BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Eric E. Vickers, Complainant,	)	
vs.	)	Case No: EC-2011-0326
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

This Complaint involves basic contract law and the interpretation of specific provisions of 4 CSR 240-13.055[1], known generally as the Cold Weather Rule (the "Rule").

Eric E. Vickers filed a complaint (the "Complaint") alleging, in part,[2] that the Company violated the law by refusing to enter into an agreement with him under the Rule, and by not putting agreements made under the Rule in writing, resulting in the Company wrongfully charging him 80% of his outstanding bill and threatening to cut his electric utility service.[3] At the evidentiary hearing, Mr. Vickers also took the position that if the Company did not have a writing confirming the January 2011 Cold Weather Rule Payment Agreement ("CWR PAG") that the Company alleged he entered into verbally, then there was no agreement and there was no breach of the agreement by him.[4] Mr. Vickers is wrong.

[1] All subsection references hereinafter are to 4 CSR 240-13.055, unless otherwise noted.
[2] By Order dated August 10, 2011, the Commission dismissed the class action claim in Mr. Vickers' original complaint, and dismissed the Commission as a party. In the Order, the Commission also noted it lacks the authority to grant injunctive relief and money damages, relief which Mr. Vickers sought in his original complaint. The dismissed matters are not addressed in this brief.
[3] (Complaint, ¶¶ 11, 12 and 13).
[4] (Tr., p. 42, l. 22 to p.43, l. 2).

Mr. Vickers was offered a CWR PAG pursuant to the rule, in January of 2011. He verbally entered into an agreement under which the Company offered that Mr. Vickers could pay his delinquent account balance in twelve monthly installments, provided he agreed to make: a timely initial payment amount; twelve timely monthly installment payments of the delinquent balance; and timely payments of all other amounts due on his account. In exchange for Mr. Vickers' promise to make these timely payments, the Company agreed not to disconnect his service because of the delinquent balance. Neither basic contract law nor the Rule requires that this agreement be in writing in order to bind Mr. Vickers. As to the Rule, subsection (6)(B) requires that the agreement be in compliance with subsection (10). Mr. Vickers' January 2011 CWR PAG complied with subsection (10) because his initial payment was calculated pursuant to (10)(C) and his installment payments were calculated pursuant to (10)(B).

Mr. Vickers did not make his initial payment as promised, however, and thereby breached his CWR PAG. Because of his breach, in March 2011 Mr. Vickers was not entitled to the new CWR PAG he demanded, and the Company rightfully refused to offer him one. His service had not yet been disconnected, though, so he was entitled under subsection (10)(B)5 to reinstate the January CWR PAG in order to avoid a disconnect for nonpayment of his delinquent electric utility bill. The Company offered Mr. Vickers the opportunity to reinstate by catching up on all the payments due under the CWR PAG, as well as all other amounts past due, as required by (10)(B)5.

Mr. Vickers would have the Commission read half of one sentence in the Rule, "[t]he utility shall confirm in writing the terms of any payment agreement under this rule[5]," as a condition to the very creation and enforcement of CWR PAGs, so that he can continue indefinitely to avoid the responsibility to pay in full and on time for the electric utility service that he has received. Although the Rule does require written confirmation, the Rule does not say that a utility's failure to send written confirmation of the terms of a CWR PAG relieves a customer of the obligations to make the required initial payment and make the installment payments of the agreement. Mr. Vickers' strained interpretation is inconsistent with Staff's, the Company's, and other regulated utilities' interpretation of the Rule, challenges common sense, and is not in the public interest.

[5] (10)(A).

II. Analysis

A. Mr. Vickers and the Company Entered Into a Valid, Enforceable Contract.

Mr. Vickers disputes that he made a binding agreement with the Company because he did not receive a written confirmation of the terms of the agreement. A valid contract must include an offer, an acceptance and consideration. *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. banc 1988). The fact that the contract was not confirmed in a writing signed by the parties is not determinative of whether there was a contract.[6] Missouri courts have determined that, "[a] contractual relationship may be established without a written contract where the circumstances and the acts and conduct of the parties support a reasonable inference of a mutual understanding and agreement that one party perform and that the other party compensate for such performance." *Follman Properties Co. v. Henty Constr. Co.*, 664 S.W.2d 248, 250 (Mo. App. 1983). "The agreement between the parties arises from their intention, implied or presumed from their acts, where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract." *Id.*

Mr. Vickers' recorded call with a Company representative on January 6, 2011 evidences that he entered into a valid contract with the Company:

> **Mr. Vickers**: I had made arrangements under the weather plan, so I don't know why somebody is coming out here [with a disconnect notice].
>
> …
>
> **Operator** [Company representative]: Okay. Thanks for holding. I do show where you had made arrangements on January the 3rd. The representative actually advised you that you can pay *** January the 10th. Call back with a receipt number to set up a payment arrangement for the remaining balance…It will be fine for you to make a payment on the 10th. Just call us back with a receipt number so we can set the arrangement up for you and keep you off the disconnection list.

[6] The Company acknowledges that § 432.010 and § 400.1-206 RSMo provide that actions on contract cannot be brought in relation to certain types of contracts unless those contracts are in writing and signed by the party to be held accountable. However, the statutes provide an exclusive list of such contracts (actions to recover against an executor's own estate, promises to pay the debt of another person, marriage contracts, real estate contracts, real estate leases for longer than a year, agreements not to be performed within a year, or contracts for the sale of personal property exceeding $5,000 in value), which does not encompass the Cold Weather Rule Payment Agreement at issue here. Further, this is not an action on a contract.

Mr. Vickers: Okay.[7]

Mr. Vickers' recorded call to the Company on January 10th, 2011 also evidences that he entered into a valid contract with the Company:

Mr. Vickers: But if I pay the *** today, then what?

Operator [Company representative]: If you pay the $*** today, we'll set the remaining balance up on a Cold Weather Rule payment agreement. And you'll have a balance—you'll have a balance of $***.**. We will take that amount and break it down into twelve monthly payments—twelve monthly installments, and that amount will be due each month with your bill. So it will be like—we're not completely wiping your bill out, but we're putting it on a payment arrangement for you to make payments so that you can catch it up and not be in threat of disconnect…Well, it says you actually have until January 14th to make the payment…If you pay the 441 by Friday that will be fine. And it's going to leave you with a balance of $***.**.

Mr. Vickers: Okay.

Operator: It will be due with a balance of $***.**. We'll break that down into twelve monthly installments of $** a month, due monthly with your bill.

Mr. Vickers: Okay.

Operator: While on the agreement, each bill must be paid in full by the delinquent date. If you are a day late or a penny short, the agreement will default and you will be responsible for the full amount of your bill at that time. Do you accept and understand the terms of the agreement?

Mr. Vickers: Yes.[8]

A reasonable inference can also be drawn from Mr. Vickers' above admission, made during the January 6th call, that he had "made arrangements under the weather plan," and from the Company's January 3, 2011 contact notes[9] that this agreement was entered into as early as January 3rd, and simply confirmed during the calls on the 6th and 10th.

The Company made an offer, Mr. Vickers accepted the offer, and consideration (not disconnecting Mr. Vickers' service) was given. Mr. Vickers and the Company entered into a valid, enforceable contract.

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[7] Tr. of Ameren Missouri Exhibit 4HC, p. 2, l. 13-14; p. 3, l. 8-12; p. 4, l. 19-23.

[8] Tr. of Ameren Missouri Exhibit 5HC, p. 4, l. 5-15, l. 25; p. 5, l. 1; p. 5, l. 25 to p. 6, l. 18.

[9] Ameren Missouri Exhibit 8HC.

B. The Contract Was in Compliance with Subsection (10) of the Rule.

Subsection (6) provides that where a residential customer has a delinquent bill, a utility cannot discontinue heat-related service due to nonpayment if, in part, the utility receives an initial payment and enters into a payment agreement, both of which comply with subsection (10) of the Rule. For a customer who has not previously defaulted on a CWR PAG, subsection (10)(B), in turn, requires that the utility offer a twelve month budget plan designed to cover all existing arrears and current bills, and the utility's estimate of ensuing bills. Mr. Vickers asserted in his Complaint, and testified at the hearing, that an initial payment under the Rule is calculated as ten percent of the outstanding utility bill balance plus one month's average bill.[10] Mr. Vickers was unable, at the hearing, to identify any provision of the Rule in support of his argument.[11]

Rather, (10)(B) provides that the utility offer a plan that covers the total of all preexisting arrears and current bills (i.e., the current balance), and the estimate of ensuing bills (i.e., an average monthly bill). As of January 2011, Mr. Vickers' current balance was $*,***.**. [12] (10)(C) provides that an initial payment be no more than twelve percent of all preexisting and current bills, unless agreed to by the parties. Twelve percent of $*,***.** was $***. The estimate of ensuing bills was $***.[13] $***, the estimate of ensuing bills is required to be included in the plan, per (10)(B), and was added to the $***. $*** plus $*** equals $***. Ms. Hart testified to this method of calculating an initial payment under the Rule.[14] Mr. Vickers agreed to pay the $***. *See* excerpt from January 10th call between Mr. Vickers and the Company representative set out in Section A, above.

C. Mr. Vickers Breached His January 2011 CWR PAG.

As detailed above, Mr. Vickers agreed to make a CWR PAG initial payment of $*** at the latest, by January 14th. Mr. Vickers admitted at the hearing that he did not make the $*** payment:

> **Q [by Commissioner Kenney]**….But January 10th did you have a discussion in which you agreed to pay $*** by January 10th?

[10] Complaint, ¶2; Tr. p. 38, l. 11-14.
[11] Tr. p. 47, l. 10 to p. 48, l. 6.
[12] Ameren Missouri Exhibit 5HC, Tr. p. 3, l. 2-3.
[13] *See* monthly charges for electric service, for December 14, 2009 through December 13, 2010, totaling $*,***.**. (Ameren Missouri Exhibit 2HC, p. 1-2). Said amount, divided by 12, equal $***.**.
[14] Tr. p. 82, l. 7-13.

A [by Mr. Vickers]. Yes.

Q. Okay. And did that occur?

A. No.[15]

Mr. Vickers also admitted that he breached the CWR PAG, in the February 19th recorded telephone call with a Company representative:

Operator [Company representative]: Okay. I'm showing where you were already on the Cold Weather Rule payment agreement, and you defaulted on January the 4th.

Mr. Vickers: Right.[16]

In addition, Ms. Hart's testimony also confirmed that the required initial payment had not been made, which constituted a default of the CWR PAG:

Q. [By Counsel Giboney] All right. Did Mr. Vickers make a payment on or before January 14th?

A. [By Ms. Hart] No.[17]

Finally, Ameren Missouri's Exhibit 2HC, the Account Activity Statement, shows that Mr. Vickers did not make the $*** payment on or before January 14th.

D. After His Breach, Mr. Vickers Was Entitled to Reinstate His CWR PAG, But Was Not Entitled To a New CWR PAG.

Mr. Vickers has alleged that the Company violated the law by refusing to enter into a CWR PAG with him when he demanded one on March 15, 2011.[18] The Company did not violate the law. Mr. Vickers points to no law or Commission rule that provides that a customer who has defaulted on a CWR PAG is entitled to a new CWR PAG upon demand. Rather, (10)(B)5 specifically provides that in the event a customer has defaulted on a CWR PAG, but has not yet been disconnected, "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." In other words, the customer is allowed to reinstate the

[15] Tr. p. 46, l. 8-13.
[16] Tr. of Ameren Missouri Exhibit 6HC, p. 3, l. 8-11.
[17] Tr. p. 193, l. 7-21.
[18] (Complaint, ¶¶ 5, 6 and 13).

CWR PAG (and avoid a disconnect for failure to pay a delinquent bill) by bringing the CWR PAG payments, and all other payments, current.

When Mr. Vickers contacted the Company in March 2011, his January CWR PAG was in default, but he had not yet been disconnected. Therefore, in compliance with (B)5, on March 14th, supervisor Michael Horn advised Mr. Vickers that he could reinstate his January 2011 CWR PAG by paying $*,***, which constituted the installment payments he had missed under his CWR PAG as well as other amounts due.[19] As such, as of March 14, Mr. Vickers was entitled to reinstate his CWR PAG by paying $*,***, but he was not entitled at that time, or on March 15th or after, to a new CWR PAG.

E. The Company Properly Calculated Mr. Vickers' Reinstatement Payment.

Mr. Vickers also alleges that he was wrongfully required to pay 80% of his outstanding bill in order to avoid disconnection.[20] This is incorrect. Mr. Vickers' 80% reference appears to come from (10)(C)2, but that provision of the Rule refers to how an *initial payment* is to be calculated when a customer has previously defaulted on a CWR PAG. As discussed above, the Company calculated the payment necessary to *reinstate* Mr. Vickers' defaulted January 2011 CWR PAG pursuant to (10)(B)5, which applies when a customer has defaulted but has not yet been disconnected, and which requires a customer to become current on his CWR PAG installment payments and all other amounts due. Mr. Vickers' reinstatement payment was calculated by the Company as follows:

$**.**	January PAG payment
$**.**	February PAG payment
$***.**	January bill
$***.**	February bill
$**.**	January late pay charge
$**.**	February late pay charge
$***.**	2 months of deposit installments
$*,***.**[21]	

Simple math also demonstrates that the Company did not calculate the required payment under the 80% provision. By March 10, 2011, just the amount past due on Mr. Vickers' account

[19] Tr. p. 203, l. 5-15; p. 157, l. 4-24; Ameren Missouri Exhibit 9HC; In addition to the Company's explanation to Mr. Vickers, the requirement of the $*,*** payment was explained in detail in a March 16, 2011 email to Mr. Vickers from the Commission's Consumer Services Manager, Gay Fred (Staff Exhibit 1 HC, Schedule 1).
[20] (Complaint, ¶8).
[21] (Staff Exhibit 1HC, Schedule 1).

was $*,***.**.[22] By March 15, 2011, the current balance on Mr. Vickers' account, which included the amount due for service from February 14, 2011 through March 15th, 2011, plus his delinquent account balance, was $*,***.** (slightly less than the prior bill, because Mr. Vickers had made a $***.** payment).[23] Had the Company required Mr. Vickers to pay 80% of either of those two figures, $*,***.** or $*,***.**, he would have been required to pay *more* than the $*,*** reinstatement payment the Company required—80% would have been either $*,***.** or $*,***.**.

Ameren Missouri did not require Mr. Vickers to pay more than the Rule specifies. In fact, Ameren Missouri, through an oversight, actually required Mr. Vickers to pay *less* to reinstate his defaulted CWR PAG than the Rule requires. This is because the above calculation did not include the $*** initial payment that Mr. Vickers never paid.[24] That is, Mr. Vickers' reinstatement payment should have been $*** higher, since that $*** was also an "amount that should have been paid pursuant to the agreement[,]" but never was paid.[25]

F. Staff and Utilities Have Properly Interpreted the Rule.

The Rule requires that utilities' confirm the terms of payment agreements in writing. (10)(A). There is no dispute among the parties as to this requirement. For practical and logical reason, Staff and utilities, including the Company, believe the Rule requires the customer to make an initial payment before a writing confirming the terms of the CWR PAG is sent to the customer.[26] The Company's practice is to send written confirmation of its CWR PAGs after the customer's initial payment is made.[27] The Company did not send written confirmation of Mr. Vickers' CWR PAG because he defaulted Mr. Vickers asserts, however, that the Company is required to send the writing confirming the terms *before* the customer is required to make the initial payment. He buttresses this argument with his belief that an agreement does not exist, and therefore he had no obligation to make an initial payment, without a writing signed by both the parties.[28] Mr. Vickers is wrong. As noted in Section A., above, "[a] contractual relationship may be established without a written contract where the circumstances and the acts and conduct

[22] Ameren Missouri Exhibit 1HC, bill dated February 16, 2011, delinquent after March 10, 2011.
[23] Ameren Missouri Exhibit 1HC, bill dated March 17, 2011.
[24] Tr. p. 204, l. 3-15.
[25] (10)(B)5.
[26] Tr. p. 67, l. 24 to p. 68, l. 9; Tr. p. 86, l. 2-5.
[27] Tr. p. 147, l. 24 to p. 148, l. 3; p. 217, l. 24 to 218, l. 5).
[28] Tr., p. 42, l. 22 to p.43, l. 2.

of the parties support a reasonable inference of a mutual understanding and agreement that one party perform and that the other party compensate for such performance." *Follman Properties Co. v. Henty Constr. Co.*, 664 S.W.2d 248, 250 (Mo. App. 1983). The circumstances in January, particularly the calls between Mr. Vickers and the Customer Contact Center representatives on January 3rd, 6th and 10th, demonstrate that Mr. Vickers and the Company entered into an agreement that required Mr. Vickers to make the $*** initial payment under his CWR PAG by January 14th.

Mr. Vickers has not and cannot identify where in the Rule the utility is required to confirm the CWR PAG in writing *before* the initial payment is due. What the Rule does mandate, however, is that a customer make an initial payment, if he wants to enter into a CWR PAG to avoid a disconnect for nonpayment of a delinquent bill.[29] For logical and practical reasons that serve the interests of customers and utilities, utilities require the customer to make the initial payment before confirming the customer's CWR PAGs in writing.

1. To Avoid a Disconnect, the Initial Payment May Need To Be Made Before Written Confirmation is Provided.

The Rule does not expressly specify when an initial payment must be made. The Rule does provides that a customer may enter into a CWR PAG and make an initial payment in order *to avoid a disconnect* for nonpayment of a delinquent bill. It is logical, therefore, that the initial payment required *must be made on or before the time service may be disconnected*. Very often, a customer calling for a CWR PAG is up for disconnection the very same day he calls, or close to it.[30] As such, it is logical that a customer in threat of immediate disconnection must make the initial payment immediately. That timing would necessitate the customer making the payment *before* any written confirmation of the terms of the agreement could be generated, mailed and received by the customer.

2. Sending Written Confirmation Before Receiving an Initial Payment Will Cause Confusion If the Customer Immediately Defaults.

As noted above, there is no provision of the Rule that requires the Company to send the written confirmation before the initial payment is received. Taking a slightly different tack at hearing, Mr. Vickers asked Ms. Fred whether on the day the verbal agreement was made the

[29] (6)(B).
[30] Tr. p. 82, l. 16-20.

Company *could have* sent him written confirmation.[31] As Ms. Fred and Ms. Hart each attempted to explain, utilities do not do this because if a written confirmation were sent immediately, and if that writing were received by the customer after his default for failure to make the initial payment on time, the terms outlined in the writing would no longer be applicable and would likely confuse the customer:

> **Q. [by Mr. Vickers]** Could Ameren on that day [of the verbal agreement] have issued a written confirmation?
>
> **A. [by Ms. Fred]** They could have, but unfortunately I don't think you would have received it before the discontinuance date would have fell and therefore it wouldn't have been viable.
>
> …
>
> **Q. [by Counsel McClowry]** Ms. Fred, would it confuse a customer to get a written confirmation of an agreement that customer had already defaulted on by failing to make an initial payment?
>
> **A.** Yes, usually.[32]

> **Q. [by Ms. Giboney]** Do you also—we heard Ms. Fred's testimony. Do you believe it would be confusing to a customer to receive a Cold Weather Rule payment agreement letter after they defaulted?
>
> **A. [by Ms. Hart]** Yes, very much.
>
> **Q.** They would be subject to different terms to reinstate than the terms stated in the letter; is that correct?
>
> **A.** Yes. We would—we would need to figure up anything that they had missed in order to reinstate, yes.[33]

> **Q. [by Mr. Vickers]** How do you—what makes you think I would have been confused by that [receiving a letter confirming the January 3rd agreement]?

[31] Tr. p. 62, l. 7-15.
[32] Tr. p. 62, l. 7-12; p. 80, l. 2-6.
[33] Tr. p. 86, l. 11-21.

A. [by Ms. Hart] Because we always send the letter out after the initial payment has been made. And if that—if that would have gone out and you had not made your initial payment, then it would in the eyes of the customer, I think it could be very confusing for that customer to think, Did I make an initial payment as requested or had I not or what's happening here. I think it would be totally confusing…And the—one of the requirements that we would have asked of a customer would have been to make an initial payment to actually have this agreement ongoing. So by [the customer] not making that initial payment and then [the Company] sending out a letter to say, You are on a payment agreement those are—we actually would be saying something that we had not said to that customer on the phone. So yes, I think it would be very confusing. [34]

In Mr. Vickers' case, had a written confirmation been sent by the Company immediately after reaching a verbal agreement with Mr. Vickers (on the assumption that he would make good on his initial payment), the writing would have advised Mr. Vickers that he was required to pay 12 monthly installments of $** due monthly with his bill by the delinquent date, or he would be in default. [35] However, upon Mr. Vickers' default on January 14th, to reinstate his agreement, Mr. Vickers would actually have been required to pay not just $**, but all the amounts that should have already been paid under the agreement, i.e. $***.[36] Then, on January 17th, Mr. Vickers' January bill issued. On that date, had he wanted to reinstate his CWR PAG, he would have been required to pay even more—the $*** plus his $***.** bill for service from December 13, 2010 through January 16th, 2011.[37] Clearly, had Mr. Vickers received around the same time as his default a writing that advised him to pay only $** with each of the next twelve months' bills, that writing would have been completely inconsistent with what he actually owed due to that default and inconsistent with what he would have to pay if he wanted to reinstate the agreement. Mr. Vickers' situation demonstrates why it makes sense not to send the writing until after the initial payment has been made.

3. Confirming a CWR PAG Before an Initial Payment is Received May Prevent a Customer From Receiving LIHEAP Assistance.

[34] Tr. p. 133, l. 2-p. 134, l. 5.
[35] Ameren Missouri Exhibit 5HC, p. 6, l. 4-12.
[36] (10)(B)5.
[37] Ameren Missouri Exhibit 1HC.

If the Company caused written confirmations to go out right after verbal CWR PAGs were reached, essentially giving customers the benefit of the doubt that they will make CWR PAG initial payments, another adverse situation might arise. Many customers might inadvertently be denied energy assistance:

> **Q. [by Counsel Giboney]** All right. Let me ask you a question about when you sent [sic] out the written confirmation. Is it also true that if a customer is seeking LIHEAP assistance, that if you record that initial payment before it's made, that can basically prevent them from receiving assistance?
>
> **A. [by Ms. Hart]** Yes. It can because it would take them out of threat of disconnection. When the energy assistance agency calls in, as they do to ask us if a particular customer or an account is in threat of disconnection, then we would either say yes, it is, or no, it's not. But if we've sent that, the payment agreement letter out previous to that payment being made, it would have taken them out of collections.
>
> **Q.** Okay. So when Ameren—when you set that up in your system, it is set up to not reflect the Cold Weather Rule payment agreement until the initial payment's made?
>
> **A.** That's correct.
>
> **Q.** That way the letter won't interfere with the LIHEAP assistance if it's applicable?
>
> **A.** That's correct.[38]

4. The Rule is Designed to Assist Customers, But Not to Enable Them to Avoid Their Obligations Indefinitely.

Mr. Vickers wants to blame Ameren Missouri for not sending a written confirmation of his January 2011 CWR PAG, in order to justify his failure to pay anything towards his electric bill, for months. To elevate the written confirmation requirement of the Rule above a customer's obligation to pay *anything* and above a utility's duty to cut off service to customers who are paying *nothing* perverts the purpose of the Rule. The Rule is intended to, "protect[] the health and safety of residential customers receiving heat-related utility service by placing restrictions on discontinuing and refusing to provide heat-related utility service from November 1 through March 31 due to delinquent accounts of those customers."[39] The restriction on utilities under the Rule, generally speaking, is that a utility cannot disconnect a customer if the customer is

[38] Tr. p. 194, l. 18-p. 195, l. 14.
[39] 4 CSR 240-13.055. (emphasis added).

making certain minimum payments toward his delinquent bill. Nowhere does the Rule, nor do Chapters 386 and 393, say, however, that utilities must provide utility service at no charge, that customers need not pay their bills, or that customers can breach agreements to pay their bills, without consequence. To the contrary, §§393.130.2 and .3 RSMo expressly prohibit electric utilities from directly or indirectly *charging, demanding, collecting or receiving less* (or for that matter, greater) compensation for electric service than the utility charges any other person for a like service, and from granting any undue or unreasonable preference or advantage. The requirement the Rule imposes on customers in exchange for the protection it offers them is to make the reduced payments required under the Rule.

Further, Ameren Missouri understands that the purpose of the written confirmation is to serve as a reminder of the terms of the agreement the customer and utility have entered into.[40] While Ameren Missouri agrees this is important, Mr. Vickers in particular cannot plausibly complain that he was not reminded about his obligations under his January 2011 CWR PAG. The evidence before the Commission is that he was advised on no less than four occasions what his obligations under the Rule were—during the January 3rd, January 6th, January 10th and February 16th calls.

Ameren Missouri has explained its action in not sending the written confirmation based on its reasonable rationale (identical to Staff's) that sending the confirmations before receipt of payment may actually confuse customers, and has explained sound public policy reasons, such as noninterference with LIHEAP assistance, for sending written confirmations after initial payments are received. Mr. Vickers' actions stand in stark contrast. From October 7, 2010 until March 14, 2011, Mr. Vickers made *no payment at all* on his account.[41] He didn't pay his April or May electric utility bills.[42] In June, July, August of 2011, Mr. Vickers paid only an amount sufficient to cover then delinquent charges, and nothing towards his then current charges. He paid nothing this September.[43] Even if Mr. Vickers had forgotten the exact terms of his CWR PAG, he was certainly receiving monthly bills and disconnection notices. Mr. Vickers' conduct speaks volumes. He is not asking the Commission to enforce the provisions of the Rule in the interest of balancing the health and safety concerns of customers against the financial interests

[40] Tr. p. 281, l. 20-25;
[41] Ameren Missouri Exhibit 2HC.
[42] Tr. p. 209, l. 6-11.
[43] Tr. p. 209, l. 18 to p. 210, l. 19.

and statutory obligations of utilities—he is seeking a rationalization for failing to pay for the utility services he has received. The balance sought by the Rule is not served if a reasonable interpretation of the written confirmation requirement is ignored in favor of one chronically delinquent customer's unreasonable interpretation that would allow him and any other such customer to indefinitely avoid payment for the utility services the utility has provided in order to safeguard all customers' health and safety. It disserves the interest of the public and utilities to allow Mr. Vickers, or any other customer, to use the written confirmation provision of the Rule to defeat the purposes of the Rule.

III. Conclusion

Based on the foregoing, Ameren Missouri respectfully requests that the Commission enter its order finding that Mr. Vickers and the Company entered into a valid, verbal Cold Weather Rule Payment agreement in January of 2011; that Mr. Vickers breached that agreement by failing to make the initial payment when required; that the Company was not required to offer Mr. Vickers the Cold Weather Rule Payment Agreement that he demanded in March of 2011; that Mr. Vickers was only entitled to reinstate that agreement in March of 2011; that the Company acted properly in offering Mr. Vickers the opportunity to reinstate his January 2011 agreement; and that the Company's policy of not sending written confirmation of Cold Weather Rule Payment Agreements until after a customer's initial payment agreement is received is consistent with the purposes of the Rule and does not violate the Rule.

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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 6th day of December, 2011.

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