



Energy & Utility ADVISORY ■

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Metering Errors & Billing Adjustments: Simple Solutions

Finding an error in a monthly utility bill is not unusual and easily corrected from an operations perspective. For example, in the Georgia natural gas market, almost 78 percent of the consumer inquiries and complaints received by the Georgia Public Service Commission last year (approximately 600 in all) have related to “billing” issues, including customer concerns regarding the accuracy of their bills.¹ Billing errors pose problems for customers and utilities alike. However, in contrast to their customers, utilities simply do not benefit from the numerous consumer-friendly statutes and regulations in Georgia that specifically protect consumers.² The consequences can be significant.

One of the more recent examples involved a billing dispute between a Georgia municipal natural gas utility (the “City”) and one of the City’s industrial customers (“Industry”), which utilized natural gas to operate a manufacturing facility.³ The dispute arose when, from 1990 to 1998, the City installed four new gas meters at Industry’s facility, mistakenly believing that all four meters measured natural gas consumption in hundreds of cubic feet.⁴ In fact, one of the meters measured gas consumption in thousands of cubic feet.⁵ By the time the City realized the problem in 2002, Industry had essentially consumed approximately \$1.5 million worth of natural gas free of charge.⁶ Nevertheless, when the City back-billed Industry and demanded payment, Industry refused.⁷

To recover the bill that Industry had refused to pay, the City filed suit against Industry in Georgia state court, alleging claims for breach of ordinance, quantum meruit, unjust enrichment and attorneys’ fees; Industry removed the case to the

¹ See Ga. Pub. Serv. Comm’n, *PSC Certified Gas Marketers’ Scorecard*, http://www.psc.state.ga.us/consumer_corner/cc_gas/scorecard.asp (last visited Nov. 26, 2013).

² For instance, O.C.G.A. § 46-4-160.2 specifies that whenever a customer of a natural gas marketer notifies the marketer of an error in the customer’s bill, the marketer has 30 days to correct the error and, if it fails to do so, “the burden of proof shall be on the marketer to show why the bill is correct.” O.C.G.A. § 46-4-160.2(a); see also GA. COMP. R. & REGS. 515-7-6-.04(e).

³ *City of Lawrenceville v. Ricoh Elecs., Inc.*, 174 F. App’x 492 (11th Cir. 2006).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 492-93.

⁷ *Id.*



Northern District of Georgia on diversity grounds.⁸ In the end, the district court ruled that the ordinance underlying the City's primary claim was invalid.⁹ Specifically, the court held that the City had failed to show that the ordinance in question, which, according to the City, set the City's natural gas rates as a matter of law, was adopted in accordance with the requirements established by the City's charter.¹⁰ As to the City's other claims, the court found that, in substance, they were all claims for indebtedness on an account, but that, under Georgia law, the account balance actually stated on a customer's bill must be "presumed correct and conclusive between the parties regardless of the actual correct amount owed."¹¹ Thus, because the City's "unilateral" mistake in calculating Industry's bills did not constitute grounds to reform the account balances actually stated on the bills, the court entered summary judgment against the City and in favor of Industry.¹² Although the City appealed the district court's rulings as to its breach of ordinance and attorneys' fees claims, the Eleventh Circuit affirmed the lower court's decision, agreeing that the City had not submitted evidence of a valid ordinance, and therefore could not recover on either claim.¹³

What Can Local Government Utilities Do Now to Ensure the Right to Adjust a Customer's Bill Later?

Billing errors happen, but they simply do not have to turn into a million-dollar problem. Instead, the utility can make enforceable changes to the utility's service terms, either by lawfully adopting an ordinance (if the utility is a local government) or effecting a contract right (preferably both), to allow the utility to make adjustments to a customer's bill in the event the utility charges the customer an amount less than the amount lawfully due under the applicable rate. With those changes in effect, the utility should be able to collect the full amount owed by a customer as a result of an underbilling. The basic terms to be included in the service terms are fairly straightforward. The following are two examples of language that can be used in service terms respecting billing adjustments:

- **Billing Adjustments Option 1:** Adjustments due to metering that registers outside of the allowable limits shall be limited to terms of no longer than [twelve (12)] billing months where the Customer is due a refund or [six (6)] billing months¹⁴ where the Customer is assessed additional charges. The Utility will credit the Customer's account for the difference between the amounts previously billed and the adjusted estimated amounts, should the adjusted estimated amounts be less than amounts actually billed. The Customer shall pay to the Utility the difference in cases where the adjusted estimated amounts exceed the amounts billed. Other billing adjustments resulting from meter reading, billing, Customer classification or any other errors shall be similarly limited to [twelve (12)] months where the Customer receives a billing credit and [six (6)] months where the Customer is billed additional amounts.

⁸ See *City of Lawrenceville v. Ricoh Elecs., Inc.*, 370 F. Supp. 2d 1328, 1329-30 (N.D. Ga. 2005), *aff'd*, 174 F. App'x 492 (11th Cir. 2006).

⁹ *Id.* at 1330.

¹⁰ *Id.*

¹¹ *Id.* at 1331.

¹² See *id.* at 1331-33.

¹³ See 174 F. App'x at 492 n.1, 493-97.

¹⁴ Given the many instances where underbilling has gone unnoticed by a utility for several years, utilities should choose this term carefully.

- **Billing Adjustments Option 2:** An adjustment of past bills for service will be made on Customer complaint, after a reasonable investigation by the Utility reveals the meter is in excess of 102-percent average accuracy. The amount of adjustment shall be calculated on the basis that the metering Equipment should be 100-percent accurate. For kilowatt and kilowatt-hour meters, the average shall be the arithmetic average of percent indication at light load and at heavy load, giving the heavy load indication a weight of four. The records of the Customer's energy use and those of previous tests shall be reviewed and a mutually acceptable agreement reached between the Customer and the Utility as to when the error began. Meters below 98-percent average accuracy will be handled as above except that adjustments will be limited to the preceding [six (6)] months.

Simply put, although each utility should tailor the specific language of a billing adjustments provision to its own particular circumstances and concerns, by utilizing some variation of the form language set forth above, utilities in Georgia can act now to protect themselves from the serious consequences that everyday billing errors can cause. In other words, an ounce of prevention...

What Other Utility Service Terms and Charter Provisions Should Every Municipal Utility Consider?

Adding a billing adjustments provision to a utility's service terms is just one of the many proactive measures that a utility can take to safeguard itself for the future. Indeed, by implementing certain service term amendments, ordinances or charter provisions now, utilities can better protect themselves against a range of potential issues arising out of anything from disputes related to security deposits and service rates, to those involving delinquent accounts and bill collection. In an effort to help utilities address these issues, Alston & Bird has put together a collection of model service terms covering many of the basic topics and concerns that Georgia utilities encounter every day.

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