

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Complaint Against Empire)
District Electric Company by Brooke Lynn)
Sheppard and Ricky Dale Sheppard.) 17-EPDE-079-COM

**NOTICE OF FILING OF STAFF'S
REPORT AND RECOMMENDATION-PUBLIC VERSION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), and files its Report and Recommendation (R&R) dated August 9, 2017, attached hereto and made a part hereof by reference. Staff recommends the Commission:

1. Find the meter serving the Complainant's residence accurately recorded electric usage for the time period addressed in the Complaint;
2. Find Empire appropriately applied the tariff's terms and conditions regarding security deposits with respect to the Complainant;
3. Find that Empire failed to follow the terms and conditions of its tariff when it did not accept the email request from Brooke Sheppard to terminate service.

Staff recommends the Commission order Empire to reimburse Brooke Sheppard \$147.88 for the billing charges that occurred after the March 5, 2015, through April 20, 2015.

WHEREFORE, Staff submits it's Report and Recommendation for Commission review and consideration, and for such other relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Jason K. Fisher

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

*****PUBLIC VERSION*****

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Leo Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: August 9, 2017

SUBJECT: 17-EPDE-079-COM: In the Matter of the Complaint Against Empire
District Electric Company by Brooke Lynn Sheppard and Ricky Dale Sheppard

EXECUTIVE SUMMARY:

On August 31, 2016, Ricky Dale Sheppard (Mr. Sheppard, Complainant) filed a Complaint on behalf of himself and his wife, Brooke Sheppard. The Complaint alleges Empire District Electric Company (Empire) charged the Complainant \$1,145.71 for electric power that was not used at his residence in Baxter Springs, Kansas. The time period in contention is from December 22, 2014, through April 2015. In addition, the Complainant states Empire required a \$400 deposit to re-establish the account in the name of Ricky Sheppard instead of Brooke Sheppard in June of 2015. The Complainant alleges the required deposit was an improper application of the terms and conditions of the Empire tariff.

After conducting discovery, Commission Staff (Staff) concludes the following:

- Empire provided accurately metered electric service to the Complainant's residence during the time period in question.
- Empire's tariff allows it the flexibility to require a deposit to re-establish an account that has been terminated. In this case, Empire had the right to require a \$400 deposit in order to re-establish service.
- Empire did not follow its tariff correctly when it delayed the disconnection of service after the customer made a request to do so.

Based on these determinations, Staff recommends the Commission order Empire to refund \$147.88 to Brooke Sheppard, the customer of record, for power consumed from March 5, 2015, until April 20, 2015.

BACKGROUND:

On December 20, 2014, the Complainant states their Baxter Springs home was vacated, and the family moved out of state. With the home vacant, the Complainant reports that all electricity in the home was shut off except for the electric circuits powering a single light and the home security system.¹ Another document from the Complainant indicates the thermostat in the home heating system was set at 50°F.² In its Answer to the Complaint, Empire states it received a customer service email on February 5, 2015, complaining about the amount of electric usage billed to the Sheppard Residence in January 2015 and requesting the meter to be tested.³ After receiving this request from the customer of record, Empire tested the home's meter for accuracy on February 5, 2015, and found it to be accurate.⁴ At that time, the meter tester noted the home was consuming 5.5 kW of power at 11:15 am on the date of the test.⁵ On February 9, 2015, Empire emailed Brooke Sheppard with the results of the meter test showing the meter to be accurate.⁶

On March 5, 2015, Brooke Sheppard, Empire's customer of record, emailed Empire and requested electric service to the Baxter Springs home be terminated.⁷ In response to this email, Empire requested the customer call Empire during normal business hours and verbally confirm the service termination request.⁸ On March 6, 2015, Empire sent a second email to Brooke Sheppard requesting a phone call to confirm the service termination request.⁹ Brooke Sheppard has stated she made the phone call as requested but has no record of the call.¹⁰ On the other hand, Empire has no record of receiving a call from Brooke Sheppard. Although Empire records all calls handled by its customer service agents, it only keeps those records for 120 days.¹¹

On April 7, 2015, Empire attempted to contact Brooke Sheppard by phone through an autodial system but was unable to complete the call. On April 20, 2015, Empire disconnected service for nonpayment of electric bills for the months of January, February and March 2015.¹²

On June 1, 2015, Empire restored service to the Sheppard residence after the Complainant paid \$1,145.71 in unpaid services and an additional \$400 security deposit to have the account switched to Ricky Sheppard's name instead of Brooke Sheppard.

On August 31, 2016, the Complainant filed a Formal Complaint with the Commission.

On October 11, 2016, Empire filed its Motion to Dismiss the Complaint. Empire does not believe it violated the Rules and Regulations of its tariff and argues Mr. Sheppard does not have a valid complaint.

¹ Page 2 of filed Complaint.

² March 5, 2015 email from Brooke Sheppard to Empire Requesting Termination of Service.

³ Response to Staff Data Request 15.

⁴ Exhibit A, Empire Answer and Motion to Dismiss, October 11, 2016.

⁵ Response to Staff Data Request 19.

⁶ Response to Staff Data Request 15.

⁷ Email from Brooke Sheppard to Empire, March 5, 2015, 8:35pm.

⁸ Email from Empire Customer Service to Brooke Sheppard, March 5, 2015, 11:25pm.

⁹ Email from Empire Customer Service to Brooke Sheppard, March 6, 2015, 2:44pm.

¹⁰ Email from Brooke Sheppard to Leo Haynos, June 29, 2017.

¹¹ Response to Staff Data Request 16.

¹² Response to Staff Data Request 5.

ANALYSIS:

Based on discovery conducted in this Docket, Staff concludes the meter serving the Sheppard residence was accurate. Ricky Sheppard's claim that power was being used only by one light and a security system are in conflict with Brooke Sheppard's statement that the thermostat in the home was set at 50°F at least for a portion of the time when the home was vacant. Exhibit 1 provides a history of the Complainant's energy usage for a four year period. Comparing usage during January for the period, the January 2015 usage is 34% lower than the average January usage for the previous 3 year period. The lower usage in 2015 indicates a significant change in energy consumption which would be expected from a home that is vacant. Reflecting this change in usage, however, also indicates the meter is accurately recording the change in usage. Staff notes the meter tester also observed the home was using 5.5kW on February 5, 2015, at 11:15am. Assuming the power was flowing to a 240 volt circuit, the amperage for the circuit would have been 23 amps. In Staff's opinion, a 23 amp current flow on a winter day to a house that was vacant indicates the furnace was not disconnected as originally claimed by Ricky Sheppard. Given the conflicting statement of the customers, the accurate meter test, the reduction in usage after the home was vacated, and the meter tester's observation of the instantaneous meter reading, Staff concludes the meter was accurately recording the energy usage.

One month after the meter test, Brooke Sheppard contacted Empire and requested service termination. Regarding service termination, the Empire tariff specifies a request for service termination must be given in writing but allows a verbal request under certain conditions.¹³ In its Answer and Motion to Dismiss, Empire states it is Empire's policy to verify customer account information before shutting off power in order to protect the customer. However, the tariff only requires a written request. Verbal verification of a written request is not contemplated in the tariff. Based on previous correspondence between Brooke Sheppard and Empire, it is clear that Empire accepts and acknowledges emails as written correspondence. Using email requests from the customer, Empire removed the account from the average payment plan and performed a meter test.¹⁴ As noted above, Brooke Sheppard stated she returned a phone call to Empire regarding the service termination request. Empire has no record of the returned call, but admits they do not maintain audio records from customer calls for more than 120 days.

Staff concludes Brooke Sheppard provided a proper request for service termination, and Empire violated the conditions of its tariff when it failed to act appropriately to her request. By prolonging the service termination date, Empire increased the amount owed by Brooke Sheppard by \$147.88. Exhibit 2 provides the itemized bill for the time period the account was active after the service termination request.

In the Complaint, Ricky Sheppard argued Empire should not have charged him a security deposit when he requested the account be reinstated under his name. Mr. Sheppard contends it was improper for Empire to require a \$400 security deposit for renewing the account serving the same family but under his name rather than that of his wife. Empire's tariff allows Empire to impose a security deposit if it establishes that the customer has an unsatisfactory credit rating based on internal bill payment history, has an insufficient prior credit history, or has an outstanding and undisputed service account with Empire.¹⁵ In response to a data request, Empire

¹³ Sheet 9, Section G: Termination of Service, General Rules and Regulations, Empire tariff.

¹⁴ Response to Staff Data Request 15.

¹⁵ Section III, Credit and Security Deposit Regulations.

stated the security deposit was required when the account was renewed due to **

**16

Based on the Complainant's previous payment history with Empire, Staff concludes Empire was within its rights to require a security deposit.

RECOMMENDATION:

Staff recommends the Commission find that Empire failed to follow the terms and conditions of its tariff when it did not accept the email request from Brooke Sheppard to terminate service. Therefore, Staff recommends the Commission order Empire to reimburse Brooke Sheppard \$147.88 for the billing charges that occurred after the March 5, 2015, through April 20, 2015.

Staff recommends the Commission find Empire appropriately applied the tariff's terms and conditions regarding security deposits with respect to the Complainant.

Staff also recommends the Commission find the meter serving the Complainant's residence accurately recorded electric usage for the time period addressed in the Complaint.

¹⁶ Response to Staff Data Requests 7 and 20.

EXHIBIT 1

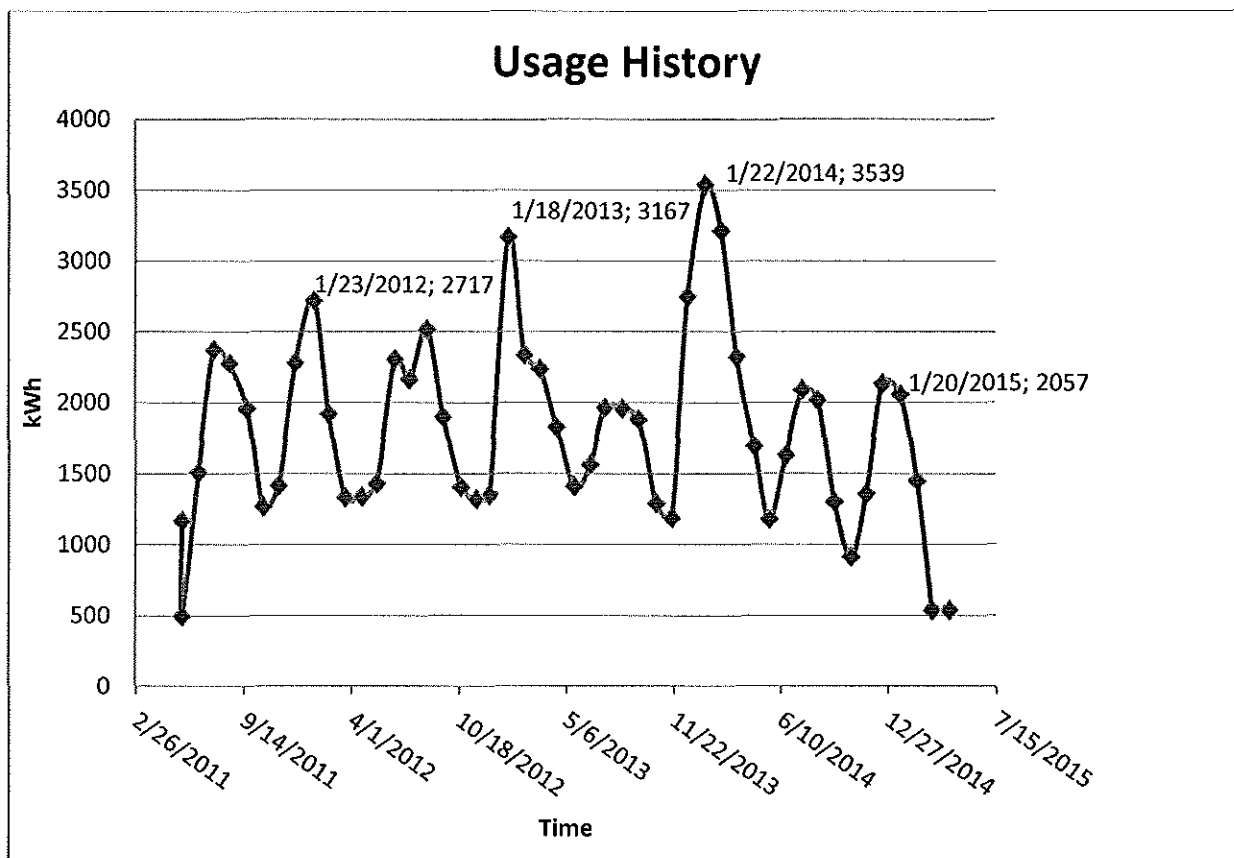


Figure 1: Complainant Usage History

**** CONFIDENTIAL****

EXHIBIT 2

CERTIFICATE OF SERVICE

17-EPDE-079-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served by electronic service on this 10th day of August, 2017, to the following:

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* Denotes those receiving the Confidential version