

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of July, 2024.

In the Matter of the Application for Midland Residential, LLC for a Variance from 20 CSR 4240-20.050 Regarding Individual Electric Meters)
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)
)

File No. EE-2024-0335

ORDER APPROVING STIPULATION

Issue Date: July 3, 2024

Effective Date: July 13, 2024

On May 9, 2024, Midland Residential, LLC, (Midland Residential) filed an application regarding a variance for individual electric meters for a new affordable housing building. On June 27, 2024, Evergy Metro Inc. d/b/a Evergy Missouri Metro (Evergy), the Staff of the Commission (Staff), and Midland Residential filed a Stipulation and Agreement (Stipulation).¹ The signatories of the Stipulation indicate that the Office of the Public Counsel does not object to the Stipulation.

The Stipulation sets forth that because the building for which the variance is requested was constructed before June 1, 1981, Staff's Variance Committee believes a variance from Commission Rule 20 CSR 4240-20.050 is not required. The Stipulation states that Evergy has discretion under the relevant portion of its tariff to waive the separate metering requirement if Evergy determines that the operation of the multiple occupancy premises makes it impractical for Evergy to separately meter the subject

¹ Evergy filed a late-filed application to intervene in this case. The Commission grants Evergy's late-filed application to intervene.

property. According to the Stipulation, Evergy has determined that separate metering is impractical and will waive the tariff requirement, so long as the property is used to provide housing to individuals who pay fixed rent inclusive of electric service.

Commission Rule 20 CSR 4240-20.050(2) requires a separate electric meter for each residential or commercial unit if the construction of the building began after June 1, 1981. Because the building for which Midland Residential seeks a variance did not begin being constructed after June 1, 1981, the Commission finds a variance is not needed.

The Commission finds that the unopposed Stipulation is a reasonable resolution of the issues between the signatories. The Commission will approve the Stipulation and will order the signatories to comply with its terms. So that the applicant may proceed with its construction plans, the Commission finds it is reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The Stipulation, attached to this order, is approved. The signatories of the Stipulation shall comply with its terms.

2. This order shall become effective on July 13, 2024.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Hahn, Ch., Coleman, Holsman
Kolkmeier, and Mitchell CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

PURPOSE OF THE STIPULATION AND AGREEMENT

6. This Settlement Agreement is to govern the Parties' desire and intention to settle EE-2024-0335, as set forth herein.

7. Midland Residential is the owner of the real property and its improvements, a high-rise residential apartment building located at 1221 Baltimore Ave., Kansas City, Missouri 64105 (the "Property") in downtown Kansas City, Jackson County, Missouri.

8. The Property will consist of approximately 135 housing units for area residents and is designed to accommodate residents who work in the immediate surrounding metropolitan area, many of whom require affordable housing accommodations. The building was originally constructed in 1926-1927 as an office building, and the footings were poured at this time.

9. Evergy Missouri Metro provides electricity to the Property.

10. The Evergy Missouri Metro tariff on file with the Commission, *Evergy Missouri Metro P.S.C.Mo. No. 2, Second Revised, Sheet No. 1.18A*, Section 5.01 ("Tariff"), requires the Property to have individual electric meters for each residential unit.

5.01 INDIVIDUAL METERING FOR SEPARATE PREMISES: Except as otherwise provided in this Rule 5 or if the Commission has granted a variance pursuant to Commission Rule 4 CSR 240-20.050(5) permitting otherwise, the occupant of each separate premises in or on any multiple occupancy premises will be individually metered and supplied electric service as the Customer of the Company, which electric service shall be utilized by the Customer only for operation of the Customer's installation located in or on the separate premises for which such electric service is supplied pursuant to the Customer's service agreement (emphasis added).

11. Midland Residential, in general, requested in its Application, that the Commission allow Midland Residential to consolidate the approximately 135 individual residential units into one master meter at the Property. Midland Residential Missouri has requested that Evergy Missouri Metro support its request to allow it to consolidate the residential units into one master

meter on the Property.

12. Midland Residential set forth evidence of good cause, including that (1) the proposed single meter plan would allow affordable housing to be available to the public sooner, (2) retrofitting the Property to accommodate single meters is impracticable due to space limitations and would impact the nature and character of the historic Property, (3) Midland Residential faces significant delays in its attempt to acquire individual meters, and importantly, (4) Midland Residential's planned monitoring system promotes energy efficiency and conservation.

AGREEMENT

13. To resolve EE-2024-0335, the Parties agree as follows:

14. The Parties agree that the tariff that will be applied to the master meter is based on the facts known at the time of this Agreement.

VARIANCE COMMITTEE'S FINDING THAT NO VARIANCE IS NECESSARY

15. Because the building was constructed before June 1, 1981, and the building was also a multiple-occupancy building prior to June 1, 1981, the Variance Committee concludes that the separate metering requirement under 20 CR 4240-20.050's does not apply to the subject Property.

16. 20 CSR 4240-20.050(2) states that "[e]ach residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit." And, 20 CSR 4240-20.050(1)(D) states that "[c]onstruction begins when the footings are poured."

17. Accordingly, the Variance Committee believes that the Commission need not grant a variance for the subject property pursuant to 20 CSR 4240-20.050(2) since the separate metering

requirement does not apply.

18. The Company has discretion under Section 5.03(b) of its Tariff to waive the separate metering requirement of Section 5.01 if EMM determines that the operation of the multiple occupancy premises makes it impractical for EMM, in its judgment, to separately meter the subject property.

5.03(b): ...The restriction against "redistribution" **may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company...** In cases where redistribution is permitted under this Rule 5.03, the Company will supply electric service to the owner, lessee, or operator of such multiple occupancy premises, as the Customer of the Company, under an applicable rate schedule and the Customer may, by redistribution, furnish electric service to his tenants in or on such multiple occupancy premises on a rent inclusion basis; i.e., as an incident of the tenancy and without a specific or separate charge for the electric service so furnished by the Customer to his tenant, or a variable rental on account thereof (emphasis added).

19. The Company has determined that separate metering at the Property is impractical for the reasons set forth above in Paragraph 12 and agrees to waive the separate metering requirement of the Tariff on file under its Section 5.03(b) authority, so long as the Property is used to provide housing to individuals who pay fixed rent inclusive of electric service.

ALTERNATIVE RELIEF: GRANTING THE VARIANCE FOR GOOD CAUSE

20. Should the Commission find that 20 CSR 4240-20.050(5) does apply, in the alternative and based upon the verified pleadings, the Parties recommend that the Commission grant a variance from 20 CSR 4240-20.050 to Midland Residential because Midland Residential has shown good cause as required by 20 CSR 4240-20.050(5) in that:

1. The proposed single meter plan would allow affordable housing to be available to the public sooner;

2. Retrofitting the Property to accommodate single meters is impracticable due to space limitations and would impact the nature and character of the historic Property;
3. Midland Residential faces significant delays in its attempt to acquire individual meters, and importantly;
4. Midland Residential's planned metering system promotes energy efficiency and conservation.

21. In the event that the Commission chooses to grant this Alternative Relief, Parties also agree that Midland Residential qualifies for a waiver from Section 5.01 of EMM's Tariff for reason stated in Paragraph 20.

22. The Parties recommend that the Commission find that no variance is necessary or, alternatively, to grant the variance for good cause, so long as the following conditions exist, to wit:

1. The Property continues to be operated as a residential apartment; and
2. The Property is used to provide housing to individuals who pay fixed rent inclusive of electric service.

GENERAL PROVISIONS

23. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth in matter EE-2024-0335. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology. Except as explicitly provided herein, none of

the Signatories shall be prejudiced or bound in any manner by the terms of this Agreement in this or any other proceeding, regardless of whether this Agreement is approved.

24. This Agreement is a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same.

25. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

26. This Agreement embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein, and may be modified by the Signatories only by a written amendment executed by all of the Signatories.

27. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

28. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (1) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (2) the

Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

29. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the issues in these cases that are settled by this Agreement explicitly set forth above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. § 536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, their respective rights to seek rehearing pursuant to § 536.500, and their respective rights to judicial review pursuant to § 386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

WHEREFORE, the undersigned Parties respectfully request the Commission to issue an order approving the Agreement subject to the specific terms and conditions contained therein and to determine that the Property is exempt from the individual meter requirement under 20 CSR 240-20.050 since the building was constructed prior to June 1, 1981 or, in the alternative, to grant the variance for good cause.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, MO 64105
Phone: (816) 556-2314
roger.steiner@energy.com

Attorneys for Evergy Missouri Metro

/s/ Mark Johnson

Mark Johnson
Missouri Bar No. 64940
Chief Staff Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-7431 (Voice)
573-751-9285 (Fax)
mark.johnson@psc.mo.gov

**Staff Counsel for the
Missouri Public Service Commission**

/s/ Aimee Davenport

Aimee Guzman Davenport MO# 50989
230 W. McCarty Street
Jefferson City, MO 65101
Aimee.davenport@stinson.com
Fax: (573) 556-3633
Phone: (573) 556-3606

Betsy Smith MO# 75766
1201 Walnut St., Suite 2900
Kansas City, MO 64106
Fax: (816) 412-9307
Phone: (816) 691-3383

Attorneys for Midland Residential

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of June 2024.

/s/ Aimee Davenport

Attorney for Midland Residential

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

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

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 3rd day of July 2024.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 3, 2024

File/Case No. EE-2024-0335

MO PSC Staff

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

**Office of the Public Counsel
(OPC)**

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Midland Residential LLC

Aimee Davenport
1201 Walnut St., Suite 2900
Kansas City, MO 64106
aimee.davenport@stinson.com

Midland Residential LLC

Betsy Smith
1201 Walnut St
Suite 2900
Kansas City, MO 64106-2150
betsy.smith@stinson.com

MO PSC Staff

Mark Johnson
200 Madison Street
Jefferson City, MO 65101
mark.johnson@psc.mo.gov

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

Sincerely,



**Nancy Dippell
Secretary**

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