

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of December, 1993.

Linda Laura Hayden,)	
)	
Complainant,)	
)	
vs.)	<u>CASE NO. EC-94-93</u>
)	
Union Electric Company,)	
)	
Respondent.)	

ORDER DISMISSING COMPLAINT AND CLOSING CASE FILE

On September 17, 1993, Linda Laura Hayden (Complainant) filed a Complaint with the Public Service Commission (Commission) against Union Electric Company (UE). A Notice of Complaint was issued by the Commission on September 17, 1993; UE filed its Answer on October 15, 1993.

Complainant alleged that UE required a deposit as a condition of continued service on her account without her consent and that UE improperly applied payments made on the account to the deposit and not to current usage, though she and her husband requested that payments be applied to current usage first. Complainant also argued that she should not be held to arrangements for payment made between her husband and UE without her consent. Complainant did not specifically allege that any action taken by UE was contrary to law or Commission rule. By way of relief Complainant requested that \$588.00 which was applied to the deposit, and a reconnect fee of \$30.00 be applied to usage charges instead.

UE's Answer stated that the disputed deposit was permitted by Commission rules and did not require the consent of the customer. UE further

answered that Complainant's husband acted as her agent in his negotiations and agreements with UE since the parties are married and both received the benefit of the services provided by UE.

The facts related by the parties are that until February, 1993, Complainant and her husband received their electricity from UE and kept their account in husband's name. In February Complainant's husband asked that the account be placed in Complainant's name instead. After receiving Complainant's assent to the change, UE changed the name on the account, returned husband's initial deposit for services, and charged a new deposit for continued service because the payments had not been made for several of the preceding months. There was no interruption in service when the name on the account was changed. Payments made by Complainant's husband in June, July, and August of 1993, were applied to the continued service deposit. Complainant and her husband failed to make all of the payments so service was discontinued some time in August of 1993, then later reconnected. Complainant makes no allegation that the electric bill was paid in full at the time of the change of name on the account nor does she dispute the amounts UE alleges to be due and owing for electric service.

An electric utility may charge a deposit as a condition of continued service when "the customer has failed to pay an undisputed bill before the delinquency date for five (5) billing periods out of twelve (12) consecutive billing periods or two (20) quarters out of four (4) consecutive quarters." 4 CSR 240-13.030(2)(C). The amount of the deposit is limited to "two (2) times the highest bill of that customer during the preceding twelve (12) month period." 4 CSR 240-13.030(4)(A). There is no requirement that the customer agree to the assessment or amount of the deposit. Such charges must be approved by the Commission as a part of the utility's tariff. 4 CSR 240-13.020(8). This

particular charge was filed with the Commission and approved, P.S.C. Mo. No. 5, 2d Revised Sheet No. 176.

Partial payments made must be credited first to utility charges when the unpaid balance includes charges for "special services" [4 CSR 13.020(11)], but there is no obligation for the utility to apply partial payments first to current usage charges. Requiring the utility to apply payments to current charges first would defeat the purpose of the deposit altogether.

The Commission, after reviewing the Complaint and Answer filed in this case, finds that the complaint should be dismissed pursuant to 4 CSR 240-2.070(6) without hearing for failure to state facts upon which relief may be granted. Complainant makes no allegation that any statute or agency rule has been broken by UE. The Commission finds that the complained of deposit is reasonable and is permitted by agency rule, 4 CSR 240-13.030 and is set out in UE's tariff sheet, P.S.C. Mo. No. 5, 2nd Revised Sheet no. 176, filed with the agency and effective as of May 5, 1990. The Commission finds that the agency rule allowing deposits for continuing service does not require customer consent to the imposition of such a deposit nor does it forbid the utility to apply payments first to the deposit and then to current charges. For all these reasons the complaint fails to state facts upon which relief may be granted.

The Commission is of the opinion that the issue of agency between husband and wife is irrelevant to the disposition of the case. The recipients of electric service and the address to which service was delivered were the same at all times. UE was entitled to charge a continuing service deposit by its tariff, which is in accord with agency rule. The Commission would point out that, since the passage of Missouri's married women's property law in 1939, Section 451.220 ff. (RSMo 1986), it has not been appropriate to treat "husband

and wife as one entity under the law" as asserted by UE's Answer, p. 3, par. No. 5. Nor is it true that agency between husband and wife may be presumed merely on the basis of the marital relationship. *Mahurin v. St. Luke's Hospital*, 809 S.W.2d 418, 422 (Mo.App. 1991); *Fuller v. Lloyd*, 714 S.W.2d 698, 701 (Mo.App. 1986). There is ample evidence in Complainant's own pleading to demonstrate an agency relationship between these spouses but, because the Commission finds the issue to be irrelevant to its decision, no finding will be made on that point.

IT IS THEREFORE ORDERED:

1. That the Complaint of Linda Laura Hayden against Union Electric Company is dismissed.
2. That the docket in Case No. EC-94-93 is closed.
3. That this order shall become effective on December 21, 1993.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.