

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 10th  
day of January, 1996.

Michael H. Dalton, III,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. GC-96-160</u>
	)	
Union Electric Company,	)	
	)	
Respondent.	)	
	)	

**ORDER DISMISSING COMPLAINT**

On November 17, 1995, Michael H. Dalton, III (Complainant) filed a formal complaint against Union Electric Company (UE or Respondent). Complainant states that he is a stockholder and serves as Vice President and Chief Financial Officer of D&M Land Development Company, a Missouri corporation (D&M).

Complainant states that D&M is developing a residential subdivision in Ashland, Missouri, which subdivision is named Ash Pointe Subdivision. Complainant states that on December 8, 1994, D&M reluctantly tendered a check to UE in the amount of \$10,615.00, a refundable deposit for the extension of gas facilities to serve phase I of Ash Pointe Subdivision.

Complainant further states that on or about August 1, 1995, he became aware that UE did not charge a refundable deposit for the extension of gas facilities to another developer of residential property in Ashland, Missouri (West Oaks Subdivision).

Complainant alleges that UE has arbitrarily and capriciously applied its policies, has violated its filed tariffs, has violated federal and state

statutes pertaining to discrimination, and has unfairly discriminated against Complainant.

Complainant states that D&M is ready to open another phase of Ash Pointe and, under protest, on November 15, 1995, D&M tendered a check to Respondent in the amount of \$1,831.71.

Complainant acknowledges that 4 CSR 240-10.040(5) requires utility companies to pay interest to customers on certain types of cash deposits. Complainant states that the rule does not apply to deposits made for the purpose of securing an extension of or additions to a utility's distribution system. Complainant states his belief that this rule violates federal and state statutes pertaining to discrimination.

On December 21, 1995, UE filed an answer to the complaint. UE states that both in requiring D&M to pay an advance refundable deposit for the Ash Pointe Subdivision and in not requiring a deposit for the West Oaks Subdivision, UE acted in accordance with its tariffs; that in both instances, it applied the tariffs in a fair, consistent and reasonable manner; that it has not violated federal and state statutes pertaining to discrimination (notwithstanding that specific statutes were not identified in the complaint); and that UE has not unfairly discriminated against Complainant.

UE denies Complainant's allegation that 4 CSR 240-10.040(4) violates federal and state statutes pertaining to discrimination. UE states that it is not appropriate to require interest to be paid on deposits made for gas main extensions because those funds are expended directly by UE to construct the gas main extensions with no opportunity to UE to receive revenue or earn income from such expenditures until customers connect to the extensions. UE further states that once customer connections occur and UE becomes eligible for earnings, UE's tariffs then require the deposits to be refunded.

UE states that the complaint was filed in violation of Commission rule 4 CSR 240-2.040(7). UE states that this rule strictly limits practice by nonattorneys to the appearance of an individual on his/her own behalf and not for any other person or entity. UE states that while the complaint states that Mr. Dalton is acting as an individual, references are made in various other paragraphs of the complaint that suggest he is purporting to represent his employer, D&M, which would violate Commission rule 4 CSR 240-2.040(7).

UE requests that the Commission issue an order dismissing the complaint.

The Commission rule in effect on the date the complaint was filed relating to practice before the Commission by nonattorneys provides, in pertinent part:

(A) Any person who signs a pleading or brief, or who enters an appearance at a hearing for another person, by this act expressly represents that s/he is authorized to so act, that s/he is a licensed attorney at law in Missouri or the state of his/her residence;

(4 CSR 240-2.040(3)(A), amended November 30, 1995).

The relevant regulation was changed effective November 30, 1995. The regulation which is currently in effect states, in relevant part:

(7) Practice by nonattorneys. A natural person may represent himself or herself in a docketed case before the commission. Such practice is strictly limited to the appearance of an individual on his/her own behalf and may not be made for any other person or entity.

(4 CSR 240-2.040(7)).

The Commission is of the opinion that the regulation which was in effect at the time the complaint was filed (i.e., November 17, 1995) is applicable to this situation. The Commission would note, however, that the result is the same regardless of which version of the regulation is applied.

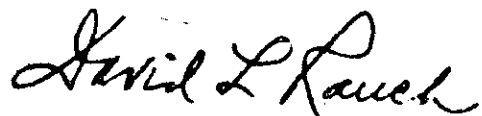
Based on the complaint and answer, the Commission determines that D&M Land Development Company is the party in interest with regard to this

complaint. This determination is based on the factual allegations in the complaint that D&M Land Development Company is the entity that has tendered refundable deposits for the extension of gas facilities to UE. The Commission further determines that these transactions are an essential basis for the complaint. Paragraph 2 of the complaint states that D&M Land Development Company is a Missouri corporation. It is well settled that corporations are recognized as entities separate and distinct from their owners in the eyes of the law. Thus, by signing pleadings or briefs or entering an appearance at a hearing, Complainant is thereby representing another person (i.e., the corporate entity D&M). This activity contravenes the Commission's rule governing practice by attorneys. The Commission's rule is based upon the Missouri Supreme Court's rules regarding the unauthorized practice of law. Thus, the Commission will dismiss the complaint.

**IT IS THEREFORE ORDERED:**

1. That the complaint filed by Michael H. Dalton, III, on November 17, 1995, against Union Electric Company be, and is hereby, dismissed.
2. That this order shall become effective on the 23rd day of January, 1996.

**BY THE COMMISSION**



**David L. Rauch  
Executive Secretary**

( S E A L )

Mueller, Chm., McClure, Kincheloe,  
Crumpton and Drainer, CC., concur.