

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Ellis M. Fischer,)
)
 Complainant,)
)
 vb.) CASE NO. EC-91-121
)
Union Electric Company,)
)
 Respondent.)

APPEARANCES: Ellis M. Fischer, 225 South Meramec, #320, St. Louis,
 Missouri 63105, pro se.

Barbara M. Sacks, Attorney at Law, P. O. Box 149,
1901 Chouteau Avenue, St. Louis, Missouri 63166,
for Union Electric Company.

Lewis R. Mills, Jr., First Assistant Public Counsel,
P. O. Box 7800, Jefferson City, Missouri 65102, for
the Office of the Public Counsel and the Public.

Andrew J. Snider, Assistant General Counsel, P. O. Box360,
Jefferson City, Missouri 65102, for the Staff of the
Missouri Public Service Commission.

REPORT AND ORDER

Procedural History

On September 14, 1990, Mr. Ellis M. Fischer (Complainant or Mr. Fischer) filed a formal complaint against Union Electric Company (Respondent or UE). Mr. Fischer alleged his electric bill for the period December 2, 1989 to January 9, 1990, was, at \$590.50, excessive. On September 28, 1990, Respondent filed its answer. UE denies it charged in excess of its permitted tariff rate. This case came to hearing on December 17, 1990, at the conclusion of which both Complainant and Respondent were

given leave to file simultaneous comments or briefs. Respondent filed its brief on January 14, 1991; Complainant, after securing an extension of time, filed his comments on February 14, 1991. Complainant appeared pro se; Respondent was represented by counsel. The Commission Staff and Office of Public Counsel were represented by counsel.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Complainant purchased his home at 450 N. Dielman, St. Louis, Missouri, in September, 1989. He began remodeling before moving in and his first electric bill was for \$34; his November bill, which he characterized as "crazy", was for \$181. Complainant paid the November bill without making a formal complaint. It was Complainant's electric bill for the period December 2, 1989 through January 9, 1990 which prompted this case, a bill in the amount of \$590.50 for consumption of 11,508 kilowatt hours of electricity.

At the time this matter was heard, Complainant owed \$300 on his disputed December billing, plus \$85 in late charges, for a total of \$385.

Mr. Fischer's stated reasons for contesting Respondent's billing include the following: (1) Complainant did not reside at the home in the billing period, thereby reducing his heating needs; (2) he had been advised by a previous owner that they had never had a winter bill as high as Complainant's; (3) Complainant, at UE's suggestion, had his electric appliances checked and all were satisfactory; (4) the difference between Complainant's November, 1989, billing, the contested billing of December, 1989, and the January billing was, to Complainant, an indication of either a malfunction or of an excessive charge.

After Complainant protested his December billing, UE conducted a meter check on January 24, 1990. The meter check is a procedure which establishes if the meter is turning at the proper r.p.m. under a load. On March 1, 1990, UE conducted a polyphase meter test, a more detailed procedure which establishes a percentage of accuracy at both high and low loads. At high loading, Mr. Fischer's meter was 99.6 percent accurate; at low loading, 100.2% accurate. UE states that Complainant's electric meter was operating within the normal limits prescribed by this Commission, and that the meter was accurately measuring Complainant's use of electricity in the disputed period.

As Complainant's 2,000 square foot home was being remodeled, work crews came and went throughout the disputed billing period. Evidence adduced at the hearing indicates that the work crews used lighting and, to some extent, benefitted from the maintenance heating. Complainant's home has three electric furnaces, two of which were operating through December, 1989. Complainant had also installed an electrically heated hot tub which maintained a "low" heat setting throughout December.

Respondent also introduced two exhibits which tend to explain how Complainant's vacant home might have used 11,508 kilowatt hours of electricity between December 6, 1989 and January 9, 1990. The first of these exhibits was a chart showing a display of "heating degree days" for the past 20 years.¹ The calendar month of December, 1989, according to UE's witness, was the second coldest December in 20 years, with a heating degree day index of 1,277. The heating degree

¹"Heating degree days" is an index to weather severity which hypothetically uses 65 degrees as an ideal outside temperature. The extent to which the actual temperature (averaged per day) falls below 65 degrees measures a "heating degree day." Example: The average daily temperature is 35 degrees. Thirty-five degrees subtracted from the ideal of 65 degrees produces a 30 heating degree day. Thirty consecutive days of 30 degree heating days would equal 900 heating degree days, a normal heating period. The colder the weather, the higher the heating degree days.

day index between December 6, 1989 and January 9, 1990, (Complainant's billing period) was even higher, at 1,349. Without more, it seems obvious that this unseasonable and bitter cold spell would make high demands on any heat sources activated by thermostatic controls, as were Mr. Fischer's furnaces and hot tub heater.

The Company also introduced a billing history of Complainant's residence at 450 Dielman. Contrary to Complainant's testimony regarding prior electric bills for winter use, UE's evidence showed that previous owners had higher December electric bills than Mr. Fischer, even when the weather was warmer. UE also stated that one previous owner's kwh daily usage, had it occurred during the contested billing period, would have produced an electric bill of \$825.58. Another previous occupant, during a monthly heating degree day index of 970, incurred an electric bill of \$606.79.

In his filed comments, Complainant concludes by stating "I simply believe that it is unfair to force me to pay a bill that flies in the face of common sense."

The Commission, although sympathetic to Complainant's position, does not believe that his billing for December, 1989, contravenes "common sense". Given the heating degree days in that heating period, the Commission is of the opinion that Complainant's bill could have been, as Respondent alleged, even higher. The fact that Mr. Fischer's home was vacant has little bearing on consumption of electricity, especially when, as here, two electric furnaces and a hot tub were thermostatically controlled to produce constant heat, at whatever level. In a period of bitter cold, heating units of any kind must work hard to maintain a selected temperature. The Commission finds that Complainant's electric meter was operating within normal limits of accuracy, and that the meter was accurately measuring Complainant's usage in the disputed period.

The record in this case supports the view of the Company; Complainant's heating and lighting load was properly measured at 11,508 kilowatt hours between December 6, 1989 and January 9, 1990.

The Commission finds that Complainant has not met his burden of proof in this proceeding. The Commission also finds that Complainant is obligated to remit the sums above mentioned to Respondent, for both the unpaid balance of \$300 for his December, 1989 electric bill and for the late charges of \$85.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction to entertain this complaint by virtue of Section 393.140(5), RSMo 1986, which provides, in part, that the Commission is empowered to entertain complaints regarding the rates, charges or acts of utilities providing electrical services to the public and to ascertain, after a hearing, whether said rates, charges or acts are unjust, unreasonable or in violation of any provision of law. The procedures governing such complaints are provided by the Commission's Rule 4 CSR 240-2.070, regarding complaints.

In instances wherein a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, the burden of proof at hearing rests with complainant. See: *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953) and *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

The Commission concludes that Complainant Ellis M. Fischer has not, for the reasons stated in the Findings of Fact, successfully discharged his burden of proof against Respondent Union Electric Company.

IT IS THEREFORE ORDERED:

1. That the complaint filed by Ellis M. Fischer on September 14, 1990, against the Union Electric Company be hereby dismissed.

2. That this Report and Order shall become effective on April 8, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Mueller, Rauch, McClure and
Letsch-Roderique, CC., Concur.
Steinmeier, Chm., Absent.

Dated at Jefferson City, Missouri,
on this 8th day of March, 1991.