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File No. EC-2016-0230

Issue Date: August 22, 2018

Effective Date: September 21, 2018

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

James Dickson and Angela Dickson,)	
)	
Complainants,)	<u>File No. EC-2016-0230</u>
v.)	
)	
KCP&L Greater Missouri Operations)	
)	
Respondent.)	

APPEARANCES

James and Angela Dickson

Complainants, appeared pro se

Roger Steiner

Attorney for KCP&L Missouri Operations Company

Wm. Hampton Williams

Attorney for the Staff of the Commission

Regulatory Law Judges: Kim Burton and Paul T. Graham

REPORT AND ORDER

Syllabus: The Commission concludes that KCP&L Greater Missouri Operations Company has not violated any statute within the Commission's jurisdiction, the company's tariff, or any Commission rule or order.

Background

James Dickson and Angela Dickson ("Complainants") have alleged that immediately after the installation of an AMI meter (hereinafter, "Smart" meter) at their residence by KCP&L Greater Missouri Operations ("the Company"), their family began experiencing health problems. Concerned about the long-term health effects of being hit by radio frequency waves ("RF") from the Smart meter and the meter's potential fire risk, Complainants requested that the Company remove the Smart meter. When the Company declined to remove the meter, Complainants filed a complaint against the Company with the Commission, asserting the Company had violated the requirements of Section 393.130.1 of the Missouri Revised Statutes by failing to provide safe and adequate service.¹

Complainants requested that the Commission require the replacement of the Smart meter at their residence with an analog meter which they purchased. Complainants also requested reimbursement from the Company for all costs which they incurred for their time, expenses, equipment, the removal of the Smart meter, medical examinations, and medical treatments.²

Findings of Fact

1. In October 2015, the Company began a process of replacing approximately 330,000 manually-read analog meters in the Company's system with

¹ EFIS Item No. 1.

² EFIS Item No. 1.

Smart meters that allow the Company not only to receive information, but also to send information to the meters. Smart meters use RF technology that allows the meters and Company to communicate with each other as to outages and energy usage.³

2. A Smart meter was installed at Complainant's residence in January of 2016.⁴

3. The Smart meter which was installed in Complainants' residence was virtually identical to those used by the Company for 20 years. In that time period, the Company received no complaints where the Company's meters were associated with ill health effects, privacy breaches, or increased fire risks.⁵

4. The FCC has set limits on the maximum permissive exposure level for RF-emitting devices. As designed, the Company's Smart meters' exposure levels are within the FCC's limitations.⁶

5. The meter installed at Complainant's residence never emitted RF at any unsafe level.⁷

6. The Smart meter was not designed so as to present a fire risk, and the Smart meter installed at Complainant's residence presented no fire risk.⁸

7. The Company has an opt-out tariff which permits customers to have a digital meter installed that has no communication capabilities and transmits no RF

³ Tr. 70; 73-74

⁴ Tr. 56.

⁵ Tr. 71; 75; see also Tr. 115, the testimony of PSC engineer Poston.

⁶ Tr. 76. The Company's Smart meters were manufactured by Landis and Gyr and use a 900-megahertz spectrum, which is the same spectrum used in cordless phones and Wi-fi. The RF power density of a smart meter in microwatts per centimeter squared (mW/cm^2) is approximately $0.1\text{W}/\text{cm}^2$. In comparison, Wi-Fi or a laptop can be anywhere from 10 to $20\text{mW}/\text{cm}^2$ and a cellphone ranges anywhere from 30 to $10,000\text{wV}/\text{cm}^2$. Id. And Tr. 108-109. The Company's Smart meters do not transmit constantly and meet FCC certification for RF interference. Tr. 74; 122-123

⁷ Tr. 75

⁸ Tr. 75; 77; 105.

signals.⁹ Per its terms, participants of the Company's opt-out tariff incur an additional charge to have the Company send someone to read the meter and to cover the additional systems and processes which will have to be managed because of the opt-out.¹⁰

8. Complainants declined the Company's opt-out because of concerns that the meter could still emit signals and because they did not believe that they should pay an additional charge for meter readings. Complainants purchased an analog meter, requested that it be used by the Company at their residence and offered to read the meter themselves and document their readings for the Company.¹¹

9. The Company's tariff gives the Company the right to provide the meter. Any meter provided by a customer will have to be tested and calibrated to meet the Company's technical expectations. The Company's meters are manufactured to the Company's specifications, so no meter provided by a customer will be compatible with the Company's billing system.¹²

Conclusions of Law

1. Section 396.390.1, RSMO, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any 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. . . ." The Company is a "utility." Section 386.020, RSMO. Complainants have filed a complaint alleging that the Company has committed acts or

⁹ Tr. 78-79

¹⁰ Tr. 78-79. Although not set at the time of the hearing, the anticipated charge to customers participating in the Company's opt-out tariff was \$150 for the purchase of the non-communicating meter and a \$45 per month fee to pay for the meter reading. Tr. 78.

¹¹ Tr. 10-11; 25; 61; 34.

¹² Tr. 80

omitted to do acts in violation of Section 393.130, RSMO. The Commission has jurisdiction in this case.

2. Missouri law provides that every electrical corporation shall furnish and provide “such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”¹³

3. All charges made or demanded by an electrical corporation for electricity must be just and reasonable and not more than allowed by law or by order or decision of the Commission. No charge may be made for electricity which is unjust or unreasonable or in excess of that allowed by law or by order or decision of the Commission.¹⁴

4. Missouri law provides:

“No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.”¹⁵

5. Missouri law provides:

“No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”¹⁶

¹³ Section 393.130, RSMO

¹⁴ Section 393.130.1, RSMO

¹⁵ Section 393.131.2, RSMO

¹⁶ Section 393.131.3, RSMO

6. Complainants have the burden of proving that the Company's alleged acts and/or omissions have violated the law or its tariff; or that the Company has otherwise engaged in unjust or unreasonable actions.¹⁷

7. No statute, rule, regulation or tariff placed any duty upon the Company to allow Complainants to install an analog meter.

8. The Commission has no authority to award damages.¹⁸

Decision

The Smart meter as designed and as actually operating at the Complainants' residence did not violate Section 393.130, RSMO. The Company's charges for its opt-out tariff were authorized by the Commission, were just and reasonable, and were no greater than charges to any other person for the service rendered for manually reading a meter. An additional charge for the opt-out did not constitute any undue or unreasonable preference or advantage to persons with the Smart meter. The Company's refusal to permit the installation of an analog meter was not unreasonable and violated no statute, rule, regulation, or tariff. The evidence did not support a conclusion that the medical signs and symptoms experienced by Complainants or their children were caused by a Smart meter. The Commission has no authority to grant Complainants' request for reimbursement for various costs and expenses.

Any application for rehearing must be filed before the effective date of this Order.

¹⁷ *State ex rel GS Techs Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

¹⁸ *Id.*

THE COMMISSION ORDERS THAT:

1. The Complaint of James and Angela Dickson is denied.
2. All unrulled Motions are denied.
3. This Report and Order shall become effective on September 21, 2018.
4. This file shall close on September 22, 2018.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Graham, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 22nd day of August 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 22, 2018

File/Case No. EC-2016-0230

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.