

ORIGINAL



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AZ CORP COMMISSION
DOCKET CONTROL

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 **COMMISSIONERS**

9 **KRISTIN K. MAYES, Chairman**
10 **GARY PIERCE**
11 **PAUL NEWMAN**
12 **SANDRA D. KENNEDY**
13 **BOB STUMP**

Arizona Corporation Commission

DOCKETED

MAY - 3 2010

DOCKETED BY *MM*

13 **GEORGE BIEN-WILLNER,**
14 **Complainant,**

DOCKET NO. E-01345A-10-0136

15 vs.

**ANSWER TO FORMAL
COMPLAINT**

16 **ARIZONA PUBLIC SERVICE COMPANY,**
17
18 **Respondent.**

19 Respondent Arizona Public Service Company ("APS") denies everything in the
20 Formal Complaint ("Complaint") of George Bien-Willner, except that which is specifically
21 admitted or qualified.¹

22 **SPECIFIC RESPONSES TO COMPLAINT**

23 The Complaint claims that there are "erratic/incorrect and possibly self-serving
24 meter reading and billing practices" at a business known as the 260 Café in Payson,
25 Arizona. More specifically, the Complaint alleges that for the period November 2007
26 through December 2008, the 260 Café was closed and could not have used the electricity

27
28 ¹ The Complaint references two businesses, the "260 Café" and the Sterling International Hotel, so it is less than clear to APS who is the actual Complainant. However, both of these business accounts are, or were during the relevant period of time, in the individual name of Mr. Bien-Willner, and the notice of the Complaint received from the Arizona Corporation Commission ("Commission") on April 15, 2010, identifies Mr. Bien-Willner as the Complainant.

1 for which Mr. Bien-Willner was billed. APS offers the following allegation responses and
2 factual information in support of its request that the Commission deny the Complaint.

3 **APS Response No. 1:**

4 APS installed meter #G90705 at the 260 Café on August 26, 2005 in the presence of
5 Commission Staff members Ms. Connie Walczak and Mr. Prem Bahl. Prior to installation,
6 meter #G90705 was tested by APS and found to register 0.0% on full load (completely
7 accurate) and -0.2% on light load (slightly slow). *See* Exhibit A.

8 **APS Response No. 2:**

9 With two exceptions (February and December of 2008), the 260 Café meter was
10 probe read by an APS meter reader during the period referenced in the Complaint. As was
11 noted by the Commission in Decision No. 71311 (October 30, 2009), once a meter is
12 probed, it is impossible to thereafter tamper with or otherwise affect the meter read or the
13 transfer of such read to the APS's billing system. *Id.* at 6. In the two instances when a meter
14 read could not be obtained because of weather conditions limiting access to the property,
15 APS followed the estimation procedures set forth in Service Schedule 8.

16 **APS Response No. 3:**

17 After receipt of Complainant's Complaint, APS again tested meter#G90705. The
18 meter tested -0.2% on both full and light load. This test reading means the meter is running
19 slightly slow but within the limits established by the Commission in A.A.C. R14-2-210 (E)².
20 *See* Exhibit B.

21 **APS Response No. 4:**

22 APS is without sufficient knowledge or information to respond to the allegation that
23 the 260 Café was closed during the months at issue, but APS does concede that usage for
24 that account during such months was substantially lower than in at least some prior or later
25 months.

26
27
28

² *See also* APS Service Schedule 1, Section 6.4.1.

1 **APS Response No. 5:**

2 Unless APS is authorized to render an estimated bill in accordance with the
3 provisions of Service Schedule 8, APS is required to bill Complainant based upon its
4 registered and metered electric consumption per A.A.C. R14-2-209 (B) and R14-2-210 (A)
5 (1).

6 **APS Response No. 6:**

7 Complainant is disputing some portion of \$4,785.55 in APS billings for the 260 Café.
8 The present amount owed by Complainant to APS for consumption at that service location
9 is \$17,444.99.

10 **APS Response No. 7:**

11 On April 30, 2009, APS received a final judgment from Maricopa County Superior
12 Court for \$13,479.56 due and owing from Complainant to APS for the 260 Café Account
13 for the period running through December 31, 2008.

14 **AFFIRMATIVE DEFENSES**

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

16 2. At all times, APS acted in conformance with its lawfully approved tariffs;
17 Arizona Administrative Code, Title 14, Chapters 2; and all applicable state and federal laws
18 with reference to the billings to Complainant for the 260 Café.

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

21 4. Complainant's dispute of APS billings for the 260 Café prior to April 8, 2008
22 is barred by the two year statute of limitations set forth in A.R.S. Section 40-248.

23 5. Complainant's dispute of APS billings for the 260 Café prior to January 1,
24 2009 (the entire period covered by the Complaint) is barred by the doctrines of *res judicata*
25 and collateral estoppel.

26 * * * * *

27 **WHEREFORE**, Respondent APS requests a declaration from the Commission as
28 follows:

Exhibit A

Meter Information System [Update Meter Tests]

File Edit Tests Window Help

Owner APS

Meter Number Manufacturer # 030282244

Test Details | Meter Information | Notes

Tester 1 2 Type Field Shop Complaint F/S Test Date 07/30/2005

Test Equipment TB11 - RFL5800 Remain in Shop

Test Reason Type ROUTINE/RECONDITION

Reason Code

Status Retire

No	Read	Registration/Percentage of Error(Le +0.1)	Demand Meter
1		As Found FL% 0.0 PF% LL% -0.2	AS Found Kw% 0.0 AS Left Kw%
2	0.0	As Left FL% 0.0 PF% LL% -0.2	
3			
4			

Reconfigure Code C63918 Program ID 13

Remark
25 rev ck good/no creep/mtr ok

Burden Test Result	
CT Number	Result

start [Taskbar icons] Search Desktop [Taskbar icons]

Exhibit B

meter information system [Update Meter Tests]

File Edit Tests Window Help

Owner APS

Meter Number Manufacturer # 030282244

Test Details | Meter Information | Notes

Tester Type Field Shop Complaint F/S Test Date 04/14/2010

Test Equipment UNKNWN - UNKNWN Remains in Shop

Test Reason Type COMPLAINT

Reason Code

Status Retire

Read		Registration/Percentage of Error (i.e. +0.1)		Demand Meter	
No	Read	As Found	As Left	AS Found KW%	AS Left KW%
1	69218	FL% -0.2	FL% -0.2		
2	20.600	PF% 0.0	PF% 0.0		
3		LL% -0.2	LL% -0.2		
4					

Reconfigure Code Program ID

Remark

RM-17-01 (S/N 801982) TEST SET. METER TESTED WELL WITHIN APS AND ACC LIMITS. SEAL TO SERVICE WIRE COVER WAS MISSING. ALL OTHER SEALS WERE O.K. METER REGISTRATION IS ACCURATE AS WELL. METER INTERNAL PROGRAMS ARE CORRECT. METER IS GOOD.

CT Number	Result

Next Test Add Update Delete Previous Next Exit

start Search Desktop