

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

Sherry Veach,)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2012-0406
)	
The Empire District Electric Company,)	
)	
Respondent.)	

EMPIRE’S POST-HEARING BRIEF

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and for its Post-Hearing Brief in this matter, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

The Complainant, Sherry Veach (“Complainant” or “Veach”), is an electric customer of Empire residing in Fair Grove, Missouri.¹ Veach established her electric service account with Empire in 1988, and she requested meter testing by Empire sometime in or around the year 1997 and again on January 23, 2012.² Empire performed a meter test at the request of Veach on January 24, 2012.³ Empire found the Veach meter to be working properly.⁴

On February 14, 2012, Veach met with Empire employee John Crawford.⁵ Veach also contacted the Commission to file an informal complaint against Empire.⁶ Staff investigated the claims of Veach and determined that Empire had not violated any statute, rule, or tariff and that

¹ Joint Stipulation of Non-Disputed Material Facts, ¶2.

² Joint Stipulation of Non-Disputed Material Facts, ¶3, ¶4, and ¶5.

³ Joint Stipulation of Non-Disputed Material Facts, ¶6.

⁴ The results of the meter test are in the Commission’s evidentiary record at page 29 of Veach Hearing Exhibit 3, EFIS item 21.

⁵ Joint Stipulation of Non-Disputed Material Facts, ¶8.

⁶ Joint Stipulation of Non-Disputed Material Facts, ¶8.

no restitution for alleged overcharges was due to Veach.⁷ As part of Staff's investigation, Staff witness Dan Beck looked at Veach's appliances and her electric meter and visited with Veach for approximately three hours.⁸ The complete Staff report is part of the Commission's evidentiary record as Staff Hearing Exhibit 5, EFIS item 31. Veach filed her formal complaint, which is the subject of this proceeding, on June 4, 2012.⁹

With her formal complaint, Veach alleges that Empire has caused "over charges of approximately 65% over the last 24 years" and accuses Empire of secretly recalibrating her meter on February 14, 2012. Veach testified at the evidentiary hearing held in this matter in Fair Grove, Missouri, on November 5, 2012, before Judge Michael Bushmann, as did Empire witnesses Ann Butts and John Crawford and Commission Staff witness Daniel Beck. Lewis Mills, Missouri Office of the Public Counsel, appeared as legal counsel for the public.

Pursuant to the Joint List of Issues and Witnesses filed herein, the issues before the Commission are: (1) whether Empire over-charged 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, (2) whether Empire took any action in February of 2012 to significantly change the measurement of electricity usage for the Veach residence, and (3) whether Empire has violated any statute, rule, or tariff with regard to Empire's provision of electric service to Veach. The evidence demonstrates that Empire has not over-charged Veach or otherwise violated any statute, rule, or tariff with regard to the provision of electric service to Veach. The evidence also demonstrates that Empire did not take any action in February of 2012 to alter the measurement of electricity usage at the Veach residence.

⁷ Tr. Vol. II, p. 113, lines 3-9.

⁸ Tr. Vol. II, pp. 109-110.

⁹ Joint Stipulation of Non-Disputed Material Facts, ¶10.

On the other hand, the evidence demonstrates that Veach has significantly varied her level of electricity usage from month-to-month and from year-to-year over a period of a number of years and that Veach significantly reduced her electricity usage prior to February of 2012 and continues to limit her electricity usage today.

Empire Hearing Exhibit 2, EFIS item 30, is the “read and charge history” for the Veach meter for the time period of December 13, 2002 through October 15, 2012. A review of the July and August readings for this approximately ten-year period establishes that Veach’s measured change in electricity usage is not the result of any action taken by Empire to replace or recalibrate the Veach meter on February 14, 2012.

<u>Meter Reading</u>	<u>kWh per day</u>	<u>Meter Reading</u>	<u>kWh per day</u>
July 16, 2003	49	July 15, 2008	47
August 18, 2003	50	August 13, 2008	55
July 15, 2004	41	July 17, 2009	54
August 16, 2004	34	August 17, 2009	46
July 14, 2005	33	July 19, 2010	57
August 15, 2005	52	August 16, 2010	74
July 18, 2006	48	July 18, 2011	48
August 16, 2006	70	August 16, 2011	72
July 16, 2007	27	July 16, 2012	39
August 13, 2007	39	August 15, 2012	52

The lowest kWh usage for July was in 2007 – not in 2012. The lowest kWh usage for August was in 2004 – not in 2012. The Veach reading for July of 2012 – after the alleged secret meter recalibration or replacement by Empire – is 39 kWh/day. This is in line with the average for the months of July for 2003-2012 which is 44.3 kWh/day. Similarly, the 52 kWh/day Veach reading for August of 2012 is in line with the average for the months of August for 2003-2012 (54.4 kWh/day).

Usage levels for the months of December and January are also quite telling. The reading on January 16, 2012 – prior to the time of the meter test by Empire (January 24, 2012) and prior to the alleged recalibration or meter replacement (February 14, 2012), shows a kWh per day usage of 39 – the lowest of any January reading between 2003 and 2012. The reading on December 14, 2011 – prior to the time of the meter test by Empire and prior to the alleged recalibration or meter replacement, shows a kWh per day usage of 43 – the lowest of any December reading between 2002 and 2012.¹⁰ Once again, the evidence demonstrates that Veach decreased her electricity usage prior to filing a complaint against Empire, but the evidence does not demonstrate that Empire recalibrated or replaced the meter at the Veach residence as alleged.

As Staff witness Dan Beck testified regarding Veach’s more recent usage, “Ms. Veach is doing probably what we should all be doing and being very conservative about her electric usage. . .”¹¹ Staff witness Beck, the engineer analysis supervisor in the Commission’s energy unit, has been employed by the Commission for 25 years.¹² Beck also explained that, based on his experience and his examination of the Veach home, Veach’s electricity usage for *past* years is consistent with what he would expect for similar houses.¹³ Empire witness Crawford also explained that a “meter is either good or it’s bad, and if it’s bad, it stays bad.”¹⁴ Crawford has been employed by Empire for almost 34 years as a Journeyman meter tester.¹⁵ Crawford deals exclusively with meters and voltage complaints.¹⁶

Empire’s responses to the data requests served on the Company by Veach are included in the Commission’s evidentiary record as Veach Hearing Exhibit 10, EFIS item 28. The usual

¹⁰ Empire Hearing Exhibit 2, EFIS item 30.

¹¹ Tr. Vol. II, p. 142, lines 3-6.

¹² Tr. Vol. II, pp. 107-108.

¹³ Tr. Vol. II, p. 114, lines 6-16.

¹⁴ Tr. Vol. II, p. 97, line 21 – p. 98, line 2.

¹⁵ Tr. Vol. II, p. 82, lines 20-25.

processes for testing and changing residential meters are explained therein (DRs 3 and 8). Empire's responses to data requests four and five also outline the procedures for managing residential meters in inventory and tagging and securing residential meters. Empire employee Crawford did not violate these procedures and processes to secretly replace the Veach meter on February 14, 2012.

Crawford visited the Veach residence on two occasions – once in January of 2012 and again on February 14, 2012. At the first visit, Crawford tested the Veach meter, a mechanical meter with a calibration range of approximately three to five percent. Crawford found the Veach meter to be working well within the Commission's standards. At the second visit, Crawford met with Veach, but he did not replace, repair, or otherwise touch the Veach meter on that date.¹⁷ Crawford also explained that new meters installed by Empire generally are not of the same type as the Veach meter and that he does not keep in stock the type of meter which is operating at the Veach residence.¹⁸ As Veach testified, the electric meter at her residence, including the glass cover, looked the same both before and after February 14, 2012.¹⁹ The same meter, clearly displaying the meter identification number, is measuring usage at the Veach residence today as was measuring usage at the Veach residence prior to February 14, 2012.²⁰

The Veach meter was not secretly replaced by Empire on February 14, 2012, or at any other time. Likewise, the Veach meter was not recalibrated. As Empire employee Crawford testified, he did not touch the Veach meter on February 14, 2012. Notably, it would not be

¹⁶ Tr. Vol. II, p. 83, lines 9-11.

¹⁷ Tr. Vol. II, pp. 83-86.

¹⁸ Tr. Vol. II, p. 88, lines 1-16, pp. 95-97.

¹⁹ Tr. Vol. II, p. 62, line 6 – p. 63, line 7.

²⁰ Veach Hearing Exhibit 8, EFIS item 26; Tr. Vol. II, p. 80, lines 19-25 (Butts testimony); Tr. Vol. II, p. 87, lines 6-22 (Crawford testimony).

possible to recalibrate the meter to the degree alleged by Veach.²¹ Although Veach was able to present extensive testimony regarding her appliances and her purported usage of those appliances over time, Veach did not present any actual evidence to support her claim that her electric meter was replaced or recalibrated by Empire on February 14, 2012.

Unable to present evidence in support of her claims, Veach accused Empire witness Crawford of lying about speaking with her on the telephone on February 14, 2012. Veach does not dispute that Empire witness Crawford met with her at her residence on February 14, 2012, but she claims she did not speak with him on the telephone prior to the meeting, further attacking Crawford's credibility as follows:

Now, if you did not call me, you could not have left a message. I could not have called you back. I could not have set up an appointment with you, so why would I believe anything else that you have given in your statement?²²

Empire was not aware that this phone call was going to be an issue at the evidentiary hearing, and Empire submits that the issue of whether or not Veach and Crawford spoke on the telephone prior to speaking in person on February 14, 2012, is not relevant to the issues before the Commission. There is no evidence to support Veach's allegation that Empire may have secretly replaced her meter on February 14, 2012; and there is no evidence to counter the testimony of Empire witness Crawford and Staff witness Beck that the Veach meter could not be recalibrated to the degree alleged by Veach. Additionally, the electricity usage records in evidence support the conclusions of the Commission Staff that Empire has not violated any statute, rule, or tariff and that no restitution for alleged overcharges is due to Veach and that Veach decreased her electric usage prior to filing her complaint against Empire and continues to be very conservative with her electric usage.

²¹ Tr. Vol. II, p. 112, line 8 – p. 113, line 2.

²² Tr. Vol. II, p. 91, lines 17-21.

As Veach admitted, she does not know what happened, but she believes the meter is simply “reading differently” as of February 14, 2012.²³ This belief, coupled with self-serving testimony regarding appliance usage, cannot provide a legal basis for a finding by the Commission that Empire violated a statute, rule, or tariff and overcharged Ms. Veach for electricity. As such, the Commission should find in favor of Empire on all issues presented.

WHEREFORE, Empire respectfully submits this post-hearing brief and requests that the Complainant’s request for relief be denied. Empire requests such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter
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ATTORNEYS FOR THE EMPIRE
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to the Complainant, the General Counsel’s Office, and the Office of the Public Counsel on this 30th day of November, 2012, and that a copy of this Post-Hearing Brief was also sent on this date to the Complainant by United States Mail, postage prepaid.

/s/ Diana C. Carter

²³ Tr. Vol. II, p. 64, lines 5-24.