

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

Before Commissioners: Jay Scott Emler, Chairman
 Shari Feist Albrecht
 Pat Apple

In the Matter of the Complaint Against Empire)
District Electric Company by Brooke Lynn) Docket No. 17-EPDE-079-COM
Sheppard and Ricky Dale Sheppard)

ORDER ADOPTING LEGAL MEMORANDUM

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter and being duly advised in the premises, the Commission finds and concludes as follows:

1. On September 2, 2016, Ricky Dale Sheppard (Complainant) filed a Formal Complaint (Complaint) against Empire District Electric Company (Empire) with the Commission. The Complainant asserted that Empire overbilled the Complainant and his wife for electric service at their residence from January 1, 2015 to March 20, 2015.¹ The Complaint is attached hereto as Attachment A.

2. On September 23, 2016, Litigation Staff for the Commission prepared a Memorandum analyzing the Complaint for compliance with Commission regulations.² Litigation Staff notes that the Complainant does not specifically cite to any violation of law, rule, or order in support of its contentions, and, therefore, is not in compliance with K.A.R. 82-1-220(b)(1).³ However, Litigation Staff recommends the Commission waive K.A.R. 82-1-

¹Formal Complaint, page 3. (September 2, 2016).

²Legal Staff's Memorandum (September 23, 2016) (Legal Memorandum).

³Legal Memorandum, 2.

220(b)(1) for good cause.⁴ Litigation Staff's Legal Memorandum is attached hereto as Attachment B.

3. Upon review of Litigation Staff's Legal Memorandum, the Commission is satisfied that jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.* Specifically, the Commission is authorized to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁵

4. Furthermore, the Commission agrees with Litigation Staff's analysis and recommendations and finds that Litigation Staff's Memorandum dated September 23, 2016, should be adopted and incorporated by reference. Specifically, the Commission finds the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, and establishes a *prima facie* case for Commission action.

5. The Commission concludes that Commission Staff should conduct an investigation into the claims alleged in the Complaint and therefore orders such an investigation.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- (A) K.A.R. 82-1-220(b)(1) is waived for good cause.
- (B) The Formal Complaint shall be served upon Empire for an Answer.
- (C) Staff is directed to investigate this matter and submit a Report and Recommendation to the Commission.
- (D) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein.⁶

⁴Legal Memorandum, 2-3.

⁵*Id.* at 2-3.


⁶K.S.A. 66-118b; K.S.A. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: SEP 29 2016



Amy L. Green
Secretary to the Commission

JF

EMAILED

SEP 29 2016

ATTACHMENT “A”

KANSAS CORPORATION COMMISSION
OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTION

FORMAL COMPLAINT

Fisher #103042
8/23/16 SE

Formal Complaint
February 2015

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

2016.09.02 13:57:12
Kansas Corporation Commission

IN THE MATTER OF THE COMPLAINT AGAINST

Empire District Corp
(Respondent, name of utility company)

by Brooke Lynn Sheppard
Ricky Dale Sheppard
(Complainant, your name)

For Commission
use only

DOCKET NO.
17-EPDE-079.com

Received
on

AUG 31 2016

Please provide complainant (your) contact information:

Full Name(s): Ricky Dale Sheppard
Address: 2300 Sunset Drive Baxter Springs, MO KS 66713
Daytime Phone: 620-202-3354
E-mail Address (optional): the3sheppards@gmail.com

by
State Corporation Commission
of Kansas

FORMAL COMPLAINT

Ricky Dale Sheppard
(Your name)

states that the above-named respondent is a public utility providing service in Kansas and is subject to the jurisdiction of the State Corporation Commission.

The facts and circumstances surrounding the complaint are set out in detail below:
(Be specific and as brief as possible. If necessary, attach additional sheets.)

AS of 12-20-14 I Ricky Sheppard left my home in Baxter Springs KS to move to new home in Farwell Michigan. I had turned off all circuit breakers inside home with the exception of one 115 volt necessary to allow one small light on in kitchen and the 115 volt home security system. There were no appliances in the home except the water

(Continued on the other side)

Formal Complaint *continued*

Complainant requests that the respondent utility be required to provide an answer to the complaint and requests the following action be ordered by the Commission. (State action or result desired.)

Tank and Heating Furnace which the power supply to those were shut off not used. The home was under contract with Real Estate Company with pictures on internet proving this fact. Each month I received a bill from Empire that was outrageously high I called explained they kept charging me more every month despite the fact no power except very small amount for one light and security system was on. January, February, March of 2015 are the bills at question. Empire refused to accept the truth so I called on March 4th or 5th instructing them to turn power all off to home and they ~~refused~~ said they would but didn't until March 20th for unknown reasons.

continued

and for such further order or orders as the Commission may deem necessary.

VERIFICATION: I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint form are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

Complainant's (your) signature

Date signed

FILING INSTRUCTIONS

This form may be filed in person at the Kansas Corporation Commission's Office or by mail. All formal complaints, whether filed by mail or delivered in person, must be directed to:

Acting Executive Secretary
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

For more information about the formal complaint process please refer to the instructions provided with this form or visit the KCC website: <http://kcc.ks.gov/>, Consumer Assistance, Filing a Complaint. You may also contact our Consumer Assistance staff toll-free at 1-800-662-0027 or by e-mail at public.affairs@kcc.ks.gov.

8-23-16

Extra
page 1-3

Formal Complaint

Kansas Corporation Commission
Office of Public Affairs Consumer Protection
Matter of Empire District
by
Ricky Dale Sheppard

As of May 1st 2015 I Ricky Dale Sheppard moved from Farwell Michigan back to Baxter Springs KS to my home and I phoned Empire District several times and was instructed that \$1,145.71 for past due charges from the 3 months of false electric usage from which no person ever used in those times. I will provide now undeniable proof that from January 1st to March 20th of 2015 that in no way this home of mine could have used anywhere close to \$1,145.71 worth of electric. I however do admit it could have used at most up to a total of \$40.00. The Real Estate Agent for my home in 2300 Sunset Baxter Springs was Mardy Allen, Employed by Kingrey-Kellum Real Estate Co. Her listing will show picture of every room of home showing there's no residents in home nor nothing plugged into plug ins. All rooms, outside showing nothing using electric not even outdoor lights only instead the one light in kitchen. Mardy can

Extra
page 2 of 3

write written statement as well to this Fact. Mardy Allen can be reached by phone or Fax if necessary as well at office # 620-856-2452, Fax 620-856-2145, or cell phone 620-717-1877. Statements From immediate neighbors to the home, Charles Wren is southside and nearest at 2302 Sunset phone is 620-674-2035, Debbie Ogle on west side of home 620-875-4992, north side Jim and Mary Kirkpatrick 620-856-4219. Security System Provider Neil Spencer 417-850-3380 Neil can give statement or testify that the home could not have been Broken into by strangers without Alarm horns alerting neighbors as to a break in and that the alarm horn is within 40 Ft of neighbors door but on my home so no way Any person could have been Stealing electric From my home cause it would have been stopped within one hour at any given time between December 20th 2014 to May 1st of 2015 which is also why the truth of my security system used actually 16 volts of power. Also I called him in February 2015 had him go by the home and check to make sure nothing was on and nobody there and of course there was n't. I pleaded with Empire District in all of May 2015 to allow them to admit

Extra page 3 of 3 of Complaint

that they were maybe not reading meter correctly, or just guessing the usage, and they refused and still do as of Aug 22nd 2016 that I must have had all my appliances on as normal which is opposite of the truth. I'm just asking anyone from the Kansas Consumer Protection Agency to persue the Facts that are in place and that are a common sense to see realestate picture showing a Empty house, plenty of individuals as witnesses to nobody living in home. My wife and I are seperated now which is why I moved home in May of 2015 she will tell you the truth as well. I wouldn't say the home was empty and shut off for no reason unless it was true. The Electric water tank I had in home during this period was off on power, drained empty so it wouldn't rust plus I had City Shut water service At end of December 2014 so that water lines wouldn't bust cause I had the power to the Electric Furnace off also during these months that Empire was charging me up to \$300 per month, and one was \$320 the. Billed me for which is more than a average family of 5 could use. I appreciate your time and services in this resolution of this matter. Thanks Ricky Sheppard

Expectation
Expected

Formal Complaint

Kansas Corp Commission Office of Public
Affairs Consumer Protection

	Complaint #
Matter of Empire District	103642
by	8-23-16
Ricky Dale Sheppard	
Brooke Sheppard	

My Expectation of said matter in which Empire District Corp unnecessarily charged Ricky Brooke Sheppard for Electric Usage that were never actually used. Of course a refund of the \$1,145.71 that was paid on Account # 797145-41-680 on June 1st 2015 by Ricky Sheppard, plus the additional \$400 of deposit money forced to pay for a new account they forced me to open for same address, same family but just so it was listed under Ricky Sheppard instead of Brooke. Also expect a written and verbal apology from Empire District for the Unethical Theft of our funds for services we never used. Also in writing a admission of guilt from Empire District for their unnecessary and unethical actions being perpetuated against Ricky and Brooke Sheppard in which they called us dishonest and for causing us hardships and embarrassment.

ATTACHMENT “B”

MEMORANDUM

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

From: Jake Fisher, Litigation Counsel

Date: September 23, 2016

Re: 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

Ricky Dale Sheppard (Complainant) filed a Formal Complaint¹ wherein Complainant alleged Empire District Electric Company (Empire) overbilled him for electric usage for the months of January, February, and March, 2015. Litigation Staff recommends the Commission accept the Formal Complaint, serve the Formal Complaint on Empire for an Answer, and direct Commission Staff to investigate the matter.

BACKGROUND

On September 2, 2016, Complainant filed a Formal Complaint against Empire. In the Formal Complaint, Complainant states he and his wife, Brooke, moved from their residence at 2300 Sunset Dr., Baxter Springs, KS, on December 20, 2014.² He states that all circuit breakers in the home were turned off except for two (2) which powered a single kitchen light and the home security system.³ Complainant further states all appliances were removed and the power supply to the water heater and furnace were shut off.⁴ During this three (3) month period, Complainant states he was billed \$1,145.71.⁵ He contacted Empire each month regarding his bill and then called on either March 4th or 5th,

¹Complaint Against Empire District Electric Co. by Ricky Dale Sheppard (September 2, 2016) (Formal Complaint).

²Formal Complaint at 1.

³Formal Complaint at 1.

⁴Formal Complaint at 1-2.

⁵Formal Complaint at 3.

2015, and requested Empire to shut off the service to his home, which was done on March 20, 2015.⁶

ANALYSIS

Upon the filing of a formal complaint, the Commission must determine, “whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to the commission’s regulations.”⁷ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.⁸

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by the continuance of acts or omissions;
- (2) set forth concisely in plain language the facts claimed by the complainant to constitute the violation; and
- (3) state the relief sought by the complainant.

The Formal Complaint plainly describes the facts and circumstances giving rise to the complaint by the cost of the electric service charged to the Complainant for his vacant residence by Empire.⁹ The Formal Complaint also states the relief sought.¹⁰

Complainant seeks an order from the Commission requiring Empire to refund the \$1,145.71 paid on account number 797145-41-680 on June 1, 2015, plus a refund of the \$400.00 deposit for his new account and a written apology from Empire.¹¹

The Formal Complaint does not expressly cite the provision(s) of law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions of the utility. Therefore, the Formal Complaint does not comply with the procedural requirement of K.A.R. 82-1-220(b)(1). However, the Commission should waive this requirement.

The Commission has been given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas.¹² The Commission is also charged with ensuring utilities provide efficient and sufficient service at just and reasonable rates and establish just and reasonable rules and regulations.¹³ Moreover, the Commission is granted authority over each electric public utility’s equipment, manner of conduct, and management to protect public safety; and shall inquire into any neglect or violations of the laws of this state by any electric public utility.¹⁴

⁶Formal Complaint at 2.

⁷K.A.R. 82-1-220(c).

⁸Id.

⁹Formal Complaint, 1-3.

¹⁰Id. at 6.

¹¹Id. at 6.

¹²K.S.A. 66-101.

¹³K.S.A. 66-101b.

¹⁴K.S.A. 66-101h.

In this instance, the Formal Complaint clearly implicates numerous provisions of law. These include but are not limited to K.S.A. 66-101b and K.S.A. 66-101h. While the Formal Complaint does not specifically identify the applicable laws, Litigation Staff believes that based on the totality of the complaint, the Formal Complaint provides sufficient detail to notify Empire and the Commission that the Complainant is asking the Commission to exercise its authority and make determinations with regard to Empire charging just and reasonable rates under Kansas law, as well as determine the utility's compliance with Commission regulations.

The detailed requirements of K.A.R. 82-1-220 are more restrictive than those required by the Kansas Public Utilities Act and Kansas courts.¹⁵ Further, the public interest is not served by dismissing the complaints of customers not represented by legal counsel for deficiencies related to stringent procedural requirements.¹⁶ Therefore, because the Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220, Litigation Staff recommends the Commission waive the requirements of K.A.R. 82-1-220(b)(1) for good cause.

RECOMMENDATION

Litigation Staff recommends the Commission find:

- The Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220;
- K.A.R. 82-1-220(b)(1) should be waived for good cause;
- The Formal Complaint establishes a *prima facie* case for Commission action;
- The Formal Complaint should be served upon Empire for an Answer; and
- Staff should be directed to investigate this matter and submit a Report and Recommendation to the Commission.

¹⁵See, K.S.A. 66-101e (the specific language of the statute allows for a complaint based solely on an unreasonable practice, K.A.R. 82-1-220(b) places the additional burden of alleging a specific violation of law, tariff or order which is not required by statute and may place an undue burden on complainants not represented by legal counsel); *See also, Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 99, 744 P.2d 806, 811 (1987) (as long as the opponent is apprised of the facts that entitle the plaintiff to relief, it is not necessary to spell out a legal theory of relief in the pleadings).

¹⁶K.S.A. 66-155 obligates "the attorney of the corporation commission" to prosecute suits on behalf of parties complaining of unjust discriminations by a public utility or other violations of the Public Utility Act. Litigation Staff believes full representation of the Complainant in this case would be an unnecessary use of Commission resources and is evidence of further good cause for the Commission to waive the requirements of K.A.R. 82-1-220(b)(1) and K.A.R. 82-1-220(b)(3).

CERTIFICATE OF SERVICE

17-EPDE-079-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on SEP 29 2016.

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/S/ DeeAnn Shupe
DeeAnn Shupe

EMAILED

SEP 29 2016