BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

ERIC E. VICKERS, PERSONALLY AND ON BEHALF OF All CUSTOMERS OF AMEREN MISSOURI WHO HAVE SOUGHT RELIEF UNDER THE COLD WEATHER RULE	)	
Complainant	)	**Case No. EC-2011-0326**
vs.	)	
AMEREN MISSOURI,	)	
MISSOURI PUBLIC SERVICE COMMISSION	)	
Defendants	)	

COMPLAINANT'S POST-EVIDENTIARY HEARING BRIEF

COMES NOW complainant, Eric E. Vickers, and hereby submits the following as his Post-Evidentiary Hearing Brief.

ISSUE

This case presents a straightforward legal question of significant import to the public. Namely, whether Ameren violated and continues to violate the Missouri Cold Weather Rule ("CWR"), 4 CSR 240-13.055, by failing to put in writing agreements Ameren claims were made to Complainant and other customers under the CWR.

A secondary issue, which emerged from the October 31, 2011 Evidentiary Hearing (hereinafter referred to as the "Hearing"), is whether Ameren violated Section 11 of the Cold Weather Rule, 4 CSR 240-13.055 (11), by not having a tape recording of the January 6, 2011 conversation between Complainant and an Ameren representative, which Ameren claims created and constituted the alleged CWR agreement with Complainant.

THE LAW – THE COLD WEATHER RULE

The purpose of the Cold Weather Rule ("CWR") is stated at the outset of the Cod of State Regulation, 4 CSR 240 – 13.055 RS. Mo.:

"PURPOSE: *This rule protects 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.*"

Sections 1 through 14 of the CWR set forth its administrative and enforcement mechanisms, such as notice requirements, the November through March period to which it applies, and the rules with respect to discontinuation of electrical service by a utility. At issue in this matter is Section 10, which governs payment agreements made between customers and utilities under the CWR.

The essence and very purpose of the CWR is to afford customers an opportunity to enter into a term payment agreement with a utility during the winter months when utility costs are typically higher for consumers, rather than be subject to disconnection because of inability to pay the full amount of the utility bill when the utility says payment is due. As the website of the Missouri Attorney General states with respect to the Cold Weather Rule, it "Allows you to budget your payments over 12 months." [See website Missouri Attorney General].

Subsection 10 (C) of the CWR allows a customer, during the months of November through March, to pay 12% down on their utility bill, with the balance of the arrears and the current payment due amortized over a 12 month period, stating:

"For a customer who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12)-month budget bill amount calculated in subsection (10) (B) of this rule unless the utility and the customer agree to a different amount." 4 CSR 240-13.055 (10) (C) 1.

The Cold Weather Rule also requires that any agreement entered into under the CWR be memorialized in writing, with Subsection 10 (A) stating in relevant part that, "The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two weeks." 4 CSR 240-13.055 RS. (10) (A) RS. Mo.

FACTUAL BACKGROUND

On March 15, 2011, Complainant requested from Respondent Ameren a payment plan pursuant to the Cold Weather Rule in order to pay the balance Ameren claimed was due in order to avoid disconnection of his electrical service. Ameren refused Complainant's request, claiming that Complainant had defaulted on a CWR agreement allegedly made with Ameren on January 6, 2011 at 2:54 pm via a telephone conversation Complainant allegedly had that date with an Ameren representative. [See PSC Staff Findings at Schedule 3].

Despite Complainant advising Ameren that he had not made or defaulted on the alleged January 6 agreement, Ameren refused to allow Complainant to make an initial payment of 12% of the outstanding balance and amortize the remaining balance over a 12 month period, as prescribed in 4 CSR 240-13.055 (10) (C).

Notwithstanding Ameren's refusal to allow Complainant to make said initial payment under the CWR, Complainant nevertheless paid Ameren on March 15, 2011 the amount of $645.23, which amount was based on Complainant's calculation of the amount he was to pay under the CWR. Ameren then advised Complainant that because Ameren considered Complainant to have defaulted on the alleged January 6 agreement, Complainant's March 15 payment was insufficient to prevent a disconnection action, and threatened to proceed with disconnection if Complainant did not pay $1,034.00 in addition to the $645.23 amount. In order to avoid any disconnection action, Complainant paid to Ameren on March 17, 2011 the amount of $1,036.75. In making the payment, Complainant - after having sent the Public Service Commission ("PSC") a series of emails complaining of Ameren's actions - sent another email to the PSC, stating:

"I have just made a payment to Ameren in the amount of $1,036.75, which is the amount Ameren claimed needed to be paid - 80% of my bill - because of my alleged default of an alleged agreement under the Cold Weather Rule. I am paying this under protest and under the duress of the threat of disconnection, and I reserve the right to challenge being forced to pay this amount. The manner in which you and the PSC protect Ameren over the consumer is a travesty." [See PSC Staff Findings at Schedule 8].

On or about March 24, 2011, Ameren delivered to Complainant a letter purporting to be: "Re: Reinstatement and Confirmation of Cold Weather Rule Payment Agreement." [See PSC Staff Findings at Schedule 9]. Complainant responded with an email to Ameren on March 24, 2011, stating:

"This is to advise that I reject this as being an agreement that I entered into under the Cold Weather Rule. I do not agree that this serves as a confirmation in writing of any agreement with Ameren under the Cold Weather Rule. I have never entered into an agreement with Ameren under the Cold Weather Rule. Please immediately remit back to me the $1,034.77 payment made. Furthermore, this is to renew my previous request to enter into an agreement with Ameren under the Cold Weather Rule, per my payment of $645.23." [PSC Staff Findings at Schedule10].

Complainant then filed a formal complaint with the PSC. Neither during the discovery process of Complainant's action, nor at the Evidentiary Hearing, did Ameren produce a written confirmation of the alleged January 6, 2011 agreement Ameren claims Complainant defaulted on.

Neither during the discovery process of Complainant's action, nor at the Evidentiary Hearing, did Ameren produce a tape recording of the January 6, 2011 conversation with Complainant that Ameren claims constitutes an agreement under the CWR.

ARGUMENT

I. Ameren Violated the Cold Weather Rule Law in Failing to Confirm in Writing the January 6, 2011 Agreement Ameren Claims Complainant Defaulted On.

Ameren claims that Complainant defaulted on a payment agreement it alleges Complainant entered into on January 6, 2011, while Complainant argues:

(a) that he never entered into an agreement with Ameren under the CWR on January 6, 2011 or thereafter; and

(b) that no agreement with Ameren under the CWR was ever confirmed in writing.

Subsection 10 (A) of the CWR states in relevant part that, "The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two weeks." 4 CSR 240-13.055 RS. (10) (A) RS. Mo.

It is undisputed and Respondent concedes that Ameren did not confirm in writing the January 6, 2011 agreement Ameren contends Complainant defaulted on. Nor does Ameren claim that the final phrase of Subsection 10 (a), which concerns two week extensions, applies to this matter. Rather, Ameren reinvents the law to argue that it was not required to put in writing the January 6th agreement it claimed Complainant defaulted on.

At the Evidentiary Hearing, Ameren argued that it is only required to confirm in writing an agreement made with a customer under the CWR after the customer makes the initial agreed upon payment. Obviously, Ameren is imposing its own statutory interpretation of Subsection (10) (A) of the CWR,

inasmuch as there is nothing in its explicit language that makes a utility's obligation to confirm a CWR agreement in writing contingent upon the utility receiving an initial payment. Indeed, from the customer's standpoint, it would be imprudent to make a payment to a utility without first having a confirmed written agreement.

Ameren's argument that it is only required to confirm a CWR agreement in writing after it receives an initial payment from the customer is in effect an argument that there is no agreement until there is an initial payment. In other words, Ameren is attempting to argue out of both sides of its mouth, claiming on the one hand that it entered into a CWR agreement with Complainant on January 6, 2011, while claiming on the other hand that an initial payment had to be made by Complainant in order for there to be an agreement to confirm in writing.

Not only is the record is devoid of any document reflecting a written confirmation of the January 6, 2011 CWR agreement Ameren claims Complainant defaulted on, Ameren admitted at the Evidentiary Hearing that it did not have a January 6, 2011 tape recorded conversation of Complainant, though interestingly, Ameren played at the Hearing and submitted into evidence other tape recorded conversations of Complainant.

II. Ameren Violated the Cold Weather Rule Law in Denying Complainant Payment Terms of an Initial Payment of 12% and Instead Requiring Complainant to Pay 80% in Order to Avoid Disconnection.

Subsection 10 (C) 1. of the CWR states:

"For a customer who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12)-month budget bill amount calculated in subsection (10) (B) of this rule unless the utility and the customer agree to a different amount." 4 CSR 240-13.055 (10) (C) 1.

While Subsection 10 (C) 1 allows for a customer to make an initial payment under a CWR agreement of only 12% of his budget bill, Subsection 10 (C) 2 states that a customer who has defaulted on a CWR agreement with a utility has to make an initial payment of 80%:

"For a customer who has defaulted on a payment plan under the cold weather rule, the initial payment shall be an amount equal to eighty percent (80%) of the customer's balance, unless the customer and the utility agree to a different amount." 4 CSR 240-13.055 (10) (C) 2.

By not having a written confirmation of the alleged January 6, 2011 CWR agreement, Ameren was able to claim Complainant was in default of the oral agreement allegedly made by Complainant on that date, and thus Ameren was able to require Complainant to pay 80% of his balance, rather than 12%, or be subject to disconnection.

Complainant filed this matter as a class action due to being advised by Ameren personnel that Ameren, as a matter of company policy, does not confirm in writing agreements made with customers under the CWR. Although the class action status of the complaint was dismissed, based on the evidence adduced at the hearing regarding Ameren's CWR policy and practices, it would be appropriate for the PSC to determine the number of customers Ameren claims defaulted on CWR agreements in order to determine the economic and social impact of Ameren's requiring that customers pay 80%, rather than 12%, of their bill in order to avert disconnection.

III. Ameren violated the Cold Weather Rule Law in Failing to Maintain Records of the January 6, 2011 Agreement Ameren Claims Complainant Defaulted On.

Section 11 of the CWR states that if "a utility fails to provide service pursuant to this rule…the utility shall maintain records concerning the refusal of service which, at a minimum, shall include…the facts surrounding the reason for the refusal and any other relevant information." 4 CSR 240-13.055 (11).

Respondent Ameren threatened in March 2011 to refuse service to Complainant if Complainant did not pay 80% of the balance Ameren claimed was due as a result of Complainant allegedly defaulting on a CWR agreement Ameren alleges was entered into on January 6, 2011.

At the Evidentiary Hearing, Ameren submitted into evidence two tape recorded conversations of Complainant that occurred on two separate occasions following January 6, 2011, which Ameren submitted as proof that it entered into a CWR agreement with Complainant on January 6, 2011. However, quite amazingly, Ameren testified at the Hearing that it did not have any tape recording of January 6, 2011.

Because the alleged January 6, 2011 CWR agreement was the basis for Ameren threatening to terminate and refuse electrical service to Complainant, Ameren was obligated under Section

11 of the CWR to maintain a tape recorded or other contemporaneous record of the alleged January 6, 2011 CWR agreement.

IV. Ameren Has Engaged in a Pattern and Practice of Violating Section 10 (A) of the Cold Weather Rule.

Stunningly, at the Evidentiary Hearing, Ameren executive Michael Horn, the 9 year Supervisor of Credit Collections for Ameren Missouri, testified that in all his tenure with Ameren he had never even seen a written confirmation by Ameren of an agreement with a customer under the Cold Weather Rule.

Tellingly, both Mr. Horn and Ameren Customer Services Supervisor Cathy Hart testified at the Evidentiary Hearing that Ameren did not place CWR agreements in writing because they believed it would be confusing to customers. Incredulously, in this technological era of transparency, top ranking executives of a utility testified that for Ameren to confirm in writing an agreement made under the CWR without an initial payment first being made would only confuse customers.

The record is clear that Ameren, as a matter of practice and policy, has not and does not confirm in writing agreements made with customers under the CWR, notwithstanding the explicit language of Section 10 (A) stating that, "The utility shall confirm in writing the terms of any payment agreement under this rule…" 4 CSR 240-13.055 RS. (10) (A) RS. Mo.

CONCLUSION

Respondent Ameren has engaged in a brazen and calculated usurpation of the clear and unequivocal language of the Cold Weather Rule that any agreement made between a customer and a utility be confirmed in writing. It should be obvious that having such a written agreement is for the benefit and protection of the consumer. A written contract versus an oral one is a hallmark of consumer protection.

For all the foregoing reasons, which demonstrate that Respondent Ameren has failed to comply with and violated the provisions of the Missouri Cold Weather Rule, Complainant prays for judgment against Respondent.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing was emailed via the PSC EFIS this 5th day of December, 2011 to all parties of record.

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