

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

In the Matter of the Application for Midland Residential, LLC for a Variance from 20 CSR 4240-20.050 Regarding Individual Electric Meters)
) **File No. EE-2024-0335**
)
)

ELECTRIC VARIANCE COMMITTEE RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and concurrently herewith files the Electric Variance Committee’s memorandum, in which the committee, for the reasons set forth in its memorandum, recommends that the Commission find that no variance from Commission rule 20 CSR 4240-20.050 is required, and order Evergy Missouri Metro (“EMM”) and Midland Residential, LLC to jointly propose a solution to EMM’s Rules and Regulations regarding multiple occupancy premises, which are more restrictive of master metering than the Commission’s rule.

Respectfully Submitted,

/s/ Mark Johnson

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Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 27th day of June, 2024.

/s/ Mark Johnson

MEMORANDUM

TO: Missouri Public Service Commission Case File
Case No. EE-2024-0335
In the Matter of the Application of Midland Residential, LLC for a Variance from
20 CSR 4240-20.050 Regarding Individual Electric Meters

FROM: Electric Meter Variance Committee

/s/ Travis Pringle
Travis Pringle, Chief Deputy Counsel
Staff Counsel Department, Missouri Public Service Commission

/s/ Claire M. Eubanks, P.E.
Claire M. Eubanks, P.E., Manager of Engineering Analysis Department, Industry
Analysis Division, Missouri Public Service Commission

/s/ Justin Tevie
Justin Tevie, Economics Analyst, Tariff and Rate Design Department, Industry
Analysis Division, Missouri Public Service Commission

SUBJECT: Electric Meter Variance Committee Recommendation

DATE: June 27, 2024

SUMMARY

On May 9, 2024, Midland Residential, LLC (“Midland” or “Applicant”) filed an application for a variance from Commission rule 20 CSR 4240-20.050 Individual Electric Meters – When Required for its project at 1221 Baltimore Ave., Kansas City, Missouri 64105. On May 17, 2024, Midland filed a supplemental application requesting the Commission find that no variance is required because the footings were poured prior to June 1, 1981, or in the alternate grant a variance from 20 CSR 4240-20.050. Midland is a future customer of Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”).

Given that the building was constructed from 1926-1927 and has been listed on the National Register of Historic Places since 1977, before the rule was promulgated, the Electric Meter Variance Committee recommends the Commission find that no variance from Commission rule 20 CSR 4240-20.050 is required. However, the Electric Meter Variance

Committee¹ recommends the Commission order EMM and Midland to jointly propose a solution to EMM's Rules and Regulations regarding multiple occupancy premises, which are more restrictive of master metering than the Commission's rule.

OVERVIEW

Commission Rule 20 CSR 4240-20.050 is aimed at compliance with certain sections of the Public Utility Regulatory Policies Act of 1978. 16 U.S.C. section 2625(d) of that Act provides:

Master metering

Separate metering shall be determined appropriate for any new building for purposes of section 2623 (b) (1) of this title if –

- (1) there is more than one unit in such building,
- (2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and
- (3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

Commission Rule 20 CSR 4240-20.050(2) states that:

Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

For the purposes of the above rule, 20 CSR 4240-20.050(1)(F) defines “multiple occupancy building” as:

A multiple-occupancy building is defined as a building or premises which is designed to house more than one (1) residential or commercial unit[.]

“Construction” is defined under 20 CSR 4240-20.050(1)(D) as:

Construction begins when the footings are poured[.]

The Electric Meter Variance Committee typically considers the following questions when reviewing applications for variances from 20 CSR 4240-20.050:

¹ Public Counsel is an ex officio member of the committee, but has chosen not to participate in the preparation of this memorandum.

- a. Is individual metering of the multiple-occupancy building required by 20 CSR 4240-20.050;
- b. Do the occupant(s) of each unit have control over a portion of the electric energy used in such unit;
- c. With respect to such portion of electric energy used in such unit, do the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters;
- d. Would the granting of a variance be consistent with the goals of PURPA to increase conservation of electric energy, increase efficiency in the use of facilities and resources by electric utilities, and establish equitable retail rates for electric consumers; and
- e. Would the granting of a variance be in the public interest because it furthers a public policy objective in conjunction with other federal, state, or local government programs, such as subsidizing housing costs for low-income residents or promoting economic development in certain urban areas?

In addition to the above listed considerations, Commission rule 20 CSR 4240-20.050(6) states:

The commission, in its discretion, may approve tariffs filed by an electric corporation which are more restrictive of master metering than the provisions of this rule.

EMM's Rules and Regulations regarding multiple occupancy premises are found at PSC MO No. 2 Sheet 1.18A through Sheet 1.22.²

DISCUSSION

The Project at 1221 Baltimore Ave., Kansas City, Missouri 64105 consists of renovation and reconfiguration of the historic Midland Office Building to provide affordable³ housing to approximately 300 area residents.⁴ The Midland Office Building is adjoined to the Midland Theatre. The renovation includes conversion of the office building to 135 apartments ranging in size from 300 to 600 square feet.⁵ Additionally, over 6,100 square foot of space is for

² P.S.C. MO. No. 2 Original Sheet 1.18A; P.S.C. MO. No. 2 Second Revised Sheet 1.19; P.S.C. MO. No. 2 Second Revised Sheet 1.20; P.S.C. MO. No. 2 Fourth Revised Sheet 1.21; and P.S.C. MO. No. 2 Fifth Revised Sheet 1.22.

³ As defined in Midland's agreement with the City of Kansas City.

⁴ Midland Application, May 9 2024, paragraph 6. Supplemental Application, May 17, 2024, paragraph 9.

⁵ Midland response to Electric Meter Variance Committee question 4.

common use such as lounge areas, kitchen space, co-working space, fitness and bike storage, a meditation room, business center, and communal laundry space.⁶

EMM supplies underground service to the building. There are two EMM owned meters, one for the theatre and one for the newly renovated and reconfigured residential tower. The Applicant installed an electric metering system, EcoStructure Energy™ Hub which can monitor the energy usage for the tenant's electrical panel and the tenant's HVAC unit.⁷

Based on the building's National Register of Historic Places nomination form ("Nomination Form"),⁸ the Midland Complex (Loew's Midland Theatre and Midland Office Building) was constructed, likely including the pouring of the footings, in 1926-1927.⁹ The foundation of the building is described in the Nomination Form as "reinforced concrete and solid brick masonry and reinforced concrete walls and piers" and was described in 1977 as being "well maintained and ... in good structural condition".¹⁰ At the time of its nomination to the National Register of Historic Places, in 1977, the Midland Office Building was used for commercial purposes. At that time, the Midland Office Building had six ground story storefronts, with three still intact.¹¹ The second through twelfth floors of the Midland Office Building consisted of single offices and suites.¹²

Given that construction of the building began prior to June 1, 1981, and the building was also a multiple-occupancy building prior to June 1, 1981, the Electric Meter Variance Committee recommends the Commission find that no variance from Commission rule 20 CSR 4240-20.050 is required. However, the Electric Meter Variance Committee recommends the Commission order EMM and Midland to jointly propose a solution to EMM's Rules and Regulations regarding multiple occupancy premises, which are more restrictive of master metering than the Commission's rule.

⁶ Midland response to Electric Meter Variance Committee question 5.

⁷ Midland Application, May 9, 2024, paragraph 10 and response to Electric Meter Variance Committee questions 8 and 10.

⁸ National Archives NextGen Catalog. The National Historic Places Register Reference Number is 77000808. Missouri SP Loew's Midland Theater – Midland Building.

⁹ *Id.* p. 1

¹⁰ *Id.* p. 4, p. 12

¹¹ *Id.* p. 2

¹² *Id.* p. 5

According to EMM, if the building is supplied electric service through one meter to one customer, it would likely be on the Large General Service rate (“Schedule LGS”).¹³ However, Schedule LGS is available for purposes other than those listed in the availability provisions of the Residential Service Rate Schedule¹⁴ and does not allow service to be supplied on that rate schedule “where the ultimate use is primarily for residential purposes.” The applicability section of Schedule LGS does indicate the rate is applicable to “multiple-occupancy buildings when the tenants or occupants of the building are furnished with electric service on a rent inclusion basis.”

EMM’s Rules and Regulations regarding multiple occupancy premises contains the following provisions:

Rule 5.01 – Individual Metering for Separate Premises. This provision requires the occupant of each separate premises in multiple occupancy premises to be individually metered and supplied electric service as the Customer of the Company, unless otherwise provided for by Rule 5 or by the granting of a variance from 20 CSR 4240-20.050 by the Commission.

Rule 5.02 – Public Service Metering for Lessor. This provision explains that common areas of multiple occupancy premises will be separately metered and billed under the applicable non-residential rate schedule.

Rule 5.03 – Resale and Distribution. This provision indicates the Company will not provide electric service to a Customer for Resale or Redistribution except as provided by Rule 5.05, 5.06, and 5.07. This provision defines Resale and Redistribution as follows:

- (a) "Resale" shall mean the furnishing of electric service by a Customer to another person under any arrangement whereby the Customer makes a specific or separate charge for the electric service so furnished, either in whole or in part, and whether the amount of such charge is determined by submetering, remetering, estimating or rebilling as an additional, flat, or excess charge, or otherwise.
- (b) "Redistribution" shall mean the furnishing of electric service by the Customer (i) to another building occupied by the Customer and located on the same premises of the Customer but used by the Customer for a separate business enterprise, or (ii) to separate premises occupied by another person, whether or not such premises are owned, leased or controlled by the Customer, without making a specific or separate

¹³ P.S.C. MO. No. 7 4th Revised Sheet No. 11.

¹⁴ P.S.C. MO. No. 7 1st revised sheet 5D. “Single-phase electric service for residential customers that have a dwelling unit having kitchen facilities, sleeping facilities, living facilities and permanent provisions for sanitation... However, this schedule is not applicable for ... other structures designed to provide multiple sleeping quarters for unrelated individuals, or any other commercial enterprise.”

charge for the electric service so furnished. With respect to any multiple-occupancy premises, the Company will not supply[sic] electric service to the owner, lessee, or operator thereof, as the Customer of the Company, and permit redistribution by such Customer to his office or residential tenants therein, except for those premises being supplied such service on the effective date of this schedule. The restriction against "redistribution" may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company.¹⁵

Rule 5.04 – Rent Inclusion by Lessor. This provision allows the Company to consider the lessor as the customer for billing and collection purposes but the Company shall individually meter each such tenant.

Rule 5.05 – Present Resale Practices. Allows for customers who were engaged in the redistribution of electric service to tenants on January 10, 1966, to continue such practice until (a) termination of electric service for any reason and (b) improvements thereon are substantially destroyed by any means.

Rule 5.06 – Present Redistribution Practice. Allows for customers who were engaged in the resale of electric service to tenants on January 10, 1966, to continue such practice provided it is continued on a rent inclusion basis.

Rule 5.07 – Renovation. This provision indicates that an apartment building presently receiving electric service for redistribution is no longer eligible for redistribution when an apartment building undergoes renovation where the renovation is greater than 50% or more of the value of the building.

Rule 5.08 – Wholesale Sales. This provision indicates nothing in Rule 5 applies to service supplied by the Company at wholesale for resale. For example, instances where EMM supplies service to rural electric cooperatives.

In its initial application, Midland represents it will bill each unit for electricity usage consistent with rates charged by Evergy and established in Evergy's Commission-approved rate schedule such that owner will not make a profit from the sale of electricity.¹⁶ While submetering by Midland through the use of its proposed EcoStructure EnergyTM Hub may align with some of

¹⁵ P.S.C. MO. No. 2 Second Revised Sheet 1.19 includes exceptions.

¹⁶ Midland Application, May 9, 2024, paragraph 10.

the purposes of PURPA, for example, to increase conservation of electric energy, the Electric Meter Variance Committee is concerned that the billing of electric service by Midland to its tenants on a per energy basis (i.e. per KWh) conflicts with the definitions of electrical corporation and electric plant in 386.020 RSMo¹⁷ and EMM's tariff restriction on sale for resale.¹⁸

§ 386.020(15), RSMo, defines "Electrical corporation"

includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others. The term "electrical corporation" shall not include:

- (a) Municipally owned electric utilities operating under chapter 91;
- (b) Rural electric cooperatives operating under chapter 394;
- (c) Persons or corporations not otherwise engaged in the production or sale of electricity at wholesale or retail that sell, lease, own, control, operate, or manage one or more electric vehicle charging stations;

§ 386.020(14), RSMo defines "Electric plant"

includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

§ 386.020(43), RSMo, defines "Public utility"

includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heating company or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter;

¹⁷ Unlike the definition of Water corporation and Sewer corporations, the definition of Electrical corporation does not include the term "for gain".

¹⁸ P.S.C. MO. No. 2 Second Revised Sheet 1.19.

Rule 5.03(a) "Resale" shall mean the furnishing of electric service by a Customer to another person under any arrangement whereby the Customer makes a specific or separate charge for the electric service so furnished, either in whole or in part, and whether the amount of such charge is determined by submetering, remetering, estimating or rebilling as an additional, flat, or excess charge, or otherwise.

§ 393.170.2, RSMo, states, in pertinent part, as follows:

No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, ... without first having obtained the permission and approval of the commission....

In response to questions from the Electric Meter Variance Committee, Midland provided alternate options for billing its tenants which align with the definition of redistribution¹⁹ in EMM's tariffs in that Midland would furnish electric service to separate premises occupied by another person without making a specific or separate charge for the electric service.²⁰ EMM's Commission approved tariffs restrict against "redistribution", however, such restriction may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company.

RECOMMENDATION

Given that the building at 1221 Baltimore Ave., Kansas City, Missouri 64105 was constructed from 1926-1927 and has been listed on the National Register of Historic Places since 1977, before the rule was promulgated, the Electric Meter Variance Committee recommends the Commission find that no variance from Commission rule 20 CSR 4240-20.050 is required. However, the Electric Meter Variance Committee recommends the Commission order EMM and

¹⁹ "Redistribution" shall mean the furnishing of electric service by the Customer (i) to another building occupied by the Customer and located on the same premises of the Customer but used by the Customer for a separate business enterprise, or (ii) to separate premises occupied by another person, whether or not such premises are owned, leased or controlled by the Customer, without making a specific or separate charge for the electric service so furnished. With respect to any multiple-occupancy premises, the Company will not supply electric service to the owner, lessee, or operator thereof, as the Customer of the Company, and permit redistribution by such Customer to his office or residential tenants therein, except for those premises being supplied such service on the effective date of this schedule. The restriction against "redistribution" may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company.

²⁰ P.S.C. MO No. 2 Third Revised Sheet No. 1.06. Rule 1.07 PREMISES: That separate walled portion of a single building undivided by any common area, or that separate portion of a single contiguous tract of land (including all improvements thereon) undivided by any way used by the public, which portion is occupied by the Customer, or as may, with the consent of the Company, be designated in the service application or by other means acceptable to the Company. All common areas in any such building and on any such tract of land may be deemed by the Company to be occupied by the owner or lessee of such building or tract of land or his authorized agent, as another Customer. A "common area" shall include all halls, lobbies, passageways and other areas of a Building or a tract of land used or usable by persons other than the Customer.

Midland to jointly propose a solution to EMM's Rules and Regulations regarding multiple occupancy premises which are more restrictive of master metering than the Commission's rule.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Midland)
Residential, LLC for a Variance from 20 CSR)
4240-20.050 Regarding Individual Electric)
Meters)
Case No. EE-2024-0335

AFFIDAVIT OF CLAIRE M. EUBANKS, PE

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW Claire M. Eubanks, PE, and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Electric Variance Committee Recommendation*; and that the same is true and correct according to her best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

Claire M Eubanks
CLAIRE M. EUBANKS, PE

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 27th day of June 2024.

Dianna L. Vaught
Notary Public

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 18, 2027 Commission Number: 15207377

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

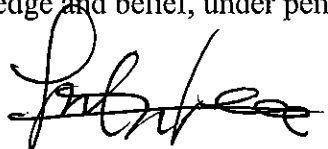
In the Matter of the Application of Midland)
Residential, LLC for a Variance from 20 CSR)
4240-20.050 Regarding Individual Electric)
Meters)
Case No. EE-2024-0335

AFFIDAVIT OF JUSTIN TEVIE

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

COMES NOW Justin Tevie, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Electric Variance Committee Recommendation*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.



JUSTIN TEVIE

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 27th day of June 2024.

Dianna L. Vaught
Notary Public

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 18, 2027 Commission Number: 15207377
