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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

DOCKETED

FEB 26 2009

DOCKETED BY

LYDIA TSOSIE,

Complainant,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Respondent.

DOCKET NO. E-01345A-09-0049

**ANSWER TO FORMAL
COMPLAINT
AND
MOTION TO DISMISS**

Respondent Arizona Public Service Company ("APS") denies everything in the Formal Complaint of Lydia Tsosie, except that which is specifically admitted or qualified.

SPECIFIC RESPONSES TO ALLEGATIONS OF FORMAL COMPLAINT

The Formal Complaint claims that there are discrepancies between Complainant's perceived electricity usage and the amounts for which she has been billed, which is part of some far-reaching scam. APS denies all such claims and offers the following allegation responses and factual information in support of its request that the Arizona Corporation Commission dismiss the Complaint.

...
...

1 **3. Complainant alleges she is on Standard Rate with Energy Support**
2 **Discount.**

3 **APS Response to Allegation No. 3:**

4 Complainant is on the E-12 Standard Rate and participates in APS's Energy Support
5 Program. This program allows customers who meet set income requirements to receive up
6 to a 40% discount on their monthly utility bill. Complainant has benefited from this
7 program since establishing electric service at 23830 W. La Vista Drive, Buckeye AZ, on
8 February 06, 2006.

9 **4. Complainant alleges her bill is higher than the bill issued to her cousin.**

10 **APS Response to Allegation No. 4:**

11 APS is without sufficient knowledge or information to respond to allegations
12 involving the billing or energy usage of Complainant's cousin.

13 **5. Complainant alleges APS overcharged her for energy consumption and**
14 **requests an adjustment to prior electric bills.**

15 **APS Response to Allegation No. 5:**

16 APS is billing Complainant accurately for energy recorded by the meter.

17 On November 07, 2008, APS tested the meter serving Complainant. The meter
18 tested 100% accurate on a full load and 100% accurate on a light load, which is well within
19 the plus or minus (+/-) 3.0% deviation limit approved by the ACC, Schedule 1, Section
20 6.4.1. The meter test results were provided to Complainant, in writing, on November 12,
21 2008. In an effort to resolve Complainant's concerns, APS agreed to prevent collection
22 activity on her account for the disputed balance through January 31, 2009, thereby allowing
23 Complainant to make payment over several months without penalty. Complainant failed to
24 make any payment toward the disputed balance of \$579.43.

25 The ACC concluded in its report, "Based on the facts in this complaint, staff believes
26 that APS has followed the rules and procedures of the Arizona Administrative Code and
27 company tariff."
28

1 **6. Complainant provides alleged daily consumption reads she obtained**
2 **through her own monitoring and suggests someone is manipulating the**
3 **meter.**

4 **APS Response to Allegation No. 6:**

5 APS is without sufficient knowledge or information to respond to allegations
6 involving the accuracy of Complainant's alleged meter reads; however, APS is not
7 manipulating her meter. APS obtained an accurate probed meter read each month from
8 March 27, 2006 to present, which is supported by the meter test conducted on November 07,
9 2008.

10 **7. Complainant believes if the meter records only the electricity that goes**
11 **through it, it should be running consistently.**

12 **APS Response to Allegation No. 7:**

13 See APS Response to Allegation No. 5.

14 **8. Complainant disputes the usage graph presented on her monthly electric**
15 **bill.**

16 **APS Response to Allegation No. 8:**

17 The usage bar graph printed on APS customer electric bills is intended to provide
18 customers with a high-level view of a customer's average daily consumption. The units,
19 which provide the height of the graph, are dependent on the highest daily energy in 12
20 months or 24 months, depending on the customer's length of service with APS. The five
21 points of measurement on the left-hand side on the graph are evenly distributed based on the
22 variable, which in this case is the customer's highest daily usage.

23 For example, the July 27, 2006 electric bill had an average daily usage of 91 kWh per
24 day. The height of the bar graph shows 91 kWh, dividing by the five (5) points on the
25 graph, results in the first marker -- on the left hand side -- of 18 kWh. The next marker is 18
26 kWh more, for a total of 36 kWh, eventually leading up to 91 kWh, which represents the
27 highest average daily usage.

28

1 In July 2007, the average daily usage decreased to 84 kWh per day. The first point on
2 the graph remains at 91 kWh, representing the highest daily use from the prior year, and the
3 reference points remain unchanged.

4 In July 2008, the average daily usage increased to 87 kWh per day. Thus, the highest
5 point on the graph moved from 91 kWh to 87 kWh, and the first reference point on the left-
6 hand side changed to 17 kWh ($87/5 = 17.4$). The daily energy consumption bar from 2007 is
7 lower because the average daily usage was only 84 kWh per day.

8 **9. Complainant alleges she has been overcharged 20 years.**

9 **APS Response to Allegation No. 9:**

10 See APS Response to Allegation No. 5.

11 **10. No one has time to investigate over-charges.**

12 **APS Response to Allegation No. 10:**

13 On September 10, 2008, Complainant filed an Informal Complaint with the ACC.
14 This Complaint was referred to Melissa Smith, APS Consumer Advocate. Ms. Smith made
15 several unsuccessful attempts to reach Complainant at the phone number provided to the
16 ACC (Complainant did not answer the phone or have an answering machine). Ms. Smith
17 finally reached Complainant by phone, on September 18, 2008, and recommended that
18 Complainant change her rate due to the consumption usage. On September 22, 2008, Ms.
19 Smith mailed a letter explaining APS's rates and included Complainant's consumption
20 history. Included in the letter was Ms. Smith's telephone number in the event Complainant
21 had any more questions.

22 Ms. Smith was asked to mediate with Complainant and the ACC. APS agreed to the
23 mediation. During the mediation, on November 04, 2008, Ms. Smith explained APS rates
24 and that the electric bills issued in 2007 confirmed APS obtained accurate probed meter
25 reads. The mediation concluded with APS committing to test the meter and mail
26 Complainant directions on how to read her meter, which were sent later that day.

27 The mutually agreed upon meter test occurred on November 07, 2008.
28 Complainant's meter tested 100% accurate on both a light load and a full load, well within

1 the ACC approved deviation limit of (+/-) plus or minus 3.0%, Schedule 1, Section 6.4.1.
2 Ms. Smith mailed Complainant a letter that explained the meter tested accurately and
3 payment would now be required for the disputed bills. Ms. Smith agreed to place an
4 additional 3-month hold on the account to allow Complainant additional time to pay the
5 disputed bills. Complainant failed to make payment towards the bills.

6 APS made several good faith efforts to address Complainant's concerns. APS's
7 thorough investigation found that its metering equipment accurately recorded energy usage.
8 APS even recommended Complainant change her service plan from APS's Standard rate to
9 the Time Advantage Rate to reduce her monthly electric bill, but Complainant refused.
10 Therefore, Complainant's bills should not be adjusted.

11 **11. Complainant requests that future bills be charged according to her usage.**

12 **APS Response to Allegation No. 11:**

13 Complainant's future bills will be charged according to her usage, as have her past
14 bills. See, also, APS Response to Allegation No. 5.

15 **AFFIRMATIVE DEFENSES**

16 1. Complainant fails to state a claim upon which relief can be granted.

17 2. At all times, APS acted in conformance with its lawfully approved tariffs;
18 Arizona Administrative Code, Title 14, Chapters 2 and 3; and all applicable state and
19 federal laws.

20 3. Under A.A.C. R14-2-210, a customer is obligated to pay bills for utility
21 service that is rendered on the basis of accurate meter reads.

22 4. APS reserves the right to assert any and all additional defenses as more
23 information becomes known about the facts surrounding this case, including all defenses
24 set forth in Rules 8(c) and 12(b) of the Arizona Rules of Civil Procedure.

25 **MOTION TO DISMISS**

26 Complainant offers no objective evidence demonstrating that APS did anything
27 wrong or that her bills were incorrect. Furthermore, APS's investigation of the complaint
28 revealed Complainant's claims were unfounded. Since Complainant cannot prove any set

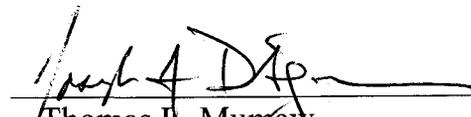
1 of facts that would entitle her to relief, her Formal Complaint should be dismissed. See
2 Newman v. Maricopa County, 167 Ariz. 501 (Ariz.App. Div. 1 1991).

3 WHEREFORE, Respondent APS requests a declaration from the Arizona
4 Corporation Commission as follows:

- 5 (1) Dismissing Complainant's Formal Complaint with prejudice without
6 any relief being granted to Complainant;
- 7 (2) Declaring that the bills for electric service from APS to Complainant
8 were not erroneous; and
- 9 (3) Declaring that APS has satisfied all conditions of the Arizona
10 Corporation Commission and is entitled to all amounts unpaid by
11 Complainant (approximately \$579.43 at the time of this filing). At the
12 time of this filing, APS waives any late charges to which it is entitled.

13
14 RESPECTFULLY SUBMITTED this 26th day of February, 2009.

15
16 PINNACLE WEST CAPITAL CORPORATION
17 LAW DEPARTMENT

18 By: 
19 Thomas L. Mumaw
20 Meghan H. Grabel
21 Joseph A. D'Aguzzo

22 Attorneys for Arizona Public Service Company

23 ORIGINAL and thirteen (13) copies
24 of the foregoing filed this 26 day of
25 February, 2009, with:

26 Docket Control
27 ARIZONA CORPORATION COMMISSION
28 1200 West Washington Street
Phoenix, Arizona 85007

1 AND copies of the foregoing sent via Federal,
2 Express this 26th day of February, 2009 to:

3 Lydia Tsosie
4 23830 W. La Vista Drive
5 Buckeye, AZ 85396-5105

6  _____

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