

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

William L. Gehrs, Jr.

v.

Complaint #EC-2018-0033

Empire District Electric Company

BRIEF

Comes now Complainant, William L. Gehrs, Jr. and states the following:

OPENING STATEMENT

I believe that Judge Clark has a good understanding of the issues before the Commission so I will not take up the Judge's time reciting the hearing transcript. I will be brief in my discussion. All references to exhibits refer to the exhibits entered at the hearing on June 14, 2019 and are part of the hearing transcript unless otherwise stated.

ARGUMENT

I. Empire is Estopped by its Conduct

In Exhibit 5-C (Gehrs Direct Testimony), Schedules A&B were documents provided to me in 2009 by Carl Daugherty, at that time an employee of Empire District Electric Company. These schedules purport to show that having a RG rate (Residential) was more economical than the CB rate (Commercial) for my apartment building at 1802 S. Wall Ave, Joplin, Missouri. I have since discovered that the schedule failed to include the additional customer charges or the loss of the kWh discount over 600 kWh per month.

I believe that because of Empire's conduct through Mr. Daugherty, plus its repeated failure to properly administer and charge in accordance with its tariff, as shown in Exhibits 2-C, 3-C, 4-C and 7-C. I am entitled to claim Empire should be estopped from collecting the additional customer charges per month and the kWh overcharge at least since 2009. (See Exhibit 5-C, page 2, lines 22-24, page 3, lines 11-26)

Under the legal theory of promissory estoppel as I understand it, the following elements must exist:

- a. A legal relationship (I am a customer of Empire);
- b. A promise made by one party to another (Schedules A & B of Exhibit 5-C);
- c. A reliance by the injured party on the promise by the other (As a customer, I should be able to rely on representations made by my utility company);
- d. I suffered a loss by my reliance on Empire's representations (See above mentioned Exhibit 5-C);
- e. It is unfair to allow Empire to break its promise to me (It would violate the Fair, Just and Reasonable Requirement).

I believe that all five elements have been met in my case and that Empire was not legally entitled to charge the additional customer charges per month and that I should have received a kWh discount rate for all usage above 600 kWh per month since 2009.

II. Fair, Just and Reasonable Rates

Empire's RG tariff, Paragraph 2 under Conditions of Service, states that service will be furnished for the sole use of the customer and will not be resold, redistributed or sub-metered, directly or indirectly. (See Exhibits 13, 14 and 15)

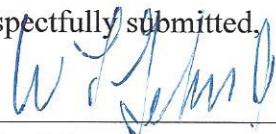
This provision prohibits an owner of a pre-1981 apartment building cannot pass on his electric cost to the tenants resulting in a disproportionate cost of electric versus a post-1981 apartment building.

In that the tariff provides that its electric service is for the "sole use" of the customer (me) should be entitled the same billing as a post-1981 apartment building customer (1 customer charge and kWh reduction above 600 kWh usage per month.

PRAYER

The excessive charges by Empire to me at 1802 S. Wall Ave violate the requirements of fair, just and reasonable rates charged. Empire has no increased cost in generation, equipment or labor in providing me electricity there. In addition, I am charged a monthly customer charge for vacant apartment units, again with no increased cost to Empire whereas a post-1981 apartment building owner does not receive that charge unless the owner chooses. I am not given the choice.

Respectfully submitted,



W.L. Gehrs, Jr.

201 N. Wall #17

Joplin, MO 64801

budgehrs@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed in EFIS on this 12 day of July, 2019, with notification sent to all parties.



William L. Gehrs, Jr.

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Joplin, MO 64801

budgehrs@yahoo.com

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Consent to and Adoption of Brief

Comes now Bob Higginbotham, an interested party in this cause, and consents with the Brief filed by William L. Gehrs, Jr. on July 12, 2019 and adopts it as his own for consideration by the Commission as it may see fit.



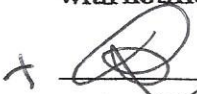
Bob Higginbotham

Dated:

7-12-19

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed in EFIS on this 12 day of July, 2019, with notification sent to all parties.



Bob Higginbotham