

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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)	

ANSWER AND MOTION TO DISMISS COMPLAINT

The Empire District Electric Company ("Empire" or "Respondent") submits the following Answer and Motion to Dismiss the Complaint filed in the above-captioned docket by Ricky Dale Sheppard ("Mr. Sheppard"). This Answer and Motion to Dismiss is being filed pursuant to the Kansas Corporation Commission's ("Commission") Order issued in this docket on September 29, 2016, and K.A.R. 82-1-220(c).

I. BACKGROUND

1. Empire is an electric public utility operating in the State of Kansas pursuant to certificates of convenience and necessity issued by the Commission. Empire's principal place of business is 602 S. Joplin Avenue, Joplin, Missouri 64802.

2. Mr. Sheppard disputes billings made by Empire to the electric utility service account for the residence located at 2300 Sunset Drive, Baxter Springs, Kansas, 66713, ("Sheppard Residence") for the months of January, February and March of 2015. Specifically, Mr. Sheppard alleges that because the house was vacant during this three month period that electric usage could not have been as high as what was indicated on the bills issued by Empire. For the reasons stated in this Answer and Motion to Dismiss, Empire denies the complaint and allegations made by Mr. Sheppard. Except as admitted herein, Empire denies each and every allegation, averment and statement in the Complaint.

3. Empire admits that it provided electric utility service to the Sheppard Residence

during the months of January, February and March, 2015. The name listed on the account relating to the Sheppard Residence was Brooke Sheppard.

4. Mr. Sheppard states in his complaint that he left his home in Baxter Springs, Kansas to move to a new home in Farwell, Michigan on December 20, 2014. Empire is without sufficient knowledge to admit or deny this allegation, therefore, it is denied.

5. Mr. Sheppard states in his complaint that at the time he left the Sheppard Residence that all circuit breakers in the residence were turned off except for two (2) which powered a single kitchen light and the home security system. Mr. Sheppard further states that all appliances were removed from the residence and the power supply to the water heater and furnace were shut off. Empire is without sufficient knowledge to admit or deny this allegation, therefore, it is denied.

6. Mr. Sheppard states that the Sheppard Residence was under contract with a real estate company. Empire is without sufficient knowledge to admit or deny this allegation, therefore, it is denied.

7. Mr. Sheppard states that he contacted Empire after receiving his bill for January 2015. Empire's records indicate that on February 4, 2015, it received a customer service email complaining about the amount of electric usage billed to the Sheppard Residence in January 2015, due to the residence being vacant. The customer email also requested an end to the customer's Average Payment Plan ("APP") for the account. Empire's records also show that after receiving the complaint the meter at the Sheppard Residence was tested for accuracy on February 5, 2015. The Empire employee who tested the meter noted the meter was reading accurately. A copy of the meter test report completed by the Empire employee who tested the meter is attached hereto as Exhibit A and incorporated herein by reference. The Empire employee also noted the meter reading on January 20, 2015, was 23,490 kWhs and on February 5, 2015, the meter read 24,225 kWhs, indicating that 735 kWhs were used at

the Sheppard Residence during the 17-day period between January 20, 2015 and February 5, 2015. The billed usage reflected in the bill issued on January 19, 2015, (33 days) was 2,057 kWhs for a total bill of \$215.61. The billed usage reflected in the bill issued on February 19, 2015, (30 days) was 1,448 kWhs for a total bill of \$156.55. Comparing the same period for the Sheppard Residence electric usage in 2014, the usage billed on January 22, 2014, (34 days) was 3,539 kWhs and the usage billed on February 19, 2014, (28 days), was 3,213 kWhs, indicating less usage at the Sheppard Residence in 2015. Attached to this Answer as Exhibit B, which is incorporated herein by reference, is a usage history at the Sheppard Residence from May 23, 2011, through April 20, 2015.

8. Mr. Sheppard further states in his Complaint that he called Empire on March 4, 2015, or March 5, 2015, instructing Empire to shut off the power to the Sheppard Residence, and that Empire did not shut off the power until March 20, 2015. According to Empire's records, on March 6, 2015, Empire received a customer service email asking Empire to turn off the power to the Sheppard Residence. Empire replied to the email requesting that Mr. Sheppard call Empire's 800 number so Empire could verify customer account information before shutting off power. It is Empire's policy to verify customer account information before shutting off power in order to protect the customer. In addition, the account was in the name of Brooke Sheppard and was not in the name of Mr. Sheppard. Empire can find no record where it received a call from either Mr. Sheppard or Brooke Sheppard requesting that electric service be shut off after it had replied to the email on March 6, 2016.

9. According to Empire's records, electric service was disconnected by Empire on April 20, 2015, for nonpayment of the electric bills for the months of January, February and March 2015.

10. Actual adjusted usage on the bill issued on March 19, 2015, (28 days) was 539 kWhs and the adjusted amount of the bill was \$69.40. Actual usage on the bill issued on April 20, 2015 (32

days) was 538 kWhs and the amount of the bill was \$70.68.¹

11. According to Empire's records, Mr. Sheppard requested that electric service be restored to the Sheppard Residence on June 1, 2015, and at that time Mr. Sheppard paid for the electric usage billed for the months of January, February and March 2015.

II. MOTION TO DISMISS COMPLAINT

12. Empire followed the requirements of its tariffs and all Commission rules and regulations in the manner in which it addressed Mr. Sheppard's Complaint. Absent some evidence that a meter is reading incorrectly, Empire is required by law to charge customers for the actual usage based upon that meter reading. K.S.A. 66-109 prohibits an electric utility from charging a customer different than what is contained in its approved tariffs. As indicated by the Commission, "compliance with its filed tariffs is an obligation of a public utility ensuring that its customer pays for what is received and that the utility is paid for what it delivers." *In the Matter of the Complaint Against Kansas Gas Service by Little Giant Fittings Company, Inc., Overcharges and Misrepresentations of Service*, Docket No. 05-KGSG-002-COM, Order on Reconsideration dated December 27, 2004, page 4, paragraph 8. The Kansas Supreme Court has also found that a customer must pay the full legal rate for the amount of electricity actually sold by the utility even if the error was the utility's error. *Kansas Electric Power Company v. Thomas*, 123 Kan. 321, 325, 255 P. 33 (1927). Empire's only legal rate is the one on file and approved by the Commission. Mr. Sheppard's January, February and (adjusted) March bills were based upon that legal rate and the actual metered usage at the Sheppard Residence. Empire tested the meter on February 5, 2015, and found that the meter was reading accurately. Under the applicable law in Kansas, the customer was responsible for payment for all electricity delivered

¹The original bill sent on March 19, 2015, was based upon estimated usage because of scheduling issues with meter readers. The original March 19, 2015, bill was adjusted by Empire based upon the actual usage measured by the meter and read by the Empire employee at the time that service was disconnected at the residence for nonpayment and an adjusted bill for March usage was sent to the customer in April, 2015.)

to its residence.

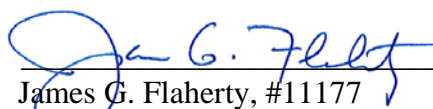
13. Based upon the foregoing, Empire moves the Commission for an Order dismissing Mr. Sheppard's Complaint with prejudice for failure to state a claim upon which relief may be granted.

III. CONCLUSION

14. Empire has complied with all applicable laws and tariffs approved by the Commission. The meter at the Sheppard Residence was tested by Empire on February 5, 2015, and the meter was reading accurately. Therefore, Empire is required under its tariffs, Commission Orders and Kansas law to charge for all usage indicated on the meter. Empire requests that the Commission issue an order finding there is no basis for the allegations in the Complaint and that the Complaint be dismissed.

WHEREFORE, Empire requests that the Commission dismiss the Complaint for failure to state a claim upon which relief can be granted and for such other further relief as the Commission deems appropriate.

Respectfully submitted,

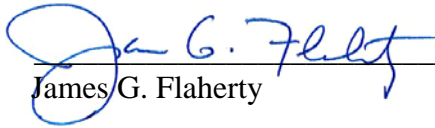


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VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, deposes and says he is attorney for The Empire District Electric Company above named; that he has read the above and foregoing Answer; and the statements contained therein are true.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 11th day of October, 2016.




Ronda Rossman

Notary Public

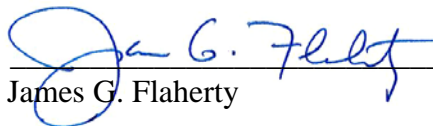
Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 11th day of October, 2016, addressed to:

Jake Fisher
j.fisher@kcc.ks.gov

Brooke Lynn Sheppard
Ricky Dale Sheppard
2300 Sunset Drive
Baxter Springs, KS 66713
the3sheppards@gmail.com


James G. Flaherty

THE EMPIRE DISTRICT ELECTRIC COMPANY

1 PHASE METER TEST REPORT

NAME AND ADDRESS BROWIE SHEPPARD 2300 SUNSET DR. BAXTER SPR, KS				TELEPHONE 128		DATE 2-5-15		METER NUMBER 00145100	
METER SIZE CL200				VOLTS 240		FORM 25		MANUFACTURER WH	
STD. NO. 96				SET SEAL Y		TEST SEAL F		TYPE D45	
REG. RATIO 13 8/9				K _h 7.2		K _e		FOUND READING 24225	
AS FOUND CREEP YES <input checked="" type="radio"/> NO				AS LEFT CREEP YES <input type="radio"/> NO		CUSTOMER LOAD REV.IN SEC. = Kw			
STD.K &				SERIES				ADJUSTED	
LOAD 30 A		REV METER 10		COR. 72		ACT. 100.00		PCT. 99.90	
UNITY		1		7.2		17		99.23	
3 A		1		7.2		17		99.23	
UNITY		1		7.2		17		99.23	
A									
.5 PF									
HL				LL		COMP			
LOWER BEARING				YES NO		TOP BEARING		YES NO	
METER READER COMMENT CODE									

1-20 23490

Last Test Date:

0455

EXHIBIT A

Read Date	Meter Number	Read Code	Read_Num	Usage	Days	Cancel
4/20/2015	00145100	Manual Read	26015	538	32	
3/19/2015	00145100	M - Missed	27315	2377	28	Incorrect Read
3/19/2015	00145100	Rebill Read	25477	539	28	
2/19/2015	00145100	N - Normal Read	24938	1448	30	
1/20/2015	00145100	N - Normal Read	23490	2057	33	
12/18/2014	00145100	N - Normal Read	21433	2132	31	
11/17/2014	00145100	N - Normal Read	19301	1356	28	
10/20/2014	00145100	N - Normal Read	17945	913	31	
9/19/2014	00145100	N - Normal Read	17032	1300	30	
8/20/2014	00145100	N - Normal Read	15732	2019	29	
7/22/2014	00145100	N - Normal Read	13713	2090	32	
6/20/2014	00145100	N - Normal Read	11623	1628	31	
5/20/2014	00145100	N - Normal Read	9995	1179	28	
4/22/2014	00145100	N - Normal Read	8816	1694	32	
3/21/2014	00145100	N - Normal Read	7122	2322	30	
2/19/2014	00145100	N - Normal Read	4800	3213	28	
1/22/2014	00145100	N - Normal Read	1587	3539	34	
12/19/2013	00145100	N - Normal Read	98048	2748	30	
11/19/2013	00145100	N - Normal Read	95300	1189	29	
10/21/2013	00145100	N - Normal Read	94111	1289	32	
9/19/2013	00145100	N - Normal Read	92822	1880	30	
8/20/2013	00145100	N - Normal Read	90942	1957	33	
7/18/2013	00145100	N - Normal Read	88985	1963	28	
6/20/2013	00145100	N - Normal Read	87022	1561	30	
5/21/2013	00145100	N - Normal Read	85461	1410	32	
4/19/2013	00145100	N - Normal Read	84051	1826	31	
3/19/2013	00145100	N - Normal Read	82225	2237	29	
2/18/2013	00145100	N - Normal Read	79988	2334	31	
1/18/2013	00145100	N - Normal Read	77654	3167	35	
12/14/2012	00145100	N - Normal Read	74487	1351	25	
11/19/2012	00145100	N - Normal Read	73136	1322	28	
10/22/2012	00145100	N - Normal Read	71814	1407	32	
9/20/2012	00145100	N - Normal Read	70407	1900	31	
8/20/2012	00145100	N - Normal Read	68507	2516	32	
7/19/2012	00145100	N - Normal Read	65991	2164	27	
6/22/2012	00145100	N - Normal Read	63827	2305	35	
5/18/2012	00145100	N - Normal Read	61522	1429	28	
4/20/2012	00145100	N - Normal Read	60093	1337	30	
3/21/2012	00145100	N - Normal Read	58756	1331	30	
2/20/2012	00145100	N - Normal Read	57425	1920	28	
1/23/2012	00145100	N - Normal Read	55505	2717	34	
12/20/2011	00145100	N - Normal Read	52788	2282	32	
11/18/2011	00145100	N - Normal Read	50506	1416	29	
10/20/2011	00145100	N - Normal Read	49090	1267	29	
9/21/2011	00145100	N - Normal Read	47823	1954	33	
8/19/2011	00145100	N - Normal Read	45869	2278	29	Dup Reads - Cancel
8/19/2011	00145100	N - Normal Read	45869	2278	29	
7/21/2011	00145100	N - Normal Read	43591	2374	29	
6/22/2011	00145100	N - Normal Read	41217	1508	30	
5/23/2011	00145100	Regular Read	39709	495	11	
5/23/2011	00145100	M - Missed	40382	1168	11	Incorrect Read
5/12/2011	00145100	Manual Read	39214	0	0	

EXHIBIT B