

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

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

**STAFF’S POST-HEARING BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and for its *Brief*, states the following:

**Introduction**

On June 4, 2012, Sherry Veach filed before the Public Service Commission (“Commission”) a *Complaint* against The Empire District Electric Company (“Empire”).<sup>1</sup> Ms. Veach claims the electric meter used for her home was not reading correctly, “causing overcharges of approximately 65% over the last 24 years.”<sup>2</sup> Ms. Veach requests relief in the form of payment from Empire for all overcharges “due to the use of a miss-calibrated [sic] meter for as far back as the law allows.”<sup>3</sup> On June 5, 2012, the Commission entered an *Order Giving Notice of Contested Case, Directing Answer, and Directing Staff Investigation*, which directed Empire to file an answer to the complaint and Staff to investigate the complaint and file a report. On July 5, 2012, Empire filed its *Answer*, stating that it had been unable to detect any meter or billing

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<sup>1</sup> Veach Ex. 3 – Copy of original Complaint, revised as noted on pg. 10.

<sup>2</sup> *Id.* at p. 1.

<sup>3</sup> *Id.* at p. 2.

errors related to Ms. Veach's electric service, and that it had acted in accordance with its tariffs during the subject time period. On August 1, 2012, Staff filed a *Staff Report*, detailing its investigation and concluding that "Empire has not violated any statute, rule or tariff and that no restitution for over-charges is owed to [Ms. Veach]." <sup>4</sup>

On September 12, 2012, the Commission issued an *Order Setting Procedural Schedule and Establishing Additional Procedural Requirements*, which set a hearing date of November 5, 2012, and a November 30, 2012 deadline for post-hearing briefs. Accordingly, a hearing was held, during which the parties presented evidence and testimony for the record. At the hearing, Ms. Veach represented herself as a pro se complainant under Commission Rule 4 CSR 240-2.040(5). <sup>5</sup> All other parties were represented by counsel at the hearing.

### **Parties**

Ms. Veach, the complainant, is a Missouri resident and an electric customer of Empire. <sup>6</sup> Empire, the respondent, is a public utility subject to the jurisdiction of the Commission. <sup>7</sup> Staff is represented by Staff Counsel, per rule 4 CSR 2.040(1); and the interest of the public is represented by Public Counsel, per rule 4 CSR 2.040(2).

### **Jurisdiction**

The Commission has jurisdiction to hear and determine Ms. Veach's complaint against Empire pursuant to Section 386.390.1 RSMo (2000), <sup>8</sup> which states as follows:

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<sup>4</sup> Staff Ex. 5, *Staff Memorandum*, p. 9.

<sup>5</sup> "Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity."

<sup>6</sup> *Joint Stipulation of Non-Disputed Material Facts*, filed October 30, 2012.

<sup>7</sup> *Id.*

<sup>8</sup> All statutory references are to RSMo (2000) as currently supplemented unless otherwise specified.

Complaint may be made by . . . any corporation or person . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . .

### **Statement of Facts**

On July 1, 1988, Ms. Veach established her electric service account with Empire for the residential address at issue.<sup>9</sup> On or about January 23, 2012, Ms. Veach contacted Empire to request a meter test.<sup>10</sup> On January 24, 2012, Empire performed a meter test.<sup>11</sup> Empire employee John Crawford performed the meter test and concluded that the meter was reading well within the Commission's standards.<sup>12</sup> Empire reported to Ms. Veach that the meter was working properly.<sup>13</sup> On January 29, 2012, Ms. Veach began tracking her daily electric usage by taking meter readings and recording those readings on a spreadsheet.<sup>14</sup> On the following day, Ms. Veach began a process of gradually unplugging all of her appliances in order to determine whether her meter reported an excessive amount of kilowatt-hour (kWh) usage.<sup>15</sup> Between January 30<sup>th</sup> and February 9<sup>th</sup>, Ms. Veach's spreadsheet showed daily usage ranging from 10 – 45 kWh.<sup>16</sup> By February 9, 2012, Ms. Veach had unplugged or stopped using most of her household appliances.<sup>17</sup> Her kWh usage readings for February 9<sup>th</sup> – 14<sup>th</sup>

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<sup>9</sup> Tr. 2: 17, ll. 18-22.

<sup>10</sup> *Id.* at 18, ll. 14-17.

<sup>11</sup> *Id.* at 19, ll. 20-25.

<sup>12</sup> *Id.* at 84, ll. 1-24.

<sup>13</sup> *Id.* at 20, ll. 1-6.

<sup>14</sup> *Id.* at 21, ll. 16-24.

<sup>15</sup> *Id.* at 20, ll. 10-13, and 75, ll. 22-24. *See also*, Veach Ex. 3, p. 13.

<sup>16</sup> Veach Ex. 3, p. 13.

<sup>17</sup> Tr. 2: 76, ll. 10-13.

ranged from 13-17 kWh.<sup>18</sup> A note on Ms. Veach's spreadsheet for February 12<sup>th</sup> indicates a reading of 8 kWh for a period of time that day when all appliances were disconnected.<sup>19</sup>

On February 14, 2012, Ms. Veach met with Mr. Crawford to discuss her suspicion that her meter was not reading correctly.<sup>20</sup> Ms. Veach and Mr. Crawford were unable to resolve the issue.<sup>21</sup> Mr. Crawford testified he did not at any time repair, recalibrate, or in any way change Ms. Veach's meter or meter name plate.<sup>22</sup> He specifically testified that he did not touch Ms. Veach's meter on February 14, 2012.<sup>23</sup> Mr. Crawford also testified that if any Empire employee was going to work on Ms. Veach's meter, it would be him.<sup>24</sup> On February 14<sup>th</sup>, Ms. Veach contacted the Commission to report her concerns, and Staff began an investigation of Ms. Veach's claims as part of informal complaint number C201202311.<sup>25</sup> On June 4, 2012, Ms. Veach filed a formal complaint with the Commission.<sup>26</sup>

For the period between February 14<sup>th</sup> and 22<sup>nd</sup>, Ms. Veach had eliminated from use almost all of her normal household electrical appliances.<sup>27</sup> For example, Ms. Veach used a propane camping stove for cooking and heating water and used her fireplace for heating her house.<sup>28</sup> Ms. Veach's usage spreadsheet for those days shows readings

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<sup>18</sup> *Id.* at 77, ll. 14-17.

<sup>19</sup> Veach Ex. 3, p. 13.

<sup>20</sup> Tr. 2: 42-43, ll. 13-9.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 86, ll. 15- 18; 87, ll. 6-10; 90, ll. 3-8.

<sup>23</sup> *Id.* at 85, ll. 14-17.

<sup>24</sup> *Id.* at 85, ll. 18-20.

<sup>25</sup> *Joint Stipulation of Non-Disputed Material Facts*, filed October 30, 2012.

<sup>26</sup> *Id.*

<sup>27</sup> Tr. 2: 22-23; Veach Ex. 3, p. 13.

<sup>28</sup> *Id.*

ranging from 6-11 kWh.<sup>29</sup> On the 21<sup>st</sup> of February, Ms. Veach began a process of turning on and using her household appliances again.<sup>30</sup> As Ms. Veach's consumption increased, her daily average kWh readings increased.<sup>31</sup> The range of Ms. Veach's daily electricity usage readings for March 2012 through the end of October was 11-70 kWh.<sup>32</sup>

Staff witness Dan Beck conducted the informal complaint investigation and the formal complaint investigation.<sup>33</sup> Mr. Beck testified at the hearing as to his qualifications as an expert in the relevant subject matter and gave his testimony as an expert with no objection.<sup>34</sup> In the course of his investigation, Mr. Beck visited Ms. Veach's home, where he discussed this matter with Ms. Veach and observed her meter, her appliances, her electrical panel, and her home in general.<sup>35</sup> Mr. Beck also traveled to Bolivar, Missouri, to observe a meter test performed by Empire personnel, which showed that a meter such as Ms. Veach's could be adjusted by approximately 3%.<sup>36</sup> In addition to these observations, Mr. Beck received a letter from the manufacturer of Ms. Veach's meter stating the meter was capable of a plus or minus 4% adjustment.<sup>37</sup>

Mr. Beck conducted his own analysis of the data Ms. Veach provided in her Complaint, and based on the readings she provided, Mr. Beck concluded that the change in kWh usage did not occur on February 14<sup>th</sup>.<sup>38</sup> Instead, the downward trend in

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<sup>29</sup> Veach Ex. 3, p. 13.

<sup>30</sup> Tr. 2: 37, ll. 3-12.

<sup>31</sup> Veach Ex. 3, pp. 14-21.

<sup>32</sup> *Id.*

<sup>33</sup> Tr. 2: 109, ll. 3-10; 110, ll. 7-17.

<sup>34</sup> Tr. 2: 107-108.

<sup>35</sup> *Id.* at 109-110.

<sup>36</sup> *Id.* at 111, ll. 10-12; 112, ll. 8-16.

<sup>37</sup> *Id.* at 112, ll. 17-24.

<sup>38</sup> *Id.* at 140.

usage began as early as January 2012.<sup>39</sup> Mr. Beck noted that the difference in average usage directly before and directly after the 14<sup>th</sup> could be represented by two 100 watt light bulbs burning twenty-four hours a day.<sup>40</sup>

After receiving additional information from Ms. Veach showing her kWh usage up to the month of the hearing, Mr. Beck conducted some additional analysis.<sup>41</sup> According to his analysis, after the first few months of recording her usage, which showed extremely low kWh readings, Ms. Veach's readings returned to more normal levels, though these levels were still lower than her average usage in previous years.<sup>42</sup> Mr. Beck testified that, considering everything in the record, the most likely reason for these lower readings is that Ms. Veach is now more conservative in her usage of electricity.<sup>43</sup>

Finally, Mr. Beck testified that based on his experience and his examination of Ms. Veach's home, he considers her electricity usage in past years to be consistent with similar houses and that, in fact, some of the readings in past years are much lower than he would expect for a home with an electric furnace.<sup>44</sup>

### **Issues**

The parties agree the issues before the Commission can be stated as follows:

- First, has Empire over-charged Ms. Veach for electric service by basing her monthly charges on a miscalibrated meter for all or part of the 60 month period defined by Commission Rule 4 CSR 240-13.025?<sup>45</sup>
- Second, did Empire take any action in February 2012 to significantly change the measurement of electricity usage for Ms. Veach's residence?<sup>46</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 113, ll. 10-25.

<sup>42</sup> *Id.* at 126, ll. 8-18.

<sup>43</sup> *Id.* at 142, ll. 3-6.

<sup>44</sup> *Id.* at 114, ll. 6-16.

<sup>45</sup> *Joint List of Issues and Witnesses*, filed October 30, 2012.

- Finally, has Empire violated any statute, rule, or tariff with regard to Empire's provision of electric service to Ms. Veach, and, if so, should Empire make restitution to Ms. Veach for over-charges?<sup>47</sup>

### **Analysis**

Ms. Veach's claims and request for relief fall under the provisions of Commission Rule 4 CSR 240-13.025, which governs billing adjustments. Rule 4 CSR 240-13.025(A) states:

In the event of an overcharge, 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, or twenty (20) consecutive quarterly billing periods, calculated from the date of discovery, inquiry or actual notification of the utility, whichever comes first;

Since Ms. Veach contacted Empire on January 23, 2012, to request a meter test, her claim applies to the five-year period ending January 16, 2012, which was the date of the last meter reading before the 23<sup>rd</sup>.<sup>48</sup> Per rule 4 CSR 240-13.025(A), if overcharges "can be shown" during this time period, Ms. Veach is entitled to restitution in the form of a billing adjustment.

Overcharges have not been shown in this case. Staff witness Dan Beck testified the historical electricity usage at Ms. Veach's home would not be unusual for similar houses, except that some readings seemed unusually low, and there was no evidence entered to counter his expert opinion other than Ms. Veach's testimony that the usage levels always seemed high to her. There was no other expert testimony regarding whether the home's historical electricity usage was greater than should have been expected, and there was no data to support such a conclusion, either. Instead, the bulk

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Staff Ex. 5, *Staff Memorandum*, p. 3.

of the evidence and testimony presented in this case goes toward the question of whether Empire acted in any way on February 14, 2012, to change the electricity usage readings for Ms. Veach's home.

Any conclusion that Ms. Veach's usage readings were too high in the past depends on a conclusion that there has been a change in her meter readings and that her new, lower usage readings are the accurate levels of usage at her home. A conclusion that there has been such a change, and that Empire is responsible for it, might be possible through data analysis but, in this case, also depends on evidence that Empire took some action to cause such a change.

The evidence does not show Empire took such an action at any time. First, Empire witness John Crawford testified repeatedly that he never repaired, replaced, or otherwise changed Ms. Veach's meter or its name plate at any time. He specifically testified that he did not even touch Ms. Veach's meter on February 14, 2012. He also testified that, if anyone from Empire was to deal with Ms. Veach's meter, it would be him. Ms. Veach did not observe Mr. Crawford changing or replacing her meter, she was not able to detect a visual difference in her meter after February 14<sup>th</sup>, and she did not specifically allege that anyone else tampered with her meter. So, unless Mr. Crawford is deemed not credible, this testimony alone should show that Empire did not cause a change in Ms. Veach's meter readings. If something caused a change in Ms. Veach's meter, the something was not Empire.

If Empire took no action to change any of Ms. Veach's meter readings, it might still be relevant to ask whether Empire should be responsible for overcharging Ms. Veach for years, if the meter has now, somehow, begun reading correctly.



However, the evidence indicates that any changes in kWh usage levels over the course of 2012 were directly related to Ms. Veach's voluntary changes in consumption, not to any change in the meter itself. For instance, the gradual decrease in electricity usage Ms. Veach documented in late January and early February 2012 (Exhibit 3) is consistent with her descriptions of how she began "controlled living" and unplugging appliances. These changes began, and the resulting significant decrease in meter readings was documented, well before February 14<sup>th</sup>. Simply looking at the kWh readings directly before February 14<sup>th</sup> and comparing them to the very small difference in readings directly after the 14<sup>th</sup> shows that it is unlikely anything occurred on February 14<sup>th</sup> to cause a drastic change in meter readings. The fact is there was no drastic change between directly before and directly after the 14<sup>th</sup>. Mr. Beck illustrated the reduction in usage during that period as roughly equivalent to turning off two light bulbs for twenty-four hours.

Finally, there was much discussion about why Ms. Veach's electricity meter readings have not returned to averages similar to previous years if she has, as she believes, returned to normal living. Mr. Beck's analysis shows that her recent average usage has begun to close the gap between current usage and historical usage over the past few months; however, there is still a gap. Despite speculation about which appliances Ms. Veach may or may not have used in the past that she may or may not use currently in similar fashion, there was no data or testimony in the record that would allow for such a specific comparison. It is not possible to know exactly what appliances were used even last year or exactly how they were used. Considering the testimony of Mr. Crawford, the data showing the downward change in electricity usage before

February 14<sup>th</sup>, which directly related to Ms. Veach's actions, and the lack of evidence to show exactly how Ms. Veach consumed electricity in the past, the most likely explanation for the slightly lower current averages is Mr. Beck's explanation, which was that, "Ms. Veach is doing probably what we should all be doing and being very conservative about her electric usage. . . ." <sup>49</sup>

### **Conclusion**

The evidence in the record for this matter has not shown that Empire overcharged Ms. Veach for electricity during the five-year period ending January 16, 2012, as is required for a billing adjustment under 4 CSR 240-13.025(A). Furthermore, the evidence does not show that Empire has violated any other statute, rule, or tariff in its provision of electric service to Ms. Veach. Therefore, Empire does not owe Ms. Veach the restitution she has requested.

**WHEREFORE**, Staff respectfully submits this *Post-Hearing Brief* in compliance with the Commission's September 12, 2012 *Order*, and prays the Commission issue an order finding that The Empire District Electric Company owes no restitution to Sherry Veach as it has violated no statute, rule, or tariff in its provision of electric service to her.

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<sup>49</sup> Tr. 2: 142, ll. 3-6.

Respectfully submitted,

**/s/ Amy E. Moore**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 30th day of November, 2012.

**/s/ Amy E. Moore**