

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3 TRANSCRIPT OF PROCEEDINGS
4 Evidentiary Hearing
5 June 14, 2019
6 Joplin, Missouri
7 Volume 4
8
9

10 William L. Gehrs, Jr.,)
11 Complainant,)
12 vs.) File No. EC-2018-0033
13 The Empire District)
14 Electric Company,)
15 Respondent.)
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18 JOHN T. CLARK, Presiding
19 SENIOR REGULATORY LAW JUDGE
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25 Reported by: PAULA C. VOYLES, RPR, CRR, CCR No. 750

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1 P R O C E E D I N G S

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3 JUDGE CLARK: Let's bring this
4 proceeding to order and go on the record.

5 Good morning. Today is June 14th, 2019,
6 and the current time is 9:12 a.m.

7 The Commission has set aside this time
8 for an evidentiary hearing in the matter of
9 William L. Gehrs, Jr., complainant, versus The
10 Empire District Electric Company, respondent, and
11 that would be file number EC-2018-0033. My name is
12 John Clark. I'm the regulatory law judge presiding
13 over this hearing.

14 At this time, I'd like counsel for the
15 parties to enter their appearance, starting with
16 Mr. Gehrs. You're self-represented. Is that
17 correct?

18 MR. GEHRS: Yes. William L. Gehrs,
19 Joplin, Missouri 64801.

20 JUDGE CLARK: Thank you, Mr. Gehrs.
21 For The Empire District Electric
22 Company?

23 THE WITNESS: Diana Carter for The
24 Empire District Electric Company, 428 East Capitol
25 Avenue, Suite 303, Jefferson City, Missouri 65101.

1 JUDGE CLARK: And for the Commission
2 Staff?

3 MS. ASLIN: Casi Aslin for Staff of the
4 Commission, and my information has been provided to
5 the court reporter.

6 JUDGE CLARK: Thank you very much,
7 Miss Aslin. Also here today we have?

8 MR. WHITWORTH: Daniel Whitworth,
9 Joplin, Missouri 64804.

10 JUDGE CLARK: And?

11 MS. STEEL: Alexandra Steel, Joplin,
12 Missouri 64804.

13 JUDGE CLARK: And those are people here
14 at the behest of Mr. Gehrs. I don't believe either
15 of them are going to be testifying, but they are
16 present in the room.

17 And also here is Bob Higginbotham, who
18 is granted intervention and who may testify and has
19 been deemed an interested party for the purpose of
20 this proceeding.

21 As indicated off the record to
22 Mr. Higginbotham, that was a designation I made as I
23 decided it would be inappropriate to make him a
24 co-complainant as he has a separate building under
25 similar circumstances, but not sufficiently similar,

1 not that I felt it deemed making it the same
2 complaint. However, based upon the outcome of this
3 proceeding, he may make some decisions regarding
4 what he wants to do as to whether or not he has a
5 complaint or not.

6 All right. I've put my cell phone back
7 here, and I've set it on vibrate. I would ask
8 anybody else who has a cell phone, if you haven't
9 put it on vibrate, you do, because it's rather
10 disruptive when a cell phone goes off.

11 As a preliminary matter, are there any
12 preliminary matters that need to be taken up at this
13 time? Mr. Gehrs?

14 MR. GEHRS: Not at this time. I need a
15 little guidance as to procedure, but I'm ready to go
16 ahead.

17 JUDGE CLARK: Okay. Now you were
18 represented at one point and then you no longer were
19 represented. I am going to tell you that you're
20 going to be held to the same standard as an
21 attorney.

22 THE WITNESS: Yes, sir.

23 JUDGE CLARK: But while I'm going to
24 hold you to the same standard in regard to
25 objections and such, certainly if you want any

1 aspect explained to you as we go along, you're
2 welcome to ask, and I'll be more than happy to
3 explain that aspect.

4 And in regard to objections, if you have
5 an objection, go ahead and make your objection, and
6 then we'll see whether or not it's legal.

7 MR. GEHRS: All right. Thank you, sir.

8 JUDGE CLARK: The worst that can happen
9 is I say no.

10 So you had no preliminary matters. Does
11 Empire have any preliminary matters?

12 MS. CARTER: Judge, just we had a
13 stipulation of facts, and I don't know if you prefer
14 that we mark that as an exhibit or not.

15 JUDGE CLARK: Actually I was going to
16 get to that, and because I am limited to what is in
17 the record, that was one of the first things I was
18 going to ask you to do, but we can address that.
19 Let's go ahead and address that now.

20 I was going to address it when I got to
21 exhibits, but the parties did file, and I believe it
22 was filed on May 31st, a joint stipulation of facts,
23 which Empire filed on behalf of -- it's in here
24 somewhere. There it is -- which Empire filed on
25 behalf -- in agreement, it said, on behalf of

1 complainant, Mr. Gehrs; intervenor, Bob
2 Higginbotham; and the staff of commission, and
3 themselves, and it indicated that everybody had an
4 opportunity to look at and agree with that
5 stipulation. There anybody who did not get an
6 opportunity to look at or agree with that
7 stipulation of facts as a party?

8 MR. GEHRS: We did.

9 JUDGE CLARK: Is there anybody who
10 objects to that being marked as Exhibit 1, and does
11 it want to be on behalf of Empire or do you want me
12 to make it a commission exhibit? Why don't we make
13 it a commission exhibit, since it's joint on behalf
14 of all the parties? Is there anybody who objects to
15 commission Exhibit No. 1, the joint stipulation of
16 facts?

17 MR. GEHRS: No.

18 JUDGE CLARK: Okay. I hear no
19 objections. Let's get it marked as Commission
20 Exhibit 1.

21 (Exhibit 1 marked and admitted

22 JUDGE CLARK: So Commission Exhibit 1 is
23 admitted onto the hearing record. Are there any
24 other pending motions?

25 MS. CARTER: No.

1 JUDGE CLARK: Staff?

2 MS. ASLIN: No.

3 JUDGE CLARK: Now, I didn't require,
4 given the low number of parties, the filing of
5 witness list, I asked off the record who was going
6 to be testifying. It looks like William Gehrs on
7 behalf of Mr. Gehrs; Bob Higginbotham, also on
8 behalf of Mr. Gehrs; Robin Kliethermes, on behalf of
9 the Commission Staff; and Patsy Mulvaney, on behalf
10 of The Empire District Electric Company.

11 In regard to an order, Mr. Gehrs, it's
12 your burden to carry your case, which means it is
13 your burden to show that The Empire District
14 Electric Company has violated a law that would be
15 under the authority of the Commission and commit a
16 lawful commission order, a commission rule or a
17 commission-approved tariff.

18 So, as the moving party, your witnesses
19 are going to go first, followed by The Empire
20 District Electric Company, as they're the
21 respondent; and, finally, Staff will go last. Does
22 anybody have any objections to that order of
23 witness?

24 I see no hands. This is normally the
25 part where I say exhibits should be premarked, but

1 I'm not going to require that either. I'm giving
2 some flexibility in this and, actually, rather than
3 having pre-filled-out exhibit lists, I'm just going
4 to be doing them one at a time, and that's because
5 people may not know yet exactly what exhibits they
6 want to offer in regards to what testimony or
7 rebutting certain testimony. So I'll leave that
8 open and flexible.

9 I am going to allow for opening
10 statements. I think it's important that the opening
11 statements are given. It's important to understand
12 that opening statements are not, in fact, evidence.
13 Opening statements are to kind of give me an
14 overview of what you believe the issues are in the
15 case and what it is you're going to be putting forth
16 in regard to those issues. So Mr. Gehrs, I'll give
17 you an opportunity to make an opening statement.

18 MR. GEHRS: Thank you. We feel that the
19 Empire District is featherbedding their tariff RG.

20 JUDGE CLARK: What was that term you
21 used?

22 MR. GEHRS: Featherbedding.

23 JUDGE CLARK: Would you explain that to
24 me, please?

25 MR. GEHRS: Featherbedding is where they

1 charge you for products and services and not being
2 able to deliver or give you the product or pursue
3 it.

4 Featherbedding is really a labor
5 terminology used in the rails years ago where, as
6 the rails modernized and had new technical
7 equipment, like from steam engines to diesel power,
8 they featherbedded the labor. In other words, a
9 diesel engine would go through two division points
10 where a steam engine would make one. The rails let
11 the crew go two divisions and paid them double pay.
12 That's called featherbedding, paying something that
13 you don't get.

14 And two, in the inability of Empire to
15 administrate their tariff properly. They cannot
16 enforce it equitably between all customers.

17 JUDGE CLARK: And I got that from your
18 amend the complaint as well.

19 MR. GEHRS: Yes.

20 JUDGE CLARK: Got a quick question in
21 regards to that. I know we've talked about this in
22 the past in prehearing conferences, and I think the
23 previous regulatory judge may have said something
24 about it. What are you requesting in the way of
25 relief here? What is it you're hoping to get out of

1 this?

2 MR. GEHRS: I believe Under Conditions
3 of Service, paragraph 4 should be eliminated or
4 modified to eliminate the featherbedding rule.

5 As time went on in the apartment house
6 business, I've been in the apartment house business
7 since early '60s, the first apartment I built was
8 420 Moffet, and at that time all apartment housing
9 in the State of Missouri were considered to be
10 commercial, and we were charged all commercial rates
11 from all utilities, real estate taxes were
12 commercial, and we paid sales tax on the utilities.

13 As time went on, the first thing was
14 eliminated was the real estate taxes, the Missouri
15 Department of Taxation had a case with Missouri
16 homeowners or apartment house owners, one, a case
17 that eliminated commercial classification of
18 apartment housing and let them go to real estate --
19 to residential.

20 JUDGE CLARK: Mr. Gehrs, it starts like
21 you're stating to get into evidence that you may
22 want to present rather than argument, and if you're
23 going to do that, I'm going to properly swear you in
24 at that point.

25 MR. GEHRS: I understand.

1 JUDGE CLARK: This is just your opening
2 argument.

3 MR. GEHRS: Two things: One,
4 featherbedding, and unable to administrate the
5 tariff.

6 JUDGE CLARK: And featherbedding you
7 indicated was paying for something that you don't
8 get?

9 MR. GEHRS: That is correct. You could
10 call it gouging, but that's kind of a tough word.

11 JUDGE CLARK: And it's your belief that
12 this featherbedding violates, what, their tariff, a
13 commission order, a rule, a statute?

14 MR. GEHRS: I believe it violates the
15 overall principal of the Commission to protect the
16 public from a monopoly corporation such as Empire.

17 JUDGE CLARK: So are you saying it goes
18 to just and reasonable rates?

19 MR. GEHRS: It's affects the rate to
20 excessive costs.

21 JUDGE CLARK: All right. Do you have
22 anything further you want to make by way of opening?

23 MR. GEHRS: That would be all. Thank
24 you.

25 JUDGE CLARK: Okay. Thank you.

1 For the Empire District?

2 MS. CARTER: Thank you. In Mr. Gehrs'
3 amended complaint, in addition to what he just said
4 about a tariff change, it requests a refund, so it's
5 unclear if he's still want to go pursue that avenue.
6 But in the complaint he asks for a refund, and in
7 that complaint he asks for a refund from 1978 to the
8 present for customer charges that were imposed
9 pursuant to the tariff.

10 Empire's records go back to 1980, so
11 that's as far back as we can verify, that Mr. Gehrs'
12 building has been on a residential rate since 1980.
13 We can't say prior to that because the records just
14 no longer exist as to whether or not he was on a
15 different rate prior to 1980, but since 1980 the
16 records show that the building has been on the
17 residential rate. Mr. Gehrs' amended complaint
18 indicates that it's been on the residential rate
19 since 1978, when the building was first put into
20 service with Empire.

21 What is not in dispute is that Empire is
22 charging Mr. Gehrs pursuant to its tariffs that are
23 on file with and approved by the Commission. They
24 are to the letter following their tariff, their
25 residential tariff, which requires a customer charge

1 for each living unit, and that is how Mr. Gehrs'
2 building is being charged for service.

3 Essentially, Mr. Gehrs' complaint is
4 that other people were accidentally charged less than
5 the tariff rates, and then Mr. Gehrs brought that to
6 Empire's notice and Empire corrected those miss
7 billings, and now, to Empire's knowledge, everyone
8 is being charged the same. But the two properties,
9 including Mr. Higginbotham's, Empire was not aware
10 that they were multi-unit residential properties
11 and, therefore, they were not being charged a
12 customer charge for each living unit. But that has
13 since been corrected since Mr. Gehrs brought that to
14 Empire's attention. But again, no dispute that
15 Mr. Gehrs has consistently been charged pursuant to
16 Empire's tariff.

17 The apartment buildings cannot be
18 charged under a commercial rate pursuant to Empire's
19 tariffs that are on file with and approved by the
20 Commission. They are specifically excluded from
21 commercial tariffs and must be charged under the
22 residential tariff.

23 What makes these apartment buildings a
24 bit unique is that they were constructed prior to
25 1981, which means they are not required to have a

1 meter for each living unit. Whereas, the Commission
2 rules require that if you have an apartment building
3 that was built 1981 or later, you have to have a
4 meter for each living unit. So everyone, either
5 pre 1981 or post 1981, everyone is paying a customer
6 charge for each living unit. It is all treated the
7 same. It's just that the folks with older buildings
8 are not required to expend the money to install a
9 meter to go with each one of those living units,
10 which does make it a bit more difficult for Empire,
11 because we can't look at every single property all
12 the time and know exactly when someone changes, say,
13 an old house and converts that into an apartment
14 building.

15 So if living units are added, Empire
16 won't know that until the customer lets Empire know
17 or possibly someone else lets Empire know, Empire
18 can then investigate that and begin charging a
19 customer charge for each living unit. There is
20 simply no indication in this case that Empire has
21 violated any tariff, rule, law under the
22 Commission's jurisdiction or order.

23 Possibly Mr. Gehrs would like to see the
24 tariff changed. He did mention or at least indicate
25 that he believes the tariff that is on file and

1 approved by the Commission is not just and
2 reasonable. That sort of change could not be made
3 here in a complaint case, however, because it would
4 go to Empire's entire cost of service and rate
5 design, would not be revenue neutral and would
6 require significant study and redesigning of rates.

7 JUDGE CLARK: So you don't believe the
8 Commission could order Empire to change its tariff.

9 MS. CARTER: Not in a complaint
10 proceeding outside of a rate case. That it could
11 not be done outside of a rate case that would
12 involve a class cost of service study and rate
13 design changes, so that revenue could still be
14 collected to cover cost of service.

15 JUDGE CLARK: Do you have supporting is
16 law for that?

17 MS. CARTER: Um, not in front of me.

18 JUDGE CLARK: Let me posit to you this
19 way: If the Commission were in this complaint to
20 determine that Empire's rates -- that because of the
21 information pointed out in the complaint that
22 Empire's rates were unjust or unreasonable, wouldn't
23 that necessitate a change in a tariff?

24 MS. CARTER: Yes, and I believe that
25 could be accomplished through a complaint

1 proceeding, which would bring all, um, revenues and
2 expenses into question, or in a rate case. But I
3 believe the basic principle which would be Hope and
4 Bluefield, I guess, cases that are often cited, that
5 you cannot take the utility's property without due
6 process would apply here, that you cannot make a
7 change that changes the revenue.

8 JUDGE CLARK: Well, I agree. We
9 couldn't change a tariff here. We couldn't do it at
10 this proceeding. But you would agree that if it was
11 determined that rates are unjust or unreasonable,
12 that would necessitate further proceedings in regard
13 to change in tariff?

14 MS. CARTER: I would agree. I would
15 point out that we don't have specific facts here,
16 that we have only heard from a particular grouping
17 of customers and no evidence has been presented
18 regarding the justness or reasonableness of the
19 rates and why there is a customer charge for each
20 living unit.

21 JUDGE CLARK: And as I said, no evidence
22 has been presented yet. We're still in argument. I
23 just asked the question.

24 MS. CARTER: And we do have prefiled
25 written testimony, and Mr. Gehrs and

1 Mr. Higginbotham did not present testimony on the
2 justness and reasonableness of a customer charge.

3 JUDGE CLARK: And you had indicated, I
4 believe, one of the things that was indicated at
5 least in submitted testimony, which hasn't been
6 admitted yet, was that it appeared Empire was
7 granting a variance in at least one instance to
8 their metering rules.

9 MS. CARTER: That is what Mr. Gehrs and
10 Mr. Higginbotham had alleged. No, that is not
11 Empire's position and nor have I -- do I believe
12 there can be evidence presented to indicate that.
13 It is being fought in circuit court. Empire does
14 not in any way agree with the statement that there
15 is a variance granted from their rules.

16 JUDGE CLARK: And secondly, you had
17 indicated --

18 MS. CARTER: Or, excuse me, tariffs.

19 JUDGE CLARK: You had indicated that it
20 had been brought to Empire's attention that there
21 were some parties -- some, not parties. Sorry --
22 some properties that were not being charged in
23 compliance with the tariff.

24 MS. CARTER: That is correct.

25 JUDGE CLARK: It's your view that that's

1 not a violation of the Commission's proof of tariff.

2 MS. CARTER: Correct. There is an
3 obligation for the customer to inform Empire how the
4 property is being used. Empire believed they were
5 charging the properties properly, which was with one
6 customer charge for the meter. As soon as Empire
7 obtained information that there were multiple living
8 units in the properties, Empire began charging the
9 multiple customer charges, one customer charge per
10 living unit.

11 JUDGE CLARK: Thank you. Those were my
12 questions in regard to your opening. Do you have
13 further argument?

14 MS. CARTER: I do not. Thank you.

15 JUDGE CLARK: Commission staff?

16 MS. ASLIN: This is going to be very
17 brief. Informal customer complaint cases such as
18 these, Staff completes an investigation and files a
19 report with the Commission and all parties to the
20 case. We have the members of Staff who investigated
21 that complaint available as witnesses at its
22 hearing, should a judge or a party call them to
23 testify.

24 In this case, Staff filed its original
25 recommendation and report on September 14th, 2017.

1 After Mr. Higgingotham intervened in this case, a
2 supplemental report was filed on February 23rd,
3 2018.

4 Having concluded its investigation in
5 both reports, Staff concludes that the company has
6 not violated any applicable statutes, commission
7 rules or commission-approved company tariffs related
8 to this complaint. Staff also agrees with Empire
9 that a customer complaint would not obviously be the
10 appropriate case to change a tariff, and we don't
11 believe that at this time that we have evidence that
12 a tariff should be changed.

13 Robin Kliethermes of Staff, who
14 supervised the investigation of this complaint, is
15 here today and is available to answer any factual
16 questions regarding Staff's investigation.

17 JUDGE CLARK: Thank you. I have no
18 questions in regard to that.

19 Mr. Higginbotham, as an intervenor, if
20 you would like to make an opening statement, you're
21 welcome to.

22 MR. HIGGINBOTHAM: Yes, please.

23 JUDGE CLARK: Go ahead.

24 MR. HIGGINBOTHAM: When I read the
25 tariff, in 1981, it appears to me that the

1 properties built prior to that are grandfathered in,
2 and I think the tariff on just plain reading, that's
3 what it articulates. And my property has not been
4 modified. It's as it was built in the '40s and so
5 it's not been modified, it's as it was. And so to
6 apply the tariff to it arbitrarily, in my opinion,
7 is improper at all. I don't believe I should be
8 paying for multiple meters when I only have one
9 meter on the building, as it was constructed and
10 grandfathered in.

11 As to unjust application or just rates,
12 when, um, we had a meeting, a phone conference with
13 Empire, their explanation for the application of the
14 tariff, the attorney on the phone, I don't remember
15 his name, but he said that it's Empire's position to
16 protect those that are vulnerable in our society.
17 And my properties are low income properties, and I
18 expressed to him that if the goal here is to protect
19 people that are vulnerable, and that was his
20 premise -- I don't know how that applies to this,
21 but that was his premise in supporting on why they
22 were applying this rule -- is that the people that,
23 in theory, they're protecting are being imposed a
24 rate -- 'cause I have to pass these on to my
25 customers -- they're experiencing, the people that

1 can least afford it are experiencing an increase for
2 multiple meters on a building that don't exist.

3 And further as to unjust rates, I asked
4 why do you want to charge me? Besides the fact that
5 you feel that you legally can -- I don't agree --
6 but why? Well, because we have to manage that many
7 tenants when the power goes out. And how is that?
8 Well, they all call us.

9 And I've been in the rental business
10 since '98, and my tenants call me, and then I have
11 to call Empire, and I manage those tenants. I don't
12 support his position. But that's to unjust
13 application.

14 What Mr. Gehrs said featherbedding.
15 They're charging me for meters that don't exist, and
16 I'm grandfathered in, in summary, and so I don't
17 believe I should be charged for meters that don't
18 exist, and I believe my building falls under the
19 prior 1981.

20 MR. GEHRS: May have a little power
21 failure.

22 JUDGE CLARK: Should be the top button
23 When you say yours should be
24 grandfathered in. I know what grandfathered in
25 mean. What do you mean by grandfathered in? How is

1 it being misapplied to you?

2 MR. HIGGINBOTHAM: My reading of the
3 tariff -- when I read the tariff, not having a law
4 degree -- I have a master's degree. I'm educated.
5 When I read the tariff, it plainly speaks to me that
6 the buildings before 1981 are grandfathered in. I
7 do not see how the tariff applies to a building that
8 has not been modified or changed, has one meter when
9 it was built, how conceptually the tariff applies to
10 me, has never applied to me until when they decided
11 they're going to start applying this; and it turned
12 out for me, it was 2017, apparently when I reported
13 to have multiple units there. But a plain reading
14 of it to me, not being an attorney, it clearly says
15 to me, my building is not subject to this tariff
16 because it existed prior to this change.

17 JUDGE CLARK: And what tariff sheet are
18 you talking about in particular?

19 MR. HIGGINBOTHAM: I'm sorry. I
20 couldn't cite that. That's the tariff in question
21 at the beginning of all of this.

22 JUDGE CLARK: There are generally a lot
23 of pages in there. So I'm just trying to determine
24 which page I should be looking at right now.

25 MS. STEEL: I think it's Schedule RG.

1 That was the girl with Mr. Gehrs.

2 MR. HIGGINBOTHAM: Okay.

3 MR. GEHRS: Is that the one? You want
4 the tariff --

5 MR. HIGGINBOTHAM: Yes, the tariff where
6 it's 1981 was grandfathered in.

7 MR. GEHRS: That's the rule of the
8 Commission.

9 MR. HIGGINBOTHAM: I should have brought
10 my glasses. Yes. So this is 4 CSR 240-20.

11 JUDGE CLARK: CSR 40?

12 MR. HIGGINBOTHAM: 240-20.

13 JUDGE CLARK: Okay.

14 MR. HIGGINBOTHAM: Section 2, the
15 beginning of Section 2. It's labeled 2. Each
16 residential and commercial unit in a multiple
17 occupancy building, construction of which has begun
18 after June 1st, 1981, shall have installed a
19 separate electric meter for each residential unit.
20 And then, the following exceptions apply and
21 separate meeting will not be required, but that's
22 for multiples et cetera.

23 But so this tariff began in 1981, right
24 there. My building preexisted and has not been
25 modified. And as she said earlier, as Miss Carter

1 said earlier, we're not required to update our
2 buildings, yet I'm being charged for multiple
3 meters.

4 There's no service being rendered. I
5 have one meter in that building. Empire is required
6 to do nothing more than there than they are in my
7 single family home, so I feel that's an unjust
8 application.

9 JUDGE CLARK: Thank you, sir. Okay.
10 Anything else?

11 MR. HIGGINBOTHAM: No, sir. Thank you.

12 JUDGE CLARK: Thank you,
13 Mr. Higgingotham.

14 That's going to bring up a point
15 somebody reminded me to ask when there is a witness
16 up. Somebody explained to me the difference
17 between, if there is a difference, between -- I'm
18 familiar with a customer charge, and I'd like some
19 clarification as to whether it's the same as a
20 metering charge or whether it's in any way tied to
21 the number of meters. So that's something I'll try
22 and remember to ask of witnesses. But if not,
23 somebody remind me.

24 That's it for openings. Mr. Gehrs,
25 we're going to move into testimony, so it's going to

1 be your opportunity to testify on your own behalf.
2 It's not -- you don't have to do any sort of
3 pantomime, where you ask yourself questions and then
4 answer them. Generally what I do is I allow you to
5 do somewhat of a narrative of what you want to say,
6 and if there's evidence that you wish to submit,
7 stop at the time you want to submit that evidence so
8 that I can be sure that all of the other parties
9 have had an opportunity to look at the evidence,
10 make any objections they want to make.

11 I'll give you an opportunity to respond,
12 and then I'll rule on any objections the admission
13 of any evidence onto the record. If any party at a
14 time offers an objection to your testimony, stop
15 testifying at that time until I've made a ruling as
16 to that objection. Do you understand?

17 MR. GEHRS: I understand.

18 JUDGE CLARK: I'm going to place you
19 under oath for the purposes of this hearing. Do you
20 solemnly swear or affirm that the testimony you are
21 about to give in this hearing will be the truth, the
22 whole truth, and nothing but the truth?

23 MR. GEHRS: I do.

24 / / /

25 / / /

1 Whereupon--

2 WILLIAM L. GEHRS, JR.,
3 having first sworn or affirmed to tell the whole truth
4 in the matter now pending, testified as follows:

5 JUDGE CLARK: Mr. Gehrs, what would you
6 like to tell me?

7 EXAMINATION

8 MR. GEHRS: I'd like to start off with
9 how far we got into this position we're in.
10 Apartment housing years ago was all commercial
11 classified, back in '60s. After the '60s and
12 '70s --

13 JUDGE CLARK: Can I say one more thing?
14 And I apologize. I should have done this earlier.
15 There's a lot of information being offered that is
16 going to be confidential in nature. It's going to
17 be impossible to address this without getting into
18 confidential information.

19 I am going to be deeming that if you
20 talk about something during this hearing, in an open
21 hearing, it's going to be waived as to the
22 confidentiality. That means that it may appear in
23 the decision, it may not. If, for whatever reason,
24 you don't want something talked about in the
25 decision or you feel that that's confidential to the

1 degree that you do not wish to waive it, let me
2 know, and we will have what's called an in-camera
3 proceeding, and that means that that portion of the
4 information will not be available in either the
5 transcript or the decision for the general public to
6 see. Okay?

7 MR. GEHRS: The only confidentiality
8 agreement we have is with Empire as to their
9 invoicing.

10 JUDGE CLARK: Yes, but the Commission
11 deems your personal information as a customer
12 confidential. Such things as who you are, your
13 address, the bills you receive, the amount of those
14 bills, the location of your property. All of those
15 things are things that you may or may not want
16 people to be able to see.

17 Now, some of those are going to be
18 waived just by the prospect of you being a
19 complainant, but if there's things that you in
20 particular do not want to discuss in an open hearing
21 but you do want me to know about and there are
22 things you don't want published in the decision, you
23 need to let me know before we talk about them.

24 MR. GEHRS: I understand. Really, I
25 have an open door.

1 JUDGE CLARK: And that's what most
2 people allude to, but I'm required to -- I'm
3 required to do that.

4 MR. GEHRS: Okay.

5 JUDGE CLARK: While I can waive
6 confidential information as I see necessary, it is
7 much better for me to have party assent.

8 MR. GEHRS: Yes, sir.

9 JUDGE CLARK: And I'm sorry I
10 interrupted. If you'll go on.

11 MR. GEHRS: Which is fine.

12 A lot of the people here are young and
13 they don't know how the apartment house business
14 really originated into what we got today.

15 JUDGE CLARK: I don't. Please tell me.

16 MR. GEHRS: Years ago, in 1960 I was a
17 in the common carrier freight business, and I
18 decided I didn't like that business. So we went on
19 a scouting trip and we started to looking to the
20 future apartment housing in Joplin. We went to
21 Texas, we came back, and we built the first
22 apartment in early 1960. That is 420 Moffet.
23 420 Moffet was classified as a commercial business,
24 which included commercial real estate, sales tax,
25 and the utility companies all rated other as a

1 commercial business.

2 As time went on, the Missouri Apartment
3 Owner's Association went to the tax commission about
4 real estate taxes and convinced them that apartment
5 housing was really multi residentials, and they
6 reduced the rate on real estate from 33 percent to
7 19 percent. Then, a few years later, utilities come
8 under attack for sales tax and the tax commission
9 agreed that the utilities were, as long as they were
10 used for domestic use, would not have to be sales
11 taxed. So they are exempt. Then we built three
12 apartments before June 1, 1981, 420 Moffet, 401
13 Sergeant, and 18th and Wall. 18th and Wall is the
14 one in question today.

15 All these apartments had central heat,
16 air conditioning, ventilation, hot water. And at
17 that time, the plans were presented to Empire by our
18 architects and engineers so they could determine the
19 amount of power required for service. They approved
20 it and the engineer designed the apartment to their
21 specification. At that time, we were going to use
22 one meter, and Empire says you got to have a demand
23 meter, and today those apartments still have the
24 demand meter.

25 Demand meters are basically used for

1 commercial businesses. The demand meter fluctuates
2 with the amount of kW used in that building. So in
3 the summer we use a higher kW than we do in the
4 winter, because mechanical air conditioning we use
5 is about 30-horsepower. And that makes the meter
6 fluctuate to the kW's.

7 So after 1981, we built another
8 apartment and complied with the Commission's rule --
9 hang on a minute -- CSR 240-20-050. We complied
10 with that rule, which requires a single meter for
11 every apartment, dwelling unit, except we had one
12 meter there we call house meter, which takes care of
13 all the power, heating, air conditioning and what
14 have we. I think in this rule, they stated you had
15 to have a special meter if you're going to furnish
16 central heat and air. And we've operated that way
17 for many years.

18 The building in question, 1802 Wall, I'm
19 sure we were a commercial rate up until a certain
20 point. We don't know when we changed -- or I don't
21 know. And at that time, we went to residential. If
22 we was at residential in 1980, that was prior to
23 1981. So they didn't have paragraph 4 in their
24 tariff under Conditions of Service, so we were just
25 paying a single meter cost plus the usage on a

1 demand merit.

2 Later on, Empire imposed paragraph 4,
3 which basically states for every dwelling unit you
4 have in the building, you'll be charged a customer
5 charge and the 600 kWh. We were being penalized at
6 that point in 1802 Wall by 13 customer charges and
7 800 -- 8,400 kWh's a month, which has a great effect
8 on our tariff structure RG.

9 The RG tariff is broke down into two
10 categories, summer and winter. The rates for the
11 summer are all one rate, which I call A rates for
12 clarification. The winter rates are two types, and
13 winter rates are the last eight months, and the
14 rates are A and B. When we were using single meter,
15 we were allowed the first 600 kWh at A rates; all
16 the rest was B rates, which is a lower rate.

17 By the new rule, at 8400 kWh's, we are
18 deprived of the B rates during the winter, because
19 we never use that much wattage, which is something
20 that they are receiving for no effort. That's where
21 the featherbedding comes in. They're charging us
22 for this extra kWh's and no fee, no work, no
23 nothin', don't cost 'em anything. And same way with
24 the customer charges. We got 13 extra charges and
25 no fees or -- or services are being rendered. So

1 that brings our cost of electricity excessively
2 high, an abusing of the rate structure.

3 EXAMINATION

4 Q (BY Judge Clark) Can I ask you a couple
5 questions in regard to that real quick?

6 A. Yes, sir.

7 Q. And I may interrupt you to ask you
8 questions.

9 A. I'm happy to, sir.

10 Q. Because I just do it when it's fresh in
11 my head.

12 My first question is, when you say
13 you're being penalized roughly 8,000 kilowatts a
14 month, are you referring from a switchover in rates
15 from this A to B or what are you referring to?

16 A. I'm referring, they will use A rates
17 until I use up 8,400 kWh's.

18 Q. Okay. And that's based upon a
19 Commission rule?

20 A. Yes.

21 Q. So is your problem with the Commission
22 rule?

23 A. Not after 1981.

24 Q. But prior to '81?

25 A. The buildings is what I'm driving at.

1 The buildings before 1981, Empire helped us design
2 those buildings, approved our method of power, and
3 here they're going to penalize us now on the old
4 buildings, which is wrong.

5 **Q. And I'm just trying to wrap my head**
6 **around this. So when you say penalized --**

7 A. Penalize us on the rate structure. We
8 could never get down to the B rates during the
9 winter months.

10 **Q. And that's because?**

11 A. The amount of usage.

12 But in the summer, there's only one
13 rate. Empire says you're going to pay the top rate
14 for the four months. Our machinery will run 14,000
15 kW a month during the air conditioning time. During
16 the winter, it will average about 7,000 kWh per
17 month, where I was getting a discount after 600 kWh.

18 **Q. I may ask a lot of questions, and they**
19 **may have relevance later and they may not. I don't**
20 **know at the time I ask them. Is your building**
21 **electrically heated or is it heated by gas?**

22 A. We heat by gas.

23 **Q. And I believe I read in the stipulation**
24 **that this building in question is in a 14-unit**
25 **apartment building.**

1 A. That is correct.

2 Q. And are these multi-person dwellings?
3 Are they, like, studio apartments or do they vary?

4 A. You mean the size of apartments?

5 Q. Yeah. Are there multiple different
6 sizes of apartments?

7 A. Yes. There's two bed and one bed.

8 Q. Okay.

9 A. But the tariff only said dwelling unit,
10 don't mean -- whatever it is.

11 Q. And I'm looking at it. There's a whole
12 definitional section, it appears, built in. I had a
13 question. Bear with me just a moment.

14 A. Yes, sir.

15 Q. Oh, in regards to -- you receive -- I'm
16 assuming that the bill comes you to --

17 A. Yes.

18 Q. -- for electrical service?

19 A. Yes. I'm the consumer.

20 Q. And how is that allocated among your
21 tenants? Do you pay the electricity and are not
22 reimbursed at all or do you send them a bill for
23 their portion of the bill?

24 A. We do not.

25 Q. Okay.

1 A. We --

2 Q. So utilities are included?

3 A. Yes. Our theory of the apartment house,
4 he pays his rent, telephone bill and the cable bill
5 and he don't have any other worries.

6 Q. Okay. So you are absorbing the cost of
7 the utilities?

8 A. Yeah, we do.

9 Q. Okay. Go on.

10 FURTHER EXAMINATION

11 MR. GEHRS: I believe that covers my
12 featherbedding discussion.

13 As to Empire's ability to enforce their
14 tariff, in my opinion, they'll never be able to
15 enforce it, because if they rely on their customer
16 to tell them what they're doing, they're going to
17 have a long wait.

18 What I mean is, they're not going to
19 tell the truth. When it comes to money, people get
20 pretty tight. So if they wait on the customer tell
21 them they got two or four or six units in their
22 house, they're not going to ever get that
23 information.

24 The only way they're going to get the
25 information, they'll have to figure it out themselves.

1 But they cannot enforce it, and as I've proven with
2 the exhibits I have, they have not enforced it up
3 until this date.

4 FURTHER EXAMINATION

5 Q (BY Judge Clark) Okay. And I read your
6 proposed paragraph 4, the replacement, and I believe
7 that it places on Empire the duty of swearing that
8 the number of apartments or that the number of the
9 units in the building is what it is under penalty of
10 perjury for them.

11 A. I don't know.

12 Q. I guess my question is how would they
13 know that I've rented out my basement unless they
14 come in and do an inspection?

15 A. That's their problem of life. I don't
16 know how they're going to do that. But also, if I
17 got empties, they don't give me credit.

18 Q. And you've actually hit on my next
19 question, which is you've got one account coming
20 into the entire building. Correct?

21 A. Yes.

22 Q. So if you have -- if you have unused
23 units during a month or units that are not rented
24 out, you're still paying on those units. Is that
25 correct?

1 A. Yes. What happens, Empire bills me for
2 that charge. Excuse me. That's on a different
3 building. Yes, I just absorb the empty charge.

4 **Q. So whether -- if -- and I guess just to**
5 **phrase this another way to ask my question is, if**
6 **you have 14 units and you only have 12 of those**
7 **units rented out, are you still paying 14 customer**
8 **charges each month?**

9 A. Yes.

10 **Q. Go on.**

11 MR. GEHRS: Okay. As to the enforcement
12 of Empire, I have a few exhibits to hand out.

13 JUDGE CLARK: Okay. Be sure that the
14 other parties have -- let me know what each one is,
15 and then give the other parties all of them,
16 including Mr. Higginbotham, an opportunity to look
17 at them and make any comments or objections. So
18 what's the first exhibit that you would like to
19 offer?

20 MR. GEHRS: The first exhibit I would
21 offer is 421 West 3rd, which is Mr. Higginbotham's
22 facility. Do you want to help me just a minute?

23 MS. STEEL: That's your original, and
24 those are your copies behind it.

25 JUDGE CLARK: If you'll circulate

1 whichever one is coming into evidence to the other
2 parties to look at. Why don't we call that -- we'll
3 just call it Exhibit 2.

4 (Exhibit 2 marked.)

5 MR. GEHRS: Exhibit No. 2 represents 421
6 West 3rd. The building was built in the early '20s.
7 It has never been charged a multi charge since the
8 building was built until my complaint. It is a
9 ten-unit complex. I received a letter from
10 Mr. Higgingotham stating it was a ten --

11 JUDGE CLARK: Hold on. Let them. Or
12 you can testify as to exhibit. Ms. Carter, do you
13 have any objections?

14 MS. CARTER: I do not. I would note
15 that it's stamped as confidential because it's
16 bills.

17 JUDGE CLARK: And I will mark it as 2C,
18 so it will go as a confidential exhibit. But you
19 don't have any objection to admitting it onto the
20 record?

21 MS. CARTER: I do not.

22 MS. ASLIN: No objection.

23 JUDGE CLARK: Okay. Complainant's
24 Exhibit 2C will be admitted onto the hearing record
25 subject to the Commission's confidentiality rule.

1 JUDGE CLARK: Any objection from you
2 Mr. Higgingotham?

3 MR. HIGGINBOTHAM: As to the
4 confidentiality, I retired out of law enforcement,
5 and I generally keep my personal address out of
6 public domain, and my bills are sent to my personal
7 address.

8 JUDGE CLARK: When I say this is going
9 to be marked as Exhibit 2C, what that means is that
10 nobody will be able to see it. When I designate an
11 exhibit with C afterwards, it's not available to the
12 general public.

13 MR. HIGGINBOTHAM: Thank you.

14 JUDGE CLARK: Okay. You indicated he
15 has offered multiple times the 421 West 3rd Street.
16 Is that a problem for you?

17 MR. HIGGINBOTHAM: No, sir.

18 JUDGE CLARK: All right. Thank you.

19 MR. GEHRS: The exhibit consists of a
20 picture of the building, a letter from
21 Mr. Higgingotham says it is a ten-unit building.
22 And the other attachment is a bill from Empire
23 showing that they only charged him one meter and
24 plus the 600 kWh; and over that, he was entitled to
25 his winter rates.

1 After the complaint was filed, Empire
2 notified Mr. Higginbotham, we're going to raise you
3 to ten units. And that cost Bob Higginbotham a
4 consumer charge of \$130 a month from \$13, and then
5 it eliminated him from B schedule rates in winter
6 months, costing him additional money.

7 **Q (BY Judge Clark) How many units are in**
8 **this building?**

9 A. Ten.

10 JUDGE CLARK: I know you want to answer.
11 Mr. Gehrs is testifying.

12 MR. HIGGINBOTHAM: Yes, sir.

13 **Q (BY Judge Clark) How many units are in**
14 **this building?**

15 A. Ten dwellings.

16 **Q. Thank you.**

17 A. Ten dwellings. I'll use the proper
18 terminology. Dwellings.

19 **Q. Okay. Go on, Mr. Gehrs.**

20 A. Exhibit No. 3.

21 **Q. Can I ask you one more question about**
22 **that property?**

23 A. Yes, sir.

24 **Q. And if you don't know the answer, I'm**
25 **assuming I'll get it from Mr. Higginbotham when he**

1 **testifies. How old is that property?**

2 A. I think it was built in the '20s, 1920s.

3 **Q. Okay. Thank you.**

4 MR. GEHRS: The next exhibit I have,
5 which will be --

6 JUDGE CLARK: That will be 3, and I'm
7 going to add does that contain any billing
8 information?

9 MR. GEHRS: Yes, sir.

10 JUDGE CLARK: That will be Complainant's
11 Exhibit 3C.

12 THE WITNESS: All right.

13 (Exhibit 3C marked.)

14 **Q (BY Judge Clark) And why don't you tell**
15 **me what it is for identification purposes?**

16 A. Exhibit 3C is two buildings, 1020 [sic]
17 Moffet, which is a 23-unit apartment complex.

18 **Q. Okay. So 1020 Moffet.**

19 A. The exhibit shows two buildings, one
20 building at 420 Moffet Street, and the other one is
21 401 Sergeant Street. The 401 Sergeant Street is
22 being charged in accordance with the tariff.

23 JUDGE CLARK: Okay. Hold on just a
24 second until -- is there any objection to --
25 Miss Carter, do you have any objection?

1 MS. CARTER: If I could wait to hear his
2 explanation. I'm not sure what it's purporting to
3 tell, because it's hard to tell based on the bill
4 printouts.

5 Q (BY Judge Clark) What does the exhibit
6 show, Mr. Gehrs?

7 A. The exhibit shows 401 Sergeant, which is
8 an 11-unit apartment complex, is being charged in
9 accordance with tariff RG at the present date.

10 Q. Is being charged the pre '81 or the
11 post '81?

12 A. It's a pre '81, and operation is a
13 single unit meter.

14 Q. And it's being charged as a single unit
15 meter?

16 A. Yes, it is.

17 Q. What about the 420 Moffet?

18 A. 423 is pre '81, 320-unit apartment. It
19 is only being charged 11 units for that apartment,
20 and it's also a single meter apartment, which
21 indicates Empire is improperly charging that
22 apartment.

23 JUDGE CLARK: Okay. Miss Carter, is
24 that sufficient for you to decide whether you want
25 to object or not?

1 MS. CARTER: Yes, and I would object to
2 Mr. Gehrs providing testimony on other apartments.
3 To my knowledge, these are not apartments owned by
4 him and that he could provide a foundation that he
5 knows the number of living units that have been
6 provided to Empire.

7 Q (BY Judge Clark) Mr. Gehrs are these
8 apartments owned by you?

9 A. They are not owned by me presently, but
10 I built them. They would be owned by a company
11 called Master of Joplin.

12 Q. Let me ask you this: In regards to --

13 A. I am familiar with all these buildings,
14 since I built them.

15 Q. In regards to any billing done, were
16 these bills that you received?

17 A. Yes.

18 Q. So this bill was sent to you?

19 A. No, the bills are not sent to me.

20 Q. Okay.

21 A. I have requested the --

22 Q. Current owner?

23 A. -- current bills from Empire to be able
24 to determine if they are applying the tariff.

25 JUDGE CLARK: Okay. I'm going to

1 sustain the objection as to the exhibit because you
2 can't testify as to bills you didn't receive because
3 these aren't your bills. I'll allow you to talk
4 about it, but I'm not going to accept this as an
5 exhibit.

6 I mean, the appropriate thing would have
7 been to have had the people here to testify about
8 their buildings, because you're kind of -- you can
9 tell me -- if it was your building at that time, you
10 can tell me how many units are in it.

11 MR. GEHRS: All right.

12 JUDGE CLARK: You can tell he what was
13 charged when you owned it, you can tell me what was
14 charged when you sold it. I think those are all
15 things that you're perfectly able to speak to. As
16 this is an administrative body, I can even accept
17 some hearsay. If you want to talk about -- well,
18 actually, let me think about that for a second. Let
19 me weigh in here.

20 While I'm doing that, does Staff have an
21 objection?

22 MS. ASLIN: No objection.

23 JUDGE CLARK: And Mr. Higginbotham, do
24 you have an objection?

25 MR. HIGGINBOTHAM: No, sir.

1 Q. (By Judge Clark) Let me ask a few more
2 questions before I go on. So these are buildings --
3 these are both buildings you used to own?

4 A. Sir?

5 Q. Both these buildings, the 420 Moffet and
6 the 421 Sergeant were buildings you used to own?

7 A. That is correct.

8 Q. They were both built prior to 1981?

9 A. Yes, sir.

10 Q. You went -- and I'm assuming the way
11 this went, and I'm sorry to shortcut this in terms
12 of asking more cross type questions, but that's what
13 I'm used to. I'm assuming you went to the current
14 owner of these buildings and said, how are you being
15 billed? Do you mind showing me? And they said yes?

16 A. No. I requested the deposition -- or
17 the interrogatories to Empire to furnish me the
18 invoices, and they did under exclusive right.

19 Q. Hold on. I'm processing. This is a lot
20 to process. So you're saying that this bill right
21 here, these two bills attached to this were provided
22 to you from Empire?

23 A. Yes, sir.

24 Q. Okay. Was this part of that
25 confidentiality motion?

1 A. Yes, sir.

2 Q. Okay. Then let's talk about that.

3 A. They're stamped at the top, sir.

4 JUDGE CLARK: Miss Carter, were these
5 provided by Empire to him?

6 MS. CARTER: Yes. Empire objected to
7 the relevance, and the judge overruled our objection
8 on relevance and directed us to provide those bills
9 so long as there was a confidentiality agreement.

10 JUDGE CLARK: Was that me?

11 MS. CARTER: No, that was not. That was
12 Judge Jordan.

13 JUDGE CLARK: It is hearsay, but you've
14 kind of self-authenticated it almost. So I'm going
15 to admit it onto the hearing record. This will be
16 admitted as Complainant's Exhibit 3C. It will be
17 admitted over objection. So I'll note your
18 objection for the record, and your objection is lack
19 of foundation?

20 MS. CARTER: Yes, as that it doesn't --
21 that the picture does not demonstrate what Mr. Gehrs
22 is telling us regarding the number of units.

23 JUDGE CLARK: Okay. And you'll have an
24 opportunity to question him about that.

25 I know previously I said I was going to

1 sustain that objection. It will be overruled and
2 Complainant's Exhibit 3C will be admitted onto the
3 record pursuant to Commission's confidentiality
4 rule.

5 (Exhibit 3C admitted.)

6 **Q (BY Judge Clark) And you can go ahead**
7 **and tell me about that.**

8 A. As stated, at one time these apartments
9 were owned by William Gehrs or one of his
10 corporations. At some time later on we decided to
11 sell them, and we sold them to Mr. Ralph Watkins,
12 who owns the Mayflower Apartments across the street.

13 420 Moffet is a 23-unit building, but
14 somehow Empire just bills them for 11 units. Why, I
15 don't know. All they had to do is go out and count
16 the doors, if they really wanted to know, or count
17 the mailboxes. Empire exerts no effort to
18 determine -- to administrate their tariff.

19 **Q. As a question, I mean, why should they?**
20 **I mean, you're the one -- they're providing**
21 **electrical service, you're requesting electrical**
22 **service. Isn't the onus on the owner to say I'm**
23 **requesting service for this many units?**

24 A. Yes. What I'm trying to present to the
25 court is that Empire does not administrate the

1 tariff equally among all their customers. That's
2 all I'm trying to prove.

3 **Q. Okay.**

4 A. I believe that's all I have to say about
5 that exhibit.

6 JUDGE CLARK: All right. Is there any
7 way we can bump the air down in here? Am I the only
8 one that's hot?

9 And for identification purposes, what is
10 this?

11 MR. GEHRS: The next exhibit is 62 [sic]
12 West 5th Street.

13 MS. STEEL: 602.

14 JUDGE CLARK: And is this also a rental
15 property?

16 MR. GEHRS: It is rental property and
17 owned by Mr. Ralph Watkins.

18 JUDGE CLARK: Is there any billing
19 information attached to that?

20 MR. GEHRS: Only what I received from
21 Empire District.

22 JUDGE CLARK: Okay. I'm going to
23 designate that as Exhibit 4C.

24 (Exhibit 4C marked.)

25 MS. CARTER: I would renew my objection

1 that this is irrelevant to Mr. Gehrs' complaint in
2 that it is not a property owned by him and is not
3 the subject of this complaint.

4 JUDGE CLARK: Is this information,
5 again, that was provided by Empire that was part of
6 a prior ruling by a prior regulatory judge?

7 MS. CARTER: Without it in front of me,
8 I can't tell you the number of sheets of this
9 exhibit. The two sheets were provided.

10 JUDGE CLARK: The others are just
11 pictures. Is that correct?

12 MS. CARTER: No, they are various
13 documents. One of them looks like it was printed
14 out from a real estate record, perhaps. Others
15 are --

16 JUDGE CLARK: Can we go off the record
17 for a second?

18 MR. GEHRS: Yes, sir.

19 (Off-record discussion held.)

20 JUDGE CLARK: We'll go back on the
21 record. And, Ms. Carter, I apologize. I
22 interrupted you.

23 MS. CARTER: I'm not sure, Judge,
24 exactly where I was.

25 JUDGE CLARK: You were explaining to me

1 that two of the sheets were in fact provided by
2 Empire, and since some of these sheets were
3 pictures, which we can see, and some of the pages
4 were not provided.

5 MS. CARTER: That's correct. Just the
6 last two pages were not provided by Empire, and
7 these would not be all of the documents that were
8 provided by Empire on this property, I don't
9 believe. I believe this is two single sheets that
10 has been taken out. There's also two pages from one
11 circuit court document, and so I guess the objection
12 would be lack of relevance and also that it's
13 incomplete

14 JUDGE CLARK: Any objection from Staff?

15 MS. ASLIN: No objection, Judge.

16 JUDGE CLARK: Any objection from
17 Mr. Higginbotham?

18 MR. HIGGINBOTHAM: No, sir.

19 JUDGE CLARK: Now, this would be a good
20 time to go ahead and address this, because I believe
21 I've seen this document before. Mr. Gehrs,
22 customarily if you provided prefiled testimony, you
23 generally move to admit that onto the record. Are
24 you wanting to have your prefiled testimony admitted
25 onto the record?

1 MR. GEHRS: Not the testimony itself.
2 It wasn't intent to use it for that. The intent was
3 to establish the number of dwelling units is all.

4 JUDGE CLARK: I'm talking about the
5 prefiled testimony that you submitted back on --

6 MR. GEHRS: Yeah. Okay.

7 JUDGE CLARK: Do you want to add that
8 admitted on the record as your direct testimony?

9 MR. GEHRS: Yes.

10 JUDGE CLARK: Is there any objection to
11 the direct testimony of the complainant in this
12 case?

13 MS. CARTER: No objection. He had
14 direct and surrebuttal, I believe.

15 JUDGE CLARK: And do you want to offer
16 both of those onto the record?

17 MR. GEHRS: Yes.

18 JUDGE CLARK: Any objection?

19 MS. CARTER: No objection to either of
20 these.

21 JUDGE CLARK: Is there confidential
22 information in that?

23 MR. GEHRS: Is there confidential
24 information? I don't have any.

25 JUDGE CLARK: I can't recall off the top

1 of my head. I think there certainly is -- I think
2 these are all things -- all right. I am going to
3 designate both of those as confidential. So
4 complainant's direct testimony will be -- well, why
5 don't I rule on this in order?

6 I'm going to overrule the objections as
7 to these what I'm going to call Exhibit 4C. That
8 will be admitted onto the hearing record subject to
9 the Commission's confidentiality rule.

10 Mr. Gehrs' testimony, I'm going to call
11 5C his direct and 6C his -- is it rebuttal? No,
12 surrebuttal. Correct -- his surrebuttal. Any
13 objections from Staff?

14 MS. ASLIN: No objection.

15 JUDGE CLARK: Any objections for you,
16 Mr. Higginbotham?

17 MR. HIGGINBOTHAM: No, sir.

18 JUDGE CLARK: And just for saving time,
19 I've got testimony here. Why don't we mark it at
20 the end?

21 THE COURT REPORTER: Okay.

22 JUDGE CLARK: So we'll mark prefiled
23 testimony at the end.

24 (Exhibits 5C and 6C marked.)

25 (Exhibits 4C, 5C and 6C

1 admitted.)

2 Q. (By Judge Clark) All right. Tell me
3 what you would like to tell me about Exhibit 4C.

4 A. 602 West 5th, first is a picture of the
5 building so you all have an idea what it looks like.
6 The Beacon was used -- report -- to determine the
7 age of the building, pre 1981.

8 Q. Do you know how many units this building
9 is?

10 A. To establish the number of units, I used
11 some testimony, which it says Empire was reading
12 44 meters as 602 West 5th, Joplin, Missouri, before
13 the fire.

14 Q. How many? Forty?

15 A. Forty-four.

16 Q. And how many were they billing for?

17 A. Presently Empire, before my complaint,
18 was billing for 3 meters.

19 Q. How many are they currently billing for?

20 A. Currently, they're at under discussion
21 for 15. And I don't see -- according to the tariff,
22 it says dwelling units, not classified as living
23 units. Uh, how they got to 15 number is beyond me.

24 Q. So you don't know?

25 A. No. I've -- I do know. It's just a

1 rumor. The fire marshal said it's only 15 units
2 that can be used in the building or some factor,
3 which is a funny deal.

4 **Q. Okay.**

5 A. I don't know how come the fire marshal
6 even got involved.

7 **Q. Well, the fire marshal is not here to**
8 **testify today.**

9 A. No. So the calculations on the last two
10 sheets is, basically, if Empire was going to charge
11 the tariff, they would charge him \$13 times 44
12 dwelling units and would charge him 44 times 600,
13 which would be 26,400 kWh before he had any
14 advantage for the winter rates, which I doubt if
15 he'd ever succeed it. That way, they were padding
16 his bill or featherbedding his bill.

17 **Q. Okay.**

18 A. The last exhibit I have showing that
19 Empire does not enforce their tariff is a building
20 at 121 North Byers.

21 **Q. And is this a building you own?**

22 A. No. It's just one of my research
23 buildings, like all the rest.

24 **Q. Okay. Would you provide that**
25 **information to them for them to --**

1 JUDGE CLARK: That will be marked as 7C.
2 (Exhibit 7C marked.)

3 JUDGE CLARK: Any objection from Empire?

4 MS. CARTER: Yes. I would continue to
5 object that the information on other properties that
6 are not the subject of a complaint are not relevant
7 to Mr. Gehrs' complaint, and also that Mr. Gehrs
8 lacks knowledge to testify regarding someone else's
9 property.

10 JUDGE CLARK: Same objections, also
11 overruled. I'll admit them onto the hearing record
12 as Exhibit 7C. But I do believe your objection goes
13 as to weight.

14 JUDGE CLARK: Any objections, Staff?

15 MS. ASLIN: No.

16 JUDGE CLARK: Any objections from
17 Mr. Higginbotham?

18 MR. HIGGINBOTHAM: No, sir.

19 JUDGE CLARK: I'll give this back to
20 you, since I have a copy here.

21 **Q (By Judge Clark) Mr. Gehrs, what would**
22 **you like to tell me about this exhibit?**

23 A. This exhibit is to state that Empire
24 cannot enforce their tariff RG and apply the rule.

25 **Q. Say that last sentence again.**

1 A. Is not applying their tariff RG
2 uniformly with all their customers.

3 This building at 121 North Byers was
4 constructed in 1935, pre 1981. As you can see, the
5 building is classified taxwise as a residential.
6 It's an apartment house consisting of two buildings,
7 one building -- each has ten units in each building.

8 **Q. So 20 units total?**

9 A. There's two units, each building has ten
10 units in each building. And referring to the
11 account detail of Empire, which they provided me the
12 records of, the first thing to be notified is their
13 classification is commercial. They have deviated
14 from their tariff and have let this apartment house
15 go as commercial. Been that way ever since it was
16 built.

17 **Q. Okay.**

18 A. And they do not apply the rule of the RG
19 tariff to this building because of classification.
20 So the exhibits prove -- or to exhibit that Empire
21 does not uniformly charge all apartment house
22 residential.

23 **Q. You didn't submit any exhibits in regard**
24 **to your own building. How is your own building**
25 **classified for tax purposes, the 1802?**

1 A. 1802. That's my last exhibit.

2 JUDGE CLARK: If you'd said last
3 exhibit. Go ahead.

4 I'm assuming that has building
5 information I'm going to mark that 8C, and that is
6 1802 Wall?

7 MR. GEHRS: 1802 Wall, the building in
8 question.

9 (Exhibit 8C marked.)

10 JUDGE CLARK: Pass it that direction.
11 The exhibit is going around.

12 MR. GEHRS: 1802 Wall was built in 1977,
13 prior to 1981. As you can look at this picture,
14 along with 420 Moffet and 401 Sergeant, it's all the
15 same design.

16 JUDGE CLARK: Any objections from
17 Empire?

18 MS. CARTER: No objection.

19 JUDGE CLARK: Any objections from staff?

20 MS. ASLIN: No objection.

21 JUDGE CLARK: Mr. Higginbotham, any
22 objections?

23 MR. HIGGINBOTHAM: No, sir.

24 MR. GEHRS: 1802 Wall, we took a picture
25 of the meter. There have been only two meters on

1 this building since construction. Both of 'em were
2 demand meters. This meter was installed, oh,
3 probably 2001, so it's been there 18 years.

4 As I stated before, demand meters were
5 basically used for business purposes, business
6 buildings. We -- at this building, we furnish all
7 central heat, air, hot water, and with the Rule 4
8 applied to this building, it eliminates us from
9 taking advantage of the winter rates on B rates, and
10 also an excessive charge of customer charges, which
11 Empire does not provide any service, product or
12 anything for the excessive charges.

13 **Q. (By Judge Clark) When you say it's a**
14 **demand meter, how does that differ from any other**
15 **meter? I mean, does it tell the same information,**
16 **how much power is being used by the building?**

17 A. Yes, but it's got a multiplying factor
18 in it.

19 **Q. Explain that to me.**

20 A. Demand meters were established years ago
21 when utility companies had high fluctuation of kW,
22 kilowatt hours. It's like running machinery that
23 comes on, it makes the demand for kW go way up, then
24 you shut it off and it drops way down. Basically,
25 they were formed so the utility company would

1 reserve that much power for that building. And for
2 that, you pay a premium.

3 So, really, Empire is double dipping me
4 at 1802 Wall. One, they are charging me a flat rate
5 customer charge for each building and a fixed gWh.
6 Plus, the demand meter in the summer uses about 40
7 kW, where in the winter it's about ten or 15 kW. So
8 in the summer they lug me an 80 percent multiplying
9 factor on that meter. So it will read more --
10 charge me more than a standard meter because demand
11 for kW is up.

12 If you look at their invoices down
13 there, you'll see a demand meter or demand read,
14 whatever it is, multiply times .80, giving a total
15 of 14 kW.

16 **Q. Okay.**

17 A. And you'll also note that this is a
18 winter month. So I had an 86 -- 8400 kWh hour, so I
19 didn't get the advantage over 600 kWh.

20 JUDGE CLARK: Okay. And I can't
21 remember whether I said so or not, but Exhibit 8C is
22 admitted onto the hearing record pursuant to
23 Commission's confidentiality rule.

24 MR. GEHRS: I also put a sheet in there
25 regarding 201 Wall for a comparison, to show the

1 featherbedding cost for 1802.

2 1802 has a single demand meter. 201 has
3 a standard meter, and we call it the house meter.
4 It has one apartment and all the machinery thereto
5 attached. You will note the customer charge at 201
6 is \$13. The customer charge at 1802 Wall is \$182,
7 where here the featherbedding applied.

8 **Q (By Judge Clark) How many units are --**
9 **you did not testify, to my knowledge, how many units**
10 **are at 201.**

11 A. There are 15. They're individually
12 metered at that because that building was
13 constructed in 1983.

14 **Q. Okay.**

15 A. So it is in compliance with their
16 present tariff and requirement of the Commission.

17 You'll notice on 201 we burnt 2700 kWh,
18 600 kWh at one rate, and the balance of 2126 kWh at
19 the lower rate. That is what we are being deprived
20 of is that lower rate with the rules that apply to
21 1802.

22 **Q. Now, are you the land record at 201?**

23 A. Yes, sir.

24 **Q. And is it the same setup as 1802? In**
25 **other words, do the individuals renters pay utility**

1 **bills or do you pay the utilities for the entire**
2 **building?**

3 A. We pay all utilities except electricity.

4 Q. **So they're paying their Empire bill?**

5 A. Yes.

6 Q. **And their customer charge accordingly?**

7 A. Yes. I think is right.

8 Q. **Do you have any other testimony you**
9 **wanted to offer at this time?**

10 MR. GEHRS: I have one more exhibit
11 showing what the other utility companies are
12 charging us on 1802.

13 JUDGE CLARK: Wait. You lost me.

14 MR. GEHRS: As to classification.

15 JUDGE CLARK: What the other -- oh, what
16 other utilities?

17 MR. GEHRS: Other utilities. Water,
18 gas, sewer. All I'm trying to show --

19 JUDGE CLARK: I understand what you're
20 going to here. I'm going to call that Exhibit 9C.
21 We can mark it and pass it around for other parties
22 to look at.

23 (Exhibit 9C marked.)

24 MS. CARTER: I would object to the
25 relevance of how other utility companies are

1 charging Mr. Gehrs. I would also object on the
2 hearsay basis in that this purports to be testimony
3 in the form of emails from other utility companies
4 without us having an opportunity to question those
5 individuals.

6 JUDGE CLARK: Any objection from Staff?

7 MS. ASLIN: I would agree with
8 Miss Carter's objection. I would also object to the
9 relevance.

10 JUDGE CLARK: Any objection from
11 Mr. Higginbotham?

12 MR. HIGGINBOTHAM: No, sir.

13 JUDGE CLARK: And what's the purpose
14 you're offering this for?

15 MR. GEHRS: Empire, their RG tariff says
16 all apartments must use this rate. And the reason
17 why they want to use it because they get those extra
18 charges. They will got give us the option. They
19 say they will give the option, but they won't give
20 you the option to go to the best rate structure for
21 your building.

22 And you look into the rebuttal of
23 Empire. They made several statements as to why 1802
24 Wall has to be residential, and they classify their
25 own classification we're residential, not

1 commercial, where the rest of the utility companies
2 and the City of Joplin says you're commercial. So
3 we had -- we've argued that, and they say you're
4 commercial.

5 JUDGE CLARK: So these are like water
6 and gas?

7 MR. GEHRS: Yes, and sewer tax.

8 JUDGE CLARK: And sewer.

9 Do these companies' tariffs require them
10 to make the same classifications that Empire's
11 tariffs do?

12 MR. GEHRS: No.

13 JUDGE CLARK: Okay. Then I'm not going
14 to admit it.

15 MR. GEHRS: What do you mean by that,
16 first?

17 JUDGE CLARK: I mean, and I was leaning
18 that direction anyway, I don't think that you can
19 show that these utilities -- regardless of how
20 they're saying on there that they're classifying
21 your buildings, I don't think you can show that the
22 same rules and tariff restrictions necessarily
23 apply. I mean, can you tell me in regards to water,
24 does the same 1981 rule apply or do you know?

25 MR. GEHRS: It does not. They don't

1 have such a rule.

2 JUDGE CLARK: Okay. Then I agree that
3 these are not going to show me anything relevant
4 because the other utilities are operating under
5 different rules.

6 MR. GEHRS: It was just a
7 classification.

8 JUDGE CLARK: And I understand why
9 you're offering it. I just think in regards to --
10 in regard to this, I agree with Staff and Empire
11 that it's not relevant, that what I have to
12 determine here is whether or not Empire is violating
13 their tariff, commission rule, commission order, and
14 not what other utilities are doing.

15 MR. GEHRS: I understand.

16 JUDGE CLARK: So I will give that back
17 to you and that will not be admitted.

18 Do you have any other testimony that you
19 personally wanted to offer or any other exhibits
20 that you wanted to offer at this time, Mr. Gehrs?

21 FURTHER EXAMINATION

22 MR. GEHRS: I'd like to talk about the
23 tariff a minute. The tariff, to me, contradicts
24 itself in several phases. We have three -- we
25 looked at three tariffs from The Empire. We had the

1 RG, we had the CB, which is commercial business, and
2 we had a tariff regarding heating, and I don't see
3 it attached here.

4 JUDGE CLARK: Are these all Empire's
5 tariffs?

6 MR. GEHRS: All Empire's tariffs.

7 JUDGE CLARK: Is there any objection to
8 the Commission taking official notice of Empire's
9 tariffs?

10 MS. CARTER: No objection, Judge. In
11 fact, the first thing on my list before cross
12 examining was to ask if you would take judicial
13 notice both of their current tariffs, as well as
14 their cancelled tariffs that remain on file with the
15 Commission.

16 JUDGE CLARK: Okay. I'm going to go
17 ahead and let him talk about it, then, and then I'll
18 let you do that.

19 MR. GEHRS: I'd like to talk about,
20 basically, conditions of service. Item 1 is the
21 same language in both RG and CB. Item 2 basically
22 states service will be furnished to the sole user of
23 the customer and will not be resold, redistributed
24 or sub-metered, directly or indirectly. If they
25 enforce that rule, I couldn't use an RG tariff or a

1 CB tariff. They're saying I'm redistributing 1802
2 electricity to the tenants, and that's why they
3 applied the RG tariff.

4 Then I'd like to talk about item 5,
5 welding, x-ray and other equipment characterized by
6 severe or fluctuating demands will not be serviced.
7 Well, that's not true. My power fluctuates quickly.
8 And the worst rule, of course, is Rule 4, the
9 featherbed rule, and that should be eliminated from
10 the tariff.

11 JUDGE CLARK: Would you remind me of the
12 language in there that you don't like? Would you
13 just read it to me?

14 MR. GEHRS: Which one? Rule 4.

15 JUDGE CLARK: The paragraph 4 that you
16 say is the worst one.

17 MR. GEHRS: If this schedule is used for
18 service through a single meter to multiply family
19 dwelling within a single building, each customer
20 charge and kWh block will be multiplied by the
21 number of dwelling units served and calculate each
22 month's bill [sic].

23 JUDGE CLARK: I'm going to be taking
24 notice of it anyway, so I'll have an opportunity to
25 look at it.

1 I guess by way of a question, this is
2 probably one you'd get anyway, but I'm going to go
3 ahead and ask it. You indicated in 201 that each
4 customer is that billed individually and that they
5 would be paying their own individual customer
6 charge.

7 MR. GEHRS: Yes.

8 JUDGE CLARK: If you chose to at 1802,
9 you could ostensibly charge each customer for their
10 own electrical usage and divide up the customer
11 charges by the number of units. Is that correct?

12 MR. GEHRS: I don't think so. Under the
13 tariff, with the exclusion of number 2, it says I
14 can't redistribute or redo anything with it; I have
15 to use it myself.

16 JUDGE CLARK: So you're relying on that
17 redistribution language?

18 MR. GEHRS: Mm-hmm. Sir, the --

19 JUDGE CLARK: No, I follow you. Because
20 this was a rule that was instituted in regard to
21 manufactured housing as well. In a similar fashion
22 it was applied.

23 MR. GEHRS: I got a question for you
24 also, or a comment -- I guess a comment. When does
25 title transfer of a product? For Empire, it's the

1 meter. Once it comes on my side of the meter, it's
2 my product. They don't want to be responsible for
3 what I do with it. Just like in the freight
4 business, tailgate was a change of product, change
5 of title. So I contend once power goes through the
6 meter, we own the power. If we want to turn the TV
7 on, we can. If I want to run a grill, I can. If I
8 want to water my yard, I can. Empire should not
9 have control after the meter. The meter is the most
10 accurate thing for the measurement of energy.

11 JUDGE CLARK: So you're saying one
12 customer charge whether it's one family living in
13 the building?

14 MR. GEHRS: Whatever I do with that is
15 our building.

16 JUDGE CLARK: As long as there's one
17 meter?

18 MR. GEHRS: Yeah.

19 JUDGE CLARK: So if it's ten units --

20 MR. GEHRS: Just one charge.

21 JUDGE CLARK: -- or if it's Trump Tower?

22 MR. GEHRS: Yes.

23 JUDGE CLARK: And that's maybe a bad
24 example?

25 MR. HIGGINBOTHAM: Yeah. Trump Tower.

1 JUDGE CLARK: Because it's Empire state.

2 MR. GEHRS: Well, Empire is
3 featherbedding, and that's what I'm trying to cure

4 JUDGE CLARK: Okay. Do you have any
5 other testimony you wanted to offer at this time
6 from yourself?

7 MR. GEHRS: I don't believe so at this
8 time.

9 JUDGE CLARK: Empire, cross-examination?

10 MS. CARTER: Yes. Thank you. Would it
11 be possible for us to have a set of exhibits?

12 JUDGE CLARK: Absolutely. Those are all
13 the exhibits with the exception of the 9C that was
14 not admitted.

15 MS. CARTER: Thank you.

16 EXAMINATION

17 **Q. (By Ms. Carter) Mr. Gehrs, when did you**
18 **become the owner of the property at 1802 Wall**
19 **Street?**

20 A. I guess the day it was built.

21 **Q. You became the owner?**

22 A. Personally?

23 **Q. Yes.**

24 A. No. It's owned by a company -- one of
25 my companies, BBG Corporation.

1 Q. So right now today you're still not the
2 owner of 1802 Wall Street?

3 A. I'm the major stockholder of BBG.

4 Q. But currently you personally don't own
5 the property?

6 A. Personally, no.

7 Q. When did you become the main shareholder
8 in BGG Corp.?

9 A. When I formed it in 1984.

10 Q. So when the property at 1802 Wall Street
11 began receiving service from Empire, who was the
12 owner?

13 A. I would say the Master of Joplin --
14 Masters of Joplin.

15 Q. Is that another corporation name?

16 A. Yes, and it has been dissolved.

17 Q. When was the bill for 1802 Wall Street
18 put into your personal name?

19 A. When we first started it nobody had any
20 credit, so Empire made me sign up, and it's been
21 that way ever since.

22 Q. So you, as opposed to your dad, since
23 the beginning?

24 A. My father. I was a heir of. My dad was
25 a senior citizen at that time. He was semi-retired.

1 Q. So that was an error in your complaint
2 that you filed?

3 A. Yes, I believe it was.

4 Q. You mentioned some different properties
5 here in your Exhibits 7C, 4C, 3C, and 2C. I just
6 want to make sure I'm correct. I'm sorry. 2C, 3C,
7 4C, and 7C.

8 A. Yes.

9 Q. Does that match with you that you are
10 not the owner of any of those properties? Correct?

11 A. I'm the owner of -- one of my
12 corporations is the owner of 1802 Wall. I have no
13 interested -- financial interest in any of those
14 exhibits.

15 Q. Okay. Maybe we should go one by one.
16 That might make it easier than trying to refer to
17 the numbers. Your Exhibit 2C is 421 West 3rd
18 Street?

19 A. Yes.

20 Q. Do you currently have any ownership
21 interest in that building?

22 A. I do not.

23 Q. Are you listed as a customer with Empire
24 for that building?

25 A. No.

1 Q. Do you agree with me that you haven't
2 been a party to conversations with Empire regarding
3 how that building would be built?

4 A. No. I don't have any interest how
5 Empire affects that building other than the exhibit
6 to show that Empire is not complying with their
7 tariff.

8 Q. Have you been a party to any
9 conversations between the owner of the building or
10 the customer and Empire as to how this property
11 would be billed?

12 A. I did not talk to Empire. I've talked
13 to the owner.

14 Q. Were you involved with any of the
15 conversations between the customer and Empire
16 regarding how this property should be billed?

17 A. No.

18 Q. Do you agree with me that you can't tell
19 by looking at the picture that is the first page of
20 Exhibit 2C, that you cannot tell the number of
21 habitable living units are inside that building?

22 A. Well, if you count the air conditioners
23 sticking out the windows, yes.

24 Q. You think you can tell by whether or not
25 there is an air conditioner on the outside of the

1 **building to determine the number of livable units?**

2 A. Looks like about five.

3 **Q. You believe that's proof of the number**
4 **of habitable living units inside a building?**

5 A. The word habitable is not in your
6 tariff. It's dwelling units in the building. They
7 don't have to be livable.

8 **Q. Sir, what do you believe defines it as a**
9 **living unit, then?**

10 A. I'm just using your own terminology.

11 **Q. So for you for Exhibit 2C, your**
12 **testimony is that you know there are ten units**
13 **because of the number of air conditioners?**

14 A. No. I have a note in there from
15 Mr. Higginbotham.

16 **Q. So -- and I'm confused, though, because**
17 **you mentioned the number of air conditioners. What**
18 **do the number of air conditioners have to do with**
19 **the number of units?**

20 A. You got to have a air conditioner per
21 unit.

22 **Q. Okay. I think you said you can see five**
23 **air conditioners?**

24 A. Well, you can count 'em if you want to.

25 **Q. Well, how many were you seeing?**

1 A. Well, I'll count, if you wish. I can
2 see about two is all.

3 Q. So you'd agree with me that you can't
4 tell necessarily from the outside of the building
5 how many living units there are on the inside of a
6 building?

7 A. As a drive-by, no.

8 Q. For example, one living unit could have
9 both an upstairs and a downstairs. Correct?

10 A. I don't know.

11 Q. You don't know if that's possible?

12 A. I imagine they're all on one floor of
13 the apartment. Mr. Higginbotham will have to
14 testify to that.

15 Q. So your Exhibit 3C, that was on 420
16 Moffet?

17 A. Yes.

18 Q. And 401 Sergeant?

19 A. Yes.

20 Q. How would you know that 420 Moffet has
21 20 living units currently?

22 A. I checked the drawings on construction.
23 I have them.

24 Q. And those are current?

25 A. Yes.

1 **Q. I'm sorry. How did you obtain the**
2 **current drawings from the property?**

3 A. When I built it I had engineering
4 drawings.

5 **Q. So when are your drawings from?**

6 A. Excuse me?

7 **Q. When are the drawings from? What's the**
8 **date on those drawings?**

9 A. Early '60s, 1960s.

10 **Q. How do you know that the number of**
11 **living units has remained the same since the '60s?**

12 A. By driving by, look at the doors and
13 people still there.

14 **Q. Did you go inside the building to check**
15 **the number of living units?**

16 A. No, I set out in the patio.

17 **Q. And if you could explain to me how you**
18 **can tell the number of living units inside.**

19 A. Dwelling units.

20 **Q. How can you tell the number of dwelling**
21 **units currently?**

22 A. I don't know if they're vacant or not,
23 but I know there's 23 units there.

24 **Q. How do you know there hasn't been any**
25 **reconstruction or remodeling to change the number of**

1 dwelling units?

2 A. I don't know if he had it remodeled or
3 not.

4 Q. And you don't know if the owner of this
5 property at 420 Moffet reported to Empire that there
6 are currently 11 living units in that property. Is
7 that correct?

8 A. Whoever -- wherever Empire got 11 is
9 beyond me.

10 Q. So you don't know if it came from the
11 owner?

12 A. I don't know.

13 Q. In your Exhibit 4C, the property at 602
14 West 5th Street --

15 A. Uh-huh. Yes.

16 Q. -- is that the property that had the
17 fire?

18 A. Yes.

19 Q. And you mention that there were 44
20 units. That was before the fire. Correct?

21 A. Yes.

22 Q. And at that time, they were charged 44
23 customer charges, correct, because there were
24 44 meters?

25 A. They were reading 44 meters. I know

1 that much.

2 **Q. So that would mean there were also 44**
3 **customer charges?**

4 A. I did not know. I didn't ask for that
5 records.

6 **Q. And now you testify that this property**
7 **is being billed for 15 dwelling units. Why do you**
8 **believe that's incorrect, that there are 15 dwelling**
9 **units?**

10 A. Fifteen units?

11 **Q. Yes.**

12 A. From conversation with the owner.

13 **Q. Were you a party to the conversation**
14 **with the fire marshal who reported the number of**
15 **living units to Empire?**

16 A. No, I was not.

17 **Q. And for Exhibit 7C, 121 North Byers, are**
18 **you an owner? You're not an owner of that property.**
19 **Correct?**

20 A. No, I'm not an owner.

21 **Q. And were you a party to the**
22 **conversations between the owner and Empire**
23 **regarding --**

24 A. No.

25 **Q. -- how the property should be charged?**

1 A. No.

2 Q. Do you agree with me that when you
3 informed Empire that there was an issue with
4 Mr. Higginbotham's building not being charged a
5 customer charge for each living unit that Empire
6 corrected that?

7 A. I assume they did. All that's testified
8 to that.

9 Q. You don't know if Mr. Higginbotham is
10 currently being charged?

11 A. I haven't sent him an invoice.

12 Q. Your property at 201 Wall?

13 A. Yes.

14 Q. How many living units are in that
15 building?

16 A. Fifteen.

17 Q. At 201 Wall?

18 A. Uh-huh.

19 Q. And how many customer charges are
20 imposed?

21 A. You bill each tenant a customer charge
22 of 14 meters and one house meter.

23 Q. So there's a customer charge for each
24 living unit?

25 A. Yes.

1 Q. And that's --

2 A. To each meter owner.

3 Q. And that happens to coincide with the
4 number of living units?

5 A. Yes.

6 Q. Has Empire told you that you're being
7 charged per meter as opposed to per living unit?

8 A. Excuse me? I don't understand the
9 question.

10 Q. I think you corrected me, and I asked if
11 you had been charged per living unit, a customer
12 charge for each living unit, and you corrected me to
13 say per meter, and I'm wondering why you corrected
14 that. Did someone tell you, you're being charged
15 per meter as opposed to per living unit?

16 A. You're not charging me the meter.
17 They're charging the tenant a customer charge and a
18 600 kW.

19 Q. So that's for each living unit in the
20 building?

21 A. Well, you call 'em living units, but
22 your tariff says dwelling. It don't have to be
23 living or non-living.

24 Q. Okay. Each dwelling unit --

25 A. Or vacant.

1 Q. Each dwelling unit has its own customer
2 charge?

3 A. Yes.

4 Q. And is that the same, then, for your
5 building at 1802 South Wall Street?

6 A. No. We have a single meter.

7 Q. I understand you have a single meter.
8 Are you being charged a customer charge for each
9 dwelling unit?

10 A. Yes.

11 Q. You have 15 dwelling units, so you're
12 charged a customer charge for each one?

13 A. Fourteen units at 14 --

14 Q. Fourteen, excuse me.

15 A. -- at 1802 Wall.

16 Q. So you have a customer charge for each
17 dwelling unit at 1802 Wall?

18 A. Yes. They're charging me 14 customer
19 charges for that building for one meter.

20 Q. I understand, sir. Is someone telling
21 you it's based on the meter instead of being based
22 on the dwelling unit?

23 A. Empire doesn't do -- Empire don't even
24 know the tenant in there. They don't know nothin'.
25 They're just padding the bill.

1 Q. Mr. Gehrs, would you agree with me that
2 your building at 1802 South Wall Street is being
3 charged exactly as is required by Empire's tariff?

4 A. Yes.

5 Q. Because the tariff requires a customer
6 charge for each dwelling unit. Correct?

7 A. That's what the tariff requires and
8 that's what I'm saying is wrong.

9 Q. And currently you and Mr. Higginbotham,
10 your properties are being charged in the exact same
11 manner. Correct?

12 A. As far as I know. I don't know for sure
13 of his.

14 MS. CARTER: That's all the questions I
15 have.

16 Oh, I'm sorry, Judge. I think I forgot
17 to start with asking you to take notice of Empire's
18 tariffs currently in effect, as well as Empire's
19 cancelled tariffs that remain on file with the
20 Commission.

21 JUDGE CLARK: Any objection to the
22 Commission taking notice, official notice of the
23 Empire's current and prior tariffs?

24 MR. GEHRS: No.

25 MS. ASLIN: No.

1 JUDGE CLARK: No objections. The
2 Commission will take -- the commission will take
3 official notice of those. Would you like me to make
4 those an exhibit or is it sufficient that I take
5 notice of them?

6 MS. CARTER: I think taking notice of
7 them is fine. They all remain in the Commission's
8 files.

9 JUDGE CLARK: Okay. Do you have any
10 other cross-examination questions?

11 MS. CARTER: No. Thank you.

12 JUDGE CLARK: Commission staff?

13 MS. ASLIN: No questions.

14 JUDGE CLARK: Mr. Higginbotham, do you
15 have any questions for Mr. Gehrs? I realize you're
16 just an interested party, but I'm trying to afford
17 you all the same rights I would afford any other
18 party.

19 MR. HIGGINBOTHAM: No. Thank you.

20 JUDGE CLARK: It is now 11:08. I think
21 it's a good time to take a break, since we've been
22 at it for a few hours.

23 I assume your next witness will be
24 Mr. Higginbotham?

25 MR. GEHRS: I have no questions of

1 Mr. Higginbotham.

2 JUDGE CLARK: But you have some
3 testimony you want to offer?

4 MR. HIGGINBOTHAM: Yes, sir.

5 JUDGE CLARK: Well, it's your choice as
6 to whether to let him testify or not. It's your
7 case.

8 MR. GEHRS: You agree with me. That's
9 fine.

10 JUDGE CLARK: He doesn't get to testify
11 if you don't want him to. Do you want to offer his
12 testimony?

13 MR. GEHRS: Yes, please.

14 JUDGE CLARK: Why don't we take a break,
15 we'll go off the record now, and we'll come back in
16 about -- is 15 minutes long enough for people?

17 MR. GEHRS: Yes.

18 JUDGE CLARK: All right. Why don't we
19 come back at 11:25?

20 MR. GEHRS: Okay. Thank you, sir.

21 (A recess was taken from
22 11:09 a.m. to on 11:26 a.m.)

23 JUDGE CLARK: All right. We'll go back
24 on the record now. Where we left off, Mr. Gehrs was
25 calling his next witness, Mr. Bob Higginbotham. And

1 just by way of Mr. Higginbotham, would you raise
2 your right hand and be sworn?

3 Do you solemnly swear or affirm that the
4 testimony you're about to give at this hearing is
5 the truth, the whole truth, and nothing but the
6 truth?

7 MR. HIGGINBOTHAM: I do.
8 Whereupon--

9 BOB HIGGINBOTHAM,
10 having first sworn or affirmed to tell the whole truth
11 in the matter now pending, testified as follows:

12 JUDGE CLARK: And would you please state
13 and spell your name for the record?

14 THE WITNESS: Bob Higginbotham. B-O-B
15 H-I-G-G-I-N-B-O-T-H-A-M.

16 JUDGE CLARK: I'd like to go ahead and
17 get this out of the way. And, like I said, I
18 indicated that I expect I'm holding Mr. Gehrs to the
19 standards of an attorney. I believe it would be
20 appropriate. Mr. Gehrs, do you want to offer
21 Mr. Higginbotham's direct testimony as filed as an
22 exhibit?

23 MR. GEHRS: Yes, sir.

24 JUDGE CLARK: Is there any objection
25 from Empire in regard to Mr. Higginbotham's direct

1 testimony as Exhibit 10C?

2 MS. CARTER: No objection.

3 JUDGE CLARK: Any objection from Staff?

4 MS. ASLIN: No objection.

5 JUDGE CLARK: I assume you don't have
6 any objection to your testimony, Mr. Higginbotham?

7 MR. HIGGINBOTHAM: No, sir.

8 JUDGE CLARK: Okay. Mr. Higginbotham's
9 direct testimony can be marked as 10C, and it will
10 be subject to the Commission's confidentiality rule.
11 Although, I will say anything you say today, unless
12 you tell me otherwise, will not be.

13 MR. HIGGINBOTHAM: Yes, sir.

14 JUDGE CLARK: So if there's anything you
15 don't want on the record, don't say it.

16 MR. HIGGINBOTHAM: Yes.

17 (Exhibit 10C marked and
18 admitted.)

19 JUDGE CLARK: Exhibit 10C is admitted.

20 JUDGE CLARK: Did you want to ask
21 Mr. Higginbotham questions?

22 MR. GEHRS: No. I believe he'll just
23 make his own statement, which I'll be happy to hear.

24 JUDGE CLARK: That's narrative. Are
25 there any objections to that?

1 MS. CARTER: No objection.

2 MS. ASLIN: No objection.

3 JUDGE CLARK: Okay, Mr. Higginbotham
4 what would you like to tell the commission?

5 MR. HIGGINBOTHAM: I have just a little
6 over five points to make. One is I would just like
7 to reassert that I don't believe that the tariff
8 applies to buildings constructed and not modified
9 since the -- you know, prior to 1981. I think that
10 my building is grandfathered in, and I think any
11 other buildings like that are grandfathered in,
12 prior to 1981, if they've not had some significant
13 change.

14 Then because of the application of the
15 tariff, it does complete -- make an unfair market
16 advantage to those of us that are paying. I
17 understand Empire's challenge in identifying
18 landlords, et cetera, or multi-family dwellings. I
19 understand that. Nevertheless, that doesn't remove
20 the fact that by having this tariff applied to me
21 wrongfully, it does create an unfair market
22 advantage for those that are not; and whether that's
23 Empire's responsibility or not, it does create this
24 situation.

25 And I think --

1 JUDGE CLARK: When you say unfair market
2 advantage, when do you mean?

3 MR. HIGGINBOTHAM: Well, as a landlord
4 of low income properties, I have several
5 competitors. One is typically HUD or my own city
6 government and HUD, cooperatives, and then other
7 landlords like myself that have multi-family
8 properties. And there is an abundance of landlords
9 in probably any community, but I know in Joplin,
10 that don't pay a per-dwelling-unit meter charge or
11 customer charge on their dwellings because Empire
12 can't identify those. And I understand their
13 challenge, but it does create a distinction when --
14 because they're not able to apply the tariff equally
15 amongst those of us in this sector, those of us that
16 do get it applied find ourselves at a disadvantage.

17 JUDGE CLARK: Okay. I follow you. So
18 you're at a disadvantage, as opposed -- when
19 compared to other single meter multi-dwelling units,
20 that -- of which Empire is unaware there are
21 multi-dwelling units.

22 THE WITNESS: Yes, sir. Yes, sir.

23 JUDGE CLARK: Okay. That explains that
24 to me.

25 MR. HIGGINBOTHAM: I think that, again,

1 standing on what Empire's response to me was, that
2 they're overriding emphasis is to protect those most
3 vulnerable -- I'm quoting -- most vulnerable, and
4 but, nevertheless, I have to pass these costs on to
5 my customer. I do pay all utilities on, for
6 instance, this one unit if building that has one
7 meter. I pay all the bills there. And because I
8 have to pass that tariff being applied to me on to
9 the customer, we are ultimately putting a sanction
10 on the most vulnerable people that Empire says that
11 these tariffs are in place to protect. So I think
12 it contradicts their statement of what their purpose
13 is.

14 Additionally, a separate fact is that I
15 bear the risk of tenants not paying their bills. So
16 when I have a tenant that decides not to pay, I'm
17 the one that's providing the electricity, and so
18 that's my loss. And so in a great way, by a single
19 meter building, I bear the risk of nonpayment.

20 Empire bears no risk of nonpayment and a
21 multitude of people that may have any number of
22 problems, yet they are charging me customer charges
23 for those dwelling units, and neither are they
24 providing service specific to those dwelling units,
25 but they also don't bear or they're not encumbered

1 by their risk of a nonpaying tenant.

2 Additionally, as Mr. Gehrs said, when
3 there are vacancies, Empire doesn't bear that load,
4 yet I still bear the customer charge regardless of
5 whether the unit is vacant. And then my last
6 assertion is that -- similar to Mr. Gehrs, is that
7 because I have one meter, formerly, prior to this
8 tariff being applied, when I went over a certain
9 kWh, I was afforded a reduction in rates. And
10 because, as a 13-unit, in theory, metered building,
11 meaning there's only one meter, because they divide
12 that usage up by 13 customers, I'm not afforded the
13 break in utilities even though I'm using the
14 utilities that meet that. And again, that enhances
15 even more -- to further that, that enhances even
16 more the unfair market advantage.

17 So it's not just the \$13 per unit, it's
18 also, um, the electrical rates that I'm paying.
19 That is a further load on low income people.

20 Those are my only assertions.

21 JUDGE CLARK: Just to summarize briefly
22 your five points, you don't believe that the tariff
23 applies to unmodified buildings;

24 That they have an unfair market
25 advantage as compared to other single meter

1 buildings with multi dwellings of which Empire is
2 not aware;

3 That you, as opposed to Empire, bear the
4 cost of customers that don't pay their utility
5 bills.

6 MR. HIGGINBOTHAM: On that, I believe I
7 benefit Empire.

8 JUDGE CLARK: Yeah. That Empire is not
9 assuming a risk that you're taking on.

10 MR. HIGGINBOTHAM: Yes, sir.

11 JUDGE CLARK: Where if it were single
12 metered, they would be taking on that risk.

13 MR. HIGGINBOTHAM: Yes, sir.

14 JUDGE CLARK: And that kilowatts divided
15 by the number of units cause you not to get the high
16 usage break that you would normally get from a
17 single meter.

18 MR. HIGGINBOTHAM: Yes, sir.

19 JUDGE CLARK: Those are the five points?

20 MR. HIGGINBOTHAM: Yes, sir.

21 JUDGE CLARK: Did you have any other
22 testimony?

23 MR. HIGGINBOTHAM: No, sir.

24 JUDGE CLARK: Did you have any exhibits
25 that you want to offer?

1 MR. HIGGINBOTHAM: I don't know if I
2 need to offer these. This is prior, where I was not
3 paying on this building. I was only paying \$13 a
4 month, and since then where I am. I don't know if
5 you need that up-to-date, if you need that or not.

6 JUDGE CLARK: Would you like to offer
7 that as an exhibit?

8 MR. HIGGINBOTHAM: I would, yes.

9 JUDGE CLARK: Would you show that to
10 the --

11 MR. HIGGINBOTHAM: What you'll see is
12 July and August of 2017 billing where I was being
13 billed for \$13. I've circled it because there are
14 other units on here. And then you'll see the
15 transition and to where I started to being billed
16 the additional dwelling unit charges.

17 JUDGE CLARK: I'll call that 11C, so
18 that will be covered under the Commission's
19 confidentiality rule.

20 Any objections from Empire?

21 MS. CARTER: I have no objection.

22 JUDGE CLARK: Any objections from Staff?

23 MS. ASLIN: No objections.

24 JUDGE CLARK: Mr. Gehrs, do you have any
25 objection to your witness offering this 11C?

1 MR. GEHRS: No objections.

2 JUDGE CLARK: 11C will be admitted onto
3 the hearing record subject to the Commission's
4 confidentiality rule.

5 (Exhibit 11C marked and
6 admitted.)

7 JUDGE CLARK: Since not technically
8 cross, I'll ask Mr. Gehrs, do you have any further
9 questions of your witness?

10 MR. GEHRS: No, I do not.

11 JUDGE CLARK: Any cross-examination by
12 Empire?

13 EXAMINATION

14 Q. (By Ms. Carter) Yes. Thank you.

15 Mr. Higginbotham, when did you become the owner of
16 property that is the subject of your testimony?

17 A. 421 West 3rd. I've been an owner of it
18 twice, currently the owner. So the first time, I
19 think, was around January of 1999, and, um, let's
20 see here. There was a time period where I sold it,
21 um, for about, I think, seven months. And then I
22 reacquired it and, gosh, I can't remember when it
23 was. Probably in the early 2000s.

24 Q. You testified that you don't believe the
25 tariff schedule RG should apply to apartment

1 **buildings that were constructed prior to 1981. Is**
2 **there language in the tariff that you're relying on**
3 **for that statement?**

4 A. Yes. As I read it, yes, ma'am.

5 Q. **If I hand you the tariff, can you tell**
6 **me what language?**

7 A. That would help, too. Give me a moment,
8 please. I should have brought my glasses.

9 Q. **Sure.**

10 A. This is not the same. So, I'm wrong.
11 The one I'm talking about is the one I read earlier,
12 where they began, the one I read earlier to you all
13 that -- where they began to apply and wanted the
14 multi meter in 1981. The 1981 ruling or change
15 wasn't -- it's not this necessarily, though I'm glad
16 to read through this, but my position is based off
17 of --

18 Q. **Are you referring to the Commission rule**
19 **as opposed to Empire's tariff?**

20 A. Yes. In this right here, this -- yes.
21 So that's what I'm referring to is that, what we
22 talked about earlier, is that I'm not required to
23 have multiple meters. And then -- and you don't
24 service but one meter, but you're charging me for
25 multiple customer services even though you only have

1 one meter on the building. That's my assertion.

2 JUDGE CLARK: For clarification, what
3 section is that? That's 4 CSR 240.20 --

4 MS. ASLIN: I think 240-20.050(2).

5 JUDGE CLARK: Two.

6 MS. ASLIN: Yes, subpart 2.

7 MR. HIGGINBOTHAM: Can I clarify my
8 response?

9 **Q. (By Ms. Carter) Yes.**

10 A. My assertion is that, you know, I'm not
11 required to put multiple meters, and so my assertion
12 is that I am being charged a customer service charge
13 where there is no customer service being provided.
14 There's one -- one meter on the building, yet,
15 because there happen to be multiple tenants, I'm
16 getting charged multiple customer charges.

17 **Q. You would agree with me, though, that**
18 **condition of service number 4 of Empire's tariffs,**
19 **schedule RG?**

20 A. Is that what this is?

21 **Q. Yes.**

22 A. Okay.

23 **Q. That that provides for the situation**
24 **where there is a single meter to multiple family**
25 **dwelling within a single building?**

1 A. I see the paragraph and I agree that it
2 says what you are saying. I'm unfamiliar when -- it
3 looks like this was in 2015 that it was provided for
4 Empire to do this, but that is a 2015 change, I'm
5 assuming, based on this date effective -- or 2016,
6 September -- but nowhere in that language does it
7 address the fact that, you know, if I build that
8 building in -- since after September 14th, 2016, if
9 I build that building and I choose to put one meter
10 on it, I can, but you're going to charge me. And so
11 I think by this language, you could do so. But my
12 position is that my building existed prior to the
13 change, and I don't think that it's provided for you
14 to charge this to a building that was in existence
15 prior to 1981, certainly in existence prior to
16 September 14th, 2016.

17 **Q. Would you agree with me that**
18 **buildings -- apartment buildings built before 1981**
19 **and apartment buildings built after 1981 are on a**
20 **level playing field in that everyone is charged a**
21 **customer charge per dwelling unit?**

22 A. Well, there are two parts to that, if I
23 may clarify. One is not every -- cut everyone,
24 because you're not able to identify. But moving
25 past that, okay, I agree that you may be, according

1 to this September 16th document, be allowed to do
2 that by the September 16th document on post 1981,
3 but I don't think just because you guys or Empire
4 afforded this opportunity to charge multiple
5 customer services in September of '16, I do not
6 interpret or allude that or by implicit or tacit
7 approval say you can apply that to a prior 1981.
8 Just because this language is in existence in
9 September 14, 2016, I do not accept that it, because
10 it exists, it arbitrarily applies to a pre 1981
11 building. That's not in here that you can apply it
12 to a pre 1981 building. So, yes, you have the
13 ability to do what you're saying, I agree with you.
14 I do not agree that it applies to pre 1981 building.

15 **Q. Is there language in the tariff that you**
16 **believe excludes apartment buildings built prior to**
17 **1981?**

18 A. I believe it says any buildings built
19 after 1981, so by implicit, it's prior 1981, not
20 implied. In this, no, but in the original tariff.
21 And I don't see any language in this document that
22 alleviates or removes that 1981 line.

23 **Q. And just so we can clarify, and I know**
24 **we have our own language. You're referring to the**
25 **Commission's rule regarding an individual meter not**

1 **being required for each living unit if the building**
2 **was built before 1981?**

3 A. Yes, and I deem those two topics
4 related.

5 Q. Okay. Do you agree with me that you
6 could install a meter for each living unit in your
7 apartment building?

8 A. At exorbitant price. It would be
9 costly.

10 Q. And if you had a meter for each living
11 unit, then Empire would bear the risk of customers
12 not paying. Correct?

13 A. They would bear not only the risk of
14 customers not paying, but they would also bear the
15 responsibility for that level of customer service,
16 just that many more times you have to do things.

17 Q. And if you had a meter for each living
18 unit, as is required for apartment buildings built
19 after 1981, then the services could be turned off
20 when a property was vacant. Correct?

21 A. Yes. Yes.

22 Q. Do you agree with me that Conditions of
23 Service number 4 on Schedule RG, that it should
24 create a level playing field between apartment
25 buildings built before 1981 and apartment buildings

1 **built after 1981?**

2 A. I'm sorry. Would you -- I do not -- I
3 don't understand. Would you do it again? You lost
4 me on the Schedule RG. Which document is that?

5 Q. **Yes. That is the tariff that is in**
6 **front of you.**

7 A. The tariff?

8 Q. **The residential tariff.**

9 A. This is the one that does allow you to
10 charge multiple customer service fees?

11 Q. **Customer charges per dwelling unit.**

12 A. Yes.

13 Q. **And I'll break it into parts. If you**
14 **have an apartment building built before 1981, you're**
15 **allowed to still have one meter for multiple living**
16 **units. Correct?**

17 A. Yes, ma'am.

18 Q. **But if you have an apartment**
19 **building 1981 or later, then you are required to**
20 **have a meter for each dwelling unit. Correct?**

21 A. Yes, ma'am.

22 Q. **So then condition number 4 on Schedule**
23 **RG, Empire's residential tariff, that would put**
24 **pre 1981 buildings and 1981 forward buildings on the**
25 **same playing field. Correct?**

1 A. Let me read this sentence that you're
2 referring to again just so I can answer the
3 question.

4 **Q. Certainly.**

5 A. Can you ask that last question again?

6 **Q. That condition number 4 would have the**
7 **purpose of treating all the apartment buildings the**
8 **same regardless of the date they were built?**

9 A. Okay. Yeah. So unless I'm
10 misinterpreting your question, I find it to be a
11 theoretical question that if, because you said if,
12 if -- if an apartment building was built prior to
13 1981 and has one meter and if you have a building
14 that's more current since '91 has multiple meters,
15 does this sentence put them on a level playing
16 field? But that's hypothetical. It's not real.
17 They are built prior to 1981 and they are built
18 post 1981 and they are not on the same level, and
19 no. Because I'm not getting the same level of
20 customer service, it's absolutely not a level
21 playing field.

22 To answer your question, I am not
23 getting the level of service from Empire, neither
24 are my tenants. If I had 10 meters on that
25 building, as an example, I'd be getting a different

1 level of customer service from Empire. You would
2 have a lot more customers directly calling you and
3 you'd -- and you would bear the burden of risk, not
4 me. So absolutely not. It is not a level playing
5 field. Regardless of the fact that you've put
6 potentiality in here to do so, it is not a level
7 playing field.

8 **Q. You mention that there are properties**
9 **that were apartment buildings built before 1981 in**
10 **Joplin. Have you provided -- that are not being**
11 **charged multiple customer charges. Have you**
12 **provided those addresses to Empire?**

13 A. No, I have not. No, I have not.

14 **Q. Are you able to do that?**

15 A. Some of the ones that Mr. Gehrs is
16 aware, I helped him locate, um, but I have not went
17 out and sought further. And so, no, it's not my
18 mention. It's not my -- I'm busy. This is hard for
19 me to be here today.

20 **Q. And, I'm sorry. I'm not asking you to**
21 **go out and do it.**

22 A. Okay.

23 **Q. I'm asking you if you're willing to tell**
24 **us the addresses of properties that you believe are**
25 **being undercharged.**

1 A. Yeah. If I wanted to go out and seek
2 those down, would I be willing to tell you, but I'm
3 not going to do that.

4 **Q. Do you currently know of any properties**
5 **that are being undercharged?**

6 A. Yes. I don't have those addresses in my
7 mind, but I know. Because I've been living here
8 since 1985, so yes, I know where there are multiple
9 family dwellings in town with one meter, and I know
10 owners that aren't -- aren't sustained -- aren't
11 sustaining this customer service charges.

12 **Q. And I'm sorry. We may be talking past**
13 **each other. Do you currently know of addresses**
14 **where they are being undercharged?**

15 A. I know of locations. I don't have
16 addresses in my head.

17 **Q. Are you willing to provide that**
18 **information so Empire can fix that?**

19 A. If I was willing to drive and go get
20 those addresses. I'm not going to work for you, no.

21 **Q. Okay. Would you like to give us any**
22 **information so we can try and fix that?**

23 A. I don't mind. If I had addresses on the
24 top of my head right now, I'd gladly give them to
25 you. I don't have the addresses in my head.

1 Q. There's not any information you'd like
2 to give us or that you're willing to give us so we
3 can fix that?

4 A. I would love to. It's not that I'm not
5 willing to. It's like, well, hey, if we drive down,
6 I think it's Jackson or Moffet, hypothetically, if
7 you go, I recognize that house, I know that guy,
8 I've done work on, it's not really practical. It's
9 not that I'm not willing to. It's that I don't have
10 the information readily available to share with you.
11 I'd be glad to.

12 MS. CARTER: That's all the questions I
13 have.

14 JUDGE CLARK: Any questions from Staff?

15 MS. ASLIN: No questions.

16 JUDGE CLARK: Any redirect from
17 Mr. Gehrs?

18 MR. GEHRS: Not to the witness, no. I
19 want to get a chance to talk to the Empire. Bob's
20 okay.

21 JUDGE CLARK: Okay.

22 MR. GEHRS: They said a statement I'll
23 question later on.

24 JUDGE CLARK: Okay. You'll have an
25 opportunity to do so.

1 Mr. Higginbotham, did you have any
2 redirect you want to talk about on your own behalf?

3 MR. HIGGINBOTHAM: No, sir.

4 JUDGE CLARK: May this witness be
5 excused?

6 MS. ASLIN: Yes.

7 JUDGE CLARK: You are a party, so
8 technically you're invited to stay around until the
9 end, but you also said it was difficult for you to
10 be here today. So I'll leave it up to you as to
11 whether you decide you need to leave or not or
12 whether you want to stay to the end.

13 MR. HIGGINBOTHAM: I don't want to
14 because of this, so I'll excuse myself now, then, if
15 you don't have any further questions of me.

16 MR. GEHRS: No.

17 JUDGE CLARK: I don't have any
18 questions. And, I don't know, at this point usually
19 what I do, and I believe it's built into the
20 procedural schedule at this point. There are -- the
21 parties will have an opportunity but are not
22 necessarily required to provide briefs and reply
23 briefs afterwards, so if you wish to, there will be
24 an order or I will, before I leave today,
25 announce -- it is in the procedural order -- you're

1 welcome to file a brief on any of the topics that I
2 decide need to be briefed, if you want to.

3 MR. HIGGINBOTHAM: Thank you. Thank
4 you. If nobody has any further questions of me,
5 I'll take off.

6 JUDGE CLARK: Is there any reason that
7 this witness should not be finally excused? [No
8 audible response]. I see no one offering anything.
9 You're excused. See you later on.

10 MR. HIGGINBOTHAM: You bet. Thank you,
11 sir. I appreciate it.

12 MR. GEHRS: Thank you, Bob.

13 JUDGE CLARK: All right. And do you
14 have any other testimony, evidence that you would
15 like to offer at this time, Mr. Gehrs?

16 MR. GEHRS: Not at this time.

17 JUDGE CLARK: Okay. So your case in
18 chief is complete?

19 MR. GEHRS: Excuse me?

20 JUDGE CLARK: Your case in chief is
21 complete at this point?

22 MR. GEHRS: Yes, sir.

23 JUDGE CLARK: Empire, you may call your
24 first witness.

25 MS. CARTER: Patsy Mulvaney.

1 JUDGE CLARK: Miss Mulvaney, would you
2 raise your right hand and be sworn?
3 Whereupon--

4 PATSY MULVANEY,
5 having first sworn or affirmed to tell the whole truth
6 in the matter now pending, testified as follows:

7 JUDGE CLARK: Will you please state and
8 spell your name for the record?

9 THE WITNESS: Patsy Mulvaney. P-A-T-S-Y
10 M-U-L-V-A-N-E-Y.

11 JUDGE CLARK: Empire, you can begin your
12 direct examination.

13 EXAMINATION

14 Q. (By Ms. Carter) Thank you. Patsy, you
15 prepared written rebuttal testimony for this case.
16 Is that correct?

17 A. Yes.

18 Q. And do you have any changes for that
19 prefiled testimony?

20 A. I do have a couple of changes.

21 Q. What is your first change?

22 A. On page 4, line 9, beginning with the
23 sentence "Service under Empire's," down to line 15,
24 I would like that removed from the testimony.

25 JUDGE CLARK: Page 4, line 9 to 15?

1 THE WITNESS: Yes, beginning at "Service
2 under Empire."

3 Q. (By Ms. Carter) So it's the ending of
4 line 9 and then all of lines 10, 11, 12, 13, 14, and
5 15 on page 4. Is that correct?

6 A. That is correct.

7 Q. And what is the reason for that
8 deletion?

9 A. Because the sole customer.

10 Q. It was just an error?

11 A. Error.

12 Q. And then did you have another change?

13 A. Yes. On page 5, line 14, I'd like to
14 add "since 1994."

15 Q. To the very end of the sentence?

16 A. To the end of the sentence, yes.

17 Q. And with those two changes, if I asked
18 you the same questions today would your answers be
19 the same?

20 A. Yes.

21 MS. CARTER: I would move for the
22 admission of Patsy's rebuttal testimony as an
23 exhibit.

24 JUDGE CLARK: Mr. Gehrs, any objection
25 to the admission of the testimony, as amended,

1 today?

2 MR. GEHRS: On the changes, I'd like to
3 have a little better explanation. We've already
4 sent them a sub-rebuttal to this thing and made
5 change an answer on it. The service under -- on
6 page 4, commercial tariffs is for sole use. What do
7 you mean by that, please?

8 MS. CARTER: I'm sorry, Mr. Gehrs,
9 that's what Patsy has stricken from her testimony
10 because you noted an error.

11 MR. GEHRS: You want to strike the whole
12 thing?

13 JUDGE CLARK: Yes. That portion, she's
14 saying, is erroneous and therefore should not be
15 considered.

16 MR. GEHRS: Okay. I understand it now.
17 I couldn't figure out what she meant by "sole use."

18 JUDGE CLARK: Well, I don't have to
19 think about it because it's no longer in the record.
20 And in regards to the "since 1994" addition to
21 page 5, line 14? And that strikes me as a
22 clarification more than anything else.

23 MR. GEHRS: Does that 1994 mean that's
24 what you added paragraph 4 to Conditions of Service?

25 MS. CARTER: It wasn't actually added,

1 but it was changed in 1994, and so we just wanted to
2 clarify in her testimony that the language has been
3 exactly the same since 1994.

4 MR. GEHRS: Okay. All right. Thank
5 you.

6 JUDGE CLARK: Any objections to
7 admitting the testimony?

8 MR. GEHRS: I have no objection.

9 JUDGE CLARK: Okay. Any objections from
10 Staff?

11 MS. ASLIN: No objection.

12 JUDGE CLARK: Okay. What I'm going to
13 call -- is there confidential information, either as
14 an attachment to this or otherwise? It looks like
15 possibly no.

16 MS. CARTER: I don't believe so. I
17 believe we tried to not use anyone's names or
18 anyone's addresses so that it could remain public.

19 JUDGE CLARK: All right. I'm going to
20 admit Exhibit 12 onto the hearing record, Mulvaney
21 direct, and it will not be subject to the
22 Commission's confidentiality rule.

23 MS. CARTER: And then, Judge, if I may,
24 I have one additional direct question.

25 JUDGE CLARK: Let's get that marked

1 first.

2 (Exhibit 12 marked and admitted.)

3 JUDGE CLARK: You had an additional
4 direct?

5 MS. CARTER: I feel a little bit funny
6 calling it direct. I have an additional question
7 for Miss Mulvaney to the response to the testimony
8 that was given live today before I tender her for
9 cross-examination.

10 JUDGE CLARK: I think that's
11 appropriate.

12 **Q. (By Ms. Carter) Miss Mulvaney, Mr. Gehrs**
13 **listed various properties during his testimony that**
14 **he believes were not being properly billed under**
15 **Empire's residential tariff. Are you familiar with**
16 **that testimony that Mr. Gehrs provided?**

17 A. Yes.

18 **Q. And those situations were brought to**
19 **Empire's attention. Correct?**

20 A. Correct.

21 **Q. What did Empire do in response to**
22 **receiving that information?**

23 A. So when those addresses were brought to
24 our attention, we did contact the customers and did
25 make the corrections based on the tariff.

1 Q. To your knowledge, is everyone now being
2 properly charged?

3 A. Yes.

4 Q. I'm assuming you can't say it's perfect
5 because you didn't go and inspect every house. Is
6 that correct?

7 A. That's correct.

8 MS. CARTER: And I would tender
9 Miss Mulvaney for cross-examination.

10 JUDGE CLARK: Mr. Gehrs, do you have any
11 cross-examination?

12 EXAMINATION

13 Q. (By Mr. Gehrs) On your tariff RG, under
14 Conditions of Service, item 4, it says "if you use
15 this tariff." What if we don't want to use it?
16 Then what?

17 A. Well, that's the only tariff that your
18 service --

19 Q. It's an option.

20 A. Well, we only have one residential --
21 Empire residen --

22 Q. Well, what else would I do if I didn't
23 want to use that tariff?

24 A. Well, your residence qualifies for the
25 residential service because it's a multi-dwelling

1 units.

2 JUDGE CLARK: Would somebody point me
3 to -- we're talking about paragraph 4 again?

4 MR. GEHRS: Yes, sir. It says if you
5 want to use it, but Empire is forcing us to use it,
6 not if we want to use it. Is that correct?

7 JUDGE CLARK: So you're saying it
8 provides no other alternative, but the "if" implies
9 an alternative?

10 MR. GEHRS: Yes, sir. I could go CB,
11 and she says no.

12 JUDGE CLARK: I believe she answered the
13 question that there is no alternative regardless of
14 whether it says "if." So do you have another
15 question?

16 **Q. (By Mr. Gehrs) Do you know from your**
17 **archives when item 4 -- paragraph 4 was added to**
18 **your tariff under Conditions of Service?**

19 A. Well, we did print off those -- the
20 older -- I don't remember when exactly, how far back
21 it goes into the archives under the Commission. We
22 did print off some records showing when that
23 condition of service, and it was all the way back to
24 1983, I believe, the condition number paragraph 4
25 was in the tariff.

1 Q. Yes, ma'am, but I have never seen that
2 tariff.

3 In 1980, that is pre 1981, and the
4 subject of individual metering was not the subject
5 at that time. So, yes, I might have been a
6 residential, but I was wasn't charged for all these
7 featherbeddings.

8 My question is, when was item 4 under
9 Conditions of Service added to the tariff, and when
10 did you start charging the penalties to one --
11 single-metered people?

12 JUDGE CLARK: Let's not call it
13 penalties, but I follow what you're saying. When
14 were those charges applied?

15 Q. (By Mr. Gehrs) Yeah.

16 MS. CARTER: And I'm sorry. We are
17 flipping through all of the archived tariffs to find
18 the original Schedule RG.

19 THE WITNESS: So 1983. So the original
20 sheet is August of 1983, as far as I can see. The
21 original schedule has paragraph 4, "If this schedule
22 is used for service through a single-meter to
23 multi-family dwellings within a single building,
24 each kilowatt hour block will be multiplied by the
25 number of dwelling units served and in calculating

1 each month's bill [sic]."

2 And on this schedule there is not a
3 customer charge. It's not broken out by customer
4 charge, just kilowatt hour, kWh.

5 Q. (By Mr. Gehrs) But that was after 1981;
6 it was '83?

7 A. The original sheet was.

8 Q. So before that tariff we were just
9 charged a single meter and kWh, whatever was used,
10 whether it's 600 kWh use. It's not -- so you
11 started penalizing us at 1983, which I don't have
12 any --

13 MS. CARTER: I'm going to object to the
14 form of the question in that he's saying that there
15 was a penalty added.

16 MR. GEHRS: Well, anyway --

17 JUDGE CLARK: I'm going to ask you to
18 rephrase your question. It's kind of a long,
19 rambling question.

20 MR. GEHRS: Yes, it is.

21 JUDGE CLARK: Why don't we break it into
22 parts? And I agree, instead of using "penalty," use
23 "charge." So it sounds -- I don't want to put words
24 in your mouth. If you can make the question into
25 two smaller questions, please.

1 MR. GEHRS: All right, sir.

2 Q. (By Mr. Gehrs) In 1980 we were not
3 charged with paragraph 4, no additional customer
4 charges and kWh. Is that correct?

5 A. I don't have that information.

6 Q. Okay. Then in 1983 you added a
7 paragraph for multi-family dwellings to add kWh only
8 to the single-meter owner. Is that what you stated?

9 A. The schedule did begin, the RG schedule
10 originally started on August the 1st of 1983.

11 Q. Up until that time, you were only
12 charging multi-apartment buildings a single meter
13 and a kWh charge. Buildings built pre to 1981
14 should be exempt, because the Commission's order, as
15 you understand it, is after 1981?

16 MS. CARTER: I'd object to the extent
17 he's asking her for a legal --

18 MR. GEHRS: That's a bad question.

19 MS. CARTER: Asking Miss Mulvaney a
20 legal conclusion as to interpretation.

21 JUDGE CLARK: I see where you're going.
22 Again, break it down into two questions, and follow
23 it with "isn't that correct" if you want to make a
24 statement and turn it into a question.

25 Q. (By Mr. Gehrs) A tariff change -- was a

1 **tariff changed in 1983 to add kWh only for a**
2 **multi-story apartments?**

3 A. So in 1983 -- so are you referring to
4 paragraph 4?

5 **Q. Yes.**

6 A. So in 1983 it has, "If this schedule is
7 used for service through a single-meter to
8 multi-family dwellings within a single building,
9 each kilowatt hour block will be multiplied by the
10 number of dwelling units served and calculated on an
11 each monthly bill [sic]."

12 **Q. Do you believe you billed customers at**
13 **that time that requirement?**

14 A. I believe we followed the tariff, and if
15 that's what the tariff has . . .

16 **Q. You don't have any billing to recognize**
17 **that?**

18 A. I'm sorry. Could you repeat the
19 question?

20 **Q. Do you have any billing in 1983 to**
21 **support that tariff on a multi-story building?**

22 A. In our billing unit, it showed --

23 **Q. That's billing a customer.**

24 A. In our CIS system?

25 **Q. At 18th and Wall, do you have any**

1 **billing to show that you billed 1802 Wall that**
2 **amendment to your tariff in 1983 to support the**
3 **tariff?**

4 A. Our customer information system shows
5 that as far back as 1980 the address at 1802 South
6 Wall was charged under the residential tariff.

7 Q. Yeah. Back in 1980 you just had a
8 classification. Did you just have a classification
9 that 1802 was a residential?

10 A. I don't have that record for 1980.

11 Q. We got a document said your computer
12 showed 1802 Wall was a residential classification at
13 that time, but if you did not support the document
14 with any billing showing that it was actually built
15 as a residential. Do you have such billing?

16 A. No. Our billing information doesn't go
17 that far back.

18 Q. Do you have any records prior to 1980
19 showing 1802 Wall, what you actually billed them at
20 the time of construction?

21 A. Our customer information system does not
22 go back that far.

23 Q. Okay. I think -- what method does
24 Empire have to determine how much energy usage we
25 use at a building of multi buildings?

1 A. You're billed on the usage coming
2 through your meter. We read the meter each month
3 and bill you based on the usage.

4 **Q. So the meter indicates the total power**
5 **that that building used and you have been paying for**
6 **that. Is that correct?**

7 A. What was the question? I'm sorry.

8 **Q. The meter indicates how much power and**
9 **usage the building used, and you send an invoice**
10 **according to the meter. Is that correct?**

11 A. According to the reading from the meter,
12 the amount of kilowatt hours used at that location,
13 yes.

14 **Q. So you do not know any relationship**
15 **other than the customer of the meter what goes on in**
16 **that building?**

17 A. No. We just know what the usage is
18 based on the meter readings.

19 MR. GEHRS: Okay. Thank you.

20 JUDGE CLARK: Any cross from Staff?

21 EXAMINATION

22 **Q. (By Ms. Aslin) I just have one question.**
23 **We're looking at paragraph 4 on the residential**
24 **service tariff. Would you agree with me that when**
25 **that says that if this schedule is used, that that**

1 is not offering an alternative but just clarifying
2 that it -- that if there is a single meter used on,
3 for example, an apartment building, that would apply
4 then? Would you agree with that?

5 A. I agree.

6 MS. ASLIN: No further questions.

7 EXAMINATION

8 Q. (By Judge Clark) I have a few
9 questions, and a few of them may be irrelevant. And
10 a few I'm going to ask you and you may not know the
11 answer to, but you're the best witness I've got at
12 which to ask them.

13 So is there -- you talked about a
14 demand. Mr. Gehrs talked about a demand meter.
15 That a term of art?

16 A. Is that a what? I'm sorry.

17 Q. What's a demand meter?

18 A. A demand meter is a meter that they set
19 up. Like a commercial property would have a demand
20 meter. Um, so there would be a reading on that
21 meter within a 15-minute period once a month where
22 they had used a high usage. So those would be
23 usually on bigger units, like on a commercial
24 service.

25 Q. What's the difference between a demand

1 **meter and say just a regular residential meter?**

2 A. I mean, the meters are the same. It's
3 just if they're reading a demand, which would be --
4 maybe I'm not saying that correctly.

5 So, uh, I mean, any meter can have a
6 demand if there's a demand read, but there's not a
7 demand read at a residential -- at the residential
8 service.

9 **Q. Okay.**

10 A. There's a demand charge.

11 **Q. But both of them provide you the same**
12 **information in terms of kilowatts used?**

13 A. Yes.

14 **Q. Mr. Gehrs has mentioned a multiplying**
15 **factor. I didn't really understand that. What's a**
16 **multiplying factor?**

17 A. So on his statement it shows -- so the
18 demand read, um, is .621, with a multiplier of 80.
19 So when you are -- when the meter is counting the
20 revolutions on a meter, because it's a bigger unit
21 and the meter has to work more, it's divided up into
22 a multiplier. So you take the demand read times the
23 multiplier to get your total kilowatt hours used.

24 **Q. But that would be -- the multiplier**
25 **doesn't change anything. If there were a bunch of**

1 small meters and you were to add up those, that
2 would be still be the same amount. Correct?

3 A. Correct.

4 Q. Okay. If I were building --
5 hypothetically, if I were building an apartment
6 complex today, who pays to have the meters put in
7 for each unit?

8 A. The apartment is responsible. The owner
9 of the property.

10 Q. So they pay per meter to have those put
11 in?

12 A. Yeah. They pay for the box. The meter
13 is the company and we set the meter at the location,
14 but the customer is responsible for the meter base
15 that you set the meter in. The meter belongs to the
16 company.

17 Q. Is the cost per unit the same as if --
18 if Mr. Gehrs were to have all of his units
19 individually metered, if he were to do that today
20 would that be the same as it would be for new
21 construction?

22 A. Would you ask the question again?

23 Q. My understanding is that if he wanted to
24 go from single meter to multimeter, meter per unit,
25 that that would be at his expense. Correct?

1 A. Correct.

2 Q. Would that expense be the same as if he
3 were building from scratch today?

4 A. Yes. Yes, sir.

5 Q. And this was unclear to me. You said in
6 1994 the tariff changed. The 1994 language that was
7 added, that was in relation to the customer charge?

8 A. Yes.

9 Q. And the customer charge is not -- is
10 that a per-meter charge?

11 A. Yes. Per meter, you're charged, the
12 customer. It's a set charge.

13 Q. Does the charge relate to the meter?

14 A. No. It's based on the fixed cost of
15 service for that location.

16 Q. Explain that more clearly.

17 A. So, uh, we are allowed to recover a
18 fixed cost at each location. So do I get between
19 all the customers, that set fee is -- or set
20 customer charge is \$13 currently under the
21 residential in Joplin and for Missouri. So the
22 costs recovered in that would be the service
23 provided to that location. So poles, lines,
24 transformers, the cost of us providing service to
25 the connection.

1 Q. I guess what I'm getting at is you said
2 yes, that cost is associated to the meter. What I'm
3 trying to get is are those costs intrinsically
4 linked or is the customer charge meant to correspond
5 to a dwelling unit?

6 A. Yeah. So a customer charge per dwelling
7 unit, not per meter.

8 Q. It just happens that that follows with
9 meters most of the time?

10 A. Right.

11 Q. Did the customer charge exist prior to
12 the 1983 -- did a customer charge exist prior to
13 1983 or do you know?

14 A. I don't have that record for before
15 1983.

16 Q. But the customer charge was added to
17 that paragraph in 1994?

18 A. Correct.

19 MS. CARTER: And Judge, it may help.
20 You've already taken notice of all of Empire's
21 current and cancelled tariffs. It may help us if we
22 mark as exhibits the original Schedule RG, the
23 current Schedule RG, and then the one where
24 Condition of Service were changed, just because
25 those are probably the three we're all going to talk

1 about the most in briefs and may help you to have
2 those identified separately.

3 JUDGE CLARK: That would be fine.
4 Mr. Gehrs, do you have any objection to that?

5 MR. GEHRS: No.

6 MS. ASLIN: No objection.

7 JUDGE CLARK: Okay. Do you want those
8 marked as three different exhibits? That would make
9 sense.

10 MS. CARTER: That would make sense, and
11 we can pick any order, and the dates are in the
12 bottom left-hand corner.

13 JUDGE CLARK: Why don't we do it
14 chronologically, with the earliest being 13, 14, and
15 15. And none of those are confidential.

16 (Exhibits 13, 14, and 15 marked
17 and admitted.)

18 **Q. (By Judge Clark) Okay. I've got one**
19 **more question. In a multi-unit dwelling that's**
20 **single metered, if one of those dwellings is**
21 **unoccupied is there any way that the landlord can**
22 **call the company and not be charged that customer**
23 **charge or is that not possible?**

24 A. That wouldn't be possible without
25 turning the meter off.

1 **Q. Okay. That answers my question.**

2 JUDGE CLARK: Mr. Gehrs, you said you
3 wanted to ask another question?

4 FURTHER EXAMINATION

5 **Q. (By Mr. Gehrs) Yes. Does it cost Empire**
6 **any expense to read a dwelling instead of a meter?**

7 JUDGE CLARK: I'm not sure I understand
8 that question. Would you clarify your question?

9 **Q. (By Mr. Gehrs) Yes. Empire gets a**
10 **customer charge for reading a meter, sending you a**
11 **bill, and to provide utility line to come to your**
12 **facility. That is to the customer who owns the**
13 **meter. The rest of these people, they don't own any**
14 **meters. Empire don't look at anything.**

15 Does Empire have any cost for those
16 people who do nothing and has no meter?

17 That's my question. Empire is out no
18 money -- now I made a statement now, Judge.

19 JUDGE CLARK: I'm afraid you did. That
20 means don't. You can try and ask your question in a
21 number of different ways. If you pare it down to a
22 simpler question that's maybe just a yes or no.

23 **Q. (By Mr. Gehrs) Yeah. All right. Yes or**
24 **no. Does Empire have any additional costs for**
25 **servicing a dwelling instead of a meter?**

1 JUDGE CLARK: Would unmetered dwelling
2 help?

3 Q. (By Mr. Gehrs) Yes.

4 A. It's not the meter. They wouldn't be
5 reading it.

6 Q. So you don't have a customer cost, you
7 don't have a meter is what I'm coming to. Do you
8 have any costs -- you read the meter, you have a
9 cost. Is that correct?

10 A. Well, we have meter readers that read
11 the meters.

12 Q. If you don't have any meter, how do you
13 come up with a cost for a dwelling unit which has
14 no -- nothing?

15 MS. CARTER: And I would object to the
16 form of the question in that I don't understand if
17 he's asking only what it costs to read the meter or
18 if he's asking about cost to provide a service.

19 JUDGE CLARK: I'm going to ask a
20 clarifying question just for myself and kind of
21 shortcut some of this.

22 What elements are covered under the
23 customer charge?

24 THE WITNESS: The cost of providing
25 service to the location.

1 JUDGE CLARK: What kinds of things would
2 that cover?

3 THE WITNESS: All lines coming into the
4 property, the meter, the transformers and any lines
5 feeding up to get to that location. All the costs
6 of providing service to those customers.

7 JUDGE CLARK: So, physical
8 infrastructure?

9 THE WITNESS: Correct.

10 JUDGE CLARK: Not just the guy who comes
11 out and reads the meter?

12 THE WITNESS: Right. Someone will
13 respond to outages and, you know, upkeep of all
14 that, tree trimming to keep the lines clean.
15 There's a lot of cost to providing service to a
16 location.

17 JUDGE CLARK: Did that clarify in any
18 way? Is that kind of where you were going? If it
19 wasn't, please feel free to --

20 MR. GEHRS: Yes. I believe anything
21 goes to that meter, in a way, we should be paid for
22 it, but you are doing no service or product to a
23 dwelling in that building. So, really, we ought to
24 send you a bill instead of you sending me a bill for
25 the customer charge.

1 JUDGE CLARK: Well, you got your
2 statement in.

3 MR. GEHRS: It's a difficult question.

4 JUDGE CLARK: Did you have any other
5 questions you would like to ask?

6 MR. GEHRS: No, sir.

7 JUDGE CLARK: Staff?

8 MS. ASLIN: No further questions.

9 JUDGE CLARK: Empire, any redirect?

10 MS. CARTER: No redirect.

11 JUDGE CLARK: Empire, did you get all of
12 your evidence in that you wanted to offer?

13 MS. CARTER: Yes, I believe so. You
14 admitted Miss Mulvaney's testimony, and then we have
15 the stipulation of facts, and you took notice of the
16 tariffs, so that should cover everything.

17 JUDGE CLARK: Yes, and we did the three
18 different versions of the RG schedule.

19 Do you have any other witnesses?

20 MS. CARTER: No other witnesses.

21 JUDGE CLARK: Staff, you can call your
22 first witness.

23 MS. ASLIN: Staff calls Robin
24 Kliethermes.

25 JUDGE CLARK: Ms. Kliethermes, would you

1 raise your right hand and be sworn?

2 Whereupon--

3 ROBIN KLIETHERMES,

4 having first sworn or affirmed to tell the whole truth
5 in the matter now pending, testified as follows:

6 JUDGE CLARK: Would you state and spell
7 your name for the record?

8 THE WITNESS: Robin R-O-B-I-N,
9 Kliethermes K-L-I-E-T-H-E-R-M-E-S.

10 JUDGE CLARK: Staff, you can question
11 the witness.

12 EXAMINATION

13 Q. (By Ms. Aslin) Where are you employed
14 and in what capacity?

15 A. I am employed by the Missouri Public
16 Service Commission as the rate tariff examination
17 manager of the tariff and rate design department.

18 Q. Did you supervise the writing of the
19 staff recommendation and report and supplemental
20 recommendation and report in this case?

21 A. I did.

22 Q. And I know that these were authored by
23 JR Perez, who no longer works for the Commission,
24 but do you agree with his conclusions?

25 A. I do.

1 Q. And did you have any changes or
2 corrections to either report?

3 A. I do not.

4 Q. And is the information contained in both
5 the report and supplemental report true and correct,
6 to the best of your belief and knowledge?

7 A. Yes.

8 MS. ASLIN: So I would move for the
9 admission. I'm not what number we are on.

10 JUDGE CLARK: We would be on -- do these
11 contain any confidential information? I believe the
12 memorandums do.

13 MS. ASLIN: Yes. Both.

14 JUDGE CLARK: So this would be 16C for
15 the staff report, and 17C for the amended -- or
16 supplemental report.

17 MS. ASLIN: Yes.

18 JUDGE CLARK: Are there any -- make sure
19 the other parties have them.

20 MS. ASLIN: Yes.

21 (Exhibits 16C and 17C marked.)

22 JUDGE CLARK: Mr. Gehrs, do you have any
23 objection to Staff's recommendation and report, 16C,
24 and staff's supplemental recommendation and report,
25 17C, being admitted onto the hearing record?

1 MR. GEHRS: Yes, sir. I just don't
2 agree with them.

3 JUDGE CLARK: Okay. That's not a legal
4 objection.

5 MR. GEHRS: No.

6 JUDGE CLARK: Is there some reason that
7 you believe in particular that they are unfair to
8 you?

9 MR. GEHRS: Yes. I think they lean
10 towards the company more than they do the public, as
11 the Commission was really developed to protect the
12 public from these types of corporations and their
13 first duty is to the public, next to the utility and
14 the development of the utility in the future, its
15 power designs or whatever they got to do.

16 JUDGE CLARK: Okay. These are generally
17 ordered by the judge.

18 MR. GEHRS: Yes.

19 JUDGE CLARK: And they are
20 regularly-kept records of the Commission. I'm going
21 to overrule those objections, and 16C, the staff
22 report, and 17C, the supplemental report are going
23 to be admitted onto the hearing record, subject to
24 the -- well, any objection from Empire?

25 MS. CARTER: No objection.

1 JUDGE CLARK: Subject to the
2 Commission's confidentiality rule.

3 MR. GEHRS: Yes, sir.

4 Q. (By Ms. Aslin) And I just have one more
5 question for Ms. Kliethermes before cross.
6 Miss Kliethermes, could you explain the purpose of a
7 demand meter?

8 A. So the purpose of a demand meter is
9 typically to measure the demand of a customer. Um,
10 so that says the purpose of the meter. And
11 typically, larger meters of are demand meters,
12 larger-load meters are demand meters.

13 Q. So demand meters are not always or
14 solely placed on commercial dwelling -- or
15 commercial buildings?

16 A. Generally, commercial loads are larger.
17 Under the case of with a single meter being served
18 for this 14-unit dwelling, um, that's -- that can be
19 a larger load. So if it's being served through a
20 single meter, it makes sense that a larger meter was
21 placed on that property.

22 MS. ASLIN: I tender Miss Kliethermes
23 for cross.

24 JUDGE CLARK: Mr. Gehrs, do you have any
25 questions you wanted to ask?

1 EXAMINATION

2 Q. (By Mr. Gehrs) A question on the demand
3 meter. Do you think that meter is doing its
4 function in giving Empire all the remedy they need
5 for that service?

6 A. So if your question is does it give --
7 if the purpose of the -- to say it is giving the
8 revenue they need, are you saying the revenue to
9 cover the cost of the meter or --

10 Q. The cost of service.

11 A. So that is getting into a --

12 Q. It measures the cost of service to that
13 building properly.

14 A. The purpose of the meter is to measure
15 the level of usage that that building is using.
16 Because it is a demand meter, there's also the
17 additional measurement of the kilowatt demand that
18 is also being measured.

19 Q. If it was an industry, a factory, and
20 usually they have demand meters, that meter would
21 read true energy that Empire provided to that
22 manufacturer or whatever it is. There is no other
23 charges past the meter?

24 A. The meter would measure the level of
25 usage that is flowing through that meter. That is

1 what that meter would measure.

2 **Q. That is correct. I understand that.**

3 A. Yeah.

4 **Q. But here do you feel that Empire is**
5 **billing us for the meter which tells the truth, then**
6 **adds all these surcharges of customer charges and**
7 **kWh as an add on? Do you think that's true?**

8 A. I -- as per our staff report, the kWh
9 that is being measured on the meter, I have not seen
10 anywhere where that has been inaccurate, and then
11 Empire is taking that kWh and billing according to
12 their tariff.

13 **Q. A residential meter just reads one type**
14 **of reading. Is that true?**

15 A. It is my understanding that a
16 residential meter is not a demand meter, so there
17 would only be a measurement of kWh.

18 **Q. A residential will not draw as much kW**
19 **as a commercial building. True?**

20 A. So that -- when it comes into commercial
21 building verse residential building, it really
22 depends on the definition of what you are defining
23 as what is residential and what is commercial. And
24 for purposes of -- so if the building that has a
25 14 -- if your building, the 14-unit apartment unit,

1 had single meters for each unit, seemingly those
2 meters would be smaller than the meter that you
3 currently have placed for that single service, and
4 so those meters would be probably just kWh. But I
5 can't exactly speak to most recent meter technology
6 that may have demand capability, so I'm not -- I
7 can't say today that a residential meter, especially
8 with AMI meters, would not be able to do something
9 like that.

10 But generally, I think you mentioned in
11 2001 the meter was placed in service. Then at that
12 time if a single meter was placed, it probably was
13 only -- would have been able to do kWh for
14 residential service. But again, I can't confirm
15 that because I don't know the exact types of meters
16 that are available to be installed for different
17 levels of service.

18 **Q. This building was built in 1977 and has**
19 **had a demand meter ever since the day it was born.**
20 **Now, my question is, does a demand meter give Empire**
21 **enough revenue to pay for all the services and make**
22 **a profit off of it?**

23 A. So that is getting into a class cost of
24 service issue that -- so Empire's tariffs have gone
25 through rate cases where Empire's cost of service,

1 um, was probably evaluated at that time.

2 If there is a question of whether --
3 that there is a imbalance of cost of service being
4 with the residential tariff, it's a more proper
5 question to raise that in a rate case, when all
6 costs and services -- or costs to serve, all costs
7 are being taken into consideration in order to
8 develop that rate.

9 **Q. I agree with your statement there.**

10 **But do you feel that Empire should be**
11 **allowed to apply additional customer charges and kWh**
12 **after the meter gives a correct reading, which I**
13 **call featherbedding?**

14 A. I -- I have not found where Empire is
15 not following their tariff correctly.

16 **Q. I think you're right, the tariff we're**
17 **considering in our complaint, they featherbedded by**
18 **paragraph 4.**

19 A. Is there a question? Are you asking me
20 a question?

21 JUDGE CLARK: No, there was no question.

22 **Q. (By Mr. Gehrs) The question is, do you**
23 **think they're featherbedding?**

24 A. I think they are following their tariff.
25 If the question is the appropriateness of Empire's

1 tariff, then again I'd restate that that is a more
2 appropriate question for a rate case or a general
3 complaint case where all costs to serve customers
4 can be evaluated.

5 Q. Let's flip the coin and you come in in
6 my position, as a consumer, and here we're paying
7 for a demand charge meter, which covers everything,
8 then they come along and add this superficial
9 charges to us, too, and do no work, no cost, no
10 nothing, and yet the tariff says that's okay; but as
11 to the consumer, it's featherbedding you. That's
12 why I'm here, to eliminate the featherbedding and
13 undue costs applied to the consumer.

14 JUDGE CLARK: That was not a question
15 either.

16 MR. GEHRS: I know.

17 JUDGE CLARK: This is your opportunity
18 to ask questions, but I am going to limit you to
19 questions. So . . .

20 Q. (By Mr. Gehrs) The question is, if you
21 are a consumer would you like to be double charged,
22 once for the demand meter and, two, all this other
23 odds and ends which they do nothing for? Would you
24 like to pay that bill?

25 A. Um --

1 MS. ASLIN: I'm going to object to that
2 question.

3 JUDGE CLARK: I'm going to sustain that
4 objection.

5 MR. GEHRS: Okay.

6 JUDGE CLARK: I don't think what she
7 thinks is relevant.

8 MR. GEHRS: I'm trying to emphasize.

9 JUDGE CLARK: Because you're asking what
10 she thinks personally rather than from any sort of
11 professional standpoint.

12 MR. GEHRS: Yeah.

13 JUDGE CLARK: So . . .

14 MR. GEHRS: That's all I have.

15 JUDGE CLARK: Empire?

16 EXAMINATION

17 **Q. (By Ms. Carter) Yes. Just a few**
18 **questions. Miss Kliethermes, can you tell us what**
19 **the purpose of a customer charge is?**

20 A. So the purpose of a customer charge is
21 to look at the cost that it takes Empire to serve
22 its customers without using energy.

23 **Q. So that would be separate from the**
24 **energy that is being read by the meter?**

25 A. That is separate.

1 **Q. Is it typical for a utility to impose a**
2 **customer charge in addition to a usage charge?**

3 A. Yes, it is a typical for a residential
4 tariff to have a two-part, a customer charge which
5 is per customer and then a usage charge for kWh.

6 **Q. Are you familiar with Empire's**
7 **commercial tariffs?**

8 A. Yes.

9 **Q. I am looking at their Schedule CB?**

10 A. Yes.

11 **Q. And could a multi-unit residential**
12 **building, an apartment building, fall under**
13 **Schedule CB?**

14 A. So it is my understanding of the tariff,
15 it does not. And where I am reading that is under
16 the availability section of the tariff, where it
17 says, "The schedule is available to any general
18 service customer on the lines of the company whose
19 electric load is not consistently in excess of 40
20 kW, except those who are conveying electric service
21 received to others whose utilization of same is for
22 residential purposes other than transient or
23 seasonal [sic]."

24 **Q. So it would be your interpretation that**
25 **a motel, for example, could receive service under**

1 **Schedule CB, but not an apartment building.**

2 **Correct?**

3 A. Yes. I'm sorry. If you continue
4 reading the paragraph, motels, hotels and inns are
5 not included in that exception.

6 **Q. So they could be served as a commercial**
7 **under the commercial tariff, but an apartment**
8 **building must be served under Empire's residential**
9 **tariff. Correct?**

10 A. That is correct.

11 **Q. Can you briefly describe just for the**
12 **benefit of Mr. Gehrs the rate design process in a**
13 **rate case?**

14 A. So in a rate case staff and other
15 intervenors to the case provide a class cost of
16 service, and in a class cost of service the costs to
17 serve, which are determined in the company's revenue
18 requirement and is audited during the rate case
19 process, is then allocated to rate classes; and then
20 within that rate class, we look at certain cost
21 categories. For example, the customer charge
22 involves cost categories of meter costs, service
23 drop costs, customer service costs, plant costs and
24 then return on plant of those costs, and any sales
25 and service expense. And that is all outlined in

1 Staff's report that is provided in rate cases,
2 specific, you know, in company rate cases, the staff
3 explains that.

4 Then based on -- that will be in a rate
5 case. When the Commission determines what the
6 revenue requirement is going to be or orders what
7 the revenue requirement is going to be, typically
8 then staff will take that revenue requirement and
9 apply it to rate design, and that will go into when
10 we look at customer costs, it determines what the
11 customer charge will be.

12 Other factors do apply. The Commission
13 can determine a lower customer charge than what is
14 found to cost. They can determine a higher customer
15 charge once they determine the cost. As long as the
16 total reference being received from that class
17 equals the Company's ordered revenue --
18 Commission-approved revenue requirement.

19 When we determine those rates, a set of
20 billing determinants is used. And so at the time of
21 the rate case, all the kWh that was deemed
22 residential is included in that calculation of the
23 rate; all kWh determined to be commercial is used to
24 determine that rate for the commercial tariff, and
25 then the tariffs take effect. Is that enough

1 explanation? Okay.

2 Q. Thank you.

3 A. I'm sorry.

4 Q. I'm sorry. I know I shouldn't have
5 asked a technical person just to set them out like
6 that. So you did good. Thank you.

7 A. Okay.

8 MS. CARTER: That's all the questions I
9 have.

10 EXAMINATION

11 Q. (By Judge Clark) I have a few. You may
12 not know the answers to all these.

13 Do you know when Mr. Gehrs' building at
14 802 Wall first started receiving multiple customer
15 charges based on dwelling units?

16 A. I don't know when it started. Just from
17 what Empire has provided in the case, that per their
18 tariff is when it started.

19 Q. Do you know if 1983 was the first time
20 that it was in the tariff that they -- well,
21 actually, I think it was -- was it '94? Are you
22 aware, was there a customer charge prior to 1983?

23 A. So Empire's -- I don't know prior to
24 1983 because the tariffs that we have, the original
25 is 1983.

1 **Q. Prior to that?**

2 A. Yes. There is no customer charge on
3 that tariff. I don't know exactly when Empire's
4 tariffs did start charging a customer charge, but as
5 recently -- I mean, from the rate cases I've worked,
6 there's always been a customer charge in that
7 paragraph 4 has been under Condition of Service.

8 **Q. In regard to the customer charge, if**
9 **he's got 14 units, can he recoup from those 14**
10 **people the customer charge?**

11 A. Can he individually bill or can he --

12 **Q. Can he say as part of -- you know,**
13 **you've rented this, you know, I pay this much for**
14 **electricity through this meter, it includes a**
15 **13-dollar per unit charge. I'm going to charge up**
16 **your pro-rata, one-fourteenth of whatever this is,**
17 **plus your 13-dollar customer charge. Can he do**
18 **that?**

19 A. So there is some legal questions in
20 there. From my interpretation of the tariff, um, so
21 electric service is not to be resold, but in the
22 case of a multi-family -- so the single meter
23 multi-family dwelling, because it's grandfathered
24 under the Commission rule, I don't know if that
25 allows that to be done or if it allows rent to be

1 charged at a higher rate than what you would have
2 charged if utilities wasn't included. I don't know
3 the answer to that question.

4 **Q. Fair enough. And maybe I'm just not**
5 **getting it. Is there any -- for purposes of this,**
6 **why does it matter if it's residential or**
7 **commercial?**

8 A. So for -- it --

9 **Q. Because it appears to just be what size**
10 **meter you get.**

11 A. Well, so with this case, because it's --
12 so after 1981 nothing is supposed to be -- no
13 commercial or residential unit is supposed to be a
14 single meter. It is supposed to be an -- there is
15 supposed to be no single meter -- or let me
16 rephrase.

17 Every unit, individual unit, residential
18 or commercial, should have a single meter. So in
19 this case, these are apartment building -- these are
20 apartment units, so after 1981 they would be
21 singularly metered.

22 So Empire's tariff says if it is a
23 single-meter multi-unit dwelling, you are billed
24 under this residential tariff because there is no
25 other tariff that you can be billed under. It is

1 not under the commercial tariff.

2 So -- and there are several -- so it
3 matters for purposes of what tariff it goes under,
4 but when you distinguish between residential and
5 commercial, I think there is a difference between
6 residential for purposes of what is defined in the
7 company's tariff as what is residential verse what
8 is commercial, and that determines what tariff
9 you're on. And that's why -- and that determines
10 how you're billed.

11 So that's not to say in a rate case
12 Empire can change their tariffs and now these
13 single-meter multi-dwelling units can be billed
14 under commercial, but it's saying right now that
15 type of unit is a residential under the residential
16 service tariff.

17 Q. Okay. Thank you.

18 A. Okay.

19 JUDGE CLARK: Mr. Gehrs, do you have any
20 follow-up questions?

21 MR. GEHRS: If you understand that,
22 you're a better person than I am.

23 JUDGE CLARK: I understood some of it.

24 MR. GEHRS: And if she understands it,
25 you're doing great.

1 MS. ASLIN: Well, yeah.

2 JUDGE CLARK: Do you have any follow-up
3 questions?

4 MR. GEHRS: No, I have none, sir.

5 JUDGE CLARK: Empire?

6 FURTHER EXAMINATION

7 **Q. (By Ms. Carter) Yes. Just one, Judge.**
8 **If you are a residential customer, under the**
9 **Commission's rules there is no protection afforded.**
10 **Is that correct?**

11 A. That is correct. Chapter 13 applies to
12 residential customers.

13 **Q. And Chapter 13 does not automatically**
14 **apply to commercial customers. Correct?**

15 A. It does not.

16 JUDGE CLARK: Bear with me just a
17 moment. Do you have any redirect?

18 MS. ASLIN: No redirect.

19 JUDGE CLARK: Have you all offered all
20 the evidence you wanted to offer?

21 MS. ASLIN: Yes.

22 JUDGE CLARK: It doesn't look like I'm
23 going to -- I'm just going to take it from
24 everything everybody said that there aren't going to
25 be any late exhibits, so I'm not going to address

1 that.

2 When do you think transcripts will be
3 available?

4 THE COURT REPORTER: I think they're due
5 the 18th.

6 JUDGE CLARK: It looks like I'm going to
7 go ahead and stick with the original time I had set,
8 because it went out with procedural schedule in
9 regards to briefs.

10 Like I said, a party may offer briefs.
11 It's not required to offer a brief. I'm not going
12 to make them required. However, if you choose to
13 brief, there are a couple of issues that I would
14 like to know something about, because I don't feel
15 that I fully have a grasp of them, and that is the
16 customer charge versus the number of meters and how
17 those are intertwined.

18 I think we may have addressed this
19 somewhat in regard to residential versus commercial,
20 and that is the higher, I'm going to assume A and B,
21 which I'm assuming has to do with the amount of in
22 regards to how both Mr. Gehrs and Mr. Higginbotham
23 said that the way it's being done deprives them of
24 the higher usage rate.

25 There is one thing I wanted to finally

1 address, because it isn't offered and it's usually
2 cited in the decisions, but I think it probably
3 ought to be put into evidence, if nobody objects,
4 and that is in this matter I think the complaint and
5 the amended complaint should go into evidence as
6 Commission's Exhibit 18C and 19C, respectively.

7 Mr. Gehrs, do you have any objection to
8 me putting your complaints confidentially into the
9 record as exhibits?

10 MR. GEHRS: No, sir, I do not.

11 JUDGE CLARK: Empire?

12 MS. CARTER: No objection.

13 JUDGE CLARK: Staff?

14 MS. ASLIN: No objection.

15 JUDGE CLARK: Okay. Then I'm going
16 to -- I believe I have copies of both of those here.
17 We'll mark those as 18C and 19C, respectively, and
18 those will be admitted onto the hearing record as
19 Commission exhibits.

20 (Exhibits 18C and 19C marked and
21 admitted.)

22 JUDGE CLARK: Any party wishing to file
23 a initial brief shall have it filed by July 12th,
24 2019. Any response briefs, if there are any on your
25 reply briefs, will be due July 26th.

1 Are there any other matters that need to
2 be taken up by this time? Mr. Gehrs?

3 MR. GEHRS: No, sir.

4 JUDGE CLARK: Empire?

5 MS. CARTER: No. Thank you.

6 JUDGE CLARK: Staff?

7 MS. ASLIN: No, Judge.

8 JUDGE CLARK: Okay. Well, I will thank
9 you all for your participation today. It's been a
10 longer hearing than I anticipated, and I will
11 adjourn this hearing. We will go off the record.

12

13 (Concluded at 12:58 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 RE: STATE OF MISSOURI
4 PUBLIC SERVICE COMMISSION
5 In the Matter of William L. Gehrs, Jr. v. The Empire
6 District Electric Company
7 File No. EC-2018-0033

8

9 Date Taken: JUNE 14, 2019

10

11 I, Paula C. Voyles, a Registered Professional Reporter,
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