

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

Marlyn Young,)
)
Complainant,)
)
v.)
)
Union Electric Company, d/b/a)
AmerenUE,)
)
Respondent.)

Case No. EC-2006-0283

FILED²
SEP 11 2006
Missouri Public
Service Commission

**STAFF'S CONCURRENCE WITH AMERENUE'S ANSWER TO MOTION FOR
JUDGMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its
Concurrence, states as follows:

1. On or about June 19, 2006, Mr. Marlyn Young, Complainant, filed a self-styled "*Motion And Order For Judgment Against Union Electric Company*" (Motion) in the above-captioned *Complaint*. In paragraph 4 of his Motion, Mr. Young asserts that AmerenUE violated Commission Rule 4 CSR 240-13.045(5) or (6)¹. In support of his Motion, Mr. Young attached, as "Exhibit A", a Disconnect Notice dated June 5, 2006, a Disconnect Notice dated June 8, 2006, and a copy of a bill for service from May 3, 2006 to June 4, 2006. These

¹ 4 CSR 240-13.045(5) states: "If a customer disputes a charge, s/he shall pay to the utility an amount equal to that part of the charge not in dispute. The amount not in dispute shall be mutually determined by the parties. The parties shall consider the customer's prior consumption history, weather variations, the nature of the dispute and any other pertinent factors in determining the amount not in dispute." 4 CSR 240-13.045(6) states: "If the parties are unable to mutually determine the amount not in dispute, the customer shall pay to the utility, at the utility's option, an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute."

Exhibit No. 9
Case No(s). EC-2006-0283
Date 8-16-06 Rptr per

documents pertain to a past due amount of \$563.56 for electric service at Mr. Young's current residence at 2437 Wieck Drive, which includes an amount of \$21.20 for service provided at Mr. Young's account at 10128 Cavalier Ct. Mr. Young "pray[s] this Commission for an Order directing Respondent for its wrongful and negligent acts pay Complainant as per his monetary amount requested in his formal complaint and punitive damages as that the Commission deem[s] proper."

2. AmerenUE filed its *Answer of AmerenUE To Motion For Judgment* (Answer) on June 26, 2006. AmerenUE explains that no amount of the \$563.56 is related to the current dispute before the Commission. To support its *Answer*, AmerenUE provides in its Attachments A and B detailed billing information showing that Mr. Young's past due amount of \$563.56 is not a part of the amounts in dispute in the above-captioned Complaint.

3. The Commission's Customer Service Department, which is part of the Staff and is included in the term "Staff" used in this pleading, has reviewed AmerenUE's *Answer* and analyzed the information provided in its attachments. The Staff concurs with AmerenUE. The past due amount of \$563.56 is for current service at Mr. Young's current residence at 2437 Wieck, and includes an amount of \$21.20 for service at 10128 Cavalier Court (a residence not part of the *Complaint*). No part of the \$563.56 is related to the current dispute in the above-captioned *Complaint*.

4. Commission Rules 4 CSR 240-13.045(5) and (6) pertain to disputed charges in a current *Complaint*. These rules do not apply to charges for service incurred by Mr. Young during the Complaint's pendency or to charges that were not part of his Complaint. Moreover, Mr. Young's Motion does not allege that the \$563.56 is a part of his original Complaint. Indeed, paragraph 5 of his Motion states "Complainant has a pending dispute before the

Commission that challenge[s] the validity of services, deposits, and transfer of service to another address.”

5. The Staff concurs with AmerenUE that Mr. Young should not be excused from paying his past due amount of \$563.56 – an amount not related to the current dispute - merely because he has a Complaint case pending before the Commission. Commission Rule 4 CSR 240-13.070 (7) provides ample authority for the Commission to dismiss Mr. Young’s Complaint for his failure to pay a past debt not part of this Complaint, in that:

Failure of the customer to pay the amount of a bill which is not in dispute, as determined pursuant to sections 4 CSR 240-13.045(5) or (6) of these rules, shall be ground for dismissal of an informal or formal complaint.

6. In his Motion, Mr. Young asks this Commission to order AmerenUE to pay his “monetary amount requested in his formal complaint and punitive damages as that the Commission deem proper.” Mr. Young’s Motion is irrelevant to his formal Complaint and lacks merit for the following reasons. First, AmerenUE acted in accordance with Commission rules when it sought payment for, and later issued disconnect notices for, a past due amount of \$563.56. This debt is not a part of Mr. Young’s pending Complaint case. Furthermore, Mr. Young is obligated to pay this debt under Commission Rule 4 CSR 240-13.070(7), and if he does not, his not doing so is basis for Commission dismissal of his formal Complaint.

7. Even if Mr. Young were to succeed in relating this current past due amount to his pending Complaint, the Commission has no authority to award “punitive damages”. While the Commission exercises “quasi judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is not plenary. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942). “Agency adjudicative

power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.” *State Tax Commission, supra*. The Public Service Commission is without authority to award money damages. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943).

8. Mr. Young’s Motion is without merit. As it relates to the instant case, Commission Rule 4 CSR 240-23.070(6) permits in relevant part, “The Commission...may strike irrelevant allegations.” Therefore, the Staff recommends that the Commission issue an order finding Mr. Young’s *Motion And Order For Judgment Against Union Electric Company* to be without merit.

9. In its *Answer*, AmerenUE points out that “...Mr. Young is not, and has not been current on his bills at 211 Coburg Drive and 2437 Weick Drive.” Staff believes that AmerenUE’s request that the “... Commission issue an order which makes clear that the filing of a complaint case at the Commission does not relieve Mr. Young of the responsibility to make timely payment on his current undisputed bills” is reasonable.

WHEREFORE, for the reasons stated above, the Staff concurs with AmerenUE’s *Answer* and its request that the Commission issue an order finding the Complaint’s Motion to be without merit and further that the Commission make clear to Complainant his obligation to continue paying his current bills on his two active accounts as those amounts are not part of the dispute in front of the Commission.

Respectfully submitted,

/s/ Robert S. Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 28th day of June 2006.

/s/ Robert S. Berlin

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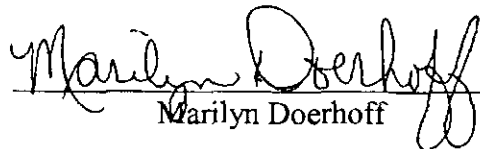
VERIFICATION OF MARILYN DOERHOFF

STATE OF MISSOURI)

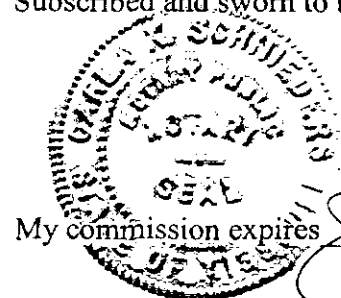
) ss

COUNTY OF COLE)

Marilyn Doerhoff, of lawful age, on her oath states: that she has knowledge of the matters set forth, in the Staff's Concurrence with AmerenUE's Answer to Motion for Judgement; and that such matters have been verified are true to the best of her knowledge and belief.

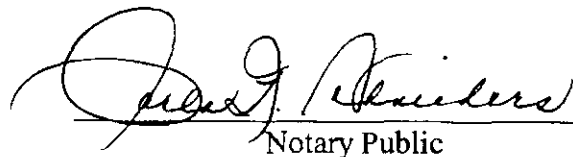

Marilyn Doerhoff

Subscribed and sworn to before me this 28th day of June, 2006.



My commission expires

June 7, 2008


Notary Public

