

James Dickson and Angela Dickson)
)
Complainants,)
)
v.) **File No. EC-2016-0230**
)
KCP&L Greater Missouri Operations)
Company,)
)
Respondent)

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through counsel, for its *Post-Hearing Brief* and states as follows:

On March 15, 2016, James and Angela Dickson (“Complainants”) filed a formal complaint against Kansas City Power and Light – Greater Missouri Operations Company (“GMO”), alleging that a number of health issues developed following GMO’s installation of an Advanced Meter Infrastructure (“AMI” or “smart meter”) electric meter at the Complainants’ residence on January 20, 2016.

On April 15, 2016, GMO filed its answer to the complaint in which GMO asserted compliance with its tariffs and with all Commission rules, regulations, and orders. GMO requested that the Commission dismiss the complaint with prejudice.

On May 13, 2016, Staff filed its *Staff Report*, submitted as Exhibit 1 in this case file, wherein Staff stated that its investigation of the formal complaint did not find GMO to be in violation of any statute or rule or order of the Commission or tariff. However, Staff recommended that GMO provide verification that the AMI meter at the

Complainants' home is installed correctly and is functioning in accordance with the manufacturer's specifications.

On August 17, 2016, the parties participated in a pre-hearing conference to set the procedural schedule for the case. Pursuant to Staff's recommendation, on August 25, 2016, Staff and GMO personnel conducted a site inspection of the meter in use at the Complainants' residence. Staff prepared a report entitled *Purpose of Inspection and Inspection Results*, submitted as Exhibit 2 in this case file. Staff's inspection did not identify any evidence that the AMI meter was "either installed incorrectly or otherwise operating in a fashion inconsistent with the manufacturer's specifications."

On October 26, 2016, the parties participated in a hearing in Kansas City, Missouri. During the evidentiary hearing the parties presented live testimony and offered evidence and were subject to examination by the parties. The Complainants represented themselves *pro se*. All other parties present at the hearing were represented by counsel.

PARTIES

The Complainants, James and Angela Dickson, are Missouri residents and customers of GMO. The Respondent, GMO, is a Missouri company which provides electric service in Missouri to customers in its service area. Staff is represented by Staff Counsel, per rule 4 CSR 240-2.040(1).

JURISDICTION

The Commission has jurisdiction to hear and determine the complaint against GMO, pursuant to § 386.390.1, RSMo, which states as follows:

Complaint may be made by . . . any corporation or person . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule,

regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

BURDEN OF PROOF

The Complainant in this matter bears both the burden of proof and persuasion. “In cases where ‘a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,’ the Commission has determined that ‘the burden of proof at hearing rests with complainant.’” *Margulis v. Union Elec. Co.*, 30 Mo. P.S.C. (N.S.) 517, 523, 1991 WL 639117 (1991). Missouri courts have “affirmed placing the burden of proof on the complainant in such cases, because the burden of proof properly rests on the party asserting the affirmative of an issue.” *State ex rel. Tel-Central of Jefferson City, Inc. v. Pub. Serv. Comm’n*, 806 S.W.2d 432, 435 (Mo.App.1991); see also § 386.764, RSMo, “Nothing in sections 386.754 to 386.764 shall be construed as modifying existing legal standards regarding which party has the burden of proof in commission proceedings.”

STATEMENT OF FACTS

On or about October 2015, Kansas City Power and Light Company and GMO began a process to replace approximately 330,000 manually read meters and upgrade their service territories from an Automatic Meter Reading (AMR) system AMI system. Tr. 2: 70, l. 7-14. On or about January 20, 2016, GMO installed an AMI meter at the residence of James and Angela Dickson, located at ** _____

_____ ** Ex. 1, pg. 1. The Complainants allege that the AMI meter installed by GMO has caused Complainants’ family various infirmities, including rashes, insomnia, and headaches. Tr. 2: 16, l. 6-10. On March 15, 2016, the Complainants filed a formal complaint against GMO. Ex. 1, pg. 1. Upon the filing of the complaint, Staff conducted

an investigation of the information provided by the Complainants and GMO and found insufficient evidence to support the Complainants' allegation. Ex. 1, pg. 11. Staff determined that the AMI meter installed at the Complainants' residence was designed to create exposure levels within the limits set by the Federal Communications Commission (FCC), and therefore would not pose a threat to the public health or safety if the meter was operating normally. Ex.1, pg. 7. Staff recommended a field inspection of the AMI meter at issue to determine whether it was operating with a gross defect or gross deviation. Ex.1, pg. 11.

On August 25, 2016, representatives from GMO, Staff, and the Complainants were present to observe the inspection and testing of the AMI meter installed at the Complainants' residence. Ex. 2, pg. 1. First, Staff visually inspected the exterior of the AMI meter and found no evidence of external damage, malfunction or tampering. Ex. 2, pg. 2. Staff then observed the exposed connections upon removal of the faceplate of the meter and did not find any obvious faults or signs of damage. *Id.* Staff then observed a GMO representative test the AMI meter's radio transmitter with a handheld TESCO radiofrequency (RF) meter, intended to test the frequency and duration of each transmission event emitting from the AMI meter. *Id.* Based on this review, Staff concluded that there is no evidence of improper installation or operation of the meter from the manufacturer's specifications. Ex. 2, pg. 3.

The meter installed at the Complainants' residence is a Landis+Gyr 3G S4e Gridstream communications module, FCC ID No. TEB-HUNTSU825. *Id.*, Tr. 2: 73, l. 15. The FCC sets limits on the maximum permissible exposure for emissions of RF-emitting devices and GMO's AMI meters operate at a level well below the maximum exposure level permissible by the FCC. Tr. 2: 76, l. 1-5. The maximum permissible exposure levels for residential meters set by the FCC is .6 microwatts per centimeter squared,

and the AMI meters used by GMO are .1 microwatts per centimeter squared. Tr. 2: 96, l. 20-25, Ex. 1, pg. 88. AMI meters use the same 900-megahertz spectrum, which is the same spectrum used by cordless phones or Wi-Fi. Tr. 2: 75, l. 20-22, Ex. 1, pg. 7. The AMI meters installed by GMO have been designed to meet the NTSI standard. Tr. 2: 73, l. 3-4. GMO's AMI meters do not transmit constantly. Tr. 2: 74, l. 14-15.

Staff did not find any scientific consensus regarding any adverse health effects from low level RF exposure. Ex. 1, pg. 7, Tr. 2: 75, l. 22-25. GMO has no evidence that AMI meters have caused any fires in its service territory. Tr. 2: 77, l. 17-18. GMO reported that the manufacturer of the meter has also indicated that there have been no instances of a fire being attributed to any of their 40 million meters that have been installed. Tr. 2: 77, l. 19-22.

In its most recent rate case, GMO promulgated an opt-out procedure that allows customers to choose service from a non-RF transmitting digital meter. Tr. 2: 79, l. 9-12. Customers exercising this option would be subject to an initial \$150 set-up fee and \$45 monthly maintenance fee, in addition to their tariffed service rates. Tr. 2: 78: 15-16, Tr. 2: 93, l. 21-25. This option will be available for the Complainants in the near future, but is not presently available.

ISSUES

- I. The Complainants' failed to identify any statute, Commission rule, Commission order, or tariff provision that GMO has violated in the installation or operation of the AMI meter located at the Complainants' residence.**
- II. The Complainants' requested relief is impermissible as utility customers lack the authority to demand the method in which utility service is provided.**

ANALYSIS

I. The Complainants' failed to identify any statute, Commission rule, Commission order, or tariff provision that GMO has violated in the installation or operation of the AMI meter located at the Complainants' residence.

Commission Rule 4 CSR 240-2.070(4) requires that a formal complaint identify a violation of any provision of law, order, rule, or Commission decision committed by a Respondent. The Complainants argue that the AMI meter installed and operated by GMO violates Section 393.130, RSMo, "safe and adequate service" standard. Tr. 2: 18, l. 14-15 and 19, l. 19-21. Further, the Complainants argue that GMO's tariff sheets require meters to be read only once a week. Tr. 2: 24, l. 16-19. Finally, the Complainants argue that Section 393.130, RSMo, prohibits the imposition of any costs associated with the provision of non-RF meter service.¹

Section 393.130.1, RSMo, states that every utility corporation "shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The Complainants allege that the AMI meter installed at their residence has caused adverse health effects and poses a fire and arcing risk. Tr. 2: 16, l. 6-10, 18, l. 14-15, and 19, l. 19-21. The Complainants have not submitted admissible evidence substantiating the alleged harm and establishing a causal link between such alleged harm and the operation of GMO's AMI meter. The AMI meter at issue is designed to operate within the permissible FCC standards. Ex. 1, pg. 7. Subject to Staff's investigation, the AMI meter at issue appears to be in operational conformance within the approved FCC standards. Ex. 2, pg. 3. Further,

¹ The Complainants averments regarding the alleged unlawful surveillance and data collection in contravention to 18 U.S.C. § 2511 are beyond the Commission's authority, and Staff will not address these allegation in his brief.

there appears to be no scientific consensus establishing the causal link between AMI meters and the alleged ailments by the Complainants. Ex. 1, pg. 7, Tr. 2: 75, l. 22-25. Since the AMI meter is functioning within its designed parameters, and absent any causal evidence to support its claim, the Complainants' allegations of harm are unsubstantiated. The Complainants admit that they have not experienced safety hazards from the operation of GMO's AMI meter, such as arcing or fire. Tr. 2: 18, l. 22. GMO has not identified any fires related to the operation of its AMI meter. Tr. 2: 77, l. 17-18. GMO reports that the manufacturer of the meter indicates that there are not any instances of a fire being attributed to the operation of any of their 40 million meters that have been installed. Tr. 2: 77, l. 19-22. GMO observed that there is no increased risk of fire from the use of AMI meters versus digital or analog meters. Tr. 2: 94, l. 21-25. Absent direct evidence of the occurrence or risk of fire, the Complainants' allegations of risks related with the installation and operation of GMO's AMI meter are unsubstantiated. The Complainants fail to meet their burden of proof and persuasion, and consequently do not establish a violation of Section 393.130.1, RSMo.

GMO Tariff Sheet 6.01 states that meters will be read on or about the same day each month. Ex.1, pg. 3. The Complainants argue that GMO's use of AMI meters violate the terms of its tariff. Tr. 2: 24, 16-19. GMO's tariff is silent as to what type of electric meter it may install and no language prohibits the use of AMI meters. Ex.1, pg. 3. Staff's review of GMO's tariff and accepted industry practices throughout Missouri found that GMO is not prohibited from reading electric meters more than once during each monthly billing cycle. Ex.1, pg. 4. There is no controversy between the tariff term relating to manual reading of a meter and the use of AMI meters. The Complainants fail to identify a violation of GMO's tariff on which it may commence an action.

Section 393.130.3, RSMo, states that no utility corporation shall make or grant any unreasonable preference or advantage to any person with respect to its service. The Complainants argue that Section 393.130.3, RSMo, prohibits the implementation of GMO's opt-out program and its associated set-up fee and monthly charge as an unreasonable preference. Tr. 2: 24, l. 22. In its most recent rate case, GMO promulgated an opt-out process that would allow customers to receive service from a non-RF transmitting digital meter. Tr. 2: 79, l. 9-12. The Complainants are not enrolled in this program. The enrollment period for this program has not been opened. Section 393.130.2, RSMo, permits companies to establish rates "with respect thereto under the same or substantially similar circumstances or conditions." GMO stated that purpose of the fees are to offset the costs associated with the labor required to manually serve the non-RF meters. Tr. 2: 97: l. 18-19. Since the opt-out program has been approved by Commission order and the Complainants have neither applied for nor been denied from the opt-out program, the Complainants fail to identify a violation GMO's opt-out program on which it may commence an action.

Since the Complainants have failed to meet their burden of proof or persuasion in identifying a rule, order, or tariff term that GMO has violated in the installation and operation of its AMI meter at their residence, the Complaint must be determined in GMO's favor.

II. The Complainants' intended relief is impermissible as utility customers lack the authority to demand the method in which utility service is provided.

The Complainants' requested relief is impermissible, as courts have found that ratepayers lack standing to determine the manner in which service is provided. Commission Rule 4 CSR 240-2.070(4)(E) requires that a formal complaint identify the relief requested. The Complainants seek an order directing GMO to replace the

AMI meter installed at the Complainants' residence with an analog meter and a waiver of a monthly reading fee. Tr. 2: 34, l. 4-7.

The Missouri Supreme Court has found that customers do not have the ability to dictate the manner in which utility service is provided. *State ex rel. City of St. Joseph v. Public Service Com'n*, 325 Mo. 209, 223, 30 S.W.2d 8 (Mo. banc 1930). "The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service." *Id.* at 14. In *USW Local 11-6*, a union argued that Laclede Gas Company's use of non-union contractors to install gas meters was unsafe. The Commission found in favor of the company, stating that "customers clearly have no right to demand that a utility's work be done by a particular class of employee." *USW Local 11-6 v. Laclede Gas Co.*, Mo.P.S.C. GC-2006-0390, 258 P.U.R.4th 293 (June 22, 2007).

The Complainants do not have the ability to request such relief in the absence of such evidence substantiating the alleged harm and establishing a causal link between such alleged harm and the operation of GMO's AMI meter. The Complainants have not alleged that utility service has been denied to them or that the service provided is deficient. The Complainants admit that they have not experienced safety hazards, such as arcing or fire, from the operation of GMO's AMI meter. Tr. 2: 18, l. 22. The Complainants have no basis to challenge the methods or manner in which GMO provides utility service, and therefore their request for relief should be denied.

In any event, the unavailability of Complainants' desired relief is a merely academic question, because the Complainants have failed to show that they are entitled to any relief at all.

CONCLUSION

For the reasons stated above, The Complaint must be determined in GMO's favor because the Complainants have failed to show that GMO violated any statute, Commission rule or order, or tariff provision. Staff recommends that the Commission (1) determine the Complainants have failed to meet their burden of proof and (2) find that GMO has not violated any Commission statute, rule, order or Commission-approved Company tariff by installing an AMI meter at the Complainants' residence.

WHEREFORE, the Staff Counsel submits this *Post-Hearing Brief*, and prays the Commission issue an order in accordance with Staff's positions.

Respectfully submitted,

/s/ Hampton Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18th day of November, 2016.

/s/ Hampton Williams