**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

**ERIC E. VICKERS, )**

**PERSONALLY AND ON BEHALF OF All )**

**CUSTOMERS OF AMEREN MISSOURI WHO )**

**HAVE SOUGHT RELIEF UNDER THE COLD )**

**WEATHER RULE )**

**)**

**Complainant ) Case No. EC-2011-0326**

**vs. )**

**)**

**AMEREN MISSOURI, )**

**)**

**MISSOURI PUBLIC SERVICE COMMISSION )**

**)**

**Defendants )**

**RESPONSE TO ORDER OF**

**MISSOURI PUBLIC SERVICE COMMISSION**

**COMES NOW** complainant, Eric E. Vickers, and in response to the June 14, 2011 Order of the Missouri Public Service Commission (“PSC”), states the following.

**I. RESPONSE TO MOTION OF DEFENDANT AMEREN TO DISMISS COMPLAINT**

Ameren’s Motion to Dismiss the Complaint per 4 CSR 240-2.070 (6) cites two (2) grounds. First, Ameren contends that the Complaint cannot be brought as a class action complaint on behalf of consumers similar to Complainant. Ameren cites no legal authority for its position, but rather cites the general and abstract proposition that the “Commission is a regulatory body of limited jurisdiction…” [Ameren Answer and Motion to Dismiss at p. 5 paragraph 17.]

The class action nature of the Complaint is based upon the similar and common claim of all Missouri consumers that the Missouri Cold Weather Rule (“CWR”) be enforced by the Missouri Public Service Commission (“PSC”), specifically the provision mandating that any agreements entered into by a utility with a consumer under the CWR be placed in writing. The remedy being sought by the Complaint would necessarily impact all Missouri consumers who have either participated in the CWR program in the past or could potentially in the future.

Ameren attempts to dodge the universal impact of its actions and policies on Missouri consumers by attempting to focus on the individual circumstances and transactions with Complainant. However, these circumstances and transactions with Complainant only served to give rise to the Complaint, as it became disclosed to Complainant during the course of his dealings with Ameren that Ameren was violating not only his rights, but all other consumers’ rights by having as a policy to not have agreements with consumers under the Cold Weather Rule put in writing, despite the law so specifying.

Indeed, in order to ensure that this issue of Ameren not putting CWR agreements in writing would be the focus of the PSC in filing the Complaint, Complainant paid under protest the amount Ameren claimed was due, and then filed this Complaint.

The second ground for dismissal, Ameren argues, is that a finding in favor of Complainant would “deprive the Company of its property in violation of its due process rights…” [Ameren’s Answer and Motion to Dismiss at p. 6 paragraph 18]. In arguing such, Ameren is arguing the Complaint should be dismissed not because it is not well based in law and fact, but because the remedy of finding Ameren in violation would require a repayment by Ameren to customers that it claims would violate its constitutional rights.

By making this its argument for dismissal of the Complaint, Ameren seeks to sidestep the gravamen issue raised by the Complaint. Namely, has Ameren violated the law by not putting in writing agreements made under the Cold Weather Rule? Ameren’s Answer and Motion to Dismiss is so egregiously lacking in addressing this unambiguous issue that its silence bespeaks its acknowledgement that it has not followed the law.

The Complaint in paragraphs 2-4 explicitly and clearly state the issue before the Commission, the issue nowhere addressed by Ameren in its Motion to Dismiss:

“2. Under 4 CSR 240-13.055, any person seeking relief under the CWR has the right to pay their utility provider 10% of outstanding balance of their utility bill, plus the cost of an average month’s bill, with the balance of the utility bill paid out in monthly installments over a twelve month period.

3. The CWR mandates that the utility company enter into a payment agreement with a customer who seeks relief under the CWR, with 4 CSR 240-13.055 (10) stating in relevant part: **“Payment Agreements. The payment agreement for service under this rule shall comply with the following:…The utility shall confirm in writing the terms of any payment agreement under this rule…”**

4. Under the CWR, if a customer defaults on an agreement entered into with a utility under the CWR, the utility can require the customer to pay 80% of the outstanding balance of their utility bill, rather than pay the lesser 10% plus one month’s average balance.”

The facts in the Complaint specify the manner in which he was denied the benefit of the CWR due to Ameren’s contention that it had entered into an agreement with Complainant under the CWR, while acknowledging there was no written agreement. The facts in the Complaint also specify that Ameren advised Complainant that it was the policy of Ameren to not put in writing agreements made with customers under the CWR.

WHEREFORE, for these reasons, Ameren’s Motion to Dismiss should be denied.

**II. RESPONSE TO PSC STAFF DATA REQUEST**

Complainant states the following with respect to the five (5) Data Requests of the PSC Staff per May 6, 2011 letter from PSC Consumers Services Manager Gay Fred:

1. Data request No. 1 is illogical in asking Complainant to, “provide the supporting documentation whereby you obtained your reference in Count 1, 2 that under 4 CSR 240-13.055,” for the reasons that (a) 4 CSR-240-13.055 speaks for itself; and (b) the Complaint is about the lack of documentation by Ameren – i.e. a written agreement under the CWR. Thus, it seems a nullity to ask Complainant for “supporting documentation” when the point of the Complaint is that Ameren failed to provide plaintiff written documentation of an alleged agreement under the CWR.

2. Same answer as for Data request No. 1.

3. Answer to PSC Data Request 3 to, “please provide me the language in the rule or with your understanding, where in the rule there [sic] a timeline for when the terms in writing must be submitted?”: Read rule, 4 CSR 240-13.055 (10) (A).

4. Complainant objects to relevance of Data Request 6 question of why formal complaint filed rather than informal complaint. That being said, Complainant found dealing with Ms. Fred prior to filing the formal Complaint a futile effort, inasmuch as she seemed biased towards Ameren and not competent or capable of understanding the issue of a written agreement under the CWR.

5. Complainant objects to relevance of Data Request 5.

**III. RESPONSE TO COMMISSION INQUIRIES**

In response to the “inquiries” made by the Commission, Complainant states that:

1. Complainant is pursuing this matter pro se, and consequently the information sought as to his attorney status is irrelevant.

2. On June 16, 2011 Complainant was walked through EIFIS System by PSC personnel, provided an access code, and has received email notifications of filings.

3. Complainant has received copies of the April 4 and April 25, 2011 Commission pleadings.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing was faxed and emailed this 5th day of July, 2011 to Steven C. Reed, General Counsel Public Service Commission.

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