

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

Charles A. Harter,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2013-0491
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri	)	
Respondent.	)	

AMEREN MISSOURI'S POST-HEARING BRIEF

COMES NOW Union Electric Company d/b/a Ameren Missouri (the "Company") and respectfully submits its post-hearing brief.

I. Introduction

The parties have stipulated that the following issues are before the Commission for a decision: a. whether the January 21, 2013 bill issued by Ameren Missouri to the Complainant and the information provided by Ameren Missouri regarding it violated any Commission statute, rule, order or approved Company tariff; b. whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri removed Complainant from the cold weather rule payment arrangement; c. whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri refused to reinstate Complainant to the cold weather rule payment arrangement; d. whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri sent Complainant disconnection notices prior to his filing of the May 7, 2013 Complaint; e. whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri sent Complainant disconnection notices subsequent to his filing of the May 7, 2013 Complaint;¹ and f. whether the disconnect notices

¹ List of Issues, List of Witnesses and Order of Cross-Examination, filed on behalf of Staff, Complainant, the Company, and the Office of Public Counsel on September 11, 2013.

issued by Ameren Missouri after the Complaint was filed involved a matter in dispute in the Complaint.²

Because Mr. Harter brought the Complaint, he has the burden of proof. He must prove to the Commission by a preponderance of the evidence (that it is more likely than not) that the Company violated a statute, rule, order or Commission-approved tariff.³ At the evidentiary hearing, Mr. Harter failed to provide *any* substantive evidence to support a finding against the Company on any of the six stated issues, let alone meet his burden. The Company, on the other hand, proved that it has complied with applicable statutes, rules, and orders in all its dealings with Mr. Harter. The evidence also shows that Mr. Harter's problems with his electric service account, even his problems understanding the status of his account at any given time, stem simply from his persistent failure to pay his bills on time and in full, and from his refusal to be cooperative in his communications with the Company. The evidence also shows that he is not entitled to avoid disconnection for nonpayment of his delinquent account balance.

II. Account History.

In December of 2012, Mr. Harter had a \$*** delinquent balance that was in collections.⁴ To avoid a disconnection other than by paying his delinquent balance in full⁵, he and the Company entered into a Cold Weather Rule payment agreement.⁶ Mr. Harter was required to make an initial payment of \$***.** by January 2, and to make twelve subsequent monthly payments, and was advised that if his payment was less than the amount due or paid after the due date, he would be in default.⁷ He was also sent a letter explaining the details of the payment agreement, including that for twelve months, he was required to pay his monthly payment agreement amount of \$**, plus his regular bill.⁸

² See Tr. p. 21, l. 5-16, amending the Complaint by consent of the parties to include this issue.

³ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996). *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁴ Ameren Missouri Exhibit 5HC; Tr. p. 86, l. 10-21.

⁵ 4 CSR 240-13.055(6)(A).

⁶ Ameren Missouri Exhibit 9HC, Joint Stipulation of Non-disputed Material Facts, p. 2, No. 6.

⁷ Tr. p. 24, l. 23-p. 25, l. 25; Tr. p. 86, l. 16-20.

⁸ Tr. p. 87, l. 4-13; Ameren Missouri Exhibit 3HC, *see* entries dated 2013-01-04.

The Company sent Mr. Harter a bill on January 21, 2013⁹. By February 13, Mr. Harter was behind on his account. He called the Company's automated voice response unit ("VRU") that day and was given his current account balance, the amount he needed to pay to avoid a disconnect and the date he needed to pay that amount, among other information.¹⁰ When he made a payment on February 14, for \$***.**, it was for the amount billed to him on January 21 that had become delinquent after February 12.¹¹

On February 19, five days after he made the payment for the delinquent January bill, the Company sent him a new bill for \$***.**, which included his monthly payment agreement amount and the amount due for service from January 17 to February 17.¹² Payment was due March 1 and delinquent after March 12.¹³

Mr. Harter called the Company on March 1, confused about a bill and concerned that it didn't reflect a payment.¹⁴ Although he did not identify what bill, presumably he was talking about the February 19 bill.¹⁵ In fact, his February 19 bill *did* show the \$***.** payment that he made on February 14.¹⁶ During the call, although Mr. Harter stated, "I paid this bill," "paid a bill in full...amount of \$***" and that he paid "a lot"¹⁷, he refused to verify account information for the representative as required in order for the representative to share account information with him and assist him.¹⁸ The representative asked Mr. Harter at least four times what his payment was and when he made it, but Mr. Harter did not provide the requested information. Eventually, he flatly refused to share the information:

Customer Representative: Okay. Do you have your payment information?

Mr. Harter: Yes, I do.

Customer Representative: Okay. Would you mind sharing that with me?

Mr. Harter: Yes, I would.

⁹ All date references hereafter are to 2013, unless otherwise noted; Ameren Missouri Exhibit 9HC, Exhibit B.

¹⁰ Tr. p. 92, l. 4-13; Ameren Missouri Exhibit 3HC, *see* entry dated 2013-02-13.

¹¹ Ameren Missouri Exhibit 9HC, Exhibit B; Tr., p. 93, l. 20-p. 94, l. 2.

¹² Ameren Missouri Exhibit 9HC, Exhibit C.

¹³ *Id.*

¹⁴ Tr. p. 96, l. 1-6, l. 21-23.

¹⁵ Tr. p. 96, l. 21-23.

¹⁶ Ameren Missouri Exhibit 9HC, Exhibit C, "Last Payment 2/14/13 \$***.**"

¹⁷ Tr. p. 97, l. 16, p. 98, l. 5-7.

¹⁸ Tr. p. 69, l. 14-23; p. 98, l. 25-p.99, l. 4.

Customer Representative: Okay. Was there anything else that I can help you with, sir?¹⁹

After this question, Mr. Harter hung up.²⁰

The Company did not receive any other payment from Mr. Harter in February and did not receive any payment at all in March,²¹ despite, as Mr. Harter testified at hearing, the fact that during the March 1 call he realized he had *not* paid his bill in full.²² Two things happened as a result of nonpayment of his \$***.00 February bill: the bill became delinquent on March 12; and as a result of the failure to pay by the delinquent date, his Cold Weather Rule payment agreement defaulted causing the entire unbilled balance of the payment agreement to be added back into his prior balance, bringing the total amount billed on March 20 to \$***.00.²³

Because of the delinquency, the Company sent notices on March 19 and 22, advising it would disconnect him for failure to pay the \$***.00 delinquent portion of his account balance if he failed to pay on or before April 4.²⁴ On April 1, the Company received a \$***.00 payment from Mr. Harter, the minimum payment necessary to avoid disconnection.²⁵ He failed to pay the remaining \$***.00 balance of his March 20 bill in full by its April 11 delinquent date, however.²⁶ As a result, the Company sent notices on April 18 and April 23, advising it would disconnect him for failure to pay his then delinquent account balance of \$***.00 if he failed to pay that amount on or before May 3.²⁷ On April 19, the Company also sent Mr. Harter his April bill, which included charges for service from March 18 to April 17 and his prior balance, totaling \$***.00.

Mr. Harter did not contact the Company until April 30, well after the end of the Cold Weather Rule period on March 31.²⁸ He indicated that he needed to know how much to pay on his bill because he could not pay the entire amount due.²⁹ The Company representative offered a non-Cold Weather Rule payment agreement, requiring a minimum initial payment of \$*** (half

¹⁹ Tr. p. 98, l. 16-24.

²⁰ Tr. p. 99, l. 16-p. 100, l. 4.

²¹ Tr. p. 35, l. 12-21.

²² Tr. p. 159, l. 11-23.

²³ Tr. p. 100, l. 5-20; Ameren Missouri Exhibit 9HC, Exhibit E.

²⁴ Ameren Missouri Exhibit 9HC, Exhibit D; Tr. p. 100, l. 20-25; Tr. p. 102, l. 23-p. 103, l. 1.

²⁵ Tr. p. 104, l. 24-p. 105, l. 105.

²⁶ Ameren Missouri Exhibit 9HC, Exhibit D; Tr. p. 105, l. 10-14.

²⁷ Tr. p. 105, l. 10-18; Ameren Missouri Exhibit 9HC, Exhibit G.

²⁸ 4 CSR 240-13.055(2).

²⁹ Ameren Missouri Exhibit 7HC; Tr. p. 108, l. 11-20. Although the transcript of the call reads, "I can't pay \$***", in the recording of the call, Mr. Harter says "I can't pay \$***."

of his \$***.** balance) and three monthly installments of the balance.³⁰ In discussing payments and payment arrangements, Mr. Harter suggested to the representative that, “it would be easier to continue the arrangement in the cold weather rule to be [sic] if possible.”³¹ The Company representative explained that wasn’t possible because his Cold Weather Rule payment agreement had defaulted for nonpayment. Mr. Harter disagreed, asked to be connected to a supervisor, but hung up before the transfer was complete.³²

On April 30 and again on May 1, Mr. Harter filed informal complaints with the Commission regarding the Company’s refusal to reinstate his Cold Weather Rule payment agreement. Staff investigated the informal complaints, found the Company did not violate the Cold Weather Rule, and on May 1 sent Complainant closure letters so advising.³³ On May 3, Mr. Harter contacted the Company and inquired about a payment agreement. The Company again offered to enter into a non-Cold Weather Rule payment agreement under which he would pay \$*** up front, and three monthly installments.³⁴ Mr. Harter hung up while on hold, but just a few minutes later, his wife, who is also a customer on the electric service account,³⁵ called back with a receipt number evidencing that the \$*** had been paid, and promised to pay three monthly installments of \$** and the monthly bill. She was advised of the terms of the payment agreement.³⁶

On May 7, after the non-Cold Weather Rule payment agreement was entered into, Mr. Harter filed Complaint EC-2013-0491 with the Commission. On May 20, the Company issued a bill in the amount of \$***.**, which included the \$** monthly payment agreement installment, and \$**.** for electric service from April 17 to May 16. That bill was due May 31.³⁷ The Company received a payment from Mr. Harter on June 3, but only for \$***³⁸, \$**.** short of what was due. Of the \$*** he paid, \$**.** was applied to the amount then due for service, and the remaining \$**.** was applied to the only other amount due at that time, the \$**.** monthly payment agreement amount.³⁹ That reduced the total amount due under the non-Cold Weather

³⁰ Ameren Missouri Exhibit 7HC; Tr. p. 109, l. 18-p. 110, l. 4.

³¹ Ameren Missouri Exhibit 7HC; Tr. p. 110, l. 23-25.

³² Ameren Missouri Exhibit 7HC; Tr. p. 111, l. 5-p. 112, l. 2.

³³ Staff Exhibit 1HC, p. 3-5.

³⁴ Tr. p. 115, l. 11-24; Ameren Missouri Exhibit 3HC, *see* entries dated 2013-05-03.

³⁵ Ameren Missouri Exhibit 3HC, *see* entries dated 2013-05-03.

³⁶ Tr. p. 116, l. 2-4; Ameren Missouri Exhibit 3HC, *see* entries dated 2013-05-03.

³⁷ Ameren Missouri Exhibit 9HC, Exhibit H.

³⁸ Tr. p. 116, l. 22-23; Ameren Missouri Exhibit 9HC, stipulation of fact No. 20.

³⁹ Tr. p. 118, l. 3-10.

Rule payment agreement to \$***.** (\$***.** less \$*** May 3 payment less \$**.** June 3 payment=\$***.**). Mr. Harter made no other payment in June, however. Because he failed to pay his payment agreement amount and monthly bill in full⁴⁰ by the June 11 delinquent date, his non-Cold Weather Rule payment agreement defaulted.⁴¹ Because of his Complaint, the Company suspended the remaining \$***.** due under the defaulted non-Cold Weather Rule payment agreement from any collection-related activity.⁴²

On June 19, the Company sent Complainant a bill totaling \$***.**, including \$***.** for electric service from May 16 to June 17, and the prior balance of \$***.**. The June bill was due July 1 and delinquent after July 11.⁴³ The Company includes amounts that have been suspended from collection activity, but that are still owed, on customers' monthly bills, so that customers are always advised of the full amount that is owed.⁴⁴ Mr. Harter did not make any payment towards the June bill in July.⁴⁵ The Company sent notices on July 18 and July 23, advising it would disconnect him for failure to pay the undisputed portion of his delinquent account balance, \$***.**, if he failed to pay on or before August 3.⁴⁶ The Company did not seek to disconnect Mr. Harter for failure to pay the \$***.**, because even though it was owed, it was in dispute and therefore suspended from collection-related activity.⁴⁷ On August 2, Mr. Harter paid the \$***.** necessary to avoid the disconnection, but failed to pay his balance in full and become current on his account.⁴⁸

On July 19, the Company sent Complainant a bill totaling \$***.**.⁴⁹ That bill included charges for electric service from June 17 to July 17, totaling \$***.**, and a prior balance of \$***.** (the suspended \$***.** plus \$***.** for the prior month's charges which had not been received by the date the July bill was issued). Although Complainant paid \$***.** on August 2, he did not pay the \$***.** due for service from June 17 to July 17 by the July bill's August 9th delinquent date. As a result, the Company sent notices to Mr. Harter on August 16th and August 21, advising it would disconnect him for failure to pay the undisputed delinquent \$***.** if he

⁴⁰ Tr. p. 35, l. 3-11.

⁴¹ Tr. p. 117, l. 7-15.

⁴² Tr. p. 118, l. 11-19.

⁴³ Ameren Missouri Exhibit 9HC, Exhibit I.

⁴⁴ Tr. p. 119, l. 7-15.

⁴⁵ Tr. p. 35, l. 12-21; Tr. p. 119, l. 19-23.

⁴⁶ Ameren Missouri Exhibit 9HC, Exhibits I and J; Tr. p. 120, l. 14-16.

⁴⁷ Tr. p. 119, l.24-p.120, l. 1-13.

⁴⁸ Ameren Missouri Exhibit 9HC, stipulation of fact No. 25; Tr. p. 120, l. 17-20.

⁴⁹ Ameren Missouri Exhibit 9HC, Exhibit K.

failed to pay on or before September 9, 2013.⁵⁰ On August 26, Mr. Harter called the Company.⁵¹ Again, he was argumentative, refused to verify basic account information for the representative, and finally hung up on her:

Customer Representative: ...And that address, please?

Mr. Harter: I don't know your address.

Customer Representative: The address that you're calling in regards to.

Mr. Harter: Oh, I don't know. I'd have to look it up.

Customer Representative: The service address? We need to use that to verify that address.

Mr. Harter: Okay. What if I don't know my address?

Customer Representative: Then I'm not going to be able to provide you with any account information.

Mr. Harter: I see. Okay. How much can I – what's going to pay to avoid a disconnection?

Customer Representative: Again, I won't be able to provide any account information if you're not able to verify, I'm sorry, the address on the account.

Mr. Harter: Why is that?

Customer Representative: Because I would need to verify if I'm speaking with the account holder or not.

Mr. Harter: Okay. I've lived here for 63 years and you think I don't know my address? Why would it matter?

Customer Representative: Would you be able to verify that address?

Mr. Harter: Would you?

Customer Representative: Yes, I would be, but I would need for you to confirm that.⁵²

Although Complainant did not pay the delinquent balance by the due date, the Company did not disconnect him because Complainant filed a pleading alleging that the Company was trying to disconnect him for an amount in dispute⁵³, and sought, and received on August 29, a

⁵⁰ Ameren Missouri Exhibit 9HC, Exhibit L; Tr. p. 123, l. 6-9.

⁵¹ Ameren Missouri Exhibit 8HC; Tr. p. 124, l. 22-p. 127, l. 6.

⁵² Id.

⁵³ "Complaint" filed August 29, 2013.

Commission order ordering the Company not to disconnect Complainant.⁵⁴ As of the date of the evidentiary hearing, Mr. Harter had not paid the \$***.** and had also not paid the amount billed for electric service from July 17 to August 15, \$***.**, due August 29th and delinquent after September 10th, for a total undisputed delinquent balance of \$***.**. The Company sent Mr. Harter a disconnect notice for this amount on September 17, to advise Mr. Harter of the total delinquent amount.⁵⁵

III. Analysis of Issues.

a. **Whether the January 21, 2013 bill issued by Ameren Missouri to the Complainant and the information provided by Ameren Missouri regarding it violated any Commission statute, rule, order or approved Company tariff.**

At the hearing, Mr. Harter did not identify any Commission statute, rule, order or approved Company tariff that he believed the January 21 bill violated. Nor did he offer any testimony or other evidence specific to that issue. He testified only that, "...the bill, in my way of thinking, was masked in that it didn't reveal the full amount...[the bill]—is the source of my complaint. And the problem is that, it lists only \$***, and I called up on the 13th and was informed and told by a recorded message...that was the amount, and that's what I paid. And to my mind, I thought I had paid everything."⁵⁶

The January bill itself, and the testimony of Ameren Missouri's witness, its Customer Service Supervisor Cathy Hart, demonstrated that the bill clearly included everything required under 4 CSR 240-13.020(9): the beginning and ending meter readings and the dates of the readings⁵⁷, the date when the bill was considered due and the date when it would be delinquent⁵⁸, the amount due for the most recent billing period for electric usage⁵⁹, the amount due for other authorized charges, if any⁶⁰, the total amount due⁶¹, the toll-free telephone number and address where the customer may initiate an inquiry or complaint⁶², and taxes⁶³. The January

⁵⁴ Order Directing Filing, issued and effective August 29, 2013; Tr. p. 127, l. 13-15.

⁵⁵ Tr. p. 127, l. 16-p. 128, l. 16.

⁵⁶ Ameren Missouri Exhibit 9HC, Exhibit B ; Tr., p. 31, l. 14-15; p. 32, l. 5-13.

⁵⁷ Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 89, l. 1-5.

⁵⁸ Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 89, l. 6-11.

⁵⁹ Ameren Missouri Exhibit 9HC, Exhibit B.

⁶⁰ Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 89, l. 14 and p. 90, l. 7-11.

⁶¹ Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 90, l. 12-18.

⁶² Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 90, l. 21-p. 91, l.4.

⁶³ Ameren Missouri Exhibit 9HC, Exhibit B; Tr. p. 90, l. 7-11.

bill did not state any previous balance because Mr. Harter's prior delinquent balance had been rolled into his Cold Weather Rule payment agreement.⁶⁴ The bill did not fold the remaining payment agreement amount into the total amount due *for that billing period*, because the parties agreed that the remaining payment agreement would be billed in installments in future months.⁶⁵ If a payment agreement defaults, *then* amounts remaining under the payment agreement are added back into the prior balance due shown on a bill, as demonstrated by the bill issued to Mr. Harter on March 20.⁶⁶ There were no charges on the January bill for service not subject to commission jurisdiction.⁶⁷

Although not specifically required by the billing and payment standards at 4 CSR 240-13.020(9), the Cold Weather Rule at 4 CSR 240-055, or the Company's tariffs, the January bill did in fact state on the right-hand side the total payment agreement amount, \$***.**, that was outstanding and that *would be* billed in installments over the next eleven months pursuant to Mr. Harter's Cold Weather Rule payment agreement.⁶⁸ In short, the bill did not mask the total amount Mr. Harter owed the Company.

As to the information provided by Ameren Missouri regarding the January bill, Mr. Harter also failed to offer any testimony or evidence about how, exactly, any such information violated any Commission statute, rule order or approved Company tariff. During Ms. Hart's testimony, she explained that on February 13, Mr. Harter called the Company's automated voice response unit, or VRU, which advised him of the current amount due at that particular time, the payment due date, the avoid disconnect amount, the avoid disconnect date, the last payment amount and the last payment received date.⁶⁹ The information provided matches what was also provided to Mr. Harter in his January bill.⁷⁰ Mr. Harter's complaint seems to be that the automated VRU message only gave him information about the amounts that were currently due, and not about amounts that would be billed in the future, including the total payment agreement

⁶⁴ Tr. p. 89, l. 12-21.

⁶⁵ Tr. p. 89, l. 22-p. 90, l. 6; and see Staff Exhibit 1HC, Schedule 8, "the *monthly installment amount* will be included in your total amount due each month...*Upon default*, the balance of your agreement will be billed to your account." (emphasis added).

⁶⁶ Ameren Missouri Exhibit 9HC, Exhibit E; Tr. p. 103, l. 16-19; Staff Exhibit 1HC, Schedule 8.

⁶⁷ Ameren Missouri Exhibit 9HC, Exhibit B.

⁶⁸ Ameren Missouri Exhibit 9HC, Exhibit B.

⁶⁹ Tr. p. 92, l. 10-13, and 24-25; Ameren Missouri Exhibit 3HC, see entry dated 2013-02-13.

⁷⁰ Ameren Missouri Exhibit 9HC, Exhibit B.

amount that was owed but not yet billed. Ms. Hart's testimony makes clear that the VRU is not set up to provide a customer information about amounts that will be due in the future.⁷¹

The Company admits it is required under 4 CSR 2140-13.040(2)(A) to make qualified personnel available and prepared during normal business hours to receive and respond to all customer inquiries. The Company does so—as Ms. Hart testified, if a customer has questions, the VRU does offer an option to connect the customer to a customer service representative.⁷² Had Mr. Harter wanted to obtain information (from a source other than his January bill) about amounts owed that would be billed in the future, including the total payment agreement amount, Mr. Harter could have taken the next step and spoken with a customer service representative. He did not do so. While the operation of the VRU may not satisfy Mr. Harter, he has failed to demonstrate how the operation of the Company's VRU, coupled with the option to speak to available Company personnel to obtain additional information, violates any statute, rule, order or Commission-approved tariff.

b. Whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri removed Complainant from the cold weather rule payment arrangement.

The evidence presented at the hearing showed that the Company did not affirmatively remove Mr. Harter from his Cold Weather Rule payment agreement. A term of the payment agreement, which was explained to Mr. Harter over the phone,⁷³ sent to him in writing⁷⁴, which he agreed to⁷⁵, and which he does not dispute⁷⁶, was that as long as he made his payments in full by the delinquent date, his payment agreement would not default.⁷⁷ Mr. Harter's Cold Weather Rule payment agreement automatically defaulted when Mr. Harter failed to pay the bill for \$***.** issued to him on February 19 by its March 12 delinquent date.⁷⁸ Mr. Harter's only evidence that might suggest that he did not default (that he paid that bill in full on its due date)

⁷¹ Tr. p. 93, l. 10-16.

⁷² Tr. p. 92., l. 14-20.

⁷³ Ameren Missouri Exhibit 5HC; Tr. p. 86, l. 16-21.

⁷⁴ Ameren Missouri Exhibit 3HC, *see* entries dated 2013-01-04, 9:58 a.m.

⁷⁵ Ameren Missouri Exhibit 5HC; Tr. p. 86, l. 22.

⁷⁶ Tr. p. 25, l. 20-25.

⁷⁷ Ameren Missouri Exhibit 5HC; Tr. p. 86, l. 16-22.

⁷⁸ Tr. p. 100, l. 5-20.

was his testimony that he made a payment on February 14 of \$***.**.⁷⁹ However, his \$***.** payment was made before the February 19 bill even issued, and was a payment of the exact delinquent amount due under his January 21 bill.⁸⁰ And Mr. Harter even admitted at the hearing that it was during his March 1 call with the Company that he realized that he had not paid his bill in full as he had thought on February 14.⁸¹ Despite that realization on March 1, Mr. Harter did not make a payment. Because Mr. Harter did not pay his bill issued February 19 by its March 12 delinquent date, his payment agreement automatically defaulted.

In his Complaint, Mr. Harter alleges that it was wrongful of the Company to revoke his Cold Weather Rule payment agreement for the reasons that he paid his delinquent February 19 bill by the date necessary to avoid disconnection, as advised in a March 19 disconnection notice⁸²: “On March 19, 2013, Respondent demanded \$***.** (exhibit 1). On April 1, 2013, Complainant paid this amount in full. Respondent then revoked the budget cold weather rule payment plan on its claim of nonpayment, even though Complainant paid its full demand.”⁸³ However, as explained above, the payment agreement, which Mr. Harter agreed to, required that he pay his February 19 bill by its *delinquent date*, in order to keep the agreement from defaulting. Paying after the delinquent date but before the disconnection date was not sufficient to keep the agreement from defaulting. Because he did not pay in full by the delinquent date, his payment agreement defaulted. This default was not a result of any Company violation of a statute, rule, order or tariff.

c. Whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri refused to reinstate Complainant to the cold weather rule payment arrangement.

The Company’s refusal to reinstate Mr. Harter’s Cold Weather Rule payment agreement was not wrongful. To be reinstated, the Cold Weather Rule requires that, “[i]f 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

⁷⁹ Tr. p. 26, l. 1-14.

⁸⁰ Ameren Missouri Exhibit 9HC, Exhibit B and Exhibit C.

⁸¹ Tr. p. 159, l. 12-23.

⁸² Ameren Missouri Exhibit 9HC, Exhibit D; and Exhibit 1 to Complainant’s Complaint.

⁸³ Complaint, para. 2.

date service is requested, as well as, amounts not included in a payment agreement that have become past due.”⁸⁴ This provision, like all provisions of the Cold Weather Rule, “takes precedence over other rules on provision of heat-related utility service *from November 1 through March 31 annually.*”⁸⁵ (emphasis added).

As to the amount Mr. Harter needed to pay to be reinstated after his default, Mr. Harter received the February 19 bill for \$***.**,⁸⁶ Mr. Harter received March 19 and 22 disconnect notices that advised that \$***.** was delinquent,⁸⁷ and Mr. Harter received the March 20 bill⁸⁸, which advised on its face that his payment agreement had defaulted due to a missed payment.⁸⁹ If after all these notifications, Mr. Harter still had a question about how much he needed to pay to reinstate his Cold Weather Rule payment agreement, he could have called the Company and inquired. Mr. Harter did not call the Company in March other than his call on March 1.⁹⁰ Although customers who *seek* reinstatement within the Cold Weather Rule period are able to be reinstated,⁹¹ Mr. Harter did not call to inquire about reinstatement at all until April 30⁹², a month after the end of the Cold Weather Rule period.

Regardless of when Mr. Harter inquired, in order to be reinstated, Mr. Harter would also have had to pay \$***.** by March 31, the end of the Cold Weather Rule period.⁹³ The Company did not receive the \$***.** from Mr. Harter until April 1.⁹⁴ Mr. Harter was not entitled to be reinstated because he did not pay the \$***.** required to be reinstated until after the end of the Cold Weather Rule period. Because he was not entitled to reinstatement, the Company did not violate the Cold Weather Rule when it refused to reinstate Mr. Harter’s Cold Weather Rule payment agreement.

⁸⁴ 4 CSR 240-13.055(10)(B)5.

⁸⁵ 4 CSR 240-13.055(2).

⁸⁶ Tr. p. 26, l. 1-4.

⁸⁷ Ameren Missouri Exhibit 9HC, Stip. No. 12 and Exhibit D.

⁸⁸ Tr. p. 26, l. 15-p. 27, l. 2.

⁸⁹ Ameren Missouri Exhibit 9HC, Exhibit E.

⁹⁰ Tr. p. 104, l. 6-23.

⁹¹ Tr. p. 149, l. 8-14.

⁹² Tr. p. 106, l. 18-20; Ameren Missouri Exhibit 3HC, *see* entry dated 2013-04-30; and Ameren Missouri Exhibit 7HC.

⁹³ 4 CSR 240-13.055(10)(B)5: “If a customer defaults...the utility shall permit such customer to be reinstated...*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.” (emphasis added).

⁹⁴ Tr. p. 27, l. 6-10; Tr. p. 104, l. 24-p. 105, l. 2.

d. Whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri sent Complainant disconnection notices prior to his filing of the May 7, 2013 Complaint.

The Company's disconnection notices provided prior to May 7 complied fully with the discontinuance of service rules set forth at 4 CSR 240-13.050, and Mr. Harter failed to provide any evidence to the contrary. Mr. Harter had an undisputed delinquent account balance as of March 12⁹⁵, and another as of April 11⁹⁶. Even though Mr. Harter called the Company on March 1, the March 12 \$***.** delinquent balance cannot be said to have been in dispute when the March 18 and 22 disconnect notices were sent because Mr. Harter admitted he realized on March 1 that he did owe the balance.⁹⁷ In addition, a customer waives the right to continuance of service related to an inquiry which has placed a charge in dispute, where the customer fails to participate with the utility in efforts to resolve the inquiry.⁹⁸ In other words, a customer cannot claim an amount is in dispute and that he should not have received a disconnect notice for it, if the customer refuses to participate with the utility in sorting out the dispute. The recording of the March 1 call demonstrates Mr. Harter's failure to participate.⁹⁹ Mr. Harter made no calls, and gave no written notice to the Company, after March 1 and prior to the April 18 and 23 disconnection notices, to advise the Company that he disputed any charges. As such, the charges for which Mr. Harter received disconnect notices on April 18 and April 23 were also not in dispute.

Per 4 CSR 240-13.050(1)(A), the Company could discontinue service for nonpayment of the undisputed delinquent charges. As required by 4 CSR 240-13.050(5) the Company sent Mr. Harter disconnect notices on March 18, March 22, April 18 and April 23, to give advance notice of the proposed discontinuances.¹⁰⁰ As required by 4 CSR 240-13.050(4), and as established by the notices themselves and the testimony of Ameren Missouri's witness, each of these disconnect notices included: the name and address of the customer; the reason for the proposed discontinuance; the date on or after which service would be disconnected, how Mr. Harter could avoid the disconnection, the possibility of a settlement agreement, and the telephone number and

⁹⁵ Tr. p. 95, l. 16-25.

⁹⁶ Tr. p. 103, l. 7-p. 104, l. 5; p. 104, l. 24-p. 105, l. 14.

⁹⁷ Tr. p. 159, l. 12-23.

⁹⁸ 4 CSR 240-13.045(3).

⁹⁹ Ameren Missouri Exhibit 6HC; Tr. p. 96, l. 17- p. p. 98, l. 23.

¹⁰⁰ Ameren Missouri Exhibit 9HC, Exhibits D and G; Tr. p. 102, l. 23-p. 103, l. 1; Tr. p. 105, l. 10-18.

address of the Company where Mr. Harter could make an inquiry without incurring a toll charge.¹⁰¹ The March 19 notice was sent at least ten days before the proposed April 4 disconnect date, as required by 4 CSR 240-13.050(5).¹⁰² Through the March 23 notice, the Company gave a second notice at least twenty-four hours in advance of the proposed April 4 disconnect, as required by 4 CSR 240-13.050(7).¹⁰³ The April 18 notice was sent at least ten days before the proposed May 3 disconnect date.¹⁰⁴ Through the April 23 notice, the Company gave a second notice at least twenty-four hours in advance of the proposed May 3 disconnect.

e. Whether Ameren Missouri violated any Commission statute, rule, order or approved Company tariff when Ameren Missouri sent Complainant disconnection notices subsequent to his filing of the May 7, 2013 Complaint.

The Company's disconnection notices provided subsequent to May 7 also complied fully with the discontinuance of service rules set forth at 4 CSR 240-13.050, and Mr. Harter failed to provide any evidence to the contrary. Just as the notices sent prior to May 7 did, each of the July 18, July 23, August 16 and August 21 disconnect notices included: the name and address of the customer; the reason for the proposed discontinuance; the date on or after which service would be disconnected, how Mr. Harter could avoid the disconnection, the possibility of a settlement agreement, and the telephone number and address of the Company where Mr. Harter could make an inquiry without incurring a toll charge.¹⁰⁵ The July 18 notice was sent at least ten days before the proposed August 2 disconnect date, as required by 4 CSR 240-13.050(5).¹⁰⁶ Through the July 23 notice, the Company gave a second notice at least twenty-four hours in advance of the proposed August 2 disconnect, as required by 4 CSR 240-13.050(7).¹⁰⁷ The August 16 notice was sent at least ten days before the proposed September 3 disconnect date.¹⁰⁸ Through the August 21 notice, the Company gave a second notice at least twenty-four hours in advance of the proposed August 3 disconnect.

¹⁰¹ Ameren Missouri Exhibit 9HC, Exhibits D and G; Tr. p. 101, l. 6-p. 102, l. 9;

¹⁰² Tr. p. 102, l. 18-19; Ameren Missouri Exhibit 3HC, *see* entry dated 2013-03-19.

¹⁰³ Tr. p. 103, l. 2-6.

¹⁰⁴ Ameren Missouri Exhibit 3HC, *see* entry dated 2013-04-18.

¹⁰⁵ Ameren Missouri Exhibit 9HC, Exhibits J and L; Tr. p. 119, l. 19-p. 120, l. 16; p. 123, l. 6-9.

¹⁰⁶ Tr. p. 102, l. 18-19; Ameren Missouri Exhibit 3HC, *see* entry dated 2013-03-19.

¹⁰⁷ Tr. p. 103, l. 2-6.

¹⁰⁸ Ameren Missouri Exhibit 3HC, *see* entry dated 2013-04-18.

f. Whether the disconnect notices issued by Ameren Missouri after the Complaint was filed involved a matter in dispute in the Complaint.

The disconnect notices issued in July and August did not involve a matter in dispute in the Complaint. They complied with the provision of 4 CSR 240-13.050(5) regarding disputed amounts, “[a] notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute...that is currently the subject of a complaint pending before the commission[.]” On May 3, *prior to filing his Complaint*, Mr. Harter entered into a non-Cold Weather Rule payment agreement that permitted him to pay his \$***.** account balance¹⁰⁹ (which included the balance of his defaulted Cold Weather Rule payment agreement) by making one \$*** payment up front, and three monthly installments of \$**.¹¹⁰ That left \$***.** under the agreement. On May 7, Mr. Harter filed his Complaint. On May 20, the Company issued a bill in the amount of \$***.**, which included the first \$** monthly payment agreement installment, and \$**.** for electric service from April 17 to May 16. That bill was due May 31 and delinquent after June 11.¹¹¹ Mr. Harter paid \$*** on June 3.¹¹² Out of that payment, \$**.** was applied to the amount then due for service, and the remaining \$**.** was applied to the only other amount due at that time, the \$**.** monthly payment agreement amount.¹¹³ The \$**.** payment reduced the total amount remaining due under the non-Cold Weather Rule payment agreement from \$***.** to \$***.**. Arguably, none of that *amount* was “in dispute”, because in his Complaint, Mr. Harter only disputed whether he was in default, or was entitled to have the agreement reinstated, not what amount was due.¹¹⁴ Notwithstanding, because of his Complaint, the Company suspended the remaining \$***.** from any collection-related activity.¹¹⁵

In compliance with 4 CSR 240-13.050(5), the disconnect notices sent to Mr. Harter on July 18 and July 23 did *not* include the \$***.** treated as an amount in dispute. Rather, the July notices advised that he might be disconnected if he failed to pay \$***.**¹¹⁶, the amount of the

¹⁰⁹ Ameren Missouri Exhibit 9HC, Exhibit F.

¹¹⁰ Tr. p. 115, l. 11-p. 116, l. 4.

¹¹¹ Ameren Missouri Exhibit 9HC, Exhibit H.

¹¹² Tr. p. 116, l. 22-23; Ameren Missouri Exhibit 9HC, stipulation of fact No. 20.

¹¹³ Tr. p. 118, l. 3-10.

¹¹⁴ See Complaint, prayer for relief, “Respondent not disconnect Complainant and reinstate cold weather rule budget agreement.”

¹¹⁵ Tr. p. 118, l. 11-19.

¹¹⁶ Ameren Missouri Exhibit 9HC, Exhibit J.

bill issued June 19 that had become delinquent, less the \$***.** suspended amount.¹¹⁷ If Mr. Harter disputed the \$***.** charge, he was obliged to notify the Company.¹¹⁸ Otherwise, the delinquent amount is simply not in dispute, and the Company may issue a disconnect notice for it.¹¹⁹ The Company received no written notice or telephone call from Mr. Harter after the June 19 bill was issued or prior to the July 18 and 23 disconnect notices, advising that he disputed the \$***.** charge.

Likewise, the disconnect notices sent to Mr. Harter on August 16 and 21 did not include the \$***.** suspended amount, but advised that he might be disconnected if he failed to pay \$***.**, the amount billed to him on July 19 for electric service from June 17 to July 17 that had become delinquent. As with the bill issued on June 19, the Company received no written notice or telephone call from Mr. Harter after the July 19 bill was issued or prior to the August 16 and 21 disconnect notices, advising that he disputed the \$***.** charge. Although the Company was advised on August 1 that Mr. Harter had filed an informal complaint about disconnection notices, the notices complained of were the July notices, not the August notices related to the \$***.**.¹²⁰ Because the \$***.** was not in dispute, the Company was entitled to issue a disconnect notice for it. Even when Mr. Harter finally did call the Company on August 26, after the notices were issued, he did not comply with Commission's rules that might have permitted him to avoid the pending disconnect. Had he "advised the utility that all or part of a charge is in dispute" and "participate[d] with the utility in efforts to resolve an inquiry which has the effect of placing charges in dispute"¹²¹, he would have had a colorable argument that he was entitled to avoid the September 3 disconnection without paying the delinquent \$***.**. The August 26 call to the Company, however, demonstrates an utter lack of cooperation on Mr. Harter's part, so he was not entitled to such relief.¹²²

Mr. Harter's objective in filing the Complaint was to stop a pending disconnection.¹²³

¹¹⁷ Ameren Missouri Exhibit 9HC, Exhibit I.

¹¹⁸ 4 CSR 240-13-045(1): "A customer shall advise a utility that all or part of a charge is in dispute by written notice, in person or by a telephone message directed to the utility during normal business hours...[.]"

¹¹⁹ 4 CSR 240-13.050(1)(A).

¹²⁰ Complainant Exhibit 3.

¹²¹ 4 CSR 240-13.045(1) and (2).

¹²² Ameren Missouri Exhibit 8HC; Tr. p. 125, l. 11-p. 126, l. 20.

¹²³ Staff Exhibit 1HC, Appendix A, p.3, "Staff advised Mr. Harter that Ameren Missouri had not violated the CWR and attempted to provide Mr. Harter additional assistance numbers for him to use to reach out for financial assistance. Mr. Harter responded by asking Staff whether he could stop the disconnection if he filed a written complaint alleging that the Company was in violation of the CWR. Staff responded to Mr. Harter that the Company

His motive became clear at the hearing when he argued that simply because there was *an* amount in dispute, he should not have been threatened with disconnection during the pendency of his Complaint.¹²⁴ That argument is contrary to the Commission’s rules. The discontinuance of service rules specifically *allow* a utility to discontinue service for, “[n]onpayment of an *undisputed* delinquent charge.”¹²⁵ It is only “*that portion* of a bill which is determined to be an amount in dispute”¹²⁶ for which a notice of discontinuance shall not be issued. As explained above, the disconnect notices issued after the Complaint was filed did not involve a matter in dispute.

Mr. Harter’s objective is also contrary to Missouri law. The Company must seek to collect the amounts not in dispute, because Missouri law prohibits utilities from directly or indirectly *charging, demanding, collecting or receiving less* compensation for utility service from any person than it charges any other person for a like and contemporaneous service. §393.130.2 RSMo. Because the disconnect notices did not include any amount in dispute that was currently the subject of a complaint pending before the Commission, and because the Company is obliged to collect for the utility services it provides, the disconnect notices issued to Mr. Harter after he filed his Complaint were proper, even though they were issued while the Complaint was still pending.

III. Conclusion

Mr. Harter has used the complaint process as a means to avoid disconnection of his electric utility service. He would have the Commission believe that some wrongful act by the Company has placed him in threat of disconnection. He is under near constant threat of disconnection not because of any violation by the Company of a statute, rule order or Commission-approved tariff, however, but because of his persistent failure to pay his bills for electric service on time and in full, and because he breaches payment agreements that are entered into to assist him in paying his bills. Because the evidence presented at the hearing demonstrates that Company has complied with all applicable statutes, rules, and orders in its dealings with Mr. Harter, the Commission should enter an order denying Mr. Harter’s Complaint on the merits, and

was not in violation of the CWR. Mr. Harter stated he understood but wanted to know if filing a written complaint would stop the disconnection.”

¹²⁴ Tr. p. 39, l. 6-11.

¹²⁵ 4 CSR 240-13.050(1)(A).

¹²⁶ 4 CSR 240-13.050(5) (emphasis added).

authorizing the Company to proceed with disconnection of Mr. Harter's electric service in the events: the Company has provided notice as required by 4 CSR 240-13.050 and Mr. Harter has failed to pay his then delinquent balance in good and sufficient funds by the date stated in the disconnection notice, by a method authorized in the disconnection notice.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief was served on the following parties via electronic mail (e-mail) on this 3rd day of October, 2013.

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