

B✓
SG
R

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 15th
day of August, 1997.

Terry Reynolds,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. EC-97-496</u>
	)	
St. Joseph Light & Power Company,	)	
	)	
Respondent.	)	
	)	

ORDER DISMISSING COMPLAINT

On May 9, 1997, Mr. Terry Reynolds (Complainant) filed a complaint before this Commission against St. Joseph Light & Power Company (Respondent or Company). Complainant disputes the amount charged by Respondent for electricity. He alleges that from 1986 until 1996 a meter installed by the Company read the electricity flow to his restaurant in Maryville. The Company replaced the meter in May 1996 after Mr. Reynolds complained about the amount of his bills. The new meter prompted a similar complaint from Mr. Reynolds in November 1996, and it was replaced with another meter in December by the Company. The Complainant requests restitution of sums allegedly overpaid by him, as well as a finding that he owes the Respondent nothing.

The Company filed two answers, one on June 5 and the other on June 12. The June 5th answer contends that the first meter was exchanged in April 1996 because of an "obvious malfunction" which resulted in the Complainant being undercharged for electrical service over a two-year

period. The new meter, which was set in May 1996, recorded increased usage and resulted in higher bills for Mr. Reynolds. He again complained, and in September a second meter was installed. According to the Company, Mr. Reynolds is not dissatisfied with his current meter and does agree that he was underbilled from February 1994 through April 1996. The Company reports that Complainant believes his pre-1994 bills were excessive based on his usage in the 1980s. It contends that after analyzing the Complainant's usage and bills, the Company properly rebilled him in the amount of \$1,577.82 for service from December 1994 through April 1996.

In the Company's June 12, 1997 answer, it generally denies Complainant's allegations and contends that he owes the Company \$1,675.86 for past electric service.

On June 24 the Commission issued an order directing the Staff to investigate the basis of the dispute and file a report with its findings no later than July 31.

On July 31 Staff filed the results of its investigation by memorandum to the official case file. Staff reconciles the difference in the two amounts demanded by the Company in its two answers, noting that the \$1,675.86 represents the rebilled amount of \$1,577.82 requested in the June 5th answer plus the regular December 1996 bill to the Complainant in the amount of \$98.04. Staff concludes that Respondent rebilled Complainant's account in conformance with its rules. Respondent's rules address billing adjustments for undercharges discovered due to meter error and define the period in which the Company can rebill the customer. Staff further determined that the use of historical data is a reasonable methodology to estimate energy use for billing adjustments. Staff states that the Company's rules allow a payment schedule whereby equal

installments are made over a period not to exceed the period for which the billing adjustment is applicable. Since the rebill period is 17 months, Staff recommends that Complainant be allowed up to 17 months to repay the billing adjustment.

Respondent's installation of a defective meter does not operate as an estoppel to collection of the amount owed for utility service. Laclede Gas Company v. Solon Gershman, Inc., 539 S.W.2d 574, 576 (Mo. App. 1976).

Section 386.390.1, RSMo 1986, provides that a complaint may be made by a person which sets forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge that has been established by a public utility in violation, or claimed to be in violation, of a provision of law, rule or order or decision of the Commission. Although the complaint states Complainant's belief that an error occurred, it does not allege any violation of law, rule or order or decision of the Commission. The complaint also fails to allege any facts which would give rise to such a violation. The schedule attached to the complaint shows that the Complainant was underbilled for a period of 17 months from December 1994 through April 1996 as a result of a defective meter. While the Company is entitled to recoup this amount from the Complainant, it must afford Mr. Reynolds a similar period of time to make the repayment. The complaint and Staff memorandum do not show any basis for finding that Mr. Reynold was overcharged for usage prior to December 1994. Further, after an independent investigation, Staff was unable to find a violation of any law or rule set by the Commission.

The Commission, without argument or hearing, may dismiss a complaint for failure to state facts upon which relief can be granted. 4 CSR 240-2.070(6). The Commission finds that the Complainant has made no allegations nor has he asserted any facts giving rise to a violation of law, rule, order or decision of the Commission. Therefore, the complaint is dismissed for failure to state a claim upon which relief may be granted.

The Complainant filed a Request for Trial in Nodaway County, Missouri on August 6, 1997. Because the Commission is an administrative agency, it only conducts hearings. Courts conduct trials. Since the Commission concludes that Mr. Reynolds has failed to state sufficient facts to merit further consideration, the Request for Trial, which we treat as a request for hearing, is denied.

IT IS THEREFORE ORDERED:

1. That the complaint filed by Mr. Terry Reynolds against St. Joseph Light & Power Company on May 9, 1997 is dismissed.

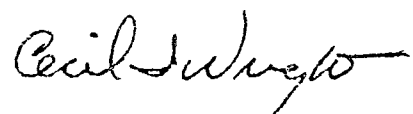
2. That the Complainant shall have 17 months to repay the rebilled amount of \$1,577.82.

3. That Complainant's Request for Trial in Nodaway County, Missouri filed on August 6, 1997 is denied.

4. That this order shall become effective on August 26, 1997.

BY THE COMMISSION

(S E A L)



**Cecil I. Wright
Executive Secretary**

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe,
CC., concur.

ALJ: Luckenbill