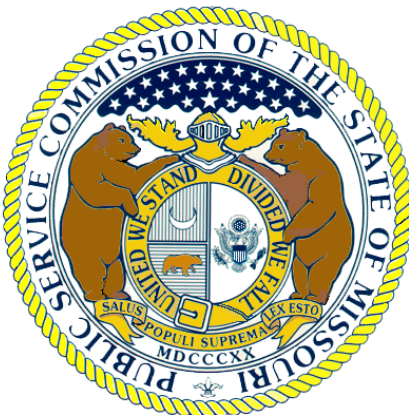


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Sherry Veach,

Complainant,

v.

The Empire District Electric Company,

Respondent.

File No. EC-2012-0406

RECOMMENDED REPORT AND ORDER

Issue Date: December 5, 2012

Effective Date: January 18, 2013

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

Sherry Veach,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2012-0406</u>
)	
The Empire District Electric Company,)	
)	
Respondent.)	

APPEARANCES

Sherry Veach, 98 North Swan St., Fair Grove, Missouri 65648, on behalf of herself as a pro se complainant.

Appearing for **THE EMPIRE DISTRICT ELECTRIC COMPANY:**

Diana C. Carter, Brydon, Swearengen & England P.C., 312 E. Capitol Avenue,
PO Box 456, Jefferson City Missouri 65101.

Appearing for **THE OFFICE OF PUBLIC COUNSEL:**

Lewis R. Mills, Jr., Public Counsel, PO Box 2230, Jefferson City, Missouri 65102.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

Amy E. Moore, Legal Counsel, Governor Office Building, 200 Madison Street,
Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Michael Bushmann, Regulatory Law Judge

RECOMMENDED REPORT AND ORDER

I. Procedural History

On June 4, 2012, Sherry Veach filed a complaint with the Missouri Public Service Commission ("Commission") against The Empire District Electric Company ("Empire"). Ms. Veach alleges that the electric meter at her residence provided by Empire has been defective or improperly calibrated for many years, causing her to be overcharged for electric service. Ms. Veach requests that the Missouri Public Service Commission ("Commission") require Empire to refund her the amount of any overcharges due to the malfunctioning electric meter. The Commission determined that the case should proceed under the small formal complaint procedures in Commission Rule 4 CSR 240-2.070(15).

Empire answered the complaint and sought its dismissal. The Commission's Staff investigated and found no violations of any statute, regulation or Commission-approved tariff. However, because there were material facts in dispute, the Commission held an evidentiary hearing on November 5, 2012 in Fair Grove, Missouri, to address Ms. Veach's allegations.¹ The regulatory law judge is providing this Recommended Report and Order to the Commission pursuant to Commission Rule 4 CSR 240-2.070(15)(H).

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and

¹ Transcript, Volume 2. In total, the Commission admitted the testimony of four witnesses and received thirteen exhibits into evidence. Post-hearing briefs were filed on November 30, 2012 and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

more persuasive than that of the conflicting evidence. On October 30, 2012, the parties filed a *Joint Stipulation of Non-Disputed Material Facts*, which the Commission incorporates and adopts in its entirety as its own Findings of Fact. The stipulated facts in the joint stipulation are as follows:

1. Empire is a public utility subject to the jurisdiction of the Commission.
2. Complainant, Ms. Veach, is an electric customer of Empire, residing at 98 North Swan St., Fair Grove, MO 65648.
3. On July 1, 1988, Ms. Veach established her electric service account with Empire for the subject address.
4. In 1997 (or thereabouts), Ms. Veach contacted Empire to request a meter test.
5. On or about January 23, 2012, Ms. Veach again contacted Empire to request a meter test.
6. On January 24, 2012, Empire performed a meter test.
7. On or about January 29, 2012, Ms. Veach began tracking her daily electric usage.
8. On February 14, 2012, Ms. Veach met with Empire lineman Orville Jackson, met with Empire meter tester John Crawford, and contacted the Commission to file an informal complaint against Empire.
9. Staff investigated Ms. Veach's claims as part of informal complaint number C201202311.
10. June 4, 2012, Ms. Veach filed a formal complaint, which is the subject of this case, Case No. EC-2012-0406.
11. Regarding residential customer billing adjustments for overcharges, Commission Rule 4 CSR 240-13.025 states that, "an adjustment shall be made for the

entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods.”

12. Commission Rule 4 CSR 240-13.025 also states that a billing adjustment for overcharges shall be “calculated from the date of discovery, inquiry or actual notification of the utility, whichever comes first.”

13. On January 16, 2012, was the date of the last meter reading before Ms. Veach contacted the Company to request a test and recalibration.

14. For the five year period (60 months) ending January 16, 2012, Ms. Veach was billed for 92,852 kWh, totaling \$8,852.60 in charges, including taxes but excluding any late payment charges.

The Commission makes the following Findings of Fact in addition to the stipulated facts of the parties:

15. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”² Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”³ The Public Counsel participated in the evidentiary hearing in this matter.

16. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁴ Although a party in this matter, pursuant to the small formal complaint

² Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

³ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁴ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

procedures Staff did not advocate a position beyond reporting the results of its investigation.⁵

17. At all times relevant hereto, the electric meter in use at Ms. Veach's residence was a Duncan mechanical electric meter.⁶ The meter is located outside at the back of her house.⁷

18. The normal calibration range of a Duncan mechanical electric meter is plus or minus 3-4%.⁸ This means that this type of meter cannot be adjusted to change the reading by more or less than 3-4% using the adjustment screws that are built into the meter.

19. Empire witness John Crawford has been testing electric meters for Empire for thirty years.⁹ Mr. Crawford testified credibly that his testing of Ms. Veach's electric meter on January 24, 2012 indicated that the meter was operating within normal parameters and with the level of accuracy required by Commission standards.¹⁰

20. Mr. Crawford is the Empire employee that is responsible for repairing or replacing Ms. Veach's electric meter, if necessary.¹¹ Mr. Crawford testified credibly that at no time did he recalibrate, repair or replace the electric meter or meter name plate at Ms. Veach's residence.¹² There was no evidence presented that any other Empire employee recalibrated, repaired or replaced Ms. Veach's electric meter.

21. Duncan mechanical electric meters are no longer being manufactured.¹³ Empire no longer keeps Duncan mechanical electric meters in its inventory, and when a customer

⁵ Commission Rule 4 CSR 240-2.070(15)(D).

⁶ Transcript, Vol. 2, p. 54-5, 63, 83; Veach Ex. 8.

⁷ Transcript, Vol. 2, p. 43.

⁸ Transcript, Vol. 2, p. 112; Staff Ex. 5, Schedule DB-1.

⁹ Transcript, Vol. 2, p. 93.

¹⁰ Transcript, Vol. 2, p. 84.

¹¹ Transcript, Vol. 2, p. 85.

¹² Transcript, Vol. 2, p. 85-87.

¹³ Transcript, Vol. 2, p. 95-6.

requires a new meter it is replaced with an electronic electric meter.¹⁴ Replacement of a customer's electric meter would require a new meter identification number, which would be indicated on Empire's customer records.¹⁵ Empire's records for Ms. Veach show that the electric meter at Ms. Veach's residence has not been replaced at any time within the last five years.¹⁶

22. Ms. Veach did not notice any difference in appearance to her electric meter after Mr. Crawford visited her on February 14, 2012.¹⁷ Ms. Veach did not observe Mr. Crawford doing anything to her electric meter on February 14, 2012.¹⁸

23. When a mechanical electric meter is defective or damaged to such an extent that it cannot be calibrated to read accurately, such a meter would not read inaccurately in both directions or spontaneously begin reading accurately again.¹⁹

24. From approximately January 29, 2012 to February 21, 2012, Ms. Veach gradually stopped using many of the electrical appliances in her house.²⁰ During this period of time she also measured the amperage used by appliances on individual circuits by attaching a Greenlee electrical testing device to wires in her electrical breaker box.²¹

25. Ms. Veach made daily readings from the electric meter at her house and recorded notes concerning her usage of electricity from January 29, 2012 through November 2, 2012.²²

¹⁴ Transcript, Vol. 2, p. 88, 95-6.

¹⁵ Transcript, Vol. 2, p. 80-1, 86-7.

¹⁶ Transcript, Vol. 2, p. 80.

¹⁷ Transcript, Vol. 2, p. 44.

¹⁸ Transcript, Vol. 2, p. 43.

¹⁹ Transcript, Vol. 2, p. 95-98, 128, 138.

²⁰ Transcript, Vol. 2, p. 20-21, 76.

²¹ Transcript, Vol. 2, p. 25-26; Veach Ex. 3, p. 23.

²² Transcript, Vol. 2, p. 34-37; Veach Ex. 3, p. 13-21.

26. From approximately February 21, 2012 to March 6, 2012, Ms. Veach gradually resumed using the electrical appliances in her house.²³ As Ms. Veach's consumption of electricity increased, her electric meter also registered an increase in daily average kilowatt hours.²⁴

27. After comparing the electrical usage she had recorded in 2012 to her electric bills in previous years, Ms. Veach developed the belief that her electric meter had not been operating properly since she purchased the house in 1988.²⁵ She calculated that the meter had been reading 62% higher than it should have been based on meter readings for the months of April and May in 2012 compared to previous years.²⁶ In support of her belief that the electric meter had not been operating properly, Ms. Veach presented evidence of discrepancies between her perceived electric usage and the meter readings, including usage during trips away from home and differences in the use of window and central air conditioning.²⁷

28. Ms. Veach believes that her meter began reading correctly on February 15, 2012 and thereafter because the meter recorded generally lower electrical usage after that date compared to previous years.²⁸

29. Based on actual meter readings from the electrical meter for Ms. Veach's house, Empire calculated the average kilowatt hours per day used by Ms. Veach for each month from December 13, 2002 through October 15, 2012.²⁹ Averaging those monthly numbers for each year yields the following results³⁰:

²³ Transcript, Vol. 2, p. 22, 37.

²⁴ Veach Ex. 3, p. 14-21.

²⁵ Transcript, Vol. 2, p. 45-46.

²⁶ Transcript, Vol. 2, p. 47-48; Veach Ex. 4; Veach Ex. 9.

²⁷ Transcript, Vol. 2, p. 49-50, 59-60, 71-72; Veach Ex. 5.

²⁸ Transcript, Vol. 2, p. 44-45.

²⁹ Empire Ex. 2.

³⁰ $\text{average} = (a_1 + a_2 + a_3 + \dots + a_n)/n$

<u>Year</u>	<u>Average daily usage (kWh)</u>
2012	26.0
2011	47.6
2010	49.8
2009	49.6
2008	61.2
2007	48.8
2006	56.4
2005	45.8
2004	50.3
2003	68.3

These results show spikes in her electric usage in 2003 and 2008 during the period of time from 2003-2012.

30. Further calculating a mean for all ten years for this period above from 2003-2012 yields a 50.4 kWh average daily usage (the “ten-year average”).³¹ The lowest average daily usage per year (26.0) was in 2012 and is 48% lower than the ten-year average.³² The highest average daily usage per year (68.3) was in 2003 and is 36% higher than the ten-year average.³³

31. Ms. Veach’s usage of electricity in years prior to 2012 is consistent with the amount of electricity used in houses similar in size and age to Ms. Veach’s house.³⁴

32. There are no explanations for the difference in the amount of Ms. Veach’s electric bills between 2012 and prior years other than either the proper operation of the electrical meter or the amount of electric consumption at her house.³⁵

III. Conclusions of Law

Although Ms. Veach is not a person or an entity regulated by the Commission, she submitted herself to the Commission’s jurisdiction when she filed her complaint pursuant to

³¹ *Id.*

³² percentage change = ((y2 - y1) / y1)*100

³³ *Id.*

³⁴ Transcript, Vol. 2, p. 114.

³⁵ Transcript, Vol. 2, p. 97-98, 127-128.

Section 386.390, RSMo 2000. Empire provides electric service to customers throughout the service area certificated to it by the Commission. Empire is an “electrical corporation” and “public utility” as those terms are defined by Section 386.020, RSMo Supp. 2011, and is subject to the Commission’s jurisdiction, supervision, control and regulation as provided in Chapters 386 and 393, RSMo.

Since Ms. Veach brought the complaint, she bears the burden of proof.³⁶ The burden of proof is the preponderance of the evidence standard.³⁷ In order to meet this standard, Ms. Veach must convince the Commission it is “more likely than not” that Empire violated an applicable statute, rule, or provision of a Commission-approved tariff.³⁸

The complaint alleges facts within the small complaint procedure.³⁹ That procedure includes a time limit for issuing a recommendation subject to good cause. Good cause includes a good faith request for reasonable relief.⁴⁰ The parties asked for a hearing date past the deadline, and one party filed a request for an extension of time. Those facts constitute good cause to extend the time limit. Therefore, the time limit is extended.

The issue for determination is whether Empire has over-charged Ms. Veach for electric service in violation of a statute, Commission rule, or tariff as a result of a defective or improperly calibrated electric meter. It is clear that Ms. Veach’s electric meter recorded lower amounts of electric usage in 2012 compared to previous years. Ms. Veach argues that the reason for this drop in measured electric usage is because her electric meter was

³⁶ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. Ct. App. 2003).

³⁷ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

³⁸ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

³⁹ 4 CSR 240-2.070(14).

⁴⁰ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App., W.D. 1996).

either defective or improperly calibrated prior to February 15, 2012. She believes that the meter began reading correctly as of that date. Empire argues that the meter was operating properly at all times and that any drop in measured electric usage in 2012 was due to a voluntary change in Ms. Veach's activities in her house that resulted in lower usage.

Commission regulations require that electric service watt-hour meters be tested for accuracy when placed in service and maintain accuracy thereafter within three percent of correct registration.⁴¹ Empire's tariff states that customers are not entitled to an adjustment in the charges for their service unless a meter test demonstrates that the accuracy of the meter has an average error of more than two percent.⁴² Since Empire's tariff has the force and effect of a law⁴³, Ms. Veach must present sufficient evidence that Empire's electric meter at her house was reading an average error of more than two percent to entitle her to an adjustment for overcharges to her bill for the five year period ending January 16, 2012.⁴⁴

The preponderance of credible evidence presented at the hearing showed that Ms. Veach's electric meter was accurate and operating properly at all times relevant to this complaint. Empire witness John Crawford testified credibly that the meter tested accurately and at no time did he recalibrate, repair or replace the electric meter at Ms. Veach's residence. There was no evidence presented that any other Empire employee recalibrated, repaired or replaced her meter. While Ms. Veach has alleged that the meter was reading in error of more than 62% prior to February 15, 2012, evidence from the meter manufacturer and the Staff witness demonstrated that this type of meter cannot be adjusted to change the reading by more or less than 3-4% using the adjustment screws that are built into the

⁴¹ 4 CSR 240-10.030(25) and (27).

⁴² The Empire District Electric Company Tariff, Tracking No. JE-2003-0707, *P.S.C. Mo. No. 5*, Section 5, Second Revised Sheet No. 17f ("Empire's tariff").

⁴³ *State ex rel. St. Louis County Gas Co. v. Public Service Commission*, 286 S.W. 84, 86 (Mo. 1926); *State ex rel. Jackson County v. Public Service Commission*, 532 S.W. 2d 20, 29 (Mo. 1975).

⁴⁴ Commission Rule 4 CSR 240-13.025.

meter. Even if Mr. Crawford had attempted to recalibrate the meter on February 14, 2012, he could not have physically made an adjustment large enough to account for the alleged discrepancy. Empire employees did not recalibrate Ms. Veach's electric meter.

In the alternative, Ms. Veach has implied that Mr. Crawford replaced her meter on February 14, 2012 without her knowledge. Empire's records do not show that Ms. Veach has received a new meter or meter identification number. Ms. Veach suggested that her meter was replaced with a similar meter, but she noticed no change in the appearance of her meter after February 14, 2012. Empire no longer stocks the brand of mechanical meter installed at Ms. Veach's house and routinely replaces such meters with a different kind of electronic meter. The Commission concludes that Empire has not replaced Ms. Veach's electric meter.

Ms. Veach's primary contention is that the reduction in her electrical usage in 2012 compared to previous years, as measured by her electric meter, and other discrepancies between her usage and the meter readings leads to the conclusion that her electric meter must have been reading in error. Ms. Veach did experience a reduction in measured usage in 2012, which average daily usage was 48% lower than the ten-year average for the period of 2003-2012. However, in that period of time there were also spikes in her electric usage compared to that ten-year average. There was a substantial increase in usage during 2008, and the average daily usage in 2003 was 36% higher than the ten-year average. There was credible evidence presented at the hearing that if a mechanical electric meter is defective, such a meter would not read inaccurately in both directions or spontaneously begin reading accurately again. The fact that Ms. Veach experienced both significant increases and decreases in her electrical usage over this period of time supports the conclusion that her meter was not defective. Moreover, since the evidence shows that

the meter was not recalibrated or replaced, Ms. Veach's contention that the meter started reading accurately after February 14, 2012 would mean that it would have had to spontaneously start working correctly, which is not something that a defective mechanical meter is likely to do.

Since the preponderance of the evidence has demonstrated that Ms. Veach's electric meter was accurate and operating properly, the only remaining explanation for the increases and decreases over time in her electric usage is a voluntary change in the consumption of electricity in her home, which cannot be attributed to Empire. Ms. Veach presented evidence of a substantial decline in electric usage during 2012 and other discrepancies between her perceived usage and the meter readings, including usage during trips away from home and differences in the use of window and central air conditioning. However, the most likely explanation is that these discrepancies were caused by Ms. Veach's actions and not by Empire violating a statute, rule or tariff.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that that Ms. Veach has failed to meet, by a preponderance of the evidence, her burden of proof to demonstrate that Empire violated any statute, Commission rule or tariff provision. Ms. Veach's complaint will be denied on the merits.

THE COMMISSION ORDERS THAT:

1. Sherry Veach's complaint is denied.

2. This Recommended Report and Order shall become effective on January 18, 2013.⁴⁵

3. This file shall close on January 19, 2013.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Michael Bushmann, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of December, 2012.

⁴⁵ The Commission has provided an effective date other than 30 days to allow time for (i) comments under 4 CSR 240-2.070(15)(H); (ii) a Commission decision under 4 CSR 240-2.070(15)(H); and the ordinary 30-day effective date for a Commission decision under Section 386.490.2, RSMo Cum. Supp. 2011.