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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 RESPONSE TO THE COMMISSION'S REQUEST FOR ADDITIONAL BRIEFING</p>
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On May 3, 2019, the Public Service Commission (the “PSC” or “Commission”) requested additional briefing from Empire Electric Association, Inc. (“EEA”) “identifying the specific tariff language [EEA] interprets to apply to [Mr.] Musumeci’s grid access charges, and how those tariff provisions apply to the facts alleged in the Complaint.” In response to the Commission’s request EEA provides the following:

BACKGROUND: SPECIFIC TARIFF LANGUAGE

1. As part of his application to have the existing electrical service to a well placed in his name, Mr. Musumeci signed an EEA Membership Form, dated June 27, 2018, before a notary.

The Membership Form is attached as **Exhibit A**.

2. By signing the Membership Form, Mr. Musumeci “applie[d] for electric service and agree[d] to purchase electric energy from Empire Electric Association, Inc. . . .” *See* Exh. A.

3. He further agreed to be bound by EEA’s “Rules and Regulations, the By-laws, and provisions of the Articles of Incorporation.”¹ *See id.*

4. EEA’s Rules and Regulations, attached as **Exhibit B**, explicitly provide:

At each Point of Delivery[,] the use of service shall be metered separately for each Consumer served. *Whenever[,] for any reason[,] [EEA] furnishes two or more meter installations for a single Consumer[,] each point of metering shall be considered a separate service and be separately billed, unless contractually agreed otherwise by [EEA].*

See Exh. B, p. 39, § XXX (emphasis added).

5. By signing the Membership Form, Mr. Musumeci also “agree[d] to pay [EEA] for service . . . *at the rates and upon the terms and Conditions set forth in the applicable rate schedule*, available on request.” *See* Exh. A (Emphasis added).

Mr. Musumeci’s Well Service

6. As noted above, Mr. Musumeci signed the Membership Form in June 2018 as part of his request that the existing electrical service to a well located in Monticello, Utah be placed in his name.

7. By (a) requesting that the existing well service be placed in his name and (b) signing the Membership Form to apply for that service, Mr. Musumeci agreed to pay fees for electrical service to well “at the rates and upon the terms and [c]onditions set forth in the applicable rate

¹ Under the express terms of the Membership Form, both members and non-members agree to be bound by EEA’s Rules and Regulations, as well as applicable provisions of the By-laws and Articles of Incorporation.

schedule, available upon request.” *See* Exh. A.

8. As explained in the Declaration of Josh Dellinger, General Manager of EEA, attached as **Exhibit C**, the rate schedule applicable to the well service is the General Service–Single-Phase rate.²

9. The General Service–Single-Phase rate, attached as **Exhibit D**, expressly includes a \$32.00 monthly grid access charge.

10. Thus, the responsible party—in this case, Mr. Musumeci—is responsible for a grid access charge of \$32.00 per month for the well service. *See* Exh. C; Exh. D.

Mr. Musumeci’s Residential Service

11. Several months after signing the Membership Form, Mr. Musumeci requested that another electrical service be established for his residence, also situated in Monticello, Utah.

12. Mr. Musumeci’s residence is not located on the same parcel of land as the well. In fact, his residence is separated from the well by nearly 3,000 feet and several other intervening parcels of land.³

13. To establish this new service, Mr. Musumeci signed both a residential service contract as well as a service order for installation of a meter and transformer.

² After a diligent search, EEA was unable to locate the original service contract for the well service, as the service was originally established nearly twelve years ago, in 2007. When a customer, such as Mr. Musumeci, places an existing service in his or her name, the customer signs only a membership form, and does not sign a new service contract. *See* Exh. C, Dellinger Decl., ¶ 4.

³ The PSC’s request for additional briefing can be viewed as presuming that Mr. Musumeci’s residence and the well were both located “on his property”—*i.e.*, the same property. *See* Request for Additional Briefing, p. 1. But each of the services provided to Mr. Musumeci by EEA are routed to separate meters on distinct parcels of land. *See* **Exhibit E** (map of services). Mr. Musumeci may or may not own both parcels, but the well and his residence are separated by approximately one-half mile of intervening private parcels.

14. Under the terms of the residential service contract, attached as **Exhibit F**, Mr. Musumeci agreed to pay to EEA “[f]ees for electrical service at the rates and upon the terms and conditions set forth in Schedule 3[,]” or the Residential Service–Single-Phase rate. *See* Exh. F.

15. The Residential Service–Single-Phase rate, attached as **Exhibit G** expressly includes a \$32.00 monthly grid access charge.

16. Additionally, by signing the residential service contract, Mr. Musumeci agreed to pay a base grid access charge of “[n]ot less than \$32.00 per month and in no event less than \$384.00 per year for electrical service or for having electrical service available commencing at completion of construction.” *See* Exh. F.

APPLICATION OF TARIFFS TO COMPLAINT

As demonstrated in the exhibits attached hereto, Mr. Musumeci has contracted to receive two distinct services from EEA. Each service is provided through a separate meter and transformer. Mr. Musumeci has also contracted to pay for these separately metered services “*at the rates and upon the terms and Conditions set forth in the applicable rate schedule.*” *See* Exh. A (emphasis added). The residential service—provided to a meter located on Mr. Musumeci’s residential property— is subject to the Residential-Service–Single-Phase rate, which expressly includes a \$32.00 monthly grid access charge. *See* Exhs. F, G. The well service—provided to a meter located 3,000 feet from Mr. Musumeci’s home on a separate parcel of property—is subject to the General-Service–Single-Phase rate, which also expressly includes a \$32.00 monthly grid access charge. *See* Exh. D.

Beyond expressly contracting for two services and two grid access charges, Mr. Musumeci has also agreed to abide by EEA’s Rules and Regulations, which expressly provide that separately

metered services provided to the same customer are separately billed: “Whenever[,] for any reason[,] [EEA] furnishes two or more meter installations for a single Consumer[,] each point of metering shall be considered a separate service and be separately billed, unless contractually agreed otherwise by [EEA].” *See* Exh. B, p. 39, § XXX. In accordance with this general rule and the rates Mr. Musumeci contractually agreed to pay, Mr. Musumeci is charged one grid access charge for each of the separately metered services he receives.

Still, Mr. Musumeci argues that the two services *should* be on a single meter. But EEA has never contracted or otherwise agreed to join the services at a single meter or point of delivery, and nothing in any of the relevant service documents contemplates such a project. As earlier set forth in EEA’s Answer, the Service Order for Mr. Musumeci’s residential service only contemplates installation of a meter and transformer to serve his residence, and makes no mention of his separate service for the well located on another parcel more than one-half mile away.

The only basis for Mr. Musumeci’s demand to join the two services is his subjective understanding that the services he receives should be combined. This understanding is not only belied by the documents Mr. Musumeci signed, but is also inconsistent with EEA’s established tariffs, rules, and regulations for the services it provides. Combining the two separate services into a single meter, as Mr. Musumeci desires, is neither consistent with existing tariffs nor practical. To accommodate Mr. Musumeci’s wishes, additional construction would have to be completed and easements negotiated and obtained over intervening properties, along with other work. Mr. Musumeci has not requested or indicated a willingness to pay for this work, nor has EEA agreed to provide it to him.

Indeed, before his initial complaint to EEA regarding his bill, EEA was unaware that Mr.

Musumeci wanted a single meter for both services. EEA is not aware of any request made by Mr. Musumeci to join both services. The only recent request to EEA was to establish electrical service to Mr. Musumeci's home and, as explained above, that construction did *not* include joining the new residential service with the existing well service. EEA has many members who, like Mr. Musumeci, obtain services from multiple locations. Some EEA members own a home at one location and a business at another, while others own a home at one location and an irrigation pump at another. EEA has many similar combinations on its system, and, in each case members with multiple services pay a separate grid access charge for each service under the appropriate rate tariff in accordance with EEA's established tariffs and agreements. As previously noted, the grid access charge is a base charge that is developed using cost-based rate principles and is calculated on a per-service basis, making it appropriate for each service to pay a grid access charge. To accede to Mr. Musumeci's request and except his separate services from the established rate protocol would have an extremely negative effect on the accepted rate calculations.

EEA certainly does not want any conflict or misunderstanding with its membership and customers, but must adhere to established principles. And, although EEA acknowledges Mr. Musumeci's frustration, as demonstrated above and in its Answer and Motion to Dismiss, it is not appropriate for EEA to exempt Mr. Musumeci's grid access charge, or to expend the resources required to permit the services provided Mr. Musumeci to otherwise qualify for a single grid access charge.

CONCLUSION

Based on the foregoing, EEA respectfully requests that the Commission dismiss the Complaint with prejudice.

DATED this 3rd day of June, 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 June 3rd, 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