BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Reinhold W. Borgmann and Joan M. Borgmann, his wife, Complainants,	)	
v.	)	CASE NO. SC-80-158
Imperial Utility Corporation, a Missouri corporation, Respondent.	)	

A public utility cannot hold a customer liable for a prior customer's unpaid bills.

Notice of termination of service in accordance with 4 CSR 240-60.030(9) to commercial customers of a public utility must be made to the customer and specify that the writing is the required 30 day notice by which the utility will terminate service on or after a specified day.

APPEARANCES: NICHOLAS G. GASAWAY, Attorney at Law, Post Office Box 127, Hillsboro, Missouri 63050,
and
GIDEON H. SCHILLER, Attorney at Law, 11 South Meramec Avenue, Clayton, Missouri 63105, for Complainants, Reinhold W. Borgmann and John M. Borgmann.

JOSEPH P. CONRAN, Attorney at Law, 100 North Broadway, Eighteenth Floor, St. Louis, Missouri 63102, for Respondent, Imperial Utility Corporation.

RORY ELLINGER, Assistant General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for Staff, Missouri Public Service Commission.

REPORT AND ORDER

On December 7, 1979, Reinhold Borgmann, et al. (Complainants) filed a complaint against Imperial Utility Corporation (Respondent). The complaint alleges violations of Respondent's tariffs by Respondent and wrongful termination of service by Respondent.

The complaint was answered on January 7, 1980, and set for hearing on March 28, 1980. The hearing date was continued and the case was heard on July 28, 1980.

The Staff of the Public Service Commission filed a motion to limit the proceedings to the issue of service termination, which was granted at the hearing.

Findings of Fact

Imperial Utility Corporation supplies sewer service to an area called the Rock Creek Watershed located in Jefferson County, Missouri. Complainants became owners of a commercial establishment called New Towne Center on May 11, 1979, which is a shopping center located in Jefferson County, Missouri, and which receives its sewer service from Respondent.

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Respondent began providing service to New Towne Center on October 1, 1977, pursuant to an application and contract with the prior owners of New Towne Center. This service continued until August 1, 1979, when Respondent terminated service for nonpayment of sewer connection fees. Service was reconnected the following day after a check for the unpaid connection fees and reconnection fees was tendered to Respondent by an agent of Fidelity Title Company.

Complainants are entitled to this complaint procedure by Section 386.390, R.S.Mo. 1978, in that they are persons alleging an act by a public utility that is in violation or claimed to be in violation of any provision of law or rule or order or decision of this Commission. Furthermore, the complainant does not have to allege a pecuniary interest which will be directly or immediately affected by the order sought.

The complaint arises from the Respondent's failure to collect all of the connection fees owed to it by the prior owners of the property involved and Respondent's subsequent termination of service to the property, which, at the time of termination of service, was owned by the Complainants.

The ultimate issue is whether the termination was in violation of Respondent's tariffs and therefore wrongful as to Complainants. There are many places of departure alleged by Complainants by which a finding of wrongful termination could supposedly be found.

Did Respondent violate its tariff Rule No. 3 (Exhibit 8) by not collecting the connection fees for sewer service applied for by the prior owners of New Towne Center? Respondent's tariff Rule No. 3.1 states that the "connection fee or fees will be required from each Customer before sewer service is provided to any premises." Tariff Rule No. 3 includes a tariff Schedule C which specifies the amount that will be owed under the tariff Rule No. 3.1. As Respondent pointed out in its brief, Schedule C allows for an additional fee to be charged for modifications or additional facilities that will result in increased discharge capacity over the initial application's specifications. But, the schedule does not state when it will be due; it states only that it will be due, and consequently, tariff Rule No. 3.1 must control when it will be due. That is, Rule No. 3.1 states that connection fees are due before service is to be provided, and therefore, on any modifications in design or additional facilities constructed that will result in an additional connection fee, said fees are due before service is to be rendered.

The requirement that the connection fee be paid before connection is not entirely practical in a commercial center where a minimum connection fee is made and a sewer is connected. Until the building is entirely filled with tenants, the ultimate discharge is not known. So as tenants come in and their discharge becomes known, additional connection fees are properly allowable. Since the sewer connection to the entire center is already hooked up, the customer, in this case the prior owners of the center, could and usually will be receiving service before paying the additional fee. But this does not mean that the Respondent is free to collect the fee when it pleases, if at all. Tariff Rule No. 3.1 still applies and the Respondent should collect immediately upon the greater discharge of waste created by the new tenant. Respondent is still in violation of its tariff for continuing service without collection of the connection fees due and owing. The tariff requires the Respondent to be in possession of the connection fee before rendering service, and it is up to the Respondent to enforce this provision, or collect as soon as the discharge is known.

Complainants did not submit the written application to the Respondent for the connection of sewer service to the New Towne Center. The prior owners supplied the written application and they are the parties who owe the connection fees due at the time of the transfer of property. Complainants cannot be held accountable for the bills of prior owners that the Respondent did not properly collect from in accordance with its tariff. Furthermore, there is not a tariff allowing Respondent to hold a new customer liable for an old customer's debts and the Commission will not allow such. The ultimate point is that Respondent cannot allow sewer hookups by a prior owner and then try to charge the new owner for such hookups. The Commission thus finds that Respondent violated its tariff Rule No. 3.1 by providing service without collecting the appropriate connection fees when they were due. Therefore, termination of service to Complainants was in violation of Respondent's tariff Rule No. 5.1, since there was not a nonpayment of a bill by Complainants by which termination could be legally carried out.

Respondent's contention that it had a contract with the prior owners of New Towne Center that was binding on subsequent owners does not relieve Respondent from following and acting in accordance with its tariff. The tariff requires payment before the supplying of service and cannot be changed by a contracting with customers. To allow such would make tariffs meaningless. It is the obligation of this Commission to set the rates of utilities and their billing practices,

which cannot be modified by a contract between a utility and its customers. The Complainants are correct in their assertion that Respondent was outside its rights in terminating service to Complainants.

Did Respondent violate its tariff Rule No. 4 by not filing a lien against the property in question? Respondent's tariff Rule No. 4 provides that Respondent may file a lien if payment for sewer service is not made within 30 days after a payment shall become due and payable. There is no requirement of a lien.

Was there notice of the termination of service in compliance with Respondent's tariff Rule No. 5 and Commission rule 4 CSR 240-60.030(9)? Respondent claims that two letters sent as carbon copies to Complainants were enough to satisfy its tariff and the Commission rule. Both the tariff and the Commission rule require 30 days' written notice to the customer by certified mail, return receipt requested, and that a copy be sent to the Missouri Public Service Commission. The letters Respondent relies on as notice were not addressed to the customer, they were addressed to the prior owners of the property and sent as carbon copies to the Complainants. Secondly, nowhere do the letters state that they are intended as 30 days' notice to the customer that service will be discontinued in 30 days if the connection fees were not paid. The letters are indications of intent to disconnect if certain fees are not paid by whomever the letters are directed at. Thirdly, the letters were not sent by registered mail. Last of all, there is no evidence that the letters were sent to the Missouri Public Service Commission as required. Respondent argues that even though the letters were not sent by registered mail, the Complainants did receive the letters. But, this does not make up for the other numerous deficiencies of the letters as being proper notice. It would be ludicrous for this Commission to accept a letter addressed to one other than the customer with no mention that the letter is to advise the customer that the letter is 30-day notice of intent to disconnect, as proper notice under the Commission rules. The customer was made aware that if the fees were not paid the Respondent would proceed to disconnect, but did not state as of when. Therefore, notice was not given in accordance with the Commission's rules or the Respondent's tariff and, consequently, the termination of service was in violation of Respondent's tariff.

Was the reconnection fee charged by Respondent excessive and in violation of its tariff? Respondent's reconnection fee was $3,241.08. This amount is considered excessive, irrespective of the fact that the termination was wrongful, since most of its composition consists of the cost to repair broken water and gas

pipes that Respondent, by its agents, damaged when disconnecting the sewer line to Complainants' building. Complainants cannot be held liable for the Respondent's actions.

Secondly, Respondent's tariff Rule 5.3 states that after termination of service, service will be resumed only upon the receipt of $400 from the customer to cover the cost of discontinuance and reconnection. This tariff does not allow the Respondent to charge a greater amount. Therefore, any charge over $400 is excessive and a violation of Respondent's tariff.

In light of the above findings that the termination was in violation of Respondent's tariff and wrongful, it must follow that any fee charged under Respondent's tariff Rule No. 5.3 for the cost of disconnection and reconnection is excessive.

One final note should be made in regard to this case that was not advanced by either party. At no time does it appear that Respondent ever presented the customer who suffered termination of service, that is, the Complainants, with a bill specifying the amount due from the customer that the nonpayment of which would result in the termination of service. Complainants received a letter addressed to the prior owners of the New Towne Center, but were never formally made aware that the Respondent intended to hold Complainants liable. A utility cannot be allowed to terminate a customer's service without first informing the customer of the bill owed and presenting said bill to the customer.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

Imperial Utility Corporation has violated its tariff rules. Respondent violated Rule No. 3 by not collecting the connection fees due from the prior owners of New Towne Center when the fees became due. Respondent violated Rule No. 5, since the customer terminated did not have an unpaid bill due and owing to the Respondent at the time of termination. Respondent further violated Rule No. 5 by not giving 30 days' notice to Complainants before terminating service. Respondent also violated tariff Rule No. 5 by charging a reconnection fee when the reconnection was not pursuant to a discontinuance for failure to pay a bill. Respondent further violated Rule No. 5 by charging a reconnection fee in excess of $400.

The Commission finds that Respondent was not within its tariff in attempting to hold Complainants liable for charges due from the prior owners of New Towne Center. Respondent's tariffs clearly state that the bill for connection fees was to be received before rendering service or, in the case of additional fees, such bills should be immediately collected. Respondent cannot look to a new customer for a bill owed by an old customer. Respondent cannot try to modify this result by contract. To do so would allow the tariff to be subject to change by contracts between Respondent and its customers. This is unacceptable, and consequently, any contract Respondent had with the prior owners cannot excuse the Respondent from its tariff, and thereby hold the Complainants liable. Therefore, the termination of service as to Complainants was wrongful.

In the absence of unusual circumstances, it is not the policy of this Commission to seek penalties under Section 386.570, R.S.Mo. 1978, resulting from a tariff violation to one customer; especially when the customer is relatively uninjured. Here the customer's only injury was a discontinuance of service from the afternoon of August 1 to the afternoon of August 2, 1979. Complainants did not suffer monetarily since a title company paid the connection fees and the fee for restoration of service. This is not to condone the tariff violations by Imperial Utility Corporation. The Commission will not tolerate such deviations in the future. The Commission is of the opinion that the circumstances of this case do not warrant an action for penalties.

It is, therefore,

ORDERED: 1. That Imperial Utility Corporation be, and hereby is, found in violation of its tariffs.

ORDERED: 2. That Complainants' requested relief, that the Commission seek penalties under Section 386.570, R.S.Mo. 1978, be, and hereby is, denied.

ORDERED: 3. That Case No. SC-80-158 be, and hereby is, dismissed from further proceedings before this Commission.

ORDERED: 4. That this Report and Order shall become effective on the 19th day of March, 1981.

BY THE COMMISSION

D. Michael Hearst

D. Michael Hearst
Secretary

(S E A L)

Fraas, Chm., McCartney and Bryant,
CC., Concur.
Dority, C., Not Participating.

Dated at Jefferson City, Missouri,
on this 17th day of February, 1981.