

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

CHARLES HARTER,	)	
COMPLAINANT	)	
V.	)	CASE NO. EC2013-0491
	)	
UNION ELECTRIC COMPANY dba,	)	
AMEREN, RESPONDENT	)	

COMPLAINANT’S APPLICATION FOR REHEARING

COMES NOW Complainant, and for his Application for Rehearing prays that the Commission rehear his cause for the following two reasons:

I.
Improper interpretation of 4 CSR 240-13.055(2)

Complainant entered into a cold weather rule agreement with respondent in 2012, accidentally made a default in his March 2013 payment and requested to be reinstated to the cold weather plan in April 2013. The respondent contends and the Decision of the Commission approves, the position that complainant was not eligible for reinstatement to his cold weather plan agreement because his application was not made prior to March 31. This is an incorrect interpretation of the Rules.

4 CSR 240-13.055(2) provides that the cold weather rule “takes precedence over other rules on provision of heat-related utility service from November 1 through March 31 annually”. Most importantly, this provision is not included as a definition in 4 CSR 240-13.055(1), but is a stand-alone rule. Subsection 1 says “The following definitions shall apply in this rule:” and lists A – E. Had the commission intended the March 31 date to control in this facts, it wouldn’t have codified this phrase as subsection (2), but instead as subsection (1)(F), thus making it

a definitional provision applicable to the entirety of rule 4 CSR 240-13.055. It did not. Thus March 31 is not a significant consideration in this case. The only thing the rule says is that it March 31 "takes precedence", not that it is exclusive, or even informative. Under the facts of this case, there is no conflict in rules, therefore no need for "precedence" in application of the rules to decide the case.

Similarly, subsection (10)(B)(5) makes no reference at all to the March 31 date of subsection (2). It speaks only of "a customer" on a "cold weather rule payment agreement". No dates are given and no requirement of "November 1 to March 31" is provided nor required. There is no provision in this rule that would make complainant not eligible for reinstatement to his cold weather rule plan. Since subsection (2) is not definitional, but merely another subsection of equal and independent authority to subsection (10), it cannot control subsection (10). Subsection (10)(B)(5) refers merely to "If a customer defaults on a cold weather rule payment agreement but has not yet had service discontinued by the utility" (which is the fact situation presented by claimant), "the utility shall permit such customer to be reinstated on the payment agreement." Respondent refused to reinstate complainant. The use of the word "shall" is mandatory, and this refusal is thus a violation of the Rules of the Commission.

To illustrate this point, consider subsection (3) which concerns notice requirements, which is a different subject than subsection (10) which concerns payment agreements. Subsection (3) begins with the words "From November 1 through March 31, prior to discontinuance of service due to nonpayment, the utility shall .." The Commission has explicitly intended, through this rule, to limit application of the notice requirements to this time period. There is no such limitation on subsection (10). The Commission thus intends no such limit on payment agreements.

This makes sense, in that repayment under the provisions set out in (10)(B) (1) will be a “(12)-month plan” and under provisions of (10)(B)(2) will extend “over a reasonable period in excess of twelve (12) months. It would be nonsensical to limit operation of this plan to November 1 to March 31, but that is the interpretation of this respondent and this Decision. The Commission, in fashioning the rule (10), as seen by this reference, clearly did not limit reinstatement to applications before March 31. The only eligibility requirement is that it be “a customer” who “defaults on a cold weather rule payment agreement”. To interpret the rule to require application for reinstatement to be made before March 31, as does Respondent and this Decision, makes a 12 month plan, which is required by the rule, completely unenforceable and nullifies the rule.

For these reasons, the following finding from page 16 of the Decision is in error:

Mr. Harter did not request reinstatement of his payment agreement until April 30, 2013, which was outside of the time period for which the cold weather rule reinstatement provision was operative. Ameren Missouri did establish a non-cold weather rule payment agreement for Mr. Harter around May 6, 2013. The Commission concludes that Mr. Harter was not entitled to reinstatement of his cold weather rule payment agreement when he made the request on April 30, 2013

II.

Respondent violated 4 CSR 240-13.070 in sending Disconnection notices

Respondent alleges complainant failed to make payments and complainant disputes that. If Respondent is right, what is the remedy? The correct remedy would be dismissal of a formal complaint under 4 CSR 240-13.070(7). Respondent could have filed a Motion to Dismiss the complaint. This would be the proper procedure the Commission has set out to settle such disputes. The hearing officer could have determined and resolved this dispute within the framework of administrative law procedure set out by the Commission. But instead, Respondent

sent multiple disconnection notices to complainant and attempted to disconnect him during the pendency of the hearing process in order to gain an unfair advantage in the administrative process. That was not within the bounds of the rules of the Commission, as the disconnection was for respondent's abuse of the cold weather rule (see rehearing application I) it would fall under 4 CSR 240-13.050(2)(F) in that wrongful refusal to reinstate the cold weather amount created a "bill correcting a previous underbilling" and complainant clearly claims "an inability to pay" and the payment agreement offered by the utility was not "equal to" the "period of underbilling" which was the cold weather rule.

In addition, the disconnection was based on the refusal to reinstate the cold weather rule, and thus was clearly "currently the subject of a dispute pending with the utility or complaint before the commission" of 4 CSR 240-13.050(5); was obviously "relative to the matter in dispute during the pendency" 4 CSR 240-13.070(6); and was a matter for the Commission to decide fairly through its procedures without coercion. Thus the finding and decision on page 16 that the amounts were "not in dispute" is in error.

WHEREFORE, complainant applies for REHEARING this 24th day of October, 2013.



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