

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	FINAL DECISION AND
BY PATSY ALLYN, PEEVER, SOUTH DAKOTA,)	ORDER; NOTICE OF ENTRY
AGAINST OTTER TAIL POWER COMPANY)	OF ORDER
REGARDING BILLING AND TREE DAMAGE)	
)	CE02-001

On April 1, 2002, the Public Utilities Commission (Commission) received a complaint filed by Patsy Allyn, Peever, South Dakota (Complainant), against Otter Tail Power Company (Otter Tail) regarding billing and tree damage. The Complaint stated six allegations regarding Otter Tail's practices.

On April 2, 2002, the complaint was faxed to Otter Tail. Pursuant to ARSD 20:10:01:09, Otter Tail was notified that it must satisfy the complaint or file an answer in writing with the Commission by April 22, 2002. On April 22, 2002, the Commission received an answer from Otter Tail. On April 26, 2002, the Commission received a response from Complainant. On April 30, 2002, the Commission received a Stipulated Agreement from Otter Tail. On May 2, 2002, the Commission received a Motion to Continue Hearing to Allow Meter Testing Pursuant to Tariff and for an Order Requiring Complainant to Remove a Lock from Respondent's Meter Socket from Otter Tail. On May 3, 2002, the Commission received a Stipulated Agreement from Complainant. On May 9, 2002, at its regularly scheduled meeting, the Commission granted Otter Tail's motion to continue further proceedings in the matter pending testing of its meter pursuant to its tariff and to allow Otter Tail access to its meter, and on May 21, 2002, the Commission issued and served its Order Granting Motion. On August 12, 2002, the Commission received a Report on Electric Meter Test from Martin C. Bettmann, Staff Engineer, South Dakota Public Utilities Commission. On August 22, 2002, a Second Order for and Notice of Hearing was served on the parties setting the matter for hearing on September 5, 2002.

The hearing was held as scheduled on September 5, 2002, in Room 412 of the State Capitol Building, Pierre, South Dakota. Complainant, Otter Tail and Commission Staff appeared as parties in the proceeding. At the conclusion of the evidence, the Commission instructed the parties to file any additional submittals or closing arguments within ten days. On September 11, 2002, Complainant filed a Closing Argument.

The Commission scheduled the matter for decision at its regular meeting on September 24, 2002. The Commission voted unanimously to deny Complainant's Complaint on all issues.

Having considered the evidence of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

A. Incorrect Billing/Excessive Charges.

1. On May 9, 2002, the Commission granted Otter Tail's Motion to Continue Hearing to Allow Meter Testing Pursuant to Tariff based upon the Commission's findings and conclusions that:
 - a. The Otter Tail tariff on file and in effect with the Commission, Section No. 3, Volume I, Original Sheet No. 98.4 (copy attached), specifies the procedure to be followed for meter tests upon the request of the customer.

- b. The tariffed procedure is consistent with ARSD 20:10:17:05.
- c. The tariffed procedure provides for Complainant to have an independent representative present for the meter test.
- d. Otter Tail stated that it had no objection to Complainant or her representative being present to observe the removal, transportation, testing and reinstallation of the meter.
- e. A competent independent expert is available to Complainant to observe the test procedure.
- f. There is no evidence or indication that the Otter Tail test equipment will not accurately test the meter's performance.
- g. The test procedure specified in the tariff is a reasonable procedure.
- h. Complainant had pointed to no competent evidence, other than a meter test, to prove Complainant's allegations of metering inaccuracy and over-billing.

2. On August 7, 2002, a meter test was performed by Otter Tail on each of the two electric meters installed at Complainant's residence. Martin Bettmann, Commission Staff Engineer, observed the removal, transportation and testing of the meters. Exhibit OTP 9.

3. Certificates of Calibration dated July 15, 2002 demonstrate that Otter Tail's meter test equipment was functioning within the acceptable tolerance range established by standards ISO 9001:1994 and ANSI/INCSL Z540-1-1994. Exhibit OTP 9, Attachments 7, 8 and 9. There is no evidence or reason to believe that Otter Tail's meter test equipment or the methods used to test the meters were deficient. Transcript at 152.

4. The watt-hour tests on the two meters demonstrated that the RDC demand meter was reading 0.378% fast and the standard meter was reading 0.541% slow. Exhibit OTP 9; Transcript at 153. Both of these values are well within the billing meter accuracy standard of 2% established by ARSD 20:1017:06. Transcript at 153.

5. The demand test on the RDC demand meter demonstrated that the demand meter was reading demand 0.29% slow. Exhibit OTP 9. This value is well within the billing meter accuracy standard of 2% established by ARSD 20:1017:06 and indicates that the meter was reading in Complainant's favor.

6. The electric meters installed by Otter Tail at Complainant's home were measuring Complainant's usage of electricity within the standards for accuracy established by the Commission. Findings 3, 4 and 5.

7. The example of inconsistency between Complainant's January bill and Exhibit A2, "Change Summary Analysis" cited by Complainant's witness, Andy Allyn, is not in fact an inconsistency. The \$255.17 amount stated in Exhibit A2 for the 12-27-01 reading date is the amount included on Complainant's January bill for the demand meter after subtraction of that portion of the energy adjustment credit attributable to usage metered by the demand meter from the base bill amount (i.e. $6691 \text{ kwh} \times \$0.00147/\text{kwh} \text{ energy adjustment} = \9.84 cr ; $\$265.01 - \$9.84 = \$255.17$). Transcript at 30, 53 and 141 - 142; Exhibits A2 and A17.

8. Neither Complainant nor Commission Staff introduced any evidence of the misapplication by Otter Tail of its tariffed rates for electric service to Complainant's usage or other miscalculation or error in the calculation of Complainant's bills.

9. Other than the mere fact that Complainant's bills are high, there is no evidence in the record on which to base a finding that Otter Tail over-billed Complainant for her electric usage. On the other hand, the record is replete with evidence of the fact that Complainant's electric demand and usage is relatively high. Transcript at 92 - 93, 108 - 110, 144; Exhibit OTP 2.

10. The late payment charges of 1.5% plus \$2.00 assessed against Complainant by Otter Tail were in accordance with the notice of late charges stated on Complainant's bills and with Otter Tail's filed and approved Tariff. Exhibits A6 and A17 - A25.

11. Otter Tail did not incorrectly bill or overcharge Complainant for electric service.

B. Failure to Provide Copies of All Bills and Payments."

12. Complainant agreed that this issue is resolved and that she is not seeking relief on it. Transcript at 121.

C. Failure to Post Payments.

13. Complainant agreed that this issue is resolved and that she is not seeking relief on it. Transcript at 121.

D. Threatening to Make an NSF Complaint.

14. Complainant agreed that this issue is resolved and that she is not seeking relief on it. Transcript at 121.

E. Improperly Trimming Tree.

15. Complainant agreed that she is no longer seeking decision and relief on this issue. Transcript at 122.

F. Changing Billing Rate from RDC Rate to Standard Rate without Notice or Consent.

16. There is no evidence in the record that Complainant was switched off of Otter Tail's Controlled Demand Rate without her consent. Complainant's witness, Andy Allyn, testified that "[w]e came home and a different meter was in the socket." Transcript at 83. This is not evidence that Complainant's billing rate was changed, and in fact all of Complainant's billing exhibits indicate that the Controlled Demand Rate was in effect for Complainant at least through the July 3, 2002 billing date. Exhibits A6 and A17 - A25.

17. The evidence indicates that Otter Tail attempted to work with Complainant to assist in lowering her electric usage and advised Commission Staff and Complainant in March of 2001, concerning potential high charges Complainant could incur because of Complainant's high demand under the RDC rate. Exhibits A9 and OTP2.

18. Complainant has now requested to be taken off the RDC rate and is no longer on the RDC

rate. Transcript at 138.

19. There is no evidence to support Complainant's position that Otter Tail improperly took Complainant off of the RDC rate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-2.1, 49-34A-3, 49-34A-4, 49-34A-9, 49-34A-10, 49-34A-26, 49-34A-27, 49-34A-39, 49-34A-40, and 49-34A-58.

2. Complainant agreed on the record that she no longer seeks relief under Complaint items 2 through 5, inclusive, and these issues are therefore deemed to be settled and appropriate for dismissal.

3. With respect to issue numbers 1 and 6, improper billing and changing of the billing rate without consent, Complainant failed to demonstrate that Otter Tail improperly billed or overcharged Complainant for electric service or that Otter Tail changed Complainant's billing status without her consent, and the Complaint is accordingly denied and dismissed as to issue numbers 1 and 6.

4. Otter Tail was not shown to have committed any unlawful or unreasonable act, rate, practice or omission, and relief under the Complaint is accordingly denied.

It is therefore

ORDERED, that the Complaint of Patsy Allyn is denied.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 28th day of October, 2002. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 28th day of October, 2002.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ROBERT K. SAHR, Commissioner