

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
Ronald and Yvonne Hopp against)	Case No. U-20755
<u>Consumers Energy Company.</u>)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on July 1, 2020.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before July 22, 2020, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before August 5, 2020.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission
**Kandra K.
Robbins**

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July 1, 2020
Lansing, Michigan

Kandra K. Robbins
Administrative Law Judge

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Case No. U-20755

An evidentiary hearing was scheduled for May 19, 2020. On May 6, 2020, this ALJ contacted the parties indicating that because of Covid-19, all in-person hearings scheduled for May were cancelled. The parties were given the option to conduct a pre-hearing at the scheduled time on May 19 or to precede with the hearing using Microsoft Teams. On May 11, 2020, the parties contacted this ALJ indicating that after much discussion between the parties, they had all agreed to proceed using Microsoft Teams. On May 12, 2020, a scheduling memo was entered converting the in-person hearing scheduled for May 19, 2020 to a videoconference hearing using Microsoft Teams. The parties were all given instructions for the Sharepoint folder and the necessary connection

information. Monica M. Stephens, Assistant Attorney General, filed an appearance on behalf of Commission Staff. On May 11, 2020, Attorneys Ian F. Burgess and Theresa A. G. Staley filed an Appearance, Answer and Motion for Summary Disposition to the formal complaint. On May 19, 2020, Ms. Stephens filed a Response to the Motion for Summary Disposition.

An evidentiary hearing in the matter was convened on May 19, 2020. Ms. Yvonne Hopp appeared on her own behalf, Ms. Staley and Mr. Burgess appeared on behalf of CEC Co, and Assistant Attorney General Stephens appeared on behalf of Commission staff. After the hearing was convened, oral argument on the Motion for Summary Disposition was taken. The Motion was taken under advisement and the hearing proceeded as scheduled.

II.

OVERVIEW OF THE RECORD

The evidentiary record consists of one transcript of 88 pages, 6 exhibits submitted by Complainants, and 2 exhibits submitted by CEC Co. Staff did not enter any exhibits. This section reviews the pleadings and the evidentiary record.

A. Complaint

The complaint consists of 39 pages¹. Ms. Hopp states that in February 2020, the rate charges to their property at [REDACTED] was changed from Electrical Residential Service Code #1000 to Electrical General Service Rate GS Commercial 1100. She contends that this is the incorrect billing rate for the property. She argues that they have a deed for the property. It is part of a condominium

¹ The first 3 pages are the MPSC form, pages 4 and 5 are a description of the issues, the remaining pages consist of copies of various documents.

association and that their usage is residential in nature because their boat has the requisite amenities necessary to be defined as a residence under the tariff.

B. Answer

CECo states that the property at [REDACTED] is a boat slip or dock. This is a condominium-like community for boat slips. CEC Co indicates that in April 2019, the Complainants appeared to have obtained electrical service to the address but it was erroneously placed on Residential Service Rate. CEC Co indicates that the rate was changed from the Residential Service Rate to the General Service Secondary Rate (GS) when the error was discovered in January 2020.

CECo states that the General Service Secondary Rate is the appropriate rate for the Complainant's service address and that under the Tariff, the Company was required to change the rate to the proper tariff rate under the Company's Electric Tariff as the service address does not qualify for Residential Rate.

CECo requested summary disposition of this matter contending that the Complaint failed to state a claim upon which relief could be granted and that the Complaint made no allegation that changing the rate violated any statutes, case law, administrative rules or regulations, Commission orders or tariffs.

C. Evidentiary Hearing

At the hearing, Complainant testified on her own behalf. She contends that while the property is a boat slip, they would have the ability to reside on the boat at the slip which has all of the household items necessary to meet the definition of a dwelling.

CECo presented one witness, Telah Wilson, Senior Rate Analyst in the Rates and Regulatory Department for CEC². Ms. Wilson testified that the tariff is the Company's contract with customers to provide uniform service for similar type of customers and customer classes. Ms. Wilson testified that there are certain qualifications for each customer class and each customer within a class must be treated the same.³ Ms. Wilson testified that the Hopps were incorrectly placed in the residential rate class based on the condominium description. However, the Hopps condominium is unique in that it is boat slips.

Ms. Wilson testified that the Consumers Standards and Billing Practices for Natural Gas and Electrical Service defines a billing error as the incorrect application of the rate. When a billing error is identified the Company is required to correct the error⁴.

In this case, the service is for a boat slip. The tariff, Section 4.3B, defines that service being provided associated with a boat as general service rate⁵.

Staff presented one witness, Nicholas Revere, Manager of the Rates and Tariffs Section of the Michigan Public Service Commission.

Mr. Revere testified that under the Company's current tariff approved by the Commission, Complainants are correctly placed in the General Service rate.⁶ Mr. Revere also testified that the current tariff has a provision for Seasonal Condominium Campgrounds. The usage would be similar to a seasonal condominium boat slip. Therefore, he recommends that the Commission require the Company to request an ex

² Tr. pg. 54

³ Tr. pg. 55

⁴ Tr. pg. 56

⁵ Tr. pg. 58

⁶ Tr. pg. 77

parte case to amend the tariffs or change the tariff as part of the next rate case to create a new tariff for seasonal boat condominiums similar to the seasonal campground condominiums.⁷

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

The following findings of fact are based on the preponderance of the evidence in the record.

The Complainants receive electrical service from CECo at [REDACTED]. This property is a condominium association consisting of privately owned boat slips.

When the Complainants first received electrical service at this location, they were charged at the Residential Service Rate, the rate commonly used for condominiums. Subsequently, the Company discovered that the property actually consists of boat slips and changed the billing rate for the Complainant to the General Service Secondary Rate, the rate under the tariff applicable for property associated with boats.

Section C4.3B of current tariff states:

For purposes of rate application, “Non-Residential usage” shall be usage metered and consumed that does not qualify for residential usage. Non-Residential usage includes usage associated with the purchase, sale or supplying (for profit or otherwise) of a commodity or service by a public or private

person, entity, organization, or institution. Non-Residential usage includes usage associated with penal institutions, corrective institutions, motels, hotels, separately metered swimming pool heater usage, yachts, **boats**, tents, campers or recreational vehicles. Non-Residential usage shall be billed on the Company's appropriate General Service Rate.⁸

(emphasis added)

Although the current tariff makes an exception for seasonal condominium campgrounds to be considered as residential in section C4.3D, there is no exception for boats, boat slips or seasonal condominium boat slips.

Based on the testimony of Nicholas Revere, the Complainants property is associated with a boat and is, therefore, correctly categorized as Non-Residential usage and charged for electrical service under the General Service Rate.

The Complainants are properly classified as Non-Residential usage and are properly being charged using the General Service Rate according to the current tariff approved by the Commission.

Conclusions of Law

The burden of proof in a complaint cases is assigned in Mich Admin Code, R 792.10446 which provides:

Rule 446. The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed or may shift, as provided by law or as may be appropriate under the circumstances.

⁸ Exhibit CE-1: -MPSC No. 14-Electric Consumers Energy Company Tariff Sheet U-20755
Page 6

This matter involves a dispute between the parties regarding the application of the current CECo tariff. The Complainants contend that the property located at [REDACTED] should be charged at the residential usage rate because the property meets the definition of a household. The property is a condominium and the boat has normal household facilities such as a bathroom, individual cooking and kitchen sink facilities. Complainants state that the property is individually metered. They contend that based on these factors, the property is residential as defined in the tariff and therefore, they should be charged using the Residential Service Rate.

This argument completely ignores the fact that the tariff specifically defines a boat and usage associated with a boat as Non-Residential usage that shall be billed on the appropriate General Service Rate. While the Complainant's boat may in fact have a kitchen and bathroom and allow for someone to reside on the boat, it is still a boat and boats are specifically defined as Non-Residential under the tariff and billed under the General Service Rate.

Staff agrees with the Company that as the tariff is currently written, the Complainants property is properly classified as Non-Residential usage and correctly charged using the General Service Rate. Staff points out that the current tariff, while defining tents, campers, or recreational vehicles as Non-Residential usage, makes an exception for some seasonal condominium campgrounds under certain specific circumstances to be classified as residential. Staff argues that this particular boat condominium association is similar in usage to a seasonal condominium campground. Staff argues that the tariff should be re-examined to determine if such an exception for a boat condominium association is appropriate. Staff requests that the Commission direct

the Company to file an *ex parte* case to amend the tariff or to include the amendment in the next rate case. At this point, there has been no notice to anyone of interest regarding amending the tariff nor has anyone been given the opportunity to present any evidence as to the need to amend the tariff. It would be appropriate to have the Company file an *ex parte* case concerning the tariff or to include the matter as part of the next rate case.

Based on a preponderance of the evidence, the Complainants are properly classified as Non-Residential usage and are being correctly charged using the General Service Rate. There is no violation of the tariff or of the Consumer Standards and Billing Practices for Electrical and Gas Residential Service.

IV.

CONCLUSION

For the reasons set forth above, the undersigned recommends that the Commission adopt the above proposed findings of fact and conclusions of law.

In addition, the undersigned recommends that the Commission require the Company to either file an *ex parte* case to determine if an amendment to the tariff is appropriate or include the matter as part of the next rate case.

Any arguments not specifically addressed in this Proposal for Decision are deemed irrelevant to the finding and conclusions recited above.

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For the Michigan Public Service Commission

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Page 8