

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

Charles Harter,)	
)	
Complainant,)	
)	
v.)	
)	<u>File No. EC-2013-0491</u>
Union Electric Company d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

STAFF’S POST-HEARING BRIEF

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through the undersigned counsel, and for its *Brief*, states the following:

Introduction

Charles Harter (“Mr. Harter” or “Complainant”) filed a formal complaint before the Public Service Commission on May 7, 2013, alleging that Union Electric d/b/a Ameren Missouri (“Ameren Missouri” or “Respondent”) revoked Complainant’s payment plan and failed to give Complainant notice of the payment due to avoid disconnection, and that Staff did not investigate Complainants informal complaints.¹ Pursuant to the formal complaint, Complainant requests that the Commission order Respondent not to disconnect Complainant’s service and to reinstate a budget payment plan. Also on May 7th, the Commission ordered that this matter proceed according to the Commission’s small formal complaint process pursuant to Rule 4 CSR 240-2.070(15). The Commission ordered Ameren Missouri to file an answer no later than June 6th, and ordered Staff to investigate the complaint and file its report no later than June 27th.

¹ Unless otherwise specified, all dates in this brief refer to the calendar year 2013.

Ameren Missouri filed a timely answer, asserting that, while it had entered into a Cold Weather Rule payment agreement with Complainant, the Complainant defaulted and is not entitled to reinstatement of the payment agreement entered into in December of 2012. On June 27th, Staff filed its *Report* and determined that, with regard to the matters Complainant raised in the first formal complaint, Ameren Missouri did not violate any Commission statutes, rules, orders or any provisions of the Company's Commission-approved tariff.

On August 28th, the Commission issued an *Order Adopting Procedural Schedule*, setting a hearing date of September 19th and an October 3rd deadline for post-hearing briefs. On August 29th, Complainant filed an additional complaint alleging that Ameren Missouri had threatened disconnection for nonpayment regarding amounts related to the current dispute, in violation of the Commission's rules. Complainant again requested that his service not be disrupted while the current dispute was ongoing. Also on August 29th, the Commission ordered Ameren Missouri to respond to the second complaint, specifically articulating Ameren Missouri's compliance with Rule 4 CSR 240-13.070(6), and stayed disconnection pending an answer. Ameren Missouri filed its answer, on August 30th, reasoning that the disconnection notice was related to amounts that are not in dispute. On September 19th, Ameren Missouri filed a *Motion for Expedited Treatment and Authority to Proceed with Disconnection*, which the Commission denied on September 24th. The hearing took place as scheduled, during which the parties presented evidence and testimony for the record.

Statement of Facts

In December 2012, Ameren Missouri agreed to enter into a cold weather rule ("CWR") agreement with the Complainant after delinquencies on his account put him in danger of

disconnection.² Pursuant to the agreement, Complainant agreed to pay the past-due balance in installments of \$32.00 per month, in addition to his monthly payments for services.³ At that time, Ameren Missouri informed Complainant that his agreement would not default if he made his payments on time.⁴ On January 21st, Ameren Missouri mailed Complainant a bill for \$177.01, including \$145.00 of current charges and \$32.00 for the CWR installment and also noting the remaining balance of the CWR as \$346.84.⁵ Ameren Missouri received timely payment for this bill. On February 19th, Ameren Missouri billed Complainant for \$162.66, including current charges of \$130.66 and another \$32.00 installment.⁶ The bill also noted the remaining balance as \$314.84 on the CWR agreement.⁷ Ameren Missouri did not receive timely payment and billed Complainant on March 20th for \$605.76, including current charges of \$125.82, a defaulted CWR amount of \$314.84, a prior balance of \$162.66, and a late charge of \$2.44.⁸ Ameren Missouri sent disconnection notices to Complainant on March 19th,⁹ and March 22nd, but both were voided upon Ameren Missouri receiving a \$162.66 payment for the past-due balance.¹⁰

On April 19th, Ameren Missouri billed Complainant for \$555.38, including current charges of \$105.62, a late charge of \$6.66, and prior balance of \$443.10 (consisting of a CWR default amount of \$314.84, a prior late charge of \$2.44, and prior balance for services

² Ameren Ex. 9HC, *Joint Stipulation of Non-Disputed Material Facts*, p. 2.

³ Staff Ex. 1, *Staff's Recommendation*, p. 2.

⁴ Tr. 3: 86, ll. 16-21; *See also* Ameren Ex. 4.

⁵ Ameren Ex. 9HC, Exhibit B.

⁶ *Id.* at Exhibit C.

⁷ *Id.*

⁸ *Id.* at Exhibit E.

⁹ *Id.* at Exhibit D.

¹⁰ *Id.* at p. 3.

rendered of \$125.82).¹¹ Ameren Missouri mailed disconnection notices to Complainant for the past-due balance of \$443.10, due by May 3rd. Complainant initiated an informal complaint on April 30th requesting reinstatement of the CWR agreement.¹² Staff contacted Complainant on May 1st, advising him regarding his first formal complaint that Ameren Missouri had not violated the CWR. ** _____

_____ ¹³ ** Ameren Missouri and Complainant then entered a non-CWR payment arrangement wherein Complainant agreed to ** _____

_____ ¹⁴ ** Complainant made a payment of \$278.00 on May 6th but filed a formal complaint on May 7th.¹⁵

Ameren Missouri suspended any action against the remaining \$220.48, which consisted of the \$555.38 bill less the \$278.00 payment and \$56.90 of the June bill that was applied toward the arrangement.¹⁶ Ameren Missouri sent Complainant a bill on June 19th including \$176.45 for service from May 16th through June 17th, a late fee of \$0.54, a prior balance of \$36.10, and \$184.38 of the defaulted payment agreement.¹⁷ Complainant failed to make timely payment and Ameren Missouri issued a disconnection notice for \$176.99 for current service charges and a late

¹¹ Ameren Ex. 9HC, Exhibit F.

¹² Staff Ex. 1, p. 3.

¹³ **

_____ ** See Staff Ex. 1, p. 4.

** _____

_____ ** See Staff Ex. 1, p. 5-6.

¹⁴ Tr. 3: 115; *see also* Ameren Ex. 3HC, p. 4.

¹⁵ Ameren Ex. 9HC, p. 3.

¹⁶ Tr. 3: 116-120; *see also* Ameren Ex. 1HC. The \$220.48 continued to show on his bill but remained suspended. *Id.*

¹⁷ Ameren Ex. 9HC, Exhibit I.

fee, but not for the \$184.38 and \$36.10, which Ameren Missouri suspended.¹⁸ On July 18th, Ameren Missouri billed Complainant for an additional \$226.93 for utility service from June 17th through July 17th.¹⁹ He paid \$176.99 to avoid disconnection, leaving the \$226.93.²⁰ As such, Ameren Missouri sent another disconnection notice on August 16th, requiring payment for the remaining \$226.93.²¹ On August 18th, Ameren Missouri billed Complainant for his usage from July 17th to August 15th, totaling \$198.47, which was due August 29th.²²

List of Issues Filed by Staff

Staff filed the parties' joint *List of Issues, Witnesses, and Order of Cross-Examination* on September 11th, which presented five issues to be determined at the hearing:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

Staff respectfully recommends the Commission follow the initial findings of Staff's June 28th recommendation, finding Ameren Missouri has not violated its tariffs, any law, or any

¹⁸ Ameren Ex. 9HC, Exhibit J.

¹⁹ *Id.* at Exhibit K.

²⁰ *Id.* at Exhibit L.

²¹ *Id.*

²² *Id.* at Exhibit M.

Commission rule or order in removing Complainant from the CWR arrangement, refusing to reinstate the agreement, and issuing disconnection notices before Mr. Harter filed his complaint on May 7, 2013. Staff further recommends the Commission find that the disconnection notices issued by Ameren Missouri subsequent to the filing of the complaint also did not violate any Commission statute, rule, order or approved Company tariff.

1. The January 21, 2013 bill issued by Ameren Missouri to the Complainant did not violate any Commission statute, rule, order or approved company tariff.

The bill Ameren Missouri issued on January 21st complied with all the requirements of 4 CSR 240-13.020 regarding *Billing and Payment Standards*. It contained all the information required by 4 CSR 240-13.020(9), including meter readings, a due date, current charges, separate fees and charges, etc. The Complainant and Ameren Missouri had entered a CWR agreement by that time. As such, the previous balance would be billed in a one-time payment of \$157.14, which Complainant made, and twelve installments of \$32.00. The CWR installment can be seen on the January 21, 2013 bill. Moreover, the remaining balance on the CWR agreement was also noted on this bill, indicating to Complainant that he still owed \$346.84 on that bill that would be divided into eleven more installment payments. As such, Ameren Missouri did not violate any tariffs or Commission statute, order or rules in issuing the January 21, 2013 bill.

2. Ameren Missouri did not violate any Commission statute, rule, order or approved Company tariff by removing Complainant from the CWR payment arrangement.

Complainant paid the initial payment of \$157.14 required by his CWR agreement with Ameren Missouri, as well as the first installment noted on the January 21st bill. However, Complainant failed to pay his February bill, which included current charges and the CWR installment, in a timely manner. The CWR rules contained in 4 CSR 240-13.055 never

state that a customer cannot be removed from a payment arrangement for non-payment. To the contrary, the rules outline the procedure for reinstating a CWR arraignment once it has been terminated for non-payment, indicating that termination is permissible. *See* 4 CSR 240.13.055(10)(B)(5). Thus, Ameren Missouri did not violate any tariffs, statutes, or Commission orders or rules in terminating the CWR payment arrangement for non-payment.

3. Ameren Missouri did not violate any Commission statute, rule, order or approved Company tariff by refusing to reinstate Complainant to the CWR payment arrangement.

The CWR Rules are only effective from November 1st through March 31st of every year. *See* Rule 4 CSR 240-13.055(2). A customer who has defaulted on their CWR payment agreement must request to be reinstated. 4 CSR 240-13.055(10)(B)(5). Complainant did not request that his CWR be reinstated until his informal complaint of April 30, 2013. This was well beyond the time period for which the CWR rules are operative. Moreover, Rule 4 CSR 240-13.055(10)(B)(5) states that a customer who has defaulted on their CWR payment arrangement must be given an opportunity to reinstate the agreement by paying “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.” Complainant failed to pay this amount. However, although not required to do so, Ameren Missouri allowed Complainant to enter a non-CWR repayment arrangement. As such, Ameren Missouri did not violate any tariffs, statutes, or Commission orders or rules in refusing to reinstate the CWR payment arrangement.

4. Ameren Missouri did not violate any Commission statute, rule, order or approved company tariff in sending Complainant disconnection notices prior to his filing of the May 7, 2013 Complaint.

Rule 4 CSR 240-13.050(1)(D) states that utility service may be terminated for, among other reasons, “failure to comply with terms of a settlement agreement.” Complainant entered a CWR payment plan with Ameren Missouri on December 21, 2012, but failed to comply with the terms of that agreement by not paying his February 18th bill in a timely manner.

Complainant was sent two disconnection notices during the operative period of the CWR (November 1st through March 31st). However, the CWR does not entirely preclude disconnection except during certain weather conditions; rather, the rule requires that certain notification requirements be met before services can actually be terminated. *See* 4 CSR 240-13.055(3). There is no evidence that such weather conditions existed that would preclude disconnection. Furthermore, regarding the disconnection notices issued after March 31st, those were outside the operative period of the CWR and, thus, were permissible by 4 CSR 240-13.050(1)(D), as stated above. Accordingly, Ameren Missouri did not violate any Commission statute, rule, order, or approved tariff in sending Complainant disconnection notices prior to his filing of the May 7, 2013 Complaint.

5. Ameren Missouri did not violate any Commission statute, rule, order or approved Company tariff in sending Complainant disconnection notices subsequent to his filing of the May 7, 2013 Complaint.

Rule 4 CSR 240-13.070(6) prohibits a utility from discontinuing service related to a matter that is in dispute. However, 4 CSR 240-13.050(1) permits a utility to discontinue service for, among other things, “nonpayment of an undisputed delinquent charge” and “failure to comply with the terms of a settlement agreement.”

After Complainant defaulted on the CWR agreement, Ameren Missouri allowed him to enter into a non-CWR plan on May 3rd, whereby he agreed to ** _____

_____ ** After Complainant made the initial payment of \$278.00, a sum of \$220.48 remained. Although that amount was included on his bills as a matter of company policy, Ameren Missouri suspended any disconnection or collection related to that amount. As such, when Complainant defaulted on his June 19th bill, the disconnection notices that followed were related solely to the late fee and utility service from May 16th to June 17th.²³ This is also the case for the two disconnection notices that were sent on August 16, 2013 and August 21, 2013.

Due to the fact that all the disconnection notices issued after Complainant filed his complaint on May 7th were for amounts not related to the dispute, it was within Ameren Missouri's rights under the rules to issue the disconnections notices. As such, Ameren Missouri did not violate any Commission statute, rule, order or approved Company tariff in issuing the disconnection notices after the complaint was filed.

Conclusion

It remains Staff's position that Ameren Missouri has not violated any Commission statute, rule, order or approved company tariff. ** _____

_____ **

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_____ ** Although Staff sympathizes with Complainant's situation, it appears that Ameren Missouri is not in violation of any rules, tariffs, or statutes.

²³ See Ameren Ex. 9HC, Exhibits I & J (showing that disconnection was for the balance of \$176.99, which included a \$0.54 late fee and \$176.45 for utility service from May 16th to June 17th).

WHEREFORE, Counsel for Staff submits this Post-Hearing Brief to the Missouri Public Service Commission for consideration in the above stated case, and respectfully recommends the Commission find no tariff or rule violation on the part of Ameren Missouri.

Respectfully submitted,

/s/ Whitney Hampton

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was mailed, electronically mailed, or hand-delivered to all parties to this cause on this 3rd day of October, 2013.

/s/ Whitney Hampton