

April 15, 2019

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, Utah 84114
psc@utah.gov

Attn: Gary Widerburg
Commission Secretary

RE: Docket No. 19-025-01 – *In the Matter of the Formal Complaint of Joseph Anthony Musumeci
Against Empire Electric Association*

Dear Mr. Widerburg:

Empire Electric Association, Inc. (“EEA”) hereby submits for filing its Answer and Motion to Dismiss in the above referenced matter.

EEA respectfully requests that all formal correspondence and requests for additional information regarding this docket and this filing be addressed to the following as counsel for EEA:

By E-Mail (preferred): mrc@scmlaw.com
alr@scmlaw.com

By regular mail: Michael R. Carlston
Andrew L. Roth
Snow Christensen & Martineau
10 Exchange Place, Eleventh Floor
P.O. Box 45000
Salt Lake City, Utah 84145-5000

By phone: (801) 521-9000

Thank you for your time and attention to this matter.

Sincerely,

SNOW CHRISTENSEN & MARTINEAU



Andrew L. Roth
Attorney for Empire Electric Association, Inc.

ALR/hae
Enclosures

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ANDREW L. ROTH (16149)
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Attorney for Respondent Empire Electric Association, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of</p> <p>JOSEPH ANTHONY MUSUMECI,</p> <p>Complainant,</p> <p>vs.</p> <p>EMPIRE ELECTRIC ASSOCIATION, INC.,</p> <p>Respondent.</p>	<p>DOCKET NO. 19-025-01</p> <p>EMPIRE ELECTRIC ASSOCIATION, INC.'S ANSWER AND MOTION TO DISMISS</p>
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Empire Electric Association, Inc. (“EEA”), pursuant to Utah Code §§ 63G-4-102, 63G-4-204 and Utah Admin. Code R746-1-206 and R746-1-301, hereby provides its Answer to the formal complaint filed by Joseph Anthony Musumeci (“Mr. Musumeci” or “Complainant”) with the Public Service Commission (“Commission”) on March 15, 2019. In addition, EEA moves that the Complaint be dismissed in its entirety because EEA has not violated any provision of law, Commission rule, or tariff.

BACKGROUND

1. In June 2018, Mr. Musumeci requested that an existing electrical service to a well located in Monticello, Utah be placed in his name. EEA fulfilled this request promptly and the service is still in his name.

2. Several months later, Mr. Musumeci requested that a new electrical service be established for his residence, which is also located in Monticello, Utah, but approximately 3,000 feet from the well.

3. On November 19, 2018, Mr. Musumeci signed a service order, attached as **Exhibit A**, that outlined the construction necessary to extend service from EEA's distribution system to Mr. Musumeci's home. The service order states that EEA would:

- a. Provide and install a meter pedestal;*
- b. Install a pad-mounted transformer; and*
- c. Provide 120/240 Volt. 10 KVA capacity, single-phase service to Mr. Musumeci's home.*

4. Mr. Musumeci agreed to pay \$4,431.53 to complete the work outlined in the service order.

5. Construction was completed and the service was energized in January 2019.

6. On March 6, 2019, Mr. Musumeci submitted an informal complaint to the Commission regarding grid access fees charged by EEA. Mr. Musumeci complained that he is "charged two grid access fees" for two separate services and indicated that he believes that he should only be charged one grid access fee for both services.

7. On March 11, 2019, EEA provided a response to the informal complaint, explaining that the grid access fees are charged on a per-service basis and reflect EEA's costs to maintain infrastructure that provides individual service access to the power grid. Because EEA provides Mr. Musumeci with two distinct electrical services (one for the well, and another for his residence), he is charged two distinct grid access fees.

8. On March 15, 2019, Mr. Musumeci filed the instant formal complaint (the "Complaint"), again arguing that he should only be charged one grid access fee because he was "under the impression the well and the household [would] be under one meter[]" after electrical service was established to his home.

9. The Complaint requests that EEA put the well and Mr. Musumeci's home "on [a single] meter or waive one of the grid access charges to make my bill . . . [reflect] only one meter each month[.]"

10. Mr. Musumeci's Complaint does not allege that EEA has violated any law, Commission rule, or tariff.

ANSWER & MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

EEA responds to the allegations of Mr. Musumeci's Complaint as follows:

I. Mr. Musumeci is charged two distinct grid access fees because he receives two distinct services from EEA.

Mr. Musumeci's Complaint argues that he should not be charged two grid access fees. EEA properly charges Mr. Musumeci two distinct grid access fees because EEA provides him with two distinct services. The grid access fee is a base charge that reflects EEA's costs to maintain the infrastructure that allows customers to access the power grid and is independent of the amount of

energy used. Accordingly, the charge is developed using cost-based principles and is calculated on a per-service basis.

Mr. Musumeci has two EEA services in his name. One service provides grid access to a well, the other provides grid access to his residence approximately 3,000 feet from the well. Each service is provided through separate transformers and separate meters. A map, attached as **Exhibit B**, provides an approximation of the location of the two service points.

As explained above, Mr. Musumeci asked that an existing service to the well be put in his name in June 2018. Mr. Musumeci requested that a new service be established for his residence several months later. As clearly delineated in the service order, the \$4,431.53 Mr. Musumeci paid to EEA reflects the costs to connect his home to EEA's distribution system, and not to merge the new service to his home with any pre-existing service. Indeed, the order makes no reference to the well service already in his name. Nor does it indicate that the service to the well and the service to the home would be connected or otherwise merged. Regardless of Mr. Musumeci's understanding, neither EEA nor its representatives indicated that these two services would be merged under a single meter.

In sum, Mr. Musumeci receives two distinct services, approximately one half mile apart, provided through two separate transformers and two separate meters. Because he receives two separate services and because EEA's customers are charged a separate grid access fee for each service they receive, Mr. Musumeci is properly charged two separate grid access fees.

II. EEA is not obligated by law, rule, or contract to merge Mr. Musumeci's services or waive his grid access fee.

Mr. Musumeci's Complaint also requests that EEA (a) put the well and his home on the same meter or (b) waive the grid access fee for one of the services. EEA is not obligated by law, rule, or contract to take either action.

First, as explained above, EEA properly charges Mr. Musumeci two grid access fees because he receives two services from EEA. This practice reflects the actual costs incurred by EEA to provide services to Mr. Musumeci. As a member-owned, non-profit cooperative, EEA strives to recover its actual costs fairly and provide proper services to its members. Since all EEA members pay a grid access fee for each service they receive, waiver of Mr. Musumeci's grid access fee would unfairly require other members to subsidize his electric services. EEA is not aware of any law or rule that would require such a waiver.

Second, EEA has not contracted with Mr. Musumeci to connect the two services it currently provides to him. As evidenced by the service order, EEA contracted with Mr. Musumeci to provide a new service to his home. EEA has completed this work and discharged its obligations under that agreement. EEA has no further obligation to connect these separate services for Mr. Musumeci. EEA's point of delivery is at the meter for both of Mr. Musumeci's services. Any work done behind either meter is the responsibility of Mr. Musumeci. If he desires to connect the services, Mr. Musumeci will need to arrange for necessary easements across intervening parcels, and ensure that the installation meets all applicable codes and standards. While EEA is certainly sympathetic to Mr. Musumeci's situation, it is not EEA's responsibility to remedy this issue on his behalf.

III. The Complaint should be dismissed with prejudice.

Based on the foregoing, EEA respectfully moves under Rule 12(b)(6) of the Utah Rules of Civil Procedure for an Order dismissing Mr. Musumeci's Complaint with prejudice. *See* Utah Admin. Code § R746-1-105. EEA submits that Mr. Musumeci's Complaint fails to allege or establish that EEA has violated any law, Commission rule, tariff, or that its actions are otherwise unjust. As a result, Mr. Musumeci's Complaint fails to state a proper claim for relief and should be dismissed with prejudice.

CONCLUSION

WHEREFORE, having fully answered Complainant's Complaint and finding no violation of law, Commission rule, or tariff to justify an award of the relief requested, EEA prays for dismissal of the Complaint with prejudice.

DATED this 15th day of April, 2019.

Respectfully submitted,

SNOW CHRISTENSEN & MARTINEAU

/s/ Andrew L. Roth

Michael R. Carlston

Andrew L. Roth

Attorneys for Empire Electric Association

CERTIFICATE OF SERVICE

Docket No. 19-025-01

I hereby certify that on April 15th, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

Complainant:

Joseph Anthony Musumeci musumeci7825@comcast.net

Division of Public Utilities:

Cynthia Dumas cdumas@utah.gov

Erika Tedder etedder@utah.gov

/s/ Andrew L. Roth _____

EXHIBIT A



Empire Electric Association, Inc

801 N. Broadway P.O. Drawer K Cortez, CO 81321-0676 Phone (970) 565-4444

www.EmpireElectric.org

Electrical Service Construction Requirements

Service

Service Order Number	212222
Applicant (person or entity to receive electric bills)	Musumeci, Joseph A
Service Address	797 E. Pioneer Bend
Use of Service	House

Cost

Total Estimated Construction Cost	\$7,959.60
Portion Paid by Empire Electric	\$3,528.07
Applicant Portion	\$4,431.53
Cost Share	\$0.00
Standard Construction Allowance	\$500.00
Share of Construction Cost to be Paid by Applicant	\$3,931.53
Billing Deposit	\$0.00
Total Amount Due Prior to Construction Scheduling	\$3,931.53

Estimated construction costs are for the specified design shown on the enclosed approval form and are valid for six months from the above date. If you want to change the design, we will re-estimate the construction costs and provide a revised approval form for your signature that addresses the agreed upon design.

In addition to all charges shown above, a \$20.00 connect fee will be applied to your first bill for the costs of connecting the service and for setting up the new billing account.

Billing Deposit

There are a number of options available to you in lieu of this cash deposit. If you are interested in using one of these options, contact any consumer records clerk at our office. If a billing deposit is required, it must either be paid along with the construction cost or, if applicable, arrangements must be made prior to construction scheduling.

Requirements to be Completed Before Construction Scheduling

Please return the items checked below that have been included in your information packet.

1. Sign and return the Empire Electric copy of the enclosed contract. Signature(s) on the contract need to match the name(s) on the account as indicated on the top line of the contract. Keep the applicant copy for your records.
2. Sign and return one copy of the enclosed approval form sketch. You need to provide the contractor copy to the appropriate contractors doing trenching and wiring. Keep consumer copy for your records.
3. Sign and return the enclosed easement form. This form requires that all signatures indicated on the form be provided and notarized. This form will be recorded as a public record. Keep the additional copy for your records.
4. Sign and return the enclosed Membership Form. Keep the applicant copy for your records.
5. Please fill out the enclosed applicant information sheet and return it. The form is required for all new members.
6. Provide total amount due as indicated.
7. Other

APPROVAL OF METER AND UNDERGROUND SERVICE LINE LOCATION

Service Address 797 E. PIONEER BEND

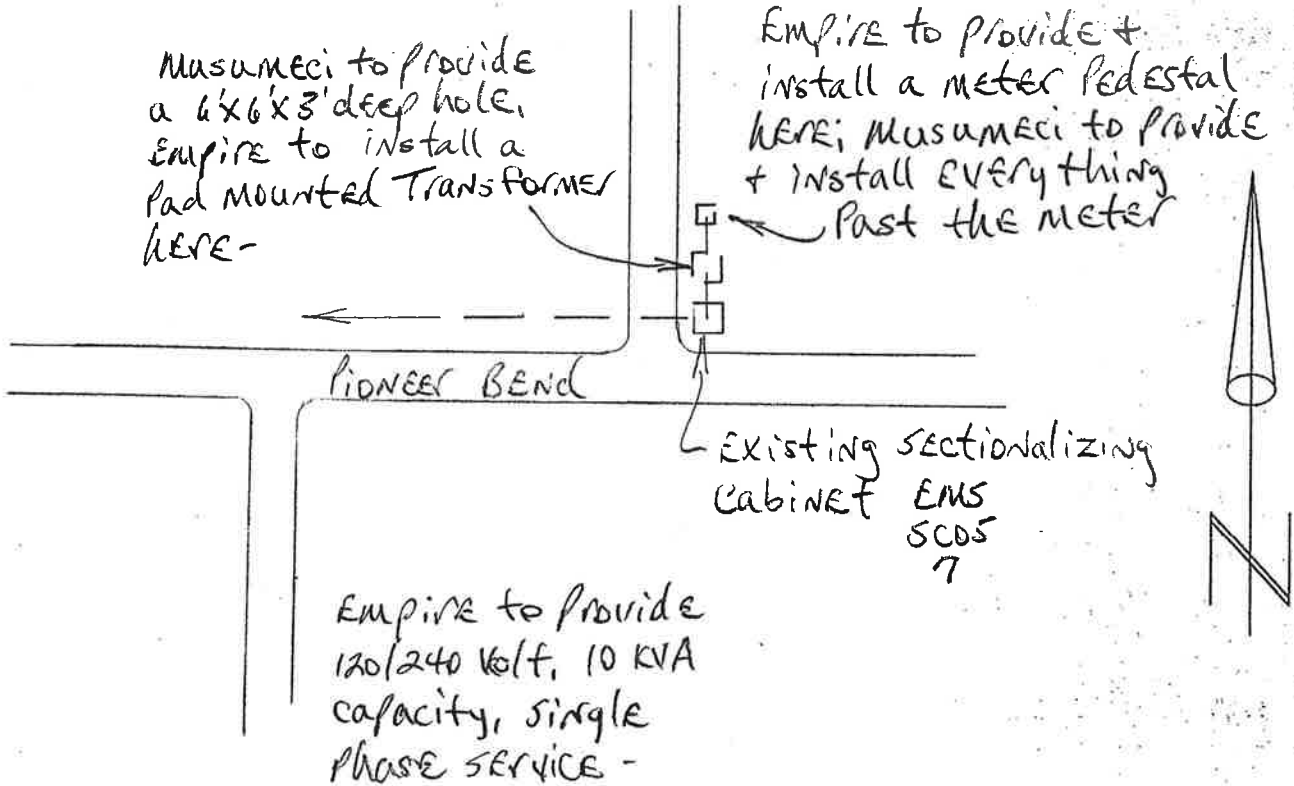
Location # 0893950-497600

Map # 85-49

CALL BEFORE YOU DIG --- COLORADO 1-800-922-2987 --- UTAH 1-800-662-4111

Musumeci to provide a 6'x6'x3' deep hole. Empire to install a pad mounted Transformer HERE -

EMPIRE to provide + install a meter pedestal HERE; Musumeci to provide + install EVERYTHING Past the meter



EMPIRE to provide 120/240 Volt, 10 KVA capacity, single phase service -

- All consumer supplied PVC conduit must be GRAY ELECTRICAL GRADE PVC conduit. ←
- EDGE OF ALL TRENCH SPOIL PILES SHALL BE A MINIMUM OF 2 FEET FROM EDGE OF TRENCH. ←

→ SEE DETAIL SKETCH ON BACK

RELAY THIS INFORMATION TO YOUR ELECTRICIAN/CONTRACTOR ←

The consumer or contractor will provide a minimum of 4' foot deep trench on this service extension and will be responsible for providing sand or soft dirt bedding as required. The consumer or contractor will have said trench and required bedding prepared prior to the arrival of Empire Electric crews and will backfill same in the presence of Empire Electric's construction personnel. Any additional crew hours spent due to the failure of the consumer or contractor to comply with the above requirements will be billed to the consumer. Service line will remain unenergized until the trenches are properly backfilled on both sides of the meter and the consumer service beyond the meter has been inspected and approved by the appropriate inspection authority.

I have read and do understand the requirements noted above and agree to the service line and meter location as shown in the above sketch.

11/19/18
Date

[Signature]
Signed

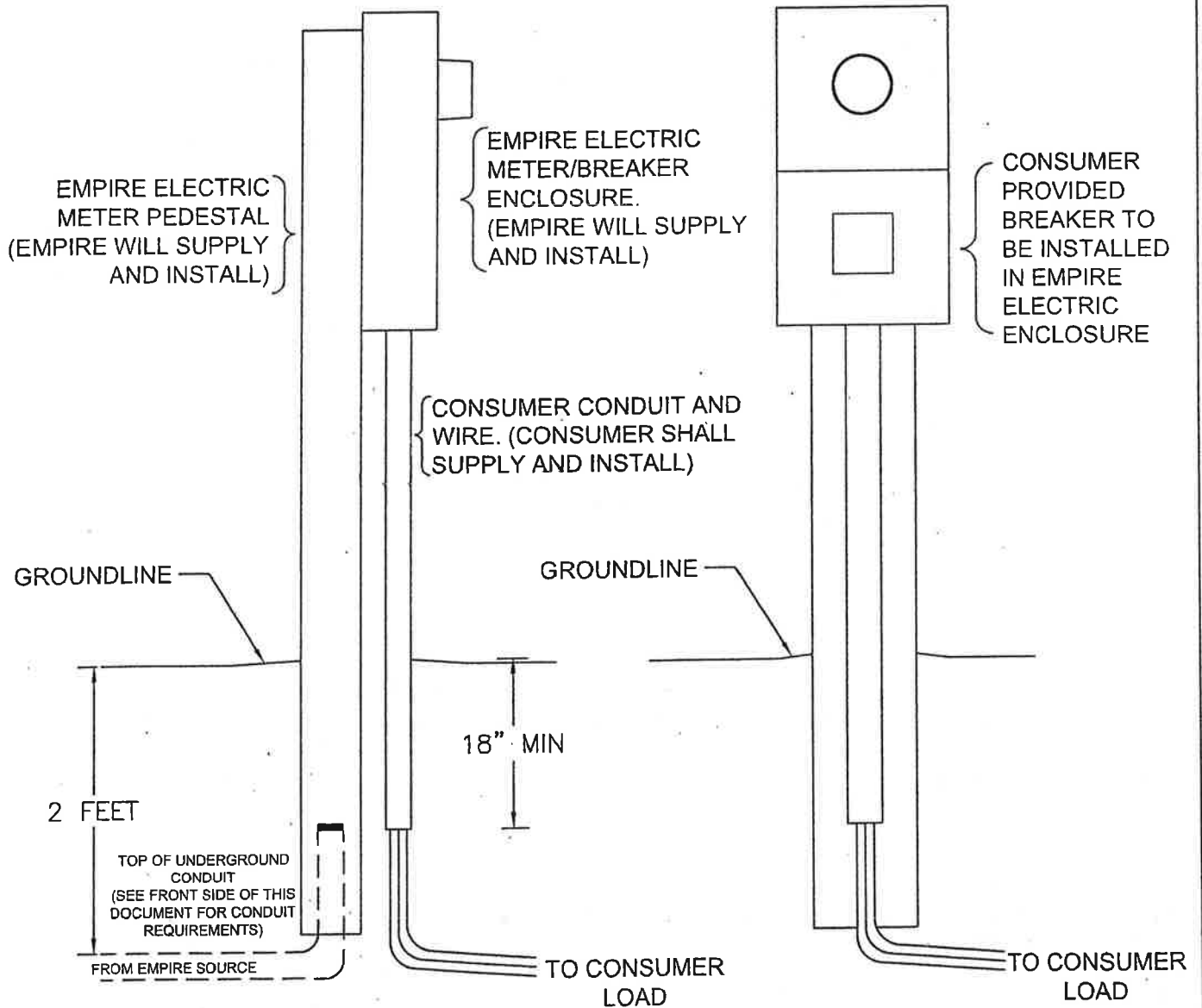
NAME Masumeci

EMPIRE ELECTRIC ASSOCIATION INC
CORTEZ, COLORADO

W.O.# 212222

200 AMP

SINGLE PHASE 200 AMP METERING
FACTORY PEDESTAL MOUNT
SUGGESTED REQUIREMENTS



SPECIAL NOTE:
BEFORE SERVICE IS ENERGIZED

All consumer wiring shall be inspected and approved by the appropriate electrical inspector and all trenches shall be completely backfilled!

EXHIBIT B



Dotted lines represent EEA's 7.2 kV underground electric lines.

Musumeci residential service.

Musumeci water well service.

Approximately 3000 feet and multiple property parcels between the two services.