

**BEFORE THE PUBLIC SERVICE COMMISSION
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,

vs.

Union Electric dba Ameren Missouri and
Missouri Public Service Commission,

Defendants.

Case No. EC-2011-0326

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by
and through counsel, and for its *Brief*, states as follows:

Introduction

This complaint was brought by Eric Vickers against Ameren Missouri and against the Public Service Commission. In Count I, Complainant charged that Ameren Missouri violated subsection (10) of Commission Rule 4 CSR 240-13.055, the Cold Weather Rule, by failing to confirm, in writing, the terms of a payment agreement and wrongfully requiring him to pay a larger portion of his outstanding bill in order to maintain electric service. In Count II, Complainant alleged that the Public Service Commission failed to require Ameren Missouri to comply with its Cold Weather Rule. The complaint was styled as a class action and sought extensive relief, including an injunction, refunds and money damages.

On August 10, the Commission dismissed all of the complaint except Count I. A hearing was held on the remaining count on October 31, 2011. Eric Vickers appeared *pro se* and testified in support of his complaint. Carol Gay Fred testified for the Staff. Cathy Hart and Michael Horn testified for Ameren Missouri.

Argument

It is Staff's position that Ameren Missouri has not violated any statute, rule or order of the Commission in its dealings with Mr. Vickers. Subsection (10) of Commission Rule 4 CSR 240-13.055, the Cold Weather Rule, provides:

(10) Payment Agreements. The payment agreement for service under this rule shall comply with the following:

(A) A pledge of an amount equal to any payment required by this section by the agency which administers LIHEAP shall be deemed to be the payment required. **The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two (2) weeks.**

(B) Payment Calculations.

1. The utility shall first offer a twelve (12)-month budget plan which is designed to cover the total of all preexisting arrears, current bills and the utility's estimate of the ensuing bills.

2. If the customer states an inability to pay the budget plan amount, the utility and the customer may upon mutual agreement enter into a payment agreement which allows payment of preexisting arrears over a reasonable period in excess of twelve (12) months. In determining a reasonable period of time, the utility and the customer shall consider the amount of the arrears, the time over which it developed, the reasons why it developed, the customer's payment history and the customer's ability to pay.

3. A utility shall permit a customer to enter into a payment agreement to cover the current bill plus arrearages in fewer than twelve (12) months if requested by the customer.

4. The utility may revise the required payment in accordance with its budget or levelized payment plan.

5. If a customer defaults on a cold weather rule payment agreement but has not yet had service discontinued by the utility, the utility shall permit such customer to be reinstated on the payment agreement if the customer pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due.

(C) Initial Payments.

1. For a customer who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12)-month budget bill amount calculated in subsection (10)(B) of this rule unless the utility and the customer agree to a different amount.

2. For a customer who has defaulted on a payment plan under the cold weather rule, the initial payment shall be an amount equal to eighty percent (80%) of the customer's balance, unless the utility and customer agree to a different amount.

(Emphasis supplied.)

Mr. Vickers contends that Ameren Missouri violated Paragraph (A) of the above rule because it did not memorialize its payment agreement with Mr. Vickers in writing. However, Mr. Vickers never made the initial payment called for by the agreement and, consequently, Ameren did not prepare the written memorial of the agreement. It is general utility practice in Missouri to memorialize a Cold Weather Rule payment agreement in writing only after the

initial payment has been made.¹ If the initial payment is not made, the agreement is not reduced to writing.² This practice reflects the language of Rule 4 CSR 240-13.055(6):

(6) Discontinuance of Service. From November 1 through March 31, a utility may not discontinue heat-related residential utility service due to nonpayment of a delinquent bill or account provided—

(A) The customer contacts the utility and states his/her inability to pay in full;

(B) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section (10) of this rule;

(C) The customer complies with the utility's requests for information regarding the customer's monthly or annual income; and

(D) There is no other lawful reason for discontinuance of utility service.

(Emphasis added.)

Facing disconnection for non-payment,³ Mr. Vickers entered into a Cold Weather Rule payment agreement with Ameren on January 3, 2011, with an initial payment amount of \$441.00.⁴ That payment was due by January 10,

¹ Tr. 3:68, 86. The reason is that the institution of the payment agreement removes the customer from disconnection status, which in turn makes them ineligible for LIHEAP energy assistance funds. Tr. 4:103-4.

² *Id.*, and see Tr. 3:67 (Gay Fred):

Q. So again, so I'm clear, you're saying that 11 the only time Ameren issues confirmations in writing is when the initial payment is made?

A. For Cold Weather Rule payment agreement, yes.

³ Tr. 4:95. It is typically the case that customers request Cold Weather Rule payment agreements on the eve of disconnection for non-payment. Tr. 3:83-6.

⁴ Tr. 4:96.

later extended to January 14.⁵ However, Mr. Vickers never made that initial payment and a written memorial of the agreement was not produced.⁶

In February, again facing disconnection for non-payment,⁷ Mr. Vickers again requested a Cold Weather Rule payment agreement.⁸ As a defaulter, his new initial payment amount was larger.⁹ Ameren agreed to reinstate the Cold Weather Rule payment agreement if an initial payment of \$1,000.00 was received by February 24.¹⁰ Mr. Vickers did not make that payment, either.¹¹

In March, Mr. Vickers again requested a Cold Weather Rule payment agreement.¹² Ameren agreed to reinstate the agreement if Mr. Vickers paid \$1,680.00 by March 15.¹³ In fact, Mr. Vickers did pay \$1,679.00 by March 17.¹⁴ Ameren then proceeded as though Mr. Vickers had complied with the agreement and sent a written Cold Weather Rule payment agreement to Mr. Vickers on March 24.¹⁵

⁵ *Id.*, at 96-7.

⁶ *Id.*, at 102.

⁷ *Id.*, at 104-5.

⁸ *Id.*, at 107.

⁹ *Id.* and see 4 CSR 240-13.055(10)(C)2. In fact, the initial payment requested by Ameren was less than the rule allows.

¹⁰ Tr. 4:107.

¹¹ *Id.*, at 110.

¹² *Id.*, at 112.

¹³ *Id.* This amount was less than the 80% allowed by the rule.

¹⁴ *Id.*, at 113-14.

¹⁵ *Id.*, at 115; Complainant Ex. A.

Conclusion

The record herein shows that Ameren Missouri complied in all respects with the provisions of Commission Rule 4 CSR 240-13.055, the Cold Weather Rule. When Complainant, faced with disconnection for non-payment, called and requested a Cold Weather Rule payment agreement, Ameren offered one, calculated as the rule requires. Complainant twice defaulted, and Ameren each time offered to reinstate the payment agreement and agreed to accept an initial payment that was less than the rule permitted.

WHEREFORE, Staff prays that the Commission will find for Ameren Missouri on this complaint.

Respectfully submitted,

s/ Kevin A. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **6th day of December, 2011**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson