

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



0000098186

Executive Director

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 1, 2009

DOCKET NO.: E-01345A-09-0049

TO ALL PARTIES:

Arizona Corporation Commission

DOCKETED

OCT - 1 2009

DOCKETED BY [Signature]

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

LYDIA TSOSIE vs. ARIZONA PUBLIC SERVICE CO.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 13, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 20, 2009 and OCTOBER 21, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 LYDIA TSOSIE,
9 Complainant,
10 v.
11 ARIZONA PUBLIC SERVICE COMPANY.
12 Respondent.

DOCKET NO. E-01345A-09-0049

DECISION NO. _____

OPINION AND ORDER

11 DATES OF HEARING: April 30, 2009, May 11, 2009 (Procedural Conferences);
12 and June 8, 2009 (Hearing)

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

15 APPEARANCES: Ms. Lydia Tsosie, in *propria persona*; and
16 Mr. Thomas L. Mumaw and Mr. Joseph A. D'Aguanno,
17 Pinnacle West Capital Corporation, on behalf of Arizona
18 Public Service Company.

18 **BY THE COMMISSION:**

19 On February 6, 2009, Lydia Tsosie ("Complainant" or "Ms. Tsosie") filed with the Arizona
20 Corporation Commission ("Commission") a formal complaint ("Complaint") against Arizona Public
21 Service Company ("APS" or "Respondent"). The Complaint alleges Respondent overcharged
22 Complainant on her July 2008 bill; that APS is controlling Complainant's meter; and that APS and
23 other utilities are conducting a "nationwide scam" to overcharge customers.

24 **BACKGROUND**

25 Ms. Tsosie is a customer of APS.¹ In July 2008, Ms. Tsosie received a utility bill from APS
26 for \$381 for monthly electricity consumption. According to Ms. Tsosie, she believed the bill was
27 high due to a rate increase by APS, until she talked to her cousin who had a lower electricity bill

28 ¹ The parties do not dispute that Ms. Tsosie has been an APS customer since February 2006.

1 (\$325), a larger home with a pool, keeps her thermostat at lower temperature, and has more people
 2 living in her home. Based on her calculations, Ms. Tsosie believes her July bill should have been
 3 approximately \$100-\$150.

4 In September 2008, Ms. Tsosie lodged an informal complaint with the Commission against
 5 APS due to her belief she had been overcharged on her July 2008 bill.² In response to the informal
 6 complaint, an APS Consumer Advocate contacted Ms. Tsosie and provided a letter outlining Ms.
 7 Tsosie's actual monthly consumption, and average daily use based on the number of days in the
 8 billing cycle for the years 2006, 2007, and 2008. In a letter dated September 22, 2008, APS stated
 9 that its records show that, in December 2007, Ms. Tsosie switched from the Time Advantage Rate
 10 ("TAR") to the Standard Rate ("SR") and based on a twelve-month review of APS' records, Ms.
 11 Tsosie could have saved \$357.34 if she had remained on the TAR plan.³ The letter stated that it
 12 appeared that Ms. Tsosie's rate selection is the cause for the higher summer bills and that Ms.
 13 Tsosie's consumption in July 2008 was similar to her energy use in July 2006.

14 On November 4, 2008, Ms. Tsosie and APS met with the Commission's Consumer Services
 15 Staff in an effort to resolve the dispute. Discussions were held regarding the advantages of the TAR
 16 verses the SR. On the same date, APS sent Ms. Tsosie a letter with instructions on how to read her
 17 home meter and informing her of the approximate scheduled dates APS would be reading her meter.⁴
 18 APS agreed to test Ms. Tsosie's meter at no charge and in her presence and on November 7, 2008 the
 19 meter testing was completed.⁵ On November 12, 2008, APS informed Ms. Tsosie, via a letter, that
 20 her meter tested 100 percent accurate on a full load and light load and that the test results were
 21 within the three percent (+ /-) deviation range allowed by Commission rules.⁶ According to the
 22 informal complaint, Ms. Tsosie does not believe that her meter is inaccurately measuring the amount

23 _____
 24 ² Complaint No. 71372.

25 ³ Ms. Tsosie's home is equipped with a meter capable of calculating energy consumption using both the SR and the TAR,
 26 and therefore the amount she could have saved are "actual savings" and not "estimated savings." According to APS' late
 27 filed exhibit, the TAR is \$0.15810 per kilowatt hour ("kWh") for on-peak (9am to 9pm) use and \$0.5110 per kWh during
 28 off-peak times for the months of May - October (Summer). During November to April (winter), the TAR is \$0.12845 per
 kWh during on-peak times, and \$0.04925 per kWh during off-peak hours. The SR cost is \$0.08570 for use between 1-
 400 kWh, \$0.12175 for 401-800 kWh, and \$0.14427 for any kWh over 801 during May- October (Summer). For the
 winter months between November and April all kWhs are billed at \$0.08327.

⁴ Respondent Exhibit 5.

⁵ Respondent Exhibit 8.

⁶ Respondent Exhibit 6.

1 of energy used, but that APS is somehow changing the numbers on her meter.⁷ APS further advised
 2 Ms. Tsosie that as of November 25, 2008, her account was delinquent by \$579.43, and that APS was
 3 placing an additional hold⁸ on the account through January 2009 to allow Ms. Tsosie more time to
 4 make the payment.⁹

5 On November 14, 2008, based on Staff's investigation of the facts in the informal complaint,
 6 Staff determined that APS had followed the rules and procedures required by the Arizona
 7 Administrative Code ("A.A.C.") and APS' tariff.¹⁰ At that time, Ms. Tsosie requested and was sent
 8 the Formal Complaint packet by Staff.¹¹ On February 6, 2009, the above-captioned Complaint was
 9 initiated. As relief, Ms. Tsosie is requesting a \$7.95 credit on her November 2008 bill; a \$21.90
 10 credit for December 2008; a credit of \$18.68 for her January 2009 bill; and an adjustment for the
 11 months June 2008 through November 7, 2008.

12 PROCEDURAL HISTORY

13 APS filed an Answer, Affirmative Defenses and Motion to Dismiss the Complaint on
 14 February 26, 2009. In its Motion to Dismiss, APS argues Ms. Tsosie offers no objective evidence
 15 demonstrating APS has done anything wrong or that her bills are incorrect. APS alleges that its
 16 investigation of the Complainant's claims show that the claims are unfounded. APS seeks relief in
 17 the form of dismissal of the Compliant with prejudice; a declaration that the bills for the electric
 18 service were not erroneous; and a declaration that APS is entitled to payment for all unpaid amounts
 19 owed by Ms. Tsosie.

20 On April 7, 2009, by Procedural Order, a Procedural Conference was scheduled for
 21 April 30, 2009, and Complainant was directed to file a Response to APS' Motion to Dismiss.

22 On April 20, 2009, Complainant docketed a Response to APS' Answer, stating that she was
 23 not aware of the requirement to file a response; the sole basis of the Complaint lies in her meter
 24 readings; APS has not shown it is not controlling the meters; and that APS has tried to silence her by
 25 sending its Answer via Federal Express, but that she refused it for "fear it contain[ed] explosives."

26 ⁷ Respondent Exhibit 8.

27 ⁸ The hold prevented future disconnect warning letters and late fees.

28 ⁹ Respondent Exhibit 8.

¹⁰ Id.

¹¹ Id.

1 On April 30, 2009, the Procedural Conference was held as scheduled before a duly authorized
2 Administrative Law Judge ("ALJ") of the Commission. Respondent appeared through counsel.
3 Complainant failed to appear. Subsequent to the Procedural Conference, the Hearing Division was
4 informed that Ms. Tsosie had arrived for the Procedural Conference after the matter had been
5 concluded.

6 On the same date, by Procedural Order, a second Procedural Conference was scheduled for
7 May 11, 2009.

8 On May 11, 2009, a Procedural Conference was held as scheduled. Complainant appeared on
9 her own behalf and APS appeared through counsel. During the Procedural Conference, the ALJ
10 requested that the parties participate in settlement discussions. Ms. Tsosie refused to participate in
11 settlement discussions.

12 On May 13, 2009, by Procedural Order, the hearing in this matter was scheduled to
13 commence on June 8, 2009.

14 On June 8, 2009, a full public hearing was held before a duly authorized ALJ of the
15 Commission. Complainant appeared on her own behalf, APS appeared through counsel and both
16 presented evidence and testimony. At the conclusion of the hearing, APS was directed to file several
17 late-filed exhibits.

18 On June 24, 2009, APS docketed its late-filed exhibits.

19 NATURE OF COMPLAINT

20 According to the Complaint, after an unusually high bill in July 2008, Ms. Tsosie began
21 taking daily readings from her home meter. (Complaint at 2) Based on meter readings taken from
22 November 7, 2008 through June 6, 2009, Ms. Tsosie alleges that APS is somehow changing the
23 readings on her meter in an effort to overcharge her.¹² Ms. Tsosie testified that she believes her
24 meter is measuring accurately, but that someone is manipulating the numbers on her meter using the
25 same process APS uses to read meters. (Tr. at 15 -20) She further testified that she believes her meter
26
27

28 ¹² See Complaint generally and C-1 through C-9 and Exhibits C-1 through C-5.

1 is being read from a central location, and that no one is physically coming out to read her home
2 meter. (Id.)

3 APS called as a witness Mr. Mike O' Meara, Section Leader for APS' electric meter shop.
4 According to Mr. O'Meara's testimony, he supervises APS employees whose job it is to conduct
5 meter testing; that the employee who tested Ms. Tsosie's meter on November 7, 2008, has had
6 extensive training as a meter specialist; and that the employee has worked as a meter tester since
7 1990. (Tr. at 85) As a part of his testimony, Mr. O' Meara demonstrated, using a sample meter test
8 device, how a meter test is conducted and described the process APS uses when a request for meter
9 testing comes in. (Id.)

10 Ms. Tsosie testified that she is not disputing that the meter test performed on November 7,
11 2008 was in error or that her meter is inaccurately measuring her electricity usage. (Tr. at 15)
12 Therefore, there is no dispute that Ms. Tsosie's meter is accurately measuring energy consumption.

13 Notwithstanding Ms. Tsosie's testimony that her meter is accurately recording energy
14 consumption, she asserts that APS' monthly bills are inconsistent with the readings she has taken
15 from her meter. (Tr. at 17, 29) Ms. Tsosie testified as to the method she uses to calculate her kWh
16 usage.¹³ Ms. Tsosie included in the Complaint, her Response to APS' Answer, and she submitted into
17 evidence meter readings taken from November 7, 2008 through June 6, 2009.

18 APS submitted into evidence a 12-month history of Ms. Tsosie's bills beginning April 23,
19 2008 through April 25, 2009, detailing the actual monthly consumption in kilowatt hours, monthly
20 charges, and a comparison bill showing what Ms. Tsosie's bills would have been under the TAR
21 verses the SR.¹⁴ APS alleges that the reason for Ms. Tsosie's high bill in July 2008 was the result of
22 her decision to switch from the TAR to the SR plan on November 22, 2007. (Answer at 2) APS
23 states that the SR is a building block rate that increases in cost with increasing energy usage. (Id.)
24 APS claims that it has recommended to Ms. Tsosie that she revert to the TAR and stated that if Ms.
25 Tsosie had been on the TAR plan her July 2008 bill would have been \$87.85 lower. (Id.)

26 _____
27 ¹³ According to Ms. Tsosie's testimony, she calculates kWh usage by subtracting the total kilowatt hours used for the
28 previous day from the current day. (Tr. at 16) Ms. Tsosie's method for calculating kWhs is consistent with the letter APS
sent to her on November 4, 2008, on how to calculate energy consumption. (Respondent Exhibit 4)

¹⁴ Respondent Exhibit 9.

1 Ms. Tsosie provided various calculations of how many kWhs APS should have charged her
2 based on her meter readings. Ms. Tsosie alleges APS is controlling her meter in an effort to
3 overcharge her. (Tr. at 17) She testified that she believes APS is changing the numbers when it reads
4 the meter from its central location. (Tr. at 19, 20)

5 Mr. Steve Rizzo, APS Section Leader for meter reading and field services testified that APS
6 uses either a handheld computer or manually reads customer's meters. (Tr. at 101) He stated he
7 reviewed Ms. Tsosie's records and she has a digital meter and her meter has been "probe read" using
8 a handheld computer since she became a APS customer. (Tr. at 104) According to Mr. Rizzo, the
9 handheld computer is connected to a probe (a small nodule) that the meter reader attaches to the
10 home meter and information from the home meter is transferred into the handheld computer.
11 (Tr. at 105) He further testified that there is no way for the meter reader to change the data taken
12 from the customer's meter. (Id.) He further stated that the customer meter information is, within five
13 days of the meter being read, downloaded from the handheld device into the APS computer system
14 where the information stays until a bill is generated. (Tr. at 106) Mr. Rizzo testified that once a
15 "meter reader probe reads a meter, the data is completely locked out and the meter reader cannot go
16 back and change it in any way, shape or form." (Tr. at 107) He further testified that APS cannot
17 remotely change a customer's meter readings and that there is no way for APS to remotely
18 communicate with a meter. (Tr. at 108) Mr. Rizzo testified that each meter reader's route is rotated
19 every four months as a part of APS' compliance with ACC rules. (Id.)

20 Ms. Tsosie claims that the readings taken from her meter are inconsistent with her actual
21 electricity consumption. (Tr. at 120) Ms. Tsosie asserts that her meter readings demonstrate that APS
22 is "controlling" her home meter because of inconsistent readings when she is using the same
23 appliances in her home. (Tr. at 38) Ms. Tsosie testified that she took daily meter readings and totaled
24 the kWhs taken from her readings to determine what her bill should have been. (Tr. at 36) Using her
25 meter readings, Ms. Tsosie pointed out dates where she read her meter before and after using various
26 appliances (i.e., dishwasher, washing machine, stove) in her home. Ms. Tsosie claims that on the
27 dates when she used the same appliance, her before and after readings should be the same no matter
28 what the date. (Tr. at 38)

1 APS' witness explained that although the meter would accurately capture what resulted from
2 running a load of clothes, it would also capture anything else that may be cycling on and off inside
3 the home during that same time period, for instance a water heater, air conditioner or refrigerator;
4 even though the appliance cycling on and off is not in use. (Tr. at 96) He further stated that he
5 believed that the on and off cycling of other appliances, as well as the varying times when the meter
6 readings were taken, could explain the inconsistencies in Ms. Tsosie's meter readings. (Id.) The
7 witness also explained that home meters display only whole kilowatt hours, but appliances can use
8 tenths or hundredths of a kilowatt hour. (Id.) He indicated that although a meter may show 10
9 kilowatts of usage, the amount of energy consumed maybe anywhere from 10.1 up to 11. (Id.)

10 A review of Ms. Tsosie's meter readings show that meter readings were not recorded for each
11 day of the month¹⁵ and the meter readings were not recorded for the same daily timeframe.¹⁶
12 Without daily meter readings for an entire month to compare with APS' billed monthly consumption,
13 no determination can be made as to whether or not Ms. Tsosie's meter readings are consistent or
14 inconsistent with the monthly energy consumption shown on APS' bills for the same timeframe.

15 During the hearing, Ms. Tsosie disputed APS' testimony that her meter has been read by a
16 meter reader since she became an APS customer in February 2006. (Tr. at 109) As evidence that
17 APS is not physically sending someone to read her meter, Ms. Tsosie referred to her January 2009
18 APS bill, which shows APS read her home meter on January 26, 2009. (Tr. at 111) According to
19 meter readings taken by Ms. Tsosie for that date, she points out that she read her meter at 11:45 a.m.,
20 and she did not see a meter reader.¹⁷ APS' witness testified that when a customer's meter is read, the
21 number shown in field 5 on the meter is reset to 00.0, and that field 5 shows the highest one kWh use
22 during on-peak time for the month. (Tr. at 112) He further testified that if a meter is read on a
23

24 ¹⁵ According to the meter readings attached to the Complaint, the Response, and submitted into evidence, for the month of
25 November 2008, there were no meter readings taken for November 1, 2, 3, 4, 5, 6, 9, 16, 23, and 30. For the month of
26 December 2008, there were no meter readings for December 7, 8, 14, 21, and 28. For the month of January 2009, there
27 were no meter readings for January 4, 11, 18, and 25. For February 2009, there were no meter readings shown for
28 February 1, 8, 15, 22, and 23. For March 2009, there were no readings recorded for May 1, 8, 9, 11, 13, 15, 22, and 29.
Further, for the month of April 2009, no readings were recorded for April 5, 12, 14, 19, and 26. Likewise for the month
of May 2009, there were no meter readings for May 1, 3, 10, 16, 17, and 24.

¹⁶ For example, from November 10, 2008 to November 11, 2008, the meter readings were taken for a 28-hour time period,
and on November 18 to 19, meter readings were taken for an 18-hour time frame.

¹⁷ See Complainant Exhibit C-7.

1 weekend, during off-peak times, and field 5 is reset to zero, field 5 would remain at zero until
2 Monday at 9:00 a.m., when field 5 would begin registering the highest one kWh for on-peak times.
3 (Tr. at 140) Using Ms. Tsosie's meter reading for that date, the APS witness offered as an
4 explanation that Ms. Tsosie had probably just missed the meter reader based on Ms. Tsosie's notation
5 that field 5 displayed a reading of 00.4 at the time she read the meter. (Id.) He further surmised that
6 because Ms. Tsosie's reading showed she ran the dishwasher during the on-peak time, field 5 was
7 registering the highest one kWh for the time between when the APS meter reader reset field 5 to zero
8 until the time she read the meter. (Id.)

9 According to Ms. Tsosie's meter reading taken on December 26, 2008, field 5 reflected a
10 reading of 00.0, which is consistent with the bill issued by APS on December 31, 2008, showing that
11 Ms. Tsosie's meter had been read on December 26, 2008, and is consistent with the testimony given
12 by APS' witness that when a meter is read, field 5 is reset to zero.¹⁸ Furthermore, Ms. Tsosie's meter
13 readings for that date show 51830 kWhs had been used and is consistent with the total kWhs shown
14 on her bill.¹⁹ Other than Ms. Tsosie's assertion that a meter reader is not reading her meter, Ms.
15 Tsosie offered no independent evidence showing APS is reading her home meter from a central
16 location. Therefore, we find that Ms. Tsosie's claim is not supported by evidence sufficient to reach
17 a determination that APS is not reading her home meter monthly.

18 Ms. Tsosie alleges that her cousin's July 2008 electric bill was less than her APS billed for the
19 same month. (Complaint at 1) Ms. Tsosie claims her cousin has a larger home with a pool, and she
20 keeps the thermostat on her air conditioner at a lower setting. (Id.) Ms. Tsosie testified that her
21 cousin lives in Chandler, Arizona, and that she is not a customer of APS. (Tr. at 25) Ms. Tsosie
22 testified that she is home during the day, she lives in an approximately 2,600 square foot home, she
23 sometimes has as many as five people residing in her home, her home is totally electric, and she does
24 not use a programmable thermostat. (Tr. at 23) She further testified that she moves the thermostat in
25 her home up and down to a temperature where it is comfortable. (Tr. at 30)

26 The record reflects that Ms. Tsosie's APS bill was compared to one for a customer of a
27

28 ¹⁸ See Complaint Exhibit C-4.

¹⁹ See Complaint Exhibit C- II.

1 different utility. The different in amounts of the bills could be influenced by a variety of factors,
2 including, but not limited to, the difference in the rates charged by different utilities, the amount of
3 use and the time of use, the energy efficiency of the homes' appliances, and other factors. Based on
4 the evidence presented regarding the comparison of Ms. Tsosie's bills with her cousin's bills, we do
5 not find that APS is incorrectly billing Ms. Tsosie for her electric use.

6 The Complaint also alleges that a "nationwide scam" is being conducted by utilities to
7 overcharge customers. (Complaint at 3) The Complaint cites examples of Ms. Tsosie's relatives
8 living in Chicago and Washington State, whose bills were allegedly high due to the scam. (Id.) The
9 Complaint also charges that Ms. Tsosie's neighbor had to relinquish her home due to a high water
10 bill. (Id.) Other than Ms. Tsosie's assertion that there is "nationwide scam" being conducted by
11 utilities to overcharge customers, no independent evidence was offered to support the claim and
12 therefore no determination can be made.

13 According to APS, Ms. Tsosie had an outstanding balance on her APS account of \$579.43 at
14 the time the Complaint was filed. In her Response to APS' Answer, Ms. Tsosie states that if her
15 Complaint is not resolved, she will begin paying for only the electricity she uses. (Response at 3)
16 During the hearing, APS' witness testified that as of May 29, 2009, Ms. Tsosie had an unpaid balance
17 of \$635.22²⁰ on her APS account. (Tr. at 79) The witness stated APS will allow Ms. Tsosie to make
18 installment payments on the outstanding balance on her account and APS has agreed to waive any
19 late fees. (Tr. at 64)

20 During the hearing, Ms. Tsosie amended her request for relief asking that the Commission
21 reimburse her for 400 copies she had to make to pursue the litigation in this matter. (Tr. at 146) Ms.
22 Tsosie submitted into evidence a portion of a document that appeared to be related to Court of
23 Appeals filings.²¹ She also submitted a second partial document that included a section called
24 "Paperwork Reduction Act Notice." The second document appears to be a part of a federal agency
25 form. Ms. Tsosie did not reference a Commission rule that would allow her to be reimbursed by the
26 Commission for copying fees. A review of Commission rules does not include a provision that allows

27 _____
28 ²⁰ Respondent Exhibit 10.

²¹ Complainant's Exhibit C-19 and C-20.

1 for reimbursement of copies resulting from litigation, therefore, Ms. Tsosie's requested relief cannot
2 be granted.

3 **ANALYSIS**

4 Based on the evidence and testimony presented, we find that Ms. Tsosie's claims that APS
5 overcharged her on her July 2008 bill; that APS is controlling her home meter; that her meter
6 readings are inconsistent with APS' billed monthly energy consumption; that APS is reading her
7 meter from a central location; and that APS and other utilities are conducting a "nationwide scam" to
8 overcharge customers, are not supported by the evidence presented in this matter. Therefore, we find
9 the Complaint in this matter should be dismissed with prejudice. We further find that Ms. Tsosie
10 owes an outstanding balance of \$635.22, including any amounts that have accrued since her May 29,
11 2009 bill, but not including late fees that have accrued, which APS has agreed to waive. Further, we
12 find Ms. Tsosie shall make payment arrangements with APS within 10 days of the effective date of
13 this Decision to pay off the over due account balance amounts. In addition to waiving late fees, APS
14 should allow the Complainant up to 12 months from the date of this Decision to bring her account
15 current.

16 * * * * *

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

19 **FINDINGS OF FACT**

- 20 1. Ms. Lydia Tsosie, who resides at 23830 W. La Vista Drive, Buckeye, Arizona, is
21 currently and has been a customer of APS since February 2006.
- 22 2. On February 6, 2009, Ms. Tsosie filed a formal complaint with the Commission
23 alleging APS overcharged her on her July 2008 bill; that her meter readings are inconsistent with
24 APS' billed monthly consumption; that APS is controlling her meter, and that APS and other utilities
25 are conducting a "nationwide scam" to overcharge customers. As relief, Ms. Tsosie requested a
26 \$7.95 credit on her November 2008 bill; a \$21.90 credit for December 2008; a credit of \$18.68 for
27 her January 2009 bill; and an adjustment for the months June 2008 through November 7, 2008 and
28 any other adjustments the Commission deems necessary. She further requested at the hearing that the

1 Commission reimburse her for copying fees associated with the litigation of this matter.

2 3. APS filed an Answer, Affirmative Defenses and Motion to Dismiss the Complaint on
3 February 26, 2009. In its Motion to Dismiss, APS argued Ms. Tsosie offers no objective evidence
4 demonstrating APS has done anything wrong or that her bills are incorrect. APS alleges that its
5 investigation shows that the claims are unfounded. APS seeks relief in the form of dismissal of the
6 Complaint with prejudice; a declaration that the bill for the electric service were not erroneous; and a
7 declaration that APS is entitled to payment for all unpaid amounts owed by Ms. Tsosie (at the time of
8 filing \$579.43).

9 4. On April 20, 2009, Complainant docketed a Response to APS' Answer, stating that
10 she was not aware of the requirement to file a response; that the sole basis of the Complaint lies in
11 her meter readings; that APS has not shown it is not controlling the meters; and that APS has tried to
12 silence her by sending its Answer via Federal Express, but that she refused it for "fear it contain[ed]
13 explosives."

14 5. A hearing on the Complaint was held in Phoenix, Arizona on June 8, 2009.

15 6. In November 2007, Ms. Tsosie switched her plan from the TAR to the SR.

16 7. The standard rate is a building block rate that increases in cost as the kWh usage
17 increases. Under the TAR, energy costs decrease during off-peak hours between 9 p.m. to 9 a.m. and
18 offers customers a lower rate during off-peak during summer months, which is offset by slightly
19 higher rates than those offered on the SR during winter months.

20 8. Ms. Tsosie's July 2008 electric bill would have been \$87.78 lower, if she had
21 remained on the TAR plan.

22 9. Based on the testimony, it appears Ms. Tsosie could benefit and would have benefitted
23 from remaining on the TAR plan.

24 10. Between November 2008 and April 2009, Ms. Tsosie alleges she conducted daily
25 meter readings taken from her home meter. Ms. Tsosie claims that her meter readings are
26 inconsistent with APS' billed monthly consumption for her home. A review of Ms. Tsosie's meter
27 readings show that they were not taken for each day of the month or for a consistent time period each
28 day and, therefore, the results of the readings cannot be used to determine whether APS has

1 overcharged Ms. Tsosie for her energy use.

2 11. On November 8, 2008, APS conducted a test on Ms. Tsosie's home meter. The test
3 results showed that Ms. Tsosie's home meter is measuring energy consumption with 100 percent
4 accuracy.

5 12. Ms. Tsosie does not dispute that her home meter is accurately measuring energy
6 consumption.

7 13. Ms. Tsosie claims that APS is not coming to her home to read her meter, but is doing
8 so from a central location. APS' witness testified that meter readings were taken at Ms. Tsosie's
9 home, and Ms. Tsosie offered no independent evidence showing her meter is being read from a
10 central location.

11 14. Ms. Tsosie's claim that she was charged more on her July 2008 bill than her cousin
12 does not support a finding that APS has improperly billed her for electricity usage.

13 15. There was no evidence to show APS and other utilities are conducting a nationwide
14 scam to overcharge customers.

15 16. APS has made good faith efforts to resolve the issues in the Complaint.

16 17. The evidence and testimony presented by Ms. Tsosie does not establish that APS is
17 charging her for electric usage other than what is indicated on her meter.

18 18. APS has not violated Commission Rules or its Commission approved tariffs.

19 19. The Complaint in this matter should be dismissed.

20 20. Ms. Tsosie has an outstanding APS bill in the amount of \$635.22 as of May 29, 2009.

21 **CONCLUSIONS OF LAW**

22 1. APS is a public service corporation pursuant to Article XV of the Arizona Constitution
23 and A.R.S. 40-246.

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

25 3. Pursuant to A.A.C. R14-2-210 a customer is obligated to pay bills for utility service
26 that is rendered on the basis of accurate meter reads.

27 4. Ms. Tsosie failed to show that APS has engaged in any wrongdoing regarding her
28 meter reads, or that APS violated any Commission Rules or its Commission approved tariffs.

1 IT IS FURTHER ORDERED that Arizona Public Service Company shall allow Ms. Lydia
2 Tsosie to within 12 months of the effective date of this Decision, bring current her account with the
3 company.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2009.

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20
21 DISSENT _____
22 YBK:db

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1 SERVICE LIST FOR: LYDIA TSOSIE v. ARIZONA PUBLIC SERVICE
2 COMPANY

3 DOCKET NO.: E-01345A-09-0049

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5 23830 West La Vista Drive
6 Buckeye, Arizona 85396

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