



BEFORE THE ARIZONA CORPORATION COMMISSION
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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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ORIGINAL

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RICHARD GAYER,
Complainant,

(Dwight D. Nodes, Hearing Officer)

v.

DOCKET NO. G-01551A-13-0327

SOUTHWEST GAS CORPORATION,
Respondent.

Complainant's
REBUTTAL TESTIMONY

(Rule R14-3-109(M))

Complainant Gayer hereby submits his testimony in rebuttal to the direct testimonies of Robert Gray of the Commission's Staff and Edward Giesecking of Southwest Gas pursuant to the amended Order of Hearing Officer Nodes dated April 7, 2014 under Rule R14-3-109(M).

Testimony of Edward Giesecking
MONTHLY WEATHER ADJUSTMENT

The monthly Weather adjustment ("MWA") was implemented in January 2012, not in 2013 as stated by Giesecking (A.7 at 2:17).

Giesecking states that SWGas uses "next-day actual weather data provided by a commercial weather subscription service" (A.10 at 3:25-26), but Complainant obtains free of charge "next-day data" from www.nws.noaa.gov/climate every day without any delay. NOAA provides climate data for seven location in the Phoenix area, seven more locations in the Flagstaff area, and four more locations in the Tucson area, for a total of 18 locations in the State

1 of Arizona. SWGas fails to explain why those data are not sufficient for its needs, especially
2 since a couple of days of delay (if any) in billing its customers cannot cause any problems.

3 SWGas concedes that data available from NOAA at no charge does not match the data it
4 purchases from a private (profit-making) company (A.12 at 4:10-11), but does not claim to
5 know which data are correct. SWGas could save money by using data available to the general
6 public, including the Complainant herein. Complainant previously pointed out that NOAA data
7 for HDDs are used by the Northwest Natural Gas Company in Oregon (prepared testimony in
8 footnote 2 at page 4).

9 SWGas asserts that it “provides this [weather] information to any customer upon request”
10 (A.14 at 4:18), but does not explain how a customer would be aware of the MWA in the first
11 place. Without such awareness, few customers would make such a request. Complainant
12 discovered the MWA almost by accident.

13 SWGas concedes that it uses methods to calculate bills that are not even mentioned in its
14 Tariff (A.17 and A.18 at 5:8 through 6:14). It also concedes that “these checks and balances are
15 *not* necessary components of the EEP” (A.18 at 6:12, emp. added). If so, then there is no need
16 to use them!

17 18 SOUTHWEST GAS’ ENERGY EFFICIENCY ENABLING PROVISION

19 Giesecking states that SWGas patterned its tariff after that of Questar Gas (A.19 at 6:24-
20 25), but Questar provides service in the State of Utah, whose climate is obviously much
21 different from that of Arizona, especially its southern half. SWGas fails to explain why it
22 adopted Questar’s intentional lack of transparency rather than deciding to fully reveal its
23 calculation methods in its own tariff.

24 Complainant submits that use of the “fixed” coefficient used by the Northwest Natural
25 Gas Company in Oregon would promote transparency by SWGas by eliminating the hidden use
26 of regressions.

27 Giesecking responds to a question about “billing processes and provisions approved in
28 Commission Orders but not detailed in its applicable tariffs” (Q and A 22 at 7:9-15), but fails to

1 identify a Commission Order, if any, that approved of regressions or other mitigators in relation
2 to the MWA. My research on the website of the AzCC has not found any such Order.

3 Giesecking writes about the avoidance of “technical issues that misled and confused them
4 [customers of SWGas]” (A.23 at 7:24-25), but he tacitly assumes that nearly all of “them” are so
5 uneducated that they are unable to learn a new concept or apply one with which they are already
6 familiar. It is the inclusion of the detailed formula on pages 92-93 of the tariff and the complete
7 omission of “linear regression” from the tariff that is truly misleading and confusing.

8 Giesecking finally states that “the annual decoupling adjustment of the EEP will true-up
9 the authorized margin amounts” (A. 24 at 8:15-17), but Complainant’s own experience with the
10 MWA seems to belie that statement. For the “winter” of 2013, I received a net credit of \$1.41
11 for the MWA, but for the same months of 2014, I paid a total of \$62.59 extra. I doubt that the
12 future EEP adjustments on my bills will correct for this surprising MWA charge.

13
14 CUSTOMER RELATIONS AND EDUCATION

15 Giesecking describes the “process to ensure that customers received accurate information
16 about the mechanism” (A.25 at 8:22-23) and asserts that the “approach [was] successful” (A.26
17 at 9:4-5). He bases his conclusion on the “dramatically” reduced “number of customer
18 assistance calls” (A.26 at 9:9-12), but fails to explain how customers who are not aware of the
19 MWA will be moved to inquire about it.

20 Giesecking then goes on to describe how SWGas allegedly assisted Complainant in
21 understanding the MWA (A. 27 at 9:17 through 10-2), but he ignores most of the factual history
22 in Complainant’s Prepared Testimony (page 2:22 through 5:1), including “the frustration that I
23 have been suffering at the hands of several representatives of SWGas.” (Page 4:25-26.)

24 Giesecking’s description of his employer’s treatment of Gayer is so whitewashed that it cannot be
25 taken seriously.

1 NON-DISCRIMINATORY APPLICATION OF TARIFFS AND PROCEDURES

2 Giesecking states that SWGas avoids “undue discrimination” in dealing with its customers
3 (Q and A 30 at 10:14-16), but fails to define “undue”. He claims that there is no “dissimilar
4 treatment or favoritism amongst customers regarding the application of the” MWA (Q and A 31
5 at 10:26 to 11:2), but fails to mention the “626 customers [who] have requested ... a more
6 detailed bill” (A.36 at 13:18-19) These customers, including Complainant, are receiving
7 favorable discrimination. By favoring these customers with a more detailed bill, SWGas is
8 violating A.R.S. section 40-334 by granting them a "preference or advantage" over almost
9 all other customers. See, e.g., *Marco Crane and Rigging v. Arizona Corporation Commission*,
10 155 Ariz. 292, 298 (App. 1987) -- after citing A.R.S. section 40-334, the Court said that "[i]t
11 would be discriminatory and therefore unlawful for Southern Union [Gas Company] to place
12 Marco Crane in a better position than its other customers".) In view of this authority, SWGas
13 must return to providing each customer with a fully itemized bill subject only to the ability of an
14 individual customer to expressly opt-out of such a bill.

15 Consider the analogy of a racist restaurant owner who posted a sign excluding Black
16 patrons, but did serve only those Blacks who complained of discrimination and demanded
17 service. Such a policy would violate A.R.S. section 41-1442 despite the service to a few Black
18 patrons.

19
20 BILL FORMAT MODIFICATION

21 Giesecking seems to argue that SWGas does not want to be bothered with inquiries from
22 its customers (A. 32 at 11:11-18). That would appear to deny its obligation to educate its
23 customers. See Giesecking testimony under “Customer Relations and Education” at 8:19 to 9:14.

24 The example of a bill from Arizona Public Service is far more complicated than a bill
25 from SWGas ever was during my experience over the past ten years (A.33 at 11:21-24 and
26 Exhibit EG-1). My present bills from APS have 13 lines for electricity and five more for taxes
27 and fees. These line items include the recently added Lost Fixed Cost Recovery (LFCR)

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1 “adjustor”, an item similar in purpose to the MWA. Complainant suggests that SWGas follow
2 the transparency exemplified by APS bills.

3 Complainant objects to the recent substitution of the exhibit for EG-2 based on relevancy
4 and uniqueness. The existing EG-2 is for G-5 single-family residential gas service for standard
5 income customers (as is Complainant’s bill) for 2002, whereas the new exhibit is for G-11
6 multi-family gas service for low income customers in 2013 (after the 10-0458 rate case) and
7 contains no amount due but only “APP”. The proposed replacement exhibit should be stricken
8 because it is triply irrelevant, based not only on the different service and customer income but
9 also because it is *sui generis*.

10 SWGas tacitly concedes that it did not simplify its bills because of customer requests but
11 *only* because of the opinions of its own customer assistance managers and the ACC Consumer
12 Services Staff (A.34 at 12:10-27). Nowhere does Giesecking mention an actual customer request
13 for a simplified bill.

14 Giesecking mentions the Staff suggestion that “the Company consider providing the
15 option for customers to continue to receive the detailed bill” (A.34 at 12:22-23), but fails to
16 recognize that such an (opt-in) option violates A.R.S. section 40-334. (See above at 4:7-12.)

17 I do not recall receiving the notice of simplification mentioned by Giesecking (A.34 at
18 12:25-27), but that notice (Exhibit EG-3) is silent on the MWA and says nothing about the
19 foregoing option for a detailed bill. Again, SWGas has utterly failed to educate its customers
20 about that option. No wonder so few of its customers have so opted! (See A.36 at 13:18-19.)

21 Giesecking mentions “the 2011 rate case” without stating its complete docket number
22 (A.35 at 13:14), but I believe that should be 2010, based on the case number ending in 10-0458.

23 Giesecking discusses the “weather adjustment **calculation**” (A:38 at 14:1-10, emp. added),
24 but Complainant never even suggested that the actual calculation be shown on a bill. He desires
25 only that a line item for the MWA be included in all bills subject to opting-out, as discussed
26 previously. (Complainant is requesting that all methods for calculating the MWA be described
27 in the tariff. If that were done, then interested customers could for example learn of the data
28 points that SWGas uses to compute a linear regression.)

1 CONCLUSION

2 Giesecking's testimony suggests that SWGas is ashamed of having to make ends meet by
3 charging its customers via the MWA for therms that they never received nor burned. One can
4 understand the difficulty of explaining to a customer why he or she is required to pay for a
5 product or a service that was never used, but that is part of SWGas' educational responsibility.
6 Surely SWGas can employ personnel who can satisfy that requirement.

7
8 **Testimony of Robert Gray (Staff)**

9 INTRODUCTION

10 No rebuttal is necessary.

11
12 RELIEF SOUGHT BY MR. GAYER

13 This is not relevant to Gayer's testimony and is confused by Gray's substituting a
14 "WNA" (page 2:12-13, etc.) for the MWA used by Gayer and Giesecking.

15 Gray's recitation regarding the "relief sought" appears to be correct.

16 Gray concedes that customers of SWGas cannot calculate their bills from information in
17 the tariff (Page 4:18-20), but he provides no remedy for that situation. He suggests only a baby
18 step in the right direction in the form of a recommendation for an annual bill insert revealing the
19 ability to opt-in for an itemized bill (page 8:14-16). Why not at least a monthly insert that
20 mentions the MWA?

21 Gray's comments about MWAs (he calls them WNAs) used by other utilities outside of
22 Arizona are interesting but irrelevant, since the laws of the State of Arizona, such as those cited
23 by Complainant in his Direct Testimony and Formal Complaint, do not apply to those utilities.
24 (Page 4:22 to 5:2.)

25 Gray discusses the "annual decoupling component" (page 5:9-24), but the Complaint
26 herein does not mention that subject in any way and Complainant does not seek leave to amend
27 in that regard. Therefore, Gray's remarks again seem to be irrelevant.

1 Gray's comments about "access to customer information" are confusing (page 6:12-22),
2 since Gayer has not requested such access in any proceeding before the Commission. (He did
3 make such a request to counsel for SWGas in a settlement discussion, but that request was
4 denied and has been permanently withdrawn.) However, Gray's recommendation about
5 "communicat[ing] more clearly and quickly with customers" (*id.*, at 16-20) certainly has merit.

6 As with SWGas, the Commission's Staff seems to be annoyed by inquiries to its
7 Consumer Services Section, including inquiries regarding the bills of SWGas (page 7:4-20).
8 But Complainant submits that this Section exists in part to answer such inquiries.

9 Staff supports the "current simplified bill" with the option for itemization (*id.*, at 18-19),
10 but as with SWGas fails to address the illegality of that approach under A.R.S. section 40-334.

11 Gray next discusses the timing of the implementation of the simplified bill (page 7:22 to
12 8:8), but supports the position of SWGas with weak language. That is, "staff does not see any
13 *particular* connection" in that regard (page 8:3-4, emp. added) and that "to the best of Staff's
14 knowledge" there was no effort to mask revenue decoupling by that timing (*id.*, at 6-8).

15 Complainant leaves the determination of this issue to the Administrative Law Judge.

16 Gray writes about a "significant expression of interest in a shift back to an itemized bill"
17 (*id.*, at 12-13), but does not explain how a customer who has never been informed of the MWA
18 would be moved to express such an interest. His recommendation about an annual "bill insert"
19 (*id.*, at 14-16) falls way short of the mark; at the very least, an option for itemization should be
20 printed on each simplified bill that mentions the MWA (but that would still not eliminate the
21 violation of A.R.S. section 40-334).

22 Regarding the source of weather data being NOAA, Gray contradicts the direct testimony
23 of Edward Gieseke as well as his own by admitting that SWGas uses a "third party vendor"
24 (page 9:1-10). Gray again supports SWGas against Gayer by stating that SWGas should not be
25 required to post weather data on its website (*id.*, at 17). Why not support transparency?

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1 CONCLUDING PERSPECTIVES

2 Complainant generally agrees with the recommendations of Staff under this heading
3 (page 9:22 to 11:19), but points out that they fall short of the mark by failing to correct the
4 illegalities inherent in the methods used by SWGas to calculate the MWA. In addition, he
5 points out that he has never alleged that SWGas has actually miscalculated its bills (although it
6 is using illegal methods to calculate them), but he does assert in his direct testimony (page 2.22
7 to 5:1) and repeats here that he had been misled over and over again by representatives of
8 SWGas regarding the calculation of the MWA.

9
10 SUMMARY OF TESTIMONY AND RECOMMENDATIONS

11 No rebuttal is necessary, since the points made here have already been covered.
12

13 **COMPLAINANT’S OVERALL CONCLUSIONS**

14 Complainant desires to emphasize two or three points.

15 Both SWGas (Giesecking A.32 at 11:14-16) and Staff (Gray at 7:16-20) argue that a
16 simplified bill should be continued in order to avoid customer calls to SWGas or the
17 Commission. Both recite customer confusion but fail to recognize that it is the obligation of at
18 least SWGas to reduce confusion through education. On education, see Order No. 72723 in
19 Docket No. 10-0458.

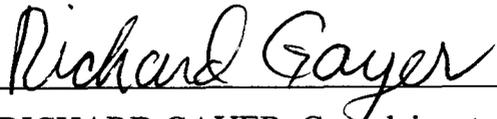
20 Neither Giesecking nor Gray discusses the fact that SWG’s failure to show the Monthly
21 Weather Adjustment Charge on all residential bills violates Rule 14-2-310(B)(2)(j) of the
22 Arizona Administrative Code on minimum information requirements for such bills
23 (“Adjustment factor, where applicable”). Note that the original and proper Exhibit EG-2
24 contains a line for “Mo Gas Cost Adj”, which is clearly an adjustment like the MWA that falls
25 within the meaning of the foregoing rule. The original EG-2 should be retained.

26 It is important to note that the MWA never appeared on any bill by default or by an act of
27 SWGas unless a customer expressly requested an itemized bill after the MWA became effective.
28 One might be able to appreciate the arguments about confusion if the foregoing sequence had

1 been reversed, but that is not the case. The actual sequence of events shows that the MWA
2 could not possibly have ever caused any confusion. Complainant urges the Commission to put
3 an end to a business practice that attempts to reduce the alleged confusion of customers by
4 hiding relevant information from them, which information Complainant contends is required by
5 law to appear on customers' bills. SWGas has conceded that simplifying its bills "wasn't
6 necessarily a cost savings measure". Statement of Jason Wilcock during proceedings of 4
7 March 2014 (Transcript p. 5:23-24; see also at p. 8:15-16 (question from ACALJ Nodes).

8
9 Dated: 2 June 2014

Respectfully submitted by,

10
11 

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17 **CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

18 On 2 June 2014, I served a copy of this document via electronic mail on Respondent's
19 attorney, Jason Wilcock, addressed to jason.wilcock@swgas.com.

20 On the same date, I served another copy via electronic mail on Robert Gray of the
21 Commission's Staff, addressed to BGray@azcc.gov.

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

24 Executed on 2 June 2014
25 at Phoenix, Arizona

26
27 
28 RICHARD GAYER, Complainant