

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

Barbara Edwards,)	
)	
Complainant)	
)	<u>File No. EC-2020-0252</u>
v.)	
)	
Evergy Missouri West, Inc.)	
d/b/a Evergy Missouri West,)	
)	
Respondent)	

NOTICE OF RECOMMENDED REPORT AND ORDER

Issue Date: September 22, 2021

On September 24, 2020, the Commission conducted an evidentiary hearing at the Commission’s offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Commission Rule 20 CSR 4240-2.070(15)(G) requires the Regulatory Law Judge to issue a Recommended Report and Order. Commission Rule 20 CSR 4240-2.070(15)(H) states:

Any party subject to a recommended report and order disposing of the case or a recommended report and order issued by a regulatory law judge under this section may file with the commission, within ten (10) days of the issuance of the recommended order, comments supporting or opposing the recommended order. Any comments opposing the recommended order shall contain specific detailed grounds upon which it claims the order is unlawful, unjust, or unreasonable. The commission may approve or reject the recommended order based on the existing record without further hearing. If the commission rejects the recommended order, the commission shall issue its own order based on the evidence previously submitted, or upon such additional evidence, as the commission shall choose to receive.

Pursuant to Commission Rule 20 CSR 4240-2.070(15)(G), the Regulatory Law Judge issues the following Recommended Report and Order.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Ronald D. Pridgin, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 22nd day of September, 2021.

an array of violations of law in Evergy West's June 2019 installation of a new meter at her home in Lone Jack, Missouri. Ms. Edwards complains the meter was installed without her permission or knowledge and poses a fire risk. She alleges the meter is causing physical symptoms, is a threat to her health and constitutes "assault." In addition, she alleges overbilling, trespass, unlawful taking and "inverse condemnation," mail fraud, "extortion," privacy violations and violations of the Americans with Disabilities Act and Fair Housing Act. Ms. Edwards demands the removal and replacement of the meter at no cost and requests the Commission order Evergy West to pay damages.

On February 25, 2020, the Commission directed notice of a contested case under Chapter 536 of the Revised Statutes of Missouri (RSMo) and directed Evergy West to satisfy the complaint or file an answer.² The Commission directed the Staff of the Commission (Staff) to investigate the complaint and report its findings and recommendations to the Commission.

On April 26, 2020, Staff filed its report and recommendations, concluding Evergy West had not violated applicable statutes, Commission rules, or the company's tariffs in relation to Ms. Edwards's complaint.

On June 8, 2020, the Commission designated the case a small formal complaint under Commission rules³ and extended the 100-day deadline for filing of a recommended report and order in a small formal complaint case because adequate time did not exist to conduct a hearing before expiration of the period.

² *Notice of Complaint and Order Setting Time for Answer and Staff Investigation and Report* (Feb. 25, 2020).

³ 20 CSR 4240-2.070(15).

The Commission set a July 2020 evidentiary hearing in Kansas City, based on the parties' joint proposed procedural schedule.⁴ Because of conditions in Jackson County, Missouri, during the COVID-19 pandemic, the Commission continued the hearing and convened a prehearing conference to discuss options for an evidentiary hearing.

On September 24, 2020, the Commission conducted an evidentiary hearing at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. During the evidentiary hearing, the Commission admitted the testimony of nine witnesses and received 11 exhibits into evidence.⁵ In addition to her own testimony, Ms. Edwards presented testimony from witnesses Elizabeth Barris, Charles Bott, and Nancy Trospen. Evergy West presented witnesses Travis Lincoln, metering operations director; Brad Walsh, measurement technology supervisor; and Alisha Duarte, customer affairs advisor. Staff presented witnesses Amanda Coffey and Tammy Huber, Commission employees who contributed to Staff's investigation of Ms. Edwards's complaint. In addition, the Commission took official notice of Evergy West tariffs in effect as of the relevant time periods in this case.⁶

As discussed during the hearing,⁷ the Commission directed Evergy West to file proposed exhibits comprised of (1) the billing statements for Ms. Edwards's Evergy West account, beginning January 2018 through and including September 11, 2020; and (2) a record of Ms. Edwards's electricity consumption on an annual basis from 2017, 2018, and

⁴ As provided by Section 386.710, RSMo (2016), and Commission Rule 20 CSR 4240-2.010(10), the Office of the Public Counsel is party to all cases before the Commission. OPC filed no pleadings in this case and did not participate in the hearing or file post-hearing briefs.

⁵ *Notice of Exhibits* (May 3, 2021).

⁶ Transcript Vol. 3 at p. 46 (Hearing Sept. 24, 2020; filed Oct. 8, 2020).

⁷ Transcript Vol. 4 at p. 277, 281 (In-camera session Sept. 24, 2020; filed Oct. 8, 2020); Transcript Vol. 3 at 319-320.

2019.⁸ Evergy West filed such exhibits on October 9, 2020, and the objection period expired without objection.

On October 2, 2020, the exhibits offered at hearing were filed in the Commission's electronic filing and information system (EFIS), and the Commission issued its *Order Providing for Correction to Admitted and Filed Exhibits*, identifying such exhibits and providing a period for submission of any corrections. On October 23, 2020, Staff filed a Corrected Exhibit No. 201, which included a "Corrected Report of the Staff." No other corrections were filed. The Commission allowed for objection to admission of Corrected Exhibit No. 201, as well as admission of Original Exhibit No. 201. No objections were received.

Partial Dismissal of Complaint

Based on review of billing statements submitted by Evergy after the hearing, on October 30, 2020, the Commission suspended the procedural schedule and directed Staff to clarify its investigation of Evergy West's compliance, in relation to Ms. Edwards's account, with Commission rules governing billing and payment standards and billing adjustments.⁹ On December 21, 2020, Staff reported its conclusion that Evergy West had violated Commission rules and approved tariffs.¹⁰

After allowing a period for response to Staff's supplemental report, the Commission on February 17, 2021, issued a procedural schedule and set a hearing on April 30, 2021, to receive testimony regarding certain exhibits offered after the hearing and other

⁸ *Order on Post-Hearing Briefs and Exhibits* (Sept. 28, 2020); *Order Amending Order on Post-Hearing Briefs and Exhibits* (Oct. 1, 2020); 20 CSR 4240-2.130(16) (presiding officer may require production of evidence upon any issue and authorize the filing of specific evidence to be included in the case record).

⁹ *Order Suspending Briefing Schedule and Directing Staff Investigation and Report* (Oct. 30, 2020).

¹⁰ *Supplemental Report of the Staff* (Dec. 21, 2020).

testimony and evidence concerning Staff's supplemental report. On April 12, 2021, on behalf of Staff, Ms. Edwards, and Evergy West, Staff filed a request to cancel the evidentiary hearing based on an agreement between Ms. Edwards and Evergy West. The Commission issued notice of the proposed partial dismissal of the complaint and directed that any responses be filed no later than April 26, 2021. The Commission's notice advised the parties that the Commission understood the partial settlement as intended to withdraw from Ms. Edwards's complaint and from Commission consideration all pending questions of Evergy West's compliance with Commission rules and company tariffs in relation to billing of Ms. Edwards's account.¹¹

Based on Ms. Edwards's voluntary agreement to accept an account credit of \$310.51 and Evergy West's voluntary offer to apply such a credit to Ms. Edwards's account, the Commission on May 3, 2021, dismissed with prejudice all pending questions of Evergy West's compliance with Commission rules and company tariffs concerning the billing of Ms. Edwards's account.¹²

Resolution of post-hearing proceedings

Following resolution of the issues raised by Staff's supplemental recommendation and expiration of the objection period for all proposed exhibits, the Commission on May 3, 2021, issued its *Notice of Exhibits* and reinstated the schedule for post-hearing briefs. On May 20, 2021, the parties filed post-hearing briefs, and the case was submitted to the Commission.¹³

Findings of Fact

¹¹ *Notice of Proposed Partial Dismissal of Complaint and Order Setting Time for Responses* (April 13, 2021).

¹² *Order Approving Partial Dismissal of Complaint* (May 3, 2021).

¹³ 20 CSR 4240-2.150(1).

1. Evergy Missouri West Inc. d/b/a Evergy Missouri West (“Evergy West”) is a “electrical corporation” and “public utility” regulated by the Commission, pursuant to Section 386.020, RSMo (Cum. Supp. 2020).

2. Evergy began providing residential electric service to Barbara Edwards in Lone Jack, Missouri¹⁴ in May 1997.¹⁵

3. Ms. Edwards’s property is fenced and gated.¹⁶ On at least one occasion, an Evergy West meter reader had to use a ladder to scale the fence and access the property.¹⁷

4. Ms. Edwards was a “self-read” customer until Evergy West installed a new electrical meter at her residence on June 21, 2019,¹⁸ while Ms. Edwards was away from the property on vacation.¹⁹ The meter installed on Ms. Edwards’ property is owned by Evergy West.²⁰

5. As a self-read customer, Ms. Edwards periodically read the electrical meter installed at her property and reported the meter reading to the company.²¹ Ms. Edwards typically used Evergy West’s automated phone service to report meter readings and make payments.²²

¹⁴ Ms. Edwards’s precise service address is designated confidential. The confidentiality of Ms. Edwards’s address is preserved in this order because she stated concerns about security during the hearing.

¹⁵ Transcript Vol. 3 at p. 231; *Answer, Affirmative Defenses, and Motion to Dismiss of Evergy Missouri West*, ¶ 3 (March 26, 2020).

¹⁶ Transcript Vol. 3 at p. 112, 138, 152-153, 162.

¹⁷ Transcript Vol. 3 at p. 138, 153.

¹⁸ Transcript Vol. 3 at p. 231; Ex. 201: Corrected Staff Report, p. 6.

¹⁹ Transcript Vol. 3 at p. 114, 119, 147.

²⁰ Transcript Vol. 3 at p. 230.

²¹ Transcript Vol. 3 at p. 113, 231.

²² Transcript Vol. 3 at p. 151-152.

6. Evergy West serves about 250,000 to 300,000 customers in Missouri.²³ Of those customers, Evergy West's supervisor of measurement technology testified that about 50 customers were "self-read" customers as of the date of hearing.²⁴

7. Evergy West plans to eliminate "self-read" arrangements throughout its service area.²⁵ Evergy West's standard meters use advanced meter infrastructure (AMI),²⁶ which in this case use radio frequency technology (RF)²⁷ to allow two-way communication between the meter and the company (AMI Meters).²⁸ The company plans to use AMI Meters for "99.9 percent" of customers.²⁹

8. The RF technology used by AMI Meters operates in a similar fashion to remote garage door openers or baby monitors, which also use radio frequencies to operate wirelessly.³⁰ The Federal Communications Commission has authorized the use of RF technology by AMI Meters.³¹

9. Radio frequency density varies by the type of device using RF technology. An FM radio has a slightly lower RF density than an AMI Meter, while cellphones and walkie-talkies are among devices with much higher RF density.³²

²³ Transcript Vol. 3 at p. 245. The number of customer accounts is reported in annual reports filed with the Commission as required by Section 393.140(6), RSMo (2016).

²⁴ Transcript Vol. 3 at p. 232, 244.

²⁵ Transcript Vol. 3 at p. 232-233, 236.

²⁶ Transcript Vol. 3 at p. 232, 240.

²⁷ Transcript Vol. 3 at p. 196-199.

²⁸ Transcript Vol. 3 at p. 240,

²⁹ Transcript Vol. 3 at p. 236.

³⁰ Transcript Vol. 3 at p. 196-197.

³¹ Transcript Vol. 3 at p. 200.

³² Transcript Vol. 3 at p. 202.

10. RF technology allows AMI Meters to indicate anomalies in service, including power outages and potential fire detection.³³ With a properly equipped AMI Meter, Evergy West may disconnect service remotely without sending a technician to a location.³⁴

11. AMI Meters typically collect electricity consumption information in 15-minute intervals and transmit the collected meter readings to Evergy West four to six times per day.³⁵ AMI Meters can also transmit immediate reports of irregular events, such as power outages.³⁶

12. AMI Meters transmit encrypted information that and does not identify individual customers.³⁷ AMI Meters are not able to report energy use attributable to specific appliances or activities.³⁸

13. AMI Meters pose no greater risk of fire than a meter that uses non-digital technology.³⁹

14. Devices that consume electricity produce “electromagnetic force” (EMF) when energized, or connected to power.⁴⁰

15. The requirements for customers to opt out of the use of Evergy West’s standard meter, an AMI Meter, are established by tariff approved by the Commission.⁴¹ Evergy West customers who do not owe a past-due balance may “opt out” of the use of an AMI Meter by paying a one-time \$150 fee, paying an additional \$45 monthly fee, and

³³ Transcript Vol. 3 at p. 198-199.

³⁴ Transcript Vol. 3 at p. 242.

³⁵ Transcript Vol. 3 at p. 200-201.

³⁶ Transcript Vol. 3 at p. 201.

³⁷ Transcript Vol. 3 at p. 201-202.

³⁸ Transcript Vol. 3 at p. 200-201.

³⁹ Transcript Vol. 3 at p. 203, 227.

⁴⁰ Transcript Vol. 3 at p. 198. Ms. Edwards’s complaint addresses “electromagnetic fields.” See Ex. 14C: Complaint, p. 1. 3. This order treats these terms interchangeably as did the parties throughout the hearing.

⁴¹ Transcript Vol. 3 at p. 87.

signing a form that acknowledges those requirements under the tariff.⁴²

16. A customer who opts out of a standard meter receives a standard meter that has been modified to disable the RF technology.⁴³

17. During the period at issue, Evergy West billing statements for Ms. Edwards's account billed separately for residential service and an exterior "private area light."⁴⁴ Ms. Edwards describes the exterior light as a "dawn-to-dusk" light.⁴⁵

18. In 2017 and for part of 2018, Evergy West issued monthly forms for Ms. Edwards's account that provided instructions to read a meter and report the reading to the company by phone.⁴⁶ Evergy West did not issue monthly self-read forms for Ms. Edwards's account after a final self-read form dated April 4, 2018.⁴⁷

19. Evergy West billing statements indicate customer meter reads on Ms. Edwards's account for 2018 billing on January 12, 2018; March 12, 2018; and April 13, 2018.⁴⁸ No customer-provided meter reads are indicated in Evergy West records for Ms. Edwards's account in 2019.⁴⁹

20. Evergy West personnel obtained a meter read directly from the meter on Ms. Edwards's property in November 2017.⁵⁰ The company did not directly read

⁴² Transcript Vol. 3 at p. 87, 245-246, 250-251; see *also* Ex. 104: Evergy Opt-out Form.

⁴³ Transcript Vol. 3 at p. 239-240.

⁴⁴ Ex. 105: Billing Statements (Billing dates Jan. 17, 2017, through Sept. 11, 2020); see *also* Ex. 105A: Affidavit of Paige MacNair.

⁴⁵ Transcript Vol. 3 at p. 132.

⁴⁶ Ex. 105: Billing Statements; see *also* Transcript Vol. 3 at p. 113, 150-152.

⁴⁷ Ex. 105: Billing Statements.

⁴⁸ Ex. 105: Billing Statements (Billing dates Jan. 16, 2018, Feb. 14, 2018; March 14, 2018; April 16, 2018); Evergy West's measurement technology supervisor, Mr. Brad Walsh, incorrectly testified Ms. Edwards reported no self-reads of her meter in 2018. Transcript Vol. 3 at p. 233-234. Evergy West's customer affairs supervisor, Alicia Duarte, also testified incorrectly that Ms. Edwards did not provide any self-reads in 2018, before revising her testimony under questioning by Ms. Edwards. Transcript Vol. 4 at p. 258, 260-263.

⁴⁹ Ex. 105: Billing Statements.

⁵⁰ Transcript Vol. 4 at p. 309, 314.

Ms. Edwards's meter during 2018.⁵¹ After November 2017, Evergy West next obtained a meter read directly from the meter on Ms. Edwards's property on June 21, 2019, when Evergy West personnel installed the new meter.⁵²

21. Beginning with the billing statement with a billing date of May 14, 2018, and continuing through the billing date of May 15, 2019, Evergy West estimated Ms. Edwards's electricity usage for her residence at 0 kilowatt hours (kWh).⁵³ During this period, Evergy West continued to bill Ms. Edwards for the exterior light.⁵⁴

22. During the period from July 2018 through April 2019, Ms. Edwards periodically made payments in excess of the billed amounts, resulting in an account credit.⁵⁵ The May 15, 2019 billing statement issued to Ms. Edwards indicates an account credit of \$780.58.⁵⁶

23. Evergy West records indicate annual electricity consumption on Ms. Edwards's account of about 12,000 kWh in 2017; 14,000 kWh in 2018; and almost 14,000 kWh in 2019.⁵⁷

24. Evergy West rebilled Ms. Edwards for underpayment of her electricity bill, based on the actual meter reading taken on June 21, 2019.⁵⁸ Despite the additional

⁵¹ Ex. 200: Corrected Report of the Staff, p. 6-7.

⁵² Ex. 200: Corrected Report of the Staff, p. 6-7; Transcript Vol. 4 at p. 253-254; Transcript Vol. 3 at p. 153, 231.

⁵³ Ex. 105: Billing Statements.

⁵⁴ Ex. 105: Billing Statements.

⁵⁵ Ex. 105: Billing Statements (Billing dates July 13, 2018; Sept. 12, 2018; Nov. 13, 2018; Jan. 14, 2019; April 15, 2019; May 15, 2019).

⁵⁶ Ex. 105: Billing Statements (May 15, 2019).

⁵⁷ Ex. 106: Annual Usage history; Ex. 106A: Affidavit of Brad Walsh.

⁵⁸ Transcript Vol. 3 at p. 231; Ex. 105: Billing Statements (Multiple statements with June 25, 2019 Billing Date).

payments Ms. Edwards had made in excess of the amount billed from July 2018 through April 2019, a balance remained on Ms. Edwards's account after the rebilling.⁵⁹

25. After returning to her home after a vacation in July 2019, Ms. Edwards experienced various physical conditions, including nausea, headache, insomnia, fatigue, "brain fog," dizziness, and changes in vision.⁶⁰

26. Ms. Edwards suspected AMI Meter was causing her physical conditions after speaking with her pastor.⁶¹

27. Ms. Edwards contacted Evergy West and requested the company remove the AMI Meter and allow her to continue service as a "self-read" customer, using a meter that does not use RF technology.⁶²

28. On July 15, 2019, Ms. Edwards contacted the Jackson County Sheriff and made a report that Evergy West had trespassed on her property and installed a new meter.⁶³

29. In December 2019, a physician addressed a letter to Ms. Edwards, stating Ms. Edwards has been evaluated for anxiety associated with the AMI Meter.⁶⁴

30. Ms. Edwards used the internet to research electromagnetic fields and spoke with people who advocate against EMF exposure.⁶⁵

31. Ms. Edwards sleeps on her living room couch, rather than her bedroom, because the meter is located outside her house, on the other side of her bedroom wall.⁶⁶

⁵⁹ Transcript Vol. 4 at p. 267-268, 308.

⁶⁰ Transcript Vol. 3 at p. 114, 116.

⁶¹ Transcript Vol. 3 at p. 103, 119-120, 146, 148-149.

⁶² Transcript Vol. 3 at p. 120, 291; Ex. 201C: Original Staff Report: Case File Memorandum, p. 2-3,

⁶³ Transcript Vol. 3 at p. 148; Ex. 14C: Complaint, attachment: Offense/Incident Report (July 15, 2019).

⁶⁴ Transcript Vol. 3 at p. 130; Ex. 14C: Complaint, attachment: Swords Letter (Dec. 18, 2019).

⁶⁵ Transcript Vol. 3 at p. 77-78, 115-116, 126-127, 226, 321.

⁶⁶ Transcript Vol. 3 at p. 92-93, 104-105.

32. Ms. Edwards has refused to sign the “Residential Non-Standard Metering Service Acknowledgment Form” (Evergy Opt-out Form) presented to her by Evergy West as a requirement to opt out of use of the AMI METER, the company’s standard meter.⁶⁷

Conclusions of Law

Preliminary matters

A. Section 386.480, RSMo (2016), limits the public disclosure of information furnished to the Commission, with the exception of “such matters as are specifically required to be open to public inspection” by the provisions of Chapters 386 and 610, RSMo.

B. The Commission may make information furnished to the Commission open to the public “on order of the Commission” and “in the course of a hearing or proceeding.”⁶⁸

C. Customer-specific information may be designated confidential under Commission rules.⁶⁹ The confidentiality provisions of Commission rules may be waived by the Commission for good cause.⁷⁰

D. The Commission may take official notice to the same extent as the courts take judicial notice.⁷¹

E. As provided by the Commission’s May 3, 2021 order, all allegations of noncompliance with Commission rules and company tariffs concerning Evergy West’s billing of Ms. Edwards’s account have been dismissed with prejudice, based on

⁶⁷ Transcript Vol. 3 at p. 246-247; See Ex. 104: Evergy Opt-out Form.

⁶⁸ Section 386.480, RSMo (2016).

⁶⁹ Commission Rule 20 CSR 4240-2.135.

⁷⁰ Commission Rule 20 CSR 4240-2.135(19).

⁷¹ Section 536.070(6), RSMo (2016).

Ms. Edwards's voluntary agreement to accept an account credit and Evergy West's voluntary offer to apply such a credit to Ms. Edwards's account.

Commission jurisdiction – Burden of proof – Damages

F. Evergy West is an “electrical corporation” and a “public utility” as those terms are defined in Section 386.020 (Cum. Supp. 2020).

G. Evergy West is subject to the Commission's jurisdiction, supervision, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has jurisdiction over the manufacture, sale and distribution of electricity within the state.⁷²

H. Section 386.390.1, RSMo (Cum. Supp. 2020), permits any person to make a complaint to the Commission “setting forth any act or thing done or omitted to be done” by any public utility “in violation ... of any provision of law subject to the [C]ommission's authority, of any rule promulgated by the [C]ommission, of any utility tariff, or of any order or decision of the [C]ommission.”

I. In a complaint before the Commission, the person bringing the complaint has the burden of showing that a public utility has violated a provision of law subject to the Commission's authority, or a Commission rule, order, or Commission-approved tariff.⁷³

J. While the Commission may determine, pursuant to a complaint, whether a public utility has violated a statute subject to the Commission's authority, or a Commission rule, order, or tariff, the Commission does not have authority to award damages.⁷⁴

⁷² See sections 386.040 and 386.250(1), RSMo (2016).

⁷³ *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

⁷⁴ *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 696 (Mo. App. 2003).

K. The determination of witness credibility is left to the Commission, “which is free to believe none, part, or all of the testimony.”⁷⁵

Duties created by statute and company tariff

L. Section 393.130.1 requires every electrical corporation to provide safe and adequate “service instrumentalities and facilities.”

M. Among the general powers of the Commission is the authority, pursuant to Section 393.140(11), RSMo (2016), to require every electrical corporation to file with the Commission and to print and keep open to public inspection “schedules showing all rates and charges made, ... all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used.”⁷⁶

N. Such rate schedules and rules and regulations are commonly referred to as “tariffs.”⁷⁷

O. A tariff is a document that lists a public utility’s services and the rates for those services.⁷⁸ Both a utility and its customers are presumed to know the contents and effect of published tariffs.⁷⁹

P. Commission-approved tariffs may also include provisions governing regulations, practices and services that are prescribed by the Commission and applicable

⁷⁵ *Office of Pub. Counsel v. Evergy Mo. W., Inc.*, 609 S.W.3d 857, 865 (Mo. App. W.D. 2020).

⁷⁶ See also *State ex rel. Inter-City Beverage Co., Inc. v. Pub. Serv. Comm’n*, 972 S.W.2d 397, 400 (Mo. App. W.D. 1998).

⁷⁷ In the context of cases before the Commission, the terms “tariffs” and “rate schedule” are synonymous. See *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 311 S.W.3d 361, 364 n.3 (Mo. App. W.D. 2010).

⁷⁸ *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006) (quoting *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).

⁷⁹ *A.C. Jacobs & Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 585 (Mo. App. W.D. 2000) (citing *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).

to the public utility and its customers.⁸⁰

Q. A tariff approved by the Commission becomes law and has the same force and effect as a statute enacted by the General Assembly.⁸¹

R. Evergy West's tariffs require the company to furnish and install a meter on customer property for billing purposes.⁸²

S. Evergy West's tariffs require customers to allow the company access to customer premises for purposes of "inspecting, reading, repairing, installing, adjusting, caring for, or removing all of its apparatus used in connection with supplying electric service."⁸³

T. Evergy West's tariffs require a customer who does not want service with a "standard digital meter" to sign a non-standard metering acknowledgment form "accepting all fees, requirements, and limitations" of the opt-out tariff, to pay a non-refundable \$150 fee, and to pay a \$45 monthly charge in addition to all other service fees.⁸⁴ The tariff provides that customers who do not have a past-due balance are eligible to request a non-standard meter.⁸⁵

U. Evergy West's tariffs do not include a provision that requires Evergy West to allow customers to maintain self-read meter service on demand.

⁸⁰ See Section 386.270, RSMo (2016); *A.C. Jacobs & Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 581-85 (Mo. App. W.D. 2000) (approved tariff that is not subject to challenge is deemed lawful and reasonable and establishes rules governing utility's duty to customers).

⁸¹ *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).

⁸² Aquila Inc. d/b/a Aquila Networks, P.S.C. MO. No. 1 Original Sheet No. R-31 (effective April 22, 2004). Evergy West operates under some tariffs originally issued in the name of Aquila Inc. In 2008, the Commission recognized Aquila's name change to KCP&L Greater Missouri Operations Co. On Sept. 20, 2019, the Commission recognized KCP&L Greater Missouri Operations Co.'s name change to Evergy Missouri West, Inc. d/b/a Evergy Missouri West, effective October 7, 2019.

⁸³ Aquila Inc. d/b/a Aquila Networks, P.S.C. MO. No. 1 Original Sheet No. R-24 (effective April 22, 2004).

⁸⁴ KCP&L Greater Missouri Operations Co., P.S.C. MO. No. 1 Original Sheet No. R-33.2 (effective Dec. 6, 2018).

⁸⁵ KCP&L Greater Missouri Operations Co., P.S.C. MO. No. 1 Original Sheet No. R-33.2, Rule 5.05 Non-Standard Metering Service (effective Dec. 6, 2018).

Decision

Preliminary matters

Limited disclosure of account information: Most of the documents filed in this case have been designated as “confidential” as permitted by the Commission’s rules, which provide for the confidentiality of customer-specific information. Because it is necessary for the Commission to make specific findings of fact regarding Ms. Edwards’s account history to decide Ms. Edwards’s complaint, the Commission finds good cause exists to allow public disclosure of limited elements of Ms. Edwards’s billing statements and other specific account information to the extent such information is expressly disclosed in this order. This order authorizes such disclosure, pursuant to the Commission’s authority under Section 386.480, RSMo (2016), and 20 CSR 4240-2.135(19).

Complaint

The Commission on May 3, 2021, dismissed with prejudice all pending questions of Evergy West’s compliance with Commission rules and company tariffs concerning the billing of Ms. Edwards’s account.⁸⁶ Thus, Ms. Edwards’s overbilling complaint is withdrawn from the Commission’s consideration, consistent with the parties’ voluntary agreement.

Among Ms. Edwards’ remaining allegations, the Commission finds Evergy West exceeded its tariff by presenting Ms. Edwards with a waiver and release of liability not required by tariff to opt out of service with a “standard” meter. The Commission finds all other allegations must be denied because the remaining claims are not supported by

⁸⁶ *Order Approving Partial Dismissal of Complaint* (May 3, 2021).

competent and substantial evidence on the record and/or constitute claims that are outside the Commission's authority and may only be determined by a court.

The Commission's authority in a complaint case is limited to evaluating the company's compliance with statute within the Commission's purview, as well as compliance with Commission rules and the company's tariffs. Ms. Edwards's complaint about the Non-Standard Metering Service Acknowledgment Form requested by Evergy West as a requirement to opt out of standard metering raises an issue about whether the form complies with the company's tariff. The Commission finds that it does not.

Evergy West presented Ms. Edwards with a form labeled "Residential Non-Standard Metering Service Acknowledgment Form." The Evergy Opt-out Form includes a paragraph that requires the customer to agree to:

release, hold harmless, and indemnify the Company in its entirety from and against any losses, liabilities, costs, expenses, suits, actions, and claims, including claims arising out of injuries to person or damage to property, caused by or in any way attributable to or related to the Customers's request for a Company Non-Standard Meter, the removal of the Company Standard Meter, and/or the subsequent installation of the Company Non-Standard Meter.⁸⁷

The form requires a customer signature, attesting the customer has "read and understand the [form] and agree[s] to this Acknowledgment, release and indemnification."⁸⁸

Ms. Edwards refused to sign the form and objected to what she characterized as "extortion"⁸⁹ and an inappropriate attempt to compromise her "civil rights and legal rights."⁹⁰

⁸⁷ Ex. 104: Evergy Opt-out Form.

⁸⁸ Ex. 104: Evergy Opt-out Form.

⁸⁹ Transcript Vol. 3 at p. 157-158; Ex. 14C: Complaint, p. 2, 5 (document is not page numbered; page numbering includes cover page).

⁹⁰ Transcript Vol. 3 at p. 88, 157-158.

Evergy West's tariff establishes the requirements for customers who wish to opt out of standard metering service with an AMI Meter. The tariff requires such a customer to "sign and return" to Evergy West a "Residential Non-Standard Metering Service Acknowledgment Form ... accepting all fees, requirements, and limitations of" the tariff, which is designated "Rule 5.05."⁹¹ Rule 5.05, as the tariff is labeled, does not state a requirement that an opt-out customer must sign a "release and indemnification" to receive service with a non-standard meter, nor does the tariff mention "release and indemnification" of any kind. Under Rule 5.05, customers who wish to opt out are required to acknowledge the requirements of the tariff by submission of an "acknowledgment" form. Imposition of a "release and indemnification" exceeds the terms of Rule 5.05 and violates Evergy West's Commission-approved tariff.

Ms. Edwards complains the meter was installed without her permission or knowledge and poses a fire risk. She alleges the meter is causing physical symptoms, is a threat to her health and constitutes "assault." In addition, she alleges overbilling, trespass, unlawful taking and "inverse condemnation," mail fraud, "extortion," privacy violations, and violations of the Americans with Disabilities Act and Fair Housing Act. Ms. Edwards demands the removal and replacement of the meter at no cost and requests the Commission order Evergy West to pay damages.

To the extent that the remaining allegations in Ms. Edwards's complaint assert an issue within the scope of the Commission's authority, Ms. Edwards has not met her burden to show Evergy West violated statute, Commission rule or the company's tariffs. The bulk of Ms. Edwards's complaint is composed of claims that are outside the scope of

⁹¹ KCP&L Greater Missouri Operations Company P.S.C. MO. No. 1 Original Sheet No. R-33.2 (effective Dec. 6, 2018).

the Commission's authority to decide. In this regard, Ms. Edwards seeks relief the Commission does not have authority to grant.

The Commission finds the Evergy Opt-out Form, presented to Ms. Edwards as a condition of opting out of service with an AMI Meter, violates the company's tariff. The remaining allegations in Ms. Edwards' complaint are denied.

Any application for rehearing must be filed before the effective date of this order.

THE PRESIDING OFFICER RECOMMENDS THE COMMISSION ORDER THAT:

1. Because of the necessity of considering customer-specific account information to decide Ms. Edwards's complaint, that information is made public to the extent such information is disclosed in this order. Such disclosure is hereby authorized as provided by Section 386.480, RSMo (2016).

2. The liability release and waiver required by Evergy West in the Residential Non-Standard Metering Service Acknowledgment Form exceeds the terms of the company's tariff, which specifies the requirements a customer must satisfy to receive service with a non-standard meter.

3. All other remaining allegations in Ms. Edwards's complaint are denied.

4. This order shall become effective on _____, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

[voting notation]

Pridgin, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 22nd day of September, 2021.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

September 22, 2021

File/Case No. EC-2020-0252

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.