

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

CHARLES HARTER,	)	
COMPLAINANT	)	
V.	)	CASE NO. EC2013-0491
	)	
UNION ELECTRIC COMPANY dba,	)	
AMEREN, RESPONDENT	)	

COMPLAINANT'S APPLICATION FOR REHEARING  
FROM REPORT AND ORDER OF NOVEMBER 13, 2013

COMES NOW Complainant, and for his Application for Rehearing prays that the Commission rehear his cause for the following two reasons:

**I.**  
**Improper interpretation of 4 CSR 240-13.055(10)(B)(5)**

Complainant entered into a cold weather rule agreement with respondent in 2012, accidentally made a default in his March 2013 payment and requested to be reinstated to the cold weather plan in April 2013. The Report and Order of the Commission finds that complainant was not eligible for reinstatement to his cold weather plan agreement because his application was not made prior to March 31. (findings of fact 31 & 32) This is an incorrect interpretation of the Rules. There is no requirement that consumers seek reinstatement to a payment plan between November 1 and March 31, and reinstatement cannot be so limited.

The Cold Weather Rule as set out in 4 CSR 240-13.055 is comprised of two main components: first are provisions concerning disconnection and second are provisions concerning agreements. The first one is time sensitive, that is, temperature sensitive. It is called the cold weather rule because it is designed to prevent people being disconnected from heat during the seasonal times of cold weather from November 1 to March 31. The second is not temperature

sensitive, nor time sensitive, in point of fact, since agreements are required to be at least twelve (12) months in length, they are equally required to extend throughout the year (12 months), and cannot be limited to November 1 to March 31. The subsections that deal with disconnection, (1)(2)(3)(4)(5)(6) and (9) are all limited by provisions within each subsection to application of November 1 to March 31. Subsections which deal with agreements, (7)(8) and (10) are not so limited.

4 CSR 240-13.055(2) provides that the cold weather rule “takes precedence over other rules on provision of heat-related utility service from November 1 through March 31 annually”. Most importantly, this provision is not included as a definition in 4 CSR 240-13.055(1), but is a stand-alone rule. Subsection 1 says “The following definitions shall apply in this rule:” and lists A – E. Had the commission intended the March 31 date to control in these facts, it wouldn’t have codified this phrase as subsection (2), but instead would have put something similar, such as “this rule shall apply to November 1, through March 31” as subsection (1)(F), thus making it a definitional provision applicable to the entirety of rule 4 CSR 240-13.055. It did not. Thus March 31 is not a significant consideration in this case.

Similarly, subsection (10)(B)(5) makes no reference at all to the March 31 date. It speaks only of “a customer” on a “cold weather rule payment agreement”. No dates are given and no requirement of “November 1 to March 31” is provided nor required. There is no provision in this rule that would make complainant not “entitled” for reinstatement to his cold weather rule payment plan. Since subsection (2) is not definitional, but merely another subsection of equal and independent authority to subsection (10), it cannot control subsection (10). Subsection (10)(B)(5) refers merely to “If a customer defaults on a cold weather rule payment agreement but has not yet had service discontinued by the utility” (which is the fact situation presented by

claimant), “the utility shall permit such customer to be reinstated on the payment agreement.”

Respondent refused to reinstate complainant. The use of the word “shall” is mandatory, and this refusal is thus a violation of the Rules of the Commission.

To illustrate this point, consider subsection (3) which concerns notice requirements, which is a different subject than subsection (10) payment agreements. Subsection (3) begins with the words “From November 1 through March 31, prior to discontinuance of service due to nonpayment, the utility shall ..” The Commission has explicitly intended, through this rule, to limit application of the notice of disconnection requirements to the November/March time period. Again, consider subsection (9) “Reconnection Provisions” which is limited to “from November 1 through March 31, shall reconnect services ...” So the provisions regarding disconnection and reconnection are limited to the cold weather November-March period. Also subsection (5) “weather provisions” contains the November-March period in subsection (5)(C) and subsection (6) “discontinuance of Service” starts “From November 1 through March 31 ..”

But consider subsection (7) about “whenever a customer with a cold weather rule payment agreement moves ..” That makes sense because people will move without consideration for the cold weather period and when they do, they want to take their agreement plan with them. This rule says they can. And of course, there is no such limitation on subsection (10) concerning payment agreements. The Commission thus intends no such limit on payment agreements, and no March 31 limit on reinstatement of payment agreements of (10)(B)(5).

This makes sense, in that repayment under the provisions set out in (10)(B) (1) will be a “(12)-month plan” and under provisions of (10)(B)(2) will extend “over a reasonable period in excess of twelve (12) months. It would be nonsensical to limit operation of this plan to

November 1 to March 31, but that is the interpretation of this respondent and this Decision at page 16, completely wrong, that

Mr. Harter did not request reinstatement of his payment agreement until April 30, 2013, which was outside of the time period for which the cold weather rule reinstatement provision was operative. Ameren Missouri did establish a non-cold weather rule payment agreement for Mr. Harter around May 6, 2013. The Commission concludes that Mr. Harter was not entitled to reinstatement of his cold weather rule payment agreement when he made the request on April 30, 2013

The Commission, in fashioning the rule 4 CSR 240-13.055 (10), as set out above, clearly did not limit reinstatement to applications before March 31. The only eligibility requirement is that it be “a customer” who “defaults on a cold weather rule payment agreement”. To interpret the rule to require application for reinstatement to be made before March 31, as does Respondent and this Decision, will make a 12 month plan, (which is required by the rule), completely unenforceable and nullify both the plan and the rule.

To summarize the codification of “November 1 to March 31” limits in Rule 4 CSR 240-13.055: It is present concerning disconnection, notice of disconnection and reconnection, and is purposefully absent for payment agreements, specifically including reinstatement of payment agreements. This is statutory design to fit a purpose. The danger from disconnection is in the name of the provision, “cold weather”, we don’t want people to freeze or get sick. So the special rules about cold weather disconnection are in force from November 1 to March 31. But the payment agreements which run a minimum of 12 months, particularly when the customer “has not yet had service discontinued by the utility” (10)(B)(5), is thus differentiated from a disconnection situation, and these are NOT limited to November 1 to March 31, because they are irrelevant to “cold weather” and continue throughout the year, regardless of weather, and are not dangerous due to “cold weather”.

It is not only wrong, it is heartless, for the utility to intentionally misinterpret this rule to try to knock deserving people in need, off the list and away from the protection designed for them. It is disgusting for the Commission to be implicit in it. How is a person on a 12 month payment agreement, supposed to apply in March for reinstatement from a September default? Isn't this just patently ridiculous? No one can seek reinstatement until after default, and default can occur at any time during the 12 month agreement. So application for reinstatement cannot be confined to November -March or it is banned from 58% of the consumers (seven months out of twelve). That surely cannot be the intent of the Commission, to distribute relief in arbitrary random fashion. Consumers on a payment plan who run out of money in August are SOL but if you run out in March you are OK? The utility makes money from this nonsense. Why does the Commission deviate from its own rules?

## **II.**

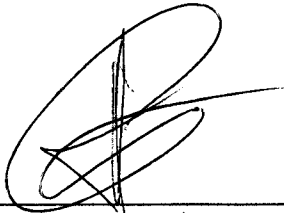
### **Respondent violated 4 CSR 240-13.070 in sending Disconnection notices**

Respondent alleges complainant failed to make payments and complainant disputes that. If Respondent is right, what is the remedy? The correct remedy would be dismissal of a formal complaint under 4 CSR 240-13.070(7). Respondent could have filed a Motion to Dismiss the complaint. This would be the proper procedure the Commission has set out to settle such disputes. The hearing officer could have determined and resolved this dispute within the framework of administrative law procedure set out by the Commission. But instead, Respondent sent multiple disconnection notices to complainant and attempted to disconnect him during the pendency of the hearing process in order to gain an unfair advantage in the administrative process. That was not within the bounds of the rules of the Commission, as the disconnection was for respondent's abuse of the cold weather rule (see rehearing application I) it would fall

under 4 CSR 240-13.050(2)(F) in that wrongful refusal to reinstate the cold weather amount created a “bill correcting a previous underbilling” and complainant clearly claims “an inability to pay” and the payment agreement offered by the utility was not “equal to” the “period of underbilling” which was the cold weather rule.

In addition, the disconnection was based on the refusal to reinstate the cold weather rule, and thus was clearly “currently the subject of a dispute pending with the utility or complaint before the commission” of 4 CSR 240-13.050(5); was obviously “relative to the matter in dispute during the pendency” 4 CSR 240-13.070(6); and was a matter for the Commission to decide fairly through its procedures without coercion. Thus the finding and decision on page 16 that the amounts were “not in dispute” is in error.

WHEREFORE, complainant applies for REHEARING this 15<sup>th</sup> day of November, 2013.

A handwritten signature in black ink, appearing to be 'CH', is written over a horizontal line.

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