

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Case Number:

LARRY V. CASE
CAROL E. CASE,

EF7-84-00163

Debtors.

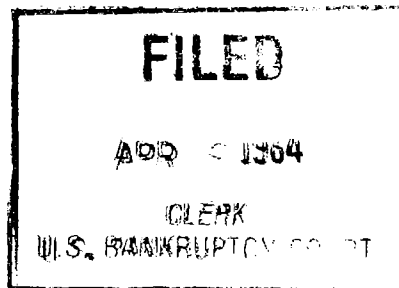
LARRY V. CASE and
CAROL E. CASE,

Plaintiffs,

vs.

BARRON ELECTRIC COOPERATIVE,

Defendant.



Adversary Number:

84-063-7

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DETERMINING ADEQUATE ASSURANCE OF PAYMENT

Debtors Larry V. Case and Carol E. Case, by Attorney Alan L. Sykes of Brunner, Sykes and Muschinske, having filed a Complaint Seeking to Enjoin Threatened Termination of Utility Services; and a Temporary Restraining Order having issued; and a preliminary hearing having been held; and the Debtors appearing in person and by counsel; and Barron Electric Cooperative by letter from Attorney

Gerald L. Liden of Liden, Cusick & Dobberfuhl, S.C., having agreed to refrain from terminating the Debtors' utilities and having petitioned the Court to determine an adequate assurance of payment pursuant to 11 U.S.C. 366(b)(1982); and the matter being submitted to the Court on briefs; the Court having considered the briefs and reviewed the complete record and file, FINDS:

1. That 11 U.S.C. sec. 366 provides, in pertinent part:

(a) Except as provided in subsection (b) of this section, a utility may not. . . discontinue service to, or discriminate against,. . . the debtor solely on the basis that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may. . . discontinue service if. . . the debtor [does not furnish] adequate assurance of payment, in the form of a deposit or other security, for service after such date.

2. That the brief submitted by Barron Electric Cooperative summarizes the Cooperative's deposit policies as follows:

A. The applicable policy requires no advance payment from property owners if a satisfactory credit experience exists (such as a letter from a prior utility that all bills have been paid promptly); otherwise, a \$50.00 deposit is required (as for service to renters).

B. Service to renters requires a \$50.00 deposit which is refunded after 2 years of a satisfactory experience.

C. Service to risk accounts is set at an amount equal to two months' usage or equal to the sum of the two highest months' usage, but in no case less than \$50.00. Again, the deposit is refundable after two consecutive years without delinquencies.

3. That the factors which gave rise to the Debtors' three figure pre-bankruptcy electric bills--farming equipment use and winter heating needs--are no longer present.

4. That, accordingly, there are no special circumstances to warrant the adoption of more stringent standards of adequate assurance than those adopted by the Cooperative. Cf. In re Santa Clara Circuits West, Inc., 27 B.R. 680,684-687 (Bankr.D.Utah 1982) (where risk of non-payment was "substantial").

5. That, in the absence of special circumstances, to set a deposit according to Cooperative policy C would violate the sec. 366(a) prohibition against discrimination on the basis of pre-order for relief debt.

6. That, in the absence of special circumstances, to set a deposit according to the "satisfactory credit experience" provisions of Cooperative policy A would violate the sec. 366(b) provision for adequate assurance.

7. That provisions of Cooperative policy B (which applies to the no satisfactory credit experience provisions of Cooperative policy A) provide adequate assurance of payment.

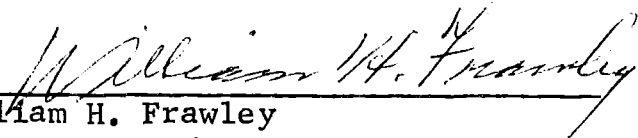
CONCLUSION OF LAW

That a deposit of \$50 will adequately assure Barron Electric Cooperative of payment of post-order for relief utility services rendered to the Debtors.

IT IS SO ORDERED.

Dated: April 9, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge

APPENDIX

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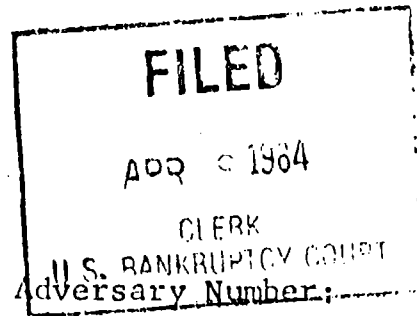
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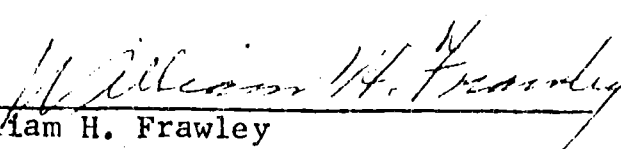
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