

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

William L. Gehrs, Jr.,)	
)	
Complainant,)	
)	File No. EC-2018-0033
v.)	
)	
The Empire District Electric Company,)	
)	
Respondent)	

APPEARANCES

Appearing For William L. Gehrs, Jr.:

William L. Gehrs, Jr., 201 N. Wall #17, Joplin, MO 64801

Appearing For Bob Higginbotham:

Bob Higginbotham, 839 West 4th St., Joplin, MO 64801

Appearing for The Empire District Electric Company:

Diana C. Carter, 428 E. Capitol Avenue, Suite 303, Jefferson City, MO 65101

Appearing for the Staff of the Missouri Public Service Commission:

Casi Aslin, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, MO 65102

Senior Regulatory Law Judge: John T. Clark

REPORT AND ORDER

Procedural History

On July 31, 2017, William Gehrs, Jr. (Gehrs) filed a formal complaint with the Missouri Public Service Commission (Commission) against The Empire District Electric Company (Empire). Gehrs' complaint alleges that Empire failed to uniformly assess multiple customer charge fees to multi-unit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Specifically, Gehrs asserts that Empire bills him multiple customer charges for a single meter building while other single meter apartment building owners are only being billed one customer charge, making his rates unjust and unreasonable.

On August 1, 2017, the Commission issued notice of a contested case, ordered Empire to answer the complaint, and ordered the Commission's Staff (Staff) to file a recommendation and report regarding the complaint. Staff filed a recommendation and report on September 14, 2017. The report concluded that Empire had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint.

On December 12, 2017, Bob Higginbotham (Higginbotham) filed an application to intervene. Higginbotham was granted intervention as an interested party and not as a co-complainant. Higginbotham is similarly situated to Gehrs, and his application to intervene states that he has an interest in the rates and billing practices at issue in this proceeding. However, the Commission makes no determination regarding Higginbotham's properties in this order.

On January 1, 2018, Gehrs amended his complaint to allege that Empire is required to render a bill to residential customers in accordance with its approved tariff and Empire has not because Empire has admitted that at least one customer was not being billed in accordance with its approved tariff.

Staff filed a supplemental recommendation and report restating that under its analysis Empire had not violated any applicable statutes, Commission Rules, or Commission-approved Company tariffs related to the complaint. Staff also recommended that the Commission not address concerns regarding the justness or reasonableness of Empire's tariff, or any proposed change to Empire's tariff.

The Commission held a hearing at the Joplin Public Library in Joplin, Missouri, on Friday, June 14, 2019. At the hearing, the Commission admitted the testimony of four witnesses and received 19 exhibits into evidence. Patsy Mulvaney, Director of Consumer Experience, testified for Empire; and Robin Kliethermes, Tariff and Rate Design Manager, testified for the Commission's Staff. Gehrs testified on his own behalf, and Higginbotham testified for Gehrs. Daniel Whitworth and Alexandra Steel accompanied Gehrs, but did not testify. Empire, Staff, and Gehrs submitted initial post hearing briefs on July 12, 2019. Gehrs submitted a reply brief on July 26, 2019. No other party submitted a reply brief.

Preliminary Matter

On August 23, 2019, Gehrs filed a request to have the Commission consider a Jasper County, Missouri, Associate Circuit Court case number 18AO-AC00918, involving a third party's action against Empire for failing to bill at a contracted rate. Gehrs previously asked the Commission to postpone this matter pending the disposition of this Jasper

County case. The Commission did postpone this proceeding until Gehrs indicated he was ready to proceed.

Gehrs' request to have the Commission consider the Jasper County order granting summary judgment was made after this matter would usually have been deemed submitted for the Commission's consideration. Therefore, the Commission afforded Empire an opportunity to object to Gehrs' request. Empire responded that it had no objection to the Commission taking notice of the Court's order granting summary judgment in 18AO-AC00918, but noted that because the Court order was issued August 6, 2019, it was not yet final.¹

The Commission takes official notice of the August 6, 2019, order granting summary judgment in 18AO-AC00918, which is admitted onto the record as Exhibit 20.

Findings of Fact

General Findings of Fact

1. Empire is an electrical corporation and public utility regulated by this Commission.²
2. Gehrs is the sole shareholder of BBG Corporation, a Missouri Corporation.³ Gehrs' BBG Corporation owns the property in dispute at 1802 S. Wall Ave.⁴ in Empire's Joplin, Missouri, service area, and is a customer of Empire for electric service.⁵
3. 1802 S. Wall Ave. is a 14-unit apartment building built in 1977.⁶

¹ Thirty days have passed since the court granted summary judgment and the judgment is now final pursuant to Missouri Supreme Court Rule 81.05.

² Commission Ex. 1.

³ Ex. 5, Affidavit.

⁴ Ex. 5, pages 1-2.

⁵ Commission Ex. 1.

⁶ Commission Ex. 1.

4. Multiunit apartment buildings constructed prior to 1981 do not need to have separate meters for each dwelling unit.⁷

5. Empire has provided electric service through a single meter to the 1802 S. Wall Ave.,⁸ under Empire's Residential Service tariff, Schedule RG since at least 1980.⁹

6. Empire does not have records for 1802 S. Wall prior to 1980.¹⁰

7. The electrical service provided to the 1802 S. Wall Ave. apartment building is used by the individual dwelling units for residential purposes.¹¹

The Customer Charge

8. It is typical for a residential tariff to have two parts, a customer charge, which is a flat fee per customer, and a usage charge per kWh.¹² Empire's residential tariff contains both a customer charge and a usage charge.¹³

9. Under Empire's residential tariff Gehrs is billed the equivalent of 14 customer charges, one for each of the dwelling units at 1802 S. Wall Ave. apartments.¹⁴

10. Gehrs contends that he should not be paying for multiple meters when he only has one meter on the building. Gehrs believes that no additional service is being rendered for the additional customer service charges¹⁵

⁷ 20 CSR 4240-20.050(2).

⁸ Commission Ex. 1.

⁹ Ex. 12, Mulvaney Direct, page 2.

¹⁰ Ex. 12, Mulvaney Direct, page 2.

¹¹ Tr., pages 74-75.

¹² Tr., page 178.

¹³ Ex. 15, Tariff Schedule RG, effective September 14, 2016.

¹⁴ Ex 5, Gehrs Direct, page 2.

¹⁵ Tr., pages 60-61.

11. Under Empire's Commission approved tariff, the customer charge does not relate to the number of meters used at a location, but is based on the fixed cost of delivering service to that location.¹⁶

12. The purpose of the customer charge is to cover the cost of Empire having everything in place to be ready to deliver energy to its customers before they use any energy.¹⁷ The customer charge would include costs for all lines feeding to the property, all lines running onto the property, transformers, the meter, labor costs involved in outage response, and tree trimming.¹⁸

13. Empire's residential tariff's Conditions of Service says that if service is provided through a single meter to multiple-family dwellings in a single building the customer charge will be multiplied by the number of dwelling units when calculating the bill.¹⁹

14. Gehrs' complaint included a bill from 2006 with a customer charge of \$144.90. Gehrs' complaint also included a bill from 2017 with a customer charge of \$182.00.²⁰

15. Empire's Commission authorized customer charge in 2006 was \$10.35.²¹

16. Empire's Commission authorized customer charge in 2017 was \$13.00.²²

17. Gehrs' bills show that he was correctly charged \$144.90 in customer charges under Empire's tariff in 2006 ($\$10.35 \times 14$ dwelling units = \$144.90), and correctly

¹⁶ Tr., Pages 161-162.

¹⁷ Tr., page 177.

¹⁸ Tr., page 165-166.

¹⁹ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁰ Commission Ex. 1.

²¹ Commission Ex. 1.

²² Commission Ex. 1.

charged \$182.00 in customer charges under Empire's tariff in 2017 (\$13.00 x 14 dwelling units = \$182.00).

High Usage Rates

18. Gehrs contends that he should receive a usage discount. Under the residential tariff during the winter season after the first usage block of 600 kWh the usage rate per kWh goes down from \$0.13006 to \$0.10574.²³

19. Empire's residential tariff's Conditions of Service says that if service is provided through a single meter to multiple-family dwellings in a single building the kWh block is to be multiplied by the number of dwelling units when calculating each month's bill.²⁴

Commercial Classification

20. Gehrs contends that he should receive a commercial rate because the larger meter serving 1802 S. Wall Ave. is a larger demand meter generally used for commercial businesses, and not a smaller residential meter.²⁵

21. Both types of meters measure kilowatt hours (kWh), that is the total amount of electricity consumed over a set period of time. Demand meters additionally measure kilowatt demand, that is the rate at which energy is being consumed to identify a customer's peak consumption (demand) during a period of time.²⁶

22. The purpose of an electric meter is to measure the level of electric usage.²⁷

²³ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁴ PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

²⁵ Tr., page 70 and 174.

²⁶ Tr., page 172.

²⁷ Tr., page 172.

23. Using a demand meter to provide electrical service to Gehrs' apartment building does not mean that it should be served under Empire's commercial tariff, but is appropriate because commercial electric loads are generally larger and Gehrs' 14-unit apartment building is capable of demanding a larger load than a single residence.²⁸

24. When determining eligibility for a particular tariff Empire assesses the customer's qualifications and requirements. If a customer is eligible to receive service under more than one tariff, Empire will provide the options to choose from to the customer.²⁹

25. 1802 S. Wall Ave. is not eligible for service under Empire's commercial tariff. Empire's commercial tariff is for those whose electric load is consistently less than 40 kW, and are not conveying electric service to others for residential usage (with an exception for transient or seasonal such as hotels, motels, and resorts).³⁰

26. 1802 S. Wall Ave. apartments is only eligible for service under Empire's residential tariff. The residential tariff is available for residential service to single-family dwellings or to multi-family dwellings within a single building.³¹

Unequal Billing

27. Gehrs contends that he is being charged different rates than other single metered apartment buildings in the Joplin area that are only being billed one customer charge.

²⁸ Tr., page 171.

²⁹ Ex. 12, Mulvaney Direct, page 3.

³⁰ PSC Mo. No. 5, Sec. 2, 18th Revised Sheet No. 1.

³¹ Ex. 15, Tariff Schedule RG, effective September 14, 2016.

28. Gehrs' witness testified that this unequal application places him at a competitive disadvantage because he is unable to recover multiple customer charges from tenants.³²

29. Gehrs testified that to recover the cost of the electric bill from tenants would be unlawful resale or redistribution under Empire's residential tariff.³³

30. Gehrs informed Empire of five multi-unit apartment buildings that he alleged were only being billed one customer charge.³⁴ Some of those were properties that he previously owned.³⁵

31. Gehrs admitted that the number of dwelling units in the buildings could not be determined by looking at the outside of the building,³⁶ and that he was unaware whether any remodeling had occurred that would alter the number of dwelling units in the building.³⁷

32. Empire's customers self-report the number of dwelling units in their buildings.³⁸

33. When asked how Empire would ascertain the number of units in a building, Gehrs stated that he did not know. He stated that he does not believe Empire will ever be able to enforce its tariff if it relies on customers to self-report the number of dwelling units in their apartment buildings.³⁹

³² Tr., page 127.

³³ Tr., pages 105-107

³⁴ Complainant's Reply to Staff Recommendation and Report, September 29, 2017.

³⁵ Tr., page 83.

³⁶ Tr., page 114.

³⁷ Tr, pages 115-116.

³⁸ Tr., page 116.

³⁹ Tr. pages 75-76.

34. After Gehrs informed Empire that it was not billing customers correctly, Empire investigated. Empire determined that one customer was being undercharged and began billing the number of customer charges based on the number of living units as reported by the fire department.⁴⁰

35. An additional property owner Gehrs alleged was being incorrectly billed for multiple dwelling units in a single apartment building, refused to grant Empire access to the property to verify the number of units.⁴¹

36. That apartment owner sued Empire in the Jasper County Circuit Court, (case number 18AO-AC00918)⁴² alleging that Empire contractually agreed to charge him differently than required in Empire's Residential tariff. He sued to enforce the rate he had contracted with Empire.⁴³

37. The Jasper County Court granted summary judgment in favor of Empire. It determined that even though Empire contracted with an apartment owner for a different rate than Empire's Commission approved rate, Empire cannot charge a rate not approved by the Commission.⁴⁴

38. Empire cannot contractually offer a rate not approved by the Commission.⁴⁵

39. Owners of multi-unit buildings with single meters may avoid having to pay the customer charges for their tenants by having additional meters installed at their own expense. The cost is the same as that incurred by developers of new construction.⁴⁶

⁴⁰ Ex. 12, Mulvaney Direct, pages 6-7.

⁴¹ Ex. 5, pages 2-3.

⁴² Ex. 20, Jasper County summary judgement order.

⁴³ Ex. 12, Mulvaney Direct, page 7.

⁴⁴ Missouri Case Number 18AO-AC00918, Order (Granting Summary Judgment), August 6, 2019, and also *May Department Stores Company v. Union Electric Light & Power Company*, 107 S.W.2d 41 (1937).

⁴⁵ Ex 20, and *May Department Stores Company v. Union Electric Light & Power Company*, 107 S.W.2d 41 (1937), and Commission Rule 20 CSR 4240-13.020(1).

⁴⁶ Tr., page 160-161.

Conclusions of Law

A. Empire is a public utility as defined by Section 386.020(43), RSMo. Furthermore, Empire is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Empire is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Under Section 386.390 RSMo, a person may file a complaint against a regulated utility setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the commission. Therefore, the Commission has authority over this complaint.

C. Section 386.390 RSMo provides that "no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service."

D. Empire's applicable tariff rules state:

PSC Mo. No. 5, Sec. 2, 18th Revised Sheet No 1.

Commercial Service Schedule CB

Availability: This schedule is available to any general service customer on the lines of the Company whose electric load is not consistently in excess of 40 kW, except those who are conveying electric service received to others whose utilization of same is for residential purposes other than transient or seasonal.

Motels, hotels, inns, resorts, etc., and others who provide transient rooms and/or board service and/or provide service to dwellings on a transient or seasonal basis are not excluded from the use of this rate. The Company reserves the right to determine the applicability or the availability of this rate to any specific applicant for electric service.

PSC Mo. No. 5, Sec. 1, 19th Revised Sheet No 1.

Residential Service Schedule RG

Availability: This schedule is available for residential service to single-family dwellings or to multi-family dwellings within a single building. This schedule is not available for service through a single meter to two or more separate buildings each containing one or more dwelling units.

Monthly Rate:	<u>Summer Season</u>	<u>Winter Season</u>
Customer Access Charge	\$13.00	\$13.00
The first 600-kWh, per kWh	0.13006	0.13006
Additional kWh, per kWh	0.13006	0.10574

Conditions of Service:

1. Service will be furnished for the sole use of the Customer and will not be resold, redistributed or submetered, directly or indirectly.

4. If this schedule is used for service through a single meter to multiple-family dwellings within a single building, each Customer charge and kWh block will be multiplied by the number of dwelling units served in calculating each month's bill.

E. Applicable Federal Law:

The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. This is codified in Missouri law in the Commission's rule 20 CSR 4240-20.050(2)

F. Applicable Commission rules state:

20 CSR 4240-13.020(1) A utility shall render a bill for each billing period to every residential customer in accordance with commission rules and its approved tariff.

20 CSR 4240-20.050(2) Each 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.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.⁴⁷ 386.390 RSMo does not require that the alleged act or violation involve the Complainant.

Decision

Gehrs' amended complaint alleges that Empire failed to uniformly assess multiple customer charge fees to multiunit apartment buildings in the Joplin, Missouri area, which were billed at the residential rate. Empire has admitted that on at least one occasion it has not charged a multi-unit apartment building the correct number of customer charges under its residential tariff. Empire has no mechanism to obtain the correct number of dwelling units in a building, and must rely on customers to self-report the number of units in their buildings.

Gehrs testified that he is unable to recover the customer charge or usage he is paying for from tenants because that would be unlawful resale or redistribution under Empire's residential tariff. He is correct that it would be unlawful for him to recover from tenants on a bill-by-bill basis. He could not charge his tenants based on individual bills or a variable rate. However, Gehrs can charge a sufficient rent on the property to account for the overall value of having landlord paid utilities.

Gehrs has requested the Commission provide a credit to any property owner who paid customer charges in excess of a single fee per meter from 1978 to date, and a

⁴⁷ In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"..."the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

revision of the Residential Service, Schedule RG, portion of Empire's tariff deleting paragraph four of Conditions of Service. Alternatively, Gehrs asks for an addition to Empire's tariff adding a paragraph to the conditions of service stating that, "If the Company has reason to believe there are multiple-family dwellings within a single building through a single meter, but only one Customer charge is being billed, then Customer shall allow the Company to inspect such property or shall swear under penalty of perjury as to the number of dwelling units in such building."

A credit is inappropriate for Gehrs because he has been correctly billed under Empire's Commission-approved tariff. The Commission will not address changing the tariff (which would alter Empire's revenue requirement) or the justness and reasonableness of Empire's rates in this complaint because Gehrs' complaint does not meet the requirements of 386.390 RSMo.

The Complainant has the burden to show that the Empire has violated a law subject to the Commission's authority, a rule, or an order of the Commission. While Gehrs has presented evidence that Empire had previously charged a customer a rate different from its Commission approved rate, Empire remedied the situation as soon as it became aware of it. Empire charging different rates within a customer class appears to be an error, and not an attempt to avoid charging a Commission approved rate. Gehrs has not pointed to any ongoing violations by Empire, of which Empire is aware of the violation and continues to charge an unapproved rate.

Therefore, the Commission must rule in favor of Empire.

THE COMMISSION ORDERS THAT:

1. William Gehrs' complaint is denied.

2. This order shall become effective on November 8, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Clark, Senior Regulatory Law Judge

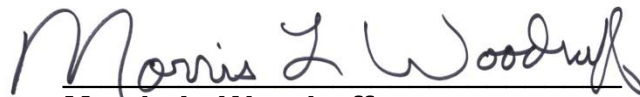
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

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

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 9th day of October 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 9, 2019

File/Case No. EC-2018-0033

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

Sincerely,



Morris L. Woodruff
Secretary

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