ARXANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE REVISIONS TO THE ARKANSAS PUBLIC SERVICE COMMISSION'S SPECIAL RULES-TELECOMMUNICATIONS, SPECIAL RULES-ELECTRIC, SPECIAL RULES-GAS, SPECIAL RULES-WATER, GENERAL SERVICE RULES, AND THE RULES OF PRACTICE AND PROCEDURE

Docket No. 92-248-R Order No. 7

Appearances: Staff of the Arkansas Public Service Commission represented by Susan E. D'Auteuil and Kenny Henderson, Attorneys at Law, Little Rock, Arkansas; Southwestern Energy Company represented by Jeffrey L. Dangeau, Attorney at Law, Fayetteville, Arkansas; Arkansas Louisiana Gas Company represented by Charles J. Harder, Attorney at Law, Little Rock, Arkansas; Arkansas Gas Consumers and Arkansas Electric Energy Consumers represented by Stephen N. Joiner, Attorney at Law, Little Rock, Arkansas; Southwestern Bell Telephone Company represented by Karen Q. Hare, Attorney at Law, Little Rock, Arkansas; Arkansas Telephone Association represented by George Hopkins, Attorney at Law, Malvern, Arkansas; Arkansas Electric Cooperative Corporation represented by Leland F. Leatherman and Robert M. Lyford, Attorneys at Law, Little Rock, Arkansas; The Empire District Electric Company represented by Sondra B. Morgan, Attorney at Law, Jefferson City, Missouri; Arkansas Power & Light Company represented by Edward B. Dillon, Jr., Attorney at Law, Little Rock, Arkansas; Southwestern Electric Power Company represented by David R. Matthews, Attorney at Law, Rogers, Arkansas; Oklahoma Gas and Electric Company represented by James N. Atkins, Attorney at Law, Oklahoma City, Oklahoma; and the Arkansas Attorney General represented by M. Shawn McMurray, Attorney at Law, Little Rock, Arkansas.
PROCEDURAL BACKGROUND

On September 17, 1992, the Staff of the Arkansas Public Service Commission (Staff) filed a petition to open a rulemaking proceeding for the purpose of proposing changes and revisions to its Special Rules - Telecommunications, Special Rules - Electric, Special Rules - Gas, Special Rules - Water, General Service Rules, and the Rules of Practice and Procedure. On December 9, 1992, Staff amended its rulemaking petition with respect to its proposed revisions to the General Service Rules.

This rulemaking docket was opened pursuant to the authority of Ark. Code Ann. §23-2-305, empowering the Arkansas Public Service Commission (Commission) to make and amend from time to time reasonable rules and regulations pertaining to its regulation of public utilities.

The stated purposes of these proposed rules changes are to put the Commission's rules in plain language for better understanding and application, to provide for consistency and conformity between all the Commission's rules and with existing laws, and to make modifications to the rules for the purpose of addressing various needs for guidelines. The changes proposed to the Rules of Practice and Procedure are for the purpose of conforming them with the other sets of rules addressed in this docket to which more extensive changes are being proposed, and for the purpose of moving
all procedural requirements into the Rules of Practice and Procedure.

Staff's amendment to its rulemaking petition dealing with the proposed revisions to the General Service Rules, filed December 9, 1992, would add an additional section to the proposed General Service Rules which would require utilities to mark the locations of their underground facilities in compliance with the Arkansas One Call Law, Ark. Code Ann. §14-271-101 et seq.

Order No. 2 of this docket, issued November 20, 1992, allowed the intervention as parties to this proceeding of Arkansas Electric Energy Consumers (AEEC) and Arkansas Gas Consumers (AGC).

On December 22, 1992, Order No. 3 of this docket scheduled a public hearing to begin on May 18, 1993, at the Arkansas Public Service Commission Building, 1000 Center Street, Little Rock, Arkansas.

As directed by Order No. 3, the Secretary of the Arkansas Public Service Commission (Secretary of the Commission) provided notice of this rulemaking proceeding to all jurisdictional utilities, all intervenors of record, the Arkansas Legislative Council, the Joint Interim Committee on Insurance and Commerce of the Arkansas General Assembly, and also provided for newspaper notice of rulemaking in accordance with Rule 12.04 of the Commission's Rules of Practice and Procedure. This newspaper notice of rulemaking was published in the Arkansas Democrat Gazette on January 7, 1993, and January 14, 1993.
Initial, reply and final comments were filed with the Secretary of the Commission prior to the hearing by utilities and other interested parties.

On May 13, 1993, a prehearing conference was held for the purpose of deciding the procedural format to be followed at the hearing beginning on May 18, 1993.

A three day public hearing was conducted by the undersigned Administrative Law Judge on May 18, 19 and 20, 1993. At the conclusion of the hearing the parties participating in the hearing were instructed to meet and to try to resolve as many of the disputed issues as possible by negotiation. The record remained open while these further negotiations were taking place.

Order No. 5, issued July 8, 1993, at the request of the parties involved in these further negotiations, extended the negotiation period until September 1, 1993, by which date the parties were requested to file a report or stipulation concerning the outcome of their negotiating efforts.

THE STIPULATION

The post-hearing negotiating efforts engaged in by the hearing participants has resulted in the filing on August 30, 1993, of a document entitled Stipulation and Agreement (Stipulation) joined in by all parties taking part in the post-hearing negotiations. This Stipulation states:

By signing this Stipulation and Agreement, the parties agree that, with the exception of the specific objections set out below, the content of
the attached August, 1993, version of the General Service Rules and the Special Rules - Telecommunications, Special Rules - Gas, Special Rules - Electric, Special Rules - Water, and portions of the Rules of Practice and Procedure represent an agreed upon version of the proposed rules that the parties can recommend as being in the public interest. The attached rules are hereby incorporated and made a part of this Stipulation and Agreement by reference.

The Stipulation provides that these proposed new rules will eliminate the need for regulated utilities to file with the Secretary of the Commission separate standard rules and regulations in the form of tariffs for Commission approval except in circumstances where a tariff filing is specifically required by these proposed new rules or where the tariff filing addresses subject matter outside the scope of these proposed new rules. The Stipulation provides that these proposed new rules will supersede all standard rules and regulations of individual utilities currently on file with the Commission which concern the same subject matter covered by these proposed new rules; however, these proposed new rules will not supersede approved tariffs which are currently on file with the Commission and which address matters not covered by these proposed new rules.

The parties to the Stipulation further agree and recommend to the Commission that the effective date of these proposed new rules should be six months after the date of the order approving them. It is recommended that during this six month period all affected utilities should be given a two month period immediately following
the order approving the proposed new rules within which to file those tariffs specifically required by the proposed new rules and to provide the Commission's Consumer Services Office with the information required by the proposed new rules. During the remaining four months of the six month period following the date of the order approving these proposed new rules, Staff would review the tariffs and information filed during the initial two month period, and Staff would then make its recommendation for an order either approving or disapproving the tariffs and other information reviewed. The proposed new rules together with all compliance tariffs could then become effective for all utilities at the end of that four month period, or six months from the date of the order approving the proposed new rules, thereby avoiding any confusion that could be created by conflicts between utilities' existing tariffs and the proposed new rules.

**SUBSTITUTION OF UPDATED SPECIAL RULES - TELECOMMUNICATIONS**

On January 28, 1994, Staff filed a motion to replace the August, 1993, proposed Special Rules - Telecommunications with a January, 1994, version of Special Rules - Telecommunications, attached to Staff's motion. On September 7, 1993, by Order No. 7 in APSC Docket No. 92-079-R, the Commission approved and adopted Rules for Operator Service Providers (OSP Rules). These OSP Rules need to be incorporated into the proposed new Special Rules - Telecommunications in order to make them complete. The recompiled proposed new Special Rules - Telecommunications, incorporating the
OSP Rules adopted in Docket No. 92-079-R on September 7, 1993, and attached to Staff's motion filed January 28, 1994, have drawn no objection from any party to this (Docket No. 92-248-R) docket. Accordingly, the January, 1994, version of the proposed new Special Rules - Telecommunications, which includes the OSP Rules, shall be treated as the version under consideration in this docket.

APPROVAL OF THE STIPULATION AND RULES COVERED THEREBY

As indicated in the Stipulation filed August 30, 1993, the post-hearing negotiations resulted in complete agreement among the hearing participants with respect to all of the proposed new rules with the exception of three matters identified therein. The three contested issues will be addressed presently. However, it is appropriate at this time and place in this order to complete the discussion regarding the noncontested proposed new rules which are the subject of the Stipulation. After lengthy and careful study of the entire record in this rulemaking proceeding, including the written comments filed prior to the hearing, the oral comments and testimony adduced at the hearing, the Stipulation, and the proposed new rules themselves, it is found and determined that the Stipulation filed August 30, 1993, together with the attached proposed new rules (including the January, 1994, version of the proposed new Special Rules - Telecommunications), represents the best negotiating efforts of Staff and the active parties to this docket, accomplishes the stated purposes of the docket, are in the public interest, and should be approved and adopted.
THE THREE CONTESTED ISSUES

Rule 1.02(A). Order No. 6 of this docket, issued October 6, 1993, established a briefing schedule for the benefit of those parties wishing to submit written briefs addressing the remaining contested issues in this case. The first of these contested issues involves a proposed rule found in Section 1, entitled Applicability and Scope, of the General Service Rules and all four sets of Special Rules. Specifically, it is Rule 1.02(A) expressing in general terms the purpose and scope of the rules. Rule 1.02(A) of the General Service Rules and all four sets of Special Rules states in pertinent part:

These Rules are intended to ensure adequate service, prevent discrimination and unfair practices and protect both the consumers and the utilities from unreasonable demands.

Three parties, the Arkansas Attorney General, AEEC and AGC, object to the language in this proposed rule saying that one of the purposes of the rules is to "... protect both the consumers and utilities from unreasonable demands." (emphasis supplied) It is argued by these parties that utilities, being monopolistic in nature, and generally having greater financial resources than the customers they serve, are quite capable of protecting themselves from "unreasonable demands." The parties opposing this proposed rule also contend that for a utility regulatory agency to include language in its rules saying that one of its purposes is to protect utilities from unreasonable consumer action is bad public policy and in effect sends the wrong message to ratepayers.
As understandable, indeed to be expected, as it is for these three consumer-oriented parties to this proceeding to oppose the language in question, Rule 1.02(A), as proposed, does not appear to this reviewer either to give utilities an unfair advantage over their customers or exceed the scope of the Commission's rulemaking authority. Rule 1.02(A) is simply a general statement of the purpose and scope of the Commission's rules (the General Service Rules and all four sets of Special Rules), and is essentially precatory in nature. For the Commission's rules to state that it is one of their purposes to ensure fair and equal treatment by utilities of their customers, and vice versa, seems innocuous enough as a statement of an ideal. One is hard pressed to imagine that in the context of any type of dispute between a utility and its customer that Rule 1.02(A), as written, would tip the scales in favor of the utility. For these reasons then, it is found and determined that the objections to proposed Rule 1.02(A) should be rejected and such rule should be approved as written and proposed in the August, 1993, version of the General Service Rules and all four sets of Special Rules.

[There is a typographical error in Rule 1.02(A) of the Special Rules - Telecommunications. The next to last word in this subsection should be "unreasonable" rather than "reasonable." This rule is thus approved as corrected.]

Rule 3.04(A). The second area of disagreement which could not be completely resolved through the post-hearing negotiation process
involves Rule 3.04(A) of the General Service Rules listing the various reasons why a utility may refuse service to an applicant. Two parties, the Arkansas Telephone Association (ATA) and Southwestern Bell Telephone Company (SWBT), are requesting an addition or extension to this proposed rule which would allow a utility to refuse service to an applicant when:

(17) a former customer, former full-time occupant, or former full-time user of the utility's service at a service location with an unpaid bill is to be a full-time occupant or a full-time user of the utility's service at the service location where service is to be provided.

Staff's analysis and discussion of the ATA's and SWBT's requested enlargement of this rule in its post-hearing reply brief is quite persuasive. As stated in Staff's brief on page 5, the "... proposed language would allow refusal of service at a new location with no outstanding debt to an applicant who has no connection whatsoever to a previous unpaid bill." Staff's opposition to this requested addition to Rule 3.04(A) of the General Service Rules is well-founded. The language proposed by the ATA and SWBT is overbroad and too far-reaching. It seems to this reviewer that such an addition to this rule would indeed capture innocent applicants for and users of utility service with respect to whom there is no basis for imposing either legal or moral responsibility for an old unpaid bill. In certain situations even constitutional questions of substantive due process could arise.
Together with the standard and conventional methods and legal remedies available to creditors generally, the August, 1993, version of the proposed General Service Rules, in toto, arm utilities with adequate and effective means to enforce collection of delinquent accounts for utility services rendered. The addition or extension of Rule 3.04(A) requested by the ATA and SWBT is both unnecessary to the financial integrity and protection of utilities, and it is fraught with the possibility of unfair application as well as outright abuse. Therefore, this requested addition or extension to Rule 3.04(A) of the General Service Rules is rejected and it is found and determined that the rule should be approved and adopted as written and proposed in the August, 1993, version.

Rule 5.19. The third and final contested issue involves a proposed Subsection "F" to Rule 5.19, entitled Billing Corrections, of the General Service Rules. The proposed addition to this rule is offered by the Attorney General. It would be subtitled Time Limit. It would read:

1. A utility may correct an underbilling which resulted from error only when it occurred within the twelve months before the utility discovered or was notified of the error, whichever is earlier. This limit does not apply to underbilling caused by tampering or unauthorized use of service.

2. The purpose of this time limit on billing corrections is to encourage utilities to correct errors promptly, and to relieve customers of unlimited liability for errors which go on for a long time without being discovered. If the Commission finds that a customer should
have reasonably discovered or prevented the error, the Commission may grant an exemption under Rule 1.03.

The Attorney General's proposed addition to Rule 5.19 of the General Service Rules would in most instances operate as a one-year statute of limitations barring a utility from collecting an underbilling. The Attorney General argues that giving a utility such a relatively short period of time within which to take action to correct an underbilling is justified because the utility is in a better position than the customer to detect or discover the error resulting in the underbilling. The Attorney General also argues that low and modest income customers can be subject to great financial hardship if utilities are allowed to seek recovery for underbillings occurring more than one year in the past.

Again, Staff counters the Attorney General's proposal with some compelling arguments. Staff's post-hearing brief points out that a rule prohibiting utilities from going back more than one year to collect underbillings could very well run afoul of existing Arkansas statutory and case law mandating that a regulated utility charge a customer the approved tariffed rate. Another point raised by Staff in its opposition to this proposed addition to Rule 5.19 of the General Service Rules is that it could result in utilities being unable to recover revenue, perhaps substantial in amount, for utility service actually furnished but underbilled and such losses being passed on to the general body of ratepayers through increased rates. Such a situation, of course, would unfairly penalize all of
As Staff states in its post-hearing brief,

Each underbilling situation can have a very different set of circumstances affecting it and the parties should be allowed to make specific arguments based upon the circumstances surrounding that situation without a one-year limit. Statutes of limitations may apply which the parties should be free to argue on a case-by-case basis.

Moreover, allowing the Commission to address underbilling situations on a case-by-case basis allows it to apply the equitable doctrines of laches and estoppel when appropriate to achieve a fair and just result.

After consideration of the Attorney General's requested addition to Rule 5.19 of the General Service Rules, it is found and determined that such proposal is unnecessary for the full protection of utility customers from utility action to correct erroneous underbillings, and thus this proposed addition is rejected and Rule 5.19 of the General Service Rules should be approved and adopted as written and proposed in the August, 1993, version.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From the petition, Appendices A-F attached thereto (being Staff's proposed rules changes), the amended petition, all other pleadings filed in this docket, the written comments filed in this docket, the testimony, evidence, oral public comments and arguments made and adduced at the hearing, the Stipulation filed August 30,
1993, and the attachments thereto, the post-hearing briefs submitted by the parties addressing the contested issues, and all other matters of record, I hereby make the following findings of fact and conclusions of law:

1. All jurisdictional utilities, parties and intervenors of record have been notified of this rulemaking proceeding for the time and in the manner prescribed by law.

2. The Arkansas Legislative Council and the Joint Interim Committee on Insurance and Commerce of the Arkansas General Assembly have been notified of this rulemaking proceeding for the time and in the manner prescribed by law.

3. The general public has been notified of this rulemaking proceeding by newspaper publication for two consecutive weeks in accordance with Rule 12.04 of the Arkansas Public Service Commission's Rules of Practice and Procedure.

4. Written comments have been received and duly considered in reaching these findings of fact and conclusions of law.

5. The proposed revisions to the Commission's rules, including both those covered by the Stipulation filed August 30, 1993, and those three disputed matters hereinbefore discussed and resolved, are necessary, desirable and in the public interest.

ORDERING SECTION

Consistent with the findings of fact and conclusions of law hereinbefore made, the following orders are made and directives given with respect to this rulemaking proceeding:
(a) The Stipulation filed in this docket on August 30, 1993, and made a part of the record of this rulemaking proceeding, together with the proposed General Service Rules, the Special Rules - Telecommunications (including the Operator Service Providers Rules approved on September 7, 1993, in Docket No. 92-079-R), the Special Rules - Gas, the Special Rules - Electric, the Special Rules - Water, and certain portions of the Rules of Practice and Procedure, all of which sets of rules were made an attachment to the Stipulation, are hereby approved and adopted.

(b) The effective date of all the rules hereby approved and adopted shall be December 15, 1994.

(c) All utilities which are required to file compliance tariffs in connection with the approval and adoption of these new rules shall file with the Secretary of the Commission, as a package, a set of compliance tariffs as identified in Appendix A to this order, no later than August 15, 1994. Each company's tariffs shall be filed in a separate "TF" docket referencing Docket No. 92-248-R.

(d) All utilities which are subject to such requirement shall furnish to the Consumer Services Office of the Arkansas Public Service Commission, as a package, the information required to be furnished by the rules hereby being approved and adopted, as identified in Appendix A to this order, no later than August 15, 1994. Each company's package of information shall reference Docket No. 92-248-R.
(e) On the effective date of these new rules hereby being approved and adopted, December 15, 1994, all currently effective general, standard or special rules and regulations which address subject matter covered and addressed by these new rules shall be deemed to be superseded; provided, however, utility tariffs currently on file which address matters not covered or addressed by these new rules, will not be considered superseded. To ensure that a complete and accurate compilation of all jurisdictional utilities' tariffs are available in the Office of the Secretary of the Commission, each utility shall provide along with the filing of its compliance tariffs pursuant to paragraph (c) above a listing of all of its tariffs which it considers to be superseded by these new rules.

(f) The Secretary of the Commission is directed to forthwith send a copy of this order to all jurisdictional utilities and other parties of record.

(g) Staff is hereby directed to coordinate with the Secretary of the Commission the compilation of the rules hereby being approved and adopted, and further to prepare a Table of Contents, Administrative History, and List of Applicable Pages for inclusion in each new set of rules before the revised compilation is made available for public distribution.

(h) Upon the final compilation of the new rules, including the Table of Contents, Administrative History, and List of Applicable Pages, the Secretary of the Commission shall send a copy
of this order together with a copy of the revised rules hereby being approved and adopted to all jurisdictional utilities and parties of record to this docket.

(i) Upon final compilation of these new rules, including the Table of Contents, Administrative History, and List of Applicable Pages, the Secretary of the Commission shall also send a copy of this order together with the revised and newly compiled rules to the Arkansas Legislative Council in accordance with Rule 12.05 of the Commission's Rules of Practice and Procedure.

(j) Upon final compilation of these new rules, including the Table of Contents, Administrative History, and List of Applicable Pages, the Secretary of the Commission shall also send a copy of this order together with certified copies of the revised and newly compiled rules to the Arkansas Secretary of State in accordance with Ark. Code Ann. §25-15-204(d)(1).

BY ORDER OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO DELEGATION.

This 16th day of June, 1994.

[Burl C. Rothenberry]
Administrative Law Judge

[Glenna Ford (acting)]
Jan Sanders
Secretary of the Commission

I hereby certify that the foregoing order issued by the Arkansas Public Service Commission has been served on all parties of record this date, by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.

[Jan Sanders]
Secretary of the Commission
Date 10-18-94
APPENDIX A

This Appendix is being attached to Order No. 7 of Docket No. 92-248-R for the purpose of assisting jurisdictional utilities, the Staff of the Arkansas Public Service Commission, and other interested parties in determining what compliance tariffs need to be filed with and information submitted to the Commission pursuant to Paragraphs (c) and (d) of the ORDERING SECTION of Order No. 7.

Required Compliance Tariff Filings

1. Amendments or Exemptions Granted by the Commission to the Rules [GSR 1.03; SR-T 1.03; SR-G 1.03; SR-E 1.03; SR-W 1.03; and RPP 1.03]

2. Extended Due Date Policy [GSR 5.09(B)] (New Requirement)

3. Levelized Billing Plan [GSR 5.10(C)] (New Requirement)

4. Extended Absence Payment Plan [GSR 5.11(B)] (New Requirement)

5. Provisions for Landlord/Tenants - Procedures for Identifying Accounts where Service is Provided at an Address Different from the Mailing Address for the Bill [GSR 6.19(A)]

6. Extension of Facilities [RPP 11.02(f)]

7. Minimum Heating Value of Gas [SR-G 6.02(B)]

8. Base or Absolute Gas Pressure [SR-G 6.03]

9. Normal Gauge Pressure for Gas [SR-G 6.04(D)]


11. Nominal Electric Voltage [SR-E 6.01(A)(1)]

12. Test Method for In-Service Electric Meters [SR-E 7.08(C)] (New Requirement)


14. Party Line Policy [GSR 6.01(S)] (New Requirement)

15. Tariff Revision Symbols [RPP 11.02(j)]
16. Charges Related to Customer Activity [RPP 11.02(d)]:

(a) Customer Account Record [GSR 2.04(A)]
(b) Energy Consumption Statement [GSR 2.04(B)]
(c) Membership Fee [GSR 3.01(E)(1)(c)]
(d) Deposit from Applicant [GSR 4.01(B)]
(e) Deposit from Landlords [GSR 4.01(B)(1)]
(f) Deposit Due to Bankruptcy [GSR 4.02(A)(7)]
(g) Deposit from Customers [GSR 4.02(B)]
(h) Late Payment Charge [GSR 5.07(C)]
(i) Processing Fee for Levelized Billing Withdrawal [GSR 5.10(C)(3)]
(j) Returned Check Charge [GSR 5.13]
(k) Meter Reading Report Charge [GSR 5.16(B)(3)]
(l) Meter Test Fee [GSR 5.18(C)(1)]
(m) Collection Fee [GSR 6.11]
(n) Reconnection Fee [GSR 6.12(C)]
(o) Finance Charge on Delayed Payment Agreements [GSR 6.13(1)]
(p) Additional Meter Charge [SR-G 3.05(A)(2); SR-E 3.06(A); and SR-W 3.06]

Information To Be Provided To The Consumer Services Office

1. Information to Customers [GSR 2.01(C)(4)]
2. Service Application [GSR 3.02]
3. Bill Form [GSR 5.02]
4. Shut-Off Notice Form [GSR 6.05]
5. Delayed Payment Agreement Form [GSR 6.14]
6. List of Complaint Contacts [GSR 2.07(A)(3)]