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 BRIEF

 Complainant entered into a cold weather rule agreement in December 2012 and then, in February 2013, could not identify the cold weather amount when he paid the full amount listed on his bill, which was his attempt to pay his bill in full. So in March, complainant believed he had a zero balance and a completely paid off account. He did not. When he did not pay, UE treated it as a default to the cold weather rule agreement. Complainant did not seek reinstatement to the cold weather rule agreement because he was confused and did not understand that the utility believed he had not paid and that the agreement was in jeopardy.

 Not until UE threatened him with disconnection. His immediate response to this threat came, under the timing set by the utility, hours after the cold weather rule expired. Thus the utility could argue that he did not ask for reinstatement to the cold weather plan during the cold weather period. Was this happenstance, or is the utility being disingenuous? The effect of the utility timing of its billing and disconnect mailings, was to shut out complainant from protection under the rule. Worse than that, it was to sever him from the possibility of any payment plan.

 When complainant sought to be reinstated to his cold weather rule agreement, because he was uninformed or unaware, he did not do so until the day after the rule expired. The utility did not analyze the confusion in February and missed payment in March as to whether complainant could be a fit candidate for reinstatement. Instead, the utility went no further in its analysis than the fact that the request came one day after the legal cut-off date for cold weather rule reinstatement. Instead of giving complainant due consideration, he was rejected out of hand.

The utility used the cold weather rule as a license to harm. The utility turned the rule on its head, instead of using the rule to shield consumers from harm, it was used as a sword to hack the consumer to pieces. Ameren testified at hearing that, of the consumers who requested reinstatement to a cold weather plan during the rule period, or prior to April 1, 100% or all of them were reinstated. Judging from the way complainant was treated, the reinstatement rate of those who ask after April 1 is 0% or none. This should not be the way. If it is impossible to be reinstated if your request comes after April 1, then the rule should not provide that such a thing is possible. The utility treats it as black and white, if you miss the date you are out of luck.

Every agent of UE told complainant that nothing could be done. ie “The rule is the rule and you are not eligible, game set match, we are done. Is there anything else we can help you with?” “No, not really, I am trying to keep my family from losing access to food (refrigerator, stove) heat (furnace) communication (telephone-internet) light, medical care and basically life itself that is threatened when you disconnect. If a consumer has not used a cold weather plan, the utility will make a repayment plan. But where, as here, the consumer has used a cold weather plan, and the utility alleges a default thereon, then they say one is “not eligible” for ANY payment plan.

This is a very dangerous grant of authority to the utility. A consumer who must seek a cold weather rule plan in the first place, will by definition have limited means. They will already be living on the margins, one illness or missed paycheck from disaster. Then, during the cold weather period, any arrearage does not disappear, but remains sizable. Then if the utility can claim a default, it can present a sizable and probably un-payable amount. If this amount is allowed to be coupled with a PSC sanctioned “rule” approved pre-determination that a consumer is not “eligible” for a payment plan due to default of a cold weather plan, this is HARSH.

It is even harsher where, as here, there is no discretion involved anymore in a matter that cries out for discretion. By rule, even if as complainant is outside the time period, he should still be a candidate to be reinstated. But he has not been so treated. Every single customer service person, supervisor of the utility and, even more sadly, every single advisor from the Public Service Commission including the written disposals of the informal complaints, merely restate the rule and the date and the facts and NOT ELIGIBLE. This is life or death. I do not think many people other than I, would fight the system to get to this point. I have been dismissed, attacked, ridiculed and threatened. Why? Because I want the utility to CONSIDER my situation.

I must thank the administrative law judge as the clear exception to the preceding paragraph. I was treated at all times with respect and fairness. There is no complaint and nothing in this Brief should be construed to infer any. Quite the contrary, I am well pleased with the competency and civility inside the courtroom. I am grateful that the hearing was rescheduled to Jefferson City at my request, for instance, and the conduct of the hearing itself was of the highest order.

The problem is, what it took to get to that point. First, you need a disabled lawyer like me willing to buck the system who will not take no for an answer, even as informal complaints are summarily dismissed with the implication that they shouldn’t have been made, and even as the staff’s report depreciatingly implies I am gaming the system. I can take it, if it can keep the electricity on for one poor family, it could save even one life, I’ll suffer it, its worth it.

 But of most concern from the hazards and hurdles placed before me as a litigant, and an issue in this case, is the fact that the utility continually and throughout the hearing process, illegally threatened complainant with disconnection. It is clear that the July, August and September disconnection attempts concern amounts in dispute before the commission. The first complaint places in dispute “$443.00(Ex2)” and the second complaint says “respondent has repeatedly threatened to disconnect complainant for refusing to pay the amounts in dispute in an unlawful attempt to gain leverage over complainant”.

 If the PSC allows the utilities to disregard a consumer’s situation because the utility believes that under its interpretation of the cold weather rule, the consumer is not “eligible”, and if the PSC allows the utility to disconnect during the hearing process because the utility (not the PSC) asserts that through utility math, the amount in dispute is not the amount in dispute before the commission, then the system is broken and there is no reason to have a commission at all.

 UE Ameren’s “Motion for Expedited Treatment” may be the most cynical and crass pleading I have seen in my 35 years of the practice of law. The utility must feel very safe and nested to post such inflammatory nonsense. What is exigent, of course, is losing electric service, not a two week delay in disconnecting it! The correct motion for the utility to make would have been dismissal by 4CSR 240-13(7). There is no provision in the rule to disconnect.

WHEREFORE, Complainant prays, for good cause shown, that he be reinstated to his cold weather rule payment plan and his electric service be not disconnected.

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