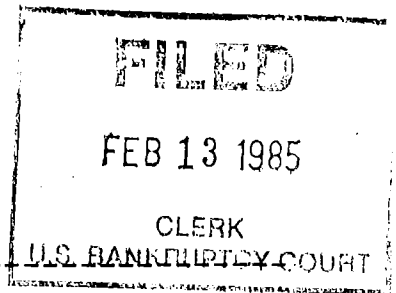


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DAVID A. RISCH  
LORA J. RISCH

WF7-84-02061

Debtor.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND  
ORDER OF REASONABLE MODIFICATION OF SECURITY DEPOSIT

David A. and Lora J. Risch, by Attorney Van Buren Wake, Jr., having filed a motion to determine the reasonableness of a deposit; and hearings having been held; and the Debtors appearing by counsel; and Wisconsin Public Service Corporation (hereinafter WPSC) appearing by Terrence J. Byrne; the Court, being fully advised in the premises, FINDS THAT:

1. On October 18, 1984, the Debtors filed for relief under Chapter 7 of the Bankruptcy Code. The Debtors' schedules show that WPSC is an unsecured creditor with a claim for utility services rendered from September, 1983, to June, 1984.

2. Upon learning of the Debtors' petition, WPSC demanded a \$400 deposit as adequate assurance of payment of post-petition service. According to WPSC, a \$400 deposit is required of all bankrupt accounts (no evidence of other WPSC deposit policies was presented).

3. In response, the Debtors filed the motion to determine reasonableness of deposit which is presently before the Court.

4. The Debtors' winter utility bills are approximately \$200 a month.

5. A utility may not discontinue service to, or discriminate against, a debtor because a petition for relief was filed<sup>1</sup> or because a pre-petition debt was not paid when due; however, the debtor must, within 20 days after the petition is filed, furnish adequate assurance of payment to the utility. 11 U.S.C. sec. 366. The Bankruptcy Code does not prevent a utility from proceeding outside of the Bankruptcy forum to collect amounts due from a debtor which arise and accrue after a Chapter 7 proceeding is commenced. In re Deiter, 33 B.R. 547, 548 (Bankr.W.D.Wis. 1983).

6. The WPSC policy of requiring a \$400 deposit of all bankrupt accounts violates recently amended 11 U.S.C. sec. 366.

7. However, WPSC is entitled to a reasonable deposit or other security as adequate assurance of payment. The amount required to adequately assure payment is determined as of the day the Debtors filed for relief.

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<sup>1</sup> The prohibition of disconnection or discrimination solely on the basis of filing for bankruptcy was added to 11 U.S.C. sec. 366 by section 443 of the Bankruptcy Amendments and Federal Judgeship Act of 1984.

8. In the absence of any evidence regarding WPSC's standard deposit policies,<sup>2</sup> this Court must fashion relief based upon the facts of this case and its familiarity with another utility's policies. See In re Case, EF7-84-163 (Bankr. W.D.Wis. April 8, 1984) (attached as an Appendix) (Barron Electric Cooperative policies set forth).

9. Here, the winter heating season and the Debtors' financial condition are special circumstances which warrant the imposition of a significant security deposit.

CONCLUSION OF LAW

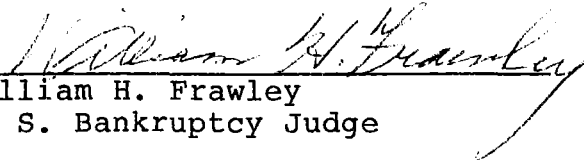
A deposit of \$200 would furnish adequate assurance of payment of WPSC.

ORDER

IT IS ORDERED THAT, as a reasonable modification of the amount of the deposit requested by Wisconsin Public Service Corporation, Debtors David A. and Lora J. Risch pay said Corporation \$200 security deposit in \$10 monthly installments commencing March 1, 1985.

Dated: February 13, 1985.

BY THE COURT:

  
William H. Frawley  
U. S. Bankruptcy Judge

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<sup>2</sup> In re Deiter, Paragraph 5 supra, which briefly refers to an unspecified Wisconsin Public Service Commission guideline, does not assist this Court. See generally WPSC sec. 113.131 (if a utility requires a deposit, it may not require more than an amount equal to two highest consecutive months' bills).

APPENDIX

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:

Case Number:

LARRY V. CASE  
CAROL E. CASE,

EF7-84-00163

Debtors.

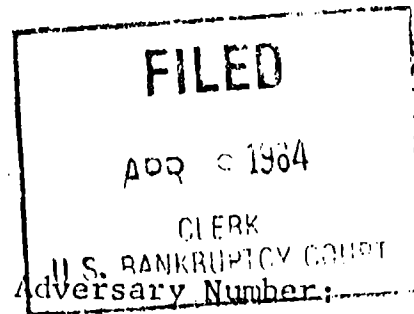
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LARRY V. CASE and  
CAROL E. CASE,

Plaintiffs,

vs.

BARRON ELECTRIC COOPERATIVE,

Defendant.



84-063-7

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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.

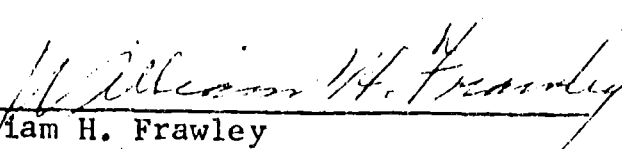
CONCLUSION OF LAW

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:

  
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William H. Frawley  
Bankruptcy Judge