

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Friendship Village of South County,  
12503 Village Circle Drive,  
Sunset Hills, Missouri 63127,

Complainant,

v.

Union Electric Company,  
1901 Chouteau Avenue,  
St. Louis, Missouri 63103,

Respondent.

Case No. EC-92-276

Friendship Village of West County,  
15201 Olive Boulevard,  
Chesterfield, Missouri 63017,

Complainant,

v.

Union Electric Company,  
1901 Chouteau Avenue,  
St. Louis, Missouri 63103,

Respondent.

Case No. EC-92-277

**APPEARANCES**

Paul H. Gardner, Husch & Eppenberger, 235 East High Street, Jefferson City, Missouri 65101, for Friendship Village of South County and Friendship Village of West County.

James J. Cook, Associate General Counsel, Union Electric Company, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Jeffrey A. Keevil, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri, for the Staff of the Missouri Public Service Commission.

**HEARING EXAMINER:**      Edward C. Graham.

## REPORT AND ORDER

### Procedural History

On May 13, 1992, Friendship Village of South County (FVSC) filed a Complaint against Union Electric Company (UE) in Case No. EC-92-276 and Friendship Village of West County (FVWC) filed a Complaint against Union Electric Company (UE) in Case No. EC-92-277 (jointly called Complainants). Notices were issued to UE by the Commission on May 15, 1992. On June 19, 1992, UE filed its Answer to Case No. EC-92-276. On July 10, 1992, UE filed a Motion To File Late Answer and Answer in Case No. EC-92-277. On August 5, 1992, the Commission issued its Order Directing Staff Participation, Setting Prehearing Conference And Consolidating Cases. On January 9, 1993, the Commission issued a Procedural Schedule. On March 15, 1993, Complainants filed their direct testimony. The Commission's Staff (Staff) filed its direct testimony on May 11, 1993. UE filed its rebuttal testimony on May 11, 1993. Cross-rebuttal testimony was filed by UE and Staff on June 4, 1993. Supplemental cross-rebuttal testimony was filed by UE on June 14, 1993. Several motions ensued thereafter by the parties as to the propriety of the filing of certain testimony and on June 18, 1993, the Commission issued an Order Allowing Filing Of Supplemental Cross-Rebuttal Testimony And Suspending Procedural Schedule. On July 27, 1993, the Commission issued a Notice adopting a new procedural schedule and on August 20, 1993, issued a Notice for the filing of additional testimony. On September 13, 1993, Complainants filed supplemental surrebuttal testimony. On October 4, 1993, a prehearing conference was convened at the Commission's offices located in the Truman Building in Jefferson City, Missouri, with all parties appearing and participating. The prehearing conference was immediately followed by a hearing which continued through October 6, 1993. A briefing schedule was ordered by Notice of the Commission on November 1, 1993, which was subsequently modified by Notice issued on November 15, 1993. On December 8, 1993, simultaneous initial

briefs were filed by all parties and on December 22, 1993, simultaneous reply briefs were filed by all parties.

### 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.

### Background

Complainants, FVWC and FVSC, are Missouri not-for-profit corporations which provide a way of retirement living known as "life care". FVWC was incorporated in September 1973 and FVSC was incorporated in May, 1976. FVWC is located on a contiguous, undivided tract of land encompassing 34 acres in Chesterfield, Missouri. FVWC has 288 living units and a licensed 121-bed health center which has 111 beds. FVWC was constructed in two phases with the major, original phase costing \$9.6 million. FVWC opened in August, 1975. FVSC is located on a contiguous, undivided tract of land on approximately 40 acres in Sunset Hills, Missouri. FVSC has 337 living units, 20 duplex cottages and a 118-bed health center. FVSC was constructed in three phases, with the major original phase costing \$11.9 million. Both FVWC and FVSC are regulated by the Missouri Division of Insurance and each files with the Division an annual application for a certificate of authority to operate as a life care facility. In addition, FVWC and FVSC are licensed by the Missouri Department of Social Services to operate the skilled nursing facilities located at both complexes. The day-to-day management of FVWC and FVSC is performed by Life Care Services Corporation (LCSC) under contract with FVWC and FVSC.

Respondent, Union Electric Company, is a Missouri corporation engaged in the generation, transmission and distribution of electricity as a public utility within the meaning of Chapter 393, R.S.Mo. 1986.

UE has provided electric service to Complainants since they were first constructed. Generally speaking, both Complainants have been served by UE pursuant to both the residential and nonresidential electric service tariffs. Each facility is comprised of several buildings. Buildings that contain apartment units are billed under terms of the Multioccupancy Residential Rate. The buildings which contain the "nursing home" facilities, as well as administration buildings, are served under the terms of UE's Large General Service Rate. The electric service to these various buildings is electrically segregated -- meaning that the Residential Service is metered and billed separately from the Large General Service usage.

FVWC and FVSC bring to individuals aged 62 and over a way of retirement living known as "life care". The purpose of this concept is to offer active retirees lifetime use of a living unit, support services, and long term nursing care if he or she can no longer live independently in a living unit. Residents pay an entrance fee and monthly fees in accordance with an executed Residency Agreement. The living units are apartments in every sense of the term like any other apartment building, with freedom and independence. FVWC and FVSC also provide main common facilities for dining and meeting, lounges, a library, a game room, an assembly room, and administrative offices. Services provided to residents of FVWC and FVSC include: (1) maintenance of the living units and common areas including twice-a-month housekeeping services; (2) weekly flat laundry service; (3) food service, including one meal each day in the month at no additional cost; (4) security; (5) resident services director and chaplain; (6) scheduled transportation services; (7) all utilities paid except for long distance telephone; and (8) emergency monitoring. Health care services are

available to all residents of FVWC and FVSC, and residents may be admitted directly to the health center from the living units. While residents who can do so are encouraged to return to independent living as soon as possible, those who cannot have the benefit of permanent care in the health center. There is also an Assistance-in-Living program for those who need additional personal services to live independently.

There have been no major changes of the original electric distribution system from the date of construction for both facilities. For FVSC there are 14 meters in the main building, with six designated "commercial" serving commercial loads and eight designated "residential". Two of the meters designated "commercial" loads are currently billed on the Commercial Large General Service Rate and four of the meters designated "commercial" are currently billed on the Residential Rate applicable to apartment complexes.

In contrast to FVSC, UE has segregated electric service by building at FVWC between commercial and residential loads, and each building at FVWC is metered by a single meter for both commercial and residential loads. Thus, unlike FVSC, the actual usage within each building at FVWC is not segregated between commercial and residential service.

Complainants have raised three basic issues for decision:

- (1) that the burden of proof in this case lies with UE;
- (2) that the facilities are not properly classified as "residential" buildings because they fall within the provisions of paragraph 5 of Service Classification 1(M) of UE's tariffs, which makes the 007 Residential Rate inapplicable to Complainants' premises, thus resulting in higher rates for electric service than if Complainants were served on nonresidential commercial rates for the whole facilities;

- (3) that both FVWC and FVSC were not offered the choice of segregating electric service between nonresidential and residential service, or of taking nonresidential electric service for the whole project at the time of the original, major construction of each facility.

#### Burden of Proof

Section 393.150, R.S.Mo. 1986, places the burden of proof upon the electric utility to show that a proposed increased rate is just and reasonable. Section 386.390 is the complaint statute and does not place the burden of proof upon the electric company. Normally, the burden of proof in a complaint case is upon the complaining party. Complainants contend that UE's assertion that it offered FVWC and FVSC an "election" to receive electric service segregated between "residential" and "nonresidential" rate applications at the time of construction of the facilities is essentially an "affirmative defense" upon which UE has the burden of proof.

The Commission determines that UE's Answer is a "denial" of Complainants' contention that they were not allowed an "election" and, therefore, is not an affirmative defense. Thus the burden of proof as to Complainants' main contention does not shift to UE. The Commission also is not persuaded by Complainants' argument that UE is in control of special knowledge unavailable to Complainants which could shift the burden of proof to UE. Both parties normally would be in possession of information and knowledge related to the "election" issue.

As a collateral issue, Complainants contend that UE has asserted that Sachs Electric Company, the electrical contractor for FVWC and FVSC, acted as agent of Complainants in electing segregated service for the two projects. Where

that issue is relevant, the Commission would agree with Complainants that the burden of proof lies with UE if it is, in fact, disputed by Complainants.

Are the Facilities of FVWC and FVSC Currently  
Properly Classified for Rate Application by UE

Complainants contend that UE has attempted to artificially segregate portions of FVWC and FVSC by "residential" buildings at FVWC and "residential" function at FVSC, and that such attempt is inherently arbitrary because many of the features and services that differentiate FVWC and FVSC are found throughout those portions of both facilities that UE bills on the 007 Residential Rate. Complainants argue that the entire FVWC and FVSC complexes are a "commercial venture" and that UE's classification applies the 007 Residential Rate to service supplied to FVWC and FVSC used in a "commercial venture" in violation of paragraph 5a(2) of UE's tariff provision (M). Complainants contend that a proper application of UE's tariffs would place both FVWC and FVSC exclusively on non-residential commercial rates. Complainants argue, in addition, that the cost-of-service characteristics of FVWC and FVSC establish that both should be classified as commercial ventures and that because group activities are conducted in FVWC and FVSC buildings, UE's residential service rate is not applicable. A final argument of Complainants is that UE's residential service rate is not applicable because the premises of FVWC and FVSC consist of one or more dwelling units and a commercial unit and are therefore excluded from the application of UE's residential service rate by paragraph 5a(1).

UE has responded by arguing that every "special" service itemized by Complainants in an attempt to prove the "nonresidential" nature of those buildings could be separately contracted for by any resident of any multiple-occupancy building or even a single family home, and none of these services changes the "residential" character of these buildings so designated.

The Commission determines that Staff's position correctly characterizes the appropriate rate application by UE for FVWC and FVSC. Staff's witness stated that if UE gave FVWC and FVSC the option of segregated residential and general service rates or total commercial rates, then both facilities are currently on appropriate rate schedules. The fact is that there is a "mixed" quality to the FVWC and FVSC facilities. They provide both residential and commercial functions for residents. There are four similar facilities served by UE. One of the four is served just like Complainants, residential and general services, and the other three are served by total commercial rates.

UE's witness, Richard Kovach, Manager of Rate Engineering and an employee of the company for 30 years, testified that "[t]he electrical usage of the residency units at Friendship exhibit the same relative usage pattern as the Company's residential (007) group of customers, as well as for the residential class as a whole. This is important because it shows that the current Residential Rate, which is based upon the Company's approved cost of providing residential service, is the most appropriate rate for Friendship." (Cross-rebuttal testimony, Exhibit 11, pp. 8-9).

The Commission determines that because of the "mixed" usage of these facilities, either option would be appropriate. The Commission does not interpret the Complainants' designated issue to be a true issue in this case. UE has offered Complainants the option of converting both of their facilities to total commercial rate application; however, the total estimated costs associated with such changes must be paid to UE in advance. As Mr. Kovach testified, "[t]he costs of providing service to a customer, and therefore the rates charged a customer, are different, depending on several factors, including who pays for the various components of the underground distribution facilities on the customer's property. For residential service, the Company pays for these facilities to the customer's meter, and for non-residential service, the customer pays for all



facilities between the Company's transformer and the customer's meter. Consequently, the rate for the non-residential electric service where the customer pays for a portion of the underground facilities is generally lower than for the residential rates." (Rebuttal testimony, Exhibit 10, pp. 10-15). Since UE paid for and installed the "residential" type distribution system for both FVWC and FVSC, it wants to be reimbursed for its incurred costs if either FVWC or FVSC elects at the present time to convert to total commercial rates.

The Commission determines that this election that UE is allowing Complainants, in the context of proper applicable electric rates, makes this issue essentially a nonissue, in that the choice is Complainants' as to the electric rate they want applied to them as long as they qualify. UE is not denying Complainants this choice at the present time if Complainants pay the total estimated costs associated with such changes in advance.

**Were FVWC and FVSC Offered the Choice of Segregating  
Electric Service Between Nonresidential and  
Residential Service or of Taking Nonresidential  
Electric Service for the Whole Project at the Time  
of the Original Major Construction of Each Facility**

All parties have agreed that this is the primary issue of this Complaint. Staff has asserted that this is the only issue and that the Commission's decision on this issue will be dispositive of the case. Complainants rely primarily for their evidence on project documents discovered from UE's files. Complainants rely on four documents: (1) Jim Bess to Clyde Allen internal UE memorandum (Bess memo) dated May 12, 1974, (2) E.G. Boverie to Richard Kovach internal UE memorandum (Bovarie memo) dated May 15, 1974, (3) Harry Gardiner to Jim Bess internal UE memorandum (Gardiner memo) dated June 6, 1980, and (4) UE form 236 documents. The Bess and Boverie memos are in regards to the FVWC project and the Gardiner memo is in regards to the FVSC project.

The Bess memo was prior to the beginning of construction at FVWC and discusses the electric distribution system. At the time, Sachs Electric Company had not been hired as electrical contractor. The memo states that UE "assumed we would class the complex as 8 different buildings which would require at least 7 or 8 separate metered accounts, 6 master metered residential and 1 or 2 general service."

The Boverie memo also was prior to the beginning of construction at FVWC and prior to the hiring of Sachs Electric as electrical contractor. The Boverie memo states that FVWC's developer and consultants "became quite concerned when (UE) informed them that the residential portion of the project would have to be metered for the Residential Rate." Also, other references in the memo referred to a "concession" of UE for heating and air conditioning for the small units to be metered utilizing the General Service heating rate, and a request from Boverie for Kovach to provide an "interpretive memorandum" so that all concerned with these types of projects may use it as a guide for future jobs.

The Gardiner memo came after the FVSC facility was in operation and stated, "Union Electric insisted that the apartment units be billed on the residential rate even though the developers pay the bills."

All of the named individuals in the memos were employees of UE who were intricately involved in the FVWC and FVSC projects as far as UE's involvement was concerned.

UE correctly characterizes the issue when it says: "The issue here is whether UE 'dictated' the residential rate for these buildings when the service was first installed; or whether Complainants were informed of the various options that were appropriate for service to these complexes, and whether Complainants chose the segregated service which included the residential rate for the multiple-occupancy buildings." The Commission finds that the evidence supports

UE's contention that it, in fact, did offer an option to both FVWC and FVSC to choose the electric service and subsequent rates they wanted.

First of all, it is important that Complainants have produced no documents from their files to support their claims. UE attempted to obtain any relevant documents possessed by Complainants in discovery but was unsuccessful. These were multimillion-dollar projects and it is difficult to understand why Complainants could find nothing in their own files to support their claim.

Secondly, UE has offered argument as to the ambiguous nature of the UE documents that Complainants contend support their claim. UE's arguments are that the statements in the memos are taken out of context. The Bess memo is truly unsupportive of Complainants' claim and requires a great stretch to reach the conclusion that no option was offered by UE. The Bovarie and Gardiner memos could conceivably be construed as evidence that Complainants were not offered options. UE argues that the Bovarie memo obviously references the requirement that once the residential underground system option is chosen and the service is installed accordingly, that service "would have to be metered for the Residential Rate." UE argues that it would not be logical for Bovarie to repeat the history of that decision in his memo, which in fact was about the possibility of looking at a General Service heating rate. As to the Gardiner memo, UE argues that it would have been written at least three years after a decision would have been made concerning the form of electric service for the facility. UE argues that it is obvious that once a decision was made, UE would have correctly "insisted that the apartment units be billed on the residential rate even though the developers pay the bills." UE argues that Gardiner wrote the memo during the period when the separately metered electric space heating rate was being discontinued. UE argues that a question to be addressed at that time was how to bill the service that had been billed on the space heating rate, which had been classified as commercial but used in a multiple-unit residential building. The

second paragraph of the memo addresses that question directly: "I propose that the existing heating meter be billed on the residential rate...." UE argues that the wording used by Gardiner -- "Union Electric insisted" -- suggests a meaning in the current context of this case that was obviously not intended at the time it was written. UE argues that in its proper context, Gardiner was attempting to persuade his boss to allow the FVSC residency heating service formerly billed on a commercial heating rate to be billed on the residential rate. UE argues that Gardiner was advocating that since UE insisted that the nonheating service to these facilities be billed on the residential rate, it was appropriate that the heating of those buildings be billed on that rate as well. Basically, in other words, UE insisted that the services be billed on the residential rate because that was consistent with the way the underground distribution system supplying these projects was installed, according to the UE argument.

The Commission restates UE's arguments primarily to support its finding that the memos are not truly dispositive of this case as admissions, but are determined to be ambiguous. The Staff points out UE's arguments are not facts in evidence. The Commission restates them as indicative of the ambiguity it finds exists in these memos. There is no document presented in evidence that clearly and unambiguously shows that Complainants were not offered options by UE at the time of the construction of the two facilities.

The UE form 236 documents indicate UE's cost for its distribution facilities at FVWC and FVSC. Those costs totaled \$59,148 at FVSC and \$99,184 at FVWC, according to the form 236 documents. Complainants argue that those construction costs were covered by the revenue test set forth in UE's nonresidential line extension rules and included the "residential" portions of FVWC and FVSC. Complainants contend that there was no need for Complainants to "elect" to segregate service to avoid payment of "required customer line extension contributions" because Complainants "received the distribution supply facilities

to all of the FVWC and FVSC projects at no cost under the revenue test applicable to non-residential tracts." Thus, Complainants argue it was not necessary to choose segregated service to avoid the "up-front" costs. UE's Richard Kovach's testimony is explanatory of this contention of Complainants that the type of line extension rule application controls whether these facilities should have been treated as commercial or residential. For underground service, at the time of construction, revenue tests were applied. As Kovach stated at the hearing (transcript, pages 492-493), "Two estimates were made of the line extension requirement. One was made for underground service; one was made for overhead service. And the customer was charged the excess cost of underground service." He went on to say that there was a one-and-a-half year revenue test for underground service. UE argues that the revenues from the nonresidential portion of the projects were estimated to see if they would be adequate to allow the installation of those commercial distribution facilities under the commercial line extension rules. Kovach has been unequivocal in his testimony, despite any ambiguity that may be inferred from the original forms 236, that both FVWC and FVSC received the residential facilities at no cost, based upon their initial election of service from UE. As UE argues, meeting the nonresidential revenue tests allowed Complainants to avoid paying the cost of installing secondary distribution facilities up to the transformer. Complainants did pay for nonresidential line extension costs between the transformer and the meters only.

On the basis of the essentially ambiguous nature of Complainants' evidence, they have failed to meet their burden of proof. However, the Commission finds additional evidence persuasive to support UE's defense. Both Richard Kovach and Thomas Castro, UE employees intimately involved in these projects, testified that it was company policy to provide all available options to a customer. As UE argues, in theory it makes no difference whether the customer takes one form of service or another. The company's costs are recovered

in either situation and therefore the company has no incentive to force a rate on a customer that a customer does not want. This may or may not be the case. However, the Commission is persuaded that a company policy of offering options for large projects of this type did exist at the time of construction of FVWC and FVSC.

Thomas Castro offers the most convincing evidence that options were offered Complainants at the time of the original construction. To summarize Castro's testimony: At the time of the inception of the first project, FVWC, he was actively involved in discussions between the parties. At that time he was an engineer in the customer services department of UE. His duties included, among other things, working with developers to determine the most appropriate and economical choices of electric service. Castro testified that FVWC was given several options of electric service from the beginning of the project. The initial contacts with FVWC representatives were with Sachs Electric, which was acting as FVWC's electrical consultant. He states that at the onset of the project, "[i]t was the intent of Sachs to install underground electrical service to the project at the least cost to Friendship Village", and that "[t]he customer was presented with all options that were available at that time, given the clear request for underground service." According to Castro, the customer chose to take service at the common buildings at the appropriate commercial rate and that for the apartment buildings, two options were discussed. Castro states that, "[a]s always, the final selection was made by the customer. In this case Friendship Village chose the single meter on the Residential Rate. There was no serious consideration given to any non-residential rate for these buildings, because of the economies of choosing Residential." Castro continues in his testimony: "From the inception of the project I attended numerous meetings with Sachs Electric and other representatives of Friendship Village for the purpose of exploring all feasible options of providing electrical service to the project.

We discussed many scenarios regarding the least cost alternatives to the owners. In the end, Friendship Village chose service that resulted in Union Electric providing all the outside underground wiring at virtually no cost to the owners or their contractors." (Supplemental cross-rebuttal testimony of Thomas J. Castro, Exhibit 8). Castro's testimony is found by the Commission to be uncontroverted and conclusive as providing evidence that UE, in fact, offered options to Complainants either directly or to their agent, Sachs Electric Company. Castro was apparently not as directly involved in the FVSC project. However, there does not appear to be any evidence controverting Castro's testimony as to UE's procedures. Since FVWC and FVSC were owned by the same company, it would not be probable that they would have been treated differently, and FVWC was the first project. If there is an agency issue with Sachs Electric Company, the Commission finds that UE has met its burden of proof, either under an apparent authority or ratification theory, that Sachs Electric Company acted as agent for FVWC and FVSC in approving electrical distribution configurations for the two projects.

UE has offered the additional argument that there were other similar facilities built from 1960-1985 that UE serves. Ue says that some chose to receive their electric service one way and others another way. FVWC and FVSC and Village North (1984) chose an installation option that held down initial costs. The others, Bethesda Town House (1960s), St. Louis Altenheim (1970s), and Chateau Girardeau (1980s) chose to pay for various portions of their distribution supply facilities and receive the benefits of a lower rate. UE also states through Richard Kovach that Lutheran Charities Center in St. Louis County (which started building just a few years before FVWC) is currently purchasing all of UE's distribution facilities on its property to receive service for all of its multiunit residency, health care and administration facilities and buildings at a single primary voltage metering point. To accept Complainants' argument, the

Commission would have to believe that UE either intentionally or negligently failed to offer options to FVWC and FVSC in violation of company policy and in a manner inconsistent with treatment of other similar facilities. Also, the Commission, to accept Complainants' view, would be forced to accept the fact that Sachs Electric Company, one of the largest electrical contractors in the St. Louis area, failed to explore all the options available with its clients, FVWC and FVSC, and UE. It is hard to imagine that an electrical contractor the size of Sachs Electrical Company would not have knowledge of all possible electrical distribution configurations available from UE.

Taken altogether, the evidence offered in this case clearly supports UE's defense that it, in fact, offered available options for electrical distribution and rate treatment to both FVWC and FVSC prior to the construction of either facility.

### Conclusions of Law

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

For all of the above findings of fact the Commission finds and determines that the Complaints of FVWC and FVSC should be denied in that Complainants have failed to meet their burden of proof in each case and, in fact, UE has provided sufficient evidence that both the Complaints are groundless.

Complainants have brought this action pursuant to Section 386.390, R.S.Mo. 1986:

--1. Complaint may be made by ... any corporation ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any ... public utility, including any rule, regulation or charge heretofore established fixed by or for any ... public utility, ... claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission....



The Commission concludes that the burden of proof in this complaint case in proving the primary issue of whether Complainants were offered an option for electric service prior to construction of FVWC and FVSC, is upon Complainants. In cases brought pursuant to Section 386.390, R.S.Mo. 1986, 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 the complainant, *Margolis v. Union Electric Company*, 30 Mo. P.S.C. (N.S.) 517, 523 (1991), *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953) and *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

The burden of proof in the issue of whether Sachs Electric Company acted as agent of Complainants in electing segregated service for projects rests with UE, *Bartlow-Hope Electric Corp. v. Herzog*, 692 S.W.2d 404, 406 (Mo. App. 1985), and *Hyken v. Travelers Ins. Co.*, 678 S.W.2d 454, 457 (Mo. App. 1984).

The Commission concludes that due to the ambiguous nature of the facilities located at FVWC and FVSC and with an option being offered as to applicable rates, UE would be correctly applying its tariffs in offering several rate schedule options, including taking service on the Large General Service and Primary Service Rate Schedules if such service is taken at a single delivery point, and the present application of a combination of residential and general service.

Section 393.140(5) and (11), R.S.Mo. 1986, state:

393.140. General powers of commission in respect to gas, water, electricity and sewer services.--The commission shall:

. . . . .

(5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust,

unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment and appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

. . . . .

(11) Have power to require every gas corporation, electrical corporation, water corporation, and sewer corporation to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation, or sewer corporation; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and

uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time.

The Courts of Missouri have held that the Commission "has the power to determine the classification of the service rendered" and has the jurisdiction to determine and classify which of two approved rates applies to a customer. *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W. 1044, 1047 (Mo. banc 1943), and *DePaul Hospital v. Southwestern Bell Tel. Co.*, 539 S.W.2d 542, 547 (Mo. App. 1976).

The Commission concludes that according to UE's 2nd Revised Tariff Sheet No. 159, FVWC and FVSC can switch to whichever rate schedules they want, if qualified for, so long as they pay the estimated cost associated with such changes in advance.

**IT IS THEREFORE ORDERED:**

1. That the Complaint of Friendship Village of South County against Union Electric Company in Case No. EC-92-276 and the Complaint of Friendship Village of West County against Union Electric Company in Case No. EC-92-277 be hereby denied.

2. That Late-filed Exhibit No. 58 be hereby admitted into evidence and any objections or motions heretofore unrul'd upon be hereby denied.

3. That this Report And Order shall become effective on the 14th day of January, 1994.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., concur  
and certify compliance with the  
provisions of Section 536.080,  
R.S.Mo. 1986.

Dated at Jefferson City, Missouri,  
on this 4th day of January, 1994.