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BEFORE THE ARIZONA CORPORATION

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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

DOCKETED

APR 17 2014

DOCKETED BY

RICHARD GAYER,
Complainant,

(Dwight D. Nodes, Hearing Officer)

DOCKET NO. G-01551A-13-0327

v.

SOUTHWEST GAS CORPORATION,
Respondent.

Complainant's

PREPARED TESTIMONY

(Rule R14-3-109(M))

Complainant Gayer hereby submits his prepared testimony pursuant to the amended Order of Hearing Officer Nodes dated April 7, 2014 under Rule R14-3-109(M).

Legal Summary

In implementing decoupling under Arizona Gas Tariff No. 7, pages 92-96 dated January 1, 2012, Southwest Gas ("SWGAs" or the "Company") is violating the tariff itself as well as Arizona Revised Statutes section 44-1521 et seq. on consumer fraud by failing and refusing to fully itemize all customers' bills (except for those who *subsequently* may expressly opt out), by discriminating in favor of a few of its customers and against the rest of them regarding itemization in violation of A.R.S. section 40-334, by using methods other than those set forth in the Tariff for calculating customer's bills, and by using non-public proprietary temperature data to determine Heating Degree Days ("HDDs").

To prevent its customers from realizing that a new charge had been added to their bills, SWGas "simplified" them nine months before adding the Monthly Weather Adjustment Charge.

1 Factual History

2 I have been a customer of SWGas since March 2004 when I moved into my home in
3 Phoenix, Arizona. I received itemized bills from them until the one dated 03/25/11 that covered
4 mostly February 2011. My bill dated 04/07/11 covering mostly March 2011 was the first
5 simplified bill that I received, but I did not then notice the change nor had I requested any
6 simplification. (I never received any prior information from SWGas about that change.)

7 In January 2012, I received a bill dated 01/06/2012 covering mostly December 2011 that
8 I later discovered was the first such bill to include the Monthly Weather Adjustment (“MWA”)
9 charge, although that information did not appear anywhere on the bill or on anything
10 accompanying the bill. It was for 100 therms and contained the following line items: \$113.98
11 for “usage” (a new term), \$10.70 for the basic service charge, \$0.05 for the DOT, and \$15.47 for
12 taxes, for a total of \$140.20. (“Usage” seems to mean cost of gas plus delivery charge plus
13 MWA.¹)

14 In early February 2012, I received a bill dated 02/06/12 covering mostly January 2012. It
15 was for only 72 therms but contained only the following line items: \$100.58 for “usage”, \$10.70
16 for the basic service charge, \$0.04 for the DOT, and 13.82 for taxes, for a total of \$125.14. I
17 was unable to make any sense out of that bill because the decrease in usage (100 therms down to
18 72 therms for a ratio of 72 %) was not reflected in the decreased charge for gas (113.98 down to
19 only 100.58, a ratio of 88%). There must be a hidden charge somewhere, so I began my
20 frustrating series of contacts with several representatives of SWGas in an attempt to learn about
21 the new charge.

22 I paid the above bill with a check dated 13 February 2012 and then called the nearest
23 office of SWGas about the hidden charge on or about 15 February 2012. I spoke with
24 “Charlene” and told her about a possible complaint to the Arizona Corporation Commission
25 (“AzCC”) about the hidden charge. She referred me to a company called the Weather Bank and
26

27 ¹ On the back of my “simplified” bills we find a definition of “Usage Charge: Usage charges recover the cost of
28 delivering natural gas which is not covered by the Basic Service Charge, and the cost of natural gas purchased by
SWG on behalf of our customers.” Why not mention the MWA or at least something about “decoupling”?

1 to WSI, Incorporated for HDD information. I later discovered on 24 February through 27
2 February that neither company had a current contract with SWGas. On or about 16 February
3 2012, Charlene explained the application of a formula to calculate my MWA and she mentioned
4 Brooks Congdon in Las Vegas. She also said (incorrectly) that SWGas uses data from NOAA
5 for HDDs, so I used that data to my frustration.

6 I also contacted Customer Service for the AzCC and contacted RUCO by telephone and
7 e-mail, but to no avail.

8 On 27 February 2012, I sent a letter via e-mail and via the United States Postal Service to
9 Karen Haller, General Counsel for SWGas, regarding my frustration in trying to calculate my
10 MWA. My main problem was the determination of the actual and normal HDDs used by
11 SWGas. In an apparent response to that letter, I received a telephone call from Brooks Congdon
12 of SWGas on the same day after 5 pm in Phoenix. He referred me to a company called Telvent
13 DTN for data on HDDs and sent me a list of *only* the *Normal* HDDs (10-year averages) used by
14 SWGas.

15 On or about 5 March 2012, I received a letter from Justin Lee Brown of SWGas in
16 response to the above letter to Karen Haller that amounted to a status report.

17 During March 2012, I attempted to find a set of **Actual** HDDs that yielded the results
18 obtained by SWGas regarding my MWA, but was unable to do so.

19 So, on 23 March 2012, in response to an earlier reference from SWGas, I sent an e-mail
20 to Kathy Smith of Telvent for information regarding the Actual HDDs used by SWGas. On 4
21 April 2012, in response to that e-mail, I received a telephone call from Brooks Congdon in
22 which he offered to and did furnish the Actual HDDs used by SWGas for the month in question
23 at that time. However, I was still unable to match the results obtained by SWGas in calculating
24 my MWA. The hidden (mathematical) method was a linear regression used to "mitigate" a
25 customer's bill that would be outrageous if the formula in the tariff was applied.

26 Since then, I have had numerous oral and written communications with Brooks Congdon.
27 I found him to be courteous and friendly, but he often provided information that turned out to be
28 false. For example, on 6-7 January 2013 we discussed via e-mail and telephone basic concepts

1 of regression as used by SWGas, including the application of the last eight “winter” months that
2 include only December, January, February and March, with further information provided
3 telephonically on 11 January 2013. Next, via e-mails dated 18 January 2013 and 21 January
4 2013, I informed Congdon of my inability to obtain regression results close to those of SWGas.
5 Later, in an e-mail of 3 April 2013, I inquired about the definition of “month” as it applies to the
6 linear regression used by SWGas to mitigate customers’ bills. He first said that it is defined by
7 the date on the bill, but that was false. He later advised that it is the month covered by the bill,
8 so that a bill dated (say) in the first few days of February was the “January” bill for regression
9 purposes.

10 In telephonic and e-mail communications around 4 January 2013, Congdon admitted that
11 “regression” was not mentioned anywhere in the tariff. He also explained that the “margin”
12 comprised three components: the gas delivery charge, the MWA, and the basic charge. In
13 calculating the regression coefficient, he said to use the most recent eight winter months, starting
14 with the one immediately before the bill in question. He later admitted the falsity of that
15 information, advising to start with the “month” (as previously defined) that was covered by that
16 bill. On 11 February 2013, I received from Congdon summary data for *actual* HDDs for the
17 entire month in question, but he did not furnish that information for each day of the month. He
18 confirmed that regressions were not mentioned anywhere in the tariff.

19 Since Congdon was not continuing to send me monthly data for the actual HDDs used by
20 SWGas (they do not use data from NOAA²), I again during March 2013 attempted to find data
21 for *actual* HDDs or actual temperatures from which HDDs may be easily calculated. I was
22 referred to the Flood Control District of Maricopa County by a weatherman for a local TV
23 channel (probably KPHO), but I was unable to find any data that was even close to those used
24 by SWGas.

25 I have presented the foregoing details *ad infinitum* to demonstrate the frustration that I
26 have been suffering at the hands of several representatives of SWGas. Being the victim of a
27

28 ² On the other hand, NOAA data for Normal HDDs are used by the Northwest Natural Gas Company in Oregon. (In addition, they used a fixed “coefficient” for all customers in at least 2012.)

1 run-around, however unintentional, is not fun! There was major confusion on my part and that
2 of Brooks Congdon caused by the shifting details he presented regarding the calculation of the
3 MWA. During those discussions, he revealed that for a given month all customers' MWAs are
4 not computed by the same method. Methods that vary from customer to customer include the
5 formula in the tariff, linear regressions, a maximum limit equal to the total number of therms
6 actually used by a customer, and an MWA charge of zero if there are zero HDDs in a given
7 month. Thus in a given "winter" month, one customer may receive favorable treatment while
8 another receives unfavorable treatment. Such discrimination is prohibited by A.R.S. § 40-334.

9 I eventually gave up and presented my problems to the AzCC, as set forth in my Informal
10 Complaint of June 14, 2013 and then in my Formal Complaint of September 24, 2013.

11
12 Concluding Remarks

13 Fraud is a strong word to use against SWGas, but its silent simplification of its bills about
14 nine months before it first applied the MWA *does* satisfy the language of A.R.S. section 44-
15 1522(A) (emphasis. added): "The act, use or employment by any person of any deception,
16 deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or
17 *concealment, suppression or omission of any material fact with intent that others rely* upon
18 such concealment, suppression or omission, in connection with the sale or advertisement of any
19 merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is
20 declared to be an unlawful practice." Section 44-1521 defines "merchandise" to include
21 services and "sale" to include any sale, and there is no need for anyone to have been "damaged
22 thereby". One may ask why SWGas did not first impose the MWA and await customer reaction
23 before simplifying anyone's bill, and also ask why the simplification was done in silence and
24 long before the MWA was imposed. The answer is obvious: SWGas did not want to deal with
25 the potential of thousands of perhaps hostile inquiries from its one million customers in Arizona;
26 even one percent of its million Arizona customers amounts to 10,000 inquiries about the MWA.

27 SWGas claims that in response to a few customer requests, it simplified *all* of its
28 customers' bills *before* the MWA was imposed, but one wonders what motivated those few

1 customers to do so. Moreover, SWGas conceded during several discussions among myself and
2 Justin Lee Brown (and others from SWGas and members of Commission staff) that it had no
3 business records of any such requests, and that in any event that such requests were not
4 numerous. Nonetheless, it went ahead and simplified *every* customer's bill without any consent
5 to that change from almost 100 percent of them. Worse yet, the silent simplification deprived
6 essentially 100 percent of its customers from even knowing about the MWA, thereby
7 guaranteeing that very few customers would inquire about it. I discovered the MWA almost
8 solely by accident.

9 SWGas also insists that it would be unfair to "impose" on all of its customers an itemized
10 bill that includes the MWA, but it has never been able to explain how adding three line items to
11 a "simplified" bill that already includes four items amounts to an imposition. Common sense
12 tells us that customers read what interests them and ignore the remainder, so that SWGas'
13 position should not be taken seriously. Significantly, SWGas concedes that simplifying its bills
14 "wasn't necessarily a cost savings measure". Statement of Jason Wilcock during proceedings of
15 4 March 2014 (Transcript p. 5:23-24; see also at p. 8:15-16 (question from ACALJ Nodes).)
16

17 Dated: 17 April 2014

Respectfully submitted by,

Richard Gayer

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22 **CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

23 On 17 April 2014, I served a copy of this document via electronic mail on Respondent's
24 attorney, Jason Wilcock, addressed to jason.wilcock@swgas.com.

25 I certify under penalty of perjury under the laws of the State of Arizona that the foregoing
26 is true and correct.

27 Executed on 17 April 2014
28 at Phoenix, Arizona

Richard Gayer
RICHARD GAYER, Complainant