

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: SEPTEMBER 29, 2014

DOCKET NO.: G-01551A-13-0327

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

**RICHARD GAYER v. SOUTHWEST GAS CORPORATION
(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 8, 2014

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 16, 2014

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.

Arizona Corporation Commission

DOCKETED

SEP 29 2014

DOCKETED BY

JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

RICHARD GAYER,

COMPLAINANT,

V.

SOUTHWEST GAS CORPORATION,

RESPONDENT.

DOCKET NO. G-01551A-13-0327

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: July 31, 2014
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
APPEARANCES: Mr. Richard Gayer, Complainant, *In Propria Persona*;
Mr. Jason S. Wilcock, on behalf of Southwest Gas Corporation; and
Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 25, 2013, Richard Gayer ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Southwest Gas Corporation ("SWG" or "Company"), alleging various improprieties with respect to SWG's implementation of its Energy Efficiency Enabling Provision, a revenue decoupling mechanism approved by the Commission in the Company's last rate case (Decision No. 72723, January 6, 2012).

On October 23, 2013, SWG filed its Answer to Formal Complaint, generally denying the material allegations in the Complaint.

...

1 On February 3, 2014, the Complainant filed a Motion to Schedule Prehearing Conference.

2 On February 19, 2014, a Procedural Order was issued scheduling a procedural conference for
3 March 4, 2014.

4 On March 4, 2014, the procedural conference was held as scheduled. During a discussion of
5 the issues raised in the Complaint, the parties agreed to undertake further settlement discussions with
6 the assistance of the Commission's Utilities Division ("Staff").

7 On March 4, 2014, a Procedural Order was issued directing the parties to undertake further
8 settlement discussions with the assistance of Staff; directing Staff to participate as a party in the event
9 no settlement is reached; and ordering the parties to file, by April 1, 2014, a status report regarding
10 settlement discussions or a proposed procedural schedule if no settlement was reached.

11 On April 1, 2014, the Complainant, SWG, and Staff filed a Joint Status Report of Settlement
12 Discussions and Request for Approval of Proposed Procedural Schedule. The parties stated that they
13 were unable to reach an amicable resolution of the issues raised in the Complaint.

14 On April 4, 2014, a Procedural Order was issued setting a hearing on the Complaint for July
15 31, 2014, and establishing the procedural deadlines requested by the parties.

16 On April 7, 2014, a Procedural Order was issued correcting the filing date for SWG's and
17 Staff's direct testimony.

18 On April 17, 2014, Mr. Gayer filed Complainant's Prepared Testimony.

19 On May 27, 2014, SWG filed the Direct Testimony of Edward Giesecking.

20 On May 27, 2014, Staff filed the Direct Testimony of Robert Gray.

21 On June 2, 2014, Mr. Gayer filed Complainant's Rebuttal Testimony.

22 On July 14, 2014, Staff filed the Supplemental Testimony of Robert Gray.

23 On July 31, 2014, an evidentiary hearing was conducted by a duly authorized Administrative
24 Law Judge. The Complainant appeared *pro se*. SWG and Staff appeared through counsel.

25 * * * * *

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

28 ...

FINDINGS OF FACT

1
2 1. In Decision No. 72723 (January 6, 2012), SWG was authorized to implement a
3 Monthly Weather Adjustment (“MWA”) as a component of a decoupling mechanism called the
4 Energy Efficiency Enabling Provision (“EEP”) approved for the Company. As described by SWG
5 witness Edward Giesekeing, “the overall purpose of the EEP is to ensure that the Company only
6 recovers the Commission authorized margin per customer, [and the MWA] provision also provides
7 bill relief to customers during times of colder than normal weather.” (SWG Ex. 2, at 2.)

8 2. In his Complaint, and through pre-filed testimony submitted in this proceeding, Mr.
9 Gayer alleged, among other things, that: customers were not being informed on their bills that they
10 were being assessed a MWA charge and other components of the EEP charge; SWG’s failure to fully
11 itemize all customer bills violated Arizona law; SWG is using methods of calculating the MWA and
12 EEP, including use of linear regression models, that are not permitted under Arizona law or the
13 Company’s tariffs; and customers are unable to verify the accuracy of their bills due to the lack of
14 transparency of the bill calculations. (Complaint at 1-2; Ex. G-1, at 1-4; Ex. G-2, at 1-5.)

15 3. Based on his claims, Mr. Gayer requested the following relief:

- 16
- 17 • An Order directing SWG to follow its tariffs in calculating the MWA and EEP
18 provisions.
 - 19 • An Order directing SWG to refrain from using any other method to calculate the
20 MWA and EEP charges, including regression analysis, limiting the charge to the
21 terms actually used by customers, and making the MWA zero when there are
22 zero Heating Degree Days (“HDD”).
 - 23 • An Order directing SWG not to discriminate in favor of or against any of its
24 customers by using different methods to calculate the bills of different customers
25 by withholding or denying billing information, with or without a request from
26 customers.
 - 27 • An Order directing SWG to itemize all customer bills to include as a line item the
28 MWA, unless a customer specifically requests a simplified bill.
 - An Order directing SWG to publish on its website the 10-year averages it uses for
normal HDDs in the formula, with a clear link to that data.

- 1 • An Order directing SWG to use the actual HDDs in the formula data that are
2 publicly available without charge from the National Weather Service or National
3 Oceanic Atmospheric Administration (“NOAA”). (Complaint at 3.)

4 4. In response, SWG claimed that its MWA and EEP are calculated properly under its
5 tariffs; that it trained employees to provide accurate information about the mechanisms; and that it
6 provides simplified bills to customers, unless otherwise requested, based on customer feedback.
7 (SWG Ex. 2, at 1-13.) Mr. Giesecking stated that since the implementation of the EEP in January
8 2012, including the MWA component, customers have benefitted through stabilized winter heating
9 bills and customer credits of over \$11 million dollars. (*Id.* at 14.) He claimed that SWG is
10 committed to timely providing all billing information requested by customers; reasonable procedures
11 were in place to respond to billing inquiries; and, accordingly, no wholesale changes to the current
12 process were required. (*Id.*)

13 5. In his pre-filed direct testimony, Staff witness Robert Gray stated, among other things,
14 that Staff did not see any evidence that SWG had miscalculated customer bills or had mislead Mr.
15 Gayer, but that the information available to customers on the Company’s website was not very useful
16 to customers for purposes of understanding how the decoupling portion of bills is calculated. (Ex. S-
17 1, at 9-10.) Mr. Gray stated that Staff believes SWG should modify the rates and regulations page of
18 its website to provide a clearer understanding of the decoupling calculations, and should submit those
19 changes for Staff’s review. (*Id.* at 10-11.) Staff also recommended that: the Company should make a
20 filing indicating the steps it will take to respond clearly and quickly to customers who wish to
21 understand the decoupling portion of their bills; and that SWG should include a billing insert at least
22 once each calendar year advising customers of their option to request an itemized bill. (*Id.* at 11-12.)

23 6. In his supplemental pre-filed testimony, Mr. Gray indicated that although SWG
24 appeared to be technically in compliance with the decoupling mechanism customer outreach
25 requirements of the Settlement Agreement approved in Decision No. 72723, the Company had not
26 put in place large portions of the communications plan filed with the Commission in 2012. (Ex. S-2,
27 at 1-3.) Mr. Gray stated that “Staff finds it disconcerting that the Company would largely abandon a
28 communications plan it had filed with the Commission...[and that Staff] is disappointed by the

1 Company's implementation of its communication plan." (*Id.* at 3.) Staff also indicated that, in
2 general, the "checks and balances" employed by SWG in calculating the EEP component of customer
3 bills reflect only weather sensitive consumption in the MWA. (*Id.* at 9.) Mr. Gray's pre-filed
4 testimony stated that Staff believes that "the metered use cap and zero use floor checks" should be
5 retained by SWG in calculating the MWA. (*Id.* at 10.) However, Staff recommended that the
6 Company "stop using the regression analysis check in calculating the MWA until such time as the
7 Commission approves its use [in a general rate case]." (*Id.*)

8 7. At the hearing, SWG and Mr. Gayer offered a Partial Settlement Agreement
9 ("Settlement" or "Agreement") to address all but one of the issues set forth in the Complaint and
10 Complainant's testimony, as well as items raised in Staff's pre-filed testimony. (SWG Ex. 1.) The
11 Settlement provides as follows:

- 12 • SWG will amend its tariff pages to reflect its use of the linear regression analysis,
13 metered use cap (*i.e.*, upper limit rule), and zero use floor (*i.e.*, lower limit rule) as
14 secondary mechanics or checks in calculating the MWA.
- 15 • SWG will publish on its website the 10-year averages used for normal HDDs in the
16 calculation of the MWA, which averages were approved as part of SWG's last general
17 rate case.
- 18 • SWG will continue to use the actual HDD information it has historically used in the
19 calculation of the MWA from the vendor of its choice, and should not be required to
20 use the information posted by the National Weather Service/NOAA.
- 21 • Within 60 days of the Decision in this proceeding, SWG will make a filing in this
22 docket indicating steps it will take to communicate clearly and quickly with customers
23 who wish to understand how the details of the decoupling components of their bills
24 (including the MWA) have been calculated.
- 25 • SWG will revise its Arizona rates and regulations page on its website to provide
26 additional content for its customers regarding revenue decoupling. Within 120 days of
27 the Decision in this proceeding, SWG will file a report in this docket to identify the
28 changes it has made to its website. The Commission's Staff will then have 30 days to

1 file a letter in this docket stating whether Staff believes the updated information
2 included in the Company's Arizona rates and regulations page of its website provides
3 the necessary information for Arizona customers to understand revenue decoupling
4 and how the calculation works.

- 5 • The only remaining relief requested in Mr. Gayer's Complaint relates to his request
6 for an order directing SWG to itemize all customer bills, including a line item for the
7 MWA, subject to actual individual requests for a simplified bill. Mr. Gayer's
8 Complaint will be withdrawn with respect to all other claims and relief requests. (*Id.*)

9 8. With respect to the remaining issue in dispute, during Mr. Gayer's cross-examination
10 of SWG witness Edward Giesecking it appeared that the Complainant would be satisfied if SWG
11 agreed to include two additional line items on all Arizona customer bills – a line showing the EEP
12 amount, and a line showing the MWA amount. (Tr. 90-91.) Under questioning by the
13 Administrative Law Judge, Mr. Giesecking stated that adding these two lines would not cause
14 additional billing pages to be generated, and therefore little or no additional costs would be incurred
15 by the Company. (*Id.* at 89.) After a brief recess, SWG agreed to add the two additional lines to all
16 bills to satisfy the only remaining issue raised by the Complainant. (*Id.* at 96.) Following additional
17 discussions on the record, Mr. Gayer, SWG, and Staff agreed that with this additional modification to
18 the Settlement, all issues were resolved and no additional testimony or evidence would be presented.
19 (*See, Id.* at 88-102.)

20 9. Given the agreement of the parties, with the modification to the Settlement Agreement
21 discussed above, all issues raised in Mr. Gayer's Complaint have been resolved and the Complaint
22 should be dismissed.

23 CONCLUSIONS OF LAW

24 1. SWG is a public service corporation within the meaning of Article XV of the Arizona
25 Constitution and A.R.S. § 40-246.

26 2. The Commission has jurisdiction over SWG and the subject matter of the Complaint
27 filed in this proceeding.

28 ...

1 stating that it has satisfied this additional term of the Settlement Agreement between the parties.

2 IT IS FURTHER ORDERED that the Complaint filed in this docket is dismissed and the
3 docket shall be closed subject to submission of the compliance items required by the Settlement
4 Agreement, as modified.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 _____
CHAIRMAN COMMISSIONER

11 _____
COMMISSIONER COMMISSIONER COMMISSIONER

13 IN WITNESS WHEREOF, I, JODI JERICH, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____ 2014.

18 _____
19 JODI JERICH
EXECUTIVE DIRECTOR

20 DISSENT _____

22 DISSENT _____
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1 SERVICE LIST FOR: GAYER V. SOUTHWEST GAS CORP.

2 DOCKET NO.: G-01551A-13-0327

3 Richard Gayer
4 526 W. Wilshire Drive
4 Phoenix, AZ 85003

5 Debra Gallo
6 SOUTHWEST GAS CORP.
6 5241 Spring Mountain Rd.
7 Las Vegas, NV 89193-8510

8 Jason S. Wilcock
8 5241 Spring Mountain Rd.
9 Las Vegas, NV 89193-8510
9 Attorney for Southwest Gas Corp.

10 Janice Alward, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
12 Phoenix, AZ 85007

13 Steven M. Olea, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007

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