

Exhibit No.: _____
Issue: Residential Customer Charge
Witness: Patsy J. Mulvaney
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Sponsoring Party: The Empire District Electric Co.
Case No.: EC-2018-0033
Date Testimony Prepared: April 2019

**Before the Public Service Commission
of the State of Missouri**

**Rebuttal Testimony
of
Patsy J. Mulvaney**

April 19, 2019



Liberty Utilities®
EMPIRE DISTRICT

REBUTTAL TESTIMONY
OF
PATSY J. MULVANEY
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. EC-2018-0033

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Patsy J. Mulvaney, and my business address is 602 S. Joplin Avenue, Joplin, Missouri.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Liberty Utilities Service Corp., an indirect subsidiary of Algonquin Power & Utilities Corp. I am the Director of Customer Experience for Liberty Utilities Central Region which includes The Empire District Electric Company (“Empire” or “Company”).

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AT EMPIRE?

A. Sixteen years ago I began working for Empire as a Contact Center Representative. After 8 years at the Contact Center, I transferred to Billing Operations for approximately one year. After that, I was promoted to Manager of the Contact Center serving there for three years. In 2015, I was promoted to my current position, Director of Customer Experience, where I oversee the following departments: Contact Center (49 employees), Customer Service Offices (37 employees), Credit & Collections (13 employees), Billing Operations (44 employees), Customer Support and Quality & Assurance (2 employees), Marketing

and Communications (5 employees) and Utility Specialists (2 employees).

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION (“COMMISSION”)?

A. Yes. I provided testimony on behalf of Empire in Commission Case No. EO-2017-0277, a change of supplier case.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING BEFORE THE COMMISSION?

A. The purpose of my rebuttal testimony is to respond to the issues presented in the Amended Complaint filed by the Complainant, William L. Gehrs, Jr., and to respond to the Direct Testimony of Mr. Gehrs and the Direct Testimony of Bob Higginbotham filed in this matter on behalf of Mr. Gehrs.

Q. IS MR. HIGGINBOTHAM A PARTY TO THIS PROCEEDING?

A. Yes, Mr. Higginbotham applied for and was granted intervention in this matter, but he is not a Complainant.

II. EMPIRE’S TARIFFS AND THE COMMISSION’S RULES

Q. DOES EMPIRE PROVIDE ELECTRIC SERVICE TO MR. GEHRS?

A. Yes. Empire provides electric service to a William L. Gehrs at the following addresses: 1802 S. Wall Ave. and 201 N. Wall Ave. in Joplin, Missouri, as well as 1081 Alexsandra Circle in Oronogo, Missouri.

Q. UNDER WHAT TARIFF(S) DOES EMPIRE PROVIDE ELECTRIC SERVICE TO MR. GEHRS AT 1802 S. WALL AVE., THE PROPERTY WHICH IS THE SUBJECT OF MR. GEHRS’ COMPLAINT.

A. According to Empire’s records, Mr. Gehrs has been served under Empire’s Residential

1 Service tariff, Schedule RG, since as far back as 1980. The Company provides service
2 pursuant to Schedule RG – PSC Mo. No. 5, Sec. 1, Sheet Nos. 1 and 1a. The Company
3 Rules and Regulations, PSC Mo. No. 5, Section 5, are also applicable.

4 **Q. PLEASE DESCRIBE THE STRUCTURE SERVED BY EMPIRE AT 1802 S.**
5 **WALL AVE.**

6 A. The Company provides electric service to a 14-unit apartment complex located at 1802 S.
7 Wall Ave. in Joplin, Missouri.

8 **Q. IS THERE A METER INSTALLED FOR EACH APARTMENT UNIT?**

9 A. No. A single meter serves the entire 14-unit apartment complex.

10 **Q. DOES EMPIRE PROVIDE ELECTRIC SERVICE TO OTHER PROPERTIES IN**
11 **THE JOPLIN AREA?**

12 A. Yes. Empire provides electric service to approximately 26,000 customers in the Joplin
13 area. Approximately 22,000 of those customers are served under residential tariffs, 3,600
14 of those customers are served under commercial tariffs, and 70 of those customers are
15 served under industrial tariffs.

16 **Q. WHO DETERMINES BY WHICH TARIFF(S) A CUSTOMER IS PROVIDED**
17 **SERVICE?**

18 A. Empire assesses a customer's qualifications and requirements and determines a
19 customer's eligibility for a particular tariff. If a customer is eligible to receive service
20 under more than one tariff, Empire will provide the options to the customer for them to
21 choose from.

22 **Q. ON PAGE 2 OF HIS DIRECT TESTIMONY, MR. GEHRS STATES THAT**
23 **EMPIRE, IN JUNE OF 2009, APPROACHED HIM ABOUT WHETHER IT**

1 **WOULD BE MORE ECONOMICAL FOR HIM TO BE SERVED UNDER THE**
2 **COMMERCIAL TARIFF (CB) OR THE RESIDENTIAL TARIFF (RG). UNDER**
3 **WHAT SERVICE IS MR. GEHRS ELIGIBLE TO RECEIVE SERVICE FOR**
4 **THE PROPERTY AT 1802 S. WALL AVE.?**

5 A. Mr. Gehrs is only eligible for residential service at 1802 S. Wall Ave.

6 **Q. PLEASE EXPLAIN.**

7 A. Empire's residential tariff states, among other things, that it applies to multiple family
8 dwellings within a single building served through a single meter, qualifying Mr. Gehrs'
9 apartment building for service under Empire's residential tariff. Service under Empire's
10 commercial tariff is for the "sole use" of the Customer, and the service cannot be resold
11 or redistributed. Mr. Gehrs' receives service from Empire for an apartment building at
12 1802 S. Wall Ave. Although Mr. Gehrs is the sole "customer," the electricity provided by
13 Empire is not used only by Mr. Gehrs. Instead, it is redistributed to all of his tenants.
14 Therefore, the apartment building does not qualify for service under Empire's
15 commercial tariff.

16 **Q. WHAT DO EMPIRE'S TARIFFS PROVIDE REGARDING SERVICE TO**
17 **MULTI-UNIT RESIDENTIAL PROPERTIES SERVED BY ONLY ONE METER?**

18 A. Paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule
19 RG – PSC Mo. No. 5, Sec. 1, Sheet No. 1, provides as follows: "If this schedule is used
20 for service through a single meter to multiple-family dwellings within a single building,
21 each Customer charge and kWh block will be multiplied by the number of dwelling units
22 served in calculating each month's bill."

23 **Q. HAS EMPIRE PROVIDED SERVICE TO MR. GEHRS IN CONFORMITY WITH**

THIS TARIFF PROVISION?

A. Yes. Empire has neither overcharged nor undercharged Mr. Gehrs. Mr. Gehrs is assessed 14 customer charges, as required by paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule RG.

Q. WHAT IS THE AMOUNT OF THE RESIDENTIAL CUSTOMER ACCESS CHARGE?

A. Empire's Schedule RG, PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No. 1, attached hereto as Schedule 1, provides for a \$13 customer charge. The \$13 customer charge took effect September 14, 2016.

Q. HAS THE CUSTOMER CHARGE REMAINED THE SAME SINCE EMPIRE BEGAN PROVIDING SERVICE TO MR. GEHRS AT 1802 S. WALL AVE.?

A. No. The customer charge has been set at various amounts (pursuant to the tariffs on file with and approved by the Commission), but paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule RG, has remained unchanged.

Q. ATTACHED AS EXHIBIT B TO MR. GEHRS' AMENDED COMPLAINT ARE TWO BILLS – ONE FROM 2006 AND ONE FROM 2017. DO THESE BILLS DEMONSTRATE THAT EMPIRE IMPROPERLY BILLED MR. GEHRS?

A. No. These bills provided by Mr. Gehrs demonstrate that Mr. Gehrs was properly charged pursuant to the applicable tariff. The 2006 bill shows a proper 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 proper customer charge of \$182 (14 units x \$13.00, the customer charge in effect as of September 14, 2016).

1 **Q. IS THERE A COMMISSION RULE REGARDING SERVICE BEING PROVIDED**
2 **TO MULTI-UNIT PROPERTIES?**

3 A. Yes. Commission Rule 4 CSR 240-20.050(2) provides that each residential and
4 commercial unit in a multi-occupancy building shall have a separate meter for each
5 residential or commercial unit, but this rule applies only to buildings where construction
6 began after June 1, 1981. Mr. Gehrs' property was constructed prior to 1981, and, as
7 such, the rule is not applicable, and Empire was not required to have Mr. Gehrs expend
8 the money to install 14 individual meters on his property.

9 **Q. DOES EMPIRE UNIFORMLY APPLY ITS RESIDENTIAL SERVICE TARIFF,**
10 **SCHEDULE RG, TO MULTI-UNIT PROPERTIES CONSTRUCTED PRIOR TO**
11 **1981, ASSESSING A CUSTOMER CHARGE FOR EACH LIVING UNIT NO**
12 **MATTER THE NUMBER OF METERS SERVING THE PROPERTY?**

13 A. At all times, Empire strives to provide safe and reliable service at just and reasonable
14 rates and in strict conformity with its tariffs on file with and approved by the
15 Commission. Mistakes, however, do happen, and Mr. Gehrs brought one such mistake to
16 our attention.

17 **Q. PLEASE EXPLAIN.**

18 A. Mr. Gehrs' complaint to the Commission brought to Empire's attention the fact that at
19 least one customer was not being properly assessed a customer access charge for each
20 living unit within a multi-unit property. The situation involving a particular customer is
21 discussed on pages 2 and 3 of Mr. Gehrs' Direct Testimony.

22 **Q. WHAT DID EMPIRE DO IN RESPONSE TO MR. GEHRS NOTIFYING**
23 **EMPIRE OF THIS BILLING ERROR?**

1 A. Upon hearing that Empire may be billing a customer the incorrect amount, Empire
2 contacted the customer and investigated the situation. Empire determined that the
3 customer was, in fact, being undercharged. Empire remedied the situation and began
4 assessing the correct number of customer access charges based on the number of living
5 units as reported by the Fire Department.

6 **Q. WHAT DID THE CUSTOMER DO IN RESPONSE TO EMPIRE CORRECTING**
7 **THIS BILLING ERROR?**

8 A. The customer filed suit against Empire in the Jasper County Circuit Court, alleging that
9 Empire agreed to charge him in a manner inconsistent with paragraph 4 of the Conditions
10 of Service in Empire's Residential Service tariff, Schedule RG.

11 **Q. DID EMPIRE AGREE TO PROVIDE SERVICE TO THE CUSTOMER IN A**
12 **MANNER INCONSISTENT WITH PARAGRAPH 4 OF THE CONDITIONS OF**
13 **SERVICE IN EMPIRE'S RESIDENTIAL SERVICE TARIFF?**

14 A. No. Empire denies the allegations and has moved for summary judgment in its favor in
15 the circuit court proceeding. Empire is well aware of its obligation to serve its customers
16 pursuant to its tariffs on file with and approved by the Commission, and Empire would
17 never knowingly charge a customer more or less than that authorized.

18 **Q. DO ANY OTHER MISSOURI IOUs HAVE A TARIFF PROVISION SIMILAR TO**
19 **PARAGRAPH 4 OF THE CONDITIONS OF SERVICE IN EMPIRE'S**
20 **RESIDENTIAL SERVICE TARIFF?**

21 A. Yes. Kansas City Power & Light Company charges a customer charge for each living
22 unit in a multi-unit residential property where service is delivered and metered at one
23 point.

III. MR. GEHRS' REQUESTED RELIEF

Q. WHAT RELIEF IS MR. GEHRS REQUESTING FROM THE COMMISSION?

A. According to his Amended Complaint, 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.

Q. SHOULD THE COMMISSION GRANT MR. GEHRS' REQUEST?

A. No. Mr. Gehrs' requested relief is directly contrary to Empire's tariff on file with and approved by the Commission. Empire was required to assess a customer charge for each living unit in Mr. Gehrs' building, pursuant to paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule RG.

Mr. Gehrs is asking for a credit based on a billing practice that has been in place since at least 1980, and he is asking for a credit based on the charges imposed during the entirety of this nearly 40-year period. Even if a customer is overcharged, the recovery period is limited to five years (Commission Rule 4 CSR 240-13.025 and Company Rules and Regulations, PSC Mo. No. 5, Section 5, Sheet No. 27).

Also, it is my understanding that the grant of Mr. Gehrs' request, even if limited to a recovery period of five years, would constitute an unlawful taking of Empire's property, as Empire lawfully collected the money pursuant to its tariffs on file with and approved by the Commission.

Q. IS MR. GEHRS REQUESTING ANY OTHER RELIEF FROM THE COMMISSION?

A. Yes. According to his Amended Complaint, Mr. Gehrs is also requesting the deletion of Paragraph 4 of the Conditions of Service in Empire's Residential Service tariff, Schedule

1 RG – PSC Mo. No. 5, Sec. 1, Sheet No. 1, which provides: “If this schedule is used for
2 service through a single meter to multiple-family dwellings within a single building, each
3 Customer charge and kWh block will be multiplied by the number of dwelling units
4 served in calculating each month’s bill.” Alternatively, Mr. Gehrs is requesting the
5 addition of a tariff provision which would authorize Empire to inspect properties in order
6 to determine the number of dwelling units.

7 **Q. SHOULD THE COMMISSION MODIFY EMPIRE’S TARIFF AS REQUESTED**
8 **BY MR. GEHRS?**

9 A. Empire does not necessarily object to the addition of a tariff provision which would
10 purport to authorize access to a customer’s property in order to determine the number of
11 dwelling units, although Empire has not studied the issue to know if such authorization
12 would fall within the Commission’s powers. Empire does oppose the deletion of
13 Paragraph 4 of the Conditions of Service in Empire’s Residential Service tariff, Schedule
14 RG, as requested by Mr. Gehrs. A change of this sort should only be made after careful
15 study and only in a rate case, where the utility’s cost of service and revenue requirement
16 are studied in detail, as well as the proper method for collecting the revenue requirement
17 from among the various classes.

18 **IV. MR. HIGGINBOTHAM’S TESTIMONY**

19 **Q. DOES EMPIRE PROVIDE ELECTRIC SERVICE TO MR. HIGGINBOTHAM?**

20 A. Yes. As set forth in Mr. Higginbotham’s Direct Testimony, Empire provides electric
21 service to Mr. Higginbotham at 421 W. 3rd Street, a 10-unit apartment building which
22 was constructed prior to 1981.

1 **Q. IS THERE A METER INSTALLED FOR EACH LIVING UNIT IN MR.**
2 **HIGGINBOTHAM'S BUILDING?**

3 A. No. A single meter serves the entire 10-unit apartment complex.

4 **Q. IS MR. HIGGINBOTHAM CHARGED ONLY ONE CUSTOMER CHARGE FOR**
5 **THIS 10-UNIT BUILDING?**

6 A. No. Pursuant to paragraph 4 of the Conditions of Service in Empire's Residential Service
7 tariff, Schedule RG, Mr. Higginbotham is charged ten customer charges for his 10-unit
8 apartment complex.

9 **Q. DO YOU HAVE ANY ADDITIONAL RESPONSE TO MR. HIGGINBOTHAM'S**
10 **ALLEGATIONS THAT EMPIRE IS NOT UNIFORMLY APPLYING ITS**
11 **TARIFFS?**

12 A. No, I do not. Mr. Higginbotham's testimony beginning on line 21 of page 1 and
13 continuing through line 5 of page 2 of this Direct Testimony is identical to Mr. Gehrs'
14 Direct Testimony (page 2, line 26 – page 3, line 9). Also, Mr. Higginbotham's Schedule
15 A is identical to Mr. Gehrs' Schedule C.

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 A. Yes.