



# Missouri Public Service Commission

# FILED

DEC 24 2013

Judge or Division: <del>_____</del> <b>Bushmann</b>	Appellate Number:	Missouri Public Service Commission <b>9:38am MA</b>
Appellant: <b>Charles A. Harter</b>	Missouri Public Service Commission File Number: <b>EC-2013-0491</b>	
Respondent: <b>Union Electric Company dba Ameren Missouri; and Public Service Commission</b>		

(Date File Stamp)

## Notice of Appeal

Notice is given that **Charles A. Harter** appeals to the Missouri Court of Appeals ☒ Western ☐ Eastern ☐ Southern District.

Date Notice of Appeal Filed \_\_\_\_\_ Signature of Attorney or Appellant

(to be filled in by Secretary of Commission)

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

## CASE INFORMATION

Appellant Name / Bar Number: <b>Charles A Harter 28059</b>	Respondent's Attorney / Bar Number: <b>UE Sarah Gibney 50299</b>
Address: <b>827 S Sappington St Louis Mo 63126</b>	Address: <b>Po Box 360 Jefferson City Mo 65102-0360</b>
Telephone: <b>314-821-1334</b>	Telephone: <b>573-526-7393</b>
Fax: <b>573-526-7393</b>	Fax: <b>573-443-3141</b>
Date of Commission Decision: <b>November 13, 2013</b>	Date of Application for Rehearing Filed: <b>November 15, 2013</b>
	Date Application for Rehearing Ruled On: <b>December 4, 2013</b>

## DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

## Certificate of Service

I certify that on **12/19/13** (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

by EFIS to all; by postage prepaid mail to **Shelley Bruesgemann Po Box 360 Jefferson City Mo 65102-0360**; **UE Sarah Gibney Po Box 918, Columbia, Mo 65205-0918**; **OPC Lewis Mills Po Box 2230, Jefferson City Mo 65102**; and emails to **PSC shelley.bruesgemann@psc.mo.gov**; **UE gibney@smithlewis.com** and **Ameren Service OPC at ops@ameren.com**

**RECEIVED**

Appellant or Attorney for Appellant

DEC 23 2013

FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

No. WD \_\_\_\_\_

[Please type or neatly print the information requested. This form must be filed with the Notice of Appeal (form 8-A) with the Circuit Clerk.]

Charles A. Harter  
Plaintiff

Charles A Harter #28059  
Attorney's Name  
827 S Sappington  
Street Address  
St Louis Mo 63126  
City Zip Code

vs. Union Electric Company  
d/b/a Ameren Missouri,  
and Public Service Commission  
Defendant

PSC  
Shelley Brueggemann #52173  
Attorney's Name  
P.O. Box 360  
Street Address  
Jefferson City Mo 65102  
City Zip Code

UE #50299  
Sarah Gabney  
P.O. Box 918  
Columbia Mo 65205

PSC  
Date Notice filed in Circuit Court 12/19/13

The Record on Appeal will consist of a:

Legal File Only or ☒ Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action) In April of 2013,  
After payment default but before disconnection, Appellant requested to  
be reinstated to his old weather rule payment agreement but AmerenUE  
and PSC denied as ineligible because request not made between 1/1 to 3/31.  
ISSUE(S):  
(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)  
4 CSR 240-13.055(10)(B)(5) allows reinstatement under  
these facts and does not require application during "1/1 to 3/31 as  
[Two (2) typewritten pages maximum] payment agreements are 12 months.  
(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)



## PSC NOTICE OF APPEAL EC-2013-0491

(ISSUE 1)

Complainant entered into a cold weather rule agreement with respondent UE 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 payment agreement because his application was not made prior to March 31. (findings of fact 31 & 32) This is an incorrect interpretation of 4 CSR 240-13.055(10)(B)(5). 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 by subsection (10) are required to be at least twelve (12) months in length, they are required to extend throughout the year, and cannot be limited to November 1 to March 31. The subsections that deal with disconnection, (1)(2)(3)(4)(5)(6)(9) are all limited by provisions within each subsection to November 1 to March 31, while subsections which deal with agreements, (7)(8)(10) are not so limited.

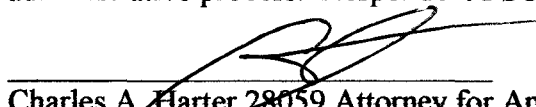
Subsection (10)(B)(5) makes no reference at all to the March 31 date. It speaks only of "a customer" on a "cold weather rule payment agreement". No dates are given and no

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. 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.

It is important to note that subsection (10)(B)(5) applies where the customer “has not yet” been disconnected. If the customer has been disconnected, then it is no longer a situation of reinstatement under (10)(B)(5), but it is a matter of reconnection, under subsection (9). The 11/1 to 3/31 period is specifically set out in (9) for reconnections and specifically not set out in (10) for reinstatements. Once the customer is disconnected, then the rules become “cold weather” sensitive. That is because where heat has not been disconnected, application of the rule is not cold weather sensitive. Appellant was seeking reinstatement to his payment plan, not reconnection to his service. Respondent and the PSC are confused to involve March 31.

(ISSUE 2)

Further, where Respondent UE alleged complainant failed to make payments during the hearing process, it should have moved to dismiss under 4 CSR 240-13.070(7). 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. Respondent PSC wrongfully upheld UE’s disconnection attempts.

  
Charles A. Harter 28059 Attorney for Appellant  
827 S. Sappington, St. Louis, Mo 63126  
314-821-1334 harleycharter@sbcglobal.net