



CITY OF LONG BEACH
CITY CLERK

~~C-10~~
CH-1

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • (562) 570-6101 FAX (562) 570-6789

May 10, 2005

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Set the date of hearing for Tuesday, May 24, 2005, at 5:00 p.m.

DISCUSSION

It is requested that the City Council set the date of hearing to review and consider the report of the hearing officer for the Appeal of October 29, 2004 Administrative Hearing Gas Bill Dispute.

In accordance with Section 2.93.050, of the Long Beach Municipal Code, please find enclosed the final findings and recommendations of the Hearing Officer, from the hearing conducted on April 4, 2005. The Hearing Officer has submitted his report for review. In accordance with Section 2.93.050 (7), the City Council shall set a date of hearing to review and consider the report. All evidence submitted at the evidentiary hearing is available for review by City Council upon request.

FISCAL IMPACT

None.

SUGGESTED ACTION:

Approve recommendation

Respectively submitted,

LARRY G. HERRERA
CITY CLERK

Prepared by:
Irma Heinrichs

LAW OFFICES
WISE PEARCE YOCIS & SMITH
A PROFESSIONAL CORPORATION

SUSAN E. ANDERSON WISE
MICHAEL J. PEARCE
THOMAS J. YOCIS
STEPHEN M. SMITH
MATHEW J. VANDE WYDEVEN
JAMES M. COX

249 EAST OCEAN BOULEVARD, SUITE 440
P. O. BOX 22664
LONG BEACH, CALIFORNIA 90801
(562) 437-9797
FAX (562) 437-6868
www.wiselawyers.com

RECEIVED
CITY CLERK
LONG BEACH, CALIF.
05 APR 20 05 11:00 AM
GEORGE E. WISE
OF COUNSEL

April 18, 2005

Dr. Willie Goffney
5552 El Cedral Street
Long Beach, CA 90815

Larry G. Herrera, City Clerk
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Richard F. Anthony, Deputy City Attorney
Office of the City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802

Rosie Bouquin
Utility Customer Services Officer
Dept. of Financial Management
Commercial Service Bureau
333 West Ocean Boulevard, 5th Floor
Long Beach, CA 90802

**Re: Appeal of October 29, 2004 Administrative Hearing
Gas Bill Dispute, Willie Goffney, 5552 El Cedral Street, Long Beach, CA
June 4, 2004 - June 6, 2004 - Account Number : 3723-2250-4
Hearing Date: April 4, 2005
My File No.: 6425.2**

Dear Dr. Goffney, Mr. Killebrew, Mr. Herrera and Ms. Bouquin:

As you know, I was appointed as the hearing officer in the above-reference appeal. The hearing was conducted on April 4, 2005 at 9:00 a.m. in the 4th Floor conference room. Enclosed please find my Statement of Decisions/Report.

If you need anything further, please contact me.

Yours sincerely,

WISE PEARCE YOCIS & SMITH



Mathew J. Vande Wydeven

ENCLS
/mvw

1 In the Matter of the Appeal of the
2 November 8, 2004 Administrative Decision
3 Re: Disputed Gas Bill

4 Account Number: 3723-2250-4
5 Service Dates: June 4, 2004 - June 6, 2004

6 Dr. Willie Goffney
7 5552 El Cedral Street
8 Long Beach, California

**STATEMENT OF DECISION
AND REPORT**

DATE: April 4, 2005
TIME: 9:00 a.m.
LOCATION: 4th Floor Conference
Room, 333 West
Ocean Boulevard,
Long Beach, CA
90802

9 **1. INTRODUCTION:**

10 This matter relates to disputed charges for natural gas provided by the City of Long
11 Beach to Dr. Willie Goffney (Account Number: 3723-2250-4) for his residence located at 5552
12 El Cedral Street, Long Beach, California. The service period was June 4, 2004 through July
13 6, 2004, and the disputed amount was \$414.66. Dr. Goffney complained that his July bill was
14 excessive, and he requested administrative review. On October 29, 2004 an Administrative
15 Hearing was conducted regarding the disputed gas bill and an Administrative Decision was
16 rendered on November 8, 2004 against Dr. Goffney. A gas usage adjustment was not
17 authorized, and it was determined that Dr. Goffney must bear the financial responsibility for
18 the subject gas usage charges.

19 Public Utilities Code, Section 10010 requires that any customer whose complaint or
20 request for an investigation has resulted in an adverse determination by a public utility may
21 appeal the determination to the governing body of the municipal corporation. Long Beach
22 Municipal Code, Section 2.93.050 provides that the City Council may refer appeals to a
23 Hearing Officer to conduct a hearing and submit a report.

24 On January 18, 2005, the City Council recommended that this matter be referred to a
25 Hearing Officer for appeal. On or about February 9, 2005, the undersigned was assigned as
26 the Hearing Officer for an Appeal of the November 8, 2004 Administrative Decision.

27 The Appeal was heard on April 4, 2005. The following persons attended the hearing:
28 Appellant, Dr. Willie Goffney; Deputy City Attorney, Richard F. Anthony; Utility Customer
Service Officer, Rosie Bouquin; and Superintendent of Operations-Gas Services Bureau,
David Black.

1 What follows is the Statement of Decision and Report.

2 **2. FINDINGS OF FACT AND STATEMENT OF RELEVANT EVIDENCE:**

3 Dr. Goffney (Account Number is 3723-2250-4), whose residence address is 5552 El
4 Cedral Street, Long Beach, California, disputes a gas bill for the period of June 4, 2004
5 through July 6, 2004 in the amount of \$414.66. The bill was sent to Dr. Goffney in the ordinary
6 course and was for natural gas which was provided by the City of Long Beach for "use" at Dr.
7 Goffney's residence.

8 On or about June 23, 2004, Dr. Goffney's wife detected the smell of natural gas at the
9 property and contacted Long Beach Energy. A field representative was dispatched to the
10 Goffney's home and it was determined that there was a gas leak. The gas meter was turned
11 off in compliance with energy department practices after it was determined that there was a
12 "90.0 CFPH gas leak of undetermined source" in the gas line which serviced the pool heater.

13 On or about June 24, 2004, a request to restore gas services was made. A field
14 representative noted that a plumber had located and capped the gas line to the pool heater.
15 Gas service was restored, and pilot lights were relit.

16 When Dr. Goffney called to question the amount of his July utility bill, a "High Bill
17 Investigation" was initiated. As part of the "High Bill Investigation" a "Demand Test" of the gas
18 meter servicing 5552 El Cedral was conducted on or about September 15, 2004. The testing
19 confirmed that the meter was within allowable tolerances as set by the Municipal Code. That
20 is, the gas meter was in proper working order. This was not disputed by Dr. Goffney.

21 The fact that the natural gas was provided, and that it passed through the meter and
22 into the gas lines located within Dr. Goffney's property, was also undisputed. It is also
23 undisputed that the gas line which leaked was the line which serviced Dr. Goffney's pool
24 heater. The subject leak was determined to be at or near a joint in the piping system which
25 was buried under approximately 2 feet of concrete and dirt.

26 **3. STATEMENT OF ISSUES:**

27 Dr. Goffney essentially does not dispute any of the above facts. He, in fact, confirms
28 that the gas leak originated from a gas line which was located within the boundary lines of his

1 own property, and not from a gas line owned or maintained by the City of Long Beach. He
2 does not contend that the gas meter was defective or that it malfunctioned in any way.

3 Dr. Goffney's arguments at the hearing on Appeal were twofold. First he argued that
4 since he did not actually "use" the lost gas for any purpose (e.g. to heat his pool), he should
5 not be charged for the "unused" gas.

6 Second, Dr. Goffney argued that the City of Long Beach Energy Department should
7 have some "discretion" to reduce "high bills" caused by natural gas leaks in customers' gas
8 lines. He believes that the Municipal Code is applied too strictly. He claims that the City
9 should have discretion to reduce bills similar to that provided to the water department.

10 **4. DECISION:**

11 Long Beach Municipal Code, Section 15.40.140 (M) provides that: "All pipe beyond that
12 outlet connections of the meter, master meter, or bank of meters, shall be maintained by
13 applicant, customer, and the owner of the property, and the gas utility shall not be responsible
14 for any loss of gas or any loss or damage whatsoever caused by or arising out of, or in
15 connection with pipe or equipment installed beyond the outlet of the gas utility meter, master
16 meter or bank of meters." Thus, the code clearly and unambiguously places the financial
17 burden of a gas leak downstream of the meter on the customer.

18 As such, the financial responsibility for the cost of the natural gas which passed through
19 Dr. Goffney's meter, into his lines, and out of the leak in his piping system must be borne by
20 Dr. Goffney, and not the City of Long Beach. The code does not require that the gas be
21 actually "used" for some purpose. The Municipal Code clearly places the risk of loss due to
22 leaks in customer piping on the customer.


23 Since it is undisputed that the excess gas charges in this case stemmed from a leak
24 in the gas line on Dr. Goffney's property which he was charged with maintaining, he must bear
25 the cost of such excess charges.

26 The argument raised by Dr. Goffney that the City should have the "discretion" to reduce
27 excess gas bills in situations like this is not an argument that can be addressed in this
28 proceeding. The Hearing Officer can only apply the facts of this case to the applicable law.

1 Whether the Municipal Code is "too stringent" and whether the City should have "discretion"
2 to reduce high gas bills caused by leaks are "legislative" rather than "judicial" issues.

3 Since Long Beach Municipal Code, Section 15.40.140 (M), as applied to the facts of
4 this case, unequivocally places the financial burden upon Dr. Goffney, the November 8, 2004
5 Adminstrative Decision must be AFFIRMED.

6 Dated: April 18, 2005

7 
8 _____
9 Mathew J. Vande Wydeven
10 Hearing Officer

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28