

## BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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	)	

### COMPLAINANT'S MOTION FOR REHEARING

**COMES NOW** complainant, Eric E. Vickers, and, pursuant to Section 386.500 Missouri Revised Statutes, requests hereby a rehearing by the Commission for the following reasons.

### THE COMMISSION'S DECISION EXCEEDS ITS POWERS OWING TO THE COMMISSION IMPOSING ITS OWN ERRONEOUS LANGUAGE AND CONDITIONS ON THE COLD WEATHER RULE

The Commission's Report and Order of January 20, 2012 both evades an analysis of whether Ameren violated and continues to violate the Missouri Cold Weather Rule ("CWR") by failing to put in writing agreements with customers under the CWR, and rests on an interpretation of the law by the Commission that amounts to the Commission creating for Ameren a law of Ameren's choosing.

The Cold Weather Rule specifically and explicitly requires that any agreement entered into under the CWR be memorialized in writing, with Subsection 10 (A) stating:

"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 weeks." 4 CSR 240-13.055 RS. (10) (A) Revised Statutes of Missouri.

In complete deference and fealty to Ameren, the Commission in its decision myopically reads Subsection 10 (A) as stating:

*“Only after the utility has received from the customer an initial payment* 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 weeks.” (Italics and underline added)

The Commission is not empowered to insert into Missouri statutes and regulations its own wording and language. There is absolutely nothing in the language of Subsection 10 (A) of the CWR that requires a customer to make an initial payment as a condition to having their CWR agreement confirmed in writing.

It is preposterous – and an insult to the intelligence of Missouri consumers – for the Commission to allow Ameren to escape the obligation to confirm in writing CWR agreements by making a finding of fact that, “It would confuse a customer to receive written confirmation of a CWR agreement...” [Commission Report and Order paragraph 22].

Not only does the Commission’s decision not give any analysis or thought to the consumer protection rationale behind the law’s requiring a written confirmation, it swallows whole and deep Ameren’s deceitful and disingenuous argument that it does not provide written confirmations to customers upon their entering into a CWR agreement because it would only “confuse” them.

In addition to lacking a legal foundation, the Commission’s decision rests upon a fact not established in the record, namely, that: “Providing written confirmation of a CWR agreement following receipt of the initial payment is the practice of all regulated Missouri utilities...” [Commission Report and Order paragraph 16].

The practices of the other utilities with respect to issuing written confirmations under the CWR was not an issue on which evidence was presented at the hearing – other than the record reflecting Complainant’s stating in conversations with Ameren and PSC staff that his experience was that Laclede Gas, unlike Ameren, issued a written confirmation of a CWR agreement.

No evidence was presented at the hearing as to the policy and practices of Laclede Gas with respect to issuing written confirmations of CWR agreements. Consequently, paragraph 16 of the Commission’s Order is not sufficiently substantiated to credibly constitute a finding of fact.

Moreover, the practices of other utilities is irrelevant to the question of whether an initial payment is required under Subsection 10 (A) as a condition to a utility confirming in writing a CWR agreement.

Similarly, irrelevant is Ameren's self-serving testimony and finding of fact by the Commission that, "The majority of people who enter into CWR agreements with Ameren Missouri understand the terms of the agreements and the procedure for making the initial payment and receiving subsequent written confirmation of the agreement," and that, "Ameren Missouri does not receive complaints or inquiries from the majority of people who enter into CWR agreements..." [Commission Report and Order paragraphs 25 and 26].

In addition to being irrelevant to the issue, there was hardly sufficient evidence presented at the hearing for the Commission to credibly reach a factual finding that the majority of Ameren customers understand their rights under the CWR to a written confirmation, or reach a factual finding that they are satisfied with Ameren's administering the CWR.

Accordingly, the Commission's decision resting on statutory and regulatory language of its own creation exceeds its powers and authority under the law, and its propounding findings of fact that lack a credible evidentiary foundation constitutes an abuse of its discretion.

WHEREFORE, Complainant requests a rehearing.

Respectfully submitted,  
/S/ Eric E. Vickers

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#### **Certificate of Service**

I hereby certify that a copy of the foregoing was emailed via the PSC EFIS this 21th day of February 21, 2012 to all parties of record.