

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

William L. Gehrs, Jr.,)	
)	
Complainant,)	
)	
vs.)	File No. EC-2018-0033
)	
The Empire District Electric Company,)	
)	
Respondent.)	

EMPIRE’S POST-HEARING BRIEF

COMES NOW the Respondent, The Empire District Electric Company (“Empire” or the “Company”), and respectfully submits its Post-Hearing Brief to the Missouri Public Service Commission (“Commission”):

The facts relevant to the Amended Complaint filed herein by William L. Gehrs, Jr. (“Mr. Gehrs”) are not in dispute, and these facts demonstrate that Empire has not violated any tariff, rule, order, or law under the Commission’s jurisdiction with regard to the service provided to Mr. Gehrs. As such, the Commission must dismiss or deny the Amended Complaint.

The Subject Properties. Empire provides electric service to the Complainant, Mr. Gehrs, at the following addresses: 1802 S. Wall Ave. and 201 N. Wall Ave. in Joplin, Missouri, as well as at 1081 Alexandra Circle in Oronogo, Missouri.¹ A 14-unit apartment building at 1802 S. Wall Ave. is the subject of Mr. Gehrs’ Amended Complaint (the “Gehrs Property”).² Empire provides electric service to Intervenor Bob Higginbotham (“Mr. Higginbotham”) for his 10-unit apartment building at 421 W. 3rd Street (the “Higginbotham Property”).³ Both the Gehrs

¹ Ex. 1, Stipulation of Facts, ¶12.

² Ex. 1, Stipulation of Facts, ¶13.

³ Ex. 1, Stipulation of Facts, ¶12.

Property and the Higginbotham Property were constructed prior to 1981.⁴ A single meter is used to serve all 14 units at the Gehrs Property, and a single meter is used to serve all 10 units at the Higginbotham Property.⁵

The Applicable Tariffs and Commission Rule. Commission Rule 4 CSR 240-20.050(2) provides that each residential and commercial unit in a multi-occupancy building shall have a separate meter for each unit, but this rule applies only to buildings where construction began after June 1, 1981:

Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

The stated purpose of Rule 4 CSR 240-20.050 is to prescribe “individual metering for new multiple occupancy buildings and new mobile home parks for all electric corporations under the jurisdiction of the Public Service Commission.” Due to the exception for construction on or prior to June 1, 1981, the rule does not mandate that Empire require the Gehrs Property and the Higginbotham Property to have a separate meter for each residential unit.

Service is provided to the Gehrs Property and the Higginbotham Property under Empire’s Residential Service tariff, Schedule RG. The Company Rules and Regulations, PSC Mo. No. 5, Section 5, are also applicable. Paragraph 4 of the Conditions of Service in Empire’s Residential Service tariff, Schedule RG – PSC Mo. No. 5, Sec. 1, Sheet No. 1, provides as follows:

If this schedule is used for service through a single meter to multiple-family dwellings within a single building, each Customer charge and kWh block will be multiplied by the number of dwelling units served in calculating each month’s bill.

Empire’s Schedule RG, PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No. 1, provides for a \$13 customer charge. The \$13 customer charge took effect September 14, 2016. Paragraph 4 of the

⁴ Ex. 1, Stipulation of Facts, ¶4 and ¶12.

⁵ Ex. 1, Stipulation of Facts, ¶5 and ¶12.

Conditions of Service in Empire's Residential Service tariff is specifically designed to address properties like the Gehrs Property – multi-family dwellings within a single building that are served through a single master meter. The only applicability of this tariff provision is to multi-unit buildings, like the Gehrs Property, that were constructed on or before June 1, 1981, or are otherwise exempt from the requirement to have a separate meter for each unit.

Attached as Exhibit B to Mr. Gehrs' Amended Complaint are two bills for service by Empire to the Gehrs Property: one from 2006 and one from 2017. The 2006 bill shows a customer charge of \$144.90 (14 units x \$10.35, the customer charge in effect as of March 27, 2005). The 2017 bill shows a customer charge of \$182 (14 units x \$13.00, the customer charge in effect as of September 14, 2016).⁶ These bills provided by Mr. Gehrs demonstrate that the Gehrs property is billed for electric service in compliance with Empire's Residential Service tariff, Schedule RG, which requires that, "for service through a single meter to multiple-family dwellings within a single building, each Customer charge and kWh block will be multiplied by the number of dwelling units served in calculating each month's bill."

Empire's Residential Service tariff, Schedule RG, is the appropriate tariff for service provided to the Gehrs Property. This tariff schedule, Exs. 13-15, provides that it is "available for residential service to single-family dwellings or to multi-family dwellings within a single building." Empire's commercial tariff schedules, on the other hand, cannot be used for service provided to single building apartment complexes like the Gehrs Property and the Higginbotham Property. *See* Commercial Service Schedules GP and CB, of which the Commission took official notice (Tr. Vol. IV, pp. 121-122) (available for electric service to any general service customer "except those who are conveying electric service received to others whose utilization of same is purely for residential purposes other than transient or seasonal"). As explained by Staff witness

⁶ Ex. 1, Stipulation of Facts, ¶10.

Robin Kliethermes, hotels and motels may be served under Empire's commercial tariffs, but apartment buildings like the Gehrs Property must be served under Empire's residential tariff.⁷

Mr. Gehrs' Requests for Relief. In this Complaint proceeding, Mr. Gehrs is requesting a "credit to any property owner who paid customer access charges in excess of a single fee per meter" from 1978 to the present. Mr. Gehrs is also requesting the deletion of Paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule RG (Ex. 19c).

As discussed above, Mr. Gehrs' first request for relief is in direct contravention of Empire's tariff. It is an impermissible collateral attack on Empire's filed and approved tariffs and would constitute a violation of the filed rate doctrine. Empire lawfully supplied retail electric energy services to the Gehrs Property pursuant to its filed and approved tariff. Consistent with Residential Service Schedule RG, since the Gehrs Property is serviced through a single meter to multiple family dwellings within a single building, the customer charge and kWh block are multiplied by the number of dwelling units served in calculating each month's bill.

In the event of an overcharge, which Empire strenuously denies, then, pursuant to Commission Rule 4 CSR 240-13.025(a) and the Company Rules and Regulations, any adjustment must be limited to a period of not more than 60 months. Additionally, the relief sought is not within the Commission's jurisdiction, in that the Commission cannot order any monetary or pecuniary award, refund, or reparation. Further, to Empire's knowledge, Mr. Gehrs lacks authorization or standing to bring a Complaint on behalf of other Empire customers.

Empire, at all times, strives to provide safe and reliable service at just and reasonable rates and in conformity with its tariffs on file with and approved by the Commission. Empire was required by its tariffs to bill Mr. Gehrs a customer charge for each living unit within his apartment building. With regard to Mr. Gehrs' second request for relief – the requested tariff

⁷ Tr. Vol. IV, p. 179, lines 3-10.

change – Empire does not mean to be contrary or dismissive of Mr. Gehrs’ concerns. A change of this sort, however, should only be made after careful study and only in a rate case, where the utility's cost of service and revenue requirement are studied in detail, as well as the proper method for collecting the revenue requirement from the various classes.

The requested tariff change, at this time, would constitute single issue ratemaking, without consideration of all relevant factors. With regard to the requested change, the Complaint is also in violation of RSMo. 386.390 (“no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or . . . not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service”).

WHEREFORE, Empire submits its Post-Hearing Brief for the Commission’s consideration. Empire respectfully requests that the Commission dismiss or deny the Amended Complaint and grant such additional or further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527

THE EMPIRE DISTRICT ELECTRIC COMPANY

428 E. Capitol Ave., Suite 303

Jefferson City, Missouri 65101

Joplin Office Phone: (417) 626-5976

Cell Phone: (573) 289-1961

E-Mail: Diana.Carter@LibertyUtilities.com

CERTIFICATE OF SERVICE

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

/s/ Diana C. Carter