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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of June, 1997.

Charles A. Harter and	)	
Mary Ann Williams,	)	
	)	
Complainants,	)	
	)	
v.	)	<u>Case No. EC-97-299</u>
	)	
Union Electric Company,	)	
	)	
Respondent.	)	
	)	

ORDER DISMISSING COMPLAINT AND CLOSING CASE FILE

Charles A. Harter and Mary Ann Williams (Complainants) filed a complaint with the Public Service Commission against Union Electric Company (UE) on February 3, 1997. The Commission issued a Notice of Complaint and UE filed its Answer on March 7.

Complainants alleged that UE overcharged them during the summer of 1996 for air conditioning at a commercial building where they are tenants. They further alleged that UE improperly assessed a late penalty against them in violation of a payment plan between the parties, and violated the Commission's cold weather rule.

In its answer UE denied the majority of the allegations and asked that the complaint be dismissed.

The Commission issued an Order Directing Investigation on March 19, directing the Commission Staff (Staff) to investigate the complaint and report to the Commission within 60 days. Staff filed a

memorandum on May 15 recommending that the complaint be dismissed. Staff described its meetings with the Complainants and UE, and discussed each allegation.

A. Allegation that UE overcharged Complainants in 1996.

The Complainants stated that they were charged for air conditioning for the entire 4,000 square-foot building, rather than for the space they were renting. Complainant Harter believes he is still paying for electricity used in other parts of the building. Staff stated that because of modifications made to the electrical wiring by the landlord, it was unable to confirm whether that was correct. Complainants did not allege that their meter was malfunctioning or that UE had made billing errors. Staff stated that, if the Complainants have been charged for electricity used by the landlord, the dispute is between Complainants and the landlord, and does not involve UE.

B. Allegation that UE improperly assessed a late penalty in violation of a payment plan between the parties.

Complainants argued that UE erred in assessing a late payment penalty on arrearages when the parties had entered into a payment plan. Staff stated that UE's Commission-approved tariff permits a late payment charge even where there is a payment plan in place. Staff noted that the tariffs of Missouri Public Service Company, United Cities Gas Company, and Laclede Gas Company all exclude from late payment charges amounts due under a payment plan. For instance, Missouri Public Service Company's electric service rules and regulations include the following provision: "Missouri Public Service may add a sum equal to one and one-half percent (1½%) on any unpaid bill for electric service excluding deposit arrears, amounts agreed to be paid pursuant to a deferred payment agreement, and circumstances where restricted by law or regulation." Missouri Public Service,

P.S.C. Mo. No. 2, 1st Revised Sheet No. R-33, paragraph 6.09. The comparable provision in UE's tariff reads in relevant part: "Any portion of any bill, other than deposit arrears, remaining unpaid after the delinquent date indicated thereon will have a late payment charge of 1.5 percent of the gross unpaid amount added and shown on the next bill. Any portion of such 'arrears' remaining unpaid after the delinquent date on any subsequent bill will also have a late payment charge of 1.5 percent added thereto." Union Electric Company, Mo. P.S.C. 5, 3rd Revised Sheet No. 173, paragraph K. Staff stated that since UE's tariff does not contain the exclusion for amounts due under a payment plan, UE is properly applying its tariff in this case.

C. Allegation that UE violated the Commission's Cold Weather Rule.

The Complainants argued that UE violated the Cold Weather Rule, 4 CSR 240-13.055, by setting up a payment plan that was not based on average usage during a prior period. The building in question had been unoccupied for more than ten years before Complainants took up residence. Staff pointed out that although UE may have been unable to properly calculate a payment plan amount, the plan in question was entered into on October 23, 1996. The Cold Weather Rule applies only to transactions taking place between November 1 and March 31 of any year and thus does not apply to the payment plan here.

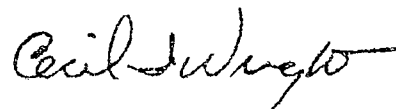
The Commission has reviewed the Complaint, Answer, and Staff report, and finds that the complaint should be dismissed. The Commission finds that the allegation of overcharging for air conditioning does not present a dispute between the Complainants and UE, but between the Complainants and the building landlord. It is possible that the internal wiring during the summer of 1996 was configured in such a way that

Complainants were being billed for energy used by other portions of the building. However, any evidence of such a configuration disappeared with the modifications made later. And, if the allegation were true, Complainants' dispute would be with the landlord, not with UE. The Commission has no jurisdiction over landlord-tenant disputes and this allegation must be dismissed. The Commission finds that UE acted in accordance with its approved tariff in applying a late payment charge to the arrears on Complainants' account. The Commission finds that the allegation that UE violated the Cold Weather Rule in calculating the amount due under the payment plan is without merit since the plan was entered into on October 23, 1996, and the Cold Weather Rule applies only between November 1 and March 31 of each year. This complaint shall be dismissed without hearing pursuant to 4 CSR 240-2.070(6) for failure to state a claim.

IT IS THEREFORE ORDERED:

1. That the Complaint of Charles A. Harter and Mary Ann Williams against Union Electric Company is dismissed.
2. That the docket in Case No. EC-97-299 is closed.
3. That this order shall become effective on July 1, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

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

ALJ: Wickliffe