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**BEFORE THE ARIZONA CORPORATION**

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

Arizona Corporation Commission

DOCKETED

OCT 24 2014

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RICHARD GAYER,  
  
COMPLAINANT,  
  
V.  
  
SOUTHWEST GAS CORPORATION,  
  
RESPONDENT.

DOCKET NO. G-01551A-13-0327

DECISION NO. 74780

**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 Giesecking, “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 therms 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.

### 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 ...



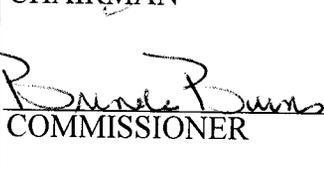
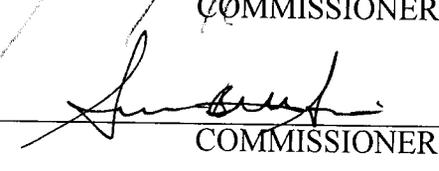
1 stating that it has satisfied this additional term of the Settlement Agreement between the parties.

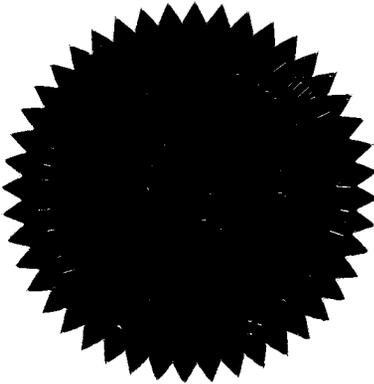
2 IT IS FURTHER ORDERED that the Complaint filed in this docket is dismissed and the  
3 docket shall be closed subject to submission of the compliance items required by the Settlement  
4 Agreement, as modified.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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| CHAIRMAN  | COMMISSIONER  |   |
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| COMMISSIONER  | COMMISSIONER  | COMMISSIONER  |



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14 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
15 Director of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this 24<sup>th</sup> day of October 2014.

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JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
DN:tv

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

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