

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Debbie Feken	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. EC-2020-0183</u></b>
	)	
The Empire District Electric Company	)	
	)	
Respondent.	)	

## RECOMMENDED REPORT AND ORDER

Issue Date: September 30, 2020

Effective Date: September 30, 2020

On July 8, 2020, the Missouri Public Service Commission (the Commission) conducted an evidentiary hearing on the Complaint of Debbie Feken (Ms. Feken) against The Empire District Electric Company (Empire). At the conclusion of the hearing, the Commission ordered briefing and took the case under advisement. Commission Rule 20 CSR 4240-2.070(15)(G), requires the Regulatory Law Judge to issue a Recommended Report and Order. Rule 20 CSR 4240-2.070(15)(H), states:

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

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

### **Procedural Background**

Ms. Feken filed a Complaint disputing a bill in the amount of \$274.04. She requested the following relief:

“I want a copy of guarantor contract I signed June 2017. I want proof [confidential] never paid his electric bill on time for 1 year therefore keeping me as a responsible guarantor. I want proof the guarantor contract I signed is legally and duly enforceable (sic) without said proof of a default to me.”

Large parts of the record filed in the Commission’s Electronic Filing Information System were designated there as “confidential.” Section 386.480, RSMo, provides that “[n]o information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.” Rule 20 CSR 4240-2.135 contains provisions for the protection of customer and company information. In this case, Empire asserts Ms. Feken owes her son’s bill based upon a guarantee she signed, and no evidence relevant to this issue will be considered confidential except her son’s name and the addresses of Ms. Feken and her son.

### **Findings of Fact**

1. Any finding of fact reflecting the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>1</sup>

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<sup>1</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009).

2. Ms. Feken's son had service with Empire at his own address beginning in 2013. Service was maintained until June 28, 2017, when it was discontinued for non-payment. Because of the account payment history, before it would reconnect service at Ms. Feken's son's residence, Empire required a \$465.00 deposit to reconnect service, along with the past due balance and a reconnection fee. Empire offered Ms. Feken's son the option to provide a guarantor as an alternative to the deposit requirement.<sup>2</sup>

3. On June 30, 2017, Ms. Feken signed a guarantee agreement<sup>3</sup> for her son, and his service was reconnected later the same day.<sup>4</sup>

4. The Feken guarantee stated the guarantor agreed to be liable for up to \$465.00 in charges, which could be transferred to the guarantor's account if the guaranteed account's final bill was unpaid.<sup>5</sup>

5. The Feken guarantee stated: "[T]his agreement will expire under the same conditions as would result in the refund of the deposit."<sup>6</sup> Patsy Mulvaney, Empire's director of customer services,<sup>7</sup> stated this was explained to a guarantor when the agreement was executed.<sup>8</sup> Ms. Feken acknowledged she recalled making a statement that each time she signed an Empire guarantee agreement, the customer would have to pay on time for one year before her responsibility would be terminated.<sup>9</sup>

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<sup>2</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Exhibit 200, Patsy Mulvaney Rebuttal Testimony, p. 3.

<sup>3</sup> This report and order will refer to other guarantee agreements as well. Hereinafter, the guarantee agreement which she signed with her son will be called the "Feken guarantee."

<sup>4</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Transcript, Vol. II, p. 35.

<sup>5</sup> Exhibit 203, Guarantee Agreement.

<sup>6</sup> Exhibit 203, Guarantee Agreement As stated below in the Conclusions of Law: Rule 20 CSR 4240-13.030(6) provides that a guarantor shall be released upon satisfactory payment of all disputed utility charges during the last 12 months.

<sup>7</sup> Exhibit 200, Patsy Mulvaney Rebuttal Testimony, p. 1.

<sup>8</sup> Exhibit 200, Patsy Mulvaney Rebuttal Testimony, pp. 3-4.

<sup>9</sup> Transcript, Vol. II, p. 47.

6. Empire's policy is to provide both the customer and the guarantor with a copy of the signed guarantee, and the agreement form has a place for the customer and guarantor to initial indicating they have received signed copies. The signed Feken guarantee, however, was not so initialed.<sup>10</sup>

7. On July 16, 2019, Ms. Feken's son requested termination of service.<sup>11</sup> Service was terminated on July 31, 2009, and a final bill in the amount of \$274.04 was generated.<sup>12</sup>

8. The final balance on the son's bill became delinquent on August 22, 2019, and was transferred to Ms. Feken on August 29, 2019.<sup>13</sup> A letter was mailed to her that same day, erroneously dated June 29, advising the balance transfer would appear on her next bill and offering the option of an installment plan.<sup>14</sup>

9. On September 3, 2019, Ms. Feken called Empire and requested a copy of the signed Feken guarantee agreement, copies of her son's account to prove the amount owed, and his payment history as proof she had not been released from the contract.<sup>15</sup> A company representative advised she could send only the Feken guarantee agreement to Ms. Feken, but not the requested billing and payment information, which could be provided only to her son.<sup>16</sup>

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<sup>10</sup> Exhibits 100, Staff Report, Official Case File Memorandum, p. 3; and Exhibit 203, Guarantee Agreement.

<sup>11</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.

<sup>12</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.

<sup>13</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 3

<sup>14</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 3; See Transcript, Vol. II, pp. 67-68, 72, for other communications of September 5 and 6, 2019, between the Company and Ms. Feken offering an installment plan.

<sup>15</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; Transcript, Vol. II, pp. 35, 43; Exhibit 207, a transcription of a September 3, 2020, telephone conversation between Teresa Lashmet, of the Company, and Debbie Feken; Exhibit 204, Recorded Call, 9/3/2019.

<sup>16</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; See also Exhibit 207, a transcription of a September 3, 2020, telephone conversation between Teresa Lashmet, of the Company, and Debbie Feken; and Exhibit 204, Recorded Call, 9/3/2019.

10. On September 6, 2019, Empire sent Ms. Feken a copy of the signed Feken guarantee agreement and confirmed it was Empire's policy to deny guaranteed account information to the guarantor unless the customer with the account had specifically granted permission to the guarantor to access the account information.<sup>17</sup>

11. Ms. Feken contacted the Commission's Consumer Services Department after receiving the bill without the requested documentation and initiated the Commission's informal complaint process.<sup>18</sup> Ms. Feken was contacted on December 30, 2019, to clarify the details of her complaint.<sup>19</sup> On January 6, 2020, Staff submitted data requests to Empire. Staff reviewed the Feken guarantee agreement, account notes, recorded phone calls between Empire and Ms. Feken, her son's billing statements and payment history, and correspondence between the parties. Staff concluded Ms. Feken's son did not pay his electric bill on time for one year.<sup>20</sup>

12. Ms. Feken denies ever receiving the Feken guarantee agreement<sup>21</sup> but does not dispute signing the Feken guarantee agreement.<sup>22</sup>

13. Ms. Feken testified she did not ask her son to provide the bills or to authorize Empire to provide her access to them "because he's not the one wanting me to pay them. It's Empire."<sup>23</sup> She testified, "It's Empire's responsibility to show me that I do owe them."<sup>24</sup>

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<sup>17</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 4; Transcript, Vol. II, p. 67-68. Empire states Ms. Feken was told in a phone call of September 13, 2019, "she could not have the customer's or see [her son's] bills." Transcript, Vol. II, 74.

<sup>18</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 5.

<sup>19</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

<sup>20</sup> Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, et seq.

<sup>21</sup> Transcript, Vol. II, p. 47.

<sup>22</sup> Transcript, Vol. II, pp. 35; 50-51.

<sup>23</sup> Transcript, Vol. II, pp. 52-53.

<sup>24</sup> Transcript, Vol. II, pp. 52-53.

14. Ms. Feken has signed several other guarantor agreements with Empire.<sup>25</sup> Angie Simkin, Consumer Service Manager for Liberty Utilities,<sup>26</sup> testified that on March 7, 2014, Ms. Feken signed a guarantee agreement for a customer other than her son, and, subsequently in January of 2015, on the basis of the agreement a balance was transferred to Ms. Feken's account.<sup>27</sup> Following that transfer, Ms. Feken called Empire on January 28, 2015,<sup>28</sup> requested printouts on the account and was told that she could not have the customer's account information.<sup>29</sup> In an unsworn response to a witness's statement and in closing argument, Ms. Feken denied requesting this information.<sup>30</sup>

15. The Commission's Staff found there were potential scenarios where an account holder might be unable or unwilling to contact Empire, leaving the guarantor with no access to proof the guarantee remained in effect.<sup>31</sup> To address these concerns, Empire has now changed its procedures, allowing a customer to exercise a "guarantor" option allowing a guarantor to obtain relevant information (but not make account changes).<sup>32</sup>

### **Conclusions of Law**

A. Section 396.390.1, RSMo, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any public utility "in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission. . . ." The Company is a "utility. " Section 386.020, RSMo. Ms. Feken has

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<sup>25</sup> Transcript, Vol. II, pp. 46-47; 73

<sup>26</sup> Exhibit 201, Simkin Surrebuttal, page 1, ll. 6-8.

<sup>27</sup> Transcript, Vol. II, pp. 73, 74.

<sup>28</sup> Transcript, Vol. II, p. 75.

<sup>29</sup> Transcript, Vol. II, pp. 73-74.

<sup>30</sup> Transcript, Vol. II, pp. 75, 79.

<sup>31</sup> See Exhibit No. 101, Surrebuttal Testimony of Ben Rankin, pp. 3 – 5.

<sup>32</sup> Exhibit 201, Surrebuttal Testimony of Angie Simkin , p. 4.

filed a Complaint alleging Empire has committed acts or omitted to do acts in violation of Section 393.130, RSMo. The Commission has jurisdiction in this case.

B. Rule 20 CSR 4240-2.070 provides that a formal complaint shall set “forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.” The rule requires the complaint to state the relief requested.

C. Missouri law provides that all charges made or demanded by any electrical corporation shall be just and reasonable and not more than allowed by law or by order or decision of the commission; and that any charge in excess of that allowed by law or order or decision of the commission is prohibited.<sup>33</sup>

D. Rule 20 CSR 4240-13.030(5) provides that in lieu of a deposit a utility may accept a written guarantee.

E. Rule 20 CSR 4240-13.030(6) provides that a guarantor shall be released upon satisfactory payment of all disputed utility charges during the last 12 months.

F. Rule 20 CSR 4240-20.015(2)(C) provides that “customer information shall be made available . . . only upon consent of the customer or as otherwise provided by law or commission rule or orders.”

G. Section 386.480, RSMo, provides that “[n]o information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or

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<sup>33</sup> Section 393.130, RSMo.

chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.”

H. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.<sup>34</sup> The jurisdiction, supervision, powers and duties of the Commission extend “[t]o such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly, or impliedly.”<sup>35</sup> Section 386.040, RSMo, which created and established the Commission, provides the Commission “shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.”<sup>36</sup> The Commission’s principal interest is to serve and protect ratepayers.<sup>37</sup>

I. The determination of witness credibility is left to the Commission “which is free to believe none, part or all of the testimony.”<sup>38</sup>

### **Decision**

The relief requested in Ms. Feken’s Complaint was a copy of her signed guarantee agreement; proof that her son had not paid his bill on time for a year, thereby releasing

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<sup>34</sup> See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966); *State ex rel GS Technologies Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

<sup>35</sup> Section 386.250(7), RSMo.

<sup>36</sup> Section 386.040, RSMo.

<sup>37</sup> *State ex rel Capital City Water Co. v. Missouri Public Service Commission*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993).

<sup>38</sup> *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers’ Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 763 (Mo. App. W.D. 2016).



her as guarantor; and proof the guarantor contract was legally enforceable without proof of her son's default. The Commission's Staff and Empire have provided Ms. Feken with a copy of her guarantee. With respect to whether Empire violated a rule, regulation or tariff by refusing to directly provide Ms. Feken's with her son's account records, the Commission finds that (a) 20 CSR 4240-20.015(2)(C) provides that "customer information shall be made available . . . only upon consent of the customer or as otherwise provided by law or commission rule or orders"; (b) the evidence did not show Ms. Feken's son had consented to disclosure of his customer information; (c) Empire could not disclose this information to Ms. Feken; and (d) accordingly, Empire did not violate the law, a regulation or its tariff in refusing to make the disclosure.

The Commission, however, also finds that Ms. Feken is entitled to the relief she requested: to proof she remained liable on the Feken guarantee and proof of her son's default. Empire cannot disclose these records to Ms. Feken. However, Section 386.040, RSMo, grants the Commission "all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter," and per Section 386.480, RSMo, the Commission may order records disclosed which are otherwise confidential. Accordingly, the Commission will order Empire to produce to Ms. Feken a copy of the billing records that show she remained liable on the guarantee when her son terminated his account and show she owed the amount subsequently transferred to her account. If Ms. Feken then decides she has been incorrectly charged, she may seek appropriate remedies with the Commission in a new complaint.

It is the Commission's decision, accordingly, that: (a) Ms. Feken has received the guarantee as she requested; (b) she should receive proof of her continued liability on the

guarantee and that she owed the amount Empire transferred to her account; and, (c) with respect to issue of providing copies of the Feken guarantee and bills to Ms. Feken, Empire did not violate any statute or regulation within the Commission's jurisdiction, or any tariff. If after review of the records provided to her, Ms. Feken wishes to raise issues other than those decided in this order, she may file a new complaint with the Commission.

**THE COMMISSION ORDERS THAT:**

1. Within ten days after the effective date of this Report and Order, Empire shall provide directly to Ms. Feken a copy of such billing records as are necessary to show she remained liable on the guarantee and that the uncollected amount owed by her son was the amount transferred from her son's account to her account.

2. Only information contained in the record disclosing the name of Ms. Feken's son and the addresses of Ms. Feken and her son shall be considered confidential. All other information filed in this case shall be public.

3. Any party wishing to file comments supporting or opposing the foregoing recommended order shall do no later than October 10, 2020.



**BY THE COMMISSION**

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris Woodruff  
Secretary

Paul T. Graham, Regulatory Law Judge,  
By delegation of authority pursuant  
To Section 388.240, RSMo 2016.

Dated at Jefferson City, Missouri,  
On the 30<sup>th</sup> day of September, 2020

**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 30<sup>th</sup> day of September, 2020.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**September 30, 2020**

**File/Case No. EC-2020-0183**

**Missouri Public Service  
Commission**

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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**

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