

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of July, 2006.

Marlyn Young,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2006-0283</u>
)	
Union Electric Company, d/b/a)	
AmerenUE,)	
)	
Respondent.)	

**ORDER DENYING COMPLAINANT'S MOTION FOR JUDGMENT
AND NOTICE OF OBLIGATIONS**

Issue Date: July 20, 2006

Effective Date: July 20, 2006

Marlyn Young filed a complaint against Union Electric Company, d/b/a AmerenUE on January 1, 2006. AmerenUE filed its answer on February 2, 2006. On March 24, 2006, the Staff of the Missouri Public Service Commission filed its report and recommendation, in which Staff recommended the complaint be dismissed, stating "that based on the information provided by Mr. Young and AmerenUE, it does not appear that AmerenUE is in violation of its tariff or Commission rules." Mr. Young filed his Objection and Response to Dismissal of Complaint Against Ameren Union Electric on April 24, 2006. AmerenUE and Staff each filed responses to Mr. Young's April 24th pleading. Having determined that resolution of this matter would require an evidentiary hearing, the Commission ordered a hearing to be held on June 14th at the Commission's offices in Jefferson City, Missouri.

Due to scheduling conflicts among the parties, the hearing was ultimately rescheduled for August 16, 2006.

On June 22, 2006, Mr. Young filed a “Motion and Order for Judgment Against Union Electric Company.” In his motion, Mr. Young stated that he had received two notices threatening to disconnect his service unless he paid a past due balance and an additional deposit totaling \$563.56. In support of his motion, Mr. Young attached, as “Exhibit A”, a Disconnect Notice dated June 5, 2006, a Disconnect Notice dated June 8, 2006, and a copy of a bill for service from May 3, 2006 to June 4, 2006. Mr. Young contended that the notices of disconnection of service and additional fines and required deposits constitute violations of 4 CSR 240-13.045(5) or (6), because he has a pending dispute before the Commission challenging the validity of services, deposits, and transfer of service to another address. In his motion, Mr. Young asks “this Commission for an Order directing Respondent for its wrongful and negligent acts pay Complainant as per his monetary amount requested in his formal complaint and punitive damages as that the Commission deem proper.”

AmerenUE filed an answer to Mr. Young’s motion on June 26, 2006. In its answer AmerenUE admitted that there is a formal complaint filed by Mr. Young which is still pending at the Commission against AmerenUE. AmerenUE further admitted that Mr. Young was sent two notices of disconnection. AmerenUE denies that the notices constitute a violation of Commission regulations, because “[n]o amount of the \$563.56 is related to the current dispute before the Commission.” AmerenUE included billing documentation supporting its position in Attachments A and B to its answer. AmerenUE further denies that it assessed additional charges, fees and deposits from a previous

address to Mr. Young's current account. AmerenUE contends that charges and fees are based upon past-due amounts on Mr. Young's current accounts. AmerenUE also contends that the additional deposit was lawfully requested pursuant to 4 CSR 240-13.030(2)(C) which allows a deposit to be requested if the customer has failed to pay an undisputed bill on or before the delinquent date for five out of twelve consecutive monthly billing periods. AmerenUE states that Mr. Young failed to timely pay five of his last twelve bills before the delinquency date. AmerenUE asks the Commission to issue an order finding Mr. Young's motion to be without merit and that the Commission make it clear to Mr. Young that he is obligated to continue paying the current bills on his active accounts as those amounts are not part of the dispute in front of the Commission.

On June 28, 2006, Staff filed a concurrence with AmerenUE's answer. The Staff states that its customer service department reviewed AmerenUE's answer and analyzed the information provided in AmerenUE's attachments. Based upon its review, Staff agrees with AmerenUE that no part of the \$563.56 in question is related to the dispute in the current case. In its recommendation Staff notes that: 1) Mr. Young neither alleges or offers evidence to support a finding that the \$563.56 is part of his original complaint; 2) Commission Rule 4 CSR 240-13.070(7) authorizes the Commission to dismiss a complaint for failure to pay an undisputed past due amount that is not part of an informal nor formal complaint; and 3) Mr. Young's request for "punitive damages" is not only without merit, but also, beyond the Commission's authority. The Staff recommends that the Commission find Mr. Young's motion to be without merit. The Staff also asks the Commission to make it clear to Mr. Young that he is obligated to continue paying the current bills on his two active accounts as those amounts are not part of the dispute in front of the Commission.

The Commission has considered Mr. Young's motion and the parties' responses and will proceed as follows. The Commission finds Mr. Young's "Motion and Order for Judgment Against Union Electric Company" without merit for the reasons stated below. First, Mr. Young does not allege that the \$563.56 amount in question is related to the current dispute in this case. Second, the relief requested by Mr. Young, the payment of the amount requested in his original complaint plus punitive damages, is not appropriate. As to the amount requested in Mr. Young's original complaint, the Commission will make a determination as to the validity of that complaint following the evidentiary hearing, currently scheduled for August 16, 2006. Mr. Young's request for punitive damages is also inappropriate, in that the Commission is without authority to award money damages¹. As correctly noted by Staff, while the Commission exercises "quasi judicial powers" that are "incidental and necessary to the proper discharge" of its administrative functions, its adjudicative authority is not plenary.² "Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise."³

Although Mr. Young did not ask the Commission to order AmerenUE to not disconnect his service pending the outcome of this complaint, the Commission could not have granted such a request given that any complainant remains obligated to pay all past, present and future billed amounts not in dispute under 4 CSR 240-13.045(5), (6) and (7).

¹ *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943).

² *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

³ *State Tax Commission*, *supra*.

Further, as referenced by Staff, 4 CSR 240-13.070(7) authorizes the Commission to dismiss a complaint for failure to pay a past debt not part of that complaint, in that:

Failure of the customer to pay the amount of a bill which is not in dispute, as determined pursuant too sections 4 CSR 240-13.045(5) or (6) of these rules, shall be ground for dismissal of an informal or formal complaint.

Simply put, Mr. Young must pay any undisputed debts he owes to AmerenUE.

IT IS ORDERED THAT:

1. The Motion and Order for Judgment Against Union Electric Company filed by Marlyn Young is without merit and is therefore denied.

2. Marlyn Young is hereby notified that pendency of this complaint does not excuse him of his obligation to timely pay all past, present and future billed amounts not in dispute and that failure to timely pay such amounts could result in the dismissal of his complaint under 4 CSR 240-13.070(7).

3. Marlyn Young is hereby notified that the Commission is without authority to grant money damages.

4. This order shall become effective on July 20, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw and Clayton, CC., concur.
Murray and Appling, CC., absent.

Voss, Regulatory Law Judge