
Formal Complaint of Joseph Anthony Musumeci against Empire Electric Association, Inc.	<u>DOCKET NO. 19-025-01</u> <u>ORDER DISMISSING COMPLAINT</u>
---	--

ISSUED: July 18, 2019

BACKGROUND

On March 15, 2019, after having engaged in the informal dispute resolution process at the Division of Public Utilities, Joseph Anthony Musumeci filed a formal complaint with the Public Service Commission of Utah (PSC) against Empire Electric Association, Inc. (“Empire”). Mr. Musumeci complains of being charged two grid access fees, one for his household and one for his well.

On April 15, 2019, Empire responded and moved to dismiss the complaint, arguing it has not violated any law, PSC rule, or Empire tariff. Empire notes that the household and well are approximately 3,000 feet apart and that Mr. Musumeci’s 2018 service order for service to his home requested new service and a meter (as opposed to combined service with the existing well meter). Empire argues that the two fees are cost based and that the service orders constitute a contract between Mr. Musumeci and Empire.

On May 3, 2019, we asked Empire to provide additional briefing identifying the specific tariff language Empire interprets to apply to Mr. Musumeci’s grid access charges, and how those tariff provisions apply to the facts alleged in the complaint.

In its response on June 3, 2019, Empire notes that Mr. Musumeci requested service to the well and household several months apart in 2018, and indicates that its Colorado rules and regulations state “each point of metering shall be considered a separate service and be separately

billed, unless contractually agreed otherwise by [Empire].”¹ Empire provides an employee declaration, two rate schedule tariff sheets, and maps to support its assertion that Mr. Musumeci’s well service should fall under the “General Service – Single-Phase” rate class while his household service should fall under the “Residential – Single-Phase” rate class.

Mr. Musumeci responded on June 4, 2019, and June 6, 2019, indicating he was not advised of two separate grid access fees when he signed up for service, and commenting on the affordability of the service. Nothing further was filed before the final response deadline of June 18, 2019.

FINDINGS, CONCLUSIONS, AND ORDER

We conclude that even though Empire has previously asserted its exemption from PSC jurisdiction under Utah Code Ann. § 54-2-202 because it is an out of state distribution electrical cooperative,² we retain jurisdiction to consider this complaint because Utah Code Ann. § 54-2-202(3)(b) retains jurisdiction with the PSC for complaints against Empire by a Utah customer. We also conclude that because of Utah Code Ann. § 54-2-202, we will evaluate this complaint for compliance with Empire’s Colorado tariffs (in some instances titled “rules and regulations”) in addition to Utah’s statutes and rules.

Mr. Musumeci has not identified any specific statute, rule, or tariff that he claims to have been violated by Empire, but his arguments are based on his concerns about general fairness.

¹ *Empire Electric Association, Inc.’s Response to the Commission’s Request for Additional Briefing*, June 3, 2019, at p. 2 (quoting Empire Electric Association, Inc. State of Colorado Rules and Regulations at p. 39).

² *See Empire Electric Association, Inc.’s Out-of-State Distribution Electric Cooperative Exemption Certification*, PSC Docket No. 18-025-03.

Nevertheless, we have evaluated his allegations to identify any potential violations by Empire. We find none.

We conclude that Empire's Colorado rules and regulations, indicating separate billing for each meter, apply to Mr. Musumeci's service. We conclude that Empire's General Service – Single-Phase tariff sheet includes a potential exception to that rule by providing the possibility of having a home and business on the same meter when they are “on the same premises.”³

Empire provided a map indicating Mr. Musumeci's well and household service are separated by approximately 3,000 feet and multiple property parcels.⁴ Mr. Musumeci does not dispute this map. Therefore, we find that Mr. Musumeci's well and household meter are not on the same premises, and we accordingly conclude that Empire is acting in accordance with its tariff rates by billing Mr. Musumeci separately for his well and household.

With respect to Mr. Musumeci's allegation that he was not advised of separate grid access fees, we find that the service orders Mr. Musumeci executed with Empire for service to his household, after obtaining metered service to his well, contains language and drawings referring to a new meter.⁵ Mr. Musumeci does not point to any legal requirement for Empire to provide additional notice beyond the service order. We conclude that Empire did not violate any notice requirements.

We dismiss Mr. Musumeci's complaint.

³ *Supra* n.1 at Exhibit D, General Service – Single-Phase rate.

⁴ *Id.* at Exhibit E, Map of Services.

⁵ *Empire Electric Association, Inc.'s Answer and Motion to Dismiss*, April 15, 2019, at Exhibit A, Service Order 212222.

DOCKET NO. 19-025-01

- 4 -

DATED at Salt Lake City, Utah, July 18, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#309226

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on July 18, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Joseph A. Musumeci (musumeci7825@comcast.net)

Shawna McLaughlin (shawna.mclaughlin@eea.coop)

Josh Dellinger (josh.dellinger@eea.coop)

Empire Electric Association, Inc.

Patricia Schmid (pschmid@agutah.gov)

Justin Jetter (jjetter@agutah.gov)

Robert Moore (rmoore@agutah.gov)

Steven Snarr (stevensnarr@agutah.gov)

Assistant Utah Attorneys General

(dpudatarequest@utah.gov)

Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Administrative Assistant