

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

Eric E. Vickers,)	
Complainant,)	
)	
vs.)	Case No: EC-2011-0326
)	
Union Electric Company, d/b/a)	
Ameren Missouri)	
Respondent.)	

EVIDENTIARY HEARING BRIEF

COMES NOW Union Electric Company d/b/a Ameren Missouri (the “Company”) and offers the following brief regarding the requirements for contract formation.

CONTRACT FORMATION

A valid contract must include an offer, an acceptance and consideration. *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. banc 1988).

The evidence will show that Mr. Vickers and the Company entered into a contract, specifically, a Cold Weather Rule Payment Agreement. Ameren Missouri offered that Mr. Vickers could pay his delinquent account balance in twelve monthly installments, provided he agreed to make: a timely initial payment amount; twelve timely monthly installment payments of the delinquent balance; and timely payments of all other amounts due on his account. Mr. Vickers and the Company each agreed to these terms. In exchange for Mr. Vickers’ promise to make these timely payments, the Company agreed not to disconnect his service because of the delinquent balance.

The fact that the contract was not confirmed in a writing signed by the parties is not determinative of whether there was a contract.¹ Missouri courts have determined that "[a]

¹ The Company acknowledges that § 432.010 and § 400.1-206 RSMo provide that actions on contract cannot be brought in relation to certain types of contracts unless those contracts are in writing and signed by the party to be held accountable. However, the statutes provide an exclusive list of such contracts (actions to recover against an executor’s own estate, promises to pay the debt of another person, marriage contracts, real estate contracts, real estate leases for longer than a year, agreements not to be performed within a year, or contracts for the sale of personal property exceeding \$5,000 in value), which does not encompass the Cold Weather Rule Payment Agreement at issue here. Further, this is not an action on a contract.

contractual relationship may be established without a written contract where the circumstances and the acts and conduct of the parties support a reasonable inference of a mutual understanding and agreement that one party perform and that the other party compensate for such performance." *Follman Properties Co. v. Henty Constr. Co.*, 664 S.W.2d 248, 250 (Mo. App. 1983). "The agreement between the parties arises from their intention, implied or presumed from their acts, where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract." *Id.*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Evidentiary Hearing Brief was served on the following parties via hand delivery on October 31, 2011 and via electronic mail (e-mail) on this 1st day of November, 2011.

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