B- Those APS Customers with KWh Only Meters That Were Estimated in Violation of Arizona Law

In addition to Subclass A, another readily definable group of APS customers has been adversely impacted by APS' unlawful billing and estimating practices. Class B can easily be defined as those APS customers, who were not on a "demand" rate, whose bills were estimated for more than three consecutive months during the class period.

The interests of this class of customers will be fairly and adequately represented by Paul and Linda Schaeffer, who were forced to pay estimated bills by APS for months at a time, effectively

forcing them to provide APS with interest-free loans. Plaintiffs allege that APS' conduct towards each member of this Subclass constitutes violations of A.R.S. § 44-1522, Arizona Administrative Code R-2-210 and A.R.S. § 40-367. Additionally, Class B seeks relief under claims of: breach of contract; breach of fiduciary duty; breach of express warranty; and, negligence.

V. CLASS CERTIFICATION STANDARDS UNDER ARIZ. RULE CIV. PRO. 23

In determining whether a class action will be certified, the substantive allegations of the complaint should be taken as true, except where clearly controverted by evidence[4]. See, Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975), cert. denied, 429 U.S. 816, 97 S.Ct. 57, 50 L.Ed.2d 75 (1976). Inquiry into the merits of the case is forbidden in ruling on a motion for class certification. See, Eisen v. Carlisle Jacquelin, 417 U.S. 156, 177-78 (1974). Moreover, "[g]enerally, [Rule 23] should be construed liberally, and doubts concerning whether to certify a class should be resolved in favor of certification. ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc., 203 Ariz. 94, 98, 50 P.3d 844, 848 (App.Div.1 2002) (review denied) (emphasis added). While the certification of a class is discretionary, "[t]he trial court, if possible, should employ its discretion to define the class in a manner that will allow utilization of the class action procedure." Lennon v. First National Bank of Arizona, 21 Ariz.App. 306, 308, 518 P.2d 1230, 1232 (App.Div.1 1974). Last, "[c]lass action certifications to enforce consumer protection laws are 'desirable and should be encouraged.'" Duran v. Credit Bureau of Yuma, Inc., 93 F.R.D. 607, 610 (D.Ariz. 1982) quoting Watkins v. Simmons and Clark, Inc., 618 F.2d 398, 404 (6th Cir. 1980).

A. Numerosity

Rule 23(a)(1), commonly known as the "numerosity" element, requires that the Class be "so numerous that joinder of all the members is impracticable." Ariz. Rule Civ. Pro 23(a)(1). While there is no bright line rule regarding the number of class members required to satisfy the numerosity

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[4] Because the language of Arizona Rule of Civil Procedure 23 is identical to Rule 23 of the Federal Rules of Civil Procedure, federal cases construing F.R.Civ.P. Rule 23 are authoritative. See ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc., 203 Ariz. 94, 98 n.2, 50 P.3d 844, 848 (App.Div.1 2002) (citing Lennon v. First Nat'l Bank of Ariozona, 21 Ariz.App. 306, 308 n. 3, 518 P.2d 1230, 1232 n.3 (1974)).

requirement, so long as the putative class consists of more members than the named class representatives alone, the numerosity requirement may appropriately be satisfied. See London v. Green Acres Trust, 159 Ariz. 136, 140, 765 P.2d 538, 542 (App.Div.1 1989)(review denied).

Here, the numerosity requirement is clearly met. APS currently has over 902,000 customers. See Exhibit 8, APS news release. Each APS customer is billed by the same computer billing and information system, and has either a consumption and demand or consumption meter. Accordingly, APS' business records confirm that all APS customers who were issued estimated bills with a demand component were billed using unapproved estimating procedures. Additionally, APS' business records demonstrate that thousands of customers had their bills estimated for periods in excess of the statutory period.

For instance, according to APS internal audits, from January 1, 2001 through March 25, 2002, over 100,000 customer accounts "had automatic system estimates of meter reads performed by the billing system when meter reads were missing or unavailable for all meter read dials required for billing." See Exhibit 7 at APS03349. Pursuant to APS internal audits, over 2000 accounts were automatically "system estimated" over four times from March, 2001 to March 2002. See Exhibit 7 at APS03350.

B. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." See Ariz. Rule Civ. Pro 23(a)(2). The standard for commonality is satisfied when "relief is based on questions of law applicable in the same manner to each member of the class." Brink v. First Credit Resources, 185 F.R.D. 567, 570 (D.Ariz 1999) (internal quotations omitted). Like the other aspects of Rule 23, this requirement has been construed very liberally by Arizona courts:

> Maintenance of a class action does not depend upon commonality of all questions of fact and law, but only that such questions predominate over questions affecting individual members of the class. Like v. Carter, 448 F.2d 798 (8th Cir. 1971); Goldstein v. Regal Crest, Inc., 59 F.R.D. 396 (D.C.1973). The common questions need not be dispositive of the entire action. Esplin v. Hirschi, 402 F.2d 94 (10th Cir. 1968), cert. den., 394 U.S. 928, 89 S.Ct. 1194, 22 L.Ed.2d 459.

Godbey v. Roosevelt School District No. 66 of Maricopa County, 131 Ariz. 13, 18, 638 P.2d 235, 240 (App.Div.1. 1981) (review denied 1981).

Also, the commonality standard is satisfied when relief is based on "questions of law applicable in the same manner to each member of the class." O'Connor v. Boeing North Am., Inc., 180 F.R.D. 359, 371 (C.D.Cal. 1997) (quoting General Tel. Co. Of the Southwest v. Falcon, 457 U.S. 147, 155, 102 S.Ct. 2364, 2369,, 72 L.Ed.2d 740 (1982)). Additionally, if common questions of law of fact exist, the possibility of variable damages for each class member is not a proper basis for finding that commonality among the class members does not exist. See, Blackie, 524 F.2d at 905.

In the case at Bar, common questions of law and fact affect all class members' claims. All subclass members pursue the same legal remedies under the same statutes and regulations, regarding the same business practices of APS. Resolution of those claims depends on answering the same questions, which can be done for all by considering common evidence regarding APS' business practices concerning billing, electric bill estimation and regulatory compliance, and simply comparing the computer driven procedures to the regulations that govern them. The following questions of fact that must be resolved in any one case will apply and also resolve the issue for all the other class members' claims:

a. whether APS' estimating and billing practices were and/or remain to the present contrary to controlling State law and Regulations;
b. whether APS' customers were being billed for the amount of electricity they actually consumed;
c. whether APS' customers were being billed for the amount of electricity they actually demanded;
d. whether APS' bills were false and misleading;
e. whether APS overcharged customers for electricity;
f. whether APS concealed the illegality of its actions from the consuming public; and,
g. whether Plaintiffs and the other members of the Class have been damaged by way of the aforementioned actions of the Defendant.

Additonally, the following questions of law are common among the class members:

a. whether Defendant has perpetrated consumer fraud in violation of A.R.S. § 44-1522, *et seq;*
b. whether Defendant, by reason of its alleged conduct, has violated Arizona Administrative Code R14-2-210;
c. whether Defendant, by reason of its alleged conduct, has been unjustly enriched;
a. whether Defendant, by reason of its alleged conduct, has breached its fiduciary duties to Plaintiffs and the Class;
e. whether APS, by reason of its alleged conduct, has breached express warranties to the class;
f. whether APS, by reason of its alleged conduct, has breached contracts entered with Plaintiff and the Class;
g. whether APS, by reason of its alleged conduct, has violated A.R.S. § 40-361;

whether APS, by reason of its alleged conduct, has violated A.R.S. § 40-367;

h. whether Defendant, by reason of its alleged conduct, proximately caused injury to Plaintiff and the members of the Class and, if so, what is the proper measure of such damages; and,

i. whether injunctive relief is appropriate to curtail said actions of the Defendant and require it to send estimated bills only upon following the procedures set forth in controlling Regulations.

Defendant APS billed each class member using the same computer billing system throughout the class period. Likewise, the central legal and factual issues in this case involve standardized, systematic conduct by APS towards its customers. Although the class members share a myriad of common facts and legal issues, "all that is required is a common issue of law or fact." Blackie, 524 F.2d at 904. Additionally, "[t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon v.Chrysler Corp., 150 F.3d 1011, 10 (9th Cir. 1998). In the case at Bar, the commonality standard is clearly met.

C. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class . . ." Ariz. Rule Civ. Pro. 23(a)(3). "The test of typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Jones v. Shalala, 64 F.3d 510, 514 (9th Cir. 1995); See also, e.g., Hanlon v. Chrysler Corp., 150 F.3d 1001, 1020 (9th Cir. 1998); Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir. 1977); Wright v. Stone Container Corp., 524 F.2d 1058 (8th Cir. 1975). The requirements of Rule 23(a)(3) were fully considered in Lennon v. First National Bank of Arizona, 21 Ariz.App. 306, 518 P.2d 1230 (1974). There the court summarized:

> Under Rule 23(a)(3) the claims of the representative party must be "typical" of the claims of the class. Some courts have held that the typicality requirement is satisfied when common questions of law or fact exist. Green v. Wolf Corp., 406 F.2d 291, 299 (2d Cir. 1968). Others have held a representative's claim typical if the interests of the representative are not antagonistic to those of absent class members. Thomas v. Clarke, 54 F.R.D. 245 (D.C.Minn.1971); Katz v. Carte Blanche Corp., 52 F.R.D. 510 (W.D.Pa.1971). Still others require the representative to demonstrate that absent class members have suffered the same grievances of which he complains. White v. Gates Rubber Company, 53 F.R.D. 412, 415 (D.C.Colo.1971).

Lennon., 21 Ariz.App. at 309, 518 P.2d at 1233.

In Lennon, the Court found that each test was independently met. Id. Subsequently, in the Godbey case, the Court of Appeals recognized that meeting any one of the three standards examined by the court in Lennon could satisfy the typicality requirement. See Godbey, 131 Ariz. at 17. Nonetheless, in the instant case typicality exists regardless of which test is applied.

With respect to the first test for commonality suggested in Lennon, as described in commonality section of this motion, *infra*, the plaintiffs' claims and the facts surrounding their claims are typical of the rest of the class. Plaintiff Read had her demand meter estimated pursuant to the same formulas used to estimate the demand meters of other class members. Also, Plaintiffs Paul and Linda Schaffer's electric bills were automatically estimated for over 3 months, in contravention of Arizona law and regulations, just as the other members of Subclass B were forced to pay bills that were based on estimates for over 3 consecutive months.

Next, both Subclasses will be represented by plaintiffs who meet the second test suggested by the Lennon court. No facts exist in the record, or elsewhere, to suggest that either Read or the Schaffers are interested in any way that would be antagonistic to the class. On the contrary, both Read and the Schaffers have shown a willingness to assist in vindicating the rights of Arizona consumers through their participation in this litigation.

Last, the third test for typicality is also met by the lead plaintiffs in this class action. Here, the absent class members, by virtue of the very definition of the Subclasses, have suffered the same grievances of which the named plaintiffs complain. This is especially true, because, as explained throughout this motion, all APS customers who received and paid for estimated bills were billed using the same billing and computer systems and guidelines.

In this case, the typicality requirement is met by Plaintiff Read for Subclass A and Plaintiffs Paul and Linda Schaffer with respect to Subclass B. Although, as established by the decision in Godbey, 131 Ariz. at 17, only one of the three possible tests for typicality need be met, here, each test is clearly and easily satisfied.

D. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Ariz. Rule Civ. Pro. 23(a)(4). This requirement centers on the character and

quality of the named representatives and the quality and experience of the attorneys representing the class. See London, 159 Ariz. at 141, 765 P.2d at 543. Alternatively stated, "[r]epresentation is adequate if counsel for the class is competent and qualified, and the class representatives do not have interests antagonistic to or conflicting with those of the unnamed class members." Brink v. First Credit Resources, 185 F.R.D. 567, 571 (D.Ariz. 1999); see also Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978).

In the present case the requirements of Rule 23(a)(4) have been fully satisfied. First, there is no evidence that Plaintiff Avis Read has any interests antagonistic to the class, or that she will not vigorously pursue claims on behalf of the class. The same is true of the Shaeffers. Plaintiff Read's demand and consumption meters were estimated repeatedly during the class period. See, Exh. A&B to Amended Complaint. In addition, Ms. Read and Mr. And Mrs. Shaeffer have retained counsel with substantial experience with consumer class actions. See Reed Affidavit. Clearly, the adequacy requirement is met in this case.

E. Rule 23(b) Requirements

In addition to satisfying the requirements of Ariz. Rule Civ. Pro. 23(a), the provisions of at least one subsection of Ariz. Rule Civ. Pro. 23(b) must be satisfied. In the instant case, the class should be certified pursuant to Rule 23(b)(3) as: (1) common questions of law or fact will predominate over questions affecting only individual members; and (2) a class is "superior to other available methods" of adjudicating the case. Certification is also appropriate, as described, infra, under Rule 23(b)(2), as Plaintiff seeks a court order declaring Defendant's practices unlawful and deceptive, and injunctive relief enjoining further commission of those ongoing practices.

VI. THE REQUIREMENTS OF ARIZ. RULE CIV. PRO. 23(B)(3) ARE MET

Common Issues of Law or Fact Predominate

The predominance standard is met when common issues of fact and law, while not necessarily dispositive, predominate over questions affecting individual members of the class. See Godbey, 131 Ariz. at 18. Also, "the requirements of Rule 23(b)(3) (and Rule 23(a)(3), to the extent they overlap) should be liberally construed." Id. The predominance test does not require an exact conformity of the claims among Class members, and instead merely "tests whether proposed classes are adhesive enough

to warrant adjudication by representation." Local Joint Ex. Board of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1162 (9th Cir. 2001), cert denied 151 L. Ed. 2d 299 (U. S. 2001), quoting Amchem Prod. v. Windsor, 521 U.S. 591. The test is satisfied "[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication." Hanlon, 150 F.3d at 1022.

In the case at Bar, the predominance requirement is satisfied, as a jury could reasonably conclude that APS is liable under legal theories applicable to all class members and based on evidence applicable to all members of the class. Moreover, the alleged violations can be established on a class-wide basis since the jury will be able to conclude, by reviewing common evidence of APS' billing practices and procedures, whether APS' conduct violated Arizona laws and Regulations. Plaintiffs will present evidence showing that APS acted with blatant disregard to the laws and regulations that govern its conduct with respect to billing and estimation. In light of APS' defenses to these allegations, the jury will be able to make a determination on the merits of this case based on common evidence of standard, computer-driven practices, without having to examine a myriad of individual facts or legal theories. The result of this process will obviate the need for a multiplicity of actions and the resulting cost and confusion that would be caused if all affected APS customers were forced to proceed with their actions individually.

Class Action Is the Superior Method of Proceeding in this Case

The final requirement to certify a class under Rule 23(b)(3) is that the Court determine that a class action is the superior method of proceeding. The real issue in determining superiority is the manageability of the case as one class action, or alternatively, as thousands of individual actions. See Brink, 185 F.R.D. at 571-72. In reaching its determination with regard to superiority, the Court may consider the following factors[5]:

> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

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[5] These factors are enumerated in Rule 23 to provide guidance to the court and are not exclusive. See Duran, 93 F.R.D. 607, 610.

(D) the difficulties likely to be encountered in the management of a class action. Ariz.R.Civ.Pro. 23(b)(3).

The factors are designed to examine whether a class action is more efficient than individual litigation, thereby promoting judicial economy. See Valentino v. Carter Wallace, Inc., 97 F.3d 1227, 1232 (9th Cir. 1996); Brink, 185 F.R.D. at 572. The absence of individual lawsuits militates in favor of supporting the superiority of a class action. See ESI, 203 Ariz. 94, 99, 50 P.3d 844, 848. This is true because the lack of other suits is consistent with the fact that the putative class members are unaware of their claims, that even if aware of their claims, pursuit of those claims is not economically feasible and the lack of other suits suggests that proposed class members would have no interest to control their own litigation. Id. at 98-99, 848-849.

In the case at Bar, no other cases that seek to determine the rights of APS customers with respect to APS' billing practices are, to Plaintiff's knowledge, pending. The real issue in determining superiority is the manageability of the case as one class action, or, alternatively, as thousands of individual actions. See, e.g., In re Workers Comp., 130 F.R.D. 99 (D.Minn.1990).

Consideration of these factors leads inexorably to the conclusion that a class action is appropriate here. First, the interest of class members in individually pursuing claims against APS is minimal because most class members have a relatively modest claim in relation to the money that would be required to prosecute such actions. This type of action is precisely the sort of case contemplated by Rule 23 – a scheme by Defendant to unlawfully obtain payment, possibly in the millions of dollars, by impermissibly overbilling APS customers by obtaining moderate sums from a large number of persons, resulting in ill-gotten gains, but insufficient damage to almost every customer to warrant individual actions. Because no one plaintiff could feasibly bring a lawsuit seeking recovery of the individual claims at issue, an aggregation of those claims is not only the superior way to resolve the claims, it is probably the only way.

The alternative against which the Court must evaluate the superiority element is the filing of thousands of individual suits, not the absence of any suits by absent class members. Due to the deceptive nature of APS' billing practices and procedures, most class members are likely unaware of the fact that their electric bills were fictitious and unlawful. Finally, as described, the existence of

centralized billing and information systems and the documents and business records related thereto greatly facilitates the management of this case. A class action, therefore, is the superior way to proceed.

VII. THE REQUIREMENTS OF ARIZ. RULE CIV. PRO. 23(B)(2) ARE INDEPENDENTLY SATISFIED

Plaintiffs also seek separate certification of the class under Rule 23(b)(2), which authorizes certification when:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Ariz. Rule Civ. Pro 23(b)(2).

Here, Plaintiffs seek a Court order declaring Defendant APS' business practices unlawful and deceptive, and injunctive relief enjoining further commission of these ongoing practices. Unless enjoined, Defendants will continue their deceptive and unlawful practices and both current and future APS customers will be forced to pay unlawful and deceptive bills in the future. As a result, separate certification under Rule 23(b)(2) is appropriate. See, e.g., Beckmann v. CBS, Inc., 192 F.R.D.608, 614 (D.Minn.2000) (certifying class under FED.R.CIV.P 23(b)(2) and (b)(3)); Fogie v. Rent-A-Center, 867 F.Supp. 1398 (D.Minn. 1993) (certifying claims for injunctive relief under FED.R.CIV.P 23(b)(2) and damage claims under 23(b)(3)); Smith v. United Heathcare Services Inc., 2002 WL 192565 *5 (D.Minn. 2002) *citing* DeBoer ("A request for monetary relief is an insufficient basis for refusing to certify a class action under Rule 23(b)(2).")

VIII. CONCLUSION

For the foregoing reasons, the motion to certify the class should be granted.

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No. CV 2002-010760 **OPPOSITION OF DEFENDANT ARIZONA PUBLIC SERVICE COMPANY TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** **(Oral argument requested)** (Assigned to the Honorable Rebecca A. Albrecht)

2.27.04

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INTRODUCTION

Plaintiffs purport to bring this action on behalf of thousands of current and former APS customers in Arizona who received estimated bills from APS after September 1, 1998. Plaintiffs identify two putative subclasses that they claim were adversely effected by APS's estimated billing procedures and practices: Subclass A consists of those APS customers who received estimated "demand" rate readings and Subclass B consists of APS non-demand rate customers whose bills were estimated for more than three consecutive months.

Certification of the proposed classes would be improper on two grounds. *First*, a decision by the Arizona Corporation Commission ("ACC") on APS's pending Application to the ACC could render moot all of Plaintiffs' claims. *Second*, Plaintiffs' claims are factually and legally incorrect, raise a host of individual issues, and otherwise fail to satisfy the requirements of Ariz. R. Civ. P. 23(b)(2) and (3).

FACTUAL BACKGROUND

A. The Nature of Plaintiff's Claims

Plaintiffs allege that since September 1998, APS has used unlawful, unapproved procedures and practices to estimate bills of demand customers when an actual meter reading cannot be obtained. (Mot. at 1.) Specifically, Plaintiffs allege that, beginning in 1998, APS failed to have its estimating methods for demand accounts approved by the ACC, as required by Arizona Administrative Code ("A.A.C.") R14-2-210(A)(5)(a). (Am. Compl. at ¶¶ 13-16.) Plaintiffs further allege that from September 1998 through July 2002, APS issued estimated bills on some non-demand accounts for up to four months, in violation of A.A.C. R14-2-210(A)(4).[1]

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[1] Plaintiffs various statutory and common law claims for consumer fraud, unjust enrichment, breach of fiduciary duty, breach of contract, breach of warranty, and negligence all flow from the alleged failure to have the ACC approve APS's estimating procedures.

Plaintiffs' contention that APS has engaged in a wholesale change of its estimated billing procedures since September 1998 is flatly untrue and is, quite frankly, much ado about nothing. Contrary to what Plaintiffs would have the Court believe, the methodology APS uses to estimate bills for demand accounts today is essentially and materially the same as it used prior to 1998. Furthermore, when APS is required to estimate a customer's bill for more than three consecutive months, it takes appropriate action to attempt to obtain an actual meter reading, which is all that the ACC regulations require. Thus, the rhetoric and unfounded assertions of Plaintiffs' Motion are not only inaccurate, but also fail to establish even the most basic requirement for class certification -- well-pleaded allegations of fact and law equally applicable to all members of the proposed classes. *See Castano v. American Tobacco Co.,* 84 F.3d 734, 744 (5th Cir. 1996) (court must go "beyond the pleadings" and "must understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues").

B. APS's Estimated Billing Procedures for Demand Accounts Have Remained Essentially and Materially the Same.

APS offers its customers a number of billing rates from which to choose. The main distinction between those rates are the bases on which they are calculated -- consumption and demand. "Demand rate" accounts use both components. Consumption, or "kWh" (kilowatt hours), is the total amount of electricity that a customer has used during that billing cycle. Demand, or "kW" (kilowatt), is the peak electric capacity consumed during a one-hour period in that billing cycle for residential accounts and a fifteen-minute period for commercial accounts.[2] Kilowatt hours (kWh) and kilowatts (kW) are both billed at certain rates, and those line items

[2] A customer on a demand rate account can usually reduce his or her overall electric utility charges by minimizing periodic increases in demand during a billing cycle. In other words, by using a relatively constant amount of electricity during the billing cycle and avoiding large spikes in electricity use, the customer is charged at a reduced rate per kWh.

are then totaled, resulting in a sum owed to APS for electrical use during that billing period. Contrary to what Plaintiffs assert, APS has consistently estimated demand and consumption for demand rate accounts based upon, where applicable, "the customer's usage during the same month of the previous year" and "the amount of usage during the preceding month." *See* A.A.C. R14-2-210(A)(2). The only significant change has been the extent to which the estimated billing process has been computerized.

1. Estimated Billing Method Under the Old CIS.

Prior to September 14, 1998, APS generated bills using a computer system commonly referred to as "old CIS." When estimated bills were necessary, the old CIS estimated both consumption (kWh) and demand (kW) based on a customer's individual account history. Consumption was estimated based on the customer's usage during the same month of the previous year and the amount of usage during the preceding two months of the same year. Demand was estimated using a "load factor," a number calculated by averaging kW of the two previous months, the same month of the prior year, and peak demand of other customers with similar kWh usage. (McLeod Affidavit at ¶¶ 2-11, **Exhibit A** hereto.)

The old CIS did not automatically send estimated bills to demand rate customers. Instead, bills with a demand component that required estimates under the old CIS triggered what is referred to as a "billing exception." A billing exception caused that customer's account to be sent to a billing representative in APS's Billing Department. At that point, the billing representative could either (1) use the estimated numbers calculated by the old CIS; or (2) if the CIS data appeared to be insufficient, manually calculate the consumption and/or demand estimates based on that customer's account history and peak demand of other customers with similar kWh usage; and/or (3) request that a meter reader make another attempt to obtain an actual meter read. (*Id.* at ¶12-13.)

The estimating procedures used by the old CIS were well known to the ACC and were addressed and applied by the ACC in several written orders prior to 1998, including a detailed order dated December 10, 1996 in Docket No. U-1345-96-162 (*Ciccone v. Arizona Public Service Co.*) (a copy of which is attached hereto as **Exhibit B**) ("[W]e 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.")

2. Estimated Billing Method Under the New CIS.

On September 14, 1998, APS began using a new computer system, which is commonly referred to as "new CIS." Although the new CIS system has always been able to estimate consumption (kWh), at its inception and for approximately the next eight months, the new CIS was unable to estimate demand (kW). Thus, from September 14, 1998, through late March or early April 1999, if the new CIS did not have an actual read for the demand number, the system would create a billing exception for that account. As with the old CIS system, the billing exceptions caused a billing representative to review the account and calculate the required estimate. The billing representative could do so by manually calculating the estimates based on that customer's account history, the peak demand of other customers with similar kWh usage, or could request that a meter reader make another attempt to obtain an actual read of the meter if possible. (McLeod Affidavit, Exhibit A, at ¶¶14-16.)

In late March or early April 1999 the new CIS was programmed so that it could estimate demand (kW), as well as consumption (kWh). The new CIS estimated demand -- as was also done by the old CIS -- using a load factor.[3] Thus, as of late

[3] In approximately July 2002, APS lowered the load factor percentage used to calculate estimated demands to 35% for residential accounts and 50% for non-residential accounts. APS based this change on market research regarding the accuracy of the load factors in estimating demand. McLeod Affidavit, at ¶18.

March or early April 1999, the new CIS estimated both consumption *and* demand and automatically sent out bills that contained estimates. However, in a number of instances the new CIS still generated a billing exception for some bills that required estimates (thus requiring the billing representative to review the calculation or prepare the estimated bills). For example, if the customer did not have a sufficient history from which to calculate consumption (kWh), the new CIS would generate a billing exception, requiring a billing representative to manually calculate the estimates based on the customer's available account history. (*Id.* at ¶¶15-16.) *See also* Affidavit of Janet Smith, **Exhibit C** hereto.)[4]

In short, although APS has refined the methodology used to provide estimates on bills to more accurately reflect actual demand estimates on bills and to computerize the process, the basic method used to estimate consumption and demand is the same under the old CIS and the new CIS systems.

C. Estimating Bills for More than Three Consecutive Months Is Neither Prohibited by ACC Regulations Nor Necessarily Detrimental to a Customer.

Plaintiffs' discussion of the Subclass B issues is likewise inaccurate. Plaintiffs contend that APS violated A.A.C. R14-2-210(A)(4) by sending estimated bills to some customers for more than three consecutive months, but that regulation does not prohibit estimated bills for more than three consecutive months. The regulations states:

> After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will

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[4] Beginning in early December 2000, the spreadsheet used by the billing representatives to estimate demand in those instances when a billing exception had been generated by the new CIS was revised to include the load factor percentages that the CIS system used to estimate demand. The billing representatives thus had the same three options that had been available to them under the old CIS: they could use the computer-generated demand estimate; they could recalculate the demand estimate using the previous two months history of the same year, the same month of the previous year, and the peak demand of other customers with similar kWh usage; or they could request that the meter reader again attempt to get an actual read of the meter. (McLeod Aff. at ¶17.)

> attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.

As set forth below, that is precisely what APS attempts to do -- secure an accurate reading of the meter -- each month that a bill is estimated, both before and after the third month. Indeed, where meter access issues require a bill to be estimated, the customer is better off receiving an estimated bill than having service terminated. For this reason, APS seeks to minimize disruption and inconvenience for the customer even when APS has the right to terminate the customer's electric service due to the customer's repeated refusal to provide meter access.

ARGUMENT

I. The Court Should Defer Consideration of Class Certification Until the ACC has Interpreted Rule R14-2-210 ("Rule 210").

As a preliminary matter, this Court should defer consideration of class certification pending a decision by the ACC on the Application APS filed with the ACC in October 2003. APS seeks the ACC's interpretation of A.A.C. R14-2-210(A) and a determination of whether APS is in compliance with that rule. The technical intricacies of the estimating procedures -- as outlined above -- and the long history and expertise that the ACC has with regard to its own regulations make this a case in which the Court should defer to the ACC at least in the first instance. [5]

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[5] As the Court is aware, APS's Application asks that the ACC find that APS and the other incumbent utilities should be declared to be in compliance with or otherwise exempt from Rule 210 at all times since the amendment of the Rule in 1998 and should be able to continue using their established estimating procedures, without any further approval by the ACC, until such time as the Director issues new and different "operating procedures" under A.A.C. R14-2-1612 ("Rule 1612"). In addition, APS's Application to the ACC asks the ACC to find that APS's estimating procedures have in fact been approved by the ACC within the meaning of amended Rule 210 given that the ACC has never indicated that APS's estimating methods were unsatisfactory when those methods were outlined to the ACC in connection with other contested hearings and reporting requirements. APS also raised in its Application an issue as to whether Amended Rule 210 and Rule 1612 are valid and enforceable or whether those Rules ever actually took effect in light of other events and court rulings relating to these and other deregulation rules. On January 27, 2004, the Arizona Court of Appeals affirmed in relevant part a lower court decision invalidating Rule 1612 (among others). By implication, this ruling would also invalidate the 1998 amendment to Rule 210 upon which Plaintiffs' claims for Subclass A are based. *See*

Should the ACC find that APS's bill estimating procedures are either exempt from or comply with the requirements of the ACC Rules, there would be little or nothing left to litigate because such a ruling would validate the estimated bills rendered by APS to Plaintiffs and all other potential class members. At the very least, a decision by the ACC will clarify any ambiguity in the procedures and provide further direction for the Court in deciding whether any of the claims in this litigation have merit. Thus, before initiating expensive and time-consuming discovery and notice to potential class members, the Court should allow the ACC to render its decision on the pending Application -- a decision that goes to the very heart of the claims that Plaintiffs seeks to pursue on behalf of the putative classes.

II. Class Certification Is Inappropriate Under Ariz. R. Civ. P. Rule 23(b).

Apart from the issues raised by APS's Application before the ACC, Plaintiffs' Motion for Class Certification should be denied because it fails to satisfy the requirements of Ariz. R. Civ. P. Rule 23(b). Plaintiffs bear the burden of showing that their case is appropriate for class action certification by showing that they have met each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001); *see also Markiewicz v. Salt River Valley Water Users' Ass'n*, 118 Ariz. 329, 341, 576 P.2d 517, 529 (App. 1978). Plaintiffs seek class certification under both Rule 23(b)(3) and (b)(2), but they fail to meet their burden of proof for either.

A. Certification of Subclass A Should Be Denied Because It Fails to Satisfy the Predominance and Superiority Requirements of Rule 23(b)(3).

In order to certify a Rule 23(b)(3) class, the Court must find (*i*) "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and (*ii*) "that a class action is superior

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Phelps Dodge Copr. V. Ariz. Elec. Power Coop., Inc., No. CA-CV-0068 (Ariz. App., January 27, 2004, at pp. 45-48).

to other available methods for the fair and efficient adjudication of the controversy." Ariz. R. Civ. P. 23(b)(3).[6] Subclass A fails both the predominance and superiority tests because of the difficulties of proving that each class member suffered injury in fact and actual damages.

1. Individual Issues of Injury-in-Fact and Damages Predominate Over Any Common Issues.

As detailed above, Plaintiffs seek monetary relief for Subclass A through a variety of claims, most of which require Plaintiffs to prove that APS's allegedly unlawful estimated billing practices injured each member of the subclass. The existence of predominating individual issues of liability -- i.e., injury in fact and actual damages -- renders class certification improper in this instance.

The predominance inquiry under Rule 23(b)(3) tests whether a proposed class is sufficiently cohesive to warrant certification. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249 (1997). Where individual issues predominate over the common questions of law or fact, the class lacks cohesiveness and certification is inappropriate. *See Markiewicz*, 118 Ariz. at 342, 576 P.2d at 530. Specifically, where "proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable." *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 187 (3d Cir. 2001). Thus, even where some common questions of law or fact arise, class certification is inappropriate in cases where individualized issues of liability predominate.[7] *Id.*

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[6] As part of its rigorous analysis of the predominance and superiority criteria, the court must take a "close look" at (A) the class members' individual interest in controlling the prosecution of the case, (B) any existing litigation regarding the controversy, (C) the desirability of concentrating litigation of the claims in the particular forum, and (D) the difficulties likely to be encountered in the management of the class action. Ariz. R. Civ. P. Rule 23(b)(3); *see also Amchem*, 521 U.S. at 615-16, 117 S.Ct. at 2246. Where the first three factors "are not relevant, the key question involved in the two Rule 23(b)(3) findings should be manageability." *Lennon v. First Nat'l Bank of Arizona*, 21 Ariz. App. 306, 311, 518 P.2d 1230, 1234 (1974).

[7] Courts have held in a variety of contexts that individualized issues of liability predominate over common questions, making class certification improper. *Johnston v. HBO Film Mgmt, Inc.*, 265 F.3d 178, 187 (3d Cir. 2001) (Rule 10b-5 claims require

In this case, individual questions of whether each class member sustained economic injury present an insurmountable obstacle to certification. *See, e.g. Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 187 (3d Cir. 2001). Plaintiffs allege that APS's bill estimating procedures resulted in "excessive estimated bills" (Pls. Mot. at 3), but Plaintiffs have failed to present evidence that the sole class representative (Mrs. Read) -- let alone a single member of Subclass A -- was overcharged as a result of APS's estimated billing procedures.[8] In fact, record evidence shows that estimated billing may work to a customer's economic benefit where the estimated demand (kW) was lower than actual demand. (McLeod Aff., Exhibit A, at ¶20-23.) In those cases where estimated bills work to the customer's favor, APS does not seek a rebate from the customer. (Id. at ¶23.) And in those cases where APS is able to obtain a normal read and finds that the previous month(s) estimated read was too high, APS issues the customer a credit on his or her account.

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individualized determination of whether stockholders relied on alleged material misrepresentations); *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 180 (3d Cir. 2001) ("In a securities class action, a putative class may presumptively establish economic loss on a common basis only if the evidence adequately demonstrates some loss to each individual plaintiff."); *Zinser*, 253 F.3d at 1189 (causation and damages for products liability plaintiffs presented individualized issues for trial); *Rutstein v. Avis Rent-A-Car Systems, Inc.*, 211 F.3d 1228, 1240 (11th Cir. 2000) (civil rights plaintiffs' claims for damages must "'focus almost entirely on facts and issues specific to individuals rather than the class as a whole'") (citation omitted); *Daly v. Harris*, 209 F.R.D. 180, 193 (D. Haw. 2002) (liability and proving damages with respect to plaintiffs' First Amendment claims turn on factual circumstances of each class member).

[8] Plaintiffs contend that the court must take the substantive allegations in the complaint as true. Pls. Mot. at 9. However, in making the class certification decision, the court need not take as true the allegations in the complaint where those allegations are unsupported and rebutted by the record. *Johnston v. HBO Film Mgmt, Inc.*, 265 F.3d at 186-87. Furthermore, the Court must conduct a "rigorous analysis" into whether the prerequisites of Rule 23 are met before certifying the class. *Zinser*, 253 F.3d at 1186. The Supreme Court has held that "sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 160, 102 S.Ct. 2364, 2372 (1982). Accordingly, the Court's "rigorous analysis" may include consideration of the factual and legal issues comprising the plaintiff's cause of action as well as the evidence in support of and in opposition to class certification *Id.* (citations omitted); *see also Reader v. Magma-Superior Copper Co.*, 110 Ariz. 115, 116, 515 P.2d 860, 861 (1973).

(Id. at ¶24.) The Court cannot presume that the members of Subclass A have suffered economic damages on a class-wide basis; economic injury will have to be determined on a bill-by-bill basis for each individual class member. *See, e.g., Newton*, 259 F.3d at 187.

Plaintiffs will also have to prove the amount of actual damages for each class member. Here again, assuming the Court determines that an individual class member suffered an injury in fact, the Court then will have to engage in an individualized inquiry to determine the amount of that injury. There simply is no overall mechanism -- and Plaintiffs suggest none -- for (1) identifying customers whose estimated charges were higher than actual use, or (2) quantifying the amount of any actual economic damage. Indeed, there is every reason to believe that APS's estimating procedure for demand customers was more favorable to the customers as a whole and resulted in an overall loss of revenue to APS. (McLeod Aff. at ¶25.)

Thus, Plaintiffs have not met their burden of proving that common issues predominate in this case. Injury in fact and actual damages -- essential elements to Plaintiffs' claims -- are individualized questions that will have to be resolved by mini-trials examining the particular circumstances of each class member's account. *See, e.g., In Re Methionine Antitrust Litigation*, 204 F.R.D. 161, 165 (N.D. Cal. 2001). The need for individualized determinations of essential elements of Plaintiffs' claims makes class certification inappropriate.

2. Class Treatment Is Not Superior Because of the Manageability Problems Created by the Need for Individualized Determination of Essential Elements of Plaintiffs' Claims.

In a related vein, Plaintiffs have also failed to prove that a class action would be superior to other available methods for resolving the controversy. In determining superiority, courts address "the difficulties likely to be encountered in the management of a class action." Ariz. R. Civ. P. 23(b)(3)(D). Courts recognize that

"[i]f each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not 'superior.'" *Zinser*, 253 F.3d at 1192 (citations omitted); *see also Daly v. Harris*, 209 F.R.D. 180, 194 (D. Haw. 2002) (holding that the superiority criteria of Rule 23(b)(3) is not satisfied where "[r]esolution of liability and damage issues with respect to members of these classes... will require the Court to conduct individualized and time-consuming inquiries"). The bottom line is that when injury and damage determinations must be made on an individual basis, "adjudicating the claims as a class will not reduce litigation or save scarce judicial resources. Under these circumstances, plaintiffs fail to satisfy the superiority standard." *Newton*, 259 F.3d at 192 (citations omitted).

Here, the fact that the court will need to hold individualized mini-trials regarding injury and damages offsets any benefits that may be achieved by class treatment. Class certification will neither reduce litigation nor conserve judicial resources, and therefore fails the superiority test of Rule 23(b)(3)(D).

B. Subclass B Also Fails to Meet the Predominance and Superiority Requirements of Rule 23(b)(3).

Plaintiffs also face insurmountable hurdles to certification of Subclass B because individualized issues predominate over common issues. Plaintiffs contend that APS acted improperly as to every customer who received more than three consecutive estimated bills on non-demand accounts. Plaintiffs' entire Subclass B claim is based on the invalid assumption that ACC rules and regulations require that APS stop issuing estimated bills to a customer (and presumably terminate the customer's service) after the customer has received three consecutive months of estimated bills. As noted above, however, the ACC rules and regulations do not prohibit more than three consecutive estimated bills. According to A.A.C. R14-2-210(A)(4), after the third consecutive month of estimating a customer's bill due to

lack of meter access, the utility "will attempt to secure an accurate reading of the meter." Nothing in the regulation prohibits a utility from continuing to send the customer estimated bills if access to the customer's meter cannot be obtained. At most, therefore, the issue for Subclass B is what constitutes an "attempt to secure an accurate reading of the meter" and did APS do so with respect to each member of the purported class.

A number of factors may prevent APS from obtaining access to a customer's meter, including a locked or inaccessible gate, the presence of a dog, vegetation obstructing the view of the meter, or lack of access to the home itself. Any time an APS meter reader is unable to access a customer's meter, either (1) the meter reader leaves a door hanger that states the reason the meter was not read and asks the customer to contact APS, or (2) the customer is sent a Meter Access Request letter. (McLeod Aff. at ¶¶26-36.) APS issues the customer an estimated bill with a side bill message that reads as follows: **"*ALERT/ALERT* A meter reading issue exists at your location. Please call us at 602-371-7171 (Metro Phoenix area) or 1-800-253-9405 (other areas)."** (*Id.* at ¶34.) After more than one month of estimated billing, APS uses various tools to contact the customer about obtaining access to the meter, including automated voice messages, postcards, additional letters, personal phone calls, and continued monthly visits by meter readers. (*Id.* at ¶¶32-36.)

Thus, whether APS attempted to secure an accurate reading of each subclass members' meter after the third consecutive estimated bill and whether the estimated bill caused damage are highly individualized questions. The Court will have to review each class member's billing history to see what attempts were made to read that particular customer's meter. Such a process would involve not only countless documents and customer files, but also the testimony of numerous witnesses such as meter readers, billing representatives, and the individual class members themselves.

Indeed, a review of the account of the Schaeffer Plaintiffs -- the proposed representatives for Subclass B -- demonstrates how the court will have to make an individualized assessment of whether APS attempted to obtain an accurate reading of each customer's meter. In April, May, June, and July 2002, the Schaeffers received estimated bills with a side bill message asking them to call APS because of lack of meter access. In July 2002, the fourth consecutive month of estimated bills, they were also sent a blue card (asking them to read the meter) and APS had a phone conversation with them regarding access issues. In August 2002, the Schaeffers received a fifth estimated bill with a side bill message. That month, APS again spoke to the Schaeffers, who gave APS a reading of their meter over the telephone and said they would unlock the gate to allow access by the meter reader. The Schaeffers were issued corrected monthly bills for April through August based on the reading they gave to APS which showed that APS had been underbilling the Schaeffers during those months. (Id at ¶39.) Thus, APS made attempts from the very first estimated bill to access the customer's meter and continued to do so thereafter. Other accounts reveal similar attempts by APS to secure an accurate reading of a customer's meter after three consecutive estimated bills, and, in virtually every case, with the very *first* estimated bill. (*Id.* at ¶40 and 41.)

Moreover, because Plaintiffs seek monetary damages for Subclass B, there are even additional individualized issues with respect to this proposed class. The Court will have to determine whether each class member was injured and, if so, what the amount of his or her actual damages are. In fact, there is and can be no evidence of damage because billing on kWh (non-demand) accounts is based on accumulated usage much like the mileage on a car's odometer. Therefore, when a bill is estimated, the next bill that is based on an actual read (when added to the estimated bills), will be a "true up" and reflect the actual consumption since the last meter read. For example, if the estimate of usage in the first month was higher than actual usage, the following

"true up" bill for month two will be correspondingly lower than actual usage for month two and the combination of month one and month two bills will be the actual usage between meter reads. Therefore, the customer has only paid for actual usage and has not been damaged.

Additionally, in many cases, just as with the Schaeffers, the estimated bills are lower than actual usage and the "true up" bill based on an actual meter read is a "catch up" bill that includes usage not previously included in the estimated bills. Thus, there simply is no damage to members of the proposed Subclass B no matter how many months their bills are estimated.

In short, just as with Subclass A, individualized questions of law and fact predominate over any common issues, making Subclass B inappropriate for class certification under Rule 23(b)(3). Furthermore, individualized determination of these issues will create management problems that defeat Rule 23(b)(3)'s superiority criteria. Accordingly, Subclass B should not be certified under Rule 23(b)(3).

C. Class Certification Is Inappropriate for Both Subclasses Under Rule 23(b)(2).

Plaintiffs give cursory treatment to certification under Rule 23(b)(2), contending that unless enjoined, APS will continue its "deceptive and unlawful practices." (Pls. Mot. at 17.) Plaintiffs' assertion that injunctive relief is necessary is belied by the fact that APS has sought clarification from the ACC of the very regulations that Plaintiffs contend APS violated. The ACC is the entity most qualified to determine the scope and effect of its regulations. The ACC has constitutional and statutory authority to promulgate rules and regulations governing the ratemaking and billing functions of public service corporations in Arizona. Given that estimated billing procedures fall squarely within the ACC's ratemaking power, the Court need not and should not certify a Rule 23(b)(2) class. Indeed, if the class is certified without a decision first being obtained from the ACC on the pending Application, there is the potential for customer confusion and inconsistent decisions. As such,

class certification under Rule 23(b)(2) is neither necessary nor appropriate, and, at a minimum, should be deferred until the ACC issues its decision.

CONCLUSION

The Court should deny Plaintiffs' Motion for Class Certification. Class certification is inappropriate because Plaintiffs have not met their burden under Rule 23(b)(3) of proving that common issues predominate and that a class action is a superior method of adjudicating this controversy. Similarly, Plaintiffs have failed to show that there is any need for injunctive relief under Rule 23(b)(2), and any action in that regard by this Court would potentially conflict with decisions, and impinge upon the authority, of the ACC. At a minimum, the Court should defer consideration of Plaintiffs' Motion until the ACC has ruled on APS's pending Application to the ACC because that ruling by the ACC will necessarily impact the issues in this litigation and may dispose of them altogether.

DATED this 27th day of February, 2004.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** (Assigned to the Honorable Rebecca A. Albrecht)

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I. INTRODUCTION

Plaintiffs Avis Read and Paul and Linda Shaeffer submit this memorandum to briefly respond to the arguments raised by Defendant in its opposition to Plaintiffs' class certification motion. Defendant raises only three arguments in its brief:

- Having denied a stay after extensive briefing and argument in February, the Court should deem a stay to be appropriate in March.
- APS's latest version of the facts surrounding its adoption of its self-created, changed estimating procedures demonstrates that they were not changes at all, despite documents and testimony confirming that they <u>were</u> unapproved changes.
- Because, at this stage of the litigation, they control the customer billing records that would determine the amount each consumer would be harmed by APS's use of unapproved new estimating procedures, the class cannot be certified, since the Plaintiffs cannot show the extent of each consumer's harm from the records only APS has.

As the following will demonstrate, these arguments are, by turn, duplicative of a previously decided motion; a self-defeating summary of the common fact disputes that will determine liability and consequently mandate certification; and a mis-statement of the law separating common liability issues from individual damage issues in the class action certification context.

A. <u>Defendant's Latest Stay Argument Should Be Rejected.</u>

While using the verb "defer" in lieu of the verb "stay", Defendant's argument that this Court should defer deciding this motion is simply a rehash of its argument for a stay. The Court has already decided this issue, and a stay is no more appropriate now than it was when the Court issued its Order on the subject on February 25, 2004.

B. <u>Defendant's Fact Summary is Contradicted by Its Own Documents and Testimony, and Merely Frames the Common Liability Issues Anyway</u>

Defendant's latest version of the facts may be simply summarized:

1. Defendant's pre-1999 estimating procedures were consistent and approved by the Corporation Commission, even though Ms. Smith's records and testimony indicate the contrary.

2. The change to a computer-driven automatic estimating procedure in 1999 that determined the estimated bill by using a generic percentage load factor rather than the previously used individual demand histories was not a change at all, although Defendant's own documents say it was.

3. The subsequent change to a lower generic percentage of load in 2002, which increased the estimated bills of consumers compared to the previous, equally-unapproved formula, was not really a change because: (a.) it was based on "market research" (footnote 3, pg. 4), and (b.) presumably, Defendant feels that its relegation to a page 4 footnote somehow renders it inconsequential. Defendant thus urges that this change was not the unauthorized creation of new estimating procedures despite another document (Smith e-mail written at the time) flatly contradicting their claim, stating that it was, and conceding it was a price increase.

What actually occurred is summarized in the affidavit of Plaintiffs' expert, Dr. Mark S. Shirilau, P.E. In short, Defendant formerly used the particular customer's prior history to estimate demand. In 1999, because it was easier for APS, it decided, without Commission approval, to change the load factors in its estimating formula to a generic percentage number, rather than the customer by customer estimates based upon account history it previously used and claims was approved by the Commission. As paragraph 7 of Dr. Shirilau's Affidavit makes clear, this change completely altered the outcome of every demand estimate. (See example cited at ¶7 from Defendant's own CIS Manual.)

In 2002 it lowered the percentage demand factor without Commission approval. As Dr. Shirilau points out, this gave APS a revenue increase, and customers higher estimated bills. (Affidavit of Dr. Shirilau, ¶9.)

Obviously, Plaintiffs assert that the trail of exhibits and Ms. Smith's own testimony establish that APS has been making up its own rates and procedures in violation of Arizona law, and that is not "much ado about nothing".[1] Plaintiffs' opening brief and Exhibits fully make that point. Defendant

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[1] This evaluation is pure posturing. It may be compared to the following statement by APS's counsel, Mr. Thomas L. Mumaw to the Arizona Corporation Commission on January 23, 2004:

does not dispute what happened, but argues that a change was not a real change in the load factor it used to determine demand requiring Commission approval.

Regardless of who is right about whether the changes are unapproved estimating procedure changes or "much ado about nothing", the inquiry frames the litigation. Based upon the testimony and the documents, the Court or jury can determine whether Defendant has been using an unauthorized, and hence unlawful and deceptive estimating procedure for demand meters, since the initial change to the load factor methodology. Defendant's factual assertions in its brief are ultimately self-defeating and support class certification, since they simply state the other side of the common class issues that control the outcome of the litigation. Liability turns on whether these were indeed changes, because Defendant never suggests they were authorized. If they were unauthorized, unapproved changes in estimating procedures, they affected every class member, since as Dr. Shirilau points out, they changed, and in the case of the 2002 action, definitely increased, the amount customers were billed. The only non-common issue is how much the changes cost consumers. Liability is a common and predominant question, even under Defendant's version of the facts.

C. Individual Issues As to How Much Defendant's Use of Unapproved Procedures Damaged Each Class Member Do Not Defeat Class Certification as a Matter of Law

Defendant's sole Rule 23 argument, that not all class members may have been overcharged by the use of unapproved estimating procedures, and thus the class has individual claims, misses the point entirely.

It does so by re-defining Plaintiffs' claims and re-writing Arizona statutory law to prohibit sending out unapproved, illegal bills only if that results in an overcharge that the customer can measure without access to Defendant's records. This is simply a re-writing of the record and the statute. The entire class has been billed improperly, using twice-changed numbers for load in a demand estimating formula that the Corporation Commission has not approved. The statute is crystal clear that the violation occurs when any bill using an unapproved procedure is sent to a customer. The amount of

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"But we do believe that this is the issue. And I have discussed this with counsel for other utilities. This is an issue that we're going to have to face and have to get resolved."

the harm caused to the customer by Defendant's unlawful conduct in calculating the bill using an unapproved procedure is a matter of measuring the damage resulting. While the measure of damages is an individual issue, the case law is clear that that is not a reason to deny certification. The use of an unlawful procedure does not create uniform harm. It creates harm measured by the difference in the result when Defendant's computer is programmed with a Commission-approved formula, including an approved method for measuring load, and then a computer run is made of what the relevant bills should have demanded. These bills can then be compared to a computer run of the sums customers actually paid: Will the result vary from homeowner to homeowner? Of course. But that has nothing to do with liability for sending out unauthorized bills, it is simply the varying measure of the resulting harm. By arguing that each Plaintiff must prove harm in order to prove liability, Defendant is re-writing the statute to say that a utility can send out unauthorized bills at its pleasure, and is only in breach of the statute if the unauthorized bill results in an immediately demonstrable financial injury. That is nonsense. If the estimating procedure is not approved by the Commission, the bills are unlawful and every customer has a claim. This is what the statute says. All that is at issue then is the amount of the claim if Plaintiffs are right about the bills being unauthorized. If some customers have a zero damage claim, so be it. But that does not mean Defendant has not breached the statute, or that the customer is not protected by the statute and entitled to a proper bill, properly calculated, regardless of the outcome.

Defendant tries to force this square peg of an argument into a round hole by also re-writing the class definition. The class has been quite deliberately designed to include all customers who had their demand meters estimated during the class period. That is because every estimated bill sent to the class violated the statute. Defendant wants to first create a straw man class comprising of only those who can magically produce a corrected accounting before damage discovery, and then argue that under its new definition requiring advance proof of damage, there are individual fact questions. That is not the claim, and it is not how the class is defined.

Plaintiffs in this case simply seek an accounting and correction of the billing errors created by APS's use of an estimating methodology it created for itself, and did not have approved by the Commission.

The conduct and its illegality are common issues. The conduct is not really even in dispute. Only the damage, in the form of a measure of the proper estimates against the unapproved estimates, is an individual issue and that issue can be resolved to a certainty by using Defendant's own computer.

The fact that all class members have claims is demonstrated by looking at Defendant's changes in estimating procedures. The changes made in the load numbers used in the formula kWh=Demand (Load X Hours) had to change the bill the customer received because it changed the key number in the formula, and, in the case of the 2002 change, it had the effect of increasing the consumer's bill. (See Affidavit of Dr. Shirilau). In 2002, Ms. Smith simply changed the load factors she used, and thereby increased APS's revenue. Thus, even assuming, *arguendo*, that the first unauthorized "Smith" formula was somehow proper, the second change in 2002 is still a blatant act by Defendant to increase electricity bills without the Commission's knowledge. That violates the statute as to all class members. The amount of the harm to any one class member is irrelevant at this stage, and will be irrelevant at trial, until the damage question is reached. This is not a liability class defined by the damages, it is a liability class defined by being subject to the statutory violation. It is not about proof of injury at this stage; it is about proof of being illegally billed. The class definition reflects that fact. The harm is in receiving an unlawfully calculated bill, and if the billing formula is proved before this Court or a jury to be unapproved, the consequences of that will then have to be addressed by mechanically calculating the effect on the class members and adjusting their accounts accordingly.

The trial of this matter could hardly be simpler, assuming that there is anything but damages left to try after a Rule 56 motion. Defendant's exact steps in creating its estimating procedures, and the actual procedure that resulted either were or were not approved by the Commission as a matter of fact, and are or are not lawful as a matter of reading the statute. If they were approved, Defendant prevails under the statute. If they were not approved, the Class is entitled to new bills for the months at issue, using the last Commission approved formula, and the individual outcomes will be what they will be. Defendant knows what it did bill and what it should have billed, if Plaintiffs are correct in asserting that the 1999 and 2002 changes in the load factors were unapproved and unlawful, the difference between the two must be calculated, at which point the entire class will have been treated fairly under the statute.

In short, once the Court is past the authorized versus unauthorized common issue, the case is simply a matter of doing the arithmetic necessary to recalculate the estimated bills if changes were unapproved.

> "When monetary relief is sought, and data from each member is required to assess individual recovery entitlement, it is still possible in most cases for the class representative to develop and prove common guidelines or formulae that will apply to determine the measure of recovery for each individual proof of claim."

3 *Newberg On Class Actions* § 10.1 at 476 (4th ed. 2000)

This is what is at issue here. Once the statutory violation and the general entitlement to damages is established by showing that an estimated bill was sent and paid using a n u nlawful estimating procedure, the individual, mechanical determination of damage is no bar to certification. Certainly, in the context of a mass tort, where liability, causation, injury and damage are at issue, certification may not be possible. But in this case the Court is dealing with a single liability issue, and mechanically calculable damages that can be formulaically determined for each class member subject to the statutory harm of receiving and paying an unlawful bill. Where damages can be assessed mechanically, individualized claims for damages are not a barrier to class certification. See, Windham v. American Brands, Inc., 565 F.2d 59, 68 (4th Cir. 1977) (cited in Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1306 (9th Cir. 1990).

Not every class member will receive money, but every class member will receive a corrected bill using the correct estimating formula. Resolution of this case turns upon three elements, only one of which is individual, and that element, damages, is provable mechanically as to all class members, and need not be common..

If the 1999 and 2002 changes were (a.) changes, and (b.) unapproved (which is apparently not in dispute) every class member suffered harm by receiving an unlawful and improperly calculated bill. That entitles each class member to a corrected bill using the factors in Section 2a of the statute, and where there is a difference (which there will be in virtually every instance, particularly in light of the self-granted 2002 price increase), the amount of damage, (or the fact that there is no damage) resulting from the violation and the receipt of the unlawful bill will be established.

The simple fact is that try as it may, Defendant cannot avoid two simple truths: (1.) if they sent out unlawfully calculated bills, the issue must be addressed and corrected; and, (2.) if it is to be corrected for each customer, which it should be, this case is the best, most efficient and fairest way to correct the problem.

Liability is a question of whether the changes in the load factors (that Defendant concedes took place, and in the case of the 2002 price increase indisputably increased bills) should have been approved by the Commission before being used to calculate APS bills sent to consumers. If the answer to that common question is "no", this case is resolved. If the answer is "yes", corrected bills need to be prepared using an approved formula. At which point the case will be over. Either way this is a common question subject to common resolution, making it ideal for class treatment.

II. CONCLUSION

For all the reasons state in Plaintiffs' briefs and supporting documents, including the Affidavit of Dr. Mark S. Shirilau, this case should be certified to proceed as a class action, and Notice should be sent to the Class.

Respectfully submitted,

DATE: March 24, 2004

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No. CV 2002-010760 **SUPPLEMENTAL MEMORANDUM OF DEFENDANT ARIZONA PUBLIC SERVICE COMPANY ("APS") REGARDING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** (Assigned to the Honorable Rebecca A. Albrecht)

This Supplemental Memorandum is submitted for two reasons: (1) to advise the Court of the current status of proceedings before the Arizona Corporation Commission ("ACC") regarding the Application filed by APS in October 2003 to have the ACC interpret, clarify and/or modify A.A.C. R14-2-210(A) ("Rule 210") and the impact of the recent Arizona Court of Appeals decision in the Phelps Dodge case, and (2) to inform the Court of the action that will be taken by APS in light of the new

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issues raised in Plaintiffs' reply memorandum in support of their Motion for Class Certification.

I. The Status of APS'ss Application to the ACC.

In October 2003, APS filed its Application with the ACC. In January 2004, the ACC referred the matter to its Process Standardization Working Group for further analysis and recommendations. As a result of discussions at the Working Group and as a result of the recent decision by the Arizona Court of Appeals in Phelps Dodge Corp. v. Arizona Electric Power Co-op, Inc., 418 Ariz. Adv. Rep. 10, 83 P.3d 573 (App., Jan. 27, 2004), APS is in the process of preparing an amended and more detailed Application to have the ACC interpret, clarify, and/or modify A.A.C. R14-2-210(A). That amended Application by APS will be filed with the ACC shortly.

Although there is no specific schedule for the ACC to consider APS'ss Application, APS will seek to have the ACC deal with the Application before lengthy rate hearings on other matters begin early this Summer.

II. Additional Developments in Phelps Dodge case.

As we advised the Court in APS's Response to the Motion for Class Certification, the Phelps Dodge case referenced above is significant not only for the ACC's consideration of APS's Application to the ACC, but also for this Court's consideration of the issues in this lawsuit.

After APS's Response was filed on February 27, 2004, a number of parties in the Phelps Dodge appeal filed motions for reconsideration. On March 15, 2004, the

Arizona Court of Appeals denied the motions for reconsideration, but slightly modified its January 27, 2004 opinion. None of the March 15 revisions, however, changed the ruling by the Court of Appeals as it relates to this case.

As we previously advised the Court, the Court of Appeals decision in Phelps Dodge invalidated A.A.C. R14-2-1612 ("Rule 1612") -- the rule that provided for the Director of the Utility Division of the ACC to promulgate procedures for utilities to obtain ACC approval of their bill estimating procedures (in anticipation that, under deregulation, numerous new electric service providers would avail themselves of the opportunity to provide electric service in Arizona). Thus, not only has Rule 1612 never been implemented (because the Director of the Utility Division never promulgated "procedures" for utilities to have their estimating procedures approved), but now the very rule itself has been declared invalid. Under these circumstances, the companion provision of Rule 210 requiring ACC approval of a utility's estimating procedures (also promulgated in 1998 as part of the deregulation package) would likewise seem to be invalid.

Now that the Motions for Reconsideration filed in the Phelps Dodge case have been resolved, the interpretation and intended application of Rule 210 -- particularly as to incumbent utilities such as APS that had a long history of estimating practices prior to the Rules amendments -- must now be addressed by the ACC.

///

///

III. Plaintiffs' Reply Brief Squarely Raises Issues of Primary Jurisdiction of the ACC.

Whatever may have been the case before, it is now clear from Plaintiffs' reply brief that Plaintiffs' claims in this lawsuit implicate the ACC's primary jurisdiction.[1] Until now, Plaintiffs have attempted to avoid a jurisdiction impediment to this litigation by vaguely contending that the core issue in the litigation was whether APS'ss estimated bills were "false and misleading" because they did not comply with approval procedures established by the ACC. For example, in their Motion for Class Certification, Plaintiffs generally contend that the principal "common issue" is "whether APS's estimating and billing practices were and/or remain to the present contrary to controlling State law and Regulations." (Motion at p. 11.) In their reply brief in support of class certification, however, Plaintiffs now contend that certification of Subclass A (i.e., demand-rate customers who received estimated bills) turns on whether changes to the load factor methodology used by APS "were unauthorized, unapproved changes in estimating procedures."[2] (Reply at p. 3.) In support of this contention, Plaintiffs attach the affidavit of an alleged expert -- who

---

[1] APS indicated in its motion for stay that Plaintiff's claims may present primary jurisdiction issues, but APS stated that it was unnecessary for the Court to reach the issue at that point. Plaintiff's reply brief now brings that issue front and center.

[2] Plaintiffs apparently have taken this new tack because they recognize that the limited issue of whether the ACC must provide approval of APS's estimating methods (or whether the ACC has already done so) does not by itself establish liability to any class member and leaves unaddressed a number of individualized liability requirements (including fact of injury and damage). Thus, Plaintiffs seek to fill that gap by altering the thrust of their class certification arguments. Indeed, Plaintiffs do not even mention their proposed Subclass B in their reply, apparently conceding that class certification is not appropriate for Subclass B because individual issues plainly predominate as to those persons (i.e., persons who received estimated bills for more than three consecutive months).

was never previously disclosed -- who opines that the precise estimating procedure used by APS beginning in 1999 (allegedly involving use of different load factor elements) increased the amount of estimated bills.[3] As Plaintiffs go on to contend in their reply brief, the alleged common issue that Plaintiffs seek to have the Court determine is whether these estimated demand account bills were "unlawfully calculated" because APS allegedly used criteria contrary to that specified in Rule 210. (Reply at p. 5.) Such an analysis would be highly technical and would potentially invade the ACC's exclusive province relating to rates.

In APS's response to the Class Certification Motion, APS asked that the Court defer to the ACC concerning the proper application and interpretation of Rule 210. The position taken by Plaintiffs in their Reply brings this issue into even greater focus. Given the new position taken by the Plaintiffs' Reply, we want to advise the Court that APS intends to file a motion to dismiss based on jurisdictional grounds -- i.e., because these technical issues relating to bill estimating criteria and applicable load factors fall squarely within the expertise of the ACC, they should be deferred to the primary jurisdiction of the ACC. The jurisdictional issue raised in that motion to dismiss is directly relevant to APS's argument that the Court should defer ruling on the Motion for Class Certification, and we will, of course, address these matters further during the April 9 hearing on Plaintiffs' motion.

---

[3] Plaintiffs' expert concedes that the estimating method used by APS until late March or early April 1999 "was consistent with the intent of A.A.C. R14-2-210A(2) because it made the estimated demand consistent with prior demand for that customer." Shirilau Affidavit, ¶ 5. Thus, by their expert's own admission, Plaintiffs have no cause of action for APS customers who received estimated bills prior to April 1999, even though their proposed class includes customers who received estimated bills after September 1, 1998.

This is not to suggest that APS believes that the proposed class or classes are otherwise appropriate for certification. On the contrary, APS will demonstrate at the April 9 hearing on the Motion for Class Certification that Plaintiffs' legal arguments for certification are fundamentally wrong, that individual issues plainly predominate, and that certification of any class in this case would be inappropriate. It is not the purpose of this Supplemental Memorandum, however, to argue those issues in advance of the hearing on the class motion on April 9.

Dated this 6th day of April, 2004.

OSBORN MALEDON, P.A.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR CLASS CERTIFICATION** (Assigned to the Honorable Rebecca A. Albrecht)

I. INTRODUCTION

Defendant has submitted a desperate, eleventh-hour "supplemental memorandum" attempting to usurp the last word, and to rescue an obviously hopeless position with respect to Plaintiffs' motion to certify this Class. As the following will demonstrate, its memorandum merely confirms what the prior briefing made obvious: Defendant has blatantly flaunted the requirement that it send out only bills that follow approved estimating procedures. Assuming, *arguendo*, that the methods it was using prior

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to its 1998/99 switch to computer-generated automatic estimates were approved, discovery in this case has established, beyond any doubt, that Defendant subsequently made two highly material changes to its estimating procedures, failed to notify consumers of that fact, failed to have the changes approved by the ACC, and blithely sent false and unauthorized bills to its customers, representing them to be legitimate "estimates", while failing to disclose that they were completely different to prior estimates. It has no excuses, and in reality no defenses either, to the class certification motion or the claims at issue in this case. Those claims can be resolved with finality as to all APS customers who paid these bills, once the class is certified, through a Rule 56 motion.

Defendant's latest series of arguments are just variations on the same old theme of seeking to delay this action or divert it into the ACC. Defendant, yet again, attacks a duly enacted regulatory scheme; the jurisdiction that this Court plainly has over this issue; and the Court's prior rulings, because it cannot defend its conduct, or explain its own documents.

As the following will demonstrate, Defendant's argument that Plaintiffs have raised "new" claims in their motion to certify is absurd. The Amended Complaint, Plaintiffs' argument regarding Defendant's Motion to Stay, and Plaintiffs' motion to certify have presented a single consistent argument: Defendant changed its estimating procedures without Commission approval or notice to consumers and consequently sent out unlawful bills claiming sums of money from its customers that were not due, while representing that they were due, and then collected and kept the unlawful charges. Defendant's argument to the contrary is just its panic-driven response to the fact that Plaintiff's expert affidavit, countering Defendant's affidavits, nails down these facts beyond any dispute and points out the impropriety of this procedure. The tactic of calling every repetition by Plaintiffs of this same claim another novel and abrupt revelation, and then using that characterization as a peg on which to hang yet another attempt to argue that this Court lacks jurisdiction or should grant APS a stay, has reached the point of complete transparency. The Court has concurrent jurisdiction. It can and should certify this case to proceed as a class action, and promptly resolve it under Rule 56.

A. Plaintiffs Have Made the Same Claims, Using the Same Arguments From the Commencement of this Action.

As described above, Defendant's claim that Plaintiffs' Reply Memorandum and accompanying Affidavit alter the basis and nature of their claims is ridiculous. It is merely a Defendant-invented initial predicate on which to hang yet another collateral attack on this Court's denial of its Motion to Stay. The attack collapses with the failure of the initial predicate.

Paragraphs 12-17 of Plaintiffs' Amended Complaint could hardly be clearer. These parapgraphs state that:

> 12. APS has failed to make the arrangements necessary and required by State law and Regulation to read the electric meters of Plaintiffs and the members of the Class on a monthly basis, and has billed estimated sums for such use without following the procedures provided for in Arizona's Regulatory scheme, resulting in massive over-utilization of estimated, inaccurate bills at great cost and expense to consumers. APS has repeatedly estimated the consumption and demand in ways that are inconsistent with Arizona law and result in overcharges to consumers.
>
> 13. Due to the foregoing, APS has violated various laws, including Arizona Administrative Code R14-2-210 governing electrical utilities, which provides:
>
> A. Frequency and estimated bills
>
> 1. Unless otherwise approved by the Commission, the utility or billing entity shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and may offer billing options for the services rendered. Meter Readings shall be scheduled for periods of not less than 25 days Or more than 35 days without customer authorization. If the Utility or Meter Reading Service Provider changes a meter reading route or schedule resulting in a significant a alteration of billing cycles, notice shall be given to the affected customers.
>
> 2. Each billing statement rendered by the utility or billing entity shall be computed on the actual usage during the billing cycle. If the utility or Meter Reading Service Provider is unable to obtain an actual reading, the utility or billing entity may estimate the consumption for the billing period giving consideration to the following factors where applicable:
>
> a. The customer's usage during the same month of the previous year.
>
> b. The amount of usage during the preceding month.

3. Estimated bills will be issued only under the following conditions unless otherwise approved by the Commission:

   a. When extreme weather conditions, emergencies, or work stoppages prevent actual meter readings.
   b. Failure of a customer who reads his own meter to deliver his meter reading to the utility or Meter Reading Service provider in accordance with the requirements of the utility or Meter Reader Service Provider billing cycle.
   c. Provider is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the meter, that is, locked gates, blocked meters, vicious or dangerous animals. If the utility or Meter Reader Service Provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternative to obtain a customer reading of the meter.
   d. Due to customer equipment failure, a 1-month estimation will be allowed. Failure to remedy the customer equipment condition will result in penalties for Meter Service Providers as imposed by the Commission.
   e. To facilitate timely billing for customers using load profiles.

4. After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance fo service.

5. A utility or billing entity may not render a bill based on estimated usage if;
   a. The estimating procedures employed by the utility or billing entity have not been approved by the Commission.
   b. The billing would be the customer's 1st or final bill for service
   c. The customer is a direct-access customer requiring load data.
   d. The utility can obtain customer-supplied meter readings to determine usage.

6. When a utility or billing entity renders an estimated bill in accordance with these rules it shall:

   a. Maintain accurate records for the reasons therefore and efforts made to secure an actual reading;

b. Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation.

(emphasis added).

14. In contravention of the foregoing rules, APS has continued to render estimated bills to class members far beyond the three month limit without having in place any procedure to comply fully with Section 4 above or Section 5d above to obtain actual readings.

15. Additionally, despite the rule requiring APS to specify on the billing statement the reason for its estimation, APS has not abided by the rule consistently.

16. Further, the estimating procedures employed by APS pursuant to which APS rendered estimated bills, including estimated demand bills, have been created on an *ad hoc* basis by APS employees, without adequate notice to and approval by the public and the Arizona Corporation Commission. . . .(emphasis added).

17. APS's practices pertaining to meter reads have not complied with the binding State laws and Regulations, and its practices have been systematic and widespread, resulting in massive overcharges to its customers, and the unlawful mailing of unauthorized estimated bills.

(emphasis added).

At page 4 of its supplemental memorandum, Defendant argues that Plaintiffs' Reply Brief brings the question of whether the bills sent were the result of *ad hoc* procedural changes created by APS employees without public notice or Commission approval "front and center" in this litigation for the first time. That argument simply will not stand scrutiny in light of Paragraph 16 of the Amended Complaint which states that exact claim.

Further, when the Court actually decided the stay issue it had before it the following from Plaintiff's Memorandum in Opposition to the Motion to Stay:

> ...In fact, even those issues in this case that directly concern the Regulations are straightforward and well within the expertise and jurisdiction of this Court.
>
> Contrary to APS's assertion that "the ACC has been well aware of [APS's estimation procedures]"(APS's Motion to Stay at pg. 5, lines 4-6), evidence discovered by Plaintiff clearly indicates that APS has ignored the Arizona law and Regulations, evaded the ACC, and employed various, unapproved methods of bill estimation, and now pleads for the ACC's involvement only as an escape hatch from this litigation. This fact is established by the documents produced by APS and by APS employees who have admitted that estimating and billing procedures employed by APS are unapproved, far from ideal, and created on an *ad hoc* basis:
>
> > I don't think load factors change that much. We are going to compare these numbers to some other numbers we have and see how much they have varied. That will give us a better idea of frequency, but I honestly don't think we will see much change. If we only change them when we

> have a rate case, our last full blown case was 1988, so every 15-20 years. Hmm, we could have a new system by then.
>
> By the way, if we were designing from scratch, the best way of estimating a demand would be to calculate the customers load factor for the past 12 months and use that to determine the demand for the current month. Since we didn't design from scratch, and had about 20 minutes to come up with something, we'll stick to the methodology we have now, with maybe some better number. (Emphasis added.)

Email from Janet M. Smith to Ravi Nair dated June 18, 2002. Attached as Exhibit A. See also, Email from Janet M. Smith to Jana Van Ness dated November 30, 2000, attached as Exhibit B:

> I met with Lori and her group yesterday to discuss some estimating issues. One of the items raised was how to properly estimate a demand. After some discussion we arrived at what I believe is the best method so this is a heads up to you in case you are ever asked by the Commission. (Emphasis added.)

Again, the notion that Plaintiffs have suddenly brought the issue of *ad hoc,* unapproved changes in estimating procedure "front and center" is not supported by the record or by reality. Plaintiff has asserted from the very outset, and at every stage, that Defendant has been making up its own unapproved estimating procedures contrary to the Arizona law, and Ms. Smith has admitted as much.

In their initial brief supporting class certification, Plaintiffs again made the same central argument:

> As a public service company, APS is required, by law, to seek approval of its rates, charges, and estimating procedures by the ACC. See A.R.S. § 40- 365. Also, any change in any rate, charge or service by APS is subject to a hearing and approval by the ACC. See A.R.S. § 40-361, *et seq.* In principal, this regulatory scheme should result in bills that are the product of uniform, fair, and governmentally and publicly approved standards. However, while APS has implemented a uniform mechanism for billing its customers, the record in this case reveals that APS has, to the extent possible without easily getting caught, taken the role of fashioning its charges and billing methods upon itself.
>
> * * *

At page 6 of their initial brief Plaintiffs stated as follows:

> ...From this bizarre arrangement, APS, in September 1998, changed its computer system to allow it to automatically estimate demand for APS' demand customers where no actual demand reading had been taken.
>
> As Ms. Smith describes in her memo, she and her colleagues "decided" to program in a series of percentage "load factors" that would be determined by meter type. There was no mention of the Section 2(a) and 2(b) factors, and APS, through Ms. Smith, created them around, rather than through Commission approval. The only approval of the procedure was provided by "Jana and Cynthia" in a memo dated December 4, 2000, that apparently approves the use of the "Smith formula" for all demand estimates.
>
> Incredibly, on June 19, 2002, Smith wrote a memo instructing the technical staff

> at APS to change the load factors used to generate an estimated demand bill by changing the percentage load factors to be used from those she had initially set. See Exh. 4. Again, these changes were made without any Commission involvement.
>
> The "Smith formula" was created *ad hoc*, internally, by APS. Indeed, in a later memo, Smith describes having created the procedure in "20 minutes" (See Smith E-mail, Exh. 5). Thus, since September 1998, Defendant has been regularly estimating demand under a formula that is completely unlawful under Section 5(a).

* * *

With all this before it, APS can hardly have been astounded when Plaintiffs stated in their Reply Brief that:

> What actually occurred is summarized in the affidavit of Plaintiffs' expert, Dr. Mark S. Shirilau, P.E. In short, Defendant formerly used the particular customer's prior history to estimate demand. In 1999, because it was easier for APS, it decided, without Commission approval, to change the load factors in its estimating formula to a generic percentage number, rather than the customer by customer estimates based upon account history it previously used and claims was approved by the Commission. As paragraph 7 of Dr. Shirilau's Affidavit makes clear, this change completely altered the outcome of every demand estimate. (See example cited at ¶7 from Defendant's own CIS Manual.)
>
> In 2002 it lowered the percentage demand factor without Commission approval. As Dr. Shirilau points out, this gave APS a revenue increase, and customers higher estimated bills. (Affidavit of Dr. Shirilau, ¶9.)
>
> Obviously, Plaintiffs assert that the trail of exhibits and Ms. Smith's own testimony establish that APS has been making up its own rates and procedures in violation of Arizona law, and that is not "much ado about nothing". Plaintiffs' opening brief and Exhibits fully make that point.

In short, Defendant's entire predicate argument, that Plaintiff has suddenly pointed to the two changes in estimating procedures authored by Janet Smith, without Commission approval, as being at the core of this case, simply will not pass muster. Those claims have been "front and center" in the Amended Complaint, the Motion to Stay, and in every other pleading in this case that concerned the facts on which Plaintiffs rely and the legal authorities that follow from them. The Court has the same concurrent jurisdiction today that it has always had. Defendant's mere characterization of Plaintiffs' class certification claims as "novel" does not make them so. The record says otherwise.

B. Plaintiffs Have Made a Variety of Claims, Over Which This Court Has Jurisdiction, and As To Which It Already Denied a Stay, Each of Which is Based Upon Other Statutes.

While Defendant continues to characterize its conduct as being subject solely to the jurisdiction and judgment of the Commission, that is simply not the law. As Qwest Corp. v. Kelly, 204 Ariz. 25, 33-34, 59 P.3d 789, 797-98 (Ap.. 2002) review denied (April 22, 2003) makes clear, the fact

that a utility is regulated does not render it immune to every other law. Again, reference to the actual record exposes Defendant's argument that the claims of unauthorized changes and fraudulent billing post-date the denial of the stay. Again, the Amended Complaint is revealing as to this issue:

> 50. In violation of A.R.S. §44-1522, Defendant deceived Plaintiffs and the Class through misstatements and dishonest course of business described in preceding paragraphs, including in particular the misrepresentation of the amounts owed by Plaintiffs and members of the Class for electricity service, and the mailing of false, unauthorized estimated bills contrary to controlling Regulations, and mailing of bills stating demand for particular months that APS knew was a pure guess or estimate, but represented as actual demand.
>
> 51. Defendant's conduct constitutes a series of unlawful practices through which statutory "merchandise," i.e., electric power, was sold, advertised, or both, to Plaintiffs and the Class within the meaning of A.R.S. §44-1522.
>
> 52. Because of the Defendant's unlawful conduct in violation of the Act, Plaintiffs and members of the Class overpaid APS for their electricity, and provided unlawful, involuntary interest free loans to APS.
>
> * * *
>
> 56. As a result of the illegal conduct described above and the relationship between the parties, Defendant has been, and continues to be, unjustly enriched at the expense of Plaintiffs and all others similarly situated. Specifically, Defendant has been, and continues to be, unjustly enriched by its continued practice of over-billing customers. Had Plaintiffs and other members of the Class known that they were being overcharged, they would not have paid the amount they were overbilled. Defendant will be unjustly enriched if it is allowed to retain these funds and not required to refund such funds to the people it wrongfully overbilled.
>
> * * *
>
> 65. Plaintiff, on behalf of herself and all others similarly situated, hereby incorporates by reference the allegations contained in the paragraphs within this Complaint as if fully set forth herein.
>
> 66. Plaintiff is a party to a contract between herself and APS in which APS agreed to provide electric services under certain terms and conditions based on set rates. Among the terms and conditions of its contracts are certain warranties made by APS.
>
> 67. Defendant APS covenants and warrants in its contract with Plaintiff that "APS operations are in compliance with all applicable regulations pursuant to the rules of electric competition. . . .". See Exhibit "C"attached hereto.
>
> 68. Defendant APS has breached such warranty by failing to comply with the Regulations that govern its billing and estimating procedures and practices.
>
> 69. As a result of the foregoing, Plaintiff and the other members of the Class have suffered, and will continue to suffer, harm.

* * *

> 84. Defendant APS owes a duty to Plaintiffs and its customers to act reasonably and prudently in preparing bills for its services and to follow applicable laws and regulations governing its conduct.
>
> 85. By negligently implementing software, information and billing systems that have failed to follow Arizona law and Regulations have resulted in unjust, artificially-inflated bills, and are a result of a lack of reasonable care by APS in preparing such bills. Defendant APS has breached and continues to breach such duties.
>
> 86. Defendant APS's conduct was the factual and legal cause for such breach of duty.
>
> 87. As a result of the foregoing, Plaintiff and other members of the Class have suffered, and will continue to suffer harm.

As Qwest makes clear, the ACC does not have exclusive jurisdiction of claims such as these, merely because they arise out of the activities of a company that it regulates. These are separate causes of action that raise common, classwide liability issues as to which this Court has concurrent jurisdiction.

C. The Status of the APS Application to the ACC is Still Irrelevant.

This Court has denied Defendant's Motion to Stay, which was really little more than an attempted procedural end-run on Qwest, which gave this Court concurrent jurisdiction to hear cases of this type. APS's machinations at the Corporation Commission have no bearing on Qwest, or upon this Court's jurisdiction. To the contrary, proving Plaintiffs' point made at oral argument on the Motion to Stay, the Commission matter has gone precisely nowhere since the hearing, while this case has moved forward. Now Defendant is planning to start over again at the Commission with a new Application. This case is close to resolution on cross-motions for summary judgment. The people of Arizona will be best served by having these issues promptly resolved.

D. Nothing in Phelps-Dodge Affects the Case at Issue.

Defendant also asks the Court to make a huge intuitive leap and to "assume" the invalidity of duly enacted regulations that may or may not require Attorney General approval, and may or may not have received or will receive such approval. The regulations at issue in Phelps-Dodge are not at issue in this case. Defendant, remarkably, is asking the Court to disregard the law as it stands before it, and to speculate as to what it might be as a result of a case that nobody has brought. The Court should not

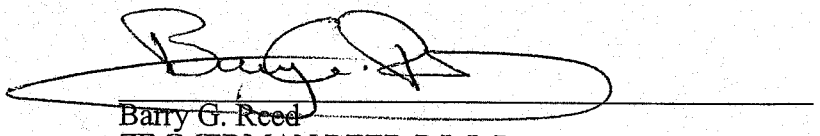
and cannot join Defendant in an analysis of what "seems" (Def.'s Supp. Brief at 3) or what the law could be in the future. Phelps-Dodge, its treatment by the Supreme Court, and its application to statutory and regulatory law not challenged in that case are all matters of pure speculation that have no bearing on the issues before this Court.

II. CONCLUSION

Defendant's Supplemental Memorandum is just another attempted end-run on concurrent jurisdiction. The motion to certify this class is ripe for decision, and Defendant's own arguments demonstrate that common issues entirely predominate. The motion should be granted.

Respectfully submitted,

DATE: April 7, 2004



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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-010760 05/26/2004

HONORABLE REBECCA A. ALBRECHT

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 05/28/2004

AVIS READ BARRY G REED

v.

ARIZONA PUBLIC SERVICE COMPANY WILLIAM J MALEDON

JEFFREY M PROPER

RULING

The Motion for Class Certification has been under advisement. The Court has reviewed the memoranda filed, the legal file, the applicable case law, and Rules of Court. The Court has further considered the arguments of counsel.

The Plaintiff claims that because of unlawful estimating practices by the Defendant, the Plaintiffs have been inaccurately charged for electricity provided to them by the Defendant. Plaintiff asserts that the injury to each Plaintiff is the receipt of an unlawful bill. Some members of the prospective class according to the Plaintiff have a compensable injury in the form of an overcharge for power. Others will not have a compensable injury.

To be certified as a class action, the Plaintiff must meet the requirements of the Arizona Rules of Civil Procedure, Rule 23.

The Defendant does not challenge all of the perquisites to a class action. Defendant challenges the class only as it relates to Rule 23(b)(3). Defendant asserts that the individual issues of liability, that is injury, in fact, and actual damages, predominate and that therefore the class certification should be denied.

The Court recognizes that Defendant re-urges its position that the Court should stay any ruling until such time as the Corporation Commission issues its rulings on the efficacy of the APS estimating system. However, the Court having previously denied that motion chooses to determine, assuming that the system violates the law, there is a viable class.

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If the Court assumes that the Plaintiff prevails on that portion of the action, wherein the class acts as a private attorney general, and the acts of the Defendant are found to be unlawful, the Court must then turn to a determination of the damage for the individual Plaintiff members of the class, and it is here that the class runs into insurmountable problems. Each Plaintiff must demonstrate his or her damage for each period at issue. The damages will vary based on individual factors, none of which are shared by other members of the class. These individual factors overwhelm the common elements in this case.

IT IS ORDERED denying the Motion for Class Certification.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **MOTION FOR RECONSIDERATION** (Assigned to the Honorable Rebecca A. Albrecht) **ORAL ARGUMENT REQUESTED**

I. INTRODUCTION

Plaintiffs respectfully submit this motion seeking the Court's reconsideration of its Order dated May 26, 2004, and received by Plaintiffs on June 1, 2004, denying Plaintiffs' Motion for Class Certification.

The Court's only stated reason for denial of certification is that "damages will vary based on individual factors, none of which are shared by other members of the class", Order at p.2. Where, as

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here, there is clearly a common liability issue, acknowledged by the Court, as to whether Defendant disseminated bills charging its customers under an illegal, unapproved estimating procedure, it is black letter law that variations in damage proof cannot defeat class certification. Indeed, if that were the case, no securities, antitrust, consumer fraud, or any other class action could ever be certified. In an antitrust case or a securities case, damages will always be subject to individual proof, yet these cases are routinely certified. Plaintiffs believe that if the Court reviews the substantial body of case law contrary to its Order, it will reconsider its Order and grant Plaintiffs' certification motion.

II. IT IS BLACK LETTER LAW THAT RULE 23(b)(3) CLASS ACTION STATUS WILL NOT BE DENIED BASED UPON INDIVIDUAL DAMAGE QUESTIONS

As noted above, cases holding that individual damage issues do not preclude certification are legion, and may be found in every federal circuit and most state courts' case law. Merely by way of example, Plaintiffs would refer the Court to Blackie v. Barrack, 524 F.2d 891 (9th Cir., 1975):

> The amount of damages is invariably an individual question and does not defeat class action treatment.

Id. at 905.

Further, as the Ninth Circuit also held in that case:

> The overwhelming weight of authority holds that repeated misrepresentations of the sort alleged here satisfy the "common question" requirement. Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members' positions, and that the issue may profitably be tried in one suit.

Id. at 902.

The fact that the existence of variations in the amount of claims will not preclude class certification was further emphasized by the Ninth Circuit in Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir., 1998). In Hanlon, the Court confirmed that predominance means just that. There is no requirement that the case involve exclusively common issues, and common liability issues will warrant certification.

> Rule 23(a)(2), Rule 23(b)(3) focuses on the relationship between common and individual issues. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear

> justification for handling the dispute on a respresentative rather than on an individual basis." (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778).

Id. at 1022.

That is precisely the showing made by Plaintiffs in this case. The question of whether all members of the Class were sent bills that were estimated using an unapproved procedure is the significant issue in the case. The amount by which they might have been overbilled is simply a question of math.

As with most states that have essentially drafted Federal Rule 23 into their own Rules, Arizona authorities on predominance track the Federal analysis:

> [W]e believe the requirements of Rule 23(b)(3) (and Rule 23(a)(3), to the extent they overlap) should be liberally contrued.
>
> The federal courts have expressed the view that any doubts concerning maintenance of a class action should be resolved in favor of such action. Esplin v. Hirschi, (infra); Gerstle v. Continental Airlines, Inc., 50 F.R.D. 213 (D.C. 1970).
>
> . . .
>
> Maintenance of a class action does not depend upon commonality of all questions of fact and law, but only that such questions predominate over questions affecting individual members of the class. Like v. Carter, 448 F.2d 798 (8th Cir. 1971); Goldstein v Regal Crest, Inc., 59 F.R.D. 396 (D.C. 1973). The common questuions need not be dispositive of the entire action. Esplin v. Hirschi, 402 F.2d 94 (10th Cir. 1968), cert. den., 394 U.S. 928, 89 S.Ct. 1194, 22 L.Ed.2d 459.

Godbey v. Roosevelt School District No. 66 of Maricopa County, 131 Ariz. 13, 638 P.2d 235, 240 (1981).

The fact of the amount of harm, or that financial harm occurred at all to every class member was expressly held in Godbey to not to be determinative as to suitability for class treatment.

> Even assuming arguendo that some class members (those who presented doctors' certificates) have already received a refund and are entitled to no further monetary recovery, and that some class members (those who were not sick) may never have been entitled to any monetary recovery, we do not believe that the claims of the named plaintiffs/appellees are atypical, or that common questions of fact or law do not predominate. Notably, the monetary amount sought are relatively small (none more than $150, and most less than $100). However, the cornerstone of this action is not the amount of monetary recovery, but the challenge of the policies of requiring doctors' certificates and docking pay, as initiated by the acting superintendent and subsequently adopted by the Board. Whether those policies were valid and lawful are questions of law common to all class members, and questions which lie at the heart of this case.

Id. at 239.

The above quotation from the Court of Appeals addresses almost precisely the issue that was before this Court on Plaintiffs' motion to certify the class. Plaintiffs candidly admitted that it was possible, albeit unlikely, that some class members had not actually suffered financial loss as a result of the "challenged policy". Nevertheless, the predominance of the questions of "whether those policies were valid and lawful" in this case plainly lies "at the heart of the case". The reasons cited by this Court for denying class certification are thus not supported by the approach to predominance taken by the Courts of this State or by the federal courts.

Arizona has also long held that difficulties in manageability in proving damages are obviated by the fact that the Defendant's own records form the baseline for their determination. In the case at Bar, Defendant has used a mathematical formula to create the bills at issue. It also claims to have had a prior mathematical formula approved by the Commission. Damage is the difference in the outcome resulting from the use of the old formula compared to the unlawful formula. In discussing a prior case where the Supreme Court had concluded that a class could not be certified, the Court in Lennon v. National Bank of Arizona, 21 Ariz. App. 306, 518 P.2d 1230, 1234 (1974), expressly held that:

> The Supreme Court was clearly concerned with the numerous individual issues revolving around the claims for damages noting the 'impossibility of the vast majority of the members of the class being able to put a value on their individual damages.' (110 Ariz. at —, 515 P2d at 861). In contrast, the damages sought here would be liquidated as to each individual class member and ascertainable from records kept by either the bank or the individual.

This is the key distinction here. The damages in the case are liquidated. They do not turn upon individual issues of prior health, physical causation, or other matters that have given Arizona courts pause in mass tort or environmental injury cases. The damages are liquidated and their calculation is mechanical, and as the Court states in Blackie, supra., individual damage questions simply do not defeat class certification. The central issue is liability, and that issue is, by the Court's own analysis, clearly common and predoninant.

As Plaintiffs made clear, (and Defendants could not refute), at the hearing on this motion and in moving papers, the amount of damage is the only non-common issue in this case. Obviously, every Plaintiff is entitled to be charged for electricity according to the law or rate governing such charges. To hold otherwise would allow Defendants to use any procedure or charge any amount they felt like

and then argue that a statutory violation is not a violation if the numbers work out in a particular way. That is not what Section 210 says. It prohibits estimated charges if the procedure used to reach the charges has not been approved by the Commission, regardless of the outcome. The outcome of the illegal procedure is material only to the amount of the damage caused by the violation.

The Court's May 26, 2004 Order suggests that the Court understood that point and accepted that liability, i.e. violation of Section 210, was a common issue based upon the single question of whether the procedures used to generate the charges to consumers were approved by the Commission. Order at p.1. With the commonality of liability issues established, the Court went on to state that damages were the only non-common issue, a point that Plaintiffs readily concede. As noted above, however, the point is not material to the certification question, as virtually every court to consider the issue has concluded, particularly where as here, it is simply a mathematical calculation.

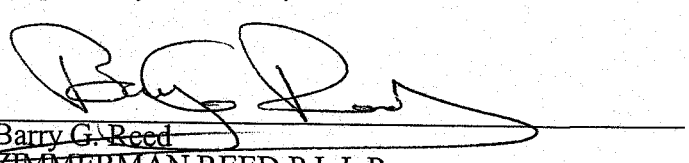
Given the foregoing, Plaintiffs respectfully suggest that the Court's Order is wrong, as a matter of law, because the Court mistakenly required that proof of the amount of damage caused to each Plaintiff by the common violation of Section 210 must also be common in order to certify the case under Rule 23(b)(3). That is not the law. Plaintiffs request reconsideration and reversal by the Court of its May 26, 2004 Order.

III. CONCLUSION

For all the reasons stated herein, Plaintiffs request reconsideration and vacation of the Court's May 26, 2004 Order, and that their Motion for Class Certification be granted.

Respectfully submitted,

DATE: June 17, 2004



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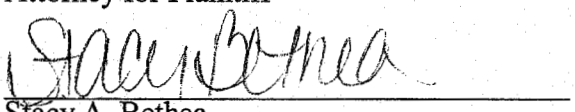

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

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AVIS READ, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No. CV 2002-010760 **MOTION TO DISMISS** **(Oral Argument Requested)** (Assigned to the Honorable Rebecca A. Albrecht)

It is clear from Plaintiffs' Reply in Support of Motion for Class Certification that each of Plaintiffs' claims in this lawsuit implicate the primary jurisdiction of the Arizona Corporation Commission. For this reason, Defendant requests that this Court dismiss this action without prejudice and give the parties a reasonable opportunity to seek administrative resolution of the issues.

Introduction

Until now, Plaintiffs have attempted to avoid a primary jurisdiction impediment to this litigation by vaguely contending that the core issue in the litigation

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was whether APS's estimated bills were "false and misleading" because they did not comply with approval procedures established by the Commission. In their reply brief in support of class certification, however, Plaintiffs now contend that liability turns on whether changes to the load factor methodology used by APS were unauthorized, unapproved changes in bill estimating procedures. (Reply at p. 3.) In support of this contention, Plaintiffs attach the affidavit of an alleged expert (who was never previously disclosed) who opines that the precise estimating procedure used by APS beginning in 1999 (allegedly involving use of different load factor elements) increased the amount of estimated bills. As Plaintiffs go on to contend in their reply brief, the alleged common issue that Plaintiffs seek to have the Court determine is whether these estimated demand account bills were "unlawfully calculated." (Reply at p. 5.)

It is one thing for Plaintiffs to contend that the alleged failure by APS to have its bill-estimating procedures approved by the Commission constitutes a violation of an administrative rule (assuming the rule is valid and deemed to be applicable) that gives rise to a claim for consumer fraud or other tort that a court has jurisdiction to adjudicate. It is quite another thing, however, when Plaintiffs claim (as they now do) that the Court must interpret and apply an administrative rule to determine whether an administratively regulated rate or customer charge has been "lawfully calculated." The latter is within the Commission's primary jurisdiction. APS requests that this Court dismiss the Plaintiffs' Complaint without prejudice so that the Commission may exercise jurisdiction.

I. This Court Ought to Apply the Doctrine of Primary Jurisdiction and Dismiss This Case Without Prejudice.

The doctrine of primary jurisdiction is a discretionary rule created by the courts to effectuate the efficient handling of cases in specialized areas where agency expertise may be useful. Campbell v. Mountain States Telephone & Telegraph, 120 Ariz. 426, 430, 586 P.2d 987, 991 (App. 1978). The doctrine applies "to claims properly cognizable in court that contain some issue within the special competence of an administrative agency." Reiter v. Cooper, 507 U.S. 258, 268 (1993). In deciding whether to apply the doctrine of primary jurisdiction, the court ought to consider the need to defer judicial exploration of an issue which is the subject of ongoing rulemaking proceedings until the rule is finalized; the desirability of employing agency expertise in cases raising issues of fact not within the conventional experience of judges; the promotion of uniformity and consistence in the regulation of business entrusted to the administrative agency; and the promotion of efficiency. 2 Am. Jur. 2d Admin. Law § 514.

Application of the doctrine of primary jurisdiction does not deprive the court of jurisdiction. Rather, the court has discretion to either retain jurisdiction or dismiss the case without prejudice if the parties would not be unfairly disadvantaged. Reiter, 507 US at 268-69.[1] Thus, under the primary jurisdiction doctrine, courts defer deciding a

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[1] A stay is preferred over dismissal in those cases where "claims are subject to the Statute of Limitations and are likely to be barred by the time the Commission acts." Carnation Co. v. Pac. Westbound Conference, 383 U.S. 213, 223 (1966). To the extent that any claims are not already barred by the statute of limitations, APS will agree to toll the statute of limitations for the period of time from the dismissal of this action until 30 days after the Arizona Corporation Commission issues a definitive decision on issues relating to the validity and interpretation of amended Rule 210.

controversy involving a question within the jurisdiction of an administrative tribunal until after that tribunal has rendered its decision. 2 Am. Jur. 2d Admin. Law § 514.[2]

Each of claims in Plaintiffs' First Amended Complaint (as now explained in their reply brief) involve issues within the special competence of the Commission: (1) Whether APS used bill-estimating procedures that were approved by the Commission; (2) whether the estimating methodology used by APS was consistent with amended A.A.C. R14-2-210(A)(2) as interpreted and applied by the Commission; (3) whether the Commission's express recognition in the Ciccone decision of APS's use of energy consumption for a particular class of customers as part of its bill estimating procedures constitutes approval of that methodology; (4) whether a change in load factors used in a bill estimating methodology constitutes a material change in the methodology itself; (5) whether a load factor based on averages for similar customers is materially different than a customer's own twelve-month moving average; and (6) whether the Commission deemed amended Rule 210 to be operative without implementation of the companion procedure that the Director of the Utility Division was to issue under A.A.C. R14-2-1612 ("Rule 1612"). All of these issues are somewhat technical in nature and implicate the technical and regulatory expertise of the Commission. Furthermore, as outlined below, the purposes of the

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[2] Plaintiffs will not be prejudiced by allowing the Arizona Corporation Commission to decide the issues in this case because the Commission has granted Plaintiff Avis Read intervention in APS's Application proceeding. ACC Procedural Order, Docket No. E-01345A-03-0775 (March 26, 2004). Thus, Mrs. Read will have the opportunity to present information she feels is relevant for the Commission's evaluation and application of amended Rule 210.

doctrine of primary jurisdiction would be served by a dismissal of this case so that the Commission can deal with these issues in the first instance.

A. This Court Should Dismiss This Action Because Amended Rule 210 Has Not Been Approved by the Attorney General.

First and foremost, this court should apply the doctrine of primary jurisdiction and decline review of whether APS's bill estimating procedures comply with amended Rule 210 because, as the recent Phelps Dodge decision makes clear, the rule is invalid until the attorney general approves it. See, e.g., Envtl. Def. Fund v. Envtl. Prot. Agency, 852 F.2d 1316, 1330-31 (D.C. Cir. 1988) (holding that an issue is not appropriate for review by the courts when it is the subject of an ongoing rulemaking procedure).

Pursuant to A.R.S. § 41-1044, Commission rules generally are "subject to review by the attorney general to ensure that they are clear, concise, understandable, in proper form and within the agency's power to make." US West Communications v. Ariz. Corp. Comm'n, 197 Ariz. 16, 22-23, ¶ 26, 3 P.3d 936, 943 (App. 2000). However, rules falling within the Commission's exclusive jurisdiction -- such as the Commission's ratemaking authority -- are not subject to review by the executive branch. State ex rel. Corbin v. Ariz. Corp. Comm'n, 174 Ariz. 216, 848 P.2d 301 (App. 1992). Relying on Corbin, the Commission determined that a number of rules -- including amended Rule 210 -- emanated from its exclusive ratemaking powers and declined to have the rules approved by the attorney general. See A.A.C. R14-2-210.

Two recent decisions by the Arizona Court of Appeals make clear that Commission rules related to billing and collection are invalid unless approved by the

attorney general. In US West Communications v. Arizona Corporation Commission, the court held that rules that are not reasonably related to ratemaking or classification are not exempt from the requirements of A.R.S. § 41-1044. 197 Ariz. at 24, ¶ 32, 3 P.3d at 944. Specifically, the court found that A.A.C. R14-2-1114 relating to billing and collection did not implicate ratemaking because "billing and payment terms apply after the rates have already been established." Id. at 25, ¶ 36, 3 P.3d at 945. The court invalidated the rule because it had not been reviewed by the attorney general. Id. at ¶ 37, n. 8. Similarly, in Phelps Dodge Corp. v . Arizona Electric Power Cooperative, the court found that A.A.C. R14-2-1612, which set forth the billing requirements for competing electric service providers and which directed the Utility Division to develop procedures for utilities to obtain approval of estimated billing procedures, was invalid because the Commission had not obtained the requisite attorney general certification before approving the rule. 418 Ariz. Adv. Rep. 10, ¶ 86, 83 P.3d 573, 594-95 (App., Jan. 27, 2004).

The holdings in these two decisions make clear that amended Rule 210 -- which addresses billing and collection by electric utilities -- falls outside of the Commission's ratemaking and classification authority and is invalid until approved by the attorney general. Thus, Plaintiffs' complaint should be dismissed without prejudice because court review of amended Rule 210 is inappropriate until the attorney general has determined that the rule satisfies the requirements of A.R.S.

§ 41-1044.[3] Plaintiffs can refile their complaint if and when amended Rule 210 has received the requisite approval.

B. The Court Ought to Rely Upon the Commission's Expertise to Determine Whether APS's Estimating Procedures Comply With Amended Rule 210.

Arizona courts also defer to administrative agencies on primary jurisdiction grounds where a case raises "issues of fact not within the conventional experience of judges, but within the duties and expertise of the Corporation Commission." Campbell, 120 Ariz. at 432, 586 P.2d at 993 (citation omitted). In Campbell, the court acknowledged that in such a case an administrative agency is better equipped than a court to ascertain and interpret circumstances underlying legal issues because of the agency's specialization, insight gained through experience, and more flexible procedures. Id. at 430, 586 P.2d at 991, quoting Far East Conference v. United States, 342 U.S. 570, 574-75 (1952). The court in Campbell stated that where issues in the litigation concern circumstances within the primary jurisdiction of an administrative agency, the court "would have no trouble in affirming dismissal of the complaint on the ground of primary jurisdiction." 120 Ariz. at 431-32, 586 P.2d at 992-93.

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[3] The validity of amended Rule 210 could determine the outcome of this case. The principal provision of amended Rule 210 at issue is Section (A)(5)(a), which provides that a utility may not render a bill based on estimated usage if the estimating procedures employed by the utility or billing entity have not been approved by the Commission. This provision was added as part of the amendments effective December 31, 1998, regarding electric service deregulation (and was obviously intended to help regulate the numerous new electric service providers that might have provided service in Arizona if deregulation had been permitted to go forward). Previously Rule 210 had no requirement that electric service providers obtain approval of their bill estimating procedures.

This is a classic case for applying the doctrine of primary jurisdiction. The Commission is primarily responsible for the supervision and regulation of public service corporations. See A.R.S. § 40-202. Only the Commission is in the position to consider disputes involving a single electric service provider in light of overall policies concerning all public service providers and the goals the Commission hoped to achieve with the amendments to Rule 210. And perhaps most importantly, the Commission is uniquely qualified to determine the scope and effect of rules that it enacts, particularly rules that relate to technical issues of customer billing calculations. An example from Plaintiffs' reply illustrates this point.

With respect to proposed Subclass A, Plaintiffs ask this Court not only to determine that there has been a violation of amended Rule 210 every time an APS demand-rate customer's bill was estimated, but also to determine what the appropriate estimating methodology should have been during that period and then apply that methodology to recalculate each such bill. Plaintiff's "expert" opines that APS materially changed its estimating procedure for demand accounts in 1999 and again in 2002, and that all such bills should be recalculated using the pre-1999 methodology which he opines "was consistent with the intent of A.A.C. R14-2-210(A)(2)." APS, however, will dispute that any such procedural changes in 1999 and 2002 were material or contrary to the Commission's historical interpretation of Rule 210(A)(2). It is respectfully submitted that this Court would be better served by employing the Commission's expertise to answer these fact questions. If the Commission determines that APS used an inappropriate estimating methodology, the agency can

use its expertise to determine if a refund obligation exists and the manner of distribution. See Ariz. Pub. Serv. Co. v. City of Phoenix, 149 Ariz. 61, 64, 716 P.2d 430, 433 (App. 1986); see also ACC Decision No. 59919 (Ciccone), attached as Exhibit B to APS's response to the Motion for Class Certification, in which the Commission dealt at length with APS's bill estimating procedures and the application of Rule 210(A)(2).

In response to APS's position that this case is within the Commission's primary jurisdiction, Plaintiffs will likely contend that the court should exercise jurisdiction because the complaint includes common law and statutory issues. In support for this proposition, Plaintiffs may rely on Campbell v. Mountain States, 120 Ariz. 426, 586 P.2d 987 (App. 1978) and Qwest Corp. v. Kelly, 204 Ariz. 25, 59 P.3d 789 (App. 2002). The narrow holdings of Campbell and Qwest, however, do not control this case. Those decisions do **not** hold that the court should retain a case just because the complaint includes common law or statutory claims which are generically within the court's expertise. Those cases direct the court to determine which issues predominate and determine whether the most important aspects of the plaintiff's claims involve facts and theories within the Commission's area of expertise and statutory responsibility. See, e.g., Campbell, 120 Ariz. at 432, 586 P.2d at 993. As outlined below, the issues within the Commission's expertise in Campbell and Qwest did not predominate. Unlike the case at bar, neither of those cases involved the interpretation or application of a Commission rule, nor did the outcome of the common law and statutory claims depend on compliance with a Commission rule.

In Campbell, the issue was whether the doctrine of primary jurisdiction required a telephone customer to assert her tort and breach of contract claims against a public service provider in a complaint before the Commission before suing on those claims in superior court. Id. at 427, 586 P.2d at 988. The court held that traditional tort and contract claims stemming from a customer's loss of business resulting from interrupted telephone service were not within the primary jurisdiction of the Commission. Issues within the Commission's jurisdiction -- such as validity, interpretation, and intended application of Commission rules -- did not predominate throughout the plaintiff's claims. Id.

Similarly, in Qwest Corp v. Kelly, the Arizona Court of Appeals held that the Superior Court had concurrent jurisdiction with the Commission over tort claims brought by a Qwest customer who alleged that Qwest had employed deceptive practices or had negligently misrepresented information concerning the need for and the value of wire maintenance service that Qwest sold to it customers. 204 Ariz. at 33, ¶ 24, 59 P.3d at 797. In so holding, the Court of Appeals concluded that the mere fact that the Commission had authorized Qwest to provide wire maintenance service and had approved the fee to be charged by Qwest for that service did not mean that

the Commission had exclusive jurisdiction over an ordinary tort claim that the service had been sold by Qwest in a deceptive manner.[4] Id.

In contrast, the issue that predominates in Plaintiffs' case is whether APS used correct bill estimating procedures under amended Rule 210. The validity, interpretation, and intended application of amended Rule 210 are all within the Commission's primary jurisdiction. Plaintiffs' First Amended Complaint contains ten counts, each of which is inextricably intertwined with the alleged violation of Commission rules. Contrary to what Plaintiffs would have this Court believe, the sheer number of common law and statutory claims does not determine whether these claims predominate. The fact remains that if APS's bill estimating procedures comply with or are exempt from amended Rule 210, then each of Plaintiffs' common law and statutory claims fails.

Furthermore, as Plaintiffs implicitly admit in their reply brief, in order to determine liability under each of their statutory and common causes of action, this Court will have to decide "issues of fact not within the conventional experience of judges." Plaintiffs now concede that part of the function of the court and jury if this case proceeds would be to determine not only whether APS's post-September 1, 1998,

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[4] Qwest v. Kelly involved a challenge to the court's subject matter jurisdiction to hear the case. Qwest moved to dismiss the plaintiffs' class action under Arizona Rule of Civil Procedure 12(b)(1), contending that the Commission had exclusive jurisdiction over all claims in the plaintiffs' complaint, including the tort claims. In this motion, APS does not claim that the Commission has exclusive jurisdiction over the claims in Plaintiffs' complaint and does not challenge this Court's subject matter jurisdiction. Rather, APS asks this court use the discretionary doctrine of primary jurisdiction and dismiss this case without prejudice. Given that each of Plaintiffs' claims -- including the common law and statutory claims -- center around the interpretation and application of amended Rule 210, primary jurisdiction lies with the Arizona Corporation Commission.

bill estimating methodology was approved by the Commission (assuming it needed to be approved), but also whether that methodology was materially different than the pre-September 1, 1998, methodology, the 1999 methodology, and the 2002 methodology, and, if so, what bill estimating methodology was appropriate for use by APS during each of these times (including such esoteric issues as load factor and average customer demand by class). These are technical issues that fall within the Commission's expertise of the and therefore should be deferred to the Commission's primary jurisdiction. Nothing in the Qwest and Campbell decisions suggests that an Arizona court must -- or even should -- exercise jurisdiction over such technical agency issues.

This Court should dismiss Plaintiffs' complaint to allow the parties a reasonable opportunity to seek resolution of the many factual issues raised by Plaintiffs within the Commission's expertise. The Commission's decision of these factual issues ultimately will determine whether APS violated amended Rule 210 and, consequently, whether Plaintiffs' remaining causes of action are valid.

C. Plaintiffs' Complaint Should Be Dismissed in the Interest of Uniformity and Consistency in the Regulation of Electric Service Providers and Judicial Efficiency.

Arizona courts further recognize the principle that "[u]niformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions review of by the judiciary are more rationally exercised" when an agency with primary jurisdiction handles cases in specialized areas.

Campbell, 120 Ariz. at 430, 586 P.2d at 991, quoting Far East Conference v. United States, 342 U.S. at 574-75. This principle applies in this case.

If this litigation proceeds without a decision first being obtained from the attorney general regarding the validity of amended Rule 210 or the Commission regarding scope and intended application of the Rule, there is the potential that any rulings by this Court on amended Rule 210 will be inconsistent with decisions of those administrative agencies. The attorney general could invalidate the Rule (if attorney general approval for the Rule is ever requested) or the Commission could find that APS's bill estimating procedures either comply with or are exempt from the Rule's requirements. Thus, in the interest of judicial economy, the Court should dismiss this action until the appropriate administrative agencies have ruled.

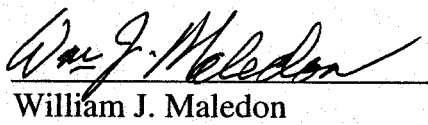
Conclusion

As outline above, court review of Plaintiffs' complaint is inappropriate at this time. Amended Rule 210 is still going through the rulemaking process; the Rule itself has never been approved. Moreover, the Commission has not made the necessary factual determinations for deciding whether APS's bill estimating procedures comply with amended Rule 210; any decision by this Court could either result in inconsistencies in the regulation of electric service providers or be rendered moot by a future Commission decision. Finally, the technical determinations and findings that Plaintiffs seek to have made by this Court or a jury are plainly within the Commission's special expertise and should be made by the Commission in the first

instance. For these reasons, APS requests that this Court defer to the primary jurisdiction of the ACC and that Plaintiffs' complaint be dismissed without prejudice.

DATED this 6th day of April, 2004.

OSBORN MALEDON, P.A.

By 

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SUPERIOR COURT IN MARICOPA CO. COURT SEAL STATE OF ARIZONA

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	No: CV 2002-010760 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** (Assigned to the Honorable Rebecca A. Albrecht)

I. INTRODUCTION

Plaintiffs submit this memorandum in opposition to Defendant's motion seeking to have this matter dismissed. As it will demonstrate, Defendant's motion is based upon a comprehensive over-reading of the cases and regulations it chooses to cite, and a complete under-reading or total avoidance of the Arizona Constitution and the controlling cases that defeat its motion. The motion should be denied.

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Because the Court is familiar with the underlying facts in this case, Plaintiffs will not burden the Court with a complete reiteration of them. Suffice to say, that in the context of a motion to dismiss, the Court must take the non-moving party's factual allegations as being true, and then, based upon those allegations, decide the motion to dismiss. In summary, those factual allegations, which are essentially undisputed in any event, assert that Defendant has been systematically sending out estimated electricity bills that represent as "Amount Due" sums that it knows are not due, because they are the product of an estimating procedure that it has unilaterally adopted, and then changed to its own benefit, without the approval of its estimating procedures by the Arizona Corporation Commission ("ACC") mandated by Arizona Administrative Code R-14-2-210-5.

That the procedures used by APS to estimate demand meters have not been approved by the ACC can hardly be doubted, which, in turn, means that claims of "Amount Due" that are not due at all, are clearly fraudulent and misleading.

Having used, and then modified, an unapproved estimating procedure that dictates the amount billed to and paid by consumers in the face of a duly adopted Regulation that prohibits such conduct, Defendant has little choice but to attack the validity of the Regulation. This constitutes the "foremost" part of its current motion. In addition, Defendant returns, once again, to its exclusive jurisdiction argument, claiming that this Court has no jurisdiction to hear this case, even in the face of the ruling in Qwest Corp. v. Kelly, 204 Ariz. 25, 33-34, 59 P.3d 789, 797-98 (Ariz. App. 2002) review denied (April 22, 2003).

To make its arguments, Defendant is forced to attempt to tread a narrow, winding path that travels around rather than through the controlling law, the Arizona Constitution and the nature of the Regulations at issue. As the following will demonstrate, it is a path that cannot reach its desired destination. No Court has directly addressed whether R14-2-210 is a valid exercise of the powers granted to the Commission by the Constitution. It is clear, however, from the language of the Constitution, the purpose and effect of such estimating procedures, and simple common sense, that the adoption of R14-2-210 is within the Commission's authority, without Attorney General approval. It is also clear that this Court has jurisdiction to hear this case.

II. The Nature and Effect of Estimating Demand

As was discussed at length by both parties at the hearing on Plaintiffs' motion to certify the class, it is important to understand what estimated demand bills really represent. They are called "estimated" bills, but in reality, because demand cannot be recaptured, recreated or reconciled with subsequent demand readings, any reconciliation that is attempted can only reconcile to the estimated outcome, not to actual demand, and in multiple estimating months cannot be reconciled at all. This essentially makes the amount paid under an estimating formula the amount billed and paid for that month. The formula controls the bill; and unlike non-demand readings, it cannot be recaptured or reconciled. This is significant to this motion in several ways that are fairly obvious. The estimate becomes the bill.

III. A.C.C. R14-2-210 Is Not Subject to Attorney General Review and Is Entirely Valid.

Defendant opens its argument regarding Section 210's validity with an assertion that is characteristic of its attempts to slide around what the Constitution, the cases and the Regulations it cites actually say. It blithely asserts that the Phelps Dodge decision "makes it clear" that the rule is invalid absent attorney general approval. This is simply not the case. Phelps Dodge does not deal with Section 210 at all. What Phelps Dodge does do is affirm the broad Constitutional authority granted to the ACC under Article 15, Section 3 to act legislatively, without attorney general approval:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations...

(Emphasis added).

This broad authority is plainly not limited to formal rate-making and nothing else. The term "rates and charges to be made and collected" clearly encompasses all forms of charge to the consumer for "services rendered". The Constitution further grants the ACC power to make reasonable "rules, regulations and orders" in support of its authority cited above. It is hard to see how R14-2-210, which requires Commission approval of procedures that result in the issuance of charges and bills that are paid

by consumers does not fall squarely within the language of Article 15, Section 3 that authorizes the ACC to act legislatively to make rules and regulations in support of its mandate to prescribe charges.

As the Court stated in U.S. West Communications, Inc. v. Arizona Corporation Commission, 197 Ariz. 16, 3 P.3d 936 (Ariz. App. 1999):

> The supreme court has "repeatedly held that the power to make reasonable rules and regulations and orders by which a corporation shall be governed refers to the power to prescribe just and reasonable classifications and just and reasonable rates and charges." Id. at 56, 864 P.2d at 1088 (quoting Williams v. Pipe Trades Indus. Program of Ariz., 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966)).

Id. at 21. (Emphasis added). This presents a simple issue: Are estimated bills "charges"? Given that they are presented to consumers as bills for use of electricity, and paid as such, the answer could hardly be clearer. They are charges. And as such, rules and regulations that require ACC approval of the procedures used to calculate them are authorized by the Constitution and hence require no approval by any other branch of government.

This broad authority over matters related to charges, not just the formal rate-making process itself, was confirmed in State ex.re. Corbin v. Arizona Corporation Commision, 174 Ariz. 216, 848 P.2d 301 (Ariz. App. 1992).

Following Corbin, which has never been criticized or overruled, the Commission looked at the Constitution, as drafted, looked at Corbin, and correctly concluded that if it could make rules and regulations regarding "charges" for electricity, it could require estimating procedures resulting in charges for electricity to be subject to Commission approval without attorney general approval of its Regulation. See, A.C.C. R14-2-210.

Defendant's only counter-argument is a reliance upon two subsequent cases having nothing to do with R14-2-210.

Contrary to Defendant's assertion that the U.S. West case is some sort of blanket restriction on ACC authority, the case sorts through several provisions and concludes that only some of them require attorney general opinions. Significantly, issues as attenuated from actual charges to consumers as "oversight of accounting records"; "discontinuing competitive services"; and "determination of a competitive service" were found by the Court to have sufficient impact upon profitability, which in turn may implicate charges to consumers, to "implicate rate-making" and be within the Commission's

authority to regulate without attorney general approval. Id. at 31. If these attenuated issues do not require attorney general approval, a regulation regarding the calculation of actual charges to consumers must surely also be within the Article 15, Section 3 authority.

Despite this result, Defendant chooses to seize upon a single phrase "billing and collection", which is no more than a very general description of R14-2-1114, which regulation the Court concluded did require attorney general approval, and use those words to suggest that this somehow negates the language of Article 15, Section 3. A close examination of R14-2-1114 reveals, however, why Defendant chooses to quickly cite this general description and move on. The Regulation has nothing to do with charges for services. It is actually entitled "Service Quality Requirements...". It is about the information that a telecommunications provider is required to give the consumer in the bills it issues. It sets out what should be on the bills, what charges can be made for N.S.F. checks and other matters related to how the bill is presented, not how much the bill is for and how charges are calculated. Defendant's "once over lightly" characterization of the R14-2-1114 as having something to do with "billing and collection" simply does not stand actual scrutiny. When its content is compared to the specific requirements of R14-2-210, which relate to the procedures for determining how much a consumer will be charged for electricity on an estimated bill, not the quality of the service used in presenting and collecting the bill, the distinction becomes obvious. One relates to the form of the bills, the other to their calculation. This is exactly the point the U.S. West Court makes at page 36 of the opinion when it concludes that "billing and payment terms apply after the rates have already been established." Id. at 36.

The way that the amount of the bill is arrived at implicates the amount the customer will pay for electricity. R14-2-1114 implicates only how the arrived at sum will be presented and collected. It is a distinction that Defendant tries desperately to blur, because, under Article 15, Section 3, it destroys its argument.

Defendant engages in the same futile effort to re-characterize unrelated regulations in the Phelps Dodge part of its argument. A.A.C. R12-2-1612 is again characterized as an estimating regulation, and the parallel hastily drawn between it and R14-2-210. Again, actual analysis of the regulation shows that Defendant has re-invented it for the purpose of its argument.

While the Phelps Dodge Court did invalidate R14-2-1612, it is difficult to see what that has to do with R14-2-210. The provision is entitled "Service Quality, Consumer Protection, Safety, and Billing Requirements". It covers numerous consumer-related areas such as changing providers, the content, such as address and telephone number, of bills, the setting up of uniform metering by competitive providers, meter ownership, and maintenance of metering equipment. Defendant hangs its hat on a single word in Section L14 of a sixteen part regulation with dozens of subparts because it states that:

> 14. The Director, Utilities Division shall approve operating procedures to be used by the Meter Reading Service Provider for validating, editing, and estimating metering data.

How Defendant reaches the conclusion, from this single, ambiguous use of the word "estimating" in one unrelated rule, that the Court was holding in Phelps Dodge that the ACC could not promulgate a comprehensive regulatory scheme for estimating that results in actual "charges" to consumers as set forth in Article 15, Section 3 is simply not explained. Defendant tosses out the reference to R14-2-1612, and concludes that the fall of this entirely different regulation brings R14-2-210 down with it. Defendant makes a reference, not an argument. Defendant does not compare R14-2-210 to Article 15, Section 3. Instead, it cites the comparison of R14-2-1612 to the Constitution, and then blithely argues that R14-2-1612 and R14-2-210 are pretty much the same thing. They are not even close.

As in Corbin and U.S. West, the Phelps Dodge Court did not simply assume that every ACC regulation had to be referred to the attorney general. To the contrary, the Court went back to Article 15, Section 3 of the Arizona Constitution and again validated the authority of the Commission to enact regulations on its own authority where they relate to the powers enumerated in the Constitution.

Defendant never addresses the decisive question: Does R14-2-210 fall within the powers granted to the ACC in Article 15, Section 3, precluding attorney general review? Defendant's argument is really not an argument at all, because it never addresses this question. It is simply an attempt to reference two different regulations that Courts held were subject to attorney general review, and to then somehow find some tenuous connection between R14-2-210 and the referenced regulations. The next step is to then urge that because there is a connection, both must be invalid. This is syllogistic

reasoning run wild.

If the cases relied upon by Defendant teach anything about the analysis in this case, it is that each provision has to be measured against the acknowledged and enumerated provisions in Article 15, Section 3, and that each does or does not implicate attorney general approval based upon its connection to the Article 15, Section 3 powers of the ACC. That is the required analysis and Defendant does not undertake it. It does not do so because the terms of Article 15, Section 3 defeat its motion. It bears repeating that Article 15 grants the Commission the right to make reasonable rules and regulations in support of the "charges to be made and collected by public service corporations." R14-2-210 is simply a regulation requiring approval of the "charges to be made and collected by public service corporations" when there is no meter reading available. That is exactly the kind of regulation of charging procedures that Article 15, Section 3 describes. Because R14-2-210 falls within the ambit of Article 15, Section 3, it is valid and not subject to attorney general review.

Given that it is valid, the question remains whether a bill representing to be the "Amount Due" when the procedure used to reach it has not been approved, really is the "Amount Due", where R14-2-210 says that no estimated bill may be rendered if the estimating procedure has not been approved. If the "Amount Due" representation is indeed untrue, Defendant is guilty of consumer fraud.

IV. This Court Continues to Have Jurisdiction to Resolve This Case.

Defendant's only other argument is a third bite at the "exclusive jurisdiction" apple. Again, it runs squarely into the fact that under Qwest v. Kelly, this Court has concurrent jurisdiction with the ACC to decide this case. Defendant continues to argue that jurisdiction is an either/or proposition and that because the ACC could resolve this dispute, only it can. That is not the law in Arizona. In both Campbell v. Mountain States, 120 Ariz. 426, 586 P.2d 987 (Ariz. App. 1978) and Qwest, the Courts made it clear that the mere incantation that the case involves issues arising from a regulation does not make the Commission the exclusive place to resolve the issue. Courts decide issues of constitutional, statutory and regulatory interpretation of laws written in plain English every day. This case involves nothing more. The regulation is written in plain English and merely provides that a utility may not send out estimated bills charging for its services without Commission approval of how it got to the charges, any more than it can send out any other bill charging for electric service using charging criteria not

approved by the Commission. Again, there is nothing requiring special expertise, other than reading the plain language of the regulation. The only remaining question is whether the procedures used by APS were or were not approved by the Commission. Defendant admits they were not, but claims they were not new procedures. Once again, the facts are quite straightforward. Ms. Smith's e-mails disclose what alterations she made to the load factor part of the billing formula. There is no dispute that the effect of both changes was to provide a different outcome and a different estimated bill to every consumer who received one, because different criteria and input numbers were used to create the estimate. Again, all of this is either straightforward, admitted in Defendant's documents, or both. The Court is not being asked to engage in some hyper-technical re-examination of rates, rate criteria, customer classification, or other matter requiring technical knowledge uniquely available to the Commission. It is being asked to measure admitted conduct against the plain English of a valid regulation derived from a direct provision of the Arizona Constitution. Measuring conduct against a regulation or statute is what courts do. Defendant's brief is replete with general references to unidentified matters uniquely requiring Commission resolution, but never actually says what those might be. Whether an admitted change in the estimating procedure is a change in the estimating procedure is not exactly a hard question to answer. Neither is the question of whether an estimating procedure for which Defendant admits it never sought approval has been approved. This only leaves unresolved the question whether a regulation that states that only estimated bills using an approved estimating procedure to calculate them may be sent, means that only estimated bills using an approved estimating procedure to calculate them may be sent. That also answers itself.

The truth is that the facts are known, the legal issues are before the Court, and following a ruling on class certification, the case is ripe for resolution. That is why Defendant wants to stop it.

It should come as no surprise to the Court that nothing whatsoever has occurred in the ACC case filed by Defendant since the last round of motions in this case. That, again, is because resolution is the last thing APS wants. The work has been done in this Court, and by this Court, and there is nothing left to do except to resolve some very mundane, albeit very important legal issues. The Court should finish what has been substantially completed.

As the Court stated in Qwest v. Kelly, while the jurisdiction of the Commission is "in the field

of prescribing rates", and that it may exclusively deem what is "just and reasonable" as a rate, id., in the judicial arena it has jurisdiction to hear consumer complaints, including those involving "allegations of deceptive business...practices". Id. But claims that are attenuated from complaints about actual rates and rate practices, as the Court also held in Campbell, upon which Qwest heavily relies, are also subject to the jurisdiction of the courts. Citing Campbell, the Qwest Court went on to lay out the criteria to be applied in these cases not directly challenging rates to determine where the case should most usefully be resolved:

> The court stated: "[t]he doctrine of primary jurisdiction determines whether the court or the agency should make the initial decision in a particular case." Campbell, 120 Ariz. at 429, 586 P.2d at 990. The doctrine "is a discretionary rule created by the courts to effectuate the efficient handling of cases in specialized areas where agency expertise may be useful." Id. at 430, 586 P.2d at 991.
>
> * * *
>
> In determining whether the Commission had primary jurisdiction in Campbell, Division One examined the plaintiff's claims in light of the following test articulated by the Supreme Court in Far East Conference v. United States, 342 U.S. 570, 574-75, 72 S.Ct. 492, 494; 96 L.Ed. 576, 582 (1952):
>
> > [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over.
>
> In Campbell, the Court applied this test to a consumer fraud case and readily concluded that although the underlying service as to which the plaintiffs were alleging fraud was regulated, none of the questions raised by the case required the resolution of facts not within the conventional experience of judges, or requiring administrative discretion.
>
> Thus, even though the Commission may well have the constitutional or statutory authority to address and order redress for McMahon's claims, that does not mean its jurisdiction of such claims is exclusive and that the superior court does not have, at the very least, concurrent jurisdiction.

Id. at 33.

The Court concluded that, as in Campbell, these were claims that could be resolved by a court because they were claims sounding in ordinary legal principles, and that while their resolution involved areas of concurrent expertise with the Commission, there was nothing so specialized about them that put them "outside the conventional experience of judges".

The Court is familiar with the facts of this case and the very straightforward issues it presents.

Defendant either has or has not been sending out bills that represent amounts due that are not due, because it either did or did not use a Commission-approved estimating procedure. Those questions are clearly not only within the conventional experience of judges, they are to all intents and purposes undisputed.

Defendant says that the special knowledge of the agency is vital, but never says why, and as to what. Defendant's argument is summed up in one completely mistaken summary of the law in Campbell and Qwest:

> Those cases direct the court to determine which issues predominate and determine whether the most important aspects of the plaintiff's claims involve facts and theories within the Commission's area of expertise and statutory responsibility.

Defendant's Brief at 9.

That is simply not the law. The test is not whether "the most important aspects of the plaintiff's claims involve facts and theories within the Commission's area of expertise and statutory responsibility". Such a test would expand the jurisdiction of the ACC to eliminate the very concurrent jurisdiction over issues related to rate-making that the Court actually affirms. The actual test is whether those facts and theories are uniquely within the Commission's area of expertise, and "raise issues not within the conventional experience of judges".

There is concurrent jurisdiction, because there is a concurrent ability to resolve the issues. The doctrine is an entirely practical one, to be used when courts really need agency assistance, not when a defendant want to change forums.

That the Commission could resolve this dispute is not at issue. Plaintiffs agree that it could. The issue is whether it needs to, whether this Court needs it to, and whether judicial economy will be served when there is clearly a concurrence of knowledge and jurisdiction. The only fair answer is "no".

V. Conclusion

This case is ripe for resolution. There is no reason for the Court to defer to the Commission on issues that are clearly non-technical and very straightforward claims involving statutory/regulatory construction of regulations that the Arizona Constitution permits the ACC to promulgate without attorney general approval. Defendant's motion should be denied.

Respectfully submitted,

DATE: May 3, 2004

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The ORIGINAL and one (1) copy of
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this 3rd day of May, 2004.

Clerk of the Court
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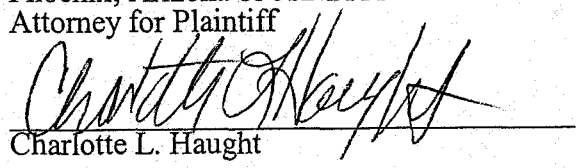

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	)	No. CV 2002-010760 **ARIZONA PUBLIC SERVICE COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS** (Assigned to the Honorable Rebecca A. Albrecht)

Plaintiffs continue to confuse the concepts of "primary jurisdiction" and "exclusive jurisdiction" and, based on that confusion, contend that this Court should not dismiss this case. Exclusive jurisdiction, however, is not at issue in this motion. What is at issue is whether this Court should invoke the doctrine of primary jurisdiction and dismiss this action without prejudice to give the parties a reasonable opportunity to seek administrative resolution of the issues.

Dismissal is warranted for three simple reasons: (1) amended Rule 210 has not received the requisite approval from the attorney general; (2) this case involves issues of fact within the duties and expertise of the Arizona Corporation Commission that

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could be better addressed by that agency; and (3) dismissal of this case would promote uniformity and consistency in the regulation of electric service providers.

A. Primary Jurisdiction versus Exclusive Jurisdiction

Plaintiffs muddle the concepts of primary jurisdiction and exclusive jurisdiction and cite to inapplicable case law -- Qwest v. Kelly -- to support their contention that this case cannot be dismissed on the grounds of primary jurisdiction. A short explanation of the distinctions between the two concepts will help demonstrate why Plaintiffs' reliance on Qwest v. Kelly is misguided and why this Court should invoke the doctrine of primary jurisdiction and dismiss this case.

As explained in the motion to dismiss, "[t]he doctrine of primary jurisdiction is a discretionary rule created by the courts to effectuate the efficient handling of cases in specialized areas where agency expertise may be useful." Campbell v. Mountain States Telephone and Telegraph, 120 Ariz. 426, 430, 586 P.2d 987, 991 (App. 1978). A court that invokes primary jurisdiction recognizes that the court and the administrative agency share concurrent jurisdiction over the issues in the case, but then defers deciding the controversy until after the administrative agency has rendered its decision. 2 Am. Jur. 2d Admin. Law § 513. The issue of primary jurisdiction was raised in Campbell. There, the defendants contended that under the doctrine of primary jurisdiction, a telephone customer should be required to file her tort and breach of contract claims with the Commission before seeking relief in superior court. 120 Ariz. at 429, 586 P.2d at 990. The court found agency expertise was not needed to decide those claims because issues within the Commission's jurisdiction did not predominate. Id. at 432, 586 P.2d at 993.

Exclusive jurisdiction differs drastically from primary jurisdiction. Exclusive jurisdiction is a tribunal's power to adjudicate an action to the exclusion of all other tribunals. For example, pursuant to Article 15, Section 3 of the Arizona Constitution, the Commission has exclusive and plenary jurisdiction with respect to matters solely and directly involving questions of the reasonableness of rates, services, and the

classification of services. See Qwest Corp. v. Kelly, 204 Ariz. 25, 30, ¶ 13, 59 P.3d 789, 794 (App. 2002). The issue of exclusive jurisdiction was at issue in Qwest v. Kelly. There, Qwest moved to dismiss the plaintiffs' claims under Arizona Rule of Civil Procedure 12(b)(1), contending that the Commission had exclusive jurisdiction over all claims in the plaintiffs' complaint, including the tort claims. Id. at 28, ¶ 5, 59 P.3d at 792. The court found that exclusive jurisdiction did not apply because the superior court and the Commission shared concurrent jurisdiction over an ordinary tort claim in which plaintiffs contended that service had been sold by Qwest in a deceptive manner. Id. at 33, ¶ 24, 59 P.3d at 797.

Unlike the defendant in Qwest v. Kelly, APS does not currently challenge this Court's subject matter jurisdiction over the Plaintiffs' claims. For this reason, the holding in Qwest v. Kelly does not control the outcome in this case. Furthermore, it is settled law in Arizona that billing and collection practices do not implicate the Commission's exclusive jurisdiction. See Phelps Dodge Corp. v. Ariz. Elec. Power Coop., 207 Ariz. 95, ___, ¶ 86, 83 P.3d 573, 594-595 (App. 2004). Thus, it would be inappropriate to claim that the Commission has exclusive jurisdiction over Plaintiffs' claims that center on a challenge to APS's billing and collection practices. For this reason, APS has asked this Court to dismiss this case on the grounds of primary jurisdiction, not exclusive jurisdiction.

The issues in a motion to dismiss on primary jurisdiction grounds differ from those in a motion to dismiss based on exclusive jurisdiction. In a challenge based on primary jurisdiction, the court must decide issues such as: whether there is a need to defer the case until the rulemaking process is finalized; whether the court should employ agency expertise to decide issues of fact not within the conventional experience of the court; and whether reliance on agency expertise would promote uniformity and consistency in the regulation of business entrusted to an administrative agency. 2 Am. Jur. 2d Admin. Law § 514.

B. Amended Rule 210.

The first reason this Court should invoke primary jurisdiction and decline to decide this case is because the Commission has not submitted amended Rule 210 -- the rule at issue here -- to the attorney general for approval. Thus, any matters based on amended Rule 210 -- such as Plaintiffs' claims here -- should be addressed by the Commission in the first instance. The Arizona Court of Appeals recently affirmed that Commission rules concerning billing and collection practices are invalid unless the rules are approved by the attorney general.

> In US West I, we held that the Commission's rules... discussing billing and collection practices, did not implicate the Commission's plenary ratemaking power and were therefore subject to attorney general review and certification. Similarly, the provisions within the Rules that concern these same topics are subject to attorney general review....

Phelps Dodge, 207 Ariz. at ___, ¶ 86, 83 P.3d at 594-595 (citations omitted) (invalidating A.A.C. R14-2-1612, which addressed the topics of service quality, consumer protection, safety, and billing requirements). Amended Rule 210, which is entitled "Billing and Collection," falls squarely within this holding and is therefore invalid until it receives the attorney general's approval.

Plaintiffs contend that the invalidation of Rule 1612 in Phelps Dodge does not affect the validity of amended Rule 210. However, Rule 1612 expressly incorporates by reference Rule 210. See A.A.C. R14-2-1612(A) & (B) (incorporating by reference Rules 201, 203, 204, 205, 208(A)-(D), 209, 210, 211, and 212 except for Rule 212(F)(1)). When reviewing a regulatory scheme, the court may consider the rules individually and invalidate only those portions of the rules that are subject to attorney general review. See Phelps Dodge, 207 Ariz. at ___, ¶ 84, 83 P.3d 594; see also US West Communications, Inc. v. Ariz. Corp. Comm'n. (US West I) 197 Ariz. 16, 24-25, ¶¶ 30-37, 3 P.3d 936, 944-45. Assuming *arguendo* that amended Rule 210 falls within the Commission's exclusive powers -- as Plaintiffs contend it does -- the Court of Appeals could have held that Section (A) of Rule 1612 was valid, while the rest of the rule was invalid. But the Court of Appeals did not draw this distinction.

Instead, the Court invalidated the entire provision and held that rules discussing the topics of billing and collection practices do not implicate the Commission's plenary powers. Phelps Dodge, 207 Ariz. at ____, ¶ 86, 83 P.3d at 594-95. The logical conclusion, then, is that amended Rule 210 is also invalid until it receives approval from the attorney general.

Furthermore, as Plaintiffs point out in their response, the court also invalidated Rule 1612(L)(14) because it had not been reviewed by the attorney general. This provision reads as follows: "The Director, Utilities Division shall approve operating procedures to be used by the Meter Reading Service Provider for validating, editing, and estimating metering data." Plaintiffs contend this provision is of minimal importance because this is the only provision in Rule 1612 that uses the word "estimating." Plaintiffs miss the mark with this argument. Rule 1612(L)(14) addresses the very practices that Plaintiffs are challenging: the procedures to be used to estimate metering data. The court held that estimating procedures listed in Rule 1612 are outside of the Commission's plenary power, so those same estimating procedures listed in amended Rule 210 must also be outside of the Commission's plenary power. That does not mean that the Commission cannot enact rules relating to those motions, but it does mean that the rules are invalid until approved by the attorney general.

Plaintiffs further argue that an estimated bill falls within the Commission's plenary power because it is a "charge." Plaintiffs confuse two simple concepts: a "charge," which is a quantity the electric service provider may ask its customer to pay for a particular service, and a "bill," which is the means by which the charges are communicated to the customer. Simple reasoning makes this distinction obvious, but it is also spelled out clearly within the scheme regulating electric service providers.

Amended Rule 201 lists the various "charges" an electric service provider may ask a customer to pay, which include the following: customer charge, minimum charge, service establishment charge, service reconnect charge, and service

reestablishment charge. See A.A.C. R14-2-201(10), (27), (37), (39), and (40). These charges must be specified in the electric service provider's "tariffs," which are "the documents filed with the Commission which list the services and products offered by the utility and which set forth the terms and conditions and a schedule of the rates and charges, for those services and products." See A.A.C. R14-2-201(42).

A bill, on the other hand, is a statement issued for each billing period by the electric service provider to the client that lists the total amount due, based on the rates and charges contained in the utility's tariffs. See A.A.C. R14-2-210(A)(1) and (D). When, as in this case, a customer impedes an electric service provider's right to safe ingress and egress from the customer's premises, the provider may issue an estimated bill. See A.A.C. R14-2-210(A)(2). Unlike actual rates and charges, however, the Commission does not require a utility to include its meter estimating practices in the company's tariffs. Thus, the Commission's own regulatory scheme makes clear that the Commission itself distinguishes between estimating meter data to produce a "bill" and a "charge," as that term is used in Article 15, Section 3.

Plaintiffs' argument that amended Rule 210 is not subject to attorney general review fails as a matter of law. Plaintiffs correctly point out that Article 15, Section 3 of the Arizona Constitution grants the Commission exclusive jurisdiction to govern "rates and charges to be made and collected by public service corporations." And Plaintiffs correctly point out that in State ex rel. Corbin v. Ariz. Corp. Comm'n, the Arizona Court of Appeals recognized the Commission's right to adopt rules within the Commission's exclusive jurisdiction without review by the executive branch. 174 Ariz. 216, 848 P.2d 301 (App. 1992). But Plaintiffs have chosen to ignore the court's holding that rules addressing the topics of billing and collections fall outside of the Commission's exclusive jurisdiction, and are therefore subject to review by the attorney general. See Phelps Dodge, 207 Ariz. at ___, ¶ 86, 83 P.3d 594-595; US West I, 197 Ariz. at 25, ¶ 36, 3 P.3d at 945. The holding in Phelps Dodge controls the

outcome of this case: Amended Rule 210 is invalid and should not be addressed by this Court until it is approved by the attorney general.

C. Commission's Expertise

Secondly, this Court should invoke primary jurisdiction because issues within the particular expertise of the Commission predominate in this case. Plaintiffs contend that APS never identified the issues "uniquely requiring Commission resolution," but they are clearly outlined on page 4 of the Motion to Dismiss:

> (1) Whether APS used bill-estimating procedures that were approved by the Commission;
>
> (2) Whether the estimating methodology used by APS was consistent with amended A.A.C. R14-2-210(A)(2) as interpreted and applied by the Commission;
>
> (3) Whether the Commission's express recognition in the Ciccone decision of APS's use of energy consumption for a particular class of customers as part of its bill estimating procedures constitutes approval of that methodology;
>
> (4) Whether a change in load factors used in a bill estimating methodology constitutes a material change in the methodology itself;
>
> (5) Whether a load factor based on averages for similar customers is materially different than a customer's own twelve-month moving average; and
>
> (6) Whether the Commission deemed amended Rule 210 to be operative without implementation of the companion procedure that the Director of the Utility Division was to issue under A.A.C. R14-2-1612 ("Rule 1612").

Each of these questions is outside of the conventional experience of this Court and raises an issue of fact that only the Commission can answer. And each of these factual issues must be addressed before this Court can decide the Plaintiffs' oversimplified version of the issue in this case: Whether under amended Rule 210 APS could send estimated bills without first receiving Commission approval for the procedure used to estimate the meter read data. Thus, in the interest of effectuating the efficient handling of this case, this Court should defer to the agency's expertise on these issues and decline to accept jurisdiction. See, e.g., Campbell, 120 Ariz. at 430-

31, 586 P.2d at 991-92, quoting Grever v. Idaho Tel. Co., 499 P.2d 1256, 1258 (Idaho 1972) ("'The doctrine of primary jurisdiction is not an inflexible mandate but rather is predicated on an attitude of judicial self-restraint, and is generally applied when the court believes that considerations of policy recommend that the issue be left to the administrative agency for initial determination.'")

D. Economy, Efficiency and Uniformity

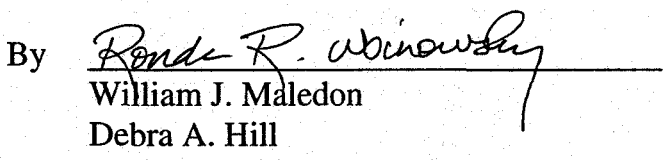
Finally, this Court should decline jurisdiction in the interest of uniformity and consistency in the regulation of electric service providers. The fact remains that there is a parallel proceeding in which the Commission is deciding the validity, scope, and application of amended Rule 210. Any decision handed down by this Court could be rendered moot if the Commission determines that APS's bill estimating procedures comply with or are exempt from the Rule's requirements, or if the attorney general does not approve amended Rule 210. Similarly, a decision by this Court as to APS could be inconsistent with the determination of the Commission. Under these circumstances, applying the doctrine of primary jurisdiction to allow the Commission to deal with this issue in the first instance promotes economy, efficiency and uniformity.

Conclusion

The Court should grant APS's Motion to Discuss. The Court should invoke the doctrine of primary jurisdiction and dismiss this case because (1) amended Rule 210 has not been approved by the attorney general; (2) these issues in the case fall within the expertise of the Arizona Corporation Commission; and (3) dismissal of the case would promote economy and uniformity of electric utility regulation.

Dated this 17th day of May, 2004.

OSBORN MALEDON, P.A.

By 

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COPY of the foregoing mailed this 17th day of May, 2004 to:

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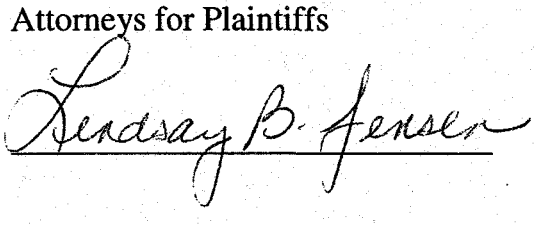

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-010760 08/19/2004

HONORABLE REBECCA A. ALBRECHT

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 08/23/2004

AVIS READ BARRY G REED

v.

ARIZONA PUBLIC SERVICE COMPANY DEBRA A HILL

DAVID A RUBIN
JEFFREY M PROPER
BRUCE A GARDNER

RULING

Arizona Public Service's Motion to Dismiss has been under advisement. The Court has reviewed the pleadings filed, the applicable case and statutory law, and considered the arguments of counsel.

Neither party questions the jurisdiction of this Court to decide the matters presented in Plaintiff's Complaint, nor does either party suggest that the Arizona Corporation Commission does not have jurisdiction to decide these matters. Indeed, both parties agree that in either forum the issues presented can be fully presented and resolved. The question is whether this Court or the Corporation Commission should be the forum for that resolution.

The Plaintiff's claims deal directly with issues that are dealt with daily by the Commission. They involve the Commission's rule-making process, interpretation of the rules and regulations by the Commission, the application of those rules to the Defendant, the manner in which customers are billed and at what rates they will be billed, and the impact of all of the Defendant's responses to the Commission's requirements on the Plaintiff.

A review of the file persuades the Court that the Plaintiff's claims do fall within the Corporation Commission's areas of primary jurisdiction. Further, the Court would be asked to decide what the Commission would have done or would do based on the facts as they are

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presented, it does not appear to this Court to make any sense to have the Court do that which the Arizona Corporation Commission is uniquely qualified to do.

Based on the matters presented to the Court,

IT IS ORDERED granting the Defendant's Motion to Dismiss without prejudice to permit these matters to be decided before the Arizona Corporation Commission.

RECEIVED
AUG 25 2004

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14646 N KIERLAND BLVD #145
SCOTTSDALE AZ 85254-2762

14

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MAR 2 9 2004

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Attorney for Plaintiffs

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ; and, PAUL SCHAEFFER and LINDA SCHAEFFER, husband and wife, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ARIZONA PUBLIC SERVICE COMPANY, Defendant.	Case No.: CV 2002-010760 **AFFIDAVIT OF** **DR. MARK S. SHIRILAU, P.E.**

3·29·04

STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

I, Dr. Mark D. Shirilau, P.E., being first duly sworn upon oath, deposes and says:

1. I am the president and chief executive officer of Aloha Systems, Incorporated, an energy industry consulting and evaluation firm.

2. I have a doctorate degree in electric power systems engineering and a master's degree in business administration. Additional qualifications and background are set out in my appended curriculum vitae.

3. At the request of Plaintiffs' counsel, Barry Reed, I have reviewed numerous documents produced by APS in the course of this litigation; in particular, I have reviewed a series of emails exchanged by Arizona Public Service staff, focusing on estimating procedures for demand meters, as well as the "Affidavit of Tammy McLeod in Support of APS' Response to Motion for Class Certification."

4. The estimating procedures described by Tammy McLeod in Paragraph 15 of her affidavit materially changed the estimating procedures used by Arizona Public Service.

5. Under the old CIS computer system, Arizona Public Service used a formula for estimating demand which included an average load factor derived for the particular customer being estimated. That load factor was calculated based upon the individual customer's load factor history, including demand in the same month of the previous year. This approach was consistent with the intent of A.A.C. R14-2-210 A(2) because it made the estimated demand consistent with prior demand for <u>that customer</u>.

6. According to Tammy McLeod, under the 1999 change the new computer was to automatically estimate demand based upon a load factor that was "an average figure based on all customers in that particular rate class." It did not take the individual consumer's demand history into account. This was a fundamental change in the estimating procedure. It used a generic load factor for each consumer, depending upon a pre-determined classification, rather than the consumer's actual prior demand.

7. In 1999, the formula used to estimate demand did not change, but the entire nature of the input used in the load factor part of the formula was changed by Arizona Public Service. The old system used the same concept of load factor, but the new system materially changed the number put into the "load factor" category of the formula. This resulted in a different estimate than would have occurred under the old system in nearly every case. In fact, the estimated demand of the sample calculation in the CIS User Manual (Page 5, Revised 01/06/87), is 9.5 kW based upon a customer average load factor of 95.07%. Using the 35% and 50% average load factor now applied to residential and nonresidential customers, the estimated demand for that same example would be 25.9 kW (residential) and 18.2 kW (nonresidential).

8. In my opinion a generic load factor would be less accurate than one based upon the particular customer's pattern of load in prior months and years, making the change very significant.

9. The 2002 change in the input into the load factor part of the formula also resulted in very different estimated energy bills. The lower percentage load factor used in the formula resulted in a higher demand being estimated for each customer. A reduction in the load factor used in the formula will always result in a higher demand being used in the estimated bill. This necessarily would increase overall revenue to Arizona Public Service from estimated demand bills, and increase the price of electricity in estimated demand bills compared to the 1998 percentage load input into the formula.

10. I have done no research into the financial effect of these changes and reach no conclusions on that question, except for my statement in Paragraph 9 above. The changes in the basis for the load factor used in the estimating formula are material and would change the estimated bills sent to customers. The 2002 change in load factor would tend to create higher bills.

11. Because of the nature of demand readings, there is no way to accurately recapture the actual demand when the demand meter has not been reset, and thereby correct bills based upon actual demand. Because the demand meter is not reset when the meter is not read, when it

The ORIGINAL and two (2) copies of
the foregoing were filed by hand delivery
this 29th day of March, 2004.

Clerk of the Court
MARICOPA COUNTY SUPERIOR COURT
101 W. Jefferson
Phoenix, AZ 85003

Copies of the foregoing were sent
by facsimile & U.S. Mail
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Mark S. Shirilau, PhD, PE

Primary Experience

1989–Present President and CEO Irvine, CA

Aloha Systems, Incorporated

- Chief executive of engineering consulting and general contracting firm.
- Institutional, industrial, commercial, and residential energy efficiency
- Utility program research, measurement, and evaluation
- Assessment and evaluation of new and developing electrotechnologies
- Renewable energy supply and distributed generation assessments
- Electric service provider rate optimization
- Market research and consumer opinion studies
- Residential and commercial construction

1983–1989 Supervisor/Project Manager Rosemead, CA

Southern California Edison Company

- **Corporate Research and Development Department:** Technical and financial evaluation, assessment, and contracting of major projects for wind, solar, and other renewable energy power plants.
- **Residential Conservation Program:** Supervised staff of engineers and other professionals responsible for setting standards and evaluating technical aspects of residential conservation program on company-wide basis. Provided training and advanced assistance to division-based energy services representatives.
- **Customer Energy Services Division:** Designed, implemented, and managed major research projects in areas of residential, commercial, and industrial energy use and demand-side management, including project planning, design, contracting, field construction, engineering and econometric evaluation, management of consultants, preparation of final reports, and preparation of professional papers and oral presentations.
- **Residential Energy Usage Comparison Project:** Full responsibility for $4,000,000 research project of SCE and EPRI.

1978–1983 Manager, Administrative Services Santa Ana, CA

EECO Incorporated

- Multifaceted responsibilities at medium-sized electronics manufacturer.
- Energy management and telecommunications
- Patent review and registration
- Corporate policy manual
- Security, facilities planning, and miscellaneous functions

Teaching and other Experience

2001–Present Consultant Sacramento, CA

Contractors State License Board

- Technical assistance developing electrical and general examinations.

2001–Present Lecturer, Electronics Glendora, CA

Citrus Community College

- Lecture and laboratory courses in electronics and electrical theory

1983–1991 Engineering Professor Orange, CA

West Coast University

- Part-time instructor of upper division and graduate courses.
- Generation, transmission, electromechanical devices, magnetic theory, control systems, measurement devices and strategies, R&D and project management, engineering economics, kinematics, power systems, economic design analysis, professional practices, ethics, mathematics, physics, and materials sciences courses.

1981–1982 Lecturer, Electronics Santa Ana, CA

Rancho Santiago Community College

1977–1978 Lecturer, Electrical Engineering San Luis Obispo CA

California Polytechnic State University

Education

1989 University of California Irvine, CA

Ph.D., Electrical Engineering

- Electric power systems, generation, transmission, distribution, control, design, management and operations
- Dissertation on integration of conservation and load management into system planning, DSM affects on overall system operation, and optimization of TOU rate structures for maximum customer, utility, and society benefit.

1985 Claremont School of Theology Claremont, CA

M.A., Religion

- Seminary of the Episcopal Church

1980 University of California Irvine, CA

M.S., Business Administration

- Business management, operations research, financial accounting

1978 Calif. Polytechnic State Univ. San Luis Obispo, CA

Master of Engineering, Electric Power Systems

- Design and operation of transmission and distribution systems and power plants

1977 University of California Irvine, CA

B.S., Electrical Engineering

- Power systems specialty, also civil and mechanical engineering coursework.

Certifications and Licenses

Registered professional electrical engineer
- California (E-11818)
- New York (080236)
- Texas (88014)

Licensed general electrical contractor, (B, C-10, HIC, California #541443)
Locksmith (California LCO-3045)
Community college teaching credential, engineering
Certified Thermographer
Notary public
Advanced open water diver (PADI)

Organization Memberships (past and present)

Association of Energy Services Professionals (AESP) [former national exec VP]
Institute of Electrical and Electronics Engineers (IEEE) [senior member]
Air Pollution Control Association
American Society of Heating Refrigerating and Air-conditioning Engineers (ASHRAE)
American Society of Safety Engineers (ASSE)
Association of Energy Engineers (AEE)
Association of Professional Energy Managers (APEM) [national corporate secretary]
Demand-Side Management Society of AEE
Eta Kappa Nu
Heat Pump Council of Southern California [treasurer]
Institute for the Advancement of Engineering
International Association of Chiefs of Police (IACP)
Mensa
Power Engineering Society of IEEE
UCI Alumni Association

Boards of Directors (past and present)

AEA Credit Union
AIDS Interfaith Network of Sonoma County
Aloha Systems, Incorporated
Association of Energy Services Professionals (AESP)
Association of Professional Energy Managers (APEM)
Ecumenical Catholic Church
Ewcon Corporation
Healing Spirit Press
Heat Pump Council of Southern California
Holy Apostles Seminary
Outrider Trucking, Inc.
Ryukendo Karate Institute
Sweetwater Springs Water District

Publications

Power 101: A Basic Introduction to Electric Utility Power (1998). Book helping residential and commercial customers in a deregulated electric market.

"Adjusting End-Use Data for Time-of-Use Rates." Western States Load Research Group, Boise, ID., April 1990.

"Applications of Electric Heat Pumps." *The Heat Pumper*, Vol. 2, Aug 1989.

"Commercial Heat Pump Water Heating Applications." EPRI Water Heating Workshop, St. Louis, MO., June 1990.

"Complexities of Cost-Effectiveness, The" *The Heat Pumper*, Vol. 1, Aug 1988

"Computerized Data Collection for End-Use Experiments." *IEEE Computer Applications in Power*, Vol. 1, No. 1, Jan 1988.

"Design of a Utility competitive Assessment Experiment: The Residential Energy Usage Comparison Experiment." IEEE Power Engineering Society, San Francisco, CA., July 1987. *IEEE Transactions on Power Systems*, Vol 3, No. 3 (Aug 1988), pp. 1298-1305.

"Development of a Heat Pump Association." EPRI/EEI Meeting Customer Needs with Heat Pumps Conference, Atlanta, GA., Nov. 1989.

"End-Use Data Adjustments Under Time-of-Use Rates." Second Annual Conference on End-Use Load Information and Its Role in DSM, Irvine, CA, July 1990. (Santa Ana, CA.: Aloha Systems)

"End-Use Load Information for Effective Energy Management." IEEE Industrial Applications Society meeting, May 1991.

"Engineering and Econometric Design of a Utility Competitive Assessment Experiment, The: The Residential Energy Usage Comparison Project." 10th World Energy Engineering Congress, Atlanta, GA., Oct 1987. *Integration of Efficient Design Technologies*, pp. 453-458. (Atlanta, GA: AEE, 1988.)

"Heat Pump Water Heaters Benefit Laundromat Owners." (Long Beach, CA: Heat Pump Council of Southern California, Sept. 1988.)

"Integrating Market Research Information with End-Use Load Data for Analysis of Technologies' Acceptance and Efficiency." Demand-Side Management Strategies for the 90's, Cincinnati, OH, May 1989. (Palo Alto, CA.: EPRI CU-6367.)

Methodology for Integrating Time-of-Use Rates in Residential Demand-Side Planning, A. Doctoral dissertation, UC Irvine. (Santa Ana, CA.: Aloha Systems, 1989.)

"Preliminary Results of the EPRI/SCE REUC Project." Western States Load Research Group, Costa Mesa, CA., Sep 1989.

"Quantitative and Qualitative Comparisons of Induction, Resistance, and Natural Gas Residential Cooking." Proceedings of the 39th Annual International Appliance Technical Conference, pp. 355-366. (Madison, WI., May 1988.)

"Review of World-Wide Heat Pump Innovations: A Discussion of the 3rd IEA Heat Pump Conference." 13th World Energy Engineering Congress, Atlanta, GA., Oct. 1990.

"Trade Allies in Heat Pump Marketing." EPRI/EEI Meeting Customer Needs with Heat Pumps Conference, Atlanta, GA., Nov. 1989.

"Cost Effective Metering for End-Use Analysis" 11th National Energy Services Conference, New Orleans, LA., December 5, 2000.

"Low Cost Approach to Metering for End-Use Analysis" (With Mark S. Martinez, Southern California Edison). Western States Load Research Association Conference, Phoenix, AZ., October 27, 1999.

"Surfing the Pacific Intertie": What to Learn While Rolling Through a Blackout." Western States Load Research Association Conference, Fort Worth, TX., April 25, 2001.

"Stability of the Pacific Intertie": Public Testimony Regarding the System Disturbance of August 12, 1996. Testimony before the California Public Utilities Commission, San Francisco, CA., August 21, 1996.

"Scheduling Rotating Outages Within All of California", Public Commentary to the Public Utilities Commission, San Francisco, CA., May 26, 2001.

15

In The Matter of:

READ VS ARIZONA PUBLIC SERVICE

UNITED STSTES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

JANET MICHELLE SMITH

APRIL 22, 2003

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

NO. CV 2002-010760

DEPOSITION OF JANET MICHELLE SMITH

Scottsdale, Arizona
April 22, 2003
8:50 a.m.

PREPARED FOR:

(COPY)

PREPARED BY:
Christina L. Larsen, RPR, CCR

DEPOSITION OF JANET MICHELLE SMITH was taken on April 22, 2003, commencing at 8:50 a.m., at the law offices of Zimmerman Reed, P.L.L.P., 14646 North Kierland Boulevard, Suite 145, Scottsdale, Arizona, before Christina L. Larsen, Arizona Certified Court Reporter No. 50011.

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ALSO PRESENT:

MS. STACY BETHEA

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JANET MICHELLE SMITH		
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QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

(None)

CONFIDENTIAL PORTIONS OF THE RECORD

(None)

RECESSES TAKEN

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JANET MICHELLE SMITH,
a witness herein, having been first duly sworn by the Certified Court Reporter to speak the truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. REED:
Q. Would you state your name for the record, please?
A. Janet Michelle Smith.
Q. And where do you live, Miss Smith? Which city?
A. Peoria, Arizona.
Q. Peoria. Okay. By whom are you employed?
A. Arizona Public Service Company.
Q. And what is your title?
A. Rate consultant.
Q. Have you ever had your deposition taken before?
A. No.
Q. Since you have not, I will explain what this is about.
I will be asking you a series of questions. If your counsel doesn't like one of my questions, she'll object. So give her time to do that, rather

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than just jumping in with your answer.
If there is any question that I ask you that you don't understand, please tell me. No one is trying to trick you. I'm just trying to find out facts from you. So the clearer my questions are to you, the clearer your answers will be to me.
We are going to be dealing, obviously, with some fairly esoteric material regarding your industry, and you probably know a great deal more about it than I do. So it's been my experience in this kind of deposition that, if sometimes we are not clear on the jargon or the initials of things, we can wind up talking at cross purposes. So if there is any term that I use that doesn't make sense to you, please, you know, let me know if I'm using the wrong jargon, because I'd like to use the right jargon so we can get the facts straight.
A. All right.
Q. Okay. What does a rate consultant do?
A. I monitor the rates that we have had approved by the Arizona Corporation Commission to ensure we are accurately enforcing those rates. And when I use the term "the rates," that includes all tariffs that we have, schedules, rules, rate sheets. I work with the field people to interpret the rates, to answer billing

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questions.
Q. When was the last rate case that APS was involved in?
MS. HILL: Objection. Foundation.
MR. REED: If you know.
A. BY THE WITNESS: I guess my question back to you would be: Are you talking a full blown rate case, or are you talking a settlement?
Q. BY MR. REED: A full blown rate case.
A. 1988.
Q. Has there been one since?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: To your knowledge.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: No.
MR. REED: Off the record for a second.
(Discussion off the record.)
Q. BY MR. REED: When did you join APS?
A. 1977.
Q. And in what position?
A. My very first position was called a trainee.
Q. And what was the first position beyond trainee that you had with APS?
A. Then I became a trainer in our training department.

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Q. And who did you train?
A. I trained our call center personnel and our office personnel and our billing personnel, credit and collections, meter reading.
Q. How long were you in that training position?
A. Approximately two years.
Q. What was your next position with APS?
A. I became an analyst on a customer information system.
Q. Could you explain what that entailed?
A. APS was in the process of converting to a new customer information system. And so I was an analyst on that, writing the policies and procedures, working with the users to identify their needs, acting as a liaison between the users and the computer service people to develop and design the system, implement the system, train the system, and then maintain the system.
Q. That would have been around 1980?
A. Yes, sir.
Q. How long were you in that position?
A. Until 1990.
Q. What was your next position?
A. Analyst in the rate department, pricing department. At that time, it was called rate department.

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Q. And you've stayed in that department since then?
A. Yes, sir.
Q. And you have a slightly different title now, rate consultant. Was that a promotion from analyst?
A. Yes, sir.
Q. When did that occur?
A. I don't remember what year.
Q. You've been within that department since 1990; that is, the rate/pricing department?
A. That's correct.
Q. Where were you working and in what capacity as of 1996?
A. In 1996, I would have been in the pricing/rate area.
Q. And you don't know whether that was as a consultant or as an analyst at that time?
A. I don't remember what year I was promoted.
Q. In either of those capacities or both of them, would you have been familiar with the procedures and practices used by APS with respect to estimating meter reads?
A. Would I have been familiar? I would have had knowledge, yes.
Q. Okay. Then was it part of your job in either

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of those positions, as rate consultant or analyst, to evaluate whether procedures did or did not comply with Arizona regulations governing APS?
A. Not on a regular basis.
Q. Okay. You described your duties earlier as involving analysis of APS activities to see whether they were in compliance with regulations. Is that correct?
A. That is correct. That is my current position.
Q. Okay. And was that part of your duties before you took this position?
A. Not to the extent that it is today.
Q. Okay. And as of 1996, you're not sure whether you were in one position or the other?
MS. HILL: Objection. Asked and answered.
A. BY THE WITNESS: Could you rephrase your question?
Q. BY MR. REED: Yeah. I'd like you to tell me -- and you can sit a moment and think, if you'd like; maybe you can relate it to some other date -- when you moved to your current position, if you can remember.
MS. HILL: Objection. Asked and answered

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at least three times. Go ahead and answer if you can.
A. BY THE WITNESS: I'm trying to think. I think it was around 2000.
Q. BY MR. REED: Okay. So in your position as an analyst, were you generally familiar with the practices and procedures regarding estimating being used by APS?
A. I had a working knowledge.
Q. Okay. What was the name of the computer system that was being used to do billing as of 1996?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: CIS.
Q. BY MR. REED: What is the name, if you know, of the system that's in use now?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: CIS.
Q. BY MR. REED: Are you aware of a major system change in 1999 regarding the billing system in use by APS?
A. No.
Q. Are you aware of changes in the estimating procedures used by APS that occurred in 1999?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: No.
Q. BY MR. REED: What is the name of the

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department that you work in?
A. Pricing. It's the pricing department. I couldn't tell you the official name. I just refer to it myself as the pricing department.
Q. Okay. And are there any people in the pricing department that report to you?
A. No.
Q. Is there anybody in the pricing department that you report to?
A. Our director.
Q. Who is the director of the pricing department?
A. Alan Propper.
Q. P-r-o-p-e-r?
A. p-p-e-r.
Q. And is he a vice-president, or what is his title?
A. He's a director.
Q. Director. And do you know to whom he reports?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: And to whom does he report?
A. Jack Davis. Oh, no. That's wrong. Steve Wheeler.

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Q. What is Mr. Wheeler's title?
A. I couldn't tell you his official title.
Q. And do you know who Mr. Wheeler reports to?
A. Yes.
Q. Who does he report to?
A. Jack Davis.
Q. And does Mr. Davis report to anybody?
A. Yes.
Q. Who?
A. Mr. Post.
Q. Does Mr. Wheeler have responsibility for more departments than just the pricing department?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: And which departments does he have authority over?
A. I'm not sure that I'll give you a complete list.
Q. Do your best.
A. Federal energy regulatory matters. Rate design. Consumer advocates. Transmission planning. That's all I can remember.
Q. Is there a director for each of those groups?
A. No.
Q. Those are direct reports to Mr. Wheeler?

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MS. HILL: Objection. Foundation. Vague and ambiguous.
A. BY THE WITNESS: No.
Q. BY MR. REED: Okay. Who is the corporate level below Mr. Wheeler other than Mr. Propper?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: No one.
Q. BY MR. REED: Consumer advocates, federal energy, rate design, and transmission, do they report to Mr. Propper, too?
A. I don't believe transmission planning does, but the other areas do.
Q. Okay. Does that group of areas have a name?
A. Yes.
Q. What is the name?
A. Can I look at a business card?
Q. Sure.
MS. HILL: Just tell him what you recall.
A. BY THE WITNESS: I don't know. The pricing department.
Q. BY MR. REED: And Alan Propper is director of pricing?
A. That's correct.
Q. Is there a separate billing department?

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A. Yes.
Q. And is estimating within the duties of the billing department, if you know?
MS. HILL: Objection. Foundation. Vague and ambiguous.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: Is there a director of the billing department?
A. Yes.
Q. Who is that?
A. Tammy McLeod. M-c-L-e-o-d.
Q. Do you know who she reports to?
A. Yes.
Q. Who does she report to?
A. Jan Bennett.
Q. And is Jan a male or female?
A. Male.
Q. And who does Mr. Bennett report to?
A. Jack Davis.
Q. Jack Davis. Okay. Are there any other departments within Jan Bennett's group of departments?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: What are those?
A. He has responsibility for the majority of

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customer service related areas.
Q. To your knowledge, is it Mr. Bennett's group that determines policy and practice with respect to estimated meter reads?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Could you rephrase that question?
Q. BY MR. REED: Sure. At this time, is it Mr. Bennett's group of departments that has authority over the policies and practices with respect to estimated meter reading?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't believe I can answer yes or no to that question.
Q. BY MR. REED: You don't know? "I don't know" is an answer, too. If you don't know, just tell me.
To your knowledge, who does set policy and practice with respect to estimating?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: It becomes a joint effort between the department that I'm in, because we work with the Corporation Commission and administer the rules, and the billing area, which would be under Jan Bennett, because they have the billing people. So we work together on those efforts.

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Q. BY MR. REED: Okay. Are you part of those efforts?
A. Yes.
Q. When did you first become part of those efforts?
A. On a more regular basis, after we converted to the current CIS system that we have in place.
Q. When was that?
A. September 1998.
Q. Is there anybody that you most frequently work with from the billing area on issues regarding procedures and practices --
A. Yes.
Q. -- with respect to estimating? And who is that?
A. Lori Moyer. Lori Lewis. She just recently got married.
Q. What is her title?
A. I don't know her official title.
Q. Does she report to Tammy McLeod?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. Yes.
Q. Okay. Are there any other people in those departments that you work with regarding estimating

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procedures?
MS. HILL: When you say "those departments," are you talking about the billing area?
MR. REED: The billing area.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: And who would that be?
A. On occasion, Lori may direct me to work with her billing consultants directly, rather than her.
Q. And how many billing consultants are there?
A. I believe there are five to eight.
Q. Why don't you give me as many names as you can remember of the five to eight, please.
MS. HILL: At the present time?
MR. REED: The ones who are in the position right now.
A. BY THE WITNESS: Esther Palacio.
Q. BY MR. REED: How do you spell that?
A. P-a-l-a-c-i-o. Joanna Seymour. Angie Carmody, C-a-r-m-o-d-y. Jaime Shamy.
Q. Is Jaime a female?
A. Yes.
Q. And Shamy is spelled --
A. S-h-a-m-y. Amelda Navar.
Q. N-a-v-a-r-r-e?
A. N-a-v-a-r.

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Q. Okay.
A. Joanie Slama.
Q. S-l-a-m-m-e-r?
A. S-l-a-m-a. I can't remember the other person's name. My mind went blank.
Q. Where does Cynthia Janka fit in there? Is she in a different department? Cynthia Janka, is she in a different department?
A. Different from what department?
Q. Different from Lori Lewis's department?
A. Yes.
Q. Okay. And what department is she in?
A. She's in the consumer advocate department.
Q. That's one of the other groups that reports to Mr. Propper?
A. That's correct.
Q. Is she the head of that? If you know.
A. I don't know.
Q. Okay. Is there anybody else that you know who works with Cynthia Janka in that department?
A. Yes.
Q. Who is that?
A. Jenny Vega. And Angela Allison.
Q. Correct me if I'm wrong. You indicated that when you went to the current CIS billing system in

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September of 1998 is when you began to interface in this joint effort, I think you described it as, between you and Lori Lewis.
Did you research what the prior billing system did when you took that position?
MS. HILL: Objection, just to your initial statement as misstating her testimony, but you can answer the question.
Q. BY MR. REED: Okay. Well, correct me if I'm wrong. When did you begin? If I'm asking it twice, I'm asking it twice. When did you begin this joint effort? I made a note that it was September of 1998.
MS. HILL: Well, what she testified was that, in September of 1998, she began to work on a more regular basis on these issues. And so you're talking about something different.
Q. BY MR. REED: Okay. You began to work on these estimating issues on a more regular basis in September of 1998?
A. That's correct.
Q. When you began to work on a more regular basis on these issues, did you make it part of your job to find out what the status quo with respect to these issues was prior to September 1998?
MS. HILL: Objection. Vague and

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ambiguous.
A. BY THE WITNESS: I already had a working knowledge of the prior CIS system.
Q. BY MR. REED: So you had a working knowledge of the CIS system both before the change in September of 1998 and subsequently. Is that correct?
A. Yes.
Q. And is that true up to this date?
A. Yes.
Q. And would it be true from 1996 to 1998? Would it be true that you had a working knowledge of the CIS system in 1996 through 1998?
A. Of the system that was in place during that period of time, yes.
Q. And were you familiar with what the system did and did not do with respect to estimating meter reads from 1996 to 1998?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: You described being more involved from September 1998 in this joint effort with Lori Lewis. Was anybody else involved in that effort?
MS. HILL: Objection. Misstates her testimony.

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A. BY THE WITNESS: Yes.
Q. BY MR. REED: Who else?
A. Numerous areas. Cynthia Janka.
Those are the areas I know of. I couldn't address who else Lori might have been working with.
Q. Were you involved in interfacing with the information technology people in setting up the program?
A. Could you be more specific?
Q. Yeah. Was there anybody who was responsible for the actual programming that you worked with?
MS. HILL: Objection. Foundation. Are you talking about in September of '98?
MR. REED: Sure. September. Let's start with September 1998.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Could you be more specific on what programs you mean?
Q. BY MR. REED: Yeah. The CIS estimating procedures.
A. I believe I did have some conversations with the billing analyst on the new CIS system.
Q. And who would that be?
A. That was Nancy Bullock.
Q. Did Ms. Bullock or anybody else who was

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involved in the information technology ask you to consult regarding whether the systems being programmed into the CIS system in 1998 complied with Arizona regulations?
A. I don't recall.
Q. Have you been consulted with respect to that issue since 1998 by the technology people?
A. Yes.
Q. When you were an analyst, as opposed to a consultant, were you familiar with the provisions of the regulations governing APS's estimating procedures?
A. Yes.
Q. So your involvement in the issues surrounding the Arizona Administrative Code have been ongoing since prior to your appointment as a consultant?
A. Yes.
Q. Do you have any recollection as to when you first became involved in analysis of Arizona Administrative Code requirements with respect to meter estimating?
A. No.
Q. Would it have been -- would that be one of your duties from 1990 onwards?
MS. HILL: Objection. Calls for speculation.

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Q. BY MR. REED: Was that one of your duties from 1990 onwards?
A. I probably had some involvement in that area.
Q. Did your involvement in that area increase as you became more experienced as an analyst?
A. No.
Q. Was there one particular time when that responsibility was assigned to you?
A. No.
Q. By 1996, were you involved in interpretation of the Arizona Administrative Code with respect to issues surrounding estimating of meter reading?
A. Yes.
Q. I would like to ask you some questions about the system before the 1998 changeover.
What was -- was there a name, you know, a shorthand name that the system was known by prior to 1998? In other words, is there a way to distinguish, shorthand, without me having to say "the system prior to 1998"? Is there, you know, an acronym or something like that?
A. We refer to them within the company as old CIS and new CIS.
Q. Gotcha. So old CIS would be the system before 1998, before the changeover in September of

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1998, and new CIS would be the system subsequent?
A. That's correct.
Q. And just so the record is clear, as of 1996, the old CIS was the system in place?
A. That's correct.
Q. Do you know the difference between demand meters and nondemand meters?
A. Yes.
Q. For the record, why don't you briefly describe what you understand to be the difference.
A. A nondemand meter registers kilowatt hours or energy only. A demand meter registers kilowatt hours and kW.
Q. Which is essentially the highest point of usage, correct, on that meter?
Well, why don't you explain what you think it measures, kW.
A. It's, at a certain point in time, the highest demand or rate of energy being used during a preset period of time.
Q. Okay. As of 1996, let's start with, did the demand meters that APS was using all require that the demand be reset each month manually in order to obtain a reading?
A. I don't know.

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MS. HILL: Objection. Foundation. You need to give me time to object.
Q. BY MR. REED: So you know the difference, but you don't know which models were which? Or do you?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. So you don't know which types of meter required manual resetting. Is that correct?
A. That's correct.
Q. But you know some number did?
MS. HILL: Objection.
Q. BY MR. REED: Is that correct?
MS. HILL: Sorry. I didn't mean to interrupt. Objection. Vague and ambiguous. Foundation.
A. BY THE WITNESS: That's correct.
Q. BY MR. REED: The old CIS did not itself, the system itself, generate estimated readings on demand meters, did it?
A. That is correct.
Q. Okay. Did APS nevertheless send out estimated bills on demand meters?
MS. HILL: Under the old system?

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Q. BY MR. REED: Under the old system. My questions, until I say, "Okay, we're changing now," will be the old system. That way, we don't have to keep saying "under the old system."
A. Yes.
Q. Okay. Let's deal, first of all, with the situation where there was no reading at all of the meter. How was the estimate achieved?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Was it done -- if you know, was it done manually as to the entire bill?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Could you rephrase the question?
Q. BY MR. REED: Yeah. Let me just maybe take this in smaller pieces.
Under the old system, if it was a nondemand meter, you know, talking just a regular nondemand meter, the system would itself calculate an estimated bill. Correct?
A. In some instances, yes.
Q. Unless the system kicked it out for some reason. Correct?
A. Yes.

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Q. And you have all those exclusion codes that we'll get to. But where there was no reading on a regular meter, the system in many instances would generate, pursuant to a program, its own estimated reading. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know that I could say many instances, to use your term. I can't speak to volume.
Q. BY MR. REED: It certainly did that?
A. Yes.
Q. Was there a specific formula that the computer used to achieve an estimated bill automatically?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: I think the term is an algorithm. Is that correct? If you know.
A. I don't know.
Q. But it was a set, preprogrammed formula?
A. Yes.
Q. To your knowledge, was that formula ever submitted to the Corporation Commission for approval?
A. I don't know.
Q. Are you aware that sometimes meter readers

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would read a meter using a scope?
A. Yes.
Q. And that was true prior to the 1998 system. Correct?
A. Yes.
Q. If they used a scope to read kWh, but could not get to the meter or did not get to the meter and read kW, do you know how a bill was prepared in that circumstance?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Not in every circumstance.
Q. BY MR. REED: Were there bills prepared, to your knowledge, that used an actual kWh reading and an estimated kW reading that was sent to consumers?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Were there estimated kW readings used in sending bills to consumers --
MS. HILL: Objection. Foundation.
Q. BY MR. REED: -- under the old system?
MS. HILL: I'm sorry. Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: How was the kW portion of those bills calculated?

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MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe there were different methods that could be used.
Q. BY MR. REED: Isn't it true that there were a variety of methods used by the billing staff in doing manual demand estimates?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Are you aware of any set formula that was required to be used in calculating demand estimates where there was an actual reading of kWh?
A. No.
Q. So a variety of kW formulas were used where kWh was a known in sending out an estimated bill. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Were you ever involved in any effort by APS to have any formula, prior to 1998, for estimating demand approved by the Commission?
A. I don't recall if I was.
Q. Do you recall if those formulas were approved by the Commission?
A. I don't know.

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Q. Are you aware of any effort to have those formulas approved by the Commission?
A. No.
Q. When kWh is estimated for any number of months, and eventually it is read, there is, in effect, a correction process that occurs whereby you now have the correct reading, and so there is an adjustment made. Is that correct?
MS. HILL: I'm sorry, Barry. Are you talking current?
Q. BY MR. REED: Back then, there was an adjustment made to correct the billing once there finally was an actual reading of kWh on a kWh-only meter. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Not in every circumstance.
Q. BY MR. REED: In what circumstances where it's a kWh-only meter would the bill not be corrected when you got an actual reading?
A. If the read that was finally obtained was higher than the previous read that had been used for billing, a correction may not have been made.
Q. Okay. Let me just see if I understand that. Let's say in June you estimate, and it comes out at -- I'll just call it 100 for the sake of using a number.

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Okay. In July, an estimate is made, and another bill is sent, and it's 100, again, units, we'll just call it, dollars, whatever you want to call it.
In August, it's finally read, and what is determined is that it's, let's say, 60, or it reads at 160. Okay. So that the actual reading is 160, and it's been estimated at 100 and then just re-estimated at 100. It's been read at 160.
There is an adjustment, a credit in other words, back so that there is no bill sent because the person has overpaid. Is that correct?
MS. HILL: Does that hypothetical make sense to you?
A. BY THE WITNESS: Is your 100 a read or a unit of measurement?
Q. BY MR. REED: It's a unit of measurement, and it's an estimate.
In other words, if you've overestimated when you finally get the read, what do you do?
A. In that case, if I've overestimated, then I would go back and adjust the previous bills.
Q. And if the net result of that is that you owe the customer money, do you cut them a check or give them a credit? How is that done?
MS. HILL: Objection. Foundation.

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A. BY THE WITNESS: I don't know. I don't know.
Q. BY MR. REED: Okay. And if the outcome is they pay a small amount when you finally get the reading, you then send them an amount, that small bill that they've got. Correct? In other words, you always adjust to the correct actual reading. Is that correct?
A. You'd have to rephrase that.
Q: Yeah. We're not really communicating, are we?
Okay. Let me give you an actual situation. You don't, for whatever reason, read the meter for three months. On the fourth month, you get an actual reading. What is your understanding of, under the old billing system, what the computer then did with that actual reading and how it adjusted the bill?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: I don't mean in terms of ones and zeros. Do you know how it effectively happened?
MS. HILL: Same objection.
A. BY THE WITNESS: It is my understanding that, if in the fourth month we received an actual reading and that reading was less than the last read we had used for billing --
Q. BY MR. REED: When you say the last read you've used for billing, you mean last actual read?

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A. Last read used for billing.
Q. Last estimate in this instance?
A. In this example.
Q. Yes. The last estimate.
A. Then the system that we had in place would kick that bill as an exception because the read is less than what the prior read was.
Q. Okay. And once it kicked it as an exception, was the bill prepared manually by the billing consultant?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. I don't know.
Q. Okay. Would that generate a credit, do you know, to the homeowner if the reading was less than the estimate?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. So if it didn't create a reading that was lower than the last estimate in my hypothetical, then a billing would be generated automatically that was based upon the actual reading that was in the system once it had finally been made. Correct?
A. I can't say that in every single case that

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occurred.
Q. But that's the general idea. Is that correct?
A. Yes.
Q. Okay. That's on a kWh-only meter. Correct?
A. Correct.
Q. What happened under the old system if you had a demand meter, and you had been doing estimates in prior months, and you finally got a correct demand reading?
A. I don't know.
Q. Isn't it true that, based upon the way that a demand meter works, you can never do the same reconciliation that is accurate that you can do with a nondemand meter when you finally get a reading?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Let's see if we can walk through this.
In month one, the meter reader reads the meter on the demand meter and resets demand to zero. Correct? Let's assume he gets an actual hands-on reading. Correct?
A. Correct.
Q. Month two, let's assume for the purposes of

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this hypothetical he doesn't get any access at all, can't scope the meter, can't do anything. He gets no reading.
Under the old system, would it create a billing exception or not if there was an entry of the kWh, but no entry of kW, in the second month because he didn't get access, let's say?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes. I believe that is correct.
Q. BY MR. REED: Okay. And then how would a bill be created in that situation where there is no data at all?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Would it be manually estimated?
MS. HILL: Same objection.
Q. BY MR. REED: If you know.
A. I believe that would be correct, yes.
Q. And both elements would be manually estimated, both kWh and kW?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't believe that's a correct statement, but I couldn't answer that with real authority.
Q. BY MR. REED: Okay. What is your

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understanding of how an estimated bill would be generated where there was a reading of neither kWh nor kW?

A. In your current question, I have neither kilowatt hours nor kW?

Q. Correct.

MS. HILL: Under the old system. Correct?

MR. REED: Under the old system.

A. BY THE WITNESS: It's my understanding that there are different methods that could be used. They could try to send someone back out to get another read, or they could have manually estimated both of those.

Q. BY MR. REED: Okay. To your knowledge, did that happen that they would manually estimate both?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: Yes.

Q. BY MR. REED: I think you indicated -- well, you're already answered that.

Would they use -- if you know. If you don't know, it's fine. Remember, we said in month one the reading on demand was X. Would they use X as the demand in month two when they didn't have a kW reading, if you know?

MS. HILL: Objection. Foundation.

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A. BY THE WITNESS: I don't know.

Q. BY MR. REED: Okay. Month three, same thing happens. Neither kWh is read nor kW is read.

Okay. Would it then again generate a manually estimated bill?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: That is my understanding.

Q. BY MR. REED: Okay. Let's go to month four. It's read, both kWh and kW, and it reads Y on kW.

Now, kWh can be -- the estimate there can be reconciled as we described before, correct, with the previous -- with the estimates --

MS. HILL: Objection.

Q. BY MR. REED: -- so you bill based on an actual reading?

MS. HILL: Objection. Foundation. Vague and ambiguous. Compound question.

A. BY THE WITNESS: The kWh could be reconciled as we've previously discussed. That is correct.

Q. BY MR. REED: But because it was not reset to zero, the kW part of that billing cannot be reconciled for the months where there was no reading. Isn't that correct?

MS. HILL: Objection. Foundation. Vague and ambiguous.

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A. BY THE WITNESS: No. That is not a correct statement.

Q. BY MR. REED: Okay. How does one -- how is it reconciled?

A. If the actual demand read that I obtained in your example in month four were lower than the demand read that was estimated in months three and two, the potential is there that you could go back and reconcile those.

Q. Why would you assume that you could know the demand in months two and three?

MS. HILL: Objection. Vague and ambiguous.

A. BY THE WITNESS: If the demand hadn't been reset since month one, it would only reach a highest peak at some point between months two, three, and four and stay there because it wasn't reset. So if the demand in month four was less than what had been estimated in three or two, then I know it couldn't have been as high as the estimate. So the potential would be there to go in and reconcile that by lowering the demand.

Q. BY MR. REED: What if Y is higher than X?

A. Could you put that in a complete sentence?

Q. Yeah. What if, when you go in and read in

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the fourth month, the demand shows higher than in the first month? Can you reconcile months two and three, or are you guessing?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: To answer your first question, can you reconcile months two and three, no. I don't believe you can.

Q. BY MR. REED: Okay.

MS. HILL: Barry, we've been going a little over an hour. Just when it's convenient for you to take a break --

MR. REED: Let me just finish this. It's hard enough to stay in these thoughts as it is.

Q. BY MR. REED: Now, with respect to the bill that would go out in month four, would that have "estimate" printed on it?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know.

Q. BY MR. REED: It's true, isn't it, that if demand was X in month one, Y in month two, and then lower than Y in month three and month four when it hadn't been reset, the Y reading for kW in month four is in fact an estimate, isn't it?

MS. HILL: Objection. Foundation. Vague and ambiguous. Incomplete hypothetical. Do you

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understand it?
Q. BY MR. REED: Do you understand?
A. In your example on your paper, month four was an actual read. So I would say --
Q. No. It was an actual read of where the meter was in month four. But that could in fact have been, because it hadn't been reset, the high point in month two, couldn't it?
MS. HILL: Objection. Foundation. Vague and ambiguous.
A. BY THE WITNESS: That is correct.
Q. BY MR. REED: So, in fact, the reading of kW in month four, until it's reset to zero, is not an actual reading of the demand in month four, but an actual reading of the highest point of demand since it was last reset. Correct?
MS. HILL: Objection. Foundation. Calls for speculation.
A. BY THE WITNESS: I don't agree with your conclusion.
Q. BY MR. REED: Why is that?
A. In my mind, that is still an actual read that was obtained on that day that we're reading that meter in month four. So that is an actual read on that date.
Q. So you would consider that to be an actual

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read of the consumption in month four. Is that correct?
A. No.
Q. It's not an actual read of the consumption in month four?
A. I won't agree with your term that it's an actual read of the consumption. I will agree that it is an actual read for that -- that was obtained on that date for that billing month.
Q. Okay. Under the old system, will month four be billed as if that was the consumption in that month?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
MR. REED: Let's take a break.
Q. BY MR. REED: Oh, one more question. Who would know?
MS. HILL: Again, don't speculate. But if you have a name, tell him.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Just one more, just to finish out this line.
Was this method of using in our hypothetical month four as an actual read for billing for month four, was that ever approved by the Commission, to your knowledge?

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MS. HILL: Objection. Foundation. Assumes facts not in evidence.
A. BY THE WITNESS: I have no knowledge of that.
MR. REED: Okay. Let's take a break.
(The deposition was at recess from 10:07 a.m. to 10:15 a.m.)
Q. BY MR. REED: I might have misspoken with one of my questions. I want to go back and clarify.
In my hypothetical where demand was X in month one, neither kWh nor kW was read in months two and three and was read as Y in month four, and Y is greater than X, I think we agreed that -- again, correct me if I'm wrong -- that if the highest point of demand was reached in month two, which is Y, where the meter was not reset until month four, the reading in month four would be Y, even if demand in month four had not reached Y. Correct?
MS. HILL: Objection. Foundation. Incomplete hypothetical.
A. BY THE WITNESS: That is correct.
Q. BY MR. REED: Okay. And when the bill went out in month four, the demand part of the bill would be based upon Y. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.

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Q. BY MR. REED: Okay. And you also don't know whether there will be any disclosure on that bill that it was an estimate?
A. That is correct.
Q. And then if that meter is not read in months five, six, seven, eight, and nine, when we get to month ten -- and it reached Y in month five, but then was lower than Y up through month ten -- the month ten reading for demand would be Y. Correct?
MS. HILL: Objection. Foundation. Vague and ambiguous. Incomplete hypothetical.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Well, let's look at it logically.
MS. HILL: Well, I mean, she has already testified she doesn't know.
MR. REED: I can test that.
MS. HILL: There is somebody who does know. It's not the person you have sitting here. So we can continue to waste her time, but she's already answered your question.
MR. REED: I'm not wasting her time. I'm taking her deposition, and anything you don't want me to ask does not qualify as wasting her time.
MS. HILL: Well, I don't object to you

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1 asking her anything, but she has told you that, as to
2 this set of hypotheticals, she doesn't know, and you
3 then said, "Let's take this logically." She already
4 told you she doesn't know.
5 MR. REED: Well, she hasn't been asked --
6 I can test the answer. I don't have to accept it.
7 MS. HILL: You don't accept that she
8 doesn't know?
9 MR. REED: No. I don't accept that she
10 doesn't know.
11 MS. HILL: She doesn't. You don't have
12 the right person.
13 MR. REED: She does.
14 MS. HILL: She will continue to tell you
15 she doesn't know if she doesn't know.
16 MR. REED: Don't coach her, please.
17 Q. BY MR. REED: In the hypothetical, the
18 reading in month five, which is estimated, where there
19 is no demand reading, is Y. And there is no resetting
20 in month five of the demand part of the meter. There
21 is then no reading of demand or resetting of the meter
22 in months six, seven, eight, nine. When it's finally
23 reset again in ten, what it will show is the highest
24 demand, which was in month five. Is that correct?
25 MS. HILL: Objection. Foundation. Asked

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1 and answered. Vague and ambiguous. Incomplete
2 hypothetical.
3 A. BY THE WITNESS: Month five was estimated.
4 Q. BY MR. REED: No.
5 MS. HILL: Well, your hypothetical does
6 say in the hypothetical "the reading in month five,
7 which is estimated."
8 Q. BY MR. REED: Right. Sorry. Five is
9 estimated. And from five onwards, actual demand is
10 lower than Y, though actual demand was Y in five. In
11 other words, that's the highest place. The highest
12 point the needle got to between month four and month
13 ten was Y in month five.
14 All those months afterwards until you get to
15 month ten, because the needle hasn't been reset, it
16 still shows Y. Correct?
17 MS. HILL: Objection. Foundation. Asked
18 and answered. Vague and ambiguous. Incomplete
19 hypothetical.
20 A. BY THE WITNESS: If I'm understanding your
21 example and your question correctly, you're saying we
22 had an actual read, in your example, in month four.
23 Months five, six, seven, eight, and nine were
24 estimated, and month ten was an actual read.
25 Q. BY MR. REED: Right.

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1 A. I can't speak to when that high point was
2 reached because those were estimated demand reads.
3 Q. If in fact the high point was reached very
4 early on in this cycle of nonreads, when you get to the
5 end of the cycle of nonreads, the reading will be Y.
6 Correct?
7 MS. HILL: Objection. Foundation.
8 Q. BY MR. REED: When you finally read it, the
9 reading will be Y?
10 MS. HILL: Objection. Foundation. Vague
11 and ambiguous.
12 A. BY THE WITNESS: Correct.
13 Q. BY MR. REED: And there is no way to go back
14 and get the actual demand for the intervening months
15 when the needle has not been reset to zero. That's
16 correct, isn't it?
17 MS. HILL: Objection. Foundation.
18 A. BY THE WITNESS: That is correct.
19 Q. BY MR. REED: And indeed, again, as with our
20 prior hypothetical, even in month ten, Y may not be the
21 actual demand in month ten. Correct?
22 MS. HILL: Objection. I'm sorry.
23 Q. BY MR. REED: If the demand in month ten was
24 lower than month five, then what you'll see is month
25 five's high point in month ten, correct, because it

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1 hasn't been reset?
2 MS. HILL: Are you through? Objection.
3 Foundation. Incomplete hypothetical.
4 A. BY THE WITNESS: As I stated previously, I
5 would not agree with your conclusion. I did get an
6 actual read on an actual day in month ten. And
7 whatever that read is, is my read for that month.
8 Q. BY MR. REED: But in point of fact, because
9 at the beginning of that month, month ten, the needle
10 wasn't reset to zero, I realize it's an actual read,
11 but it may be an actual read that goes back to month
12 five?
13 MS. HILL: Objection. Foundation.
14 Incomplete hypothetical.
15 A. BY THE WITNESS: It is an actual read for
16 month ten, but I have no way of knowing when -- at what
17 point in time that high demand was reached.
18 Q. BY MR. REED: And you have no way of knowing
19 whether it was reached in month ten. Correct?
20 A. That is correct.
21 Q. But the billing that goes out goes out as if
22 it was reached in month ten. Is that correct? If you
23 know.
24 MS. HILL: Objection. Foundation.
25 A. BY THE WITNESS: I don't know.

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Q. BY MR. REED: Okay. And you don't know whether it would say "estimate" or "actual" on that bill?
MS. HILL: Objection. Foundation. Asked and answered.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Under the old system, if the system received a scoped reading of consumption but no reading of demand, would it send out an automatic bill? If you know.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't believe so, no.
Q. BY MR. REED: So there would be a reject code, and it would go to the billing people. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe that was the procedure then.
Q. BY MR. REED: Okay. Did the system ever send out an estimated demand bill because it didn't default, because it had an actual consumption?
Did you understand the question?
MS. HILL: Well, I'm objecting on foundation. Vague and ambiguous.
MR. REED: I'm sure you are.

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MS. HILL: Well, she may have understood it.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Under the old system, were there specific dates built into the system when specific reads had to be in or else the system would estimate?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. I believe there were.
Q. So if the computer didn't receive a full input from the reader by a certain date, it just automatically would estimate as long as it was a kWh meter. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: No. I wouldn't say that's a correct statement.
Q. BY MR. REED: Unless it kicked it out for an exception?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: That's correct.
Q. BY MR. REED: And under the old system, if you know, was lack of a demand entry read by the system as being a reason to kick out the bill, or was it satisfied as long as it had the consumption factor to

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send the bill?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. I believe that was an exception that we would kick for a missing demand read.
Q. You would then do the manual demand read and send it out. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe I stated somewhere earlier that they could have done numerous things at that point, tried to verify the read or done the manual read.
Q. BY MR. REED: Okay. I take it that, when there was extreme weather conditions and that stopped the meter reader from being able to read, the estimated bills for his area would go out because it was time on the billing cycle. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe that is correct.
Q. BY MR. REED: This, again, is under the old system. Under the old system, if there was a no-access code entered by the meter reader, would that automatically trigger an estimated bill?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.

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A. I don't know.
Q. Okay. Do you know, again, under the old system, what steps were taken, if any, to obtain a reading after a no-access estimate?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: I can't speak for every step that was taken because I wasn't in charge of that area or the expert on that. I can tell you that we did make attempts to go verify reads where we could. We could have contacted the customer to try to give us a read. I think we did everything possible whenever we could to try to get a read.
Q. BY MR. REED: Are you familiar with the actual steps that were taken? If you're not, then that's fine.
A. No.
Q. Okay. Do you know, under the old system, whether an exception was created at all after three consecutive months of estimates?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes.
Q. BY MR. REED: Okay. And the old system would create an exception for that and kick it out?
A. Yes.

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Q. And what would then happen on the fourth month?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. Well, actually, it kicked it out in the third month. And reading your previous question, you said after the three consecutive months, and I didn't pick up on that. It really was in the third consecutive month that we kicked it as an exception.
Q. Do you know what that triggered, what activity by you that triggered?
A. No. I can't say.
Q. Have you ever sent out first or final bills that were estimated?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: To your knowledge.
A. Yes.
Q. Do you know whether under the Arizona Administrative Code you are permitted to do that?
A. Yes.
Q. And are you?
A. Today? Yes.
Q. You are permitted today?
A. Today, yes.
Q. Okay. And when did you first obtain

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permission to send out A first or final bill that was estimated?
A. I don't know the exact date that the Commission -- of that Commission order.
Q. Was it prior to 1996?
MS. HILL: Objection. Calls for speculation.
A. BY THE WITNESS: No.
Q. BY MR. REED: Was it relatively recently? In the last two years?
MS. HILL: Objection. Calls for speculation.
A. BY THE WITNESS: I don't know the exact date. I'm not going to speculate.
Q. BY MR. REED: Was there a time within the last six years, to your knowledge, when you weren't allowed to send out a first or final bill that was estimated?
A. Yes.
Q. Did you send out, if you know, first or final bills, when it was prohibited, that were estimated?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know. I wasn't in that area.
Q. BY MR. REED: Okay. Do you know, again,

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under the old system, when there was a no-access entry into the computer, did the computer automatically send any kind of communication to the customer providing a card for the customer to read their own meter?
A. I don't know.
Q. Do you know the circumstances under which under the old system a card was ever sent or provided to the homeowner to read their own meter?
A. I don't know the circumstances. I know we did it. I don't know the circumstances when we did it.
Q. Are you familiar with the circumstances under which the Commission allows you to send an estimated bill under paragraph three of Title 14, Chapter 2?
A. I don't know it word for word. I have a familiarity with it, yes.
Q. You're familiar with it?
A. Yes.
Q. Okay. Would one be extreme weather conditions, emergencies, or work stoppages under A, if you're familiar with it?
A. I would have to read the schedule.
Q. Okay. Is not having enough meter readers available one of the reasons under paragraph three that you're permitted to send out estimated bills?
A. I would have to refer to the schedule.

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Q. I won't ask you any more questions about this until I put it in front of you. Maybe that will save us some time.
Were you involved at all in creating the algorithm that was used to create the automatic bills under the old system?
A. No.
Q. Were you involved at all in getting that algorithm or that methodology approved?
A. I don't believe so. I don't recall if I was.
Q. Okay. Now, you indicated, I think, earlier that, under the old system, if there was no demand provided, the computer would not automatically estimate demand and would kick it out. Correct?
A. I believe that's correct. Yes.
Q. And you said a variety of methods were used -- you were not sure what they were -- by the customer service people to estimate demand manually. Correct?
A. That's correct.
Q. Did you ever have meetings with the customer service people where you told them what formula they should use to calculate demand where there wasn't a demand and reset reading?
A. Are we talking under the old system?

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Q. Under the old system.
A. If I did, I don't recall.
Q. Was there a standard company formula that they should use under the old system when it got kicked out?
MS. HILL: Objection. Asked and answered.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Have you ever had any discussions with the Commission under the old system regarding the formulas it would use to estimate demand?
A. No.
Q. Have you ever submitted those formulas for approval to the Commission under the old system where you would estimate demand?
MS. HILL: Objection. Asked and answered. Foundation.
A. BY THE WITNESS: I personally have not, no.
Q. BY MR. REED: Do you know of anybody who did?
A. No.
Q. To your knowledge, were there ever delays in getting data into the computer from meter reads for technical reasons under the old system?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't recall if there

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were.
Q. BY MR. REED: Do you know, again, under the old system, under what circumstances the bill was identified as an estimate in the bill to the consumer?
A. I couldn't -- no, I don't know.
Q. You don't know. Okay. Perhaps this will help you follow along with the questions.
A. Okay.
Q. Looking at paragraph three, my first question is whether there are any other circumstances other than those that the Commission lists in A through E that APS considers itself entitled to send out estimated bills.
MS. HILL: Objection. Foundation. Calls for a legal conclusion.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Are there any other circumstances where it does send out estimated bills other than those listed in E?
MS. HILL: Objection. Foundation. She's confused. You may have misspoke. You said other than those listed in E, and E doesn't have to do with estimated bills.
Q. BY MR. REED: I'm sorry. A through E.
MS. HILL: Objection. Foundation.
Q. BY MR. REED: 3A through E.

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A. I don't know.
Q. Okay. Based upon your knowledge as a consultant who deals with the issues surrounding the Arizona Administrative Code and the practices of your company, is it your understanding that it would be proper or improper under the regulations to send out an estimated bill for no other reason than that the reading had not been done in a timely enough fashion to allow the readings to be in the computer when that batch of bills went out?
MS. HILL: Objection. Calls for a legal conclusion. Vague and ambiguous.
A. BY THE WITNESS: Could you rephrase that question?
Q. BY MR. REED: Sure. Let's just do it in two bites.
I think you testified earlier that one of the things you do is sort of measure your company's practices and procedures against the administrative code and try and make sure that they follow the code. Is that correct?
A. That is one of my duties. Correct.
Q. Okay. And I think you agree with me that the -- well, would you agree with me that paragraph three of Title 14, Chapter 2, says, "Estimated bills

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will be issued only under the following conditions unless otherwise approved by the Commission," and then it lists five conditions.
A. We're now on R14-2-210. Is that correct?
Q. Yeah.
A. I agree that that's what it states.
Q. So those are the only conditions?
MS. HILL: Objection. Calls for a legal conclusion.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: I'm going to ask you a hypothetical. If somebody in your company came to you and said, "I want to send out estimated bills for a reason not listed in A through E," would you tell them that you can't do that?
MS. HILL: Objection. Calls for speculation. Incomplete hypothetical.
A. BY THE WITNESS: I would need to know the circumstances under why they want to send out those estimated bills to see if it really didn't meet one of the conditions that's been approved by the Commission that we could use.
Q. And if it didn't meet one of those conditions, you would advise them not to do it. Correct?

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MS. HILL: Objection. Calls for speculation. Incomplete hypothetical.
A. BY THE WITNESS: I believe I would advise them that that was not one of the approved reasons.
Q. BY MR. REED: Okay. Have you ever been approached and asked whether it was okay to send out estimated bills because the readings were not entered in the computer in a timely fashion?
A. I don't recall.
Q. You don't recall ever being asked that?
A. Huh-uh. No.
Q. Do you recall being asked whether it was okay to send out estimated bills because a meter reader had hurt themself and hadn't read their meters?
A. I don't believe I've ever been asked that specifically, no.
Q. Is that one of the reasons you can send out estimated bills?
MS. HILL: Objection. Calls for a legal conclusion.
A. BY THE WITNESS: Under certain conditions, I would say yes, we could.
Q. BY MR. REED: What conditions are those?
A. I would say if it was in a rural area and the meter reader was sick or broke his leg or someone in

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his family died and he was unable to read meters that day because he had to go to a funeral, that could fall under an emergency.
Q. And you consider that to be a reason why you would send out an estimated bill?
A. I would consider that to be -- to fall under the condition of emergency.
Q. What if you just didn't have enough meter readers. Would that be an emergency?
MS. HILL: Objection. Calls for speculation. Also calls for a legal conclusion.
A. BY THE WITNESS: I would not personally consider that an emergency.
Q. BY MR. REED: Under A(1), isn't it true that you have a ten-day window to read a meter?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: I don't see any wording in here that says ten-day window.
Q. BY MR. REED: Well, it says, "Meter reading shall be scheduled for periods of not less than 25 days or more than 35 days without consumer -- customer authorization."
MS. HILL: Is your question is that what A(1) says?

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Q. BY MR. REED: Would you agree that provides you with a ten-day period in which to get the meter read?
MS. HILL: Objection. Calls for a legal conclusion. Vague and ambiguous.
A. BY THE WITNESS: No. I wouldn't agree with that. I would state that it just says that meter reading should be scheduled for periods of not less than 25 days or more than 35 days. It's not saying how long you have to read a meter.
Q. BY MR. REED: It doesn't, huh? Okay.
Do you know, again, under the old system, if you are unable to obtain an actual reading under C --
MS. HILL: I'm sorry. Are you on 14-2-210(C)?
MR. REED: Yeah. 3(c). 14-2-210(A)(3)(c).
MS. HILL: Thank you.
Q. BY MR. REED: Are you familiar with, under the prior system, what steps were taken to obtain an actual reading by the customer if there was no access?
A. No.
Q. You don't know what steps were taken?
A. I don't know.
MS. HILL: Objection. Asked and

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answered.
Q. BY MR. REED: Has anybody ever asked you to evaluate any kind of a program or system under the old system and tell them whether it complies with Arizona Administrative Code 14-2-210(A)(3)(c) as a reasonable alternative? Did anybody ever ask you to do that?
MS. HILL: You're talking about the statute as it existed at the time?
MR. REED: Right.
A. BY THE WITNESS: I don't recall ever doing that under the old system, no.
Q. BY MR. REED: Okay. If you would look, please, at four. It carries on after three into four.
A. We don't have a four. Oh, I think it's just cut off.
Q. Okay. It begins "After the third consecutive month of estimating."
Okay. Under the old system, are you aware what attempts were made to secure an accurate reading of the meter?
A. I can't follow you on this sheet.
MS. HILL: Yeah. Ours --
A. BY THE WITNESS: We don't have a four.
MS. HILL: Are you talking about 3(e)? There is no four on our sheet. I think you're talking

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about 3(e), but that's where the confusion is. It goes from three to five. You can see 3(a), (b), (c), (d), (e), and then it goes to five. So I don't know if you're talking about 3(e). I think you are.

MS. BETHEA: The four should be right before -- it starts -- four starts with, "After the third consecutive month."

MR. REED: Is that on your sheet?

MS. HILL: No.

MS. BETHEA: Under E?

MR. REED: There is something missing. Oh, okay. The four just didn't print. If you would look at -- right after (e), there is a little four by the side there that somehow didn't print. The language "After the third consecutive month" is what I'm focusing on.

MS. HILL: I'm sorry, but that's why we were confused.

MR. REED: I understand.

THE WITNESS: Okay. What was the question?

Q. BY MR. REED: Do you know what, under the old system, was actually done after the third consecutive month to attempt to secure an accurate reading of the meter?

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A. No.

Q. Okay. If you go now under 6(b), under the old system, did the system always indicate that an estimated bill was estimated?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know.

MR. REED: You don't know? Okay.

(Deposition Exhibit Nos. 1 and 2 were marked for identification.)

Q. BY MR. REED: Take some time to read through these. It's a series of e-mails.

MS. HILL: I think she's through reading.

Q. BY MR. REED: Okay. I want to switch now, if I could, to the procedures under the new system, which was implemented in '98. So we'll call that the -- what was the phrase we used? New --

A. New CIS.

Q. New CIS. Okay. Under the new CIS, does the system estimate demand if there is no demand reading entered in the system on a demand meter?

MS. HILL: Are you asking her today?

Q. BY MR. REED: Well, let's say when the system was first instituted in 1998, was that the case?

MS. HILL: Objection. Foundation.

Q. BY MR. REED: If you know.

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A. I don't know when we very first implemented.

Q. Does the new system estimate demand?

MS. HILL: Again, are we talking today? I just think you're going to need to be more specific in terms of your question.

Q. BY MR. REED: Today does it estimate demand?

A. In some instances, but not all.

Q. Okay. And there are some where you've got a kickout for it's a no-demand customer. Correct? I mean a no-estimate customer, so they don't get estimated demand. Is that correct?

MS. HILL: Objection. Vague and ambiguous.

A. BY THE WITNESS: I don't know.

Q. BY MR. REED: Under what circumstances will the computer estimate demand for a demand customer?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I believe it will estimate a demand on most of our residential demand accounts now. Our E-32 general service rate will now estimate a demand. Unless there is somewhere in the system that, for that particular account, it says do not estimate, but -- we've changed. So we do do most of them now.

Q. BY MR. REED: Okay. Do you know when you began to estimate demand on the new system?

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A. I don't know the exact date.

Q. Was it close to simultaneous with the commencement of the new system, or was it an added feature later on? If you know.

A. I believe it was added later on.

Q. Before it was added, did the system still kick out a demand reading that didn't have the demand in it? Did it still kick it out as you described earlier to the customer reps?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I believe it did.

Q. BY MR. REED: Since 1998, have you ever had any discussions as to whether any particular formula used by the system to estimate demand needed to be approved by the Commission?

A. I don't recall specific discussions.

Q. And you've never had any discussions with the Commission about the estimating procedure for demand meters that you can recall?

A. I personally have not, no.

Q. Are you aware of any attempt by anybody to have the formula used for estimating demand through the computer approved by the Commission?

MS. HILL: Objection. Asked and answered.

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A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Going back to your work as the person who compares practices and procedures to the Arizona Administrative Code, have you ever in your recollection had any estimating procedure employed by APS approved by the Commission?
A. Have I personally?
Q. Have you been involved in that process?
A. No.
Q. Okay. Going back to APS 1712, Exhibit 2. Do you recall being part of this exchange of e-mails regarding the question of whether the system does or does not or how it estimates demand meters?
A. No. I was copied on all these notes. I don't recall the situation.
Q. Okay. If you would look on the first page of that. It's a little hard to figure out which address box relates to which e-mail, but if you would look at the third e-mail down.
It says: "The estimate bill message is triggered by the read source." If you could read through that.
A. Uh-huh.
Q. It says, "CIS does not know the demand read is missing or that it needs to be estimated." Do you

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see that?
A. Uh-huh.
Q. Okay. Is this a situation where the kWh has been read, kW hasn't been read or hasn't been reset, so that you're in fact estimating kW but not kWh?
MS. HILL: Objection. Foundation. Calls for speculation.
Q. BY MR. REED: Is that your understanding of what this discussion is about in the third e-mail down?
MS. HILL: Same objections.
A. BY THE WITNESS: Just from what I'm reading here, I would agree that could be what it's talking about.
Q. BY MR. REED: Okay. Do you know whether, under the system, the statement in this situation "There is not an estimate bill message" -- is that true?
MS. HILL: As of the date of this e-mail?
MR. REED: As of the date of the e-mail.
A. BY THE WITNESS: I didn't originate the messages, and I didn't -- I don't recall doing any research to verify if that was a true situation or not. Those aren't my words.
Q. BY MR. REED: Well, that wasn't my question. My question was whether you know whether the system,

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when it got a kWh reading but didn't get a kW reading, printed "estimate" on the bill?
A. I don't know.
Q. Based upon your knowledge of the regulations, would you agree that it should be printed on the bill if any part of the bill is estimated?
MS. HILL: Objection. Calls for a legal conclusion. Incomplete hypothetical.
Again, you're talking about as of September '99 with the statute as it existed at that point in time. Correct?
Q. BY MR. REED: I'm talking about, at the time of the e-mail, whether APS was required to clearly and conspicuously indicate that it is an estimated bill and note the reason for the estimation.
MS. HILL: Objection. Calls for a legal conclusion. Vague and ambiguous.
A. BY THE WITNESS: I would agree, yes.
Q. BY MR. REED: Okay. Do you at any point get involved in this debate about whether the bill should indicate that demand has been estimated even if kWh was not estimated?
A. I have had involvement in what we should indicate on the bill when the demand is estimated.
Q. Okay. Do the bills that go out now, do those

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indicate on them -- where demand is estimated, does it say "demand estimated," or does it say "this is an estimated bill" at this time?
A. I don't know the exact wording. I would have to look.
Q. Okay. I'm sorry. Words to that effect?
A. I believe that is correct, yes.
Q. When was that instituted?
A. I don't know the exact date. I'm sure you have it in the pile over there. I don't know.
Q. Was there a period of time where bills were going out that had estimated demand but did not have "estimate" printed on the bills?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Yes. I believe there were.
Q. BY MR. REED: Do you know how long that lasted?
A. No, I don't.
Q. Do you know what the G reason code is? Go to the bottom of the second page.
A. I would only know what it was from reading this note.
Q. Okay.
A. That was from the old system.
Q. And under the old system, there is a

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1 statement there, "We weren't telling the customer that
2 we read it or not, and we got into a lot of trouble
3 over that."
4 Do you know what that refers to?
5 MS. HILL: Objection. Calls for
6 speculation.
7 A. BY THE WITNESS: No, I don't.
8 Q. BY MR. REED: Do you agree with the statement
9 that we weren't telling the customer under the old
10 system that we were not reading or resetting the
11 demand? Is that an accurate -- to your knowledge -- an
12 accurate statement of the circumstances under the old
13 system?
14 MS. HILL: Objection. Mischaracterizes
15 Exhibit 2. Foundation. Vague and ambiguous.
16 A. BY THE WITNESS: If I understand your
17 question, you're asking me if I agree that the words
18 here say that we weren't telling the customer?
19 Q. BY MR. REED: No. My question is: Based
20 upon your knowledge, were you or were you not telling
21 the customer under the old system whether or not you
22 were reading or resetting the demand? If you don't
23 know, you don't know.
24 MS. HILL: Objection. Foundation.
25 A. BY THE WITNESS: I don't know.

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1 Q. BY MR. REED: Okay. Who was involved in the
2 decision to begin to put "estimate" on the bill when
3 demand was estimated?
4 MS. HILL: Objection. Foundation.
5 A. BY THE WITNESS: I would imagine -- I
6 believe --
7 Q. BY MR. REED: Well, were you, I guess, is the
8 question.
9 A. No, I was not.
10 Q. Were you consulted?
11 A. Initially or down the road?
12 Q. At any point.
13 A. I believe at some point I have had some
14 involvement with printing "estimated" on the bill when
15 the demand is estimated.
16 Q. Was that something that you recommended?
17 A. I don't recall.
18 Q. Is it something that you endorsed?
19 A. I would have no reason to think I wouldn't
20 endorse it.
21 Q. Would you endorse it because it fit with the
22 regulations?
23 MS. HILL: Objection.
24 Q. BY MR. REED: Or let's just say did you
25 endorse it because it fit with the regulations?

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1 A. I don't know.
2 Q. Well, did you have any opinion as to whether
3 it fit with the regulations at the time you were asked?
4 A. Yes.
5 Q. What was your opinion?
6 A. My opinion would be that it fit with the
7 regulations.
8 Q. Was it also your opinion that not putting it
9 on there didn't fit with the regulations?
10 MS. HILL: Objection. Calls for a legal
11 conclusion.
12 A. BY THE WITNESS: I don't remember
13 specifically stating an opinion that not doing it
14 wouldn't fit with the regulations.
15 Q. BY MR. REED: But you did have an opinion
16 that doing it would?
17 MS. HILL: Objection. Asked and
18 answered. Vague and ambiguous.
19 A. BY THE WITNESS: I have an opinion now that
20 it would do it. I can't speak for what might have
21 happened two years ago or can't recall specifics.
22 Q. BY MR. REED: Who is Linda Jacobs?
23 A. She is a business analyst.
24 Q. Did you ever communicate with her regarding
25 the conclusion to her e-mail that's on the first page

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1 of this exhibit that the change to billing is not
2 required and not cost justified?
3 A. I don't recall responding to that comment.
4 Q. Did you ever meet with her to discuss this
5 issue and whether it was in fact required?
6 A. I don't recall any meetings on that.
7 (Deposition Exhibit No. 3 was marked for
8 identification.)
9 Q. BY MR. REED: Do you recognize this e-mail?
10 A. Yes. Yes, I do.
11 Q. In the second paragraph, it says, "Currently,
12 we use a 50 percent load factor," et cetera, et cetera.
13 Do you know where that formula originated?
14 Whose idea was it?
15 A. Yes.
16 Q. Whose idea was it?
17 A. It was a recommendation from the pricing
18 department to use load factor to calculate demand.
19 Q. Or to calculate estimated demand?
20 A. To calculate estimated demand. That is
21 correct.
22 Q. And did it come to you for approval before it
23 was put into effect?
24 A. It didn't come to me for approval. It came
25 to me for a recommendation on what would be a good

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1 methodology to use.
2 Q. Okay. When did that happen? It says,
3 "Currently, we use a 50 percent load factor,"
4 et cetera, et cetera. Do you know when that was put
5 into effect?
6 A. I don't know the exact date we started
7 letting the system estimate the demand.
8 Q. But that's when that formula went into
9 effect, when you let the system estimate demand?
10 A. That is correct.
11 Q. And the 50 percent load factor, 45 percent,
12 60 percent classifications, that is the estimating
13 procedure that APS was employing when it was estimating
14 for demand meters, is that correct, when it was done by
15 the computer?
16 A. That is correct. When we let the system
17 start estimating, those are the load factors we used
18 for those rates.
19 Q. So those are the procedures that you
20 employed?
21 A. Those are the load factors we used to
22 estimate a demand for these specific rates.
23 Q. And those were invented by APS personnel?
24 Originated with APS personnel?
25 MS. HILL: Objection. Compound.

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1 Q. BY MR. REED: Did those originate with APS
2 personnel?
3 A. Yes.
4 Q. Okay. And then they came to you to see
5 whether -- do you know why they were referred to you?
6 That is, the original ones that are listed as current
7 on Exhibit 1746.
8 MS. HILL: Objection. Foundation.
9 A. BY THE WITNESS: I don't understand your
10 question.
11 Q. BY MR. REED: Yeah. Why would they come to
12 you with this proposed 50/45/60 formula that's in the
13 second paragraph of Exhibit 3?
14 MS. HILL: Objection. Foundation. Calls
15 for speculation.
16 Q. BY MR. REED: Is that part of your job?
17 A. Why would they come to me with this proposal?
18 Q. Yeah.
19 A. They aren't coming to me with this proposal.
20 This is me stating what we currently use and asking for
21 them to be changed.
22 Q. You said that when they first did it and put
23 it into the system, they came to you and asked you to
24 review it. Is that correct? If I'm wrong, I'm wrong,
25 but I thought that's what you testified.

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1 A. No. When they originally wanted to come up
2 with a way to estimate demand in the system, they came
3 to the pricing department. And myself and my
4 supervisor at that time came up with the load factor
5 and the 50, 45, and 60 percent.
6 Q. As the estimating procedure you were going to
7 use?
8 A. As the load factor calculations to use to
9 calculate an estimated demand for these specific rates.
10 Q. And did you get approval to do that from
11 anybody?
12 MS. HILL: Objection. Vague and
13 ambiguous.
14 A. BY THE WITNESS: I don't recall, no.
15 Q. BY MR. REED: Did you get approval from your
16 boss?
17 A. Yes.
18 Q. Do you know whether he got approval from his
19 boss?
20 A. I don't know.
21 Q. Okay. Do you know whether the president of
22 the company was aware that you were doing this?
23 MS. HILL: Objection. Foundation.
24 A. BY THE WITNESS: I don't know.
25 Q. BY MR. REED: And it's true, isn't it, that

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1 you never had this formula approved by the Commission?
2 A. I don't know. I didn't personally.
3 Q. Do you know if anybody did?
4 A. I don't know.
5 Q. Then with this e-mail in 2002, it says, "We
6 would like the load factors for the residential rates
7 lowered to 35 percent and the load factor for
8 nonresidential lowered to 50 percent." Do you see
9 that?
10 A. Yes.
11 Q. Who is "we"?
12 A. The pricing department.
13 Q. The pricing department. So you were going to
14 change the formula again in the pricing department?
15 A. In response to concerns that we were getting
16 from the field and to bring the load factors more in
17 line with actual load research data, the pricing
18 department did ask for the load factors to be lowered.
19 Q. And was it done?
20 A. Yes.
21 Q. Did you ask the Commission for approval?
22 A. I personally did not.
23 Q. Did anybody that you know of?
24 A. I don't know.
25 Q. Is there any way -- when you finally read a

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1 meter that's been estimated, is there any way to know
2 for sure that your formula accurately measured demand
3 in that home when the meter wasn't reset?
4 MS. HILL: Objection. Foundation. Calls
5 for speculation.
6 A. BY THE WITNESS: No.
7 Q. BY MR. REED: And there is no way to
8 accurately recapture the demand in the months when the
9 meter wasn't reset, is there?
10 MS. HILL: Objection. Foundation. Calls
11 for speculation.
12 A. BY THE WITNESS: Not under most instances,
13 no.
14 Q. BY MR. REED: And once that estimated load
15 bill is paid by the customer, if it's not an accurate
16 measure of the demand, there is no way to recapture the
17 accurate demand and reconcile the bill in the future,
18 is there?
19 MS. HILL: Objection. Foundation.
20 Incomplete hypothetical. Calls for speculation.
21 A. BY THE WITNESS: Not under most instances,
22 no.
23 Q. BY MR. REED: So your formula actually does,
24 in months where the demand is not read, dictate how
25 much the consumer is paying for the electricity they

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1 consume. Correct?
2 MS. HILL: Objection. Foundation.
3 A. BY THE WITNESS: The formula provides a means
4 of estimating, of calculating an estimated demand to be
5 used for billing purposes for that month.
6 Q. BY MR. REED: But that remains the bill,
7 essentially, in most cases, because you can't go back
8 and re-create the actual demand if it wasn't reset, can
9 you?
10 MS. HILL: Objection. Vague and
11 ambiguous. Incomplete hypothetical.
12 A. BY THE WITNESS: Your statement is correct
13 that you can't go back and re-create the actual demand
14 if it wasn't reset.
15 Q. BY MR. REED: So the formula really dictates
16 the amount of the bill, doesn't it?
17 MS. HILL: Objection. Asked and
18 answered.
19 A. BY THE WITNESS: The formula provides a means
20 of calculating an estimated demand to be used for
21 billing purposes for that month for the rate.
22 Q. BY MR. REED: And the homeowner is required
23 to pay that. The customer is required to pay that. Is
24 that correct?
25 A. There are provisions under the rules where

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1 the customer disputes a bill.
2 Q. But that's the bill you sent out, and, unless
3 they dispute it, they pay it. Correct?
4 A. That would be our --
5 Q. Your expectation?
6 A. If we send a bill, that they will pay it.
7 They don't always pay.
8 (Deposition Exhibit No. 4 was marked for
9 identification.)
10 Q. BY MR. REED: If you look at page -- showing
11 you what has been marked as Exhibit 4 to your
12 deposition. Could you turn to page 1723?
13 Okay. Could you explain to me what the
14 process of prorating the demand charge is, if you know?
15 MS. HILL: Objection. Foundation.
16 A. BY THE WITNESS: The system calculates the
17 charge and then prorates it to the number of days.
18 Q. BY MR. REED: So is it based on an actual
19 reading of the demand needle and then you prorate? Or
20 can you prorate off of an estimate?
21 MS. HILL: Objection. Foundation.
22 Q. BY MR. REED: If you know.
23 A. You could do either. It could be either.
24 Q. Are you aware of any prorating of an estimate
25 on a final or initial bill?

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1 A. Prorating of the charge on an estimated or
2 final bill?
3 Q. There is a statement here, "We do prorate the
4 demand charge on initial or final bills but not the
5 read."
6 A. That is correct.
7 Q. Okay. Could you explain what that means?
8 A. All of our --
9 MS. HILL: Objection. Calls for
10 speculation. Foundation.
11 A. BY THE WITNESS: A final bill could only be
12 for four days. The customer might disconnect service
13 four days after their last normal read. So we wouldn't
14 charge them the entire monthly charge, because most of
15 our rates are monthly charges. So we prorate it down
16 to four days. So for the actual number of days. Or we
17 might just set a meter on an initial bill, and they
18 could only be in the house five days when their meter
19 gets read the first time. So we prorate the charge to
20 five days.
21 Q. BY MR. REED: On a demand meter -- see if I
22 can understand this. On a demand meter, it's reset to
23 zero -- strike that.
24 A demand meter is estimated and not reset to
25 zero. Then in the following month, they move out. Do

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you go back and read the demand when they move out, or do you estimate the demand and prorate it when they move out?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: When a customer asks to have service disconnected, we go out and try to physically get a read off the meter.

Q. BY MR. REED: Okay. But if the meter wasn't reset in the prior month or the month before that, let's say, then we're back to this problem of it reads the highest demand over that four months, and you prorate for that. Is that correct?

MS. HILL: Objection. Foundation. Vague and ambiguous.

A. BY THE WITNESS: We would have the same situation that we previously discussed in your examples.

Q. BY MR. REED: Okay. Would you consider that to be an estimated bill in that situation?

MS. HILL: Objection. Calls for a legal conclusion.

A. BY THE WITNESS: I would consider that to be an actual read taken on that day and used for billing purposes.

Q. BY MR. REED: So in fact, you would not

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necessarily know -- if it hadn't been reset in any of the prior months, you wouldn't know -- if demand was in fact lower in the month of the proration, you wouldn't know whether that was an accurate proration, would you, because you wouldn't know the demand?

MS. HILL: Objection. Calls for speculation. Incomplete hypothetical.

A. BY THE WITNESS: I would know the demand read on the day that I was out taking that demand. I would have no way of knowing at what point in time that demand was reached.

Q. BY MR. REED: It could have been reached in the prior month where it hadn't been reset. Correct?

A. That's correct.

Q. When that prorated bill goes out, does it say "estimate" on it? Do you know?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know which bill we're talking about now.

Q. BY MR. REED: Okay. When the prorated bill goes out at the end of the service period, when they cut the service off, does it say "estimated" on it; do you know?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: If we got an actual read on

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that the date that the customer asked to have service disconnected, it would not say estimated.

Q. BY MR. REED: Turn to page 1726. This is the November 2000 e-mail exchange between you and Cynthia Janka. Do you recall this?

A. Yes, I do.

Q. It says, "I met with Lori and her group yesterday." Was that the -- the "I" there is you. Correct?

A. That's correct.

Q. Okay. And Lori is who?

A. Lori Lewis.

Q. Okay. Now, it says, if you look at the middle of the second paragraph, after stating that the old system did not estimate demands, which is true, you then state that the billing consultants and associates use various methods to estimate demands, which you testified to earlier.

It says, "When we first converted, there were numerous concerns that the demands being estimated by the system were unreasonable."

My question there is: Does that mean that, from the time you converted in '98, the system has been estimating demands?

A. Well, I know I stated earlier that I didn't

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think we were doing it when we first converted. So by reading this, I'm assuming I didn't remember something when I answered it the first time, and there must have been concern.

Q. Then it says, "Around March of '99, the pricing department was asked to provide some better guidelines."

Now, is that what you were testifying to earlier, that first group of meetings where the pricing people came up with the 60/45/50 formula?

A. That would be then, yes. I stated I didn't know the date, that you had it in the pile, and you did.

Q. Do you know what the system formula was prior to March of 1999?

A. No.

Q. Where it says IS, is that information systems? There is an abbreviation, IS.

A. Yes.

Q. Okay. So we know for sure that, at least from April of 1999 and perhaps before that, the system was estimating using a set formula that had been created internally at APS. That's correct, isn't it?

A. That is correct.

Q. Go to the next paragraph. It says that, if

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demand had to be estimated by billing services, there was still various methods being used. So would that mean that, if demand was being estimated manually, you were still in the situation where consultants and associates used various methods to estimate demand when needed? The situation you described in your second paragraph was still going on?

MS. HILL: Objection. Compound.

A. BY THE WITNESS: That is correct.

Q. BY MR. REED: Okay. You then suggested that all of those be abandoned and everybody go to your formula, the 45/50/60. Is that what you're proposing there?

A. That's correct.

Q. And in November of 2000, do you have any recollection of anybody raising with the Commission this formula and asking them to approve it as an estimating methodology?

A. I'm not aware.

Q. Turn to page 1729. At the bottom there, there is an e-mail that is sent to you from Cynthia Janka, talking about "When we researched multiple month demand readings in '96."

Were you part of that process where there was an examination in 1996 of what was being done about

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demand estimates?

A. No.

MR. REED: Okay.

MS. HILL: Is it possible to take another short break?

MR. REED: Yeah.

(The deposition was at recess from 11:59 a.m. to 12:05 p.m.)

(Deposition Exhibit No. 5 was marked for identification.)

Q. BY MR. REED: Take a quick look at Exhibit 5. Are you familiar with the predictive dialer campaign that's listed here? Described here, I should say.

A. My familiarity is really what's here.

Q. Okay. My question is: Prior to November of 2000, was there any program in place to follow up with no-access meter reads?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: If I understand the question, this is as we discussed earlier. And if we weren't able to get a read, we would make different attempts. I couldn't expound on all of them.

Q. BY MR. REED: Yeah. I was just wondering if there was any systematic program, a program like, you know, predictive dialer, where there is a clear program

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with a bunch of rules. This is what we're going to do when we have no access.

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know.

Q. BY MR. REED: You don't know. Okay.

Has this program been expanded beyond metro Phoenix; do you know?

A. I don't know.

(Deposition Exhibit No. 6 was marked for identification.)

Q. BY MR. REED: Showing you what has been marked as Exhibit 6 to your deposition. This is an e-mail from Doug Winckler to you, dated March 11, '99. This is the same formula for estimated demand that was referenced in the other documents?

A. The original way of estimating the original load factors, yes, it is.

Q. So this is the -- this would be about when the system first started to estimate -- or is this the second bite at it? Or is this the first? I'm a little unclear whether this refers to your first formula or your revised formula.

MS. HILL: Objection. Compound. Vague and ambiguous.

Q. BY MR. REED: Do you know which formula this

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refers to?

A. This is the first formula that the pricing department was asked to provide.

Q. Okay. But you're not clear whether this was the first formula ever put into the system or whether this was the replacement for the first formula put into the system. Is that correct?

A. That's correct.

MR. REED: Okay. 1715, please.

(Deposition Exhibit No. 7 was marked for identification.)

Q. BY MR. REED: Is that 1715?

A. Uh-huh.

Q. This is from Doug Winckler to you regarding estimating, and it's a fairly complicated discussion about a variety of circumstances of estimating demands and a variety of formulas for different kinds of base loads, et cetera.

My question to you is whether any of this has ever been submitted to the Commission and approved by the Commission, to your knowledge, as part of anything, either on its own or as part of a rate?

A. I don't know.

MR. REED: Okay. 1750 and then 1651.

(Deposition Exhibit No. 8 was marked for

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1 identification.)
2 Q. BY MR. REED: 1750?
3 A. Uh-huh.
4 Q. If you look at the top, this is from you to
5 Ravi Nair. Is that correct?
6 A. That's correct.
7 Q. And, again, there is a statement from you:
8 "Yes, we are going with 35 percent on both of the
9 residential rates."
10 A. That's correct.
11 Q. Whose decision was that? Was that yours or
12 your boss's?
13 A. It was a joint decision of myself and the
14 boss.
15 Q. Okay. Did you consult the Commission?
16 A. I personally did not, no.
17 Q. Do you know whether he did?
18 A. I don't know.
19 Q. In situations where you are seeking the
20 approval of the Commission for something you're going
21 to do, who typically does that within the organization?
22 A. It could go through various channels,
23 depending on the topic.
24 Q. Do you know what channel, if any, estimating
25 would go through?

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1 A. It could go through the consumer advocate's
2 or it could go through the regulatory compliance
3 section.
4 Q. Okay. Who is in regulatory compliance?
5 A. Jana Van Ness.
6 Q. Was Jana Van Ness aware of the formulas you
7 were creating for estimating demand needed, any of
8 them? Was she involved in those discussions?
9 A. Yes.
10 Q. To your knowledge, did she ever go to the
11 Commission to advise them of these changes?
12 A. I don't know.
13 Q. Did she ever talk to you about doing that?
14 A. No.
15 Q. Looking at 1750 again, is June 2002 the last
16 time that you changed the estimating procedures for
17 demand meters?
18 A. It's the last time that we changed the load
19 factor percentages that are used.
20 MR. REED: Okay. Showing you 1651 --
21 have you got that?
22 (Deposition Exhibit No. 9 was marked for
23 identification.)
24 Q. BY MR. REED: Look at the middle paragraph
25 first, Vega to Van Ness. There's a statement: "She

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1 told me they were up against the last day for the 25-35
2 window to get these reads in."
3 The 25/35 window, since it's in quotes there,
4 the word "window," is that sort of a term that's used
5 around the company to describe when stuff has got to
6 get billed?
7 MS. HILL: Objection. Foundation.
8 A. BY THE WITNESS: It's a term we use any time
9 we're talking about due dates.
10 Q. BY MR. REED: In your position as the person
11 who evaluates the Arizona Administrative Code, do you
12 consider being up against the window to be an
13 appropriate reason for submitting estimates?
14 MS. HILL: Objection. Calls for a legal
15 conclusion.
16 A. BY THE WITNESS: Without knowing the
17 circumstances of why they're against the window, I
18 can't answer.
19 Q. BY MR. REED: If you go to the top of that,
20 were you involved in any of these discussions in 2002
21 about estimated first and finals?
22 A. I was involved in discussions on that, yes.
23 Q. Were those numbers ever pulled together as to
24 how many first and finals were being estimated?
25 A. Yes.

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1 Q. And did that wind up in the CIS compliance to
2 ACC rules and regulations audit, those statistics? Do
3 you know?
4 A. I don't know.
5 Q. How far back, to your knowledge, did this
6 problem with first and final bills being estimated go?
7 MS. HILL: Objection. Foundation.
8 Q. BY MR. REED: You were a part of the
9 discussion of the problem. How far back did it go?
10 MS. HILL: Objection. Foundation.
11 A. BY THE WITNESS: How far -- I don't
12 understand your question.
13 Q. BY MR. REED: Yeah. In April 2002, there was
14 work on a report to illustrate the number of first and
15 final bills that were estimated. My question is: Was
16 this an issue that emerged in 2002, or was it an
17 ongoing issue about estimating first and finals?
18 MS. HILL: Objection. Foundation. Vague
19 and ambiguous.
20 A. BY THE WITNESS: I believe it started when
21 the Commission granted a waiver allowing the estimating
22 of first and final bills and required a report on the
23 number.
24 Q. BY MR. REED: Okay. But before the waiver,
25 you had still been engaged in the practice. Correct?

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MS. HILL: Objection. Foundation.
A. BY THE WITNESS: It's my understanding that it did occur.
Q. BY MR. REED: When was the waiver granted?
A. I don't know the exact date of the decision by the Commission.
Q. Going quickly to the new system. Currently, how many months will it estimate automatically before creating an exception, if you know?
A. Two months, and it will kick it as an exception in the third month.
Q. That wasn't always the case with the new system, was it?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: No. I believe we did have some issues around the interpretation of the three months --
Q. BY MR. REED: Right.
A. -- and it was occurring in the fourth month.
Q. I think it was kicking in the fourth month. Correct?
A. For a brief period of time, that is correct.
Q. Was it from the inception of the program until the change was made?
MS. HILL: Objection. Foundation.

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A. BY THE WITNESS: I don't know.
Q. BY MR. REED: You don't know. But there was a change made where you went to three months rather than four. Is that correct?
A. That's correct.
Q. And these errors were fixed in July of 2002?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know. Is that right?
A. I can't address that without knowing the whole statement of everything that's being said around that.
Q. Okay. Would you agree with this statement, which I can tell you comes from Pinnacle West Capital Corporation CIS Compliance to ACC Rules and Regulations Audit.
MS. HILL: Could you show it to her, please, so she can see the context?
MS. BETHEA: Do you want it as an exhibit?
MR. REED: Yeah. It will speed it up.
(Deposition Exhibit No. 10 was marked for identification.)
Q. BY MR. REED: If you look at page 3345, paragraph three under "Areas reviewed that need improvement."

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A. Yes.
Q. "Customer accounts were being estimated for more than three consecutive months without creating a billing exception, as the rules and regulations require. These errors were fixed in July 2002."
Do you see that statement?
A. Yes.
Q. Okay. The question is: How long, to your knowledge, were customer accounts being estimated for more than three consecutive months without creating a billing exception prior to July 2002?
MS. HILL: Objection. Foundation. Asked and answered.
A. BY THE WITNESS: I don't know the exact time frame. I believe -- and I'm sure you have the e-mails in there that address this -- that it was a relatively short period of time where we had an old program get reinstalled, and then it was fixed again. So I think it was just a couple of months. It was not --
Q. BY MR. REED: It was not from the inception?
A. No.
Q. I would like you to look at the statement in paragraph four. And would you agree with the statement in paragraph four?
MS. HILL: Objection. Foundation.

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A. BY THE WITNESS: Yes.
Q. BY MR. REED: And on page 3346, first line: "APS is required to comply with rules and regulations contained in the Arizona Administrative Code, Title 14." Do you agree with that?
A. Yes.
Q. Under the new system, do you know if there is any program in place to obtain customer readings for nonaccess meters?
A. I believe we do have some processes in place for customers to provide us reads.
Q. Do you know what they are?
A. I believe we send some blue cards or postcards that have dials on them, and the customer can mark the position of the dials on the card. I think they also have phone numbers they can call into.
Q. And do you know when that was put into place?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: No, I don't.
Q. BY MR. REED: And you've already testified you don't know what system they were using to get customer reads under the old system. Correct?
A. I believe I testified I didn't know all of the methodologies they might have been using.
MR. REED: Okay.

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(Deposition Exhibit No. 11 was marked for identification.)

Q. BY MR. REED: Does this refresh your recollection as to what the present system is?

A. No.

Q. Okay. I notice on there it says, "Month Four - Office Estimate." Was this during 2000, October 2000, around the time when you had the problem with the four-month estimating?

MS. HILL: Objection. Foundation. Calls for speculation.

A. BY THE WITNESS: I don't recall.

Q. BY MR. REED: Okay. Do you know exactly what is done after the third estimate to obtain a reading, what steps are taken on a uniform basis?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: No.

Q. BY MR. REED: Do you know why the old CIS system didn't estimate demand? Was it a policy decision, or was it the inability of the system to do it?

A. I don't know.

MS. HILL: Objection. Foundation. Compound. Sorry.

THE WITNESS: That's all right. I tried

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to wait.

Q. BY MR. REED: A couple loose ends. To your knowledge, do the meter readers ever scope demand meters and submit the kWh without submitting the kW to the system?

A. I don't know.

MS. HILL: Objection. Foundation.

Q. BY MR. REED: And do you know whether, where estimates have been made in excess of three months, when the bill is corrected, is interest paid to the customer if the customer has been overbilled?

MS. HILL: Objection. Foundation.

Q. BY MR. REED: If you know.

A. No. We don't pay interest on that.

MR. REED: Okay. I think we're done. Thank you, ma'am.

(The deposition was concluded at 12:35 p.m.)

JANET MICHELLE SMITH

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C E R T I F I C A T E

I, Christina L. Larsen, Certified Court Reporter for the State of Arizona, certify:

That the foregoing deposition was taken by me; that I am authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded by counsel and the answers of the witness were taken down by me in shorthand and thereafter transcribed under my direction; that the transcript was made available to the witness to read and sign; and that the foregoing pages are a full, true, and accurate transcript of all proceedings and testimony had upon the taking of said deposition, all to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 1st day of May, 2003.

Christina L. Larsen
Certified Court Reporter #50011
For the State of Arizona

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In The Matter of:

READ VS ARIZONA PUBLIC SERVICE

UNITED STSTES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

CYNTHIA JANKA

APRIL 22, 2003

JD REPORTING, INC
CRETIFIED COURT REPORTERS
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

NO. CV 2002-010760

DEPOSITION OF CYNTHIA J. JANKA

Scottsdale, Arizona
April 22, 2003
1:35 p.m.

PREPARED FOR:

(COPY)

PREPARED BY:
Christina L. Larsen, RPR, CCR

DEPOSITION OF CYNTHIA J. JANKA was taken on April 22, 2003, commencing at 1:35 p.m., at the law offices of Zimmerman Reed, P.L.L.P., 14646 North Kierland Boulevard, Suite 145, Scottsdale, Arizona, before Christina L. Larsen, Arizona Certified Court Reporter No. 50011.

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ALSO PRESENT:

MS. STACY BETHEA

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QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

(None)

CONFIDENTIAL PORTIONS OF THE RECORD

(None)

RECESSES TAKEN

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CYNTHIA J. JANKA,
a witness herein, having been first duly sworn by the Certified Court Reporter to speak the truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. REED:
Q. Would you state your name for the record, please?
A. Cynthia Janka.
Q. And, Ms. Janka, where do you live? I don't need the address, just the city.
A. Peoria.
Q. And by whom are you employed?
A. APS.
Q. And what is your title now?
A. Rate and regulatory adviser.
Q. And how long have you been in that position?
A. Since November. I have had that title since November.
Q. November 2002?
A. Uh-huh.
Q. What was your position before that?
A. Consumer advocate.
Q. How long did you hold that position?

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A. Approximately seven or eight years.
Q. So you held that position when the new CIS system was put in?
A. Yes.
Q. And did you hold that position when the old CIS system was operating?
A. Yes.
Q. And so you actually held that position from the early '90s?
A. Mid '90s.
Q. So as of 1996 through 2002, you were the consumer advocate?
A. Correct.
Q. What exactly does a consumer advocate do within a company like APS?
A. The consumer advocate acts as a liaison with the Arizona Corporation Commission. We handle customer complaints.
Q. In that position, who did you report to?
A. During that time period, several people.
Q. Well, what was the name of the title that you reported to?
A. It changed, because we reported to different departments.
Q. Okay. Let's -- well, let's back up a second.

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Who do you report to now?
A. Al Propper.
Q. Okay.
A. Alan Propper.
Q. And at the time you made the transition to rate and regulatory adviser, who were you reporting to?
A. Alan Propper.
Q. So Mr. Propper was your boss when you were the consumer advocate, too?
A. Yes.
Q. For how long?
A. I don't remember.
Q. Were you reporting to Mr. Propper when the new CIS went into operation?
A. I don't believe so.
Q. Okay. Who was his predecessor in terms of your report?
A. I believe at the time I reported to Barbara Klemstine.
Q. Is that with a K?
A. Yes.
Q. What was her title?
A. I don't remember.
Q. Was she Mr. Propper's predecessor, or was that a different department you were reporting to?

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A. I'm believing -- remembering back, I believe she did report to Al Propper for at least some of that time.
Q. And then you reported to her?
A. Yes.
Q. Okay. Mr. Propper is a director. Correct?
A. Correct.
Q. And he has about five different departments reporting to him, including consumer advocacy?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Go ahead.
A. I believe there's four.
Q. Okay. And do you know the names of those four departments?
A. Pricing department, rate administration, consumer advocate office. And I don't know the title of the department, but they deal with our FERC requirements. Federal --
Q. Energy?
A. Right. Right.
Q. Okay. Did the consumer advocate office always report to within that group, or was it part of another group at some point?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: It was part of another group

9

1 prior to that.
2 Q. BY MR. REED: What was that group?
3 A. Customer service.
4 Q. That was Mr. Bennett?
5 MS. HILL: Objection. Vague and
6 ambiguous.
7 Q. BY MR. REED: Go ahead.
8 A. Prior to reporting to Barb Klemstine, the
9 consumer advocate office reported to Denise Hutchinson,
10 who is in the training department at customer service.
11 Q. Okay. Do you know the year that changed?
12 A. I believe 1998.
13 Q. Was that as part of the switch in the system
14 to the new computer system in 1998, or did they happen
15 to both occur in 1998?
16 MS. HILL: Objection. Foundation.
17 A. BY THE WITNESS: It was not part of the new
18 computer system.
19 Q. BY MR. REED: Okay. Just a separate decision
20 to move your department from one reporting tree to
21 another?
22 A. I'm not really familiar with that
23 decision-making process of why it was moved.
24 Q. No. I didn't say why. But it was not
25 related to the change in the computer system is what

10

1 you're saying?
2 A. The consumer advocate office moved in January
3 of 1998.
4 Q. Okay. Did you have a report prior to Barbara
5 Klemstine? Did you report to anybody as consumer
6 advocate prior to Barbara Klemstine?
7 A. Yes. Denise Hutchinson.
8 Q. Oh, that's right. Anybody prior to Denise
9 Hutchinson?
10 A. Jana Van Ness.
11 Q. And what was Ms. Van Ness's position?
12 A. I don't recall her title.
13 Q. Do you know when that switch was made from
14 Van Ness to Hutchinson?
15 A. No. I don't remember.
16 Q. Okay. Tell me about some of your duties
17 since November 2002. Who do you advise?
18 A. The consumer advocate office.
19 Q. And who is in your old position as consumer
20 advocate?
21 A. I'm still a part of the consumer advocate
22 office. I still handle customer complaints. In
23 addition to that, I act as the lead in the consumer
24 advocate office.
25 Q. So you've stayed involved in customer

11

1 problems and added the regulatory responsibility to
2 that where you're advising your department on those
3 issues. Is that correct?
4 A. I don't know that I would characterize it
5 that way.
6 Q. Why don't you characterize it for me then.
7 MS. HILL: Objection. Vague and
8 ambiguous. Do you understand the question?
9 THE WITNESS: No.
10 Q. BY MR. REED: Okay. What do you do?
11 MS. HILL: Objection. Asked and
12 answered. Go ahead.
13 A. BY THE WITNESS: I handle customer
14 complaints. I assist in questions from the other
15 advocate. And there's two. There's an advocate and a
16 part-time advocate. I still work with the Corporation
17 Commission quite closely on different matters. I
18 handle any escalated type customer complaint. I also
19 work with customer service and other departments in the
20 company to assure compliance with the rules.
21 Q. BY MR. REED: When you said "with the rules,"
22 does that include Title 14, Chapter 2, of the Arizona
23 Administrative Code?
24 A. It includes the Arizona Administrative Code.
25 Q. Okay. So it would include 14-2-210?

12

1 A. I'm not familiar offhand -- yes.
2 Q. Okay. And in your prior position, were you
3 required to be familiar with the practices and
4 procedures of the company regarding billing of
5 consumers?
6 A. Yes.
7 Q. Were you required to have knowledge regarding
8 the company's practices and procedures regarding
9 estimated billings?
10 A. Yes.
11 Q. Were you required to have knowledge regarding
12 14-2-210 of the Arizona Administrative Code?
13 A. Yes.
14 Q. Was part of your job to measure what was
15 being done internally against the requirements of the
16 code?
17 MS. HILL: At what point in time?
18 Q. BY MR. REED: While you were in the consumer
19 advocate office.
20 A. I don't understand the question.
21 Q. Yeah. Was part of your job to put the
22 administrative requirements here on your left and the
23 conduct on your right and compare them and make sure
24 the conduct fit within the requirements?
25 A. Yes.

13

Q. I would like to, if I could, break this down into old CIS and new CIS so we can establish the differences.

Under the old CIS system, how many estimated bills would it take to create a billing exception?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know.

Q. BY MR. REED: Who would know, if you know?

A. I don't know.

MS. HILL: Objection. Calls for speculation.

Q. BY MR. REED: Okay. Under the old system, let's start to talk about a kWh-only meter. Under the old system, if there was no reading in the system for a kWh-only meter, would the system automatically estimate it?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I believe certain times it would and certain times it wouldn't, depending on the situation.

Q. BY MR. REED: Okay. And do you know which times it would and which times it wouldn't?

A. No.

Q. And when it would, that would be done automatically within the system, correct, and a bill

14

would be generated?

MS. HILL: Objection. Foundation. Compound.

A. BY THE WITNESS: Could you --

Q. BY MR. REED: Yeah. You're familiar, you indicated, with the practices and procedures of the company regarding estimating. I think you answered yes to that.

A. Yes.

Q. Okay. So my question is: Under the old system, did the computer either estimate when it didn't get a kWh reading or create an exception?

MS. HILL: Objection.

Q. BY MR. REED: Were those the two possibilities?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know that those would be the only situations.

Q. BY MR. REED: What were the other situations; do you know?

A. I don't know.

Q. Okay. One of the things that would happen under the old system was that, in some instances, the system would automatically create an estimated bill, correct, for kWh?

15

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: Could you repeat the question?

Q. BY MR. REED: Yeah. You testified earlier that you know and have known for some time about the estimating procedures of APS. Correct? And I'm asking you a question about the estimating procedures of APS.

Did the computer produce automatic estimated bills?

MS. HILL: Objection. Foundation. You need to just take a moment so I have time to do my objection.

A. BY THE WITNESS: I'm not familiar with great details of the billing system.

Q. BY MR. REED: Okay. What about the billing system do you know?

MS. HILL: Objection. Vague and ambiguous.

Q. BY MR. REED: You've told me you understand the estimating system. I've asked you one question about estimating, and, after the foundational signal, you said "I don't know."

MS. HILL: Well, objection. Misstates her previous testimony about what she testified. If you want to ask her questions, she'll tell you whether

16

she has knowledge or not.

Is there a question on the record? I mean, to say, "What about the billing system do you know?" that's -- I take that as harassment. If you have a specific question about the billing system --

MR. REED: Harassment? Oh, Lord. If you want to see harassment -- you probably don't.

MS. HILL: I'd say that's a good thing, but --

MR. REED: You really don't. You really don't if you think that's harassment.

MS. HILL: Well, you understand where I'm going.

MR. REED: No, I really don't. I think you're disrupting the deposition with silly foundation objections. That's what I think. And I don't the foundation objections are really objections; I think they're signals. That's what I think.

MS. HILL: Well, the foundation objections are well founded. Please let me finish. I let you finish.

MR. REED: You didn't, but that's okay.

MS. HILL: Well, I'm sorry if I didn't, because, at least on the record, it looked like I had.

The foundation objections are well founded.

17

You do not have the proper people here who can answer the questions that you're asking. If they know the answer, they will certainly testify. And when you have the right person, that person will testify as to the questions you're asking, too.

So I'm going to continue to make my objections. I believe they are well founded. You have not established the foundation for these witnesses to be able to answer these questions.

MR. REED: Except they keep on answering them, don't they?

MS. HILL: They don't. The answer is "I don't know."

MR. REED: Although a lot of the answers this morning were "I don't know" after your foundation objections. A lot of them.

MS. HILL: Well, and you make the foundation objection because there is no foundation. And if in fact they know, terrific.

MR. REED: They do know. They are being instructed not to know.

MS. HILL: They have not, and that is absolutely false, Barry.

MR. REED: Let's go back to asking questions now that we've had that bit of fun.

18

Q. BY MR. REED: You said -- when I asked you the foundation question, you said that you were familiar with the system by which APS estimates. Is that not accurate?

MS. HILL: Objection. Misstates her previous testimony.

Q. BY MR. REED: Do you understand the estimating procedures? Do you know them?

A. I know big picture details. I don't know individual details.

Q. I'm not asking you individual accounts. I'm asking you about how the system works and worked.

For instance, let me ask you this. Do you know -- again, this is under the old system -- whether an attempt was ever made while accounts were being estimated to get a reading by the consumer of his or her own meter?

MS. HILL: Objection. Foundation.

MR. REED: How can there be a foundation objection when I'm asking her "do you know"?

MS. HILL: Well --

MR. REED: I'm laying the foundation.

Q. BY MR. REED: Do you know about that?

MS. HILL: You can read the question. Do you see the question?

19

A. BY THE WITNESS: Yeah. On an individual customer or on all customers?

Q. BY MR. REED: I want to know the policy and practice. What was your policy about sending out blue cards to consumers under the old system when their meters were estimated?

A. I don't remember what that was.

Q. What is it now?

A. I'm not sure there is a specific policy. I don't know.

Q. Okay. You don't know what the policy and practice was or is with respect to obtaining self-reads. Is that correct?

MS. HILL: Objection. Foundation. Misstates her testimony.

Q. BY MR. REED: Do you know?

A. I believe I said I don't know if there is a policy.

Q. Do you know if there is a practice?

A. No, I don't.

Q. Do you know anything about what is currently done regarding self-reads of meters?

MS. HILL: Objection. Foundation. Vague and ambiguous.

A. BY THE WITNESS: I'm not familiar with the

20

current policy.

Q. BY MR. REED: Okay. Are you familiar with what the policy has been at any time since 1996?

A. No.

Q. Okay. Are you familiar with what the policy has been at any time since 1996 about the conditions under which estimates would actually be made?

A. Could you repeat the question?

Q. Yes. Do you know anything about the conditions under which estimates would be made by APS from 1996 to the present? We'll start with kWh meters only.

MS. HILL: Objection. Vague and ambiguous.

A. BY THE WITNESS: I don't understand the question.

Q. BY MR. REED: Okay. You indicated that one of your jobs now and in the past was to have familiarity with Arizona Administrative Code Title 14, Chapter 2, Section 210-A. You can look at that if you like while I'm asking you the question.

If you look at A(3), it says: "Estimated bills will be issued only under the following conditions unless otherwise approved by the Commission." Do you see that?

21

A. Yes.
Q. Okay. What were the conditions under which APS issued estimated bills while you were the consumer advocate?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: That's a long span of time.
Q. BY MR. REED: Let's start in 1996.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Would you repeat what exactly you're asking?
Q. BY MR. REED: Yeah. You said you had knowledge of the Arizona Administrative Code, of how the policies and practices of APS compared to the Arizona Administrative Code, because you were the consumer advocate. And my question is: Looking at the requirements of 3, A(3) of R14-2-210, what were the conditions in 1996 under which estimates would be made by APS?
MS. HILL: Objection. Misstates her previous testimony. Foundation.
A. BY THE WITNESS: I don't remember what went on in 1996.
Q. BY MR. REED: Okay. Do you know under what conditions they would do estimates under the new system, beginning in 1998?

22

MS. HILL: Objection. Foundation.
MR. REED: How can it be foundation when the question is "do you know"? That is foundation.
MS. HILL: You can answer.
A. BY THE WITNESS: I know there are many conditions. There are a lot of different conditions that cause an estimated bill.
Q. BY MR. REED: Okay. List all of them that you know.
MS. HILL: At the present time?
Q. BY MR. REED: Any that you know at the present time. Then we'll go backwards.
A. When extreme weather conditions or emergency work stoppages prevent actual meter readings. Failure of a customer to read his or her own meter.
Q. If you're going to read to me the requirements of A through E, I can read those. That's fine.
Do you have anything else? Are there any other reasons?
How about when the meter reader hurts his knee?
A. There could be other conditions.
Q. Can you give me some that you're familiar with?

23

A. You just said one. The meter reader hurts his knee.
Q. Would you then estimate?
A. Yes.
Q. Okay. How about when there aren't enough meter readers to cover all the routes. Would you estimate then?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Is that one of the reasons that's not listed in A(3)?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: To my knowledge, that's never been the case.
Q. BY MR. REED: Okay. How about when meter readers do not get in all of their data in time to meet the billing window?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Is that another reason?
A. Yes.
Q. And that has occurred, hasn't it?
A. Yes.
Q. Do you know whether the computer system, as presently constituted, is set up to issue bills on the 25th day, the 35th day, or something in between for each customer? In other words, what is the cycle set

24

at, if you know?
MS. HILL: Objection to foundation. Compound.
A. BY THE WITNESS: The rules state that billing periods will be between 25 and 35 days.
Q. BY MR. REED: I know that's what the rule says. I'm saying what do you do? How are you set up? If I'm billed, then how long is the cycle before I'm billed again under the present system?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: 25 to 35 days.
Q. BY MR. REED: Okay. Is there a single rotating date, like thirty days, for each bill, or does it vary from month to month as to the day a certain address is billed?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Did you understand the question?
A. It will vary.
Q. It will vary within the 25 to 35-day window. Correct?
A. Correct.
Q. But if all the data isn't in when you get to the end of the 35-day window, you send out an estimate. Correct?

25

A. I don't agree with that entire statement.
Q. Okay. Why don't you tell me what you don't agree with.
A. Well, restate it.
Q. What don't you agree with?
A. It isn't based to click on 35 days. It's set up to bill in 25 to 35 days. But for each billing route or reading route, each month, there's the date specific or a number of dates specific. It doesn't start on 25 and then automatically end on 35.
Q. So a target date is set up each month for each route. Is that correct? Or is it a group of dates?
A. A window.
Q. And the window is smaller than ten days?
A. Yes.
Q. Okay. Typically, what is that window? Two days? Three days?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I'm not sure.
Q. BY MR. REED: Okay. But if the data isn't in when the window closes, the bill is estimated?
A. Correct.
Q. Has that always been the case, or is that just the case under the new system?

26

MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I couldn't agree to always.
Q. BY MR. REED: To your knowledge, since 1996, has the company had a system whereby there was a target window, and, if the data wasn't in, it would send out an estimated bill?
A. I can't remember for the old system.
Q. How about for the new system?
A. I believe I answered that.
Q. I don't believe you did, but, if you did, you can answer it again.
MS. HILL: Do you understand the question?
A. BY THE WITNESS: Would you ask it again?
Q. BY MR. REED: Sure. Under the new system, if the data isn't in by the target date and the window is closing, does the system then estimate?
A. Yes.
Q. And at least since the new system was in place, that's always been the case?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: To my knowledge.
Q. BY MR. REED: Everything I ask you is to your knowledge.
Okay. Under the old system, if you would

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look at (c), 3(c).
A. Yes.
Q. It says, "If the utility or meter reading service provider is unable to obtain an actual reading for these reasons, meaning those stated in C, it shall undertake reasonable alternatives to obtain a customer reading of the meter."
Under the new system, do you know what steps are taken to obtain a customer reading of the meter if there is a no-access problem?
A. There are several steps that can be taken. I'm not necessarily familiar with every step. And I'm not necessarily familiar with last week, today, last year.
Q. Okay. I'm interested in what you know is done, not what could be done. A lot of things could be done. So do you know what is done under the present system?
A. I couldn't say for certain.
Q. As a consumer advocate, did you become aware of situations where an estimate was done because the meter reader didn't have his data in?
A. Could you explain what you mean by "didn't have his data in"?
Q. Yeah. It hadn't been entered into the

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computer, for whatever reason.
A. There's more than one computer. So I don't know which -- if you say the meter reader entered -- I'm not sure. Could you repeat the question? Because if the meter reader entered the information -- that was your question, right?
Q. My question was: Are you aware of situations where the bill was estimated because the data had not been entered in time by the meter reader to meet the billing window?
A. Yes.
Q. Okay. Is that something that you dealt with on a monthly basis, or was that just an isolated case?
MS. HILL: You're asking her for a seven or eight-year period?
MR. REED: No. Under the new system. She told me she doesn't remember anything prior to the new system.
A. BY THE WITNESS: I know there were some problems in one particular area.
Q. BY MR. REED: Which area was that?
A. It's the area where you'd mentioned earlier the meter reader hurt his knee.
Q. Bisbee?
A. If you say so. I don't have the paperwork in

29

1 front of me.
2 Q. Were you aware of any problems when you were
3 advocating for consumers where the meter reader just
4 didn't get all the reading done, and so it was
5 estimated, even though he wasn't injured or missing or
6 anything like that?
7 A. I know that when the meter reader in Bisbee,
8 Douglas -- wherever it happened to be -- had injured
9 his knee or was injured in some way -- I can't
10 remember -- supplemental meter readers or other meter
11 readers were brought in from other locations that were
12 not familiar with the rural area and were not able to
13 completely read their books for the day.
14 Q. Have you had any problems when you were the
15 consumer advocate with meter readers simply having too
16 many meters to read and, therefore, estimating the ones
17 they couldn't get data to the computer in time?
18 A. I don't remember any.
19 Q. Okay. And you indicated that you did not
20 know the old procedures for blue cards. Do you know
21 the current procedures as to when and how blue cards
22 are provided to customers?
23 MS. HILL: Objection. Asked and
24 answered.
25 Q. BY MR. REED: Go ahead.

30

1 A. I don't remember what my answer was.
2 Q. Just tell me the truth.
3 MS. HILL: Look, there is no reason to --
4 MR. REED: Well, when she says, "I don't
5 remember what my answer was," I mean, why does she need
6 to remember what her answer was?
7 MS. HILL: When I make an objection, go
8 ahead and look at the question, and then just answer
9 the question that's there. I'm just making my
10 objection for the record.
11 THE WITNESS: All right.
12 Q. BY MR. REED: Either you know or you don't.
13 Just tell me.
14 MS. HILL: Here's the question.
15 A. BY THE WITNESS: No, I don't.
16 Q. BY MR. REED: Did you ever get any questions
17 when you were advocating for consumers from consumers
18 asking about reading their own meter?
19 A. Yes.
20 Q. Did you know then and you don't know now what
21 the system is? Have you forgotten, or did you not know
22 then?
23 MS. HILL: Objection. Compound.
24 MR. REED: She understands the question.
25 A. BY THE WITNESS: Customers who read their own

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1 meters and blue cards are two different things.
2 Q. BY MR. REED: I understand that. I asked
3 you: Did you get calls from people who had questions
4 about wanting to read their own meter rather than be
5 estimated?
6 MS. HILL: That wasn't your question, but
7 do you want to ask her that question?
8 MR. REED: I just did.
9 A. BY THE WITNESS: Yes.
10 Q. BY MR. REED: Did you know what to tell them
11 when they asked?
12 A. I referred them to the meter reading
13 department.
14 Q. Okay. And so you just referred them on. You
15 didn't have an answer with respect to what the system
16 was with respect to reading their own meters?
17 A. I left that to the meter reading department
18 to take care of the customer's concerns.
19 Q. Okay. Did you ever, while you were an
20 advocate for consumers, look into the question of
21 whether the system for arranging self-reads met the
22 requirements of the regulation?
23 A. I don't believe so.
24 Q. As you sit here today, do you know whether
25 the system -- now I'm talking about the old system --

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1 did or did not meet the requirements of the Arizona
2 Administrative Code? Do you know?
3 MS. HILL: Objection. Vague and
4 ambiguous.
5 A. BY THE WITNESS: To my knowledge, the old
6 system met the requirements of the Arizona
7 Administrative Code.
8 Q. BY MR. REED: You said you didn't know what
9 the old system was. How do you know if it meets the
10 code?
11 MS. HILL: Objection. Argumentative.
12 Misstates her prior testimony.
13 Q. BY MR. REED: Go ahead.
14 A. You were asking for specific details that I
15 wasn't familiar with. Overall, did the systems adhere
16 to the Arizona Administrative Code? Yes. Specific
17 details of billing systems I am not familiar with.
18 Q. How do you know -- if you don't know the
19 details, how do you know if those details met the
20 requirements of the code?
21 MS. HILL: Objection. Argumentative.
22 A. BY THE WITNESS: When I have a specific
23 customer complaint, I review that particular customer
24 complaint. If I have any questions as to whether a
25 broader investigation or a look needs to be made, then

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that's forwarded on to the responsible people.
Q. BY MR. REED: And who would that be?
A. There are different folks responsible for different situations.
Q. Okay. Let's talk about now, when your job is assure compliance with the rules. Does the current system and all of its details for providing for customer reads meet the rules?
MS. HILL: Objection. Calls for a legal conclusion. Foundation.
A. BY THE WITNESS: I'm not familiar with the customer read portion.
Q. BY MR. REED: Okay. So you don't know if what they're doing now meets the rules?
A. Again, I'm not familiar with the customer read portion.
Q. And you're also not familiar with the steps taken under the new system to obtain access when there is no access to a meter. Is that correct?
A. I know there are a variety of steps.
Q. Okay. What are those variety of steps?
A. To obtain a meter reading, we could send a blue card for a customer read.
Q. Okay. But you don't know the circumstances under which a blue card is sent?

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A. I don't know when they send them, if they send them every time, no, I don't.
Q. Okay. What else?
A. There is a dialer program. You can contact the customer.
Q. Do you know whether that's done on the first second, third, fourth estimate? Do you know?
A. I'm not familiar with that. I don't remember.
Q. Okay. What else?
A. At times, a meter reader could leave a card at the customer's door.
Q. But you're not familiar with the exact circumstances under which that was done?
A. Nor do I know if it's done every time or what the requirements are.
Q. And you don't know what the requirements are under the code for doing that?
A. Under the code?
Q. Uh-huh. Yeah. What are the requirements for obtaining an actual reading?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: The requirements for obtaining an actual reading are that the customer

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provide APS unassisted access to the meter each and every month.
Q. BY MR. REED: Okay. Would you look at four?
MS. HILL: It's missing.
Q. BY MR. REED: Beginning "After the third consecutive month."
MS. HILL: It's that paragraph.
Q. BY MR. REED: Okay. Do you know what steps are taken by APS under the current system to attempt to secure an accurate reading of the meter?
A. I know there are reports. There's what we call a no-access report, where the meter reading department attempts to contact the customer, either maybe by phone, maybe by letter. You know, there are letters that go out.
Q. Do you know the details of that?
A. The details as far as what they go through on each account?
Q. No. Not on each account. The details of the program that is in place to accomplish what's set out in the regulation in front of you regarding securing an accurate reading of the meter.
A. I know that the meter reading department attempts to obtain a read if one was not available. I also know that APS attempts to get a read every month.

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Q. Okay. Do you know the details of either of those, or is that just sort of a general statement of policy? Do you know what they do?
A. They have a report.
Q. Do you know when it goes out? When it's followed up on? Who does the calling?
A. APS bills in 21 different billing cycles throughout -- it's not really a month. It rotates, depending. There are 21 separate billing cycles. Each billing cycle produces a report of any accounts on that particular -- during that cycle where access was unable to be obtained and a meter reading was not obtained. So those reports would produce per cycle as the cycle produced. The meter reading department is in charge of working those reports. What they do in detail for that, I'm not familiar with.
Q. You don't know what they do to work those?
A. No.
Q. Has anyone ever asked you to evaluate whether what they do to work those reports meets the requirements of the regulation?
A. Yes.
Q. Who asked you that?
A. The Arizona Corporation Commission.
Q. Okay. Who did you pass that to, to answer?

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A. Who did I pass that to?
Q. Uh-huh.
A. I don't understand.
Q. Yeah. Who answered the question? You?
A. The meter reading department.
Q. Okay. So you weren't involved in answering that question?
A. I'm involved in gathering information. I wouldn't know exactly how the meter reading department operated on a day-to-day basis.
Q. Did you gather the information and pass it on to the Commission?
A. I was a part of a team that gathered the information, yes.
Q. Okay. And in that capacity, did you find out what they were doing?
A. That was, I believe, in 1996.
Q. Okay. Did you find out that they weren't following the regulations in 1996?
A. In what particular -- I mean -- weren't following the regulations. I don't know . . .
Q. Were you part of the meter reading/billing task force?
A. Yes.
(Deposition Exhibit Nos. 12 and 13 were

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marked for identification.)
MS. HILL: I think this is the question that was pending, Cynthia. Were you part of the meter reading/billing task force?
Q. BY MR. REED: This task force, who was on it?
A. Sandy Alexander, Bonnie Coffey, Michael Goguen, Shereen Loveridge, Cynthia Singley, Bill Sommers, Jana Van Ness, Dick Ray.
Q. So you weren't on it?
A. Singley is my maiden name.
Q. Okay. And this was a direct report to Bill Post?
A. Yes.
Q. Did you find anything wrong at all?
A. By anything wrong, are you speaking back to the Arizona Administrative Code?
Q. Uh-huh.
A. I don't believe -- I don't remember that there were any in violation of the Arizona Administrative Code, nor does the document jog my memory that there was anything in violation of the Arizona Administrative Code.
Q. But nevertheless, there were a series of commitments made to the ACC to change things, weren't there?

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MS. HILL: Objection. Foundation. No reference to time.
A. BY THE WITNESS: I believe the document speaks to enhancements.
Q. BY MR. REED: Enhancements. What are enhancements?
A. I believe the things that were established here were done in order to provide better service to our customers.
Q. Okay. What part of -- well, were there subcommittees within that group where you were assigned specific tasks?
A. I don't remember any subcommittees. There may have been.
Q. Was there a thorough review of all the billing practices and procedures?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe that's what the document states.
Q. BY MR. REED: That's not what I asked you. Was it a thorough review of the practices and procedures?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Again, the document states that it was a thorough review, and I have my name on

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the document. I believe the document.
Q. BY MR. REED: Would you please answer the question? That's not answering the question. I can read the document. I want to know whether, in your experience, regardless of what the document says, it was a full and thorough review?
A. Review of what?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Of the billing practices and procedures.
A. I believe it was.
Q. Thank you. Were any of the issues that we've discussed today that you don't remember anything about part of that review?
MS. HILL: Objection. Vague and ambiguous.
MR. REED: Oh, no, it's not.
A. BY THE WITNESS: Whatever I don't remember about today, that's -- that's a huge amount. I don't know what you're talking about. You've asked me a lot of questions that I don't have direct knowledge of.
Q. BY MR. REED: Okay. Let's get specific. Did that report deal with the question of how many estimated bills would go out on an account before there was any attempt to obtain access?

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A. I don't believe so.
Q. Did the review address whether there was compliance with the requirement that, if the utility or meter reading provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternatives to obtain a customer reading of the meter? Is there anything in the report about whether that was being complied with?
A. The document you have in front of me doesn't speak to that.
Q. Is there a "but" coming? It doesn't?
A. The document --
Q. Okay. So that wasn't one of the things that was reviewed?
A. I'm not sure that the document you have in front of me is all of the review.
Q. That was produced by your counsel. Do you have any reason to believe it's incomplete?
A. I don't have any reason to believe this is incomplete. I believe there were other pieces or follow-up to this document.
Q. Were they produced by that committee?
A. Yes.
MR. REED: Have I received all of those, Counsel?

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MS. HILL: I don't know. I don't know.
MR. REED: I would ask that they be produced if they haven't been produced.
MS. HILL: Well, to the extent they're relevant, they certainly will be produced or have been produced. I don't know offhand what Cynthia is talking about as we sit here today.
MR. REED: All I'm saying, if that document is responsive, then follow-ups to that document would be responsive, too.
MS. HILL: Not necessarily. But I will be glad to look at it and check into it.
MR. REED: I think necessarily, but we can disagree about that.
THE WITNESS: Can we take a break?
MS. HILL: Sure.
MR. REED: Sure.
(The deposition was at recess from 2:35 p.m. to 2:47 p.m.)
(Deposition Exhibit No. 14 was marked for identification.)
Q. BY MR. REED: Now, I've looked through -- just take a look at Exhibit 14. I've looked through it, and I can't find a date. So if you could tell me, was that produced about the same time as the committee,

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or does it look familiar at all?
MS. HILL: Objection. Compound.
A. BY THE WITNESS: It is familiar. By the committee, do you mean --
Q. BY MR. REED: Yeah. The list of people that you got off the previous exhibit.
A. Yes.
Q. So was this one of the supplemental documents you were referring to earlier?
A. Yes.
Q. Are there any more like this, do you know, with no dates on them?
A. I don't believe so.
Q. Okay. At the time of this investigation, did all estimated bills have "estimate" printed on them? In other words, advising the consumer it was an estimate.
A. No.
MS. HILL: Objection. Foundation.
Q. BY MR. REED: When was that put into effect?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe it was 1996.
Q. BY MR. REED: At that time, did the system automatically estimate demand --
MS. HILL: Objection. Foundation.

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Q. BY MR. REED: -- on a demand meter?
MS. HILL: I'm sorry. Objection. Foundation.
Q. BY MR. REED: On a demand meter?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't recall, so I'm seeing if the document states.
I don't see that in the document, and I'm not absolutely sure.
Q. BY MR. REED: Okay. Does the present system estimate demand on demand meters?
A. Yes.
Q. Okay. Were you involved in the process of determining the formula that should be used to calculate estimated demand that's in the system?
A. I was not a part of the actual calculations.
Q. Okay. Was that Janet Smith that did that?
A. I believe so.
Q. Do you know whether a bill that is generated by the meter reader scoping the kWh, but where he's unable to reset and read the kW, whether that is counted as an estimated bill or not an estimated bill by the present system?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe that would be

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calculated as an estimated -- shown as an estimated bill.

Q. BY MR. REED: Because the kW is being estimated?

A. Let me read the question again, make sure I'm answering it correctly.

Q. Sure.

A. I know that it's coded as a demand not reset. And I can't remember whether that code then generates the estimate for sure. I would have to refer to notes.

MR. REED: Would you show the witness Exhibit 3?

THE WITNESS: Okay.

Q. BY MR. REED: Is this the estimating methodology that is currently in use in the system for automated demand estimates?

MS. HILL: Objection. Foundation. Vague and ambiguous.

A. BY THE WITNESS: I'm not sure.

Q. BY MR. REED: Okay. Would you look at Exhibit 8?

A. Okay.

Q. Let's start with the 35 percent on both of the residential rates, that statement there.

A. Okay.

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Q. So I'm clear what that is, that in effect creates a particular estimated bill on a demand meter that the company expects the consumer to pay. Correct?

When I say that, I mean the 35 percent plugged into the formula.

MS. HILL: Objection. Foundation. I'm sorry.

A. BY THE WITNESS: I don't understand the question.

Q. BY MR. REED: Okay. Let's walk through this in sequence.

You indicated earlier, I think we can agree, that the computer system, either from its inception or certainly no later than 1999, was estimating demand on some meters. Correct?

A. That's my understanding.

Q. And it was doing it automatically by reason of a formula. Correct?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I know there is a formula.

Q. BY MR. REED: In either 1998 or 1999, were you involved in having that formula submitted to or approved by the Commission?

A. I was not.

Q. Do you know if anybody was?

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A. I don't know.

Q. And that would be in Exhibit 6, that formula, which is a 50 percent, 45 percent, 60 percent formula.

MS. HILL: I'm sorry, Barry. Is there a question pending?

MR. REED: Yeah. I'll go back and ask it again.

Q. BY MR. REED: Looking at Exhibit 6, do you recall there being a 45/50/60 percent formula for demand meters in 1999?

A. I'm not involved to that detail.

Q. But that formula, to your knowledge, was not approved by the Commission?

A. To my knowledge, I have no knowledge of that.

Q. Okay. Then if you'll look at the one that's been marked Exhibit 8, then there's a proposal in the third paragraph of the middle e-mail to make a change in the load factors for estimating demand meters. Correct?

A. Yes.

Q. Okay. Were you ever part of any effort to submit that for approval to the Commission?

A. No.

Q. Do you know if anybody was?

A. No.

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Q. And then if you look at the top, there is a June 25, 2002, statement from Janet Smith: "We are going with 35 percent on both of the residential rates." Do you see that?

A. Yes.

Q. Did she ever talk to you about having that approved by the Commission?

A. No.

Q. Have you ever talked to anybody about having that approved by the Commission?

A. Not that I remember.

MR. REED: Okay. Could you mark that one, please?

(Deposition Exhibit No. 15 was marked for identification.)

Q. BY MR. REED: There is a statement there from Janet Smith that, in initially designing the estimating system, she says that they had about 20 minutes to come up with something.

A. Where are you?

Q. Second paragraph on the top e-mail. Do you see that?

A. Okay.

Q. Okay. Were you part of that process of coming up with an estimation methodology in 20 minutes?

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A. No.
MS. HILL: Objection. Assumes facts not in evidence. Mischaracterizes the document.
Q. BY MR. REED: Sorry. About 20 minutes.
MS. HILL: Same objections.
A. BY THE WITNESS: I wasn't involved in this.
Q. BY MR. REED: Did you have any participation in creating an estimating procedure for demand meters?
A. I know I was aware of the process. I didn't actually participate in it.
Q. And you didn't participate in having that approved, you've already testified?
A. No, I did not.
MR. REED: Okay. I need to take about two minutes.
(The deposition was at recess from 3:03 p.m. to 3:12 p.m.)
(Deposition Exhibit No. 16 was marked for identification.)
Q. BY MR. REED: Just a quick point. If you'd look at that document, is this a training manual of some kind; do you know? Does it look familiar?
A. I don't know. I'm not familiar with it.
Q. If you look at page 1543, there is a statement there about APS policies and procedures.

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A. Okay.
Q. If you go on to page 1545, point 10, it says: "KW (demand) metered accounts cannot be estimated."
A. Okay.
Q. Does that refresh your recollection as to whether the old system could in fact do estimated demand reads?
A. No.
Q. Okay. Do you know how a demand meter works?
A. I'm familiar with the big picture. I'm not familiar with the details.
Q. Let's try --
A. I've never been able to get that straight in my mind. So . . .
Q. Let's try a little big picture stuff.
If we assume you've got a month where the demand part of the meter is not read, it's not then physically reset to zero. Correct?
A. That's correct.
Q. Okay. And then if in the next month it goes to the highest possible demand, and then for another three months it's not read, when it is finally read in the -- what is that? -- sixth month, the reading you get will be the highest point it reached and hasn't been set back from. Is that correct?

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MS. HILL: Objection. Foundation.
A. BY THE WITNESS: That's a long question.
Q. BY MR. REED: Want me to take another shot at it?
A. Take it, please.
Q. I'll simplify it. Let's use this as a little background. Month one, you get a reading. Okay? So it's read that the demand is X. Okay?
A. Uh-huh.
Q. Month two, there is no reading, and the demand is Y, but it's not reset.
A. Okay.
Q. For month three, four, and five, you've got a problem, which is that it's not read again for whatever reason. Then in month six, it's read again. The reading, because it's never been turned back from Y in those estimated months, will still be Y. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: The reading would be the highest amount of energy that was registered during any of those points.
Q. BY MR. REED: Correct.
A. Not necessarily Y.
Q. Right. Well, yeah. Correct. If Y is the highest point it reaches during any of those months,

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then it will show Y?
A. Correct.
Q. Okay. My question is: When the bill goes out for month six, it will show Y as the basis for the reading, even though Y may not have been reached during month six. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Could you rephrase?
Q. BY MR. REED: Sure. In month six, a bill goes out, and that bill, if I'm correct, will use Y as the demand factor. Correct?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: And then it's reset in month six.
A. Okay.
Q. Okay? But the factor it's using, because it's been estimated in previous months, in truth, nobody can know whether Y was the highest usage in month six, month two, three, four, or five. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: If we weren't able to get meter readings in months three, four, five, then the demand reading could have been established during month three, four, five, or six.
Q. BY MR. REED: Or two?

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A. Or two.
Q. There is no way to know?
A. No.
Q. Under your system, is that an estimated bill? Is "estimate" written on there?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Which month?
Q. BY MR. REED: Six.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know. I would have to research that.
Q. BY MR. REED: Okay. And if you're talking about a kWh meter, when you eventually do read it, you can obviously reconcile the previous month's consumption by seeing whether you underestimated or overestimated. Correct? Talking just kWh now.
A. Yes.
Q. On kW readings, you can't really reconcile those previous months, can you, because you don't know, because it was never reset to zero, what the high point was in those months? You're just guessing, basically. Is that correct?
A. Well, it's an estimate based on the customer's prior usage.
Q. Correct. But there is no possibility of a

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reconciliation with respect to that that you have with the kWh. That's correct, isn't it?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: Would you restate it?
Q. BY MR. REED: Sure. You cannot achieve the same certain reconciliation when you finally get a read with respect to demand that you can with respect to kWh. Correct?
A. I will also not know what the read was for kWh on the day the meter was supposed to be read for month three, four, and five.
Q. Oh, absolutely. But you are able to reconcile them at the end because you know where you wound up. So you can reconcile whether your estimates were high or low and then balance it out. Correct?
A. We can't necessarily reconcile whether the estimates were high or low. We can determine that the customer used an amount certain of kilowatt hour energy between the last time we got a read and the next time we got a read.
Q. Correct. And with respect to demand, that's just not possible?
A. That's correct.
Q. So even that sixth one may in fact reflect

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the high point in another month other than the month when you're actually doing the reading, and it won't be until the seventh month that you'll get an accurate one. Correct?
MS. HILL: Objection. Foundation. Incomplete hypothetical.
A. BY THE WITNESS: Could you restate it?
Q. BY MR. REED: Yeah. Because the resetting of demand isn't occurring until month six, it won't be until month seven that you'll be getting the first accurate, known accurate, demand reading. Correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Whenever we're able to reset the demand, the next month would indicate the demand that was used between that 25 to 35 days.
Q. BY MR. REED: Right. Six and seven. Between six and seven, you would then know the demand?
A. From the month it was estimated, when we do get an estimate, the correct read and the meter is reset. Then we'll know for the next month what was used between that 25 and 35 day-period.
Q. Correct. But if it's been overestimated, underestimated, in the prior months, that is not something that you can recapture with that seventh month reading, is it?

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A. We're not able to recapture the demand read if we go out for a monthly read and we're not able to obtain that read. We aren't able to recapture that unless -- you know, you could never recapture that.
Q. Okay. And you said you don't know whether or what the bill in month six says as to whether it's an estimate or not?
A. Not for sure. I can't remember.
Q. Do you know what the bill to the consumer says if the reader can scope the kWh part of the meter but can't get in to reset the meter? Would the system as it now exists treat that as being a read because it read the kWh, or would it kick it out and treat it as a not read because it didn't have the demand? If you know.
MS. HILL: Objection. Compound.
A. BY THE WITNESS: All I'm certain of is that, if the demand is not reset, then that should be indicated on the customer's bill.
Q. BY MR. REED: Okay. And when was that put into effect?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. I don't remember.
Q. Okay. Is there any program that you're aware

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of currently to move people from demand to nondemand meters if there are no-access problems?
A. If there are no access problems?
Q. If there are problems with no access.
A. Could you restate it?
Q. Yeah. If there are problems getting access, do you have a program to move people off of demand meters?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: A requirement of a demand rate in the rules is that there is unassisted access to the meter each month. So I do believe, at certain times, customers are not -- are moved off a demand rate if access is not provided.
Q. BY MR. REED: Do you know what the parameters of that are, what the tolerances are before they are moved?
A. I don't know that.
Q. Were you involved back in 1996 in a dispute involving a Mr. Bien-Willner?
A. I have spoken with Mr. Bien-Willner regarding disputes on several occasions. 1996 could have been one of those.
Q. Okay. Were you aware of a large payment by APS to Mr. Bien-Willner in 1996 of about a quarter of a

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million dollars?
A. I am aware of a payment made to Mr. Bien-Willner. I wasn't directly involved with that.
Q. Do you know why it was made?
A. I wasn't directly involved with that. So I do not.
Q. Who was directly involved; do you know?
A. Not for sure.
Q. Do you know what his complaint was?
A. Again, I wasn't directly involved with that.
Q. Okay. How about a Mr. Ciccone? C-i-c-c-o-n-e. Do you remember that case?
A. Yes.
Q. Was he paid an amount of money --
MS. HILL: Objection. Foundation.
Q. BY MR. REED: -- to dismiss a claim?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. No.
Q. You don't know?
A. He wasn't paid an amount of money to dismiss a claim. He had a complaint that was resolved through the Corporation Commission.
Q. And was he paid $5,000?

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A. No, sir.
Q. Was he offered $5,000?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. I don't have direct knowledge of that.
Q. Do you have indirect knowledge of that?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Did somebody tell you that?
A. Yes.
Q. Who told you that?
A. I don't remember.
Q. I can't remember if I asked you this. If I did, I apologize. I don't remember the answer.
Do you recall when the word "estimate" was added to bills that were estimated?
A. I don't recall.
Q. Okay. And do you recall a time where there was a problem with bills being estimated for more than three months without taking the steps necessary to obtain a reading? The system would automatically estimate beyond three months under the old system?
A. Could you -- I think there is more than one question there. Could you restate?
Q. Yeah. Did the old system, to your knowledge, at any time do automatic estimates beyond three months?

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A. Yes.
Q. And what time was that?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Was it up through 1998; do you know?
MS. HILL: Objection. Foundation. Calls for speculation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: You don't know? Was that a problem, as an advocate for consumers, that you had to deal with at all, where consumers were concerned about getting month after month after month of estimated bills?
A. The customer concerns that I receive regarding multiple estimated months of billing are fairly consistently due to a lack of access to the meter.
Q. Okay. Does the or did the old system kick out a proposed automatic bill beyond three months so that there could be follow-up with the customer to ensure access?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Do you know?
A. Could you restate that?

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Q. Yeah. Was there an exception in the old system that would create a list of no-access accounts that could be called after three months?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe so.
Q. BY MR. REED: And when was that put in place; do you know?
A. I don't recall.
Q. Was that something the IT people would know?
MS. HILL: Objection.
Q. BY MR. REED: Do you know?
MS. HILL: Calls for speculation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Who would know?
MS. HILL: Objection. Calls for speculation.
MR. REED: Not if she knows who knows.
A. BY THE WITNESS: I don't know.
MR. REED: Okay.
MS. HILL: How can she know who knows? She knows what she knows, Barry.
MR. REED: Of course she can know who knows. If it's somebody's particular responsibility and she knows it's somebody's responsibility, she can tell me that. Do you know who knows how many paper

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clips are ordered in your office? I expect you do.
MS. HILL: I have absolutely no idea.
MR. REED: You probably would start with the office manager, I would think.
MS. HILL: I don't think she would know either, Barry.
Q. BY MR. REED: Whose responsibility is it to know how the computer system handles various estimating problems?
MS. HILL: Just so we are clear, are you asking her as of today?
MR. REED: Let's start with today.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: As of today, it would be someone, I would think, in our information services department.
Q. BY MR. REED: Who heads up information services?
A. I don't know.
Q. Okay. Is there somebody that you know of who is sort of the guru of the CIS system, the new one, somebody who really knows it inside and out?
A. I don't know.
Q. You indicated earlier that your present job was to interface with the Commission.

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A. Correct.
Q. How often do you meet with the Commission?
A. I don't meet with them very often.
Q. How often do you communicate with them?
A. Some days more than others. We usually communicate when they have a specific customer complaint or concern.
Q. Do you have any reporting requirements in your relationship with the Commission?
A. I don't have any reports that I provide to the Commission.
Q. I mean, you don't have to report every six months on how you're doing in terms of compliance with the administrative code, for instance?
MS. HILL: You're talking about you, Cynthia Janka, in that sentence. Correct?
MR. REED: Well, she is the liaison.
Q. BY MR. REED: Does the company have a reporting requirement to the Commission?
A. No.
Q. Okay. Does the company file its rates with the Commission?
A. Yes.
Q. Does it file its estimating procedures with the Commission?

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MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Have you ever filed an estimating procedure with the Commission?
A. No.
Q. Have you ever been involved in asking the Commission to approve or disapprove any estimating procedure at any time?
A. Not that I remember.
Q. When you make a change in your estimating procedures, do you know whether it is routine to advise the Commission?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Is there somebody that you report to with respect to your contacts with the Commission?
A. Could you be more specific?
Q. Yeah. Do you file a report with your boss saying, "The following is a summary of my contacts with the Commission for the month of April 2003," that kind of thing?
A. Yes.
Q. And who do you give that to?
A. Al Propper.

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Q. And do you copy the Commission on that?
A. No.
Q. And does the Commission ever discuss policy matters with you, or do they just discuss individual complaints?
A. Individual complaints.
Q. Okay.
A. There may be policy matters that come up in discussing an individual complaint.
Q. Sure. And if a policy comes up in discussions about an individual complaint, do you deal with that, or do you pass that along?
A. My role really is to get information where I can find information and provide that back to answer the Corporation Commission's -- any questions that they may have.
Q. Has the Corporation Commission ever asked you any questions in the last two years concerning your estimating procedures? I don't mean specific problems with estimating, but rather --
A. With individual customers?
Q. More general. You know, questions such as, you know, "Why are you doing this?" "How are you doing that?" Those kind of questions.
A. Over the past two years?

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Q. Uh-huh.
A. I don't know.
Q. Has the Commission, to your knowledge, ever asked you to provide information or clarification with respect to how you bill estimated demand?
A. Over the past two years?
Q. Ever. Where they've asked you.
A. I don't recall.
Q. You don't recall any?
A. I could have. They could have asked me, or they may not have asked me. I don't recall over the seven or eight years that I've been in this position.
Q. Did Mr. Ciccone's case involve, in part, estimating demands?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Mr. Ciccone's -- I don't believe his demands were estimated.
Q. BY MR. REED: And did Mr. Bien-Willner's case involve estimated demands?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I would ask that you be more specific which case you're speaking of.
Q. BY MR. REED: Have any of his cases involved a challenge by him to the process of estimating a demand meter when it hasn't been reset?

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MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe that has been one of his complaints.
Q. BY MR. REED: Was that something you discussed with the Commission?
A. I recall discussing with Mr. Bien-Willner on several of his accounts. I don't recall discussing with the Commission. I may have.
Q. Did he object to having his demand meters estimated and not reset?
A. Yes.
MS. HILL: Objection. Foundation.
Q. BY MR. REED: And how did you respond to him?
MS. HILL: When you say "you," you're asking how Cynthia Janka responded?
MR. REED: Uh-huh.
A. BY THE WITNESS: There are -- I'm trying to remember, because I've had many, many, many contacts with Mr. Bien-Willner over the years. So these are kind of vague questions, because he's had several concerns that he's raised, and I've dealt with him, like I said, many times over the years. So a question like that -- some things I've dealt with him, and some things I haven't. So could you be more specific in your question?

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Q. BY MR. REED: Yeah. Did he ever say to you that, "If you don't read my demand meter for several months, the bill you finally send me when you do is completely fictitious," or words to that effect?
A. I don't recall that he said those specific words to me.
Q. Words to that effect?
A. Again, I've had so many conversations with Mr. Bien-Willner that it's hard for me to recall a specific conversation.
Q. Have you ever expressed, in your role as an advocate for consumers, concern to the management of APS that it is misleading to send out the first bill after a demand meter has not been read for a while and call it an actual bill?
A. Could you restate that? I don't understand.
Q. Yeah. Have you ever said to management, "There's something wrong here. You're sending out this bill as an actual bill and billing off of a demand number that may be completely fictitious"?
MS. HILL: Objection. Assumes facts not in evidence.
A. BY THE WITNESS: I don't know how to answer that. I don't really understand.
Q. BY MR. REED: Have you ever had a

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1 conversation like that?
2 A. I don't understand your question.
3 Q. Okay. Well, let's take it again. Have you
4 ever had a conversation with anybody -- I'm sure the
5 answer to that is yes -- at APS about anything?
6 Correct? You have?
7 A. You're asking me if I have ever had a
8 conversation with anyone at APS about anything?
9 Q. You didn't understand it, and I'm breaking it
10 down for you.
11 A. Yes.
12 Q. Was one of the anythings that you had the
13 discussions about a claim by anybody that it is
14 misleading to send out a demand bill at the end --
15 after the first reading after estimates because the
16 bill that's represented as a bill is, in fact, a guess?
17 Have you ever had that conversation? Yes or no?
18 MS. HILL: Objection. Vague and
19 ambiguous. You can answer it.
20 A. BY THE WITNESS: The specific conversation
21 that you're talking about, I don't recall having that
22 specific conversation with anyone.
23 Q. BY MR. REED: Has anyone ever brought to the
24 attention of APS, to your knowledge, the fact that a
25 bill on a demand meter sent out after a series of

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1 estimates is not an actual bill, but actually is a
2 guess as to demand? Has anyone brought that to your
3 attention or to the attention of APS, to your
4 knowledge?
5 A. That's possible.
6 Q. Well, I know it's possible. Do you have any
7 recollection of it happening?
8 A. Not specifically, no.
9 Q. Have you, in your role as the consumer
10 advocate, ever looked at that issue and said to your
11 employer, "That's not fair"?
12 MS. HILL: Objection. Vague and
13 ambiguous.
14 Q. BY MR. REED: That it's not fair to represent
15 that the bill that goes out on a demand meter, when it
16 is finally read after a period of estimation, is in
17 fact a truthful representation of what the demand was?
18 MS. HILL: Objection. Assumes facts not
19 in evidence.
20 A. BY THE WITNESS: I don't believe so.
21 Q. BY MR. REED: Is it fair?
22 MS. HILL: Objection. Assumes facts not
23 in evidence.
24 A. BY THE WITNESS: Bills that are estimated for
25 multiple months are typically due to a customer not

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1 providing unassisted access for us to obtain a meter
2 reading. Since it is the customer's obligation to
3 provide APS with unassisted access, if access is not
4 provided, then those estimates have to be made based on
5 the rules. So multiple-month estimates caused by a
6 lack of access from a customer, I think, is in
7 accordance to the rules.
8 Q. BY MR. REED: So what you're saying is that
9 procedure is approved by -- the procedure of billing
10 demand meters based on estimates is approved by the
11 Commission?
12 MS. HILL: You're asking her in her
13 opinion?
14 MR. REED: Yeah.
15 A. BY THE WITNESS: In my opinion, if the
16 customer does not provide access to APS's meter for us
17 to obtain a read, the rules do provide for APS to
18 continue to estimate bills until access is provided and
19 we are able to obtain a read.
20 Q. BY MR. REED: And when you get a read, does
21 the Commission say it's okay to treat that read as if
22 it's a real demand? Has the Commission ever said that
23 to you?
24 MS. HILL: Objection. Compound.
25 Foundation. Assumes facts not in evidence.

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1 A. BY THE WITNESS: I'm not sure we treat that
2 read as a real demand. I can't remember whether the
3 system showed it -- how the system showed it.
4 Q. BY MR. REED: Well, do you think the system
5 should show it as an estimate?
6 MS. HILL: Objection. Foundation. Calls
7 for speculation.
8 Q. BY MR. REED: Well, you're the consumer
9 advocate or were. As an advocate for the consumer,
10 would you say that that should be an estimate?
11 MS. HILL: Objection. Foundation. Calls
12 for speculation.
13 A. BY THE WITNESS: As an advocate for the
14 consumer, I would work with the consumer or ask them to
15 work with the meter reading department in order to work
16 out a solution to provide us with unassisted access so
17 we could obtain accurate meter readings.
18 Q. BY MR. REED: So if you don't provide access,
19 you get what you deserve. Is that right?
20 MS. HILL: Objection. Misstates her
21 testimony. Argumentative.
22 Q. BY MR. REED: Is that how you feel about it?
23 The consequences of not providing access are you don't
24 get accurate bills. Is that basically your point?
25 MS. HILL: Objection. Misstates her

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1 testimony. Argumentative. Asked and answered.
2 MR. REED: Go ahead.
3 A. BY THE WITNESS: I believe that APS is very
4 fair in providing customers with an estimated bill.
5 Q. BY MR. REED: Even on demand meters?
6 A. I believe APS is very fair.
7 Q. And even though those demands can't be
8 reconciled at the end of a period of estimating, it's
9 still fair?
10 A. Again, I believe APS is very fair in
11 estimating energy usage for customers where we are
12 unable to obtain a read.
13 Q. And is the series of formulas you use for the
14 estimates, is that fair?
15 MS. HILL: Objection. Foundation.
16 A. BY THE WITNESS: Again, I believe that --
17 Q. BY MR. REED: I'm talking about Janet Smith's
18 formula, just to clarify.
19 MS. HILL: Objection. Foundation.
20 Q. BY MR. REED: In your opinion as a consumer
21 advocate, is that fair?
22 MS. HILL: Objection. Foundation.
23 A. BY THE WITNESS: I believe that APS estimates
24 bills fairly for our customers.
25 Q. BY MR. REED: Does that include the estimates

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1 of demand usage under the formula created by Janet
2 Smith?
3 MS. HILL: Objection. Foundation.
4 A. BY THE WITNESS: I believe APS fairly
5 estimates --
6 Q. BY MR. REED: Please answer the question.
7 MS. HILL: Let her finish her answer.
8 MR. REED: Fine.
9 A. BY THE WITNESS: I believe APS fairly
10 estimates bills for our customers when an estimated
11 bill is necessary.
12 Q. BY MR. REED: Please listen to my question.
13 Does that evaluation of fairness include the selection
14 of percentages for demand estimates in Janet Smith's
15 formula?
16 MS. HILL: Objection. Foundation. Asked
17 and answered.
18 MR. REED: You don't get to just repeat
19 things. You have to answer the question.
20 MS. HILL: You know, Barry, we don't
21 really need the comments. I have made an objection.
22 Your question is on the record.
23 Would you go ahead and answer it, please?
24 A. BY THE WITNESS: The percentages that are
25 outlined in Janet's document you showed me earlier with

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1 the load factors are something that I am not familiar
2 with the actual calculations of all of that.
3 Do I believe that it's fair? Yes, I do. Can
4 I break down load factor? No, I cannot.
5 Q. BY MR. REED: Well, if you don't know how it
6 works, how do you know it's fair?
7 MS. HILL: She answers your question; you
8 still object.
9 MR. REED: I'm not objecting. I'm asking
10 what the foundation is for her assertion that something
11 she doesn't understand is fair.
12 Q. BY MR. REED: Is it fair because your
13 employer did it and you're loyal?
14 MS. HILL: Objection. Why don't you ask
15 another question, Barry?
16 Q. BY MR. REED: I want to know why you think
17 it's fair when you don't understand it.
18 MS. HILL: Objection. Misstates her
19 testimony.
20 A. BY THE WITNESS: I have looked at a lot of
21 customer bills. And in looking at a pattern of
22 customer usage, without understanding how to calculate
23 load factor, you can look at a bill and make a
24 determination as to whether it's a fair bill.
25 Q. BY MR. REED: If you don't know what the

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1 demand was in the month that was estimated, how on
2 earth can you make that assumption?
3 MS. HILL: Objection. Asked and
4 answered. This is about the fourth time. I'm going to
5 let her answer this time, but I'm not going to let her
6 answer it again, Barry. You have asked this question
7 time and time again. You don't like her answer. You
8 keep asking it.
9 MR. REED: I like her answer.
10 MS. HILL: I'm going to let her answer
11 one more time, and that's it, and you're going to move
12 on.
13 MR. REED: I'm not.
14 MS. HILL: Then fine. She is not going
15 to answer the question.
16 MR. REED: That's fine, too. I will make
17 my record. If you want to instruct her not to answer
18 because you don't want her to answer, then you're going
19 to have to do that.
20 MS. HILL: She can answer this question.
21 But I think the record will reflect, and I've got it
22 here in front of me, that you're asking this question
23 time and time again.
24 MR. REED: It's because she won't answer
25 it.

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MS. HILL: She has asked and answered.
MR. REED: She has given me a formulaic reply to the question based upon -- and when I tested her on her formulaic response, she had no basis for it. I think -- this is cross-examination. I think I can go as far and as long as I want.
MS. HILL: Well, not and ask her the same question.
MR. REED: It is not the same question.
MS. HILL: Well, it is.
MR. REED: It's not the same question. I'm asking her why she thinks it's fair when she doesn't understand, by her own admission, how it works.
MS. HILL: Okay.
MR. REED: She has said she's looked at a lot of bills, and she then says, "I think they're fair."
Q. BY MR. REED: I repeat my question. Why do you think they're fair when you don't know how it works?
MS. HILL: Barry, the problem is the question you asked her that I objected to is totally different than this question. Do you want to have the court reporter go back and read the last question?
MR. REED: No. I know what the last

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question was. No, it wasn't the one I just asked.
MS. HILL: Okay. So the question that is pending is: Why do you think they're fair when you don't know how it works?
Is that the question that's pending?
MR. REED: No. Read back the previous question.
(The requested portion of the record was read by the court reporter.)
MR. REED: That it was fair.
MS. HILL: Same objections.
A. BY THE WITNESS: You can look at THE demand for the same period of time the year before. You can look at the demand for the kilowatt hours the month before. You can look at the kilowatt hour reading on a month when access was obtained and you could get a read on what the demand was and estimate the demand to see if it's in line with what the demand is that you're estimating. There are a lot of different ways to look at the history on the customer's account to determine whether an estimated bill is fair.
Q. BY MR. REED: But that's not the way it's done, is it? It's done by a percentage formula.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: What's done by a percentage

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formula?
Q. BY MR. REED: How you estimate demand.
A. I believe that there's -- I don't know that. I don't know.
Q. I thought that's what Janet Smith's memo said, that it's just a straight percentage.
So what you're saying is there are a lot of different things that would make it fair, but they are not used. Is that correct?
MS. HILL: Objection. Misstates her testimony.
A. BY THE WITNESS: That's not what I'm saying.
MR. REED: Okay. Maybe we will just let it rest there. I have no further questions.
Wait a minute.
Q. BY MR. REED: Is the concept of unassisted access, is that anywhere in the code?
A. Yes.
Q. Where?
A. I don't know off the top of my head.
Q. Would you like to look?
A. I don't have my rules. There's another set of rules that go with this that are schedules, and I know it's clear in our schedules, and I don't know exactly where it is in there.

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Q. Oh, it's in your schedules, meaning APS's schedules?
A. Well, it might be there, too. I would have to search the rules.
Q. You don't know?
MS. HILL: Objection. Misstates her testimony.
Q. BY MR. REED: You don't know without looking -- is that accurate? -- whether it's in there?
MS. HILL: Objection. Misstates her testimony.
Q. BY MR. REED: Well, all I want to know is --
A. I believe it's in there.
Q. You believe?
A. Uh-huh.
Q. Okay. In 14-2-209, 210, that group of --
A. I believe it's in the Arizona Administrative Code. I don't know specifically where it is without researching that, without looking at the rules.
MR. REED: Okay. No further questions.
(The deposition was concluded at 4:02 p.m.)

CYNTHIA J. JANKA

1 C E R T I F I C A T E
2
3 I, Christina L. Larsen, Certified Court
4 Reporter for the State of Arizona, certify:
5 That the foregoing deposition was taken
6 by me; that I am authorized to administer an oath; that
7 the witness before testifying was duly sworn by me to
8 testify to the whole truth; that the questions
9 propounded by counsel and the answers of the witness
10 were taken down by me in shorthand and thereafter
11 transcribed under my direction; that the transcript was
12 made available to the witness to read and sign; and
13 that the foregoing pages are a full, true, and accurate
14 transcript of all proceedings and testimony had upon
15 the taking of said deposition, all to the best of my
16 skill and ability.
17 I FURTHER CERTIFY that I am in no way
18 related to any of the parties hereto nor am I in any
19 way interested in the outcome hereof.
20 DATED at Phoenix, Arizona, this 1st day
21 of May, 2003.
22
23
Christina L. Larsen
24 Certified Court Reporter #50011
For the State of Arizona

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In The Matter of:

READ VS ARIZONA PUBLIC SERVICE

UNITED STSTES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

JANA VAN NESS

APRIL 23, 2003

JD REPORTING, INC
CRETIFIED COURT REPORTERS
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AVIS READ, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

NO. CV 2002-010760

DEPOSITION OF JANA K. VAN NESS

Scottsdale, Arizona
April 23, 2003
9:11 a.m.

PREPARED FOR:

(COPY)

PREPARED BY:
Christina L. Larsen, RPR, CCR

DEPOSITION OF JANA K. VAN NESS was taken on April 23, 2003, commencing at 9:11 a.m., at the law offices of Zimmerman Reed, P.L.L.P., 14646 North Kierland Boulevard, Suite 145, Scottsdale, Arizona, before Christina L. Larsen, Arizona Certified Court Reporter No. 50011.

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ALSO PRESENT:

MS. STACY BETHEA

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20	BL-19 Estimating, Hi-Lo Checking, Rounding (APS02772-2777)	33

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

(None)

CONFIDENTIAL PORTIONS OF THE RECORD

(None)

RECESSES TAKEN

	PAGE
Recess taken from 10:16 to 10:29	32

(Deposition Exhibit No. 17 was marked for identification.)

JANA K. VAN NESS,
a witness herein, having been first duly sworn by the Certified Court Reporter to speak the truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. REED:

Q. Would you state your name, please?
A. Jana Van Ness.
Q. Where do you live? The city. I don't need the address.
A. Peoria, Arizona.
Q. Everybody lives in Peoria. And by whom are you employed?
A. Arizona Public Service.
Q. And what is your title?
A. I'm the manager of regulatory compliance.
Q. And when did you begin in that position?
A. Within the last year.
Q. What was your position before that?
A. I was the manager of state regulation.
Q. How long were you in that position?

5

A. Approximately two years.
Q. That would take us to around what? 1999? Somewhere around there? 2000?
A. Yes.
Q. Okay. And what was your position with APS before that?
A. I was consumer advocate.
Q. How long were you in that position?
A. About a year, year and a half.
Q. And what was your position before that?
A. I was the manager of the call center.
Q. How long were you in that position?
A. For one year.
Q. And before that, you were what?
A. I was the manager of the quality team and consumer advocate office.
Q. How long in that position?
A. Approximately, I'd say, eighteen months.
Q. Did you have a position before that?
A. Yes, I did.
Q. And what was that?
A. Prior to that, I was consumer advocate.
MR. REED: Off the record.
(Discussion off the record.)
Q. BY MR. REED: So you've been consumer

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advocate twice?
A. Yes.
Q. What years were you a consumer advocate the first time?
A. I began in 1990.
Q. And for how long were you in that position?
A. My recollection is five and a half to six years. I had a part time assignment in the middle of that where I managed corporate communications for APS, but that was about a six to seven-month stint.
Q. Okay. What was your position in mid 1996; do you recall?
A. I believe that would have been when I was managing the quality team and the consumer advocate office.
Q. What were your duties managing the quality team and the consumer advocate office?
A. The quality team, this team had responsibility for listening to phone calls for the call center representatives, and they would record them, and then they would grade them. So I managed that team in addition to the consumer advocates. At the time, I had two advocates that reported to me. And they work as liaisons with the Arizona Corporation Commission.

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Q. As part of your evaluation of the calls that you were monitoring as manager of the call center, were you required to have substantive knowledge of APS's practices and procedures regarding billing?
A. No.
Q. So what were you monitoring for? Style more than substance or . . .
A. The associates that were being recorded and the monitors, we'll call them, that were listening to them, they had a template that they would use to go through to grade a call, if you will. So I was managing the process more than getting into the details of the way they were monitoring calls.
Q. Okay. And as manager for regulatory compliance, who do you report to?
A. I report to Barbara Klemstine. K-l-e-m-s-t-i-n-e.
Q. Did you report to her as manager for state regulation?
A. No, I did not.
Q. And who did you report to?
A. Alan Propper. You got that one?
Q. Got that. What does the manager for state regulation do?
A. I had responsibility for managing the

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consumer advocate office, and I managed the rate administration group, and I had also responsibility for managing the compliance filings that we file with the Arizona Corporation Commission.
Q. How often are those filed?
A. Regularly. We have filings that are due on a monthly basis.
Q. Okay. Are there any filings that you make seeking approval of estimating procedures on a regular basis?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: I have no filing requirement for that.
Q. BY MR. REED: There is no filing requirement for estimating procedures?
A. Yes, there is.
Q. Okay. And what is that requirement?
A. That we file the number of first and final bills that are estimated and the procedure -- the procedures that are used to estimate first and final bills.
Q. Are you aware of any filing for approval of estimating procedures for your kWh-only meters, for the estimating procedures you use for estimating those

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1 meters?
2 A. No.
3 Q. Have you ever filed anything seeking approval
4 of the estimating procedures that your current computer
5 system uses to estimate demand meters?
6 MS. HILL: When you say "you," you're
7 talking about her personally versus APS?
8 MR. REED: Her personally, and then I'll
9 get to whether she knows about APS.
10 A. BY THE WITNESS: It went away. No, I'm not
11 aware of any requirement to do that.
12 Q. BY MR. REED: I wasn't asking you whether you
13 were aware of any requirement. I'm asking whether you
14 had ever done that.
15 A. No.
16 Q. Are you aware of APS ever, to your knowledge,
17 seeking to have their estimating procedures approved by
18 the Commission other than the first and finals?
19 A. No.
20 Q. Have you ever had a discussion with anybody
21 at APS regarding the language in the Arizona
22 Administrative Code Section 14-2-210(A)(4)(a) that says
23 the utility or billing entity may not render a bill
24 based on estimated usage if the estimating procedures
25 employed by the utility or billing entity have not been

10

1 approved by the Commission?
2 MS. HILL: Is that the four that's
3 missing?
4 MR. REED: That's the four that's
5 missing. It's the A after the words "After the third
6 consecutive month."
7 MS. HILL: I'm sorry, Barry. I'm not
8 sure we're at the right spot, because four doesn't
9 appear to say anything about you may not render a bill
10 based on estimating usage.
11 MR. REED: It's five. I'm sorry. I
12 wrote over my five on my copy. It's 5(A).
13 MS. HILL: Would you mind just asking the
14 question again?
15 Q. BY MR. REED: Sure. Have you had any
16 conversations with anybody at APS concerning the
17 language in 14-2-210(A)(5)(a), which states that the
18 utility or billing entity may not render a bill based
19 on estimated usage if the estimating procedures
20 employed by the utility or billing entity have not been
21 approved by the Commission?
22 A. No.
23 Q. Were you until today aware of that language?
24 A. Absolutely.
25 Q. Okay. Are you familiar with the formula in

11

1 use today to bill demand when you are estimating a
2 demand meter and doing the automatic estimate in the
3 computer?
4 A. No.
5 MR. REED: 01630, please. I think it's
6 already been marked as an exhibit.
7 MS. BETHEA: I don't have it.
8 MR. REED: Maybe I've got the number
9 wrong. It's Exhibit 9. Sorry.
10 THE WITNESS: Shall I read this?
11 MR. REED: Yeah. Why don't you read
12 through the e-mails that are on there.
13 That's the wrong one. You can stop reading.
14 It's the wrong document. It's not been marked. It's
15 1630. It's from Smith to Van Ness. You don't have it?
16 MS. BETHEA: No.
17 Q. BY MR. REED: What position were you in when
18 the change in the computer system occurred in 1998?
19 A. I was in the consumer advocate office.
20 Q. You were aware, I assume, at that time,
21 because you were the advocate for consumers, that the
22 system did not automatically estimate demand under the
23 old system. Is that correct?
24 MS. HILL: Objection. Foundation.
25 A. BY THE WITNESS: I don't recall.

12

1 MR. REED: Okay. If I can mark this the
2 next number.
3 (Deposition Exhibit No. 18 was marked for
4 identification.)
5 Q. BY MR. REED: Look at the second e-mail down,
6 which begins, "I met with Lori and her group
7 yesterday."
8 A. Okay.
9 Q. Does that refresh your recollection as to
10 whether the old system did not estimate demands?
11 That information was provided to you in the
12 e-mail by Janet Smith. Do you see that in front of
13 you?
14 A. Yes, I do.
15 Q. Does that refresh your recollection as to
16 that issue?
17 A. Actually, it doesn't refresh my recollection,
18 but I trust Janet to know that. I trust that what
19 she's saying is correct.
20 Q. And the next statement she makes there is
21 that, "The billing consultants and associates used
22 various methods to estimate demands when needed. It
23 varied depending on the person doing the estimating,
24 not the situation." Do you see that?
25 A. Yes, I do.

13

Q. Okay. Do you have any knowledge, first of all, as to the accuracy of that statement by Janet Smith?
A. No, I don't.
Q. Okay. Do you have any independent knowledge of whether billing consultants and associates used various methods to estimate demands when needed?
A. No.
Q. Okay. In taking on your positions as state regulation coordinator -- manager, sorry -- and regulatory compliance manager, did you go back through files of old filings to kind of orient yourself as to things that had been filed with the Commission?
A. Occasionally.
Q. In going through those, did you ever find any documents that suggested that any of the various methods to estimate demands used before the system did the demands had ever been submitted for approval to the Commission?
A. I don't recall.
Q. You don't recall ever seeing any?
A. I don't recall seeing any, and I don't recall if I saw them or not.
Q. Okay. Are there any particular files that are kept by APS that contain everything that's been

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filed with the Commission?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Is there a central file with everything filed with the Commission that you -- well, is there, first of all?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Over what time frame?
Q. BY MR. REED: From 1996 forward.
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: If I said to you -- if I was your boss and I said, "Jana, I really need to see a filing that was made in January of 1996 with the Commission. Please find it for me," where would you look?
A. I would look in the files in my department, although I don't believe they go back that far.
Q. Is there a dead filing area where you could look, too?
A. The company has an archive. However, I don't know if anything had ever been archived and what the retention period was for my predecessor.
Q. Okay. To your knowledge -- and you may not know -- in your interaction with the Commission, have you ever become aware of how they archive filings by

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APS?
A. I have no knowledge.
Q. Have you ever looked in your files, the ones that you do have in your office, for any filing with the Commission approving these methods to estimate demands referenced by Miss Smith?
A. No.
Q. And the next sentence there is, "Our current CIS does estimate demands."
A. I see it.
Q. Is that still the case, to your knowledge?
A. I do not know.
Q. Okay. As of the time you left the consumer advocate's office, was the system, the current CIS system, estimating demands?
A. Are you referring to '98 when I was in the consumer advocate's office?
Q. No. Whenever your latest stint was, the second stint.
MS. HILL: I think that is '98.
A. BY THE WITNESS: Okay. Your question was whether or not I was aware that the current system --
Q. BY MR. REED: That the current system would estimate demands automatically.
A. I don't recall when I was there.

16

Q. See in the next sentence there, Miss Smith said, "When we first converted, there were numerous concerns that the demands being estimated by the system were unreasonable."
A. Yes. I see that.
Q. Did you ever receive any complaints that the demand estimates were unreasonable? You personally.
A. I don't recall.
Q. Okay. "Around March of 1999, the pricing department was asked to provide some better guidelines to IS," which I assume is information systems. Correct?
A. I would think so, yes.
Q. Okay. "For system estimating."
Were you part of the request to the pricing department to provide better guidelines to IS for system estimating?
A. No, I was not.
Q. Do you recall that happening?
A. I recall being told that there was a request for the pricing department's assistance.
Q. What position would you have been in in the spring of 1999?
A. The consumer advocate's office.
Q. Were you provided with any information at

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that time while you were in the consumer advocate's office about the four-part formula that is reported in Miss Smith's e-mail to you?

MS. HILL: You're talking about the load factor plus the sentence above that. Correct?

Q. BY MR. REED: Yeah. There's four sentences there beginning with the word "if."

In other words, were you in any way part of that process of making that part of the system?

A. No.

Q. Okay. In any of your positions as consumer advocate or as state regulation manager or as regulatory compliance manager, were you ever asked to file anything with the Commission seeking approval of that estimating procedure?

MS. HILL: When you say "that estimating procedure," you're referring to those same four sentences?

MR. REED: Yeah. The same sentences in Exhibit 18.

A. BY THE WITNESS: No.

Q. BY MR. REED: Do you know how the formula was arrived at?

A. No.

Q. Do you know whether it was in fact generated

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within the pricing department?

A. I don't know that.

Q. Okay. If you go on to the next sentence: "Yesterday's meeting brought out the fact that, if a demand had to be estimated by billing services, there were still various methods being used."

Were you part of a meeting where that was discussed?

A. I don't believe so.

Q. Did you ever have any discussion with Janet Smith regarding her next paragraph, where she says: "As you know, the rules state that, when estimating, we should give consideration where applicable to the customer's usage during the same month a year ago and the amount of usage during the preceding month"?

A. I don't recall.

Q. She says there "as you know" and then follows with her interpretation. Is she right? Is that something that you know?

A. Yes.

Q. Does a system based on meter type, an estimating system based on meter type, give consideration to the customer's usage during the same month a year ago and the amount of usage during the preceding month?

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MS. HILL: Objection. Calls for a legal conclusion. Go ahead and answer if you know.

A. BY THE WITNESS: I do not know.

Q. BY MR. REED: Is there anything that you do know in the regulations that says, when estimating, you should go by meter type?

MS. HILL: Objection. Vague and ambiguous.

A. BY THE WITNESS: No.

Q. BY MR. REED: But you are familiar with the provision which says that you should give consideration to usage during the same month a year ago and the amount of usage during the preceding month. Correct?

A. Correct.

Q. The next sentence says, "I feel as long as we are using these guidelines to determine the kWh," referring to, as you know, that sentence, "As long as we are using these guidelines" -- "I feel as long as we are using these guidelines to determine the kWh, we are fine with our methodology for determining a kW."

Did you ever ask Miss Smith what the logic was behind her conclusion that, as long as you were fine using the methodology stated in the regulation for kWh, you were fine using a different methodology for kW?

20

MS. HILL: Objection. Misstates Exhibit 18. Vague and ambiguous.

A. BY THE WITNESS: No.

Q. BY MR. REED: Did you ever challenge the logic of that to her?

A. Not that I recall.

Q. Finally, she says, "I wanted to send this to the two of you first in case you wanted to discuss."

Did you ever have a discussion about this change with Miss Smith?

A. I don't remember.

Q. Have you ever been asked to determine, in your position as manager of regulatory compliance, whether an across-the-board percentage load factor for estimating complies with 14-2-210?

A. No.

Q. Do you know whether this methodology was, in fact, used for automatic estimating and then subsequently for manual estimating?

A. No, I don't.

Q. I think you've already answered this. You're not aware of that ever having been submitted -- that methodology described in this memo having ever been submitted to regulators for approval?

A. No.

21

Q. Number two.
A. Shall I read this?
Q. Yeah, please. You might want to check the dates so you can sort of read them in sequence. They have dates and times on them.
A. Yeah. They start at the bottom.
MS. HILL: I don't think Exhibit 17 was ever entered on the record. I don't believe giving an exhibit to the court reporter and having her mark it --
MR. REED: Yeah. I didn't want to use it. It's fine to have it marked.
MS. HILL: We skipped a number then. We went from 16 to 18, and I was just trying to figure out what 17 is. If there is no 17, that's fine.
MR. REED: Why don't I put 17 in to keep it simple so we don't have to renumber.
MS. HILL: That's fine.
MR. REED: Can you enter 17 in the record, please?
MS. HILL: Thanks. I was confused because I never saw it.
THE WITNESS: Okay.
Q. BY MR. REED: If you would go to page 1713.
A. Okay.
Q. It's the middle one at the bottom.

22

Are you familiar with the G reason code under the old system?
A. Yes.
Q. And was that created to solve a problem?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Do you know why it was created?
A. Yes.
Q. Why was it created?
A. So that the meter reader could identify in the field that the demand portion of the meter was not reset, and this then would trigger our CIS system to produce "estimate" on the bill.
Q. When was that change made?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: Well, I know it was the old system. So I would estimate '96-'97 time frame.
Q. BY MR. REED: But you don't know for sure?
A. I don't. I don't recall.
Q. Okay. Having read all the other e-mails, did that address the situation under the old system where the meter reader would read, using a scope, the kWh but not be able to read demand or not be able to reset demand because he couldn't get in?
Strike that. Let me see if I can get this right.

23

A. Thank you.
Q. Correct me if I'm wrong, but there are sort of two situations here. One is where the meter reader can't read any of the dials or reset demand on a demand meter, and two, where he can read kWh over the fence, let's say, but he can't get in to reset demand. Two situations.
A. Okay.
Q. Okay. Under the old system, after the G reason code was developed, would the bill state "estimate" under both of those circumstances?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't believe so.
Q. BY MR. REED: Okay. Under the old system, if kWh was read but demand was not reset and was estimated, would the bill say "estimate"?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: In other words, where the kWh wasn't an estimate, but demand was an estimate, would the bill say "estimate"? Or did the old system read it as a bill, as a read bill, as long as one of the two was read?
MS. HILL: Objection. Foundation. Also no reference as to time.
MR. REED: Under the old system is what I

24

said.
MS. HILL: Well, I know. But as I understand what she's saying, there may be a difference in her answer before and after the G reason code was developed. So just saying the old system isn't sufficient.
MR. REED: I think I said after the G reason code.
MS. HILL: You didn't. You just said under the old system.
Q. BY MR. REED: Okay. Let me start again. After the G reason code was created, did the system print "estimate" on the bills where demand was estimated but kWh was read?
A. Yes.
Q. Okay. Before the G reason code, it didn't. Is that correct?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Under the new system -- now we're going to go to these e-mails here, 1712 and 1713.
How did the system handle a bill where demand was not read?
MS. HILL: Objection. Foundation.

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A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Have you read all of these e-mails that I have just put in front of you that you were copied on, some of which were from you?
A. Yes, I have.
Q. Okay. Would you look at the second one down, please.
A. I'm there.
Q. The one that begins, "Gosh." "Gosh, this horse is taking a beating, but I want to make sure I understand. Any time the kW is estimated, it needs to print on the bill that it is estimated. The only time this is an issue is when the kWh are actual reads, the kW aren't."
What you're saying there is that "estimate" does not print when kWh is actual read and kW isn't.
A. Actually, I was asking.
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: I was asking for clarification.
Q. BY MR. REED: Okay.
A. I said, "I want to understand."
Q. Did you get your clarification from Linda Jacobs?

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A. I believe I did.
Q. Okay. And what is your understanding of her clarification?
A. That when a demand is not reset, that it is stated on the bill so that the customer will understand that.
Q. So demand not reset is the message when the kWh is read, but the kW isn't?
A. That can also be used if the meter reader is able to get a read over the fence but can't physically reset it.
Q. Okay. But, of course, if the meter had been estimated in the prior month, that read over the fence might not be that month's highest demand; it might be the previous month's highest demand if it hadn't been reset the month before. Correct?
MS. HILL: Objection. Vague and ambiguous.
A. BY THE WITNESS: That's correct.
Q. BY MR. REED: Is this clarification saying that the word "estimate" does not appear under those circumstances, but "demand not reset" does appear? Or does it say that both appear in the situation where demand has not been read and reset.
A. I don't believe this note clarifies that.

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Q. As you sit here today, do you know the answer to that, as to whether both messages appear on there or whether just "demand not reset" appears?
A. I don't.
MR. REED: Okay. Off the record.
(Discussion off the record.)
Q. BY MR. REED: To your knowledge, who would know? Would it be somebody in the billing services department who would know what appears on the bill when the demand has been estimated and the kWh read?
A. I believe the employees in billing services would know, yes, I do.
Q. Okay. Did you ever have any follow-up conversations after you received Linda Jacobs' clarification, saying to her, "Your clarification didn't clarify?" Do you recall any such conversation?
A. No, I don't.
Q. Did you ever get an answer to your question that begins, "Gosh"?
A. Yes.
Q. Okay. And what was the answer you finally got?
A. That the "demand not reset" message is printed on the bill.
Q. Okay. But you don't know whether it prints

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with "estimate" or instead of "estimate"?
MS. HILL: Objection. Asked and answered.
A. BY THE WITNESS: No, I don't.
Q. BY MR. REED: Okay. And so that's where her clarification left you?
A. I don't think -- yeah. There was no problem from my end with it.
Q. Okay. You didn't have a problem with the notion that, if part of the bill was estimated, you didn't have the word "estimate" disclosed to the consumer?
MS. HILL: Objection. Assumes facts not in evidence.
A. BY THE WITNESS: I don't know that to be the case.
Q. BY MR. REED: You don't know that it was estimated. Correct?
A. No. I don't know if it printed on the bill or not.
Q. Okay. You said that you didn't have a problem as long as "demand not reset" was printed on the bill. Correct?
A. Yes.
Q. Okay. So it didn't trouble you if in fact

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"estimate" did not appear on the bill and part of it was estimated --

MS. HILL: Objection. Assumes --

Q. BY MR. REED: -- as long as it said "demand not reset"?

MS. HILL: Assumes facts not in evidence.

A. BY THE WITNESS: This has been a while ago, but my recollection would be that, if I was comfortable that "demand not reset" was printing on the bill, it was likely that "estimate" was also printing on the bill. And I clearly stated in my note that that's what my concern was.

Q. BY MR. REED: Your note seems to say -- it says at the bottom of her clarification, "I talked to Jana on the phone, and she is okay with this. She wanted to make sure that we were still printing the "demand not reset" message, which we are."

So I think we can agree that you knew at that point that "demand not reset" was printing on those bills.

A. Yes.

Q. Okay. At that time, you were content with that as her response?

A. Yes.

Q. Okay. But you didn't know whether the word

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"estimate" was also printed on those bills?

A. As I stated just a few minutes ago, I believe that -- and, again, it's hard to recall. It's been quite some time -- but I was comfortable in knowing that "demand not reset" was printed on the bill, and I could have very well been told at the time of the conversation with Linda Jacobs. Whatever she told me made me feel comfortable.

Q. But you don't recall whether she told you that "demand not reset" was being used as a substitute for "estimate" or whether it was being used as an addition to "estimate"?

A. That's correct. I do not recall.

Q. Okay. That was in September of 1999. Have you been involved in any changes to that printing procedure since then? In other words, has this been an ongoing issue that you've been involved in, or was that the end of it?

MS. HILL: Objection. Compound. Foundation.

Q. BY MR. REED: Was that the end of the issue, or did you have further conversations with anybody regarding this issue of what printed on a demand estimate bill?

A. I do not recall.

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MR. REED: 1628.

(Deposition Exhibit No. 19 was marked for identification.)

THE WITNESS: Okay.

Q. BY MR. REED: Okay. It appears from this that the issue sort of resurfaced in January of 2001. Do you see that?

A. Yes, I do.

Q. Okay. Were you ever able to determine in January of 2001 whether the issue had been fixed?

MS. HILL: Objection. Vague and ambiguous.

A. BY THE WITNESS: I believe that we were.

Q. BY MR. REED: Okay. Looking at what appears to be the last e-mail on this subject from Cynthia Janka to you, you said: "This is why I want all these print issues in simple terms and in one document so there will not be this confusion."

Is there such a document?

MS. HILL: Objection. Foundation.

A. BY THE WITNESS: I don't know.

Q. BY MR. REED: Did you ever have any further communication, either verbally or in writing by e-mail, with anybody to respond substantively to your e-mail of January the 8th, 2001? "I was under the impression

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that "estimate" is printing on the bills when it should be. I thought the messages that were not printing consistently were "corrected bill" and "prorated bill." Am I confused?"

Did you ever get any response to that e-mail other than Cynthia Janka's, the nonresponse response that didn't tell you the answer?

MS. HILL: Objection. Compound.

A. BY THE WITNESS: In writing?

Q. BY MR. REED: At all.

A. I don't know.

Q. Okay. As you sit here today, do you know whether, under the circumstances where kWh is read and kW is not reset, not read, whether that's printing as an estimate?

A. I believe it is.

Q. Do you know who told you that?

A. No, I don't.

Q. Do you know from what date "estimate" was printed under the new system?

A. I have no idea.

MS. HILL: Would this be a good time for a break?

MR. REED: Yeah.

(The deposition was at recess from 10:16 a.m.

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to 10:29 a.m.)
(Deposition Exhibit No. 20 was marked for identification.)
Q. BY MR. REED: My first question is: Do you know who NIPSCO is?
A. I believe NIPSCO is the company we bought our current CIS system from.
Q. Actually, it's the Northern Indiana Power Systems Company.
A. And it was their system.
Q. It was their system that you purchased?
A. Correct.
Q. Okay. So, basically, it's a billing system that they developed that you licensed or purchased or -- do you know?
MS. HILL: Objection. Foundation.
A. BY THE WITNESS: I believe it was a CIS system that they developed with whomever, whatever vendor, and then it was sold to us.
Q. BY MR. REED: Okay. Are you aware of the outcome of some recent litigation involving NIPSCO and the Indiana regulators?
A. No.
Q. So you aren't aware that they just paid $285 million to settle a claim that their billing was

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improper?
MS. HILL: Objection. Assumes facts not in evidence.
A. BY THE WITNESS: Not at all.
Q. BY MR. REED: You're not aware?
Sorry. It was $225 million. I overstated.
Okay. So this is -- essentially, is this sort of a manual where they didn't change the word --
MS. HILL: Objection. Foundation.
Q. BY MR. REED: Do you know?
A. I don't know what this is.
MS. HILL: You've never even asked her if she's seen this document.
Q. BY MR. REED: Do you know what it is?
A. No, I don't.
Q. Okay. It says there, "NIPSCO will estimate four consecutive months if necessary before requiring the meter be read."
To your knowledge, was that four consecutive months programmed into your system initially?
A. I have no idea.
Q. You don't know. Okay. Has anybody ever brought this document or something like it that lays out the initial computer driven estimating process to you and said, "Does this comply with the regulations?"

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Have you ever been asked to pass on something like this?
A. Not that I recall.
Q. Have you ever seen any document submitting the estimating procedures laid out in 2772 to the Commission?
A. Your question was have I ever seen any document submitting the estimating procedure laid out in 2772 to the Commission?
Q. Uh-huh.
A. No.
Q. Please take a look at Exhibit 15. Where's the one -- if you look at Exhibit 8.
A. You want me to read 15 right now also?
Q. Yeah. Why don't you read 15, too.
A. Okay.
Q. Putting the three exhibits together, they show a chain of --
A. I have two. Did I miss one?
Q. 3, 8, and 15.
A. Oh, this is similar. Okay.
MS. HILL: Three is just the first part.
THE WITNESS: Okay.
Q. BY MR. REED: Look at 15, first of all. There is a reference there to, "Since we didn't design

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from scratch and had about 20 minutes to come up with something, we'll stick to the methodology we have now with maybe some better numbers," referencing load factors.
The question I have is: Were you part of that process at all of designing an estimating procedure for load factors in 2000 when that change was made?
MS. HILL: Objection to the characterization of the sentence as referencing load factors.
A. BY THE WITNESS: No.
Q. BY MR. REED: So that initial change in the base numbers used to do demand estimates was not run by you or approved by you?
A. No.
Q. There was a subsequent change which was referenced in -- if you'd look at number 8. There was a decision to go -- I'm quoting here -- "Yes, we are going with 35 percent on both of the residential rates." Correct?
A. I'm sorry.
Q. That's Janet Smith to Ravi Nair.
A. Yes, I see that.
Q. Were you involved in that decision to go to

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35 percent?
A. No.
Q. Did anybody ask you whether they needed approval to do that from the Commission?
A. No.
Q. And would you agree that the change to a 45 percent/50 percent/60 percent system, which occurred earlier, is a change in estimating procedures?
MS. HILL: Objection. Calls for a legal conclusion.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Well, is it a change in the factors you used to do an estimate?
MS. HILL: Objection. Asked and answered. Calls for a legal conclusion.
A. BY THE WITNESS: I don't know if we had ever used these factors in the past or not.
Q. BY MR. REED: Okay. If it was a change, it would be a change in estimating procedures. Correct?
MS. HILL: Objection. Asked and answered. Calls for a legal conclusion.
A. BY THE WITNESS: I don't know.
Q. BY MR. REED: Okay. Did anybody ever ask you to submit the changes to 35 percent on the residential rates to the Commission --

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A. No.
Q. -- for approval? Do you know whether those are still in effect?
A. No, I don't.
Q. When did you get a waiver for estimating first and last bills?
MS. HILL: Was the question when?
Q. BY MR. REED: When?
A. I don't recall the date, but it would have been in, I believe, fall of 2001.
Q. Okay. Had you been estimating first and last bills prior to that?
A. Yes.
MS. HILL: Objection. Foundation.
THE WITNESS: Sorry.
Q. BY MR. REED: Was that waiver in writing? Was it something written by the Commission?
MS. HILL: Objection. Foundation.
Q. BY MR. REED: If you know.
A. The waiver received in October of 2001 or fall, whatever it was, yes.
Q. And did it absolve you of all responsibility for having done estimated first and last bills prior to the fall of 2001?
MS. HILL: Objection. Foundation.

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Q. BY MR. REED: Is there any release?
MS. HILL: Same objection.
A. BY THE WITNESS: No.
Q. BY MR. REED: Look, please, at 5(B).
A. In the rule?
Q. Yes. It says there, "A utility or billing entity may not render a bill based on estimated usage if the bill will be the customer's first or final bill for service." See that?
A. I do.
Q. So prior to getting the waiver, you were in fact issuing first and final bills contrary to that rule. Is that correct?
A. Yes.
MS. HILL: Objection.
THE WITNESS: Sorry.
MS. HILL: Objection. Calls for a legal conclusion.
MR. REED: I don't have any further questions.
MS. HILL: Asked and answered.
THE WITNESS: I would like to finish my answer.
Q. BY MR. REED: Oh, I thought you had.
A. No.

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Q. Go ahead.
A. Yes, we were estimating first and finals, and the Commission was aware of that.
Q. You were estimating first and final bills?
A. Absolutely, when there were situations out of our control.
Q. But you were estimating first and final bills?
A. Clearly.
MR. REED: No further questions.
(The deposition was concluded at 10:46 a.m.)

JANA K. VAN NESS

1 CERTIFICATE
2
3 I, Christina L. Larsen, Certified Court
4 Reporter for the State of Arizona, certify:
5 That the foregoing deposition was taken
6 by me; that I am authorized to administer an oath; that
7 the witness before testifying was duly sworn by me to
8 testify to the whole truth; that the questions
9 propounded by counsel and the answers of the witness
10 were taken down by me in shorthand and thereafter
11 transcribed under my direction; that the transcript was
12 made available to the witness to read and sign; and
13 that the foregoing pages are a full, true, and accurate
14 transcript of all proceedings and testimony had upon
15 the taking of said deposition, all to the best of my
16 skill and ability.
17 I FURTHER CERTIFY that I am in no way
18 related to any of the parties hereto nor am I in any
19 way interested in the outcome hereof.
20 DATED at Phoenix, Arizona, this 1st day
21 of May, 2003.
22
23
Christina L. Larsen
24 Certified Court Reporter #50011
For the State of Arizona

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Janka, Cynthia J(H86891)

From: Van Ness, Jana K(H95986)
Sent: Tuesday, March 12, 2002 10:21 AM
To: Willis, Delia M(H98097); Froetscher, Daniel T(H36154)
Cc: Vega, Jennie A(H96038)
Subject: FW: Estimated Meters

Hi guys -- I just wanted to add that I am very concerned about estimated reads of any nature at this time. Let me provide a little background which forms the basis of my concerns.

In April 2002, we are going to have to file a new semi-annual report (at the direction of the ACC) which illustrates the number of first and final bills that were estimated. When doing research for preparing this filing, I found out that last year, in July alone, we had 998 accounts (first or final) that had been estimated for various reasons. While some of the causes were beyond APS control, there are a significant amount of estimates that were created by APS.

While I do not know what the other months look like, as we're still pulling all of the #'s together for the report, I am very concerned that the other months will provide similar results.

As a result, I'm concerned that the ACC will the first and final #'s, be very surprised at the volume and then react. Typically, reactions of this nature aren't a good thing. I'm concerned that they will order us to share the rest of our #'s around estimated reads.

Of course, I will be following up with the appropriate folks (once I get the final #'s) to express my concerns in this area and work to make whatever changes are needed to decrease these numbers. And, anything you all can do in an effort to prevent/reduce estimated reads (of any type) should be considered and implemented as quickly as possible.

Thanks for indulging me through this long note.. it's important that we get these estimated reads under control. If there is anything I can do on my end, please don't hesitate to let me know.

-----Original Message-----
From: Vega, Jennie A(H96038)
Sent: Tuesday, March 12, 2002 9:30 AM
To: Van Ness, Jana K(H95986)
Subject: FW: Estimated Meters

I spoke with Delia on 3/11/02. She told me they were up against the last day for the 25-35 "window" to get these reads in and that's why they had to estimate.

I explained our concern that we could have increased scrutiny from the ACC because we now have to report first and last read estimates. She said the estimated area is old town Bisbee and she felt confident they didn't have any first or last estimates. I clarified our concern was more with the possibility of increased scrutiny from the ACC.

Delia told me about the difficulty of getting supplemental meter readers. Even though they have someone that is crosstrained for her area they can't just call and get someone, they have to submit paperwork. She said they should have the supplemental meter reader by today.

Jennie Vega
Consumer Advocate
602-250-2038

-----Original Message-----
From: Willis, Delia M(H98097)
Sent: March 11, 2002 9:17 AM
To: Consumer Advocate, (ConsAdv)
Cc: Froetscher, Daniel T(H36154)
Subject: Estimated Meters

Our meter reader in Bisbee injured his knee today and is on desk duty so 278 meters will be estimated today. We have paperwork in to bring a supplemental meter reader in so hopefully we won't have to estimate too many more. Thanks, Delia

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Smith, Janet M(H50500)

From: Janka, Cynthia J(H86891)
Sent: Thursday, November 30, 2000 7:30 AM
To: Smith, Janet M(H50500); Van Ness, Jana K(H95986)
Subject: RE: Estimating Demands

This sounds great to me. Jana?

—Original Message—
From: Smith, Janet M(H50500)
Sent: Thursday, November 30, 2000 7:03 AM
To: Van Ness, Jana K(H95986); Janka, Cynthia J(H86891)
Subject: Estimating Demands

I met with Lori and her group yesterday to discuss some estimating issues. One of the items raised was how to properly estimate a demand. After some discussion we arrived at what I believe is the best method so this is a heads up to you in case you are ever asked by the Commission.

As you know, the old system did not estimate demands. The billing consultants and associates used various methods to estimate demands when needed (it varied depending on the person doing the estimating, not the situation). Our current CIS does estimate demands. When we first converted there were numerous concerns that the demands being estimated by the system were unreasonable. Around March of 1999, the Pricing Department was asked to provide some better guidelines to IS for system estimating. Taking into consideration something that would be easy to implement and fair (actually very generous) to the customer, we decided the best way to estimate a demand is by using a load factor. We provided to IS the following guidelines which were implemented in late March early April 1999:

If the account is non-residential with an L or M meter type, or on E-34, do not estimate the demand.

If the account is residential with a C or G meter type, use a load factor of 45%.
If the account is residential with a F, J, K, or L meter type, use a 50% load factor.
If the account is non-residential with a C or G meter type, use a 60% load factor.

Yesterday's meeting brought out the fact that if a demand had to be estimated by Billing Services, there were still various methods being used. After some discussion I suggested we use the same method used by our Billing system. This would provide consistency regardless of if the estimate is being done by the system or someone in Billing Services.

As you know, the rules R14-2-210, state that when estimating we should give consideration where applicable to the customer's usage during the same month a year ago; and the amount of usage during the preceding month. These guidelines are in place for estimating kWh in the system and are also considered by Billing Services when they need to estimate kWh. I feel as long as we are using these guidelines to determine the kWh, we are fine with our methodology for determining a kW. And, as I mentioned before this will provide consistency between a system bill and "manual" bill.

I wanted to send this to the two of you first in case you wanted to discuss. If you are in agreement, then I can resend the note to Jennie and Angela, as well as Lori and Joy for documentation.

Thanks.

APS01726

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Smith, Janet M(H50500)

From: Smith, Janet M(H50500)
Sent: Wednesday, June 19, 2002 8:37 AM
To: Nelson, Joy L(H72346)
Cc: Nair, Ravi (ZB1310); Rumolo, David J(Z80729); Van Ness, Jana K(H95986); Janka, Cynthia J (H86891); Froetscher, Patti (ZB2407)
Subject: Estimating Demand

Joy, can you please write a defect or enhancement or whatever you guys do now and ask for a change to the load factors we currently use to estimate a demand.

Currently, we use a 50% load factor for ECT-1R, 45% for EC-1, and 60% for non-residential (for the service plans we let the system estimate).

I know there has been concern from the field that the demand being estimated by the system is too low and didn't always look right "historically." In response to these concerns and to bring the load factors more in line with recent load research data, we would like the load factors for the residential rates lowered to 35% and the load factor for non-residential lowered to 50%.

In a perfect world, and if we were designing a system from scratch, we would still support using load factor, only we would make it customer specific and have the system estimate a demand using the customer's annual load factor. Since our world isn't perfect and we aren't designing a new system, we still believe estimating demands using these average rate specific load factors is the fairest methods for all customers. is defensible to the Commission, and is easy to train to the Billing Reps so they can use the same methodology if they need to estimate a demand.

Let me know the status of this request.

Thanks.

Tracking:

Recipient	Read
Nelson, Joy L(H72346)	Read: 6/19/02 9:38 AM
Nair, Ravi (ZB1310)	Read: 6/19/02 8:40 AM
Rumolo, David J(Z80729)	Read: 6/19/02 9:02 AM
Van Ness, Jana K(H95986)	Read: 6/21/02 1:18 PM
Janka, Cynthia J(H86891)	Read: 6/19/02 8:40 AM
Froetscher, Patti (ZB2407)	Read: 6/19/02 8:38 AM

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From: Smith, Janet M(H50500)
Sent: Tuesday, June 18, 2002 2:38 PM
To: Nair, Ravi (ZB1310)
Subject: RE: Estimation

I don't think load factors change that much. We are going to compare these numbers to some other numbers we have and see how much they have varied. That will give us a better idea of frequency, but I honestly don't think we will see much change. If we only change them when we have a rate case, our last full blown rate case was 1988, so every 15-20 years. Hmm, we could have a new system by then.

By the way, if we were designing from scratch, the best way of estimating a demand would be to calculate the customers load factor for the past 12 months and use that to determine the demand for the current month. Since we didn't design from scratch, and had about 20 minutes to come up with something, we'll stick to the methodology we have now, with maybe some better numbers.

-----Original Message-----
From: Nair, Ravi (ZB1310)
Sent: Tuesday, June 18, 2002 2:32 PM
To: Smith, Janet M(H50500)
Subject: RE: Estimation

Please go thru Joy.... How often do you foresee these numbers to change , typically.. guestimate??

-----Original Message-----
From: Smith, Janet M(H50500)
Sent: Tuesday, June 18, 2002 2:31 PM
To: Nair, Ravi (ZB1310)
Subject: RE: Estimation

We have some new numbers based on load data that will support the rate case. the numbers are lower than what we have now, so I want to make sure if we want to use the newer numbers, it can be done painlessly. Sounds like it can so as soon as I get the buy off from Dave Rumolo on the new numbers, do I tell you, or does Joy need to write an enhancement/defect?

-----Original Message-----
From: Nair, Ravi (ZB1310)
Sent: Tuesday, June 18, 2002 2:29 PM
To: Smith, Janet M(H50500)
Subject: RE: Estimation

Yes.... it is. If we foresee these numbers to change dynamically, we probably ought to have them as factors (reference table driven). But I suspect these are pretty static in nature, if we stick with the present approach to demand estimation.

-----Original Message-----
From: Smith, Janet M(H50500)
Sent: Tuesday, June 18, 2002 2:27 PM
To: Nair, Ravi (ZB1310)
Subject: RE: Estimation

Ravi, if we only want to change the numbers we have in place now (the 45%, 50% and 60%) is that a simple change?

-----Original Message-----
From: Nair, Ravi (ZB1310)
Sent: Tuesday, June 18, 2002 9:53 AM
To: Smith, Janet M(H50500)
Subject: Estimation

we will be putting a new exception/bsns rule... This is fyi -

-----Original Message-----
From: Nair, Ravi (ZB1310)

APS02324

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Smith, Janet M(H50500)

From: Smith, Janet M(H50500)
Sent: Monday, December 04, 2000 6:20 AM
To: Moyer, Lori P(F76283)
Subject: Estimating Demands

Lori, I ran the estimating demand by Jana and Cynthia and they both support our approach 100%. So, here is how the system is programmed and you can have Dawn set your spreadsheet up to do the same thing.

If the account is non-residential with an L or M meter type, or on E-34, do not estimate the demand.

If the account is residential with a C or G meter type, use a load factor of 45%.
If the account is residential with a F, J, K, or L meter type, use a 50% load factor.
If the account is non-residential with a C or G meter type, use a 60% load factor.

Janet.

Tracking:

Recipient	Read
Moyer, Lori P(F76283)	Read: 12/4/00 10:04 AM

APS01727

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Smith EXHIBIT —
4-22-2003
CHRISTINA L. LARSEN

Smith, Janet M(H50500)

From: Jacobs, Linda L(H54248)
Sent: Monday, September 20, 1999 12:56 PM
To: Van Ness, Jana K(H95986); Schallmo, Elizabeth J(C22400); Nelson, Joy L(H72346); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Stapley, Mary C(Z37021)
Subject: RE: Zero Demand

To clarify:
The system does not estimate demand only. Its all or nothing. If the system estimates, then the message appears on the bill.
If Billing Services fixes the demand only, what prints on the bill is determined by the read source the employee used.

I talked to Jana on the phone and she is ok with this. She wanted to make sure we were still printing the Demand Not Reset message..... which we are.

—Original Message—
From: Van Ness, Jana K(H95986)
Sent: Monday, September 20, 1999 12:30 PM
To: Jacobs, Linda L(H54248); Schallmo, Elizabeth J(C22400); Nelson, Joy L(H72346); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Stapley, Mary C(Z37021)
Subject: RE: Zero Demand

Gosh. . this horse is taking a beating . but I just want to make sure I understand Linda. Just to reiterate... anytime the kW is estimated (and the customer is billed on a demand rate) it needs to print on the bill that it is estimated. The only time this is an issue is when the kWh are actual reads, the kW aren't. Otherwise... if both the kWh and kW are estimated, we're covered as estimate will automatically print. Right?

—Original Message—
From: Jacobs, Linda L(H54248)
Sent: Monday, September 20, 1999 11:00 AM
To: Schallmo, Elizabeth J(C22400); Van Ness, Jana K(H95986); Nelson, Joy L(H72346); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Stapley, Mary C(Z37021)
Subject: RE: Zero Demand

The Estimate Bill message is triggered by the **read source**. The kWh and kW share one read source code..... this means since the kWh read is not estimate. CIS does not know that the demand read is missing or that it needs to be estimated.
In this situation, there is <u>not</u> an Estimate Bill message.

So even though CIS can estimate kW, it is <u>not</u> in this situation. Since we are not estimating the demand in this situation, what prints on the bill is not an issue unless we change the system.

After someone from the billing team researched exception 118, I learned that the 118 does not apply here because it is only when the entire read is missing.
However after looking into the program on <u>demand read validation</u>, the demand would kick to exceptions as a **160 (ACT ACCT, NO DMD READ OBTAINED. SERV PLAN REQ DMD)** if the demand read = <u>ZERO</u> for:

- Residental with KWH greater than 500
- Commercial with KWH greater than 3600

<u>Conclusion</u>:
I feel that changes to billing is not required or not cost justified.

—Original Message—
From: Schallmo, Elizabeth J(C22400)
Sent: Friday, September 17, 1999 3:45 PM
To: Jacobs, Linda L(H54248); Van Ness, Jana K(H95986); Nelson, Joy L(H72346); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095)

EXHIBIT
tabbies #2

APS01712

Subject: RE: Zero Demand

I think something is missing here. Billing does not always create a 118 billing exception. Demand reads can be estimated now. Also, we need to check to see if the statement indicates the demand is estimated when the usage is read.

—Original Message—
From: Nelson, Joy L(H72346)
Sent: Friday, September 17, 1999 3:09 PM
To: Jacobs, Linda L(H54248); Van Ness, Jana K(H95986); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: RE: Zero Demand

One question....is it noted on the bill when we estimate the demand? I know it is showing estimate on bills for certain conditions, but if we get reads for a total, and demands are estimating, are we informing the customers that the demand portion of their bill was an estimated demand?

—Original Message—
From: Jacobs, Linda L(H54248)
Sent: Friday, September 17, 1999 3:05 PM
To: Van Ness, Jana K(H95986); Nelson, Joy L(H72346); Jacobs, Linda L(H54248); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: RE: Zero Demand

I talked with Joy and clarified that G = Demand not Reset. It did not mean that the demand was not read

Amy stated that for accounts with Service Plans that were billed on demand, went to exceptions as a 118 (No estimate, demand required) for account with zero demand read.

I have given Joy a list of meters from Scotts list with Freeform comments from the meter reader so she could see if any others needed a exchange order to correct the meter type.

CONCLUSION:

1. **Yes to adding a new** No Read Reason

2. **No change needed to billing** because the condition is already handled by Exception 118 for Service Plans that are billed on demand.

Please let me know if you do not agree with my conclusion.

—Original Message—
From: Van Ness, Jana K(H95986)
Sent: Friday, September 17, 1999 9:01 AM
To: Nelson, Joy L(H72346); Jacobs, Linda L(H54248); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: RE: Zero Demand

Linda – I agree 100% with Joy.
We absolutely need to advise our customers that the kW has been estimated and the cause of the estimate.
And, billing needs to follow standard procedure to estimate the kW. This is an ACC mandate.

—Original Message—
From: Nelson, Joy L(H72346)
Sent: Thursday, September 16, 1999 2:07 PM
To: Jacobs, Linda L(H54248); Moyer, Lori P(F76283); Maloney, Amy (Z21945); Smith, Janet M(H50500); Van Ness, Jana K(H95986)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: RE: Zero Demand

In the old system that was why we developed that G reason code, was when we weren't reading or resetting the demand. We weren't telling the customer that we read it or not, and we got into a lot of trouble over that. I think if we estimate it, we need some way to let the customer know his demand was estimated. Also on the 3rd example you gave, The meter reader is telling us that the meter should be an F type meter, with no demand. But it is set in CIS as a J type meter, expecting a demand. Because the code

is the same for both an F and a J, we have no way of knowing this, unless the meter reader tells us, as he is doing. And I will get that account fixed.

—Original Message—
From: Maloney, Amy (Z21945)
Sent: Thursday, September 16, 1999 1:57 PM
To: Jacobs, Linda L(H54248); Moyer, Lori P(F76283); Nelson, Joy L(H72346); Smith, Janet M(H50500); Van Ness, Jana K(H95986)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: RE: Zero Demand

A No Read Reason would be helpful. Exception 118 (No estimate, demand required) kicks an account with no demand read. The system doesn't allow us to bill these without entering a demand.

—Original Message—
From: Jacobs, Linda L(H54248)
Sent: Thursday, September 16, 1999 1:48 PM
To: Moyer, Lori P(F76283); Nelson, Joy L(H72346); Maloney, Amy (Z21945); Smith, Janet M(H50500); Van Ness, Jana K(H95986)
Cc: Fraser, Scott (ZA8883); Arora, Jasvinder S(Z03095); Schallmo, Elizabeth J(C22400)
Subject: Zero Demand

We have learned if the meter reader DID read the **KWH**,..... but did NOT read the **KW**.
Then CIS thinks the KW read was actually zero.

Scott was able to find approx 125 occurrances by looking at some the Itron files. It is hard to quantify exactly how many days the represents because it is the last 25 uploads per Read Office. Some read offices send more than one file a day, others don't.

Example sites:

640410284	9/14
567040288	9/13
790431286	9/7

If you want more examples, I can mail you a copy of the list Scott gave me.

The reason is..... Itron handles every read separately and the meter reader can enter different reads for each dial. CIS handles the KWH and KW reads together and they share one set of codes.

Questions:

1. Do you agree that we should we create a special No Read Reason that tells the user that the KW dial was not read?
2. How should this situation be handled by billing?..... exception?..... estimate the KW?

If you have any questions, please feel free to call 81-2238.

APS01714

Smith, Janet M(H50500)

From: Holbrook, James (Z48861)
Sent: Thursday, May 18, 2000 1:46 PM
To: Smith, Janet M(H50500); Van Ausdal, Keith B(F95908)
Subject: FW: Rules for Estimating, Factors Used & rules for Hi exceptions.

Importance: High

Smith EXHIBIT 4
4-22-2003
CHRISTINA L. LARSEN

FYI

—Original Message—
From: Nair, Ravishanka (ZB1310)
Sent: Thursday, May 18, 2000 1:38 PM
To: Moyer, Lori P(F76283); Nelson, Joy L(H72346); Holbrook, James (Z48861)
Cc: Haynes, Sherwood (ZB3164); Arora, Jasvinder S(Z03095)
Subject: Rules for Estimating, Factors Used & rules for Hi exceptions.
Importance: High

Genearl Rules for Estimating as implemented in APS :

Estimating is not performed on services which are:

- Less than 15 day bills
- Service plan 1400
- Non residential with an 'L' or 'M' meter type.
- No previous usage history other than a turn-on.

Estimating is perfomed for:

- Irregular services use usage one year ago as the estimated usage, even if that amount is zero kWH.
- Base load is determined for the 6 month season. i.e. May thru October is summer. If the number of days for this six month season is between 165 and 195, then the estimate is calculated from this.
- If base load is not sufficient to determine the estimated usage, the previous months billing is used in the estimated calculation.

Estimated calculation is as follows:

- If base load is used: Base load times 0.1667. (This factor will give a one-month average of the base load) . **Note** :We are changing the factor from 0.1667 to be = 30/total-number-of-base-days in 6/30 Release.
- If the previous month is used, the calculation is (prior period usage * 30) / prior period days
- Multiply the previous calc by the number of billing days in the current billing and divide by 30. (Estimated usage * billing period usage days) / 30.
- This above calc comes up with the ESTIMATED USAGE for the period. It is used in generation of Exception 182.

The demand is determined as follows:

- Residential with time-of-use meter - ((Estimated usage / (13 * billing period usage days)) / 0.50 + 0.05)
- Residential with normal meter - ((Estimated usage / (24 * billing period usage days)) / 0.45 + 0.05)
- All commercial services - ((Estimated usage / (24 * billing period usage days)) / 0.60 + 0.005)

Exceptions if a meter is not read:

- If they are a "Do Not Estimate" and the meter is not read, a "103" exception is created.
- Also, if the previous usage was no-billed, voided or cancelled, a "115" exception is created.
- A count of the number of previous reads in a row that were estimated is taken. 3 points are added if the read was estimated and 2 points are added if it is a customer or post card read. If the accumulated total number of points is greater than nine, a "116' exception is created. **Note:** we are changing this to check from 9 to 6 in 6/30 Release.
- If the previous read was a turn on or initial read a "117" exception is created.
- If final bill indicator is on a "119" exception is created.

Rules for the HI exceptions

EXHIBIT
tabbies
#4

APS01717

CASE <A> **Exception 181**

FOR NON-RESIDENTIAL ACCOUNTS, (AND ALSO IRREGULAR WITH IN USAGE PERIOD), OR NO BASE LOAD EXISTS, COMPARE AGAINST HIGHEST HISTORICAL FOR LAST 12 MONTHS.

Highest-Usage = Highest Usage on site , in past 12 months
Normalized Usage = KWH / Usage-Prorate-factor Usage-Prorate-factor = 1.5
if num-days = 45

IF WS-NRMLZD-USG > HIGHEST-USG * 5 (5 is the current factor in Reference table for all service plans)

If TURN-ON done and KWH less than THRESHOLD-KWH (value maintained as a factor in database table) Note : at present this threshold-value is missing in the table. hence effectively the threshold value = zeroes for now. We are asking around when this may have been lost.)

do nothing

ELSE

Give a 181 exception

END.

CASE <B> **Exception 182**

FOR RESIDENTIAL ACCOUNTS, AND IRREGULAR ACCOUNTS (IN USAGE PERIOD), WHEN BASE LOAD EXISTS, COMPARE AGINST ESTIMATED USAGE. USAGE-LIMIT is calculated as follows This exception is checked for if Estimation can be done.

USAGE-LIMIT = Estimated-USAGE * 10 (10 is the current factor in Reference table for all service plans)

Estimated-USage is arrived at by applying rules mentioned in above section.

IF Usage (KWH) > USAGE-LIMIT
Give exception 182

CASE <C> **Exception 183**

Max-Capacity is calculated as follows

Max Capacity = 10/2	if Dial-count = 1
Max Capacity = 100/2	if Dial-count = 2
Max Capacity = 1000/2	if Dial-count = 3
Max Capacity = 10000/2	if Dial-count = 4
Max Capacity = 100000/2	if Dial-count = 5
Max Capacity = 1000000/2	if Dial-count = 6
Max Capacity = 10000000/2	if Dial-count = 7
Max Capacity = 100000000/2	if Dial-count = 8

IF Usage (KWH) > Max-Capacity / **2**
Give exception 183

Regards,
Ravi (602-250-3864)

APS01718

—Original Message—
From: Nair, Ravishanka (ZB1310)
Sent: Monday, August 14, 2000 1:42 PM
To: Smith, Janet M(H50500)
Cc: Arora, Jasvinder S(Z03095)
Subject: RE: Estimating in the 3rd month

Hi Janet,

If we have 2 consequetive estimated bills in the **recent** past. then we will give an exception stopping the "billing in progress" to be system estimated.

i.e

If we are billing the month of August & july and june bills are estimated,
then we give a 116 exception if we are attemptig to do a system estimate of the August bill.

If july bill was NOT estimated but june & may bill were estimated, we will **not** give the exception stopping the August bill from getting system estimated, since the July bill was not an estimate.

This is my understanding on how the system deals with this scenario as of May 19th Install.

—Original Message—
From: Arora, Jasvinder S(Z03095)
Sent: Monday, August 14, 2000 11:19 AM
To: Nair, Ravishanka (ZB1310)
Subject: FW: Estimating in the 3rd month

Ravi
Can you help me answering this.
Jassi

—Original Message—
From: Smith, Janet M(H50500)
Sent: Monday, August 14, 2000 11:10 AM
To: Arora, Jasvinder S(Z03095)
Subject: Estimating in the 3rd month

Good morning Jassi.

In the Arizona Administrative Code rules which govern all regulated utilities, one of the rules states "After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter."

In the old system, their was programming to kick and account into special in the 3rd consecutive month that we did not obtain a read.

I've been in several meetings lately and have heard conflicting ideas of what, if anything, we are doing in our current CIS system. So, to set me straight, can you please have someone tell me exactly what we are doing when we have had 2 consecutive months of estimating. Do we do something in the 3rd month of a missing read, or do we not do anything? One person thought we created an exception if they had 2 estimates in the past 12 months, not necessarily consecutive months.

Anyway, thanks in advance for helping to clear this up for me.

Smith, Janet M(H50500)

From: Nair, Ravishanka (ZB1310)
Sent: Monday, August 14, 2000 2:08 PM
To: Smith, Janet M(H50500)
Subject: RE: Estimating in the 3rd month

We made changes in the 5/19 release for "recent past". it used to be 3 consecutive and an exception on the 4th month. Now we changed it to 2 consecutive & 3rd month we give the 116 exception...

My baby daughter's name is Nimisha - it means " a moment in time"
She is cute :) She was born on 7/30/00 (Leo methinks) at 12:37pm.

Nimisha.jpg

mom'n'misha.jpg

—Original Message—
From: Smith, Janet M(H50500)
Sent: Monday, August 14, 2000 1:46 PM
To: Nair, Ravishanka (ZB1310)
Subject: RE: Estimating in the 3rd month

Ravi, thanks for this. This is also what I thought we were doing, but like I said I kept hearing differing opinions. Although, it doesn't really matter if they are in the recent past does it? It sounds like if we have 2 consecutive estimated bills, then in the 3rd month you put out the 116 Exception.

Do you have baby pictures at your desk? What is your daughter's name (Doug is no good at baby details!)?

—Original Message—
From: Nair, Ravishanka (ZB1310)
Sent: Monday, August 14, 2000 1:42 PM
To: Smith, Janet M(H50500)
Cc: Arora, Jasvinder S(Z03095)
Subject: RE: Estimating in the 3rd month

Hi Janet.

If we have 2 consequetive estimated bills in the **recent** past, then we will give an exception stopping the "billing in progress" to be system estimated.

i.e

If we are billing the month of August & july and june bills are estimated, then we give a 116 exception if we are attemptig to do a system estimate of the August bill.

If july bill was NOT estimated but june & may bill were estimated, we will **not** give the exception stopping the August bill from getting system estimated, since the July bill was not an estimate.

This is my understanding on how the system deals with this scenario as of May 19th Install.

—Original Message—
From: Arora, Jasvinder S(Z03095)
Sent: Monday, August 14, 2000 11:19 AM
To: Nair, Ravishanka (ZB1310)
Subject: FW: Estimating in the 3rd month

Ravi
Can you help me answering this.
Jassi

—Original Message—
From: Smith, Janet M(H50500)
Sent: Monday, August 14, 2000 11:10 AM
To: Arora, Jasvinder S(Z03095)
Subject: Estimating in the 3rd month

Good morning Jassi.

APS01720

In the Arizona Administrative Code rules which govern all regulated utilities, one of the rules states "After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter."

In the old system, their was programming to kick and account into special in the 3rd consecutive month that we did not obtain a read.

I've been in several meetings lately and have heard conflicting ideas of what, if anything, we are doing in our current CIS system. So, to set me straight, can you please have someone tell me exactly what we are doing when we have had 2 consecutive months of estimating. Do we do something in the 3rd month of a missing read, or do we not do anything? One person thought we created an exception if they had 2 estimates in the past 12 months, not necessarily consecutive months.

Anyway, thanks in advance for helping to clear this up for me.

APS01721

Smith, Janet M(H50500)

From: Smith, Janet M(H50500)
Sent: Wednesday, October 18, 2000 1:01 PM
To: Langham, Pamela J(H19458)
Cc: Van Ness, Jana K(H95986)
Subject: RE: Prorating

If we didn't get a read at all, and then we later receive an actual read, we should do whatever is in the customer's benefit. For example, if we estimated a demand of 10 and we get an actual read 3 days later and the demand is 8, then we should rebill the customer. If we estimated a 5 and we later get a read of 6, then we can stay with our estimated read of 5. Does this help?

-----Original Message-----
From: Langham, Pamela J(H19458)
Sent: Wednesday, October 18, 2000 9:22 AM
To: Smith, Janet M(H50500)
Subject: RE: Prorating

My question was not where we have a demand read. My problem is when there are no reads period and we are estimating or when we have estimated and we get a good read and we go back and rebill I apologize that I was not clear on that. Changing a probed demand would never be a choice unless it was a full scale...

Pamela J Langham
Billing Services
Sta. 3855

-----Original Message-----
From: Smith, Janet M(H50500)
Sent: Wednesday, October 18, 2000 9:16 AM
To: Langham, Pamela J(H19458)
Subject: FW: Prorating

Pam, this is the note I sent to Joy in response to her note on this subject. I also discussed this with Jana and we are in agreement on this. Hope this helps. Sounds like your area is not the place to be today!

-----Original Message-----
From: Smith, Janet M(H50500)
Sent: Wednesday, October 18, 2000 9:15 AM
To: Nelson, Joy L(H72346)
Cc: Janka, Cynthia J(H86891); Van Ness, Jana K(H95986)
Subject: RE: Prorating

First, I would say if we have an actual probed demand read, we should not change that read. We may need to send a T.O or field verify to check the read if it could not pass the reasonableness test, but otherwise we should always "trust" a probed read.

If the read is not probed and it is clearly out of line, then I would say we should ESTIMATE a demand read. When estimating a demand you should consider the customer's load factor and history. I think considering load factor is particularly important on a non-residential account since E-32 is such a load factor based rate. I have seen numerous accounts on EC-1 recently where the demand is clearly wrong, or reached full scale. None of these has been a probed read yet they clearly need to be rebilled.

As far as prorating, to my knowledge the system never prorates a demand read, but we do prorate demand charges. The system will prorate demand charges for a rate change or if the number of days falls outside the parameters. Again though we are prorating $'s, not the read.

I hope this helps. Let me know if you need any additional information.

-----Original Message-----
From: Nelson, Joy L(H72346)

APS01722

Sent: Wednesday, October 18, 2000 8:01 AM
To: Smith, Janet M(H50500)
Subject: FW: Prorating

Hi there...there seems to be some controversy about demands, and if they are prorated when rebilling months that had been estimated. Or do we use the actual demand we get on the meter for the current month to rebill for overestimated, or underestimated months?
Cynthia says we use actual except for initial and finals Then we can prorate. What do you think?

—Original Message—
From: Janka, Cynthia J(H86891)
Sent: Tuesday, October 17, 2000 3:18 PM
To: Nelson, Joy L(H72346)
Subject: RE: Prorating
Importance: High

We always use the actual demand if we have it. We do prorate the demand charge on initial or final bills but not the read.

Hope this helps, let me know if you need more.

Thanks,
Cynthia

—Original Message—
From: Nelson, Joy L(H72346)
Sent: Tuesday, October 17, 2000 12:32 PM
To: Janka, Cynthia J(H86891)
Subject: Prorating

Hi there....I have a question....what is the rules or guidelines about prorating a customer's demand? Do we prorate a demand, or do we use an actual demand?

Tracking:

Recipient	Read
Langham, Pamela J(H19458)	Read: 10/18/00 1:01 PM
Van Ness, Jana K(H95986)	

APS01723

Smith, Janet M(H50500)

From: Nelson, Joy L(H72346)
Sent: Tuesday, November 07, 2000 12:07 PM
To: Smith, Janet M(H50500)
Cc: Froetscher, Patti (ZB2407)
Subject: RE: CA 113290282 Site 841370283

Hi Janet....I sent a note to Jassi again to see where this is. Do you think we need to run a query to find out how many accounts have been affected by this, or just leave it as is?

—Original Message—
From: Smith, Janet M(H50500)
Sent: Tuesday, November 07, 2000 11:52 AM
To: Froetscher, Patti (ZB2407); Nelson, Joy L(H72346)
Subject: RE: CA 113290282 Site 841370283

I think this has come up before. I am attaching a note I got from Joy in August on this very subject. Looks like the defect has not been worked. See all the notes below that I just pasted in. Joy, can you follow up on the status of the defect? Thanks!

Hi there....fyi? Don't know if you want to know this or not, nor do I know how many other accounts this has affected? Thanks

—Original Message—
From: Winckler, Douglas K(C98351)
Sent: Monday, August 14, 2000 10:36 AM
To: Nelson, Joy L(H72346)
Cc: Nair, Ravishanka (ZB1310)
Subject: RE: site 841370283

The problem with this account is that it is an irregular user. When estimating these guys, we use the KWH from one year ago for the estimate. We are not carrying the KW forward for them. This needs to be changed in the program. I will write a defect now so that we can get it resolved. It looks like it was never set up for KW estimates for irregular users, so there are probably others that were incorrect in the past.

—Original Message—
From: Nelson, Joy L(H72346)
Sent: Thursday, August 10, 2000 11:48 AM
To: Nair, Ravishanka (ZB1310)
Subject: site 841370283

Hi Ravi....This site had 2 months of System Estimates....the customer is on 4400 rate. The system estimated May and June, and it estimated KWH but did not estimate a demand at all. This rate is billed on a demand, so why wouldn't the system estimate a demand???? thanks

—Original Message—
From: Froetscher, Patti (ZB2407)
Sent: Monday, November 06, 2000 8:48 AM
To: Smith, Janet M(H50500); Nelson, Joy L(H72346)
Subject: CA 113290282 Site 841370283

J & J— This acct is a 4400 rate. Did you know that when the system automatic estimates this they billed the demands at zero???? Did it in Oct and also in April May and June....ugh!!!!! We need to look at these?? I'm going to rebill Oct.

Tracking:	Recipient	Read
	Van Ness, Jana K(H95986)	Read: 11/16/00 9:18 AM
	Janka, Cynthia J(H86891)	Read: 11/16/00 9:09 AM

APS01725

Smith, Janet M(H50500)

From: Janka, Cynthia J(H86891)
Sent: Thursday, November 30, 2000 7:30 AM
To: Smith, Janet M(H50500); Van Ness, Jana K(H95986)
Subject: RE: Estimating Demands

This sounds great to me. Jana?

—Original Message—
From: Smith, Janet M(H50500)
Sent: Thursday, November 30, 2000 7:03 AM
To: Van Ness, Jana K(H95986); Janka, Cynthia J(H86891)
Subject: Estimating Demands

I met with Lori and her group yesterday to discuss some estimating issues. One of the items raised was how to properly estimate a demand. After some discussion we arrived at what I believe is the best method so this is a heads up to you in case you are ever asked by the Commission.

As you know, the old system did not estimate demands. The billing consultants and associates used various methods to estimate demands when needed (it varied depending on the person doing the estimating, not the situation). Our current CIS does estimate demands. When we first converted there were numerous concerns that the demands being estimated by the system were unreasonable. Around March of 1999, the Pricing Department was asked to provide some better guidelines to IS for system estimating. Taking into consideration something that would be easy to implement and fair (actually very generous) to the customer, we decided the best way to estimate a demand is by using a load factor. We provided to IS the following guidelines which were implemented in late March early April 1999:

If the account is non-residential with an L or M meter type, or on E-34, do not estimate the demand.

If the account is residential with a C or G meter type, use a load factor of 45%.
If the account is residential with a F, J, K, or L meter type, use a 50% load factor.
If the account is non-residential with a C or G meter type, use a 60% load factor.

Yesterday's meeting brought out the fact that if a demand had to be estimated by Billing Services, there were still various methods being used. After some discussion I suggested we use the same method used by our Billing system. This would provide consistency regardless of if the estimate is being done by the system or someone in Billing Services.

As you know, the rules R14-2-210, state that when estimating we should give consideration where applicable to the customer's usage during the same month a year ago; and the amount of usage during the preceding month. These guidelines are in place for estimating kWh in the system and are also considered by Billing Services when they need to estimate kWh. I feel as long as we are using these guidelines to determine the kWh, we are fine with our methodology for determining a kW. And, as I mentioned before this will provide consistency between a system bill and "manual" bill.

I wanted to send this to the two of you first in case you wanted to discuss. If you are in agreement, then I can resend the note to Jennie and Angela, as well as Lori and Joy for documentation.

Thanks.

APS01726

Smith, Janet M(H50500)

From: Smith, Janet M(H50500)
Sent: Monday, December 04, 2000 6:20 AM
To: Moyer, Lori P(F76283)
Subject: Estimating Demands

Lori, I ran the estimating demand by Jana and Cynthia and they both support our approach 100%. So, here is how the system is programmed and you can have Dawn set your spreadsheet up to do the same thing.

If the account is non-residential with an L or M meter type, or on E-34, do not estimate the demand.

If the account is residential with a C or G meter type, use a load factor of 45%.
If the account is residential with a F, J, K, or L meter type, use a 50% load factor.
If the account is non-residential with a C or G meter type, use a 60% load factor.

Janet

Tracking:

Recipient	Read
Moyer, Lori P(F76283)	Read: 12/4/00 10:04 AM

APS01727

Smith, Janet M(H50500)

From: Haven, Linda G(H44167)
Sent: Thursday, January 04, 2001 11:54 AM
To: Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Bullock, Nancy J(H17960); McLeod, Tammy D(Z64965); Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Smith, Janet M(H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

We will proceed here in Metro with that mandate and I will see that the State Region Meter Reading Leaders get the same message.

—Original Message—
From: Alexander, Sandra C(X01632)
Sent: Thursday, January 04, 2001 11:23 AM
To: Van Ness, Jana K(H95986); Haven, Linda G(H44167); Bullock, Nancy J(H17960); McLeod, Tammy D(Z64965); Janka, Cynthia J (H86891)
Cc: Moyer, Lori P(F76283); Smith, Janet M(H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

If the Consumers Advocate's office and Customer Service Management are satisfied with the information that is in the system then Audit Services concurs. It is your decision on this. My only concern is that we need to actively work at least the 2 reports that Linda mentioned in her response on question # 4 regarding multiple months of the same demand. Having the Load Controller information may make that easier to explain, but it is a lot of work to get all the data since we did not convert it.

—Original Message—
From: Van Ness, Jana K(H95986)
Sent: Thursday, January 04, 2001 9:16 AM
To: Haven, Linda G(H44167); Bullock, Nancy J(H17960); McLeod, Tammy D(Z64965); Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Alexander, Sandra C(X01632); Smith, Janet M(H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

Be more than happy to help, just let me know what I can do.

—Original Message—
From: Haven, Linda G(H44167)
Sent: Wednesday, January 03, 2001 5:04 PM
To: Van Ness, Jana K(H95986); Bullock, Nancy J(H17960); McLeod, Tammy D(Z64965); Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Alexander, Sandra C(X01632); Smith, Janet M(H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

I too would like to see us pass on the Load Controller data.

Item 4, you are understanding correctly. We are reading the meter over the fence and noting cannot reset demand. The meter reader doesn't know what rate the customer is on. They do know that we have an abundance of TOU meters set, not all being on a TOU rate.

In response to your last comment, sounds like Lori and I could use your input when we proceed to ask for some system change. You are correct, we do not want to create any unnecessary orders. So we will look to your for help to insure that doesn't happen.

Thanks for your note.

—Original Message—
From: Van Ness, Jana K(H95986)
Sent: Wednesday, January 03, 2001 3:00 PM
To: Bullock, Nancy J(H17960); McLeod, Tammy D(Z64965); Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Haven, Linda G(H44167); Alexander, Sandra C(X01632); Smith, Janet M(H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

APS01728

Linda --- you're response was great.. thanks for all of the info and VERY hard work!!! I agree that we do not

need to pursue the inclusion of "LC" any longer...at least not on the meter reader side. I believe this info. is much more accurate and more easily acquired via the call center associates when talking with the customer. However, with that said, this line of questioning can be time consuming and cumbersome, therefore if there is no good business/marketing reason to acquire this info. I would recommend that we let it go.

On item #4, your fourth paragraph.... I need some clarification. If what you're saying is that when a meter reader doesn't have access they will read the meter over the fence and note the account "demand not reset". This code is used in lieu of "no access". Am I understanding you correctly? If so, I absolutely agree that is the best way to handle this situation. If I'm misunderstanding you... please straighten me out (oh.. how I know you love these opportunities.. ha!).

And, I had one last comment on the very last sentence of the last paragraph in your note regarding having CIS produce orders on those accounts that have had the same kW for 3 months or more. My thought is that we might be able to eliminate those accounts that have a normal probe read.. and there may be other conditions (known load control) that would warrant the exclusion of these accounts from producing an order. Just a thought. I know when we have ran these reports in the past, we've found many customers who legitimately have consistent kW's from month to month.

Again, kudos to you and your team for your hard work... it's always a pleasure working with you. And for the record, I think your response was very timely.

Thanks,
Jana

—Original Message—
From: Bullock, Nancy J(H17960)
Sent: Tuesday, January 02, 2001 12:49 PM
To: McLeod, Tammy D(Z64965); Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Haven, Linda G(H44167); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Smith, Janet M (H50500)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

I only find 5 sites in the new system that are marked as having load controllers. This is in the appliance information. I also checked for meter read freeform messages and didn't find anything that said load controller stuff. I then checked with IS and found no knowledge of trying to convert this information from the old system. The old system tracked this data as a rate test group of 'LC'.

—Original Message—
From: McLeod, Tammy D(Z64965)
Sent: Tuesday, January 02, 2001 10:31 AM
To: Janka, Cynthia J(H86891)
Cc: Moyer, Lori P(F76283); Haven, Linda G(H44167); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Smith, Janet M (H50500); Bullock, Nancy J(H17960)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

Thank you Cynthia. I agree with the logic that you have laid out below.

—Original Message—
From: Janka, Cynthia J(H86891)
Sent: Tuesday, January 02, 2001 10:29 AM
To: Bullock, Nancy J(H17960); Haven, Linda G(H44167); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Smith, Janet M (H50500)
Cc: Moyer, Lori P(F76283); McLeod, Tammy D(Z64965)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

When we researched multiple month demand readings in '96, we found it difficult to determine which accounts had load control devices and could be eliminated from our search for problems in resetting demands. The notation of a load control device was for internal benefit and was much less time consuming in the old system. I believe then, we just had the meter reader note in the free form message area that a load controller existed. If that is not possible with the new system, that may be a justification for eliminating that piece from our commitments.

Jana & Sandy, is my statement above what you remember and what do you think about eliminating that commitment?

Thanks,
Cynthia

—Original Message—
From: Bullock, Nancy J(H17960)
Sent: Tuesday, January 02, 2001 10:18 AM
To: Haven, Linda G(H44167); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Janka, Cynthia J (H86891); Smith, Janet M(H50500)
Cc: Moyer, Lori P(F76283); McLeod, Tammy D(Z64965)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

I wasn't really addressing its usefulness, just that it was there if its needed. Jana, Janet, Cynthia what do you guys think? Should we spend time and money to track this piece of information?

—Original Message—
From: Haven, Linda G(H44167)
Sent: Tuesday, January 02, 2001 10:16 AM
To: Bullock, Nancy J(H17960); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Janka, Cynthia J (H86891); Smith, Janet M(H50500)
Cc: Moyer, Lori P(F76283); McLeod, Tammy D(Z64965)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

Thanks Nancy, I had checked and missed it as it is under electric load controller, not just load controller.
If all of you still feel this adds some value to our business, please let me know. This requires additional training for our readers and someone will need to enter this in the system. If, in fact, we have been surviving without this information I would suggest we not pursue this data any longer.

—Original Message—
From: Bullock, Nancy J(H17960)
Sent: Tuesday, January 02, 2001 10:04 AM
To: Haven, Linda G(H44167); Alexander, Sandra C(X01632); Van Ness, Jana K(H95986); Janka, Cynthia J (H86891); Smith, Janet M(H50500)
Cc: Moyer, Lori P(F76283); McLeod, Tammy D(Z64965)
Subject: RE: 1996 Commitments to ACC, APS Board and Bill Post

Regarding #5 - spot in CIS to identify load controllers. This identification is available in the site notebook on the appliance page. Load controller is one of the options.

—Original Message—
From: Haven, Linda G(H44167)
Sent: Thursday, December 28, 2000 10:22 AM
To: Alexander, Sandra C(X01632); Bullock, Nancy J(H17960); Van Ness, Jana K(H95986); Janka, Cynthia J (H86891); Smith, Janet M(H50500)
Cc: Moyer, Lori P(F76283); McLeod, Tammy D(Z64965)
Subject: FW: 1996 Commitments to ACC, APS Board and Bill Post

This is in follow up to our November 17 meeting. A few items regarding Meter Reading,received from the Metro Meter Reading Leaders;

1. Any meter reading error that affects the customer's bill will be corrected before the next meter reading.
Clock errors will be worked within 3 days.

The Leaders do not believe that "bad battery" reports are worked within the 3 days and do feel that this will affect the customer's bill...sooner or later as it will only take one outage .

2.All meter reader datacaps will be set based on satellite time, which is consistent with the time used by the meter shop. The intent is to reduce unnecessary monthly

clock errors.

Satellite time is presently listed on the Electric Meter Shop Web site as "National Institute Standard's and Technology Time". This is our(Metro Meter reading) official time used and our data cap log in time is checked against this source weekly. Further, Chuck Evans has sent a reminder regarding this to all State Region Meter Reading leaders.

3.No input.

4.Exception reports which identify those accounts in which the demand has been consistent in excess of 3 months. The intent is to identify and resolve any potential access issues as well as enhance the already existing internal "check and balances".

Two of the 6 "daily" reports received by Meter Reading are KM14R01, The 3 Month Same Demand Report and Demand Meters to Be Reset,KM06R36.

These reports have been worked in Metro as time permitted. Our first priority has been the No access report. We will make an effort to work these more thoroughly from this point forward and believe with the addition of the No Access Call Campaign, we will have the time to devote.

One of the questions that arose from our meeting was about the coding used. Our Itron system only allows for one code. The meter reader only uses demand not reset if they actually read the meter, but could not reset the demand. We have been attempting to read over fences etc, to lessen the impact on the customer and the billing services group. Since we do not know what rate the customer is on, and we do know that TOU meters are routinely set even when the customer is on the standard rate, we believed that obtaining the kwh read and coding demand not reset was of benefit.

Another issue that surfaced was whether our Meter Readers are allowed to read their own meters.
In fact, if it becomes known to a Leader that the reader had a route with their home, we do make a switch and try not to give them the same route again. If they have a probed meter, this should not be a problem .
Further, as we move to a more consistent rotation of reading assignments, this will also not be an issue.

5. Meter Readers will note those accounts which have visible load control. This will enable APS to better identify those accounts with load control as a means for rate comparison and analysis.

We no longer have any designated spot in our CIS for this notation and the Leaders can only recall that they were asked to make ONE pass in the old system to identify and enter some coding if they noticed load
control at a site. We have not been performing this function . To do this will require us to first give some training to our present meter reading staff. We do have the ability to use a "survey" button. A paper report could be generated, but we have no designated area in CIS for this information and no manpower to enter the data. So

if this is something expected of us, we need to know so that we can determine a process.

6. When a meter reader observes a change in the meter access condition in the field, they will note the account identifying the change...in CIS.

We are entering access/condition changes as we read daily. Coding is appearing in CIS.

7. Customer access reports will be worked on a regular basis...

We are actually receiving 10 system reports in Meter Reading.
4 are monthly reports, 6 daily
3 of the 4 monthly reports are used to assess the performance of individual meter readers

KM06R20 is the infamous "No access meters" report. It is received daily, listing all meters that were flagged
by the meter reader for no access and gives the reason the meter was not read. The difficulty with working this report is that it does not list the accounts in "worst" first order so that our time spent researching and taking action is spent wisely. Some offices have small numbers and are able to get entirely through the report daily, others continue to have a large volume that without some system sorting assistance, cannot get through this report in it's present state.
We are awaiting (process is in test mode) the installation of a new Agentless Dialer program for no access accounts. The system will make an unattended call to any account that has 3 consecutive or more "no access" entries for the following reason codes;
meter blocked
locked gate
dog or dogs
foliage
weather(rain,snow,flood,bad weather...we put this in just in case of emergency as experienced in the past by some of our State offices)
no key

We will be piloting this first in Metro areas and adding State Region offices later. We believe that this dialer program can also provide us reports that we can have placed in "worst" first order as well as tell us which accounts did not have a valid phone number so that we can send a letter or attempt further contact.

8. Meter Reader routes will be rotated on a more regular basis.

In fact, the Leaders had not gotten this message. Although this will affect our productivity, we understand and have created a plan that will insure the readers will be rotated every 3-4 months.

9. No input.

10.Any trouble or message code that affects the customer bill (dead meters,demand not reset,no access, high low checks, full scale kw,etc.) will be reviewed and

appropriate measures taken to assure an accurate bill.

We have been focused on No access issues as we felt this was the most important issue affecting customer billing and consequently, customer satisfaction. We have been advised in the past (by the meter shop)that we should not be generating trouble orders. Due to the need to work the demand not reset, or same demand 3 months, we will begin issuing all needed orders. I will send an advance notice to Field Services and the Meter Shop. Further, following discussion with Lori Moyer, we believe that the system should automatically issue an order when the same demand is registered 3 months in a row and will be asking for this enhancement to be added to the CIS list.

My apologies for the delay in response.
Linda Haven
Manager, Customer Assistance Center

Smith, Janet M(H50500)

From: Winckler, Douglas K(C98351)
Sent: Thursday, April 26, 2001 2:48 PM
To: Smith, Janet M(H50500)
Subject: RE: Estimating

We should look at the two prev months and one year ago

---Original Message---
From: Smith, Janet M(H50500)
Sent: Thursday, April 26, 2001 2:42 PM
To: Winckler, Douglas K(C98351)
Subject: RE: Estimating

Doug, I know you've told me this 100 times, and I promise this time I will save your answer somewhere:

When we do a system estimate, not tied to an exception, but just a plain jane no read came in estimate, do we look at the previous two months and the same month one year ago, or do we do the base-load calculation (basically the average of the six summer months)?

---Original Message---
From: Winckler, Douglas K(C98351)
Sent: Friday, March 23, 2001 7:49 AM
To: Nelson, Joy L(H72346)
Cc: Smith, Janet M(H50500)
Subject: Estimating

These are the changes that I think we decided to make to our estimating process.

1. The only historical usage that will be used for estimating purposes is with a read status of billed (RD_STAT_CD = 'B')
2. Analyze some actual reads to see if using the following calculation is valid:

Ex: If this is April, 2001, get the historical usage, and:

a. Add two times the April, 2000 usage plus March 2001 plus May, 2000.

b.Divide this total usage amount by the number of months that actually had usage (If May, 2000 had zero usage, then the total would be divided by 3. If all months had usage, then the total would be divided by 4).
3. Do not estimate initial or final bills.
4. For time-of-use meter estimates, use a percentage of the total usage for the peak usage.

Let me know if there is something that I missed?

APS01734

From: Winckler, Douglas K(C98351)
Sent: Thursday, March 11, 1999 9:33 AM
To: Smith, Janet M(H50500)
Subject: Estimated Demand

I want to make sure that I understand the formula for estimated demand. If anything has changed since yesterday let me know.
We will not estimate demand for a non-residential customer with an L or M meter types. Also no estimated demand for any service plan 1400.

For residential C and G meters - Estimated usage / 730 / **0.45** = Estimated demand.
For residential F, J, K and L meters - Estimated **on-peak** usage / **365** / **0.50** = Estimated demand.
For non-residential C and G meters - Estimated usage / 730 / **0.60** = Estimated demand.

Doug Winckler
81-2515

Smith EXHIBIT 6
4-22-2003
CHRISTINA L. LARSEN

EXHIBIT
#6

APS01711

Smith, Janet M(H50500)

From: Winckler, Douglas K(C98351)
Sent: Monday, September 20, 1999 1:47 PM
To: Smith, Janet M(H50500)
Subject: FW: Estimating

Smith EXHIBIT 7.
4-22-2003
CHRISTINA L. LARSEN

Here it is!

—Original Message—
From: Winckler, Douglas K(C98351)
Sent: Monday, September 20, 1999 9:56 AM
To: Burris, Earlene C(H18540)
Subject: RE: Estimating

ANOTHER CAN OF WORMS!!
I forgot about the exceptions if a meter is not read:

- If they are a "Do Not Estimate" and the meter is not read, a "103" exception is created.
- Also, if the previous usage was no-billed, voided or cancelled, a "115" exception is created.
- A count of the number of previous reads in a row that were estimated is taken. 3 points are added if the read was estimated and 2 points are added if it is a customer or post card read. If the accumulated total number of points is nine or greater, a "116' exception is created.
- If the previous read was a turn on or initial read a "117" exception is created.
- If final bill indicator is on a "119" exception is created.

For Amy's question, a third month is estimated based on the criteria for a "116" exception. The estimating process does not differentiate between types of estimates, so an office estimate is the same as a system derived estimate.

- —Original Message—
  From: Burris, Earlene C(H18540)
  Sent: Monday, September 20, 1999 8:51 AM
  To: Winckler, Douglas K(C98351)
  Subject: RE: Estimating

  What about those ca's which are marked "Do Not Estimate"?

  —Original Message—
  From: Winckler, Douglas K(C98351)
  Sent: Monday, September 20, 1999 8:46 AM
  To: Burris, Earlene C(H18540)
  Cc: Nair, Ravishanka (ZB1310); Schallmo, Elizabeth J(C22400)
  Subject: RE: Estimating

  Estimating is not performed on services which are:
  - Less than 15 day bills
  - Service plan 1400
  - Non residential with an 'L' or 'M' meter type.
  - No previous usage history other than a turn-on.

  Estimating is perfomed for:
  - Irregular services use usage one year ago as the estimated usage, even if that amount is zero kWH.
  - Base load is determined for the 6 month season. i.e. May thru October is summer. If the number of days for this six month season is between 165 and 195, then the estimate is calculated from this.
  - If base load is not sufficient to determine the estimated usage, the previous months billing is used in the estimated calculation.

  Estimated calculation is as follows:
  - If base load is used: Base load times 0.1667. (This factor will give a one-month average of the base load)
  - If the previous month is used, the calculation is (prior period usage * 30) / prior period days
  - Multiply the previous calc by the number of billing days in the current billing and divide by 30. (Estimated usage * billing period usage days) / 30.

EXHIBIT #7

APS01715

The demand is determined as follows:

- Residential with time-of-use meter - ((Estimated usage / (13 * billing period usage days)) / 0.50 + 0.05)
- Residential with normal meter - ((Estimated usage / (24 * billing period usage days)) / 0.45 + 0.05)
- All commercial services - ((Estimated usage / (24 * billing period usage days)) / 0.60 + 0.005)

—Original Message—
From: Burris, Earlene C(H18540)
Sent: Monday, September 20, 1999 6:48 AM
To: Winckler, Douglas K(C98351)
Subject: Estimating

Please provide all the criteria for system estimating. This was a request out of our Tuesday meeting for Billing Services. I would need this before tomorrow's 3:00 meeting. Thanks

APS01716

Smith, Janet M(H50500)

From: Smith, Janet M(H50500)
Sent: Tuesday, June 25, 2002 11:21 AM
To: Nair, Ravi (ZB1310)
Subject: RE: Estimating Demand

Yes, we are going with 35% on both of the residential rates.

Smith EXHIBIT 8
4-22-2003
CHRISTINA L. LARSEN

—Original Message—
From: Nair, Ravi (ZB1310)
Sent: Monday, June 24, 2002 3:29 PM
To: Smith, Janet M(H50500)
Subject: RE: Estimating Demand

Do you mean the load factor being reduced for both residential rates ? i.e ECT-1R from 50% to 35% and EC-I from 45% to 35% ??? Please confirm. Thanks.

—Original Message—
From: Smith, Janet M(H50500)
Sent: Wednesday, June 19, 2002 8:37 AM
To: Nelson, Joy L(H72346)
Cc: Nair, Ravi (ZB1310); Rumolo, David J(Z80729); Van Ness, Jana K(H95986); Janka, Cynthia J(H86891); Froetscher, Patti (ZB2407)
Subject: Estimating Demand

Joy, can you please write a defect or enhancement or whatever you guys do now and ask for a change to the load factors we currently use to estimate a demand.

Currently, we use a 50% load factor for ECT-1R, 45% for EC-1, and 60% for non-residential (for the service plans we let the system estimate).

I know there has been concern from the field that the demand being estimated by the system is too low and didn't always look right "historically." In response to these concerns and to bring the load factors more in line with recent load research data, we would like the load factors for the residential rates lowered to 35% and the load factor for non-residential lowered to 50%.

In a perfect world, and if we were designing a system from scratch, we would still support using load factor, only we would make it customer specific and have the system estimate a demand using the customer's annual load factor. Since our world isn't perfect and we aren't designing a new system, we still believe estimating demands using these average rate specific load factors is the fairest methods for all customers. is defensible to the Commission, and is easy to train to the Billing Reps so they can use the same methodology if they need to estimate a demand.

Let me know the status of this request.

Thanks.

Tracking:

Recipient	Read
Nair, Ravi (ZB1310)	Read: 6/25/02 2:09 PM

APS01750

EXHIBIT
#8

Janka, Cynthia J(H86891)

From: Van Ness, Jana K(H95986)
Sent: Tuesday, March 12, 2002 10:21 AM
To: Willis, Delia M(H98097); Froetscher, Daniel T(H36154)
Cc: Vega, Jennie A(H96038)
Subject: FW: Estimated Meters

Hi guys -- I just wanted to add that I am very concerned about estimated reads of any nature at this time. Let me provide a little background which forms the basis of my concerns.

In April 2002, we are going to have to file a new semi-annual report (at the direction of the ACC) which illustrates the number of first and final bills that were estimated. When doing research for preparing this filing, I found out that last year, in July alone, we had 998 accounts (first or final) that had been estimated for various reasons. While some of the causes were beyond APS control, there are a significant amount of estimates that were created by APS.

While I do not know what the other months look like, as we're still pulling all of the #'s together for the report, I am very concerned that the other months will provide similar results.

As a result, I'm concerned that the ACC will the first and final #'s, be very surprised at the volume and then react. Typically, reactions of this nature aren't a good thing. I'm concerned that they will order us to share the rest of our #'s around estimated reads.

Of course, I will be following up with the appropriate folks (once I get the final #'s) to express my concerns in this area and work to make whatever changes are needed to decrease these numbers. And, anything you all can do in an effort to prevent/reduce estimated reads (of any type) should be considered and implemented as quickly as possible.

Thanks for indulging me through this long note.. it's important that we get these estimated reads under control. If there is anything I can do on my end, please don't hesitate to let me know.

-----Original Message-----
From: Vega, Jennie A(H96038)
Sent: Tuesday, March 12, 2002 9:30 AM
To: Van Ness, Jana K(H95986)
Subject: FW: Estimated Meters

I spoke with Delia on 3/11/02. She told me they were up against the last day for the 25-35 "window" to get these reads in and that's why they had to estimate.

I explained our concern that we could have increased scrutiny from the ACC because we now have to report first and last read estimates. She said the estimated area is old town Bisbee and she felt confident they didn't have any first or last estimates. I clarified our concern was more with the possibility of increased scrutiny from the ACC.

Delia told me about the difficulty of getting supplemental meter readers. Even though they have someone that is crosstrained for her area they can't just call and get someone, they have to submit paperwork. She said they should have the supplemental meter reader by today.

Jennie Vega
Consumer Advocate
602-250-2038

Smith EXHIBIT 9
4-22-2003
CHRISTINA L. LARSEN

-----Original Message-----
From: Willis, Delia M(H98097)
Sent: March 11, 2002 9:17 AM
To: Consumer Advocate, (ConsAdv)
Cc: Froetscher, Daniel T(H36154)
Subject: Estimated Meters

Our meter reader in Bisbee injured his knee today and is on desk duty so 278 meters will be estimated today. We have paperwork in to bring a supplemental meter reader in so hopefully we won't have to estimate too many more. Thanks, Delia

EXHIBIT
#9

APS01651

Janka, Cynthia J(H86891)

Van Ness EXHIBIT 19
4-23-2003
CHRISTINA L. LARSEN

From: Janka, Cynthia J(H86891)
Sent: Monday, January 08, 2001 9:19 AM
To: Van Ness, Jana K(H95986)
Subject: RE: Estimates on Statements

This is why I want all these print issue in simple terms and in one document so there will not be this confusion.

-----Original Message-----
From: Van Ness, Jana K(H95986)
Sent: Monday, January 08, 2001 8:59 AM
To: Janka, Cynthia J(H86891)
Subject: RE: Estimates on Statements

Actually, this wasn't last summer, it was the summer of '99....eck!! And, I was under the impression that "estimate" is printing on the bills when it should be. I thought the messages that were not printing consistently were "corrected bill" and "prorated bill".... am I confused?

-----Original Message-----
From: Janka, Cynthia J(H86891)
Sent: Friday, January 05, 2001 3:09 PM
To: Van Ness, Jana K(H95986)
Subject: FW: Estimates on Statements

See if you can make sense of the message below regarding problems we were having last summer. I don't think any of this was corrected.

-----Original Message-----
From: Easterly, Donna M(H59271)
Sent: Wednesday, July 14, 1999 1:45 PM
To: Van Ness, Jana K(H95986); Singley, Cynthia J(H86891)
Cc: Saager, Delores K(H81235)
Subject: RE: Estimates on Statements

Jana

I agree this needs to be treated with a sense of urgency and will get it taken care of. I'll keep you posted.

Thanks,
Donna Easterly
Competitive Billing/ESP Services
Phone (602) 250-2535
e-mail donna_easterly@apsc.com

Try not to become a person of success but rather a person of value.
-Albert Einstein

-----Original Message-----
From: Van Ness, Jana K(H95986)
Sent: Wednesday, July 14, 1999 1:32 PM
To: Easterly, Donna M(H59271); Singley, Cynthia J(H86891)
Cc: Saager, Delores K(H81235)
Subject: RE: Estimates on Statements
Importance: High

Donna - thanks for the follow-up. We are VERY concerned with "estimate" not producing on the bills and definitely feel that the completion of this "fix" should be expedited. Clearly, we are in violation of an ACC order as have gotten sideways with the ACC on this issue in the past. What do we need to do to have this issue escalated and resolved ASAP?

-----Original Message-----
From: Easterly, Donna M(H59271)
Sent: Wednesday, July 14, 1999 1:19 PM
To: Singley, Cynthia J(H86891); Van Ness, Jana K(H95986)
Subject: FW: Estimates on Statements
Importance: High

FYI

Donna Easterly

EXHIBIT #19

APS01628

Competitive Billing/ESP Services
Phone (602) 250-2535
e-mail donna_easterly@apsc.com

Try not to become a person of success but rather a person of value.

-Albert Einstein

-----Original Message-----
From: Lambeth, Diane L(W58460)
Sent: Wednesday, July 14, 1999 1:06 PM
To: Easterly, Donna M(H59271)
Subject: Estimates on Statements
Importance: High

Donna,

Betsy wanted me to send a note to you regarding the Bills that were estimated. You wanted to know what the status is.

The TOTAL fix for the THIS MONTH WAS ESTIMATED message is not in production. We had made a fix, but upon further investigation, I found that we were not consistently providing the data to produce this message.

When you read the BILLING STATEMENT MAINTENANCE RELEASE document I sent you, you will see that I have it covered. That work tentive due date is the end of August.

Now for statements that you want to print so that the message will appear on them, we can manually provide them. Give us a list and we can do DUPRT and reset the Read Src Cd with the Estimate code and have these reprinted and sent out how you wish..

Please feel free to get with me if you want clarification or to discuss the above. I will be out of the office on Friday, Monday and Tuesday. Betsy will be back on Monday.

24

Smith EXHIBIT 10
4-22-2003
CHRISTINA L. LARSEN

PINNACLE WEST
Capital Corporation

CIS COMPLIANCE TO ACC RULES AND REGULATIONS AUDIT

Report #21054
August 13, 2002

EXHIBIT
#10
4-22-2003

APS03344

EXECUTIVE SUMMARY

CIS COMPLIANCE TO ACC RULES AND REGULATIONS AUDIT

AUDIT #21054

REPORT DATE: AUGUST 13, 2002

OBJECTIVE

The objective of this audit is to review APS compliance with rules and regulations of the Arizona Corporation Commission (ACC).

SUMMARY OF MAJOR FINDINGS AND RECOMMENDATIONS

Our review showed that Customer Service and Regulatory Affairs take compliance with ACC Rules and Regulations very seriously. These groups set goals that go beyond what the rules and regulations require and meet them on a continuous basis.

Areas reviewed that meet or exceed compliance are:

- Curtailment
- Filing Requirements
- Handling of complaints and correspondence
- Handling of Cogeneration Customers

Areas reviewed that need improvement are:

- Access to meters
  1. Current processes are not designed to deal with all access issues and are mainly focused on Metropolitan Phoenix residential accounts.
  2. Access issues exist for all service plans and are not limited to Time of Use accounts. Additionally access issues relating to non-residential accounts have grown substantially since the implementation of estimating demand meter readings in March 1999.
  3. Customer accounts were being estimated for more than three consecutive months without creating a billing exception, as the rules and regulations require. These errors were fixed in July 2002.
  4. Estimating meter readings and demands for non-residential accounts presents the risk of under billing or over billing a customer on the demand side. These over and under billings normally go uncorrected, unless the customer questions the charges.
- Totalized metering
  1. Review of the set up of totalized accounts by the Design Project Leader most familiar with the actual field configuration should be made to ensure that all billing and contract values are correct. This review will ensure that accounts are billing correctly and all revenues collected.

STATUS

BACKGROUND

APS is required to comply with rules and regulations contained in the Arizona Administrative Code, Title 14. Public Service Corporations; Corporations and Associations; Securities Regulation, Chapter 2, Corporation Commission Fixed Utilities. These rules and regulations define information to be provided to the Arizona Corporation Commission, including timeframes, treatment of depreciation, and rate hearings. Also contained within these rules and regulations is specific wording regarding meter reading, billing, line extension, etc. These rules must be adhered to when APS conducts business with its Customers.

SCOPE

Review of all rules and regulations contained in the Arizona Administrative Code, Title 14, Public Service Corporations, Corporations and Associations, Securities Regulation, Chapter 2 Corporation Commission Fixed Utilities, Article 1 General Provisions, Article 2 Electric Utilities.

A review was performed of all rules, regulations and schedules to determine if audits currently scheduled for completion in 2002 or completed in 2001 addressed the issue of compliance with the rules, regulations or schedules.

Rules, regulations and items in schedules to be included in this audit are:

Totalized Metering – billings and creation during 2001
No Access issues – through current date
Correspondence – through current date
Complaint Handling – through current date
Schedule 5 – Guidelines for Electric Curtailment
Filings – for 2001
Accident Reporting – for 2001
Schedule 15 – Conditions Governing the Providing of Electric kWh Pulses
Schedule 02 - Terms and Conditions for Energy Purchases from Qualified Cogeneration and Small Power Production Facilities
Service to Abnormal Load Equipment
General Trailer Park Policy

All items relative to direct access were excluded from this audit.

CONCLUSION

Customer Service and Regulatory Affairs are aware of ACC Rules and Regulations and diligently work to meet or exceed those requirements.

AUDIT TEAM

Team Lead: Nancy Bullock, Senior Auditor
Mary Thiesing, Senior Auditor

Audit Supervisor: Sandra Alexander

APS03346

TOTALIZED METERING

BACKGROUND

The process of totalizing a customer's metering and billing configuration is covered by Schedule # 4 of the Schedules Regarding Arizona Corporation Commission Rules and Regulations for Electric Utilities. This schedule was last updated on October 01, 1999. This metering configuration allows customers at a single premise whose load requires multiple points of delivery through multiple service entrance sections to be metered and billed from a single meter through Adjacent or Remote Totalized Metering. Totalized Metering (adjacent or remote) is the measurement for billing purposes on the appropriate rate, through one meter, of the simultaneous demands and energy of a customer who receives electric service at more than one service entrance section at a single premise. Customer sites are evaluated based on the terms of Schedule #4 to determine eligibility for this type of metering and billing configuration. The Totalizing Committee, chaired by Steve Bischoff, Director - Construction, Maintenance and Operations, performs the evaluation. Records relating to the customer sites approved and denied are maintained by Steve Bischoff's area. This information is received from customer service personnel who are working with the customer to establish their metering and billing configuration. Additional information is received from the Electric Meter Shop when the meters are actually set in the field for the customer. As of March 29, 2002 there were 205 accounts set up with a totalized metering configuration in CIS.

FINDINGS AND RECOMMENDATIONS

1. The company has a comprehensive review process to determine if a customer site qualifies for totalized metering and billing.

2. All accounts set up in a totalized metering and billing configuration received approval by the Totalizing Committee.

3. A review of the contract values for billing delivery point charges uncovered two accounts that were set up and billing in error. One account had been over charged $12,000 and has been rebilled and a refund check issued for the over billing. Another account was undercharged $40,000 for the past two years. This account has been corrected and no backbilling is planned.

4. Of the 205 accounts coded as having a totalized metering configuration, nine accounts had coding errors. These errors were pointed out to Customer Operations personnel and the errors were corrected. These coding errors occurred when new accounts were being created in CIS and the totalized value was selected for the meter kind rather than individual.

5. A review of the totalized meter records found inconsistencies with the information in CIS. Discrepancies were found in the site identification number, customer name, service address, meter numbers, delivery points and charges. The area representing the most risk to the company is the delivery point and charges, as this is the basis for the billing of the customer account.

6. In addition to the records kept by Steve Bischoff's area, the Electric Meter Shop and Regulatory Affairs also keep information on Totalized accounts. A comparison of the data kept by the various groups found inconsistencies in the information.

7. A initial review of the meter and service level voltage information in CIS indicated that we were not in compliance with Rule #2 of Schedule 4 which states "Power will generally be delivered at no less than 277/480 volt (nominal), three-phase, four wire; and". Follow up discussions with Glenn Ensor from the Electric Meter Shop explained that only the submeters in the totalized metering configuration should be included in this review. An additional review of only the submeters showed that we comply with rule #2.

Recommendations

- A review needs to be made of all totalized accounts to determine if delivery point charges are being applied correctly when accounts are established or the configuration of the site changes.
- One area of the company should be the record keeper for all of the totalized metering documentation. Other areas that need access to the information should receive information from that single source to eliminate inconsistent information.
- Information regarding totalized accounts needs to be reviewed and updated annually to ensure that changes have not occurred to items, such as customer name, status of account, etc.
- Update Rule #2 of Schedule 4 to clearly define that the voltage requirements are for the sub meters only and does not apply to the billing meter.
- Documentation of the actual process for creating a totalized account needs to be created so that all necessary steps to get the account entered into CIS are completed correctly.

Response

- *A review has been completed and all totalized account data is now correct.*
- *We agree with the concept of having a single database and shared file for keeping track of the totalized accounts. There will be a limited number of areas that can update, but read access to the information will be more general. A team is putting the finishing touches on the totalizing procedure. We have pulled together another team to analyze and evaluate the who, where and how this information will be stored. Our intent is to implement in the first quarter of 2003.*
- *The Customer Operations Technology Team has provided a query to the totalized metering committee. Annually in April, the totalized metering committee will perform an audit of the CIS totalized data.*
- *Our interpretation of Rule #2 of Schedule 4 is that "delivered" implies sub meters. Since energy is always delivered through a sub meter never directly through the totalizing meter. No modification to the rule is necessary.*
- *A cross functional team was created with the task of documenting the totalized metering process. This has been completed and a process document created.*

NO ACCESS METERS

BACKGROUND

APS has over 900,000 meters currently set in the field. Many of these meters require that the meter reader physically touch the meter each month to obtain meter readings, reset demand measuring devices, etc. Meter reads analyzed between January 1, 2001 through March 25, 2002 showed over 13,000 occurrences of no access meters problems that caused billing exceptions. Accounts with no access for more than one month during that same timeframe totaled over 10,000 accounts. In addition, over 100,000 accounts had automatic system estimates of meter reads performed by the billing system when meter reads were missing or unavailable for all meter read dials required for billing. The breakdown of meters not read each month is less than 1% of the total meters read.

R14-2-210, Billing and Collection, of the Arizona Administrative codes states:
"A. Frequency and estimated bills

1. Unless otherwise approved by the Commission, the utility or billing entity shall render a bill for each billing period to every customer in accordance with its applicable rate schedule and may offer billing options for the services rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35 days without customer authorization. If the utility or Meter Reading Service Provider changes a meter reading route or schedule resulting in a significant alteration of billing cycles, notice shall be given to the affected customers.
2. Each billing statement rendered by the utility or billing entity shall be computed on the actual usage during the billing period. If the utility or Meter Reading Service Provider is unable to obtain an actual reading, the utility or billing entity may estimate the consumption for the billing period giving consideration the following factors where applicable:
    a. The customer's usage during the same month of the previous year,
    b. The amount of usage during the preceding month.
3. Estimated bills will be issued only under the following conditions unless otherwise approved by the Commission:
    a. When extreme weather conditions, emergencies, or work stoppages prevent actual meter readings.
    b. Failure of a customer who reads his own meter to deliver his meter reading to the utility or Meter Reading Service Provider in accordance with the requirements of the utility or Meter Reading Service Provider billing cycle.
    c. When the utility or Meter Reading Service Provider is unable to obtain access to the customer's premises for the purpose of reading the meter, or in situations where the customer makes it unnecessarily difficult to gain access to the meter, that is, locked gates, blocked meters, vicious or dangerous animals. If the utility or Meter Reading Service Provider is unable to obtain an actual reading for these reasons, it shall undertake reasonable alternatives to obtain a customer reading of the meter.
    d. Due to customer equipment failure, a 1-month estimation will be allowed. Failure to remedy the customer equipment condition will result in penalties for Meter Service Providers as imposed by the Commission.
    e. To facilitate timely billing for customers using load profiles.

4. After the 3rd consecutive month of estimating the customer's bill due to lack of meter access, the utility or Meter Reading Service Provider will attempt to secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.
5. A utility or billing entity may not render a bill based on estimated usage if:
    a. The estimating procedures employed by the utility or billing entity have not been approved by the Commission.
    b. The billing would be the customer's 1st or final bill for service.
    c. The customer is a direct-access customer requiring load data.
    d. The utility can obtain customer-supplied meter readings to determine usage.
6. When a utility or billing entity renders an estimated bill in accordance with these rules, it shall:
    a. Maintain accurate records of the reasons therefor and efforts made to secure an actual reading;
    b. Clearly and conspicuously indicate that it is an estimated bill and note the reason for its estimation."

FINDINGS AND RECOMMENDATIONS

1. We found 2,247 accounts that used automatic system estimated reads for billing over 4 times from March 2001 to March 2002. 94 accounts used automatic system estimated meter reads over 8 times during this same period. 8 accounts used automatic system estimated reads every month during that period. All of these automatic system estimated reads were a result of No Access exceptions.
    - Access problems exist for all service plans.

Service Plan	Count of No Access
100	3051
120	4603
160	319
208	4
212	10
232	49
233	10
244	2
300	3518
400	4
800	1305
900	47
999	2
1800	498
2000	5
2300	3
4400	1
7402	7

    - Access problems associated with meter reading exist in Metro Phoenix and State Region areas.

Meter Read Department	# of No Access Exceptions
116	56
117	63
119	32
191	79
192	91
193	77
291	1968
293	1935
391	123
392	75
393	4518
394	160
395	86
396	477
397	641
613	598
622	3
641	14
642	96
651	31
652	1
671	90
691	578
711	228
713	71
732	22
734	270
751	13
753	97
811	222
812	128
831	334
832	86
971	29
991	146

- Meter reads automatically estimated by the system are not reported as a no access billing exception.
- Reports for no access problems are not worked consistently by Meter Reading offices statewide.
- Reports for no access problems lack information that would allow Meter Reading Offices to work the reports efficiently.
- Reads were estimated due to no access
- Reads were estimated due to weather conditions
- Reads were estimated due to difficulty in reaching remote sites, such as mountain tops, etc. Many accounts in Northern Arizona areas cannot be read during the winter season because the roads in the area have been closed by the county or Forest Service and we do

not have keys to their gates. These accounts are currently coded as no read due to snow when that reason code is not accurate.

2. A system problem was found with the timing for creating an exception when the prior two months meter reads have been estimated by the system. The system creates the exception on the 4th consecutive month rather than the 3rd consecutive month. Changes were made to the Customer Information System on July 26, 2002 to correct this problem.
3. A system problem was found with the automatic estimating of accounts. The system is allowing accounts coded with an irregular use code to estimate more than three consecutive months without creating a billing exception. Changes were made to the Customer Information System on July 26, 2002 to correct this problem.
4. Billing Services works the accounts that have a no access billing exceptions. They send a postcard to the customer requesting that they read their meter and provide that information to APS so that the account can be billed and/or follow-up with the appropriate Meter Reading area to request assistance in obtaining an actual meter read. We asked Lori Moyer to have her staff clarify which specific account or accounts had an issue when adding notes to customers with multiple sites and meters.
5. An unmanned outbound calling program is currently running to contact residential customers in Metropolitan Phoenix. Here is a sample of the messages played:

   "This is an important message from APS regarding your electric bill. We have been unable to read your electric meter for at least three consecutive months; therefore, your billings have been estimated. Please call us at (602) 493-4371 to resolve this issue and insure that your future bills are accurate. The number again is (602) 493-4371. We thank you in advance for your cooperation in this matter."

   - Customers in areas other than Metro do not receive such messages.
   - Non-residential customers do not receive such messages.

6. Automatic system estimation of non-residential customer meter reads was implemented in March 1999. Prior to that date system estimation of meter reads for non-residential accounts was not allowed. A review of accounts with demand that were estimated shows problems with that process that allow customers to be under charged as much as 50% for demand charges and in many instances over charged. In addition, the automatic system estimation of non-residential accounts with less than 12 months worth of history represents a financial risk to the company. Approximately 2,500 non-residential accounts are automatically system estimated on a monthly basis.

   Recommendations

   - Shereen Loveridge, Department Leader for Metro Field Services has put together a comprehensive revision to how we deal with the no access problem. These recommendations have been reviewed as part of the audit and we would recommend implementation of these changes statewide. Limiting the changes to Metro would put us at risk because we would be dealing with Metro customers in a stronger manner than state region customers.
   - Discontinue the automatic estimation of meter reads for non-residential customer accounts. This will require some programming changes and potentially additional training for Billing Service Representatives.
   - Add additional no read codes so those areas such as in Northern Arizona that are not read due to lack of seasonal accessibility can be correctly coded.

Response

- *The Metro No Access Process and Procedures revisions were presented at the Division Manager meeting in January 2003 by Tammy McLeod. Due to differences in staffing personnel between State and Metro, some changes in responsibility are being determined and incorporated into the revisions. The state Division Managers have agreed to adopt a policy of consistently addressing access issues. Each division manager is currently determining a point person for their areas. Communication and training will follow to facilitate a first quarter 2003 roll-out of the revised process and procedures.*
- *Because the Customer Information system uses the same process to estimate that is used in a manual estimation, Billing Services will continue to let the system estimate. Increased manual estimation would require additional staffing without a corresponding increase in accuracy. The current system estimating routine may have its flaws but there will always numerous accounts identified to demonstrate that any estimating routine does not work in certain situations. Since we are estimating based on norms, there are always exceptions in the real world that will make the routine appear flawed. If the estimating algorithm is changed, our opinion is that the Rates department should perform an extensive study and get a new routine refined before it is brought to IS as a enhancement.*
- *A new no access read code named "Seasonal Closure" has been added to the Itron and CIS systems to allow better identification of accounts when meter reading is not able to obtain a read due to lack of seasonal accessibility.*

GENERAL TRAILER PARK POLICY

BACKGROUND

This frozen policy exempts trailer park customers who connected before May 1, 1964 from receiving a minimum bill when no usage is reported. Trailer spaces on this policy will continue on the policy until they are disconnected or they have a change in ownership. Under this policy, the customer is billed under service plan 800.13 or 800.14.

FINDINGS AND RECOMMENDATIONS

1. We found seven accounts being billed under the General Trailer Park Policy in error. Four of these errors were a result of clerical errors and three of these accounts defaulted to the 800.13 service plan in error.

   Recommendation

   We recommend that the process to default service plan values be reviewed and changes made to CIS to insure that all accounts default to the correct service plan.

   Response

   The CIS system has been modified so that these accounts are currently defaulting to the 100.1 service plan when service is re-established at these sites. All accounts billing on this rate in error have been corrected.

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Janka EXHIBIT 13
4-22-2003
CHRISTINA L. LARSEN

To: Bill Post

From: Meter Reading/Billing Task Force

Date: September 3, 1996

At your request the Meter Reading/Billing Task Force has reviewed our practices in these areas and present the following report.

Task Force members are Sandra Alexander, Bonnie Coffey, Michael Goguen, Shereen Loveridge, Cynthia Singley, Bill Sommers, Jana Van Ness, and Dick Ray, Coordinator.

SUMMARY:

Based on the collective experience and judgement of the group and intensive testing and investigation of 226,000 customer accounts, it is the opinion of the group that APS meter reading and billing practices are accomplished to a very high standard of excellence and accuracy. In isolated instances when problems are discovered, they are aggressively addressed. The few problems and follow-up situations noted in this report are well within acceptable tolerances for a system that bills approximately 710,000 customers on a monthly basis.

ORGANIZATION OF REPORT:

The issues which have been addressed by the Task Force are organized into three areas:

Meter Reading Issues
Billing Issues
Customer Communication Issues

EXHIBIT
#2

APS01580

Issue: Is demand reset reliable on probeable meters?

Situation: Demand is automatically reset at the time that meters are probed. If any condition precludes resetting of demand, the system automatically notes these instances for follow-up.

We did find instances where clock errors triggered a no reset situation on demand. The meters functioned as designed, and the situation was "flagged" in each case. These situations require a field check of the meter prior to the next scheduled read date, but in the noted instances, the field check may not have been accomplished on a timely basis. The instances of potential mis-billings due to this situation were extremely limited. For the 12 months ended June, 1996 a total of 68 accounts were rebilled due to this situation. During the review process, 17 accounts were rebilled and refunds totaling less than $2700 were credited to these customers. At the conclusion of the review process, an additional 51 accounts were rebilled and refunds totaling less than $4900 were credited to these customers.

Controls: Other than these isolated instances and customer created access problems, no problems have been noted. If the meter is not probed and the meter reader is unable to reset demand, the meter reader must manually indicate this. These situations require a field re-check and are worked on a timely basis.

Additional follow-up: None considered necessary, other than enhanced customer communication on access problems as discussed under Customer Communication Issues.

Issue: Is demand reset reliable on non-probeable meters?

Situation: Demand reset in these situations requires physical contact with the meter and manual resetting by the meter reader. Meter readers are also required to note in their hand held computer units when they are not able to reset the demand. These situations require a field check to reset the demand, unless there are customer created access problems.

Extensive analysis of demand patterns from probeable meters, where we know that demand was reset, demonstrates that two and three months of consecutive, consistent demands occur routinely, and though less frequent, four, five and six months of consecutive, consistent demands also occur.

Controls: APS has extensive controls in place to monitor accuracy in resetting demand for non-probeable meters. These include the meter reader training programs listed earlier in this report as well as periodic rotation of meter readers on routes and a system of tagging these meters with a color coded seal each month as demand is reset. The colors of these seals are rotated each month through a three month cycle.

Additional follow-up: None considered necessary.

Issue: Are there "time-of-use" clock errors with probeable meters?

Situation: At the time of probing the meter, if there is more than a ten minute differential between the meter's internal clock and the clock in the hand held computer unit, the error is "flagged." In these instances, the meter is revisited and corrected or replaced prior to the next scheduled read.

Controls: Reports indicating all clock errors on these meters are produced and reviewed. Field check revisits are scheduled on a timely basis.

Additional follow-up: None considered necessary.

BILLING ACCURACY ISSUES:

Issue: Given accurate meter read components to the billing system, are accurate bills produced?

Situation: There are many checks and balances built into our systems to assure accurate bills. These include:

- High Low meter reading checks in the field
- High Low meter reading checks in the Customer Information System
- Trouble and message codes entered by the meter reader (no access, dead meter, etc.)
- Trouble and message codes generated by the meters (clock errors, demand not reset, etc.)
- Billing rate to meter reads validations
- Field verification of reports
- Billing exception reports
- Meter location validations

When any of these controls trigger an account for follow-up, that account is researched by experienced personnel. We noted no errors in the billing system.

The billing system is continually subject to review by Information Technology personnel, Rate Department personnel, Billing Department personnel, and Internal Audit personnel. Additionally, our external auditors periodically review the billing system.

When we have rate changes, a special team is formed with personnel from the departments noted above. This team participates in extensive testing of the new rates before they are put into our production billing system.

Additional follow-up: None considered necessary at this time.

Issue: When it is necessary to use estimates as components of the billing process, are reasonable bills produced?

Situation: When it is necessary to use estimates (primarily due to customer created access problems) these estimates are produced by a combination of computer based formulas and the work of experienced Billing Service Associates. These estimates are based on the following criteria:

- A review of the customer's usage during the same month one year ago.
- A review of a month with comparable energy usage.
- A review of last month's read.
- A review of current demand usage if a read has been obtained after the meter was reset.
- Use of a modeling program to calculate a demand, if history does not exist.

Controls: Estimates of energy usage are automatically "trued-up" with the next actual read. Customer review of billings with estimated components serves as an additional control.

Additional follow-up: None considered necessary at this time.

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ACC

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REVIEW OF APS METER READING, METERING AND BILLING PRACTICES

The following issues will be discussed:

Janka EXHIBIT 14
4-22-2003
CHRISTINA L. LARSEN

1. Meter Reading Practices
2. Billing Practices
3. Meter Practices
4. Meter Reading Operational Review
5. Ciccone Issue

I. APS METER READING PRACTICES

A. Meter Reading Training and Incentives

There are many checks and balances built into our process from meter reading to the production of an accurate bill.

1. Meter Readers are thoroughly trained and incentives are in place to encourage quality and accuracy.

   - Interactive on line PC based training system
   - Field training with an experienced Meter Reader for 4-6 weeks
   - Financial incentives to maintain accuracy
   - Ongoing performance enhancement training

2. Performance Assurance:

   - Rotation of meter reading routes
   - The bill review process
   - Customer contacts
   - Seal colors changes in the field
   - Individual statistical performance reports
   - Route completion standards
   - End of shift reviews of work completion

B. Disciplinary Action

The following disciplinary actions are taken if any performance issues are raised.

- Coaching Sessions
- Disciplinary letters to the Employees' file
- Termination

EXHIBIT
#14

III. METERING PRACTICES

A. A high degree of accuracy is maintained through the following practices:

- Developing and maintaining close relationship with suppliers
- In-depth knowledge of meter technology
- Staying abreast of new technologies
- Trouble shooting
- Ensure meter compatibility to climate
- Timely correction to equipment failures
- On going maintenance of equipment
- Stringent testing

B. Meter Equipment

- ANSI Standards
- Meter function - Explanation by Paul Taylor
- Meter manufacturers supply APS with the same metering devices used by other utilities
- Statistically correct sample of meters are tested to ensure compliance with ACC Standards and APS Standards

IV. Meter Reading Operational Review

A. Three areas were reviewed; meter reading, metering and billing practices

1. Meter Reading Practices:

- Notifying customers when we cannot reset their demand meter

Customers will receive a message on their bill notifying them that the demand was not reset.

- Estimated meter reads

Customers will receive a message on their bill notifying them if any part of their bill is estimated.

- Expanding and reviewing exception reports (consecutive reads)

A database of all residential demand customers was examined to determine the natural occurrence of multiple months of identical demands. Probe meters have the electronic component that enables APS to identify, with certainty, if a kW demand was reset. Utilizing this certainty we

- How kW demand is measured
- Average meter reading route time
- Customer bill notifications:
  - -Demand not reset
  - -Estimated bill
  - -Access issues
  - -Prorated bill
- All system validations
- Meter reader performance
- Meter reader performance measurements
- Meter error codes by manufacturer

V. Ciccone Issues

The assumption that consistent kW demand readings are random and purely by chance is a false assumption because:

A. Incentives for consistent kW demand is inherent in rate design

B. Consistent and consecutive kW demand reads can be achieved by:

- Use of a load controller
- Use of timers
- Manually controlling load
- Having a lifestyle that naturally controls load

C. Billing history cannot determine if the demand portion of the meter has been reset as evidenced by the following examples:

- Accounts which show kWh lowering and kW demand increasing
- 7,182 customers registering two months of consecutive identical kW demand reads
- 669 customers registering three months of consecutive identical kW demand reads
- 85 customers registering four months of consecutive identical kW demand reads
- 21 customers registering five months of consecutive identical kW demand reads
- 12 customers registering six months of consecutive identical kW demand reads

- What have we done to resolve access problems?

  APS' Rate schedules that bill on a demand component are clear that access is a requirement of the Rate. APS associates discuss access with each customer upon connecting service or discussing Rate changes. R14 -2-209 D and R14-2-210 A2 A4 and A5c also discuss the requirement of the customer to provide access. APS may disconnect services or remove a customer from a Rate when access is not given. however, APS chooses not to do so in the spirit of customer service. Instead, several things are done to assist in gaining access: (See "Review of APS Meter Reading, Metering and Billing Practices" page 2).

  - Meter Readers leave notices at the door
  - Meter Reading Department contacts customers
  - Customers are contacted through a phone calling program
  - An information line advises customers when their meter will be read (there are approximately 1200 calls per month)
  - Cards are sent to the customers in order to obtain a meter read

- Meter readers do not leave early, they always work at least a normal shift. If the meter reader does finish his route early, they go back to the field to work verify reads (customer or billing department requests the meter be read again, after the scheduled meter read).

- Why can't the meter reader simply set in the truck and "plug in" reads?

  With the use of the hand held data cap, it is impossible for the meter reader to "plug in" reads without it being noticed. The routes are mixed with all types of meters. If the probeable meters in the route has not been probed, this will raise a red flag and the supervisor will closely examine the entire route. Also, if the route shows a large number of exception bills (bills that do not clear the checks and balances and need to be looked at by hand), the entire route will be analyzed. The hand held data cap allows us to produce a report showing the time each meter on the route was read (a copy of this report was submitted in our answer to Mr. Ciccone's formal complaint).

- What are the ramifications if a meter reader does not complete his route?

  Route completion is not a problem. Routes are designed to be read in one day. If a meter reader does not complete the route, it is always completed the next day. When discipline for route completion is required, the following discipline standards apply:

  Coaching
  Oral Reminder
  Written Reminder
  Decision Making Leave
  Termination

- How many customer do we contact by phone each month regarding access?

  Approximately 550 per month.

- Are those phone contacts always done or only done if we have time?

  The phone contacts are done on accounts where phone numbers are available and accounts which are not being addressed by the Meter Reading Department. These customers are contacted mainly in the evening until 8pm, however. calls during the business day are also made. Since these access issues need to be addressed prior to the next meter read, there is an approximately 30 day window in which to continue to contact the customer.

ACC QUESTIONS REGARDING METER READING

1. Prepare a kWH/demand analysis for 10 random customers for a period of 2 years for the same route as the complainant.

- Analysis shows no irregularities with the reads of these 10 accounts.

2. Submit to Commission quality control standards that APS uses to monitor meter readers.

- Meter readers are evaluated based on their errors.
- Errors are determined by accounts which do not clear the high/low checks, customer complaints which result in corrections and the manual monitoring of accounts.
- Meter read errors are less than 1%.

2. A. Does quality control have standards that differ according to readers experience or performance records?

- Meter readers are graded in the following manner:

Less than 6 months	3.35 errors per 1000 meters read
6-12 months	3.00 errors per 1000 meters read
12-18 months	2.50 errors per 1000 meters read
Specialist	1.00 errors per 1000 meters read

2.B. Specifics about meter readers routes such as number of meters required to be read in a work day, and how frequently do routes change physically as well as change in readers themselves.

- The average number of meters read in a day is 400. This number can vary greatly, even up to 800 meters per day depending on the route. If it is necessary to drive between reads, the number of meters read in a day is less. If the route includes an apartment complex or subdivision, more meters can be read per day.
- Routes change infrequently. It is necessary to change routes when several new services are added. In some instances, the route may not have changed in many years. In an area of new growth, the route can change often.
- It is advantageous for the same meter reader to read a route. They become familiar with the most efficient way to read the route and they are able to notice any problems or unusual situations when they are familiar with the route and their customers on that route. New meter readers are rotated more often. This allows a cross check by a more experienced meter reader the next month.

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Janka EXHIBIT 16
4-22-2003
CHRISTINA L. LARSEN

Usage Estimation

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EXHIBIT
#16

APS01541

Functional Areas

Billing, Meter Reading, Credit and Collections, Accounts Receivable

Associated Change Requests

Change Request #	Description
CCR# 123	Estimating - Not Using Square Footage Calc
CCR# 223.1	Estimating Usage

Original Specification/Documentation

Category	Description/Location
Prototype	n/a
Interface Design	n/a
ISSC Doc	e:\doc\host\bl\dbusg.doc KILDB25 Estimate usage KILDB27 Calculate Estimating Factor KILDB30 Determine Able to Estimate KILDB11 Accumulate baseload, prior period, and current period usage for estimation
Report Layouts	n/a
Scenarios	BL-19 Estimating BL 20 Prorating
Issues	#321 - Need to determine square footage logic #767 - Irregular user rules #769 - Conversion for irregular users #357 - Modify irregular user codes and business rules to match APS #358 - Changes to irregular user codes require programming changes. #322 - Estimating hi/low factor parameters by geographic zone #323 - Average temperature table #324 - Estimating demands and TOU on residential accounts #325 - How does NIPSCO estimate #289 - Number of estimates before billing exception #292 - Estimating demands and TOU

Customization Summary

1. Disable estimating based on square footage information for billing, deposits and budget payment programs.
2. Provide the ability to calculate estimating factors based on geographical areas, using revenue town.

APS01542

Detailed Change Description

1. Disable (do not delete as it may have a future use) the square footage calculation used for estimating billing usage, deposit amounts, and budget amounts. This should totally disable the use of square footage for any usage/dollar estimating.
2. Provide the ability to calculate estimating factors based on geographical areas, using revenue town. Values need to be calculated daily for use with the next processing day. 25 accounts with valid reads for each revenue town need to exist for estimating factors to be changed.

   Programmers Notes: Either modify KI_USGEST_PRIM_FTR to be dependent on REV_TOWN or alter references to KI_USGEST_PRIM_FTR to use USGEST_ALT_FTR .
3. Estimating processes must reference APS revenue classes, Service Plans, and Irregular Services when they are used in the processes. Change the processes to use APS values. Programmers note: Many of the values are hard coded in the processes.

Reference Tables

1. Update reference table KI_USGEST_FTR_CLS and KI_USGEST_FTR_RVCL to reflect APS values.

APS Policies and Procedures

1. Due to the diversity of elevations served by APS, estimation factors are developed based upon geographical location as well as consumption ranges utilizing Town/District Code values.
2. APS does not identify customers with irregular usage patterns to account for changes in usage.
3. APS applies a single estimation factor to residential and non-residential accounts to compensate for weather variance. The factor is derived from accounts with actual reads within the same town with similar historical consumption.
4. APS does not systematically calculate estimates for TOU billing.
5. APS does not systematically calculate estimates for demands used in billing.
6. An example of APS estimating formula for KWH is:

   Estimating July

Prorated consumption for June the current year =	4,750
Plus the prorated consumption for May of the current year	5,000
Plus the prorated consumption for July for the previous year	6,200
	15,950

   15,950 divided by 3 = 5316.67 or 5317 (average consumption)

APS01543

Average consumption X estimate factor = estimating billing consumption

5317 X 1.05 (current estimate factor) = 5582.85 or 5583

5583 divided by 30 X actual # of days for current bill = current estimated monthly consumption

7. There must be at least 25 accounts billed in the revenue class to create the estimation factor

Other Processes Affected

Process	Change
Bill Calculation	CCR #248 No proration for normal bills
Bill Calculation	CCR#236 Tariff Change Proration (Version Change of Rate)
Meter Reading	ICR# 228 More needed on meter read interface table
Budget	CCR#26 Budgets
Usage Validation	CCR #226 - Rev Class, Irregular Service Code
Quarter Section	CCR #81 - Quarter Section
Deposits	CCR #208 - Deposit Calculations

Business Rule and Design Assumptions

ISSC CIS Business Rule/Version Assumptions

1. CIS uses square footage to estimate billing, budget payment and deposit dollars required if insufficient billing history exists.
2. Irregular user values are defined based on Midwestern United States customer types, such as Grain Dryers, wood burners, brooders. These codes are used to identify service accounts with irregular usage patterns.
3. CIS calculates one group of factors for the entire company. They do not calculate different factors for different geographic zones of their service territory.
4. The estimation factor is calculated by using usage from this year and the same day last year
5. The estimation factors are calculated for two different revenue classes out of the 7 different CIS revenue classes. The two calculated are for residential electric and electric heating. But these two factors are used to estimate other revenue classes.
6. There must be at least 25 accounts billed in the revenue class to create the estimation factor.
7. The estimation factors are created using the actual readings from the previous business day's cycle.
8. Only accounts billed for a normal billing period (27-33 days) are used to calculate the estimation factor.
9. These estimation factors are used for hi-lo checking.

APS01544

10. CIS will estimate three consecutive months if necessary before requiring the meter be read. Post Card readings will be accepted as good readings but for a maximum of three also. Only KWH metered accounts can be estimated. KW (Demand) metered accounts cannot be estimated.
11. The CIS system estimates two different ways:
    - **Current Usage Pattern System(CUPS)**

      CUPS is based on using the average usage over winter/summer periods and applying a Load Estimation Factor that is based on the overall increase/decrease in use for the same group of customers for the previous cycle billed this year versus last year.
    - **Prior Period Usage**

      Prior Period Usage is based on using estimated and/or actual usage from prior billing periods and applying a Load Estimation Factor that is based on the overall increase/decrease in use for the same group of customers for the previous cycle billed this year versus last year.
12. CUPS is the primary way that CIS accomplishes estimating and hi-lo checking.
13. If there is insufficient history to use CUPS then Prior Period Usage is used.
14. If there is insufficient history to use Prior Period Usage then the usage cannot be estimated by the system and a read must be obtained or the usage manually estimated.

Implementation Issue

1. During system acceptance testing estimation factors should be calculated and set so that we can use with when we go live for estimation process.

Conversion Assumption

1. Steps will be taken to identify known irregular users for conversion to an irregular user category during the conversion process. This will help reduce the number of billing exceptions that occur on accounts with irregular usage patterns, such as winter visitors, summer homes, cotton gins, etc.
2. Previous consumption histories will be converted to allow for the estimating process to calculate estimation factors.
3. Estimation factors will not be converted.

Interface Assumption

1. A separate program will be used to send the necessary information to the Itron interface to provide an estimated usage which is used for hi/low validation.

APS01545

Other Assumption

1. A separate system exists or will be written for the square footage estimated usage calculations used in Usage Breakdown for appliance usages.
2. CCR #81 Quarter section will be worked and Revenue_Town breakdowns for APS service territory will exist for use with the estimation factor calculation process.
3. CCR #226 Usage Validation will be worked and provide information on Revenue Class and Irregular Use values to be used when billing service accounts.
4. Budget payment calculation based upon square footage will no longer be required if sufficient history does not exist.
5. Deposit dollars required will be calculated based upon history or a default value.
6. Forecasting department will take care of updated average degree day information.
7. CCR # 248 and 236 in Bill Calculation functional spec. Will be worked and change the number of days for prorating from 27-33 days to 25-35 days.

Training Issues

1. Forecasting department will need training to learn how to update average degree day information.

View Customization Assumptions

None

New Report Detail

None

Other Considerations

Category	Description
External Interface Data Requirements and expected Responsibilities	n/a
Queue (In-Basket) Requirements (name, priority, authority)	n/a
Reporting Requirements	n/a
Conversion Requirements	Provide historical information which will allow for the calculation of estimation factors.

APS01546

String Testing

Or Note regarding Technical Spec Package or System Test

1. Deposit quote should default to "policy amount" if insufficient history exists to calculate 2 times average bill for residential or 2 1/2 times highest bill for non-residential accounts.
2. User should receive a message indicating that Budget Payment amount would need to be manually calculated if insufficient history exists for the system to calculate values.

Object Assumptions

Object Name	Description
Deletes KI_REVENUE_CLASS KI_IRREGULAR_SERV	Can't tell which objects changed CCR #223.1 will not cover changes to irregular use codes or revenue classes.

Walk-Through Attendees

Role	Name
Developer - Presenter	Diane Lambeth
Developer - Reviewer	none
Business Analyst - Presenter	Nancy Bullock
Functional Architects QA	Bill Dow, Kathy Grove
Interface - Reviewer	
Data/Process Modeler - Observer	
Others	Barbara Severson

APS01547

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BL - 19 Estimating

Hi-Lo Checking
Rounding

Van Ness EXHIBIT 20
4-23-2003
CHRISTINA L. LARSEN

Business Event:

Estimate usage for accounts on which the meters are not read

Scenario:

Discuss how estimating is accomplished in the CIS system to determine if it meets APS requirements.

Background:

NIPSCO will estimate four consecutive months if necessary before requiring the meter be read. Post Card readings will be accepted as good readings but for a maximum of four also. Only KWH metered accounts can be estimated. KW (Demand) metered accounts cannot be estimated and the meter reread or the reading calculated and entered like a post card read.

The CIS system estimates two different ways:

I. **Current Usage Pattern System(CUPS)**
CUPS is based on using the average usage over winter/summer periods and applying a Load Estimation Factor that is based on the overall increase/decrease in use for the same group of customers for the previous cycle billed this year versus last year.

II. **Prior Period Usage**
Prior Period Usage is based on using estimated and/or actual usage from prior billing periods and applying a Load Estimation Factor that is based on the overall increase/decrease in use for the same group of customers for the previous cycle billed this year versus last year.

- CUPS is the primary way that CIS accomplishes estimating and hi-lo checking.
- If there is insufficient history to use CUPS then Prior Period Usage is used.
- If there is insufficient history to use Prior Period Usage then the usage cannot be estimated by the system and a read must be obtained or the usage manually estimated.

EXHIBIT
#20

APS02772

III. Current Usage Pattern System(CUPS)

A. Base Load Estimation Factor

- CIS calculates one group of factors for the entire company. They do not calculate different factors for different geographic zones of their service territory.
- The factor is calculated by using usage from this year and the same day last year
- The factors are calculated for two different revenue classes out of the 7 different CIS revenue classes. The two calculated are for residential electric and electric heating. But these two factors are used to estimate other revenue classes.
- There must be at least 25 accounts billed in the revenue class to create the estimation factor.
- The factors are created using the actual readings from the previous business day's cycle.
- Only accounts billed for a normal billing period (27-33 days) are used to calculate the Estimation Factor.
- These factors are used for hi-lo checking.

B. Develop Base Load for the Service Account. The Base Load periods developed are as follows:

They have two seasons:

		# Days Usage Required
Winter Season	- October thru May	110-130
Summer Season	- June thru September	225-255

Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep

Winter Season	Summer Season
8 Months	4 Months

Example - Base Load

Electric Service Account with Revenue Class = 1. If current period is 12/91, the Base Load is 8 months (October - May) as follows:

Period	Usage	# of Days
12/90	100	31
01/91	158	31
02/91	158	27

APS02773

03/91	145	27
04/91	147	33
05/91	140	30
06/91		
07/91		
08/91		
09/91		
10/91	150	31
11/91	155	30
Totals	-----	-----
	1153	240

# of Days = 240 is valid (225 <= 240 > = 255)
Base Load is 1153

C. Base Load - Estimation Factor Calculation
Base Load Estimation Factor = 0.14

Base Load Estimation Factor that is used in the billing for this business day is based on calculating the factor(s) using usage from the previous business day.

(For example: In a simple example assume there were three accounts in the group from which we calculate the Base Load Estimation Factor. These three accounts were billed on the previous business day and the usage for November 1991 is yesterday's usage on these accounts. This usage should take into account the usage pattern for accounts being presently billed based on weather conditions, etc. All accounts included in the analysis must have between 27 to 33 days between readings and this example assumes the same number of days for all accounts.

Period	Acct # 1 Usage	Acct # 2 Usage	Acct # 3 Usage	# of Days
12/90	100	125	112	31
01/91	158	180	170	31
02/91	158	178	168	27
03/91	145	174	156	27
04/91	147	169	165	33
05/91	140	161	153	30
06/91				
07/91				
08/91				
09/91				

APS02774

10/91	150	170	160	31
11/91	165	179	178	30
Totals	-----	-----	-----	-----
	1163	1336	1262	240

The total for all usage on the three accounts is 3761 (1163 + 1336 + 1262 = 3761). The total usage on the three accounts for November is 522 (165 + 179 + 178 = 522). 3761 / 522 = 0.13879 which is the Base Load Estimation Factor to be used in estimating of all similar accounts for this business day.

- Period being estimated is a 27 day period
  Estimated usage = 1153 x 0.13879 x 27/30 = 144.0 KWH

- Period being estimated is a 26 day period
  Estimated usage = 1153 x 0.13879 x 26/30 = 138.7 KWH

IV. Prior Usage Period

- If the meter was read the last two billing period, the prior period usage is last period's usage.
- If the last billing period's usage was estimated, the prior period usage is last billing period's usage.
- If last month's usage was from an actual read and the previous month's usage was estimated. The prior period usage is the average of last billing period's usage and all consecutive preceding months' usage's that were estimated.
- Usage periods used to develop prior period usage's must fall within 27 to 33 days or no prior period usage can be developed.

1. Base Load Estimation Factor

- CIS calculates one group of factors for the entire company. They do not calculate different factors for different geographic zones of their service territory.
- The factor is calculated by using usage from this year and the same day last year.
- The factors are calculated for all seven different revenue classes of CIS.
- There must be at least 25 accounts billed in the revenue class to create the estimation factor.

APS02775

- The factors are created using the actual readings from the previous business day's cycle.
- Only accounts billed for a normal billing period (27-33 days) are used to calculate the Estimation Factor.
- These factors are not used for hi-lo checking.

Example - Prior Period

Electric Service Account with Revenue Class = 1. Current period is 12/91. The historical usage is as follows:

Period	Usage	Est/Actual	# of Days
08/91	100 KWH	Actual	30
09/91	158	Estimate	30
10/91	158	Estimate	31
11/91	145	Actual	30

Prior Period Usage = (158 + 158 + 145)/3 = 461/3
Estimated Index = 153.7 KWH
Estimated Usage = 153.7 KWH x 1.025 (Estimating Factor) = 157.5 KWH

CCR#109 Estimating/Proration/Rounding

CIS Reports	APS Reports
	CS14R02 Estimating Range Factor
	CS14R01 Estimating Factor Add/Change/Delete

HI-LO CHECKING

Business Event:

Hi-Lo check of usage.

Background:

CIS does hi-lo checking in the following ways:

LO Side - 50% of CUPS usage estimate if able to calculate CUPS for this service account

APS02776

or

50% of usage for same month last year

HI Side - 3 X CUPS Estimate

or

3 X previous highest usage

BILL CALCULATION ROUNDING

Business Event:

How does CIS do rounding.

Background:

CIS rounding is specified in the Service Plans as part of the calculations. Normally this is to six or seven positions past the decimal point.

Function:

Steps:

Views:

Data Requirements:

Data:

APS02777

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Arizona Public Service Company
P.O. BOX 53999 • PHOENIX, ARIZONA 85072-3999

JAN H. BENNETT
VICE PRESIDENT
CUSTOMER SERVICE

September 12, 1994

EX# 24
Date: 10-10-03
JoAnn Klemm CCR#50022
Bennett

Mr. George Bien-Willner
Sterling, Inc.
3641 N. 39th Avenue
Phoenix, Arizona 85019

Dear George:

I am very sorry we have caused you so much frustration and inconvenience over the last eighteen months. Our poor performance on reading your meter and billing is inexcusable.

As we discussed, I have researched your accounts and found that there are several special meter reads taken by servicemen, supervisors and energy auditors. There are sufficient reads of this type to validate the actual usage and the turnover rate of the dials. This makes it possible to calculate the total consumption for the entire seven year period.

This research also indicates there are no meter readings that failed the high-low test in the handheld computer used to capture meter reading data.. In my opinion, this makes it virtually impossible for any of these reads to have been estimated by the meter reader. This high-low is based on each individual account and uses the prior month and same month last year to develop a range of acceptable meter reads.

The demand reads are not cumulative and cannot be validated. However, the demand can be calculated by dividing the usage by the number of hours used. Using this method assumes the best possible load factor and will result in your accounts being billed at the lowest possible demand for any given month. I propose that we rebill your accounts using this method which will result in a refund of approximately $30,000.

I propose to install an IDR meter that will capture load and usage data and record it every fifteen minutes during the month. Copies of this data will be sent to you monthly to validate our billing accuracy. I also suggest we review this data quarterly to validate past billings and make further adjustments as necessary. This will be provided at no charge to you.

Your dispute with APS should have been solved without your having to hire attorneys and consultants. I am proposing to reimburse you for all the reasonable expenditures you have incurred as a result of this billing problem. You currently have two months of bills you are disputing. I will place these invoices in suspense until we resolve our billing dispute. I will ensure no credit activity is taken while we resolve this issue.

I am pursuing the option of assisting you in determining if co-generation is a viable alternative for your apartments and will have an answer by the end of the week.

Finally, I would like to have you speak to our meter readers in the near future. I liked your suggestion and think it will help them to understand how their actions can negatively impact our customers.

George, again, I am very sorry you have had such a negative experience with our company and I will do whatever is necessary to make your future experiences more enjoyable. Please give me a call at 250-3331 if you have any questions or need more information.

Sincerely,

Jan Bennett, ca

JB/ch

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ARIZONA PUBLIC SERVICE COMPANY
P.O. BOX 53999 PHOENIX, AZ. 85072-3999

27442

First Interstate Bank of Arizona
405 N. Central
Phoenix, Arizona

91-1
1221

DATE	CHECK NO.
10/14/94	30001291

XX

AMOUNT
$175,000.00*

PAY $175,000***** DOLLARS and 00* CENTS

TO THE ORDER OF
George Bien-Willner
Sterling, Inc.
3641 N. 39th Ave.
Phoenix, AZ 85019

AUTHORIZED SIGNATURE

COUNTER SIGNATURE
(NECESSARY ONLY IF CHECK IS FOR MORE THAN $50,000)

⑈027442⑈ ⑆122100011⑆ 097915718⑈

EX# 25
Date: 10-10-03
JoAnn Klemm CCR#50022
Bennett

ARIZONA PUBLIC SERVICE COMPANY • P.O. BOX 53999 • PHOENIX, AZ. 85072

VENDOR NO.	ATTACH		GROUP	CHECK NUMBER
H				30001291

VENDOR NAME		CHECK DATE	PAGE NO.
George Bien-Willner	27442	10/14/94	

VOUCHER INV DATE	INVOICE NUMBER	P.O. NO. INV. DESC.	GROSS AMOUNT	DISC/ADJ/RETENTION	NET AMOUNT
10/14/94	Settlement of Claim on Apartment Complexes on 7th St. and 16th St.				$175,000.00

FORM 130-00N REV. 9-86

D. Bahnimptewa x81-3777

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Arizona Public Service Company
P.O. BOX 53999 • PHOENIX, ARIZONA 85072-3999

JAN H. BENNETT
VICE PRESIDENT
CUSTOMER SERVICE

November 30, 1994

EX# 26
Date: 10-10-03
JoAnn Klemm CCR#50022
Bennett

Mr. George Bien-Willner
President, Sterling Manufacturing
3641 N. 39th Avenue
Phoenix, AZ 85019

Dear George:

When we originally agreed to settle your complaint, I believed a credit to "zero out" the disputed billing was appropriate.

After attempting to do this, I find that, from an accounting perspective, the correct method is to issue you another check in the amount of $56,971.98 to cover the disputed bills. In return, I am asking you to pay the past due amount of $56,971.98 on the attached bills. This effectively "zero's out" the disputed amount.

In addition, these bills include the current billing of $10,085.46 which you agreed to pay.

George, I apologize for any inconvenience this may cause, but this method does meet the terms of our settlement agreement.

Sincerely,

JB/ch
attachment

ARIZONA PUBLIC SERVICE COMPANY · P.O. BOX [illegible]

VENDOR NO.	ATTACH		GROUP	CHECK NUMBER
A34566				22035832

VENDOR NAME		CHECK DATE	PAGE NO.
George Bien-Willner	019741	11/30/94	

INV. DATE	INVOICE NUMBER	P.O. NO./INV. DESC.	GROSS AMOUNT	DISC/ADJ/RETENTION	NET AMOUNT
1/29/94		Account settlement for Bien-Willner apartment complexes.			$56,971.98

M1 — 24595.21
M4 — 32,376.77

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Arizona Public Service Company
P.O. BOX 53999 • PHOENIX, ARIZONA 85072-3999

JAN H. BENNETT
VICE PRESIDENT
CUSTOMER SERVICE

October 6, 1994

Mr. George Bien-Willner
Sterling, Inc.
3641 N. 39th Avenue
Phoenix, Arizona 85019

Re: Electric Bills at Apartment Complexes on 7th Street and 16th Street

Dear George:

This letter is in response to your letter dated September 16, 1994, regarding the above-referenced accounts.

Let me first say again that I appreciated the opportunity to meet and get acquainted with you on September 7. I understand that you feel an issue you raised with APS has gone unresolved for over a year. I was hopeful that we could quickly remedy the matter, and my letter of September 12 was a genuine and good faith effort to rectify the situation.

Frankly, George, I was shocked and disappointed to read your letter of September 16. I thought we had agreed to be open and honest and to deal with one another in good faith. I can appreciate your frustration and concern over the fact that your electric usage has increased substantially over the last several years. In fact, we have attempted to assist you in determining how the electricity is being consumed.

The problem here has not been caused by any wrongdoing on the part of APS. In fact, the problem is that APS has bent over backwards trying to comply with your requests: (1) That APS search out the apartment complex property manager in order to get a key to the meter room each time a meter read is needed; and (2) that APS never estimate the consumption.

These requests evidence a lack of understanding of APS' rights and responsibilities. APS is entitled by law to access to its meters at all reasonable times, not just when we can find your property manager to get a key. (See attached Summary of Issues at IV.) Furthermore, it is proper, as established by law, for APS to estimate the electric consumption for the billing period when we are unable to read the meter. (See attached Summary of Issues at III.A.1.)

If APS had simply insisted that you provide us with a key as is our standard practice, the issues would have been resolved instantly. In an effort to be accommodating, we were willing to try getting the key from your property manager. However, neither you nor we are satisfied with the

EX# 27
Date: 10-10-03
JoAnn Klemm CCR#50022
Bennett

results of this arrangement. Too often the property manager cannot be found and the bill must either be estimated or APS must return to the property repeatedly just to get a single meter read.

Therefore, be advised that we will now require that a key be made available in a lockbox or other suitable arrangement for APS to gain access to its meters without the necessity of finding the property manager.

George, I sincerely attempted in good faith to resolve this matter and I am disappointed with your response to this offer. Therefore, I suggest that you provide your attorneys with the enclosed Summary of Issues and allow them to discuss the issues with our attorney (Bruce Gardner, 250-3507). Of course, I am always willing to work with you directly and would like to meet again to review all the facts.

I remain hopeful that we can resolve this matter amicably.

Sincerely,

Jan H. Bennett
Vice President,
Customer Service

JHB:lkc
Enclosure

SUMMARY OF ISSUES

I. The underlying issue is simply that Mr. Bien-Willner feels his bills are too high. The electric consumption at 7th Street and 16th Street has gone up substantially over the last several years. He does not understand why.

It is APS' responsibility to provide electricity at the meter. It is not their responsibility to know how the customer uses the electricity. Any effort on APS' part to assist the customer in determining how electricity is used beyond the meter is a service exceeding its obligations.

II. Mr. Bien-Willner is questioning whether any of his bills since December, 1986, are accurate. He wants a refund of 52.36%, which equals $341,261.

A. Mr. Bien-Willner's refund calculation is totally illogical.

B. The ACC Rules and Regulations at R14-2-209.B.1. and APS' Terms and Conditions, Schedule 1, Section 6.3, state that APS must bill its customers based on meter readings unless the meter is found to be in error by more than +/- 3%.

C. There are really only two reasons why Mr. Bien-Willner's bills would not be accurate--either the meter is not working properly or it was not read correctly.

1. Meter Tests

<u>7th Street Account</u>

Original meter (#494790) installed prior to customer connection in 12/86:

1/9/90 Routine field test:	Full load -.2%
	Light load -.4%
7/29/94 Field tested upon removal from premises:	Full load -.3%
	Light load -.7%

New meter (#A63023):

6/14/94 Shop test prior to installation:	Full load +.1%
	Light load +.1%

<u>16th Street Account</u>

Original meter (#348910) installed prior to customer connection in 12/86:

1/31/90 Shop test after removal:	Full load .0%
	Light load -.1%

New meter (#885372):

1/11/90 Field test upon installation:	Full load -.4%
	Light load +.5%
9/1/93 Field test:	Full load +.5%
	Light load +.1%
7/29/94 Field test:	Full load +.3%
	Light load +.5%

2. Meter Reads

a. Verified reads when someone other than the regular meter reader read the account (supervisor or polyphase meter man):

7th Street Account
Meter #494790:

1987	(Marketing study done. No actual reads written, but extensive studies performed. Reads would have been taken to determine energy use over a period of days. Had reads been out of line with meter reads in system, it would have been noticed.)
1/9/90	Field Test
7/29/94	Field Test

Meter #A63023:

7/29/94	Installed and set with 0 read
8/16/94	Verify read by Marketing Engineer
9/2/94	Verify read

16th Street Account
Meter #348910:

11/14/86	Connect read
1987	(Marketing study--same as above.)
1/11/90	Outread upon removal of meter
1/31/90	Shop test

Meter #885372

1/11/90	Installed and set with 0 read
9/1/93	Field test
7/21/94	Field test
8/14/94	Verify read by another meter reader

These meter reads taken by someone other than the assigned meter reader confirm the accuracy of the reads taken by the assigned meter reader.

b. There have been no high-low checks on either account in the past 12 months.

D. Because the meter tests confirm that the meters were working properly and the meter reads have been verified, the issue of rebilling is properly limited to those few times when the meters could not be read and the monthly consumption was estimated. The consumption is confirmed by a subsequent meter read, but the kilowatt hour demand is not because that dial on the meter is reset each month by the meter reader. Those months involving estimates could be rebilled, and in fact, most of them were (see III.A.5. below). However, the fact that APS estimated the bills because the meter readers were not able to get access to the meter is good justification for no refund. To give Mr. Bien-Willner the benefit of the doubt on the demand dial read whenever APS must estimate the bill because they could not get to the meter is incentive to him to lock APS out.

III. Allegations of Broken "Promises" Made to Mr. Bien-Willner

A. "Promise" No. 1: APS "promised" not to estimate bills.

1. Estimating a bill when a meter cannot be read is proper procedure pursuant to ACC Rules and Regulations at R14-2-210.A.1-3:

1. Each utility shall bill monthly for services rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35 days.
2. If the utility is unable to read the meter on the scheduled meter read date, the utility will estimate the consumption for the billing period giving consideration to the following factors where applicable:
a. The customer's usage during the same month of the previous year.
b. The amount of usage during the preceding month.
3. After the second consecutive month of estimating the customer's bill for reasons other than severe weather, the utility will attempt to secure an accurate reading of the meter.

2. APS did not "promise" not to estimate bills in July and August of 1993. Rather, Mr. Bien-Willner stated that there was always a manager available to let the meter reader in the door, and based on that statement, Anne said that there should not be a reason to estimate bills. She agreed to notify all the substitute meter readers that they should see the manager for access to the meter. (See Anne's letter of August 17, 1993.)

3. The "promise" not to estimate Mr. Bien-Willner's consumption made on May 24, 1994, at the Corporation Commission mediation meeting was again based on Mr. Bien-Willner's "promise" that the manager would always be available.

4. The 16th Street and 7th Street accounts were estimated only five and six times, respectively, in the past eight years:

7th Street: 12/88, 12/92, 7/93, 10/93, 12/93, and 3/94
16th Street: 1/93, 2/93, 3/93, 6/93, and 6/94

In every case, the bills were estimated only when the meter reader tried to read the meter, but was unable to gain access.

5. APS rebilled the accounts after most of the estimates to give the customer the benefit of the doubt on the demand portion of the bill. APS rebilled

7th Street: Three months (10/93 - 12/93)
16th Street: Seven months (1/4/93 - 6/30/93)

B. Promise #2: APS promised not to use a screwdriver to gain access to the 16th Street meter.

In approximately February or March, 1994, APS management and Mr. Bien-Willner learned that the meter readers were gaining access to the 16th Street meter by using a screwdriver to slide back the bolt on the lock. Mr. Bien-Willner requested that APS discontinue that practice and APS agreed. Since that date a screwdriver has not been used.

The current meter reader of the 16th Street account has read the meter for the past three years. Both he and the previously assigned meter reader state that the previous property manager okayed the use of a screwdriver for access to the meter.

IV. APS' Right of Access to Meters

A. ACC Rules and Regulations and APS' Terms and Conditions address the issue of APS' right of access to meters.

ACC Rules and Regs at R14-2-209.D.1:
Each utility shall have the right of safe ingress to and egress from the customer's premises at all reasonable hours for any purpose reasonably connected with the utility's property used in furnishing service and the exercise of any and all rights secured to it by law or these rules.

Schedule 1, Section 5.3:
Company Access to Customer Premises - Company's authorized agents shall have access to Customer's premises at all reasonable hours to install, inspect, read, repair or remove its meters; to install, operate or maintain other Company property, and to inspect and determine the connected electrical load. Neglect or refusal on the part of Customer to provide reasonable access shall be sufficient cause for discontinuance of service by Company, and assurance of access may be required before service is restored.

A.R.S. § 40-431:
A. A duly appointed and authorized officer or agent of a public service corporation may, at all reasonable times, upon exhibiting written authority signed by the president, secretary or manager of the corporation, enter any premises using the product of such corporation for the purpose of inspecting and examining the property of the corporation, or for ascertaining the quantity of its product consumed.
B. A person who knowingly prevents or interferes with such officer or agent entering such premises or making such examination or inspection is guilty of a class 2 misdemeanor.

Under the termination provisions, both the ACC Rules and Regulations and APS' Terms and Conditions authorize termination for failure to provide reasonable access. (See ACC Rules and Regs at R14-2-211.C.1.d. and APS' Terms and Conditions, Schedule 1, Section 7.1.5. See also ACC Rules and Regs at R14-2-210.A.4.)

B. Mr. Bien-Willner's statement that "the manager is always there" simply isn't true. APS has very specific times over the last couple of months when the manager could not be found.

1. 7th Street Account:

July 22, 1994. Meter reader supervisor and another employee went to talk to the manager and he was not there. They wandered around the complex for 5-10 minutes to find him.

August 26, 1994. Meter reader was unable to read the meter. Although it was 1:00 p.m., a sign on manager's door stated he would be "back at 11:00 a.m.."

2. 16th Street Account:

June 28, 1994. Meter reader was "locked out" and read was estimated (this was just after the May meeting at ACC). Meter reader had the log sheet that was agreed to be used in the meeting at the ACC to give to the manager, but could not find the manager.

July 22, 1994.. Meter reader supervisor went to see the manager and had to search the complex for 5-10 minutes to find him.

July 30, 1994. Meter reader could not find manager to get read.

August 4, 1994. Another employee went back to the complex to try again to read the meter and was unable to find the manager. Left note on door saying "APS was here to read meter. No one on site."

August 14, 1994. The person making the third trip to try to obtain a meter read was finally able to find the manager.

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EX# 28
Date: 10-10-03
JoAnn Klemm CCR#50022
Bennett

SUMMARY OF ISSUES

I. The underlying issue is simply that Mr. Bien-Willner feels his bills are too high. The electric consumption at 7th Street and 16th Street has gone up substantially over the last several years. He does not understand why.

It is APS' responsibility to provide electricity at the meter. It is not their responsibility to know how the customer uses the electricity. Any effort on APS' part to assist the customer in determining how electricity is used beyond the meter is a service exceeding its obligations.

II. Mr. Bien-Willner is questioning whether any of his bills since December, 1986, are accurate. He wants a refund of 52.36%, which equals $341,261.

A. Mr. Bien-Willner's refund calculation is totally illogical.

B. The ACC Rules and Regulations at R14-2-209.B.1. and APS' Terms and Conditions, Schedule 1, Section 6.3, state that APS must bill its customers based on meter readings unless the meter is found to be in error by more than +/- 3%.

C. There are really only two reasons why Mr. Bien-Willner's bills would not be accurate--either the meter is not working properly or it was not read correctly.

1. Meter Tests

<u>7th Street Account</u>

Original meter (#494790) installed prior to customer connection in 12/86:

1/9/90 Routine field test:	Full load -.2%
	Light load -.4%
7/29/94 Field tested upon removal from premises:	Full load -.3%
	Light load -.7%

New meter (#A63023):

6/14/94 Shop test prior to installation:	Full load +.1%
	Light load +.1%

<u>16th Street Account</u>

Original meter (#348910) installed prior to customer connection in 12/86:

1/31/90 Shop test after removal:	Full load .0%
	Light load -.1%

New meter (#885372):

1/11/90 Field test upon installation:	Full load -.4%
	Light load +.5%
9/1/93 Field test:	Full load +.5%
	Light load +.1%
7/29/94 Field test:	Full load +.3%
	Light load +.5%

[0208.DOC 9/28/94 11:14 AM]

2. Meter Reads

a. Verified reads when someone other than the regular meter reader read the account (supervisor or polyphase meter man):

7th Street Account

Meter #494790:

1987	(Marketing study done. No actual reads written, but extensive studies performed. Reads would have been taken to determine energy use over a period of days. Had reads been out of line with meter reads in system, it would have been noticed.)
1/9/90	Field Test
7/29/94	Field Test

Meter #A63023:

7/29/94	Installed and set with 0 read
8/16/94	Verify read by Marketing Engineer
9/2/94	Verify read

16th Street Account

Meter #348910:

11/14/86	Connect read
1987	(Marketing study--same as above.)
1/11/90	Outread upon removal of meter
1/31/90	Shop test

Meter #885372

1/11/90	Installed and set with 0 read
9/1/93	Field test
7/21/94	Field test
8/14/94	Verify read by another meter reader

These meter reads taken by someone other than the assigned meter reader confirm the accuracy of the reads taken by the assigned meter reader.

b. There have been no high-low checks on either account in the past 12 months.

D. Because the meter tests confirm that the meters were working properly and the meter reads have been verified, the issue of rebilling is properly limited to those few times when the meters could not be read and the monthly consumption was estimated. The consumption is confirmed by a subsequent meter read, but the kilowatt hour demand is not because that dial on the meter is reset each month by the meter reader. Those months involving estimates could be rebilled, and in fact, most of them were (see III.A.5. below). However, the fact that APS estimated the bills because the meter readers were not able to get access to the meter is good justification for no refund. To give Mr. Bien-Willner the benefit of the doubt on the demand dial read whenever APS must estimate the bill because they could not get to the meter is incentive to him to lock APS out.

III. Allegations of Broken "Promises" Made to Mr. Bien-Willner

A. "Promise" No. 1: APS "promised" not to estimate bills.

1. Estimating a bill when a meter cannot be read is proper procedure pursuant to ACC Rules and Regulations at R14-2-210.A.1-3:

1. Each utility shall bill monthly for services rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35 days.
2. If the utility is unable to read the meter on the scheduled meter read date, the utility will estimate the consumption for the billing period giving consideration to the following factors where applicable:
a. The customer's usage during the same month of the previous year.
b. The amount of usage during the preceding month.
3. After the second consecutive month of estimating the customer's bill for reasons other than severe weather, the utility will attempt to secure an accurate reading of the meter.

2. APS did not "promise" not to estimate bills in July and August of 1993. Rather, Mr. Bien-Willner stated that there was always a manager available to let the meter reader in the door, and based on that statement, Anne said that there should not be a reason to estimate bills. She agreed to notify all the substitute meter readers that they should see the manager for access to the meter. (See Anne's letter of August 17, 1993.)

3. The "promise" not to estimate Mr. Bien-Willner's consumption made on May 24, 1994, at the Corporation Commission mediation meeting was again based on Mr. Bien-Willner's "promise" that the manager would always be available.

4. The 16th Street and 7th Street accounts were estimated only five and six times, respectively, in the past eight years:

7th Street: 12/88, 12/92, 7/93, 10/93, 12/93, and 3/94
16th Street: 1/93, 2/93, 3/93, 6/93, and 6/94

In every case, the bills were estimated only when the meter reader tried to read the meter, but was unable to gain access.

5. APS rebilled the accounts after most of the estimates to give the customer the benefit of the doubt on the demand portion of the bill. APS rebilled

7th Street: Three months (10/93 - 12/93)
16th Street: Seven months (1/4/93 - 6/30/93)

B. Promise #2: APS promised not to use a screwdriver to gain access to the 16th Street meter.

In approximately February or March, 1994, APS management and Mr. Bien-Willner learned that the meter readers were gaining access to the 16th Street meter by using a screwdriver to slide back the bolt on the lock. Mr. Bien-Willner requested that APS discontinue that practice and APS agreed. Since that date a screwdriver has not been used.

The current meter reader of the 16th Street account has read the meter for the past three years. Both he and the previously assigned meter reader state that the previous property manager okayed the use of a screwdriver for access to the meter.

IV. APS' Right of Access to Meters

A. ACC Rules and Regulations and APS' Terms and Conditions address the issue of APS' right of access to meters.

ACC Rules and Regs at R14-2-209.D.1:
Each utility shall have the right of safe ingress to and egress from the customer's premises at all reasonable hours for any purpose reasonably connected with the utility's property used in furnishing service and the exercise of any and all rights secured to it by law or these rules.

Schedule 1, Section 5.3:
<u>Company Access to Customer Premises</u> - Company's authorized agents shall have access to Customer's premises at all reasonable hours to install, inspect, read, repair or remove its meters; to install, operate or maintain other Company property, and to inspect and determine the connected electrical load. Neglect or refusal on the part of Customer to provide reasonable access shall be sufficient cause for discontinuance of service by Company, and assurance of access may be required before service is restored.

A.R.S. § 40-431:
A. A duly appointed and authorized officer or agent of a public service corporation may, at all reasonable times, upon exhibiting written authority signed by the president, secretary or manager of the corporation, enter any premises using the product of such corporation for the purpose of inspecting and examining the property of the corporation, or for ascertaining the quantity of its product consumed.
B. A person who knowingly prevents or interferes with such officer or agent entering such premises or making such examination or inspection is guilty of a class 2 misdemeanor.

Under the termination provisions, both the ACC Rules and Regulations and APS' Terms and Conditions authorize termination for failure to provide reasonable access. (See ACC Rules and Regs at R14-2-211.C.1.d. and APS' Terms and Conditions, Schedule 1, Section 7.1.5. See also ACC Rules and Regs at R14-2-210.A.4.)