

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

October 31, 2011

Jefferson City, Missouri

Volume 3

In the Matter of:

Eric E. Vickers, Personally )  
and on Behalf of all )  
Customers of Ameren Missouri )  
who have Sought Relief under )  
the Cold Weather Rule, )  
)

Complainants,)

vs. ) File No. EC-2011-0326

)  
Union Electric d/b/a Ameren )  
Missouri and Missouri Public )  
Service Commission, )

)  
Respondents. )

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HAROLD STEARLEY, Presiding  
SENIOR REGULATORY LAW JUDGE  
JEFF DAVIS,  
ROBERT S. KENNEY,  
COMMISSIONERS

REPORTED BY:

Shelley L. Mayer, CCR

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FOR: The Staff of the Missouri Public Service  
14 Commission

1 JUDGE STEARLEY: All right. We'll go  
2 ahead and go on the record.

3 Good afternoon. Today's October 31st,  
4 2011. The Commission has set this time for a  
5 contested case hearing in File No. EC-2011-0326 which  
6 is captioned as Eric E. Vickers, Complainant, versus  
7 Union Electric Company doing business as Ameren  
8 Missouri, Respondent.

9 My name is Harold Stearley; I'm the  
10 presiding regulatory law judge over this proceeding.  
11 We'll begin by taking entries of appearance beginning  
12 with the Staff of the Commission.

13 MR. THOMPSON: Thank you. Good  
14 afternoon, Judge. Kevin A. Thompson and Meghan  
15 McClowry for the Staff of Missouri Public Service  
16 Commission, P.O. Box 360, Jefferson City, Missouri  
17 65102.

18 JUDGE STEARLEY: Thank you, Mr. Thompson.  
19 Mr. Vickers.

20 MR. VICKERS: Yes, your Honor. Eric E.  
21 Vickers on behalf of myself. You want an address for  
22 the record and so on?

23 JUDGE STEARLEY: If -- if you don't mind  
24 giving your address as public information, by all  
25 means read it into the record for us.

1                   MR. VICKERS: 1100 Wyoming Avenue,  
2                   St. Louis, Missouri 63118.

3                   JUDGE STEARLEY: Thank you, Mr. Vickers.  
4                   For Union Electric Company.

5                   MS. GIBONEY: Sarah Giboney from Smith  
6                   Lewis. That's 111 South Ninth Street, Columbia,  
7                   Missouri, Suite 200, 65201.

8                   JUDGE STEARLEY: All right. Thank you,  
9                   Ms. Giboney.

10                  And we'll note for the record that the  
11                  Office of the Public Council has not entered an  
12                  appearance in this matter.

13                  I do need to advise the parties of a  
14                  number of things before we get started. First, I ask  
15                  that you shut off all cell phones, Blackberries,  
16                  other electronic devices which may interfere with our  
17                  recording and our webcasting.

18                  See, that's the problem with operating  
19                  two remotes; I only have one of them going. But now  
20                  we're streaming on both.

21                  So, yes, if you'd please shut off all  
22                  electronic devices which could interfere with our  
23                  recording and our webcasting.

24                  Second, I did want to advise you that  
25                  while all the Commissioners are not on the bench

1       today, they probably will be -- and we know  
2       Commissioner Kenney is appearing virtually, but the  
3       others are probably watching our streaming webcast.  
4       And I did want to advise the parties, in particular,  
5       you, Mr. Vickers, if there's confidential information  
6       that you don't want being broadcast on our webcast or  
7       going into the public copy of the transcript, you'll  
8       need to advise us so that we can switch to an  
9       in-camera mode and mute our broadcast.

10               I'm assuming since this is a billing  
11       dispute, you plan on making your billing records, to  
12       the extent that you're offering exhibits, public  
13       anyway; is that correct?

14               MR. VICKERS: No, that's not correct.

15               JUDGE STEARLEY: That's not correct.  
16       You'd like to maintain that as confidential  
17       information?

18               MR. VICKERS: Correct.

19               JUDGE STEARLEY: All right. So when  
20       you're offering exhibits there, we need to be sure  
21       they're marked highly confidential. If there are  
22       portions of those that might need to be disclosed for  
23       purposes of a final order of the Commission, the  
24       Commission may have to declassify certain  
25       information. We will have to see what the evidence

1 shows us and address that at that time.

2 But if there are specific matters then in  
3 your testimony you want to remain confidential,  
4 you'll need to advise me so that I can stop our  
5 webcast from streaming.

6 And if there's any persons in the gallery  
7 today that would need to be cleared from the gallery,  
8 we're going to leave that to counsel as your  
9 responsibility to make sure the gallery is cleared.

10 All right. Scheduling matters. We've  
11 got the afternoon today in the hearing room. I'm  
12 hoping we can conclude this afternoon by business  
13 five o'clock. If we need to stay late, I'm certainly  
14 available; our court reporter is available.

15 Ms. Giboney?

16 MS. GIBONEY: Judge, our witness,  
17 Ms. Hart, is not available after 5:30. She has to  
18 resume duty over at her office, so that's one issue I  
19 know of.

20 JUDGE STEARLEY: Okay. Well, we'll watch  
21 how witness testimony is going today, and if need be,  
22 we'll put her up in the order to make sure she can  
23 complete her testimony today.

24 MS. GIBONEY: Okay. Thank you.

25 JUDGE STEARLEY: If we do need to pick up

1 another day in the hearing, there may be some  
2 conflicts with tomorrow. I have a conflict in the  
3 morning although I had a hearing room reserved for  
4 the afternoon, but we could also possibly pick up on  
5 Monday the 7th or Tuesday the 8th as well. But  
6 we'll -- we'll go over that with counsel and compare  
7 conflicts later as we -- if we need to.

8 Do we have any pending motions or  
9 preliminary matters that need to be taken up? Okay.  
10 Hearing none I understand our witness list today is  
11 going to be Mr. Vickers for himself; Staff has Gay  
12 Fred, the manager of consumer services; Ameren has  
13 Cathy Hart, the consumer -- or customer services  
14 supervisor and Michael Horn, supervisor of credit  
15 collections; is that correct?

16 MS. GIBONEY: That is correct.

17 JUDGE STEARLEY: All right. Then we will  
18 proceed with opening statements if the parties have  
19 opening statements or would like to give them.

20 Mr. Vickers, would you like to give an  
21 opening statement?

22 MR. VICKERS: Yes, your Honor, and I'll  
23 be brief. I am here and what this complaint is about  
24 is Ameren's application of the Cold Weather Rule.  
25 And my contention is that they violated the Cold

1 Weather Rule in my instance and that they, as a  
2 pattern or as a practice, violate the Cold Weather  
3 Rule by not abiding by the explicit terms of the  
4 regulation that they put in the agreement made under  
5 the Cold Weather Rule in writing.

6 They did not do that in this case, and it  
7 is set forth in my complaint, the facts which I will  
8 lay out briefly. And by them not confirming the  
9 agreement in writing as the law requires, then I  
10 became victimized, penalized by having to make  
11 payments which I would not otherwise have had to make  
12 had the Cold Weather Rule been properly applied.

13 JUDGE STEARLEY: All right. Thank you,  
14 Mr. Vickers.

15 Opening statement from Staff.

16 MS. MCCLOWRY: Good afternoon. Staff  
17 conducted an investigation in this matter and filed a  
18 Staff report. Staff will present the results of its  
19 investigation today through the testimony of Ms. Gay  
20 Fred. Staff has received no new information that  
21 would change Staff's conclusions in this matter;  
22 therefore, Staff's conclusions today are the same as  
23 in the report, that the Company has not violated its  
24 tariff or any Commission rule or statute.

25 JUDGE STEARLEY: All right. Thank you,



1 Ms. McClowry.

2 Opening statement from Ameren Missouri.

3 MS. GIBONEY: The regulations do not  
4 require that the Cold Weather Rule payment agreement  
5 be put forth in writing prior to a customer entering  
6 into that agreement. They do require that the  
7 agreement be confirmed in writing.

8 However, the evidence will show that  
9 Mr. Vickers breached his agreement before that  
10 confirmation could be sent in writing. There was a  
11 contract in this case; there was an offer and  
12 acceptance and consideration.

13 The evidence will show that Mr. Vickers  
14 called and asked about paying a delinquent balance,  
15 that the Company offered that he could pay that  
16 balance in 12 monthly installments provided he agree  
17 to make a timely payment -- excuse me, a timely  
18 initial payment amount, 12 timely monthly installment  
19 payments of the delinquent balance, and timely  
20 payments of all other amounts due on his account.  
21 Mr. Vickers and the Company each agreed to these  
22 terms, and in exchange for Mr. Vickers' promise to  
23 make these payments, the Company agreed not to  
24 disconnect his service because of the delinquent  
25 balance.

1 JUDGE STEARLEY: All right. Thank you,  
2 Ms. Giboney.

3 COMMISSIONER KENNEY: Can I ask a  
4 question?

5 JUDGE STEARLEY: Certainly,  
6 Commissioner.

7 COMMISSIONER KENNEY: Of Ms. Giboney real  
8 quickly.

9 I want to -- I want to -- good  
10 afternoon.

11 MS. GIBONEY: Good afternoon.

12 COMMISSIONER KENNEY: I want to be clear  
13 about which provision of the CSR we're dealing with.  
14 Is it 4 CSR 240-13 (10) (A) and (B)?

15 MR. VICKERS: Yes.

16 MS. GIBONEY: I just got it in front of  
17 me. Can I cite to it?

18 COMMISSIONER KENNEY: Oh, sure, yeah,  
19 absolutely.

20 MS. GIBONEY: 4 CSR 240-13.055.

21 COMMISSIONER KENNEY: Yeah, I'm sorry,  
22 055 and then --

23 MS. GIBONEY: Sub (6). Sub (6). That  
24 would be the discontinuance of service provision.

25 COMMISSIONER KENNEY: Okay.

1 MS. GIBONEY: And then Sub (10), you're  
2 correct.

3 COMMISSIONER KENNEY: So, and Sub (10) is  
4 the provision dealing with whether and when the  
5 agreement needs to be confirmed in writing, correct?

6 MS. GIBONEY: That's correct. And Sub  
7 (6) is the provision that says, Provided a customer  
8 contacts utility, states they can't pay in full, and  
9 the utility receives an initial payment and the  
10 customer enters into the agreement, then you can have  
11 a Cold Weather Rule agreement.

12 And then it says that that payment has to  
13 be set up in compliance with Subsection (10), which  
14 says you need to confirm an agreement in writing.

15 MR. VICKERS: Where are you reading from,  
16 Counselor, I'm sorry?

17 COMMISSIONER KENNEY: Okay. I see --

18 MS. GIBONEY: Subsection (6) and  
19 Subsection (10).

20 COMMISSIONER KENNEY: Thank you.

21 JUDGE STEARLEY: Thank you, Commissioner.

22 Mr. Vickers, I believe we're ready for  
23 your testimony if you'd like to come up to our  
24 witness box here.

25 MR. VICKERS: Well, actually, your Honor,

1 I wanted to begin my case by calling Ms. Hart.

2 JUDGE STEARLEY: Were you planning on  
3 putting on direct testimony yourself?

4 MR. VICKERS: Other than what's in the  
5 record, no. I would testify to this, the dates and  
6 circumstances and a receipt.

7 JUDGE STEARLEY: At this point we have  
8 filings in our case, but we really don't have an  
9 evidentiary record, so I want to be sure you --

10 MR. VICKERS: Sure.

11 JUDGE STEARLEY: -- get whatever your  
12 direct case is into this evidentiary record, so.

13 And also you would need to be available  
14 for cross-examination yourself from the other  
15 parties.

16 So let me -- you are a complainant and I  
17 think we need to go forward with your direct case  
18 first before we move on to the other witnesses.

19 MR. VICKERS: I can't call my witness  
20 first? Is that the --

21 JUDGE STEARLEY: Ms. Giboney?

22 MS. GIBONEY: Judge, if I could just add,  
23 the parties were asked to submit a list of witnesses,  
24 and Mr. Vickers did not submit Ms. Hart as a witness  
25 for his direct case. She's ready to testify --

1 JUDGE STEARLEY: Well, he's certainly  
2 going to be welcome to cross-examine those witnesses  
3 after they put them on.

4 But just as a matter of procedure here,  
5 Mr. Vickers, I believe you should go first and  
6 present your --

7 MR. VICKERS: Okay.

8 JUDGE STEARLEY: -- direct case and then  
9 be available for cross-examination.

10 And afterwards we'll continue down the  
11 order list with Staff's witnesses or witness and then  
12 Ameren's witnesses. And after you give your direct,  
13 Mr. Vickers, and go through cross, you'll be --  
14 you'll have an opportunity to do basically redirect  
15 or provide some more testimony.

16 MR. VICKERS: Thank you.

17 JUDGE STEARLEY: I know this is a little  
18 awkward since you're --

19 MR. VICKERS: Yes.

20 JUDGE STEARLEY: -- here yourself in  
21 terms of don't expect you to be asking yourself  
22 questions, but if you could just give us a narrative  
23 of your testimony. But allow me to swear you in  
24 first.

25 (Witness sworn.)

1 JUDGE STEARLEY: Thank you. And you may  
2 proceed.

3 THE WITNESS: Thank you.

4 ERIC VICKERS, having been sworn, testified as  
5 Follows:

6 DIRECT TESTIMONY BY MR. VICKERS:

7 As is stated in paragraph five of the  
8 formal complaint that I filed on or about March 15th,  
9 I contacted Ameren to request an agreement under the  
10 Cold Weather Rule, and I thereupon tendered payment  
11 to Ameren in an amount equal to 10 percent of the  
12 outstanding utility bill balance plus one month's  
13 average bill, which was the amount required to be  
14 paid under the Cold Weather Rule.

15 Ameren rejected my effort to have the  
16 Cold Weather Rule put in place, have a cold weather  
17 agreement. They contend that I entered into an  
18 agreement with them in January. I never entered into  
19 an agreement with Ameren.

20 On March -- on or about March 24th, I  
21 received from Ms. Cathy Hart of Ameren a letter which  
22 we'll mark as Plaintiff's Exhibit A, Plaintiff's  
23 Exhibit A. And this letter references, saying,  
24 quote, Reinstatement and confirmation of Cold Weather  
25 Rule payment agreement.

1                   I had no agreement in March with Ameren  
2           as this letter states, and this is not a confirmation  
3           of any agreement that I made with Ameren.

4                   As I understand the law, when a customer  
5           seeks assistance under the Cold Weather Rule and  
6           enters into an agreement, then that agreement becomes  
7           confirmed in writing. And the regulation  
8           specifically requires the confirmation in writing of  
9           any terms of any agreement. I believe this is to  
10          protect the customer, to protect the consumer.

11                  And in my discussions with Ameren  
12          personnel, they do not routinely put agreements in  
13          writing. I inquired of them why don't they do it  
14          like the gas companies; I understand the gas  
15          companies, when they make an agreement under the Cold  
16          Weather Rule, they put it in writing. Ameren has no  
17          written confirmation of any agreement they said that  
18          I entered into in January.

19                  And as a result of that, Ameren not  
20          allowing me to come under the Cold Weather Rule, they  
21          accelerated the payments that were due and forced me  
22          to make payments in order to prevent a disconnection.

23                  JUDGE STEARLEY: All right. Mr. Vickers,  
24          you referred to an Exhibit A?

25                  MR. VICKERS: Yes.

1 JUDGE STEARLEY: Would you please have  
2 our court reporter mark that.

3 (Complainant Exhibit A was marked for  
4 identification.)

5 JUDGE STEARLEY: And do you have  
6 additional copies of that that the Commission could  
7 view?

8 MR. VICKERS: I just have this.

9 JUDGE STEARLEY: Just the one?

10 MR. VICKERS: Just the one.

11 JUDGE STEARLEY: Have the other parties  
12 had an opportunity to look at that exhibit?

13 MS. GIBONEY: Yes.

14 MR. VICKERS: I think they plan to use  
15 it.

16 JUDGE STEARLEY: Were you planning on  
17 offering that?

18 MR. VICKERS: Yes.

19 JUDGE STEARLEY: We'll go ahead and offer  
20 it at this time.

21 Are there any objections to the admission  
22 of Exhibit A on Mr. Vickers' part?

23 MR. THOMPSON: No objection.

24 JUDGE STEARLEY: Hearing none, it shall  
25 be received and admitted into the record.



1 (Complainant Exhibit A was received into  
2 evidence.)

3 MR. VICKERS: Thank you.

4 JUDGE STEARLEY: Mr. Vickers, do you have  
5 any other comments you'd like to make before we open  
6 this up to cross-examination?

7 THE WITNESS: No, your Honor.

8 JUDGE STEARLEY: All right. Cross-  
9 examination beginning with Staff.

10 MR. THOMPSON: No questions. Thank you,  
11 Judge.

12 JUDGE STEARLEY: All right. Thank you,  
13 Mr. Thompson.

14 Cross-examination, Ameren Missouri.

15 MS. GIBONEY: No questions, Judge.

16 JUDGE STEARLEY: All right. Thank you,  
17 Ms. Giboney.

18 Any questions from the Commissioners?  
19 Commissioner Davis.

20 QUESTIONS BY COMMISSIONER DAVIS:

21 Q. And I guess, Mr. Vickers, you are aware  
22 that you have the burden of proof in this matter,  
23 correct, since you're bringing the complaint?

24 A. Correct.

25 COMMISSIONER DAVIS: Does everybody else

1 agree with -- agree with that?

2 MR. THOMPSON: Yes.

3 MS. GIBONEY: Yes.

4 BY COMMISSIONER DAVIS:

5 Q. Okay. All right. And so, Mr. Vickers,  
6 could you just summarize for me the elements of your  
7 complaint again and how you meet those elements that  
8 Ameren violated the Cold Weather Rule in your  
9 specific case?

10 A. The regulation requires, as I mentioned  
11 and I think as was read, that any agreements made  
12 under the Cold Weather Rule be put in writing,  
13 confirmed in writing.

14 In March of this year, when I attempted to  
15 be placed under the Cold Weather Rule with Ameren, I  
16 was denied because they said I defaulted on an  
17 agreement in January. And they said that because I  
18 had defaulted on the January agreement, then I could  
19 not get the benefit of the Cold Weather Rule, that I  
20 had to pay an accelerated amount.

21 They claim I defaulted on an agreement in  
22 January. I say that the law says that if they claim  
23 there was an agreement in January, they should have  
24 something confirming that agreement in writing. If  
25 they don't have something confirming a January

1       agreement in writing, then there was no agreement and  
2       there was no default.

3               So then in March I should have been able  
4       to get the full benefit of the Cold Weather Rule.

5               Q.     All right. And when did you call and make  
6       the agreement with Ameren?

7               A.     March.

8               Q.     Okay.

9               A.     And that's when I tendered payment to  
10       them.

11              Q.     Okay.

12              A.     I first called them in January.

13              Q.     Okay. So did you call them in January and  
14       did you make an agreement with them over the phone in  
15       January?

16              A.     Yes, of sorts.

17              Q.     Okay. Did you --

18              A.     And I say of sorts because in my mind  
19       there was no agreement until there is a confirmation  
20       of it in writing.

21              Q.     Okay. Did they tell you on the phone that  
22       in order for -- in order for them to make that  
23       agreement, that you needed to pay 10 percent, and did  
24       you pay the 10 percent or?

25              A.     I believe they may have, but I can't

1 recall.

2 Q. Okay. Did you -- did you actually make  
3 that 10 percent payment?

4 A. No.

5 Q. So is that the -- is that where they are  
6 alleging that you initially breached a verbal  
7 agreement?

8 A. That's right. That's their contention.

9 Q. Okay. Is there anything you want to add,  
10 Mr. Vickers? Anything else?

11 A. No.

12 COMMISSIONER DAVIS: Okay. Thank you.

13 JUDGE STEARLEY: All right. Commissioner  
14 Kenney, do you have questions?

15 QUESTIONS BY COMMISSIONER KENNEY:

16 Q. Mr. Vickers, good afternoon. Can you hear  
17 me okay?

18 A. Yes, sir, I can. Good afternoon.

19 Q. Thank you.

20 Can -- I mean, so you don't -- it's your  
21 contention that there's no agreement until there's a  
22 confirmation in writing. Can you cite to me the CSR  
23 section that you believe supports that contention?

24 A. Yes. It's the paragraph (10) (A) of 4 CSR  
25 240-13 that we were -- you had inquired about.

1 Q. Okay. Point 055(10) --

2 A. (A).

3 Q. -- (A)?

4 A. Yes. It says first under (10), The  
5 payment agreement for service under this rule shall  
6 comply with the following: (A) A pledge of an amount  
7 equal to any payment required by this section by the  
8 agency which administers LIHEAP shall be deemed to be  
9 the payment required. The utility shall confirm in  
10 writing the terms of any payment agreement under this  
11 rule, unless the extension granted customer does not  
12 exceed two weeks.

13 Q. And how do you interpret the last clause  
14 of that last sentence, the Unless the extension  
15 granted the customer does not exceed two weeks?

16 A. Well, that would be an exception to them  
17 having to confirm it in writing. And I'm trying to  
18 interpret it and at the same time say, I did not fit  
19 within that exception. It --

20 Q. Were you still thinking or were you  
21 waiting for me?

22 A. Oh, I was waiting for you.

23 Q. Oh. Well, I -- okay. So the Unless the  
24 extension granted the customer does not exceed two  
25 weeks, it's your contention that that does not --

1       portion of the -- of the subsection doesn't apply?

2           A.     No, not to me. And Ameren's never  
3       contended, as far as I know, that it did.

4           Q.     So in January -- well, let me back up.

5                   Did you enter into a verbal discussion? I  
6       won't call it in an agreement because I guess that's  
7       part of your argument, is that there was no  
8       agreement. But January 10th did you have a  
9       discussion in which you agreed to pay \$441 by  
10      January 10th?

11          A.     Yes.

12          Q.     Okay. And did that occur?

13          A.     No.

14          Q.     Okay. So there was no confirmation of the  
15      discussion in writing, and therefore it's your  
16      contention that there was no agreement?

17          A.     Correct.

18          Q.     Okay. And then it was in March that you  
19      tendered the 10 percent?

20          A.     Right.

21          Q.     How did you arrive at the determination  
22      that 10 percent was the correct amount?

23          A.     Well, it's 10 percent of your average  
24      daily balance plus an additional amount. And I had  
25      received information from Ameren of what my average

1       daily balance had been over the previous year. And  
2       based on that, I -- that's 10 percent of that amount,  
3       plus the additional amount that's required. That's  
4       what --

5           Q.     And where do you -- go ahead, I'm sorry.

6           A.     I'm sorry.

7           Q.     No, go ahead, I'm sorry.

8           A.     And that's why I made the payment of  
9       645.23.

10          Q.     And where do you find in the rules that  
11       it's -- that you're supposed to make a 10 percent  
12       payment?

13          A.     You know, I'm not sure if it's in the  
14       rules or if it's in their policy of the --

15          Q.     Okay.

16          A.     It's -- I would have to take a minute to  
17       find it.

18                   Are you still waiting for me to find that,  
19       the 10 percent?

20          Q.     If you're still looking.

21          A.     Yeah. Like I said, I'm not sure if it's  
22       in the rule or it's their policy, but I don't think  
23       there's any dispute that that's the payment  
24       arrangement under the Cold Weather Rule. It's 10  
25       percent plus -- yeah, it's -- it's you pay 10 percent

1 of your outstanding utility bill balance plus one  
2 month's average bill.

3 Q. And where are you reading that from?

4 A. Well, I'm actually reading it from my  
5 complaint. And so I know that -- that either comes  
6 from their policy or from the regulation itself.

7 COMMISSIONER KENNEY: All right. I  
8 don't -- actually I don't have any other questions  
9 then. We can move on to the next witness.

10 JUDGE STEARLEY: All right. Thank you,  
11 Commissioner.

12 First let me ask if there's any  
13 recross --

14 COMMISSIONER KENNEY: Sorry.

15 JUDGE STEARLEY: -- or any cross based on  
16 questions from the bench.

17 MR. THOMPSON: None from Staff.

18 MS. GIBONEY: None from Ameren.

19 JUDGE STEARLEY: All right. Mr. Vickers,  
20 would you like to add anything else before you  
21 conclude your testimony?

22 MR. VICKERS: No, your Honor.

23 JUDGE STEARLEY: All right. Well, thank  
24 you very much. Appreciate your testimony. You may  
25 step down.



1                   And, Staff, you may call your witness.

2                   MS. MCCLOWRY: Staff calls Ms. Gay Fred.

3                   JUDGE STEARLEY: And, Ms. Fred, if you'd  
4 please raise your right hand.

5                   (Witness sworn.)

6                   JUDGE STEARLEY: Thank you. And you may  
7 proceed, Counselor.

8 CAROL GAY FRED, having been sworn, testified as  
9 follows:

10 DIRECT EXAMINATION BY MS. McCLOWRY:

11               Q.     Ms. Fred, can you state your name and  
12 spell it for the record.

13               A.     It's Carol Gay Fred; spelling is C-a-r-o-l  
14 G-a-y F-r-e-d.

15               Q.     Where are you employed?

16               A.     I'm employed with the Missouri Public  
17 Service Commission. My title is consumer services  
18 manager.

19               Q.     What does the consumer services department  
20 do?

21               A.     Our department is responsible for looking  
22 after the protections of the consumer as well as  
23 making sure that we balance those same interests with  
24 the utility. We primarily look at making sure the  
25 utility is in compliance with the rules and

1 regulations of this Commission as well as their  
2 approved tariffs that are on file with us.

3 Q. And how long have you been the manager of  
4 the consumer services department?

5 A. I've been the manager for eight years;  
6 I've been employed with the Missouri Public Service  
7 Commission for approximately 25 years now.

8 Q. What are your responsibilities in your  
9 position?

10 A. My primary responsibility as the manager  
11 of the consumers services department, we have what we  
12 call intake invest-- consumer specialists who take in  
13 the complaints with the details of the consumer's  
14 complaint and account information so that we can  
15 thoroughly investigate.

16 And then I also am responsible for the  
17 investigators, and we are responsible for looking  
18 into both the utility responses to the complaint as  
19 well as the complainant's responses and making sure  
20 that we're balancing those interests, trying to be  
21 the nonpartisan, nonneutral [sic] party in these  
22 matters so that we can do our job which is to, you  
23 know, basically watch after the protection for the  
24 consumer as well as the utility.

25 Q. In your daily duties, did you have the

1 occasion to come across Mr. Eric Vickers?

2 A. Yes.

3 Q. How so?

4 A. Mr. Vickers copied me on an email that was  
5 actually sent to the -- one of the general counsel  
6 for AmerenUE, and that's how I got involved with his  
7 complaint back in February, March time frame of this  
8 year.

9 Q. Did he file any complaints with the  
10 Commission?

11 A. No. I had asked Mr. Vickers at my initial  
12 contact if he would please call our 800 number so we  
13 could get account specifics so then we could actually  
14 open an informal complaint in what we would call  
15 our -- our normal process. Unfortunately Mr. Vickers  
16 did not carry through with that request --

17 MR. VICKERS: Objection. I'll object  
18 to -- I'll object.

19 JUDGE STEARLEY: What's your objection,  
20 Mr. Vickers?

21 MR. VICKERS: The objection is it's not  
22 relevant.

23 JUDGE STEARLEY: I'm going to overrule.  
24 This is background on the complaint and how we ended  
25 up here. You'll have your opportunity to cross-

1       examine Ms. Fred though with regards to specifics of  
2       this testimony.

3               COMMISSIONER DAVIS: Judge, can I ask a  
4       hypothetical question?

5               JUDGE STEARLEY: Certainly.

6               COMMISSIONER DAVIS: Can he object that  
7       it's hearsay?

8               JUDGE STEARLEY: He can certainly raise  
9       that objection.

10              COMMISSIONER DAVIS: Well, hypothetically  
11       what if he did?

12              JUDGE STEARLEY: Then he can raise the  
13       objection and I'll give counsel an opportunity to  
14       respond.

15              MR. VICKERS: Objection; hearsay.

16              MS. MCCLOWRY: Mr. Vickers is here and  
17       available for cross-examination. Res gestae.

18              JUDGE STEARLEY: I'm sorry?

19              MS. MCCLOWRY: Res gestae.

20              JUDGE STEARLEY: I'm going to overrule  
21       the objection.

22       BY MS. MCCLOWRY:

23              Q.     Ms. Fred, did Mr. Vickers file a formal  
24       complaint?

25              A.     Yes, he did.

1           Q.     Did you have an opportunity to review that  
2 formal complaint?

3           A.     Yes, I did.

4           Q.     And what was Mr. Vickers' complaint about?

5           A.     Primarily Mr. Vickers was disputing the  
6 fact that he had not entered into an agreement, a  
7 Cold Weather Rule payment agreement with Ameren. He  
8 stated that he felt like there was no communications  
9 in a formal writing of a document of agreement and  
10 that he had not entered into an agreement with them.

11          Q.     Did you do any investigation regarding  
12 Mr. Vickers' complaint?

13          A.     Yes. I did do the investigation for the  
14 formal complaint. I submitted to the Commission my  
15 report of the Staff for this particular formal  
16 complaint.

17          Q.     Did you have the opportunity to reach any  
18 conclusions regarding Mr. Vickers' complaint?

19          A.     Yes. Actually in my conclusion I did not  
20 find where the Company had violated any Commission  
21 rule or their approved tariff nor had anyone else at  
22 this point.

23          Q.     Did you file a report in this case?

24          A.     Yes. I did file a report on July 28th,  
25 2011.

1           Q.     Okay. Ms. Fred, how knowledgeable are you  
2     regarding the Commission's customer service rules?

3           A.     I would say I'm extremely knowledgeable  
4     having worked with them every day for the last  
5     several years. In addition I've also helped with  
6     some of the rewrite of some of the rules as well as  
7     continuing to look at rewritings of the rules.

8           Q.     How knowledgeable are you regarding the  
9     Cold Weather Rule?

10          A.     Extremely knowledgeable given that's a key  
11     component of our rules that we must review and make  
12     sure the companies are in compliance with on an  
13     annual basis. I'm very familiar with those rules.

14          Q.     I'm going to show you what's been marked  
15     Staff Exhibit 1.

16                   Everyone has copies of that, correct?

17                   MR. VICKERS: Excuse me?

18                   (Staff Exhibit No. 1-HC was marked for  
19     identification.)

20     BY MS. McCLOWRY:

21          Q.     What is that, Ms. Fred?

22          A.     This is my report that I filed before the  
23     Commission on this formal complaint.

24          Q.     Are you the same person that prepared and  
25     caused to be filed that Staff report?

1 A. Yes, I am.

2 Q. Is this confidential?

3 A. Yes, it is.

4 Q. Do you have any additions or corrections  
5 that you would like to make to your report at this  
6 time?

7 A. No, I do not.

8 Q. Is all the information contained in your  
9 report true and accurate to the best of your  
10 knowledge?

11 A. Yes, it is.

12 MS. McCLOWRY: At this time I would move  
13 for admission of Staff's report marked as Staff's  
14 Exhibit 1 and tender the witness --

15 JUDGE STEARLEY: Any objections to the  
16 admission of Staff Exhibit 1?

17 MR. VICKERS: No objection.

18 MS. GIBONEY: No.

19 JUDGE STEARLEY: It will be received and  
20 admitted into the record.

21 (Staff Exhibit No. 1-HC was received into  
22 evidence.)

23 MS. McCLOWRY: Tender the witness for  
24 cross-examination.

25 JUDGE STEARLEY: All right. Cross-

1 examination beginning with Ameren Missouri.

2 MS. GIBONEY: No cross-examination, your  
3 Honor.

4 JUDGE STEARLEY: All right. Cross-  
5 examination by Mr. Vickers.

6 CROSS-EXAMINATION BY MR. VICKERS:

7 Q. Ms. Gay, good morning.

8 A. Good morning.

9 Q. Now, you stated you reviewed the complaint  
10 that I filed?

11 A. Yes. The emails that you filed, yes.

12 Q. And you said you were aware that I said  
13 that I did not have an agreement with Ameren in  
14 January?

15 A. That was your allegation in your emails,  
16 yes.

17 Q. Now, did you talk to Ameren about that?

18 A. Yes, I did.

19 Q. Did you ask Ameren if they had any  
20 agreement in January in writing?

21 A. I asked Ameren if they had any agreement.  
22 They had the verbal agreement on tape that I listened  
23 to.

24 Q. Did you ask them -- let me repeat.

25 Did you ask them, did they have any



1 agreement with me in writing?

2 A. Not any ongoing Cold Weather Rule payment  
3 agreement because the initial payment had not been  
4 met.

5 Q. Now, you're aware you said of the Cold  
6 Weather Rule?

7 A. Yes.

8 Q. Now, are you aware of the provision that  
9 requires that payments under the agreement shall be  
10 confirmed in writing?

11 A. I'm familiar with the language as it's  
12 written in -- in 13.055.

13 Q. Well, you agree it says that utility shall  
14 confirm in writing the terms of any payment agreement  
15 under this rule? You say you're an expert on this,  
16 so you're aware of that, correct?

17 A. I'm aware that's what the verbiage says  
18 here on this page.

19 Q. You think that's just verbiage?

20 A. Am I allowed to give you my  
21 interpretation?

22 Q. Well, I'm asking you first that you are  
23 aware of this language?

24 A. Yes, I am aware of this language.

25 Q. Now, when you talked to Ameren about my

1 situation, did you ask them, did they confirm the  
2 January agreement that they claimed in writing?

3 A. I know that they did not confirm any  
4 agreement with you in writing in January because  
5 there was no initial payment made that would generate  
6 the actual written document.

7 Q. You say there was no initial payment made?

8 A. Right.

9 Q. Now, is there something in the regulation  
10 that says that there has to be an initial payment  
11 made before an agreement can be confirmed in writing,  
12 or is that just your own interpretation of the  
13 regulations?

14 A. The regulations do require the utility has  
15 to receive initial payment from a customer.

16 Q. Where is that?

17 A. It's under 13.055, paragraph (6) (A) (B).

18 Q. Could you tell me --

19 A. (C).

20 JUDGE STEARLEY: Excuse me, Mr. Vickers.  
21 Before we continue, I don't mean to interrupt, but  
22 could you please use that microphone. Be sure the  
23 green light is lit on. We're having a little trouble  
24 getting you on our recording. Thank you.

25 THE WITNESS: If you go to 13.055,

1        subparagraph (6) .

2        BY MR. VICKERS:

3            Q.     13.055.

4            A.     And (6) starts out with, Discontinuance of  
5        service.

6            Q.     Right.

7            A.     And go to (B), The utility receives an  
8        initial payment and the customer enters into a  
9        payment agreement, both of which are in compliance  
10       with Section (10) of this rule.

11          Q.     So you're interpreting that to mean that  
12        in order -- that if there is no initial payment,  
13        there's no confirmation in writing?

14          A.     Correct.

15          Q.     Now, are you aware that as a practice  
16        Ameren does not confirm agreements in writing?

17          A.     Unfortunately it's been my observation  
18        that they do confirm their agreements in writing  
19        after receiving the initial payment and that's  
20        somewhat reflected in the mail that you received  
21        dated in March, I think 24th which was your agreement  
22        in writing once a payment had been received on your  
23        account.

24          Q.     Now, what if a customer receives a  
25        confirmation in writing, but doesn't agree with the

1 terms that are set forth in that writing?

2 A. That then would not become what we call a  
3 Cold Weather Rule agreement but rather a dispute that  
4 they have now entered into a dispute on what those  
5 terms are. And it really takes on a different  
6 process altogether versus the Cold Weather Rule  
7 payment agreement.

8 Q. And where do you find that in the  
9 regulation?

10 A. If you go to 04 -- 13.045, there's a  
11 section on disputes where a customer shall advise a  
12 utility of any or a part of a charge that is in  
13 dispute by written notice.

14 Q. Okay. And you're saying that applies to  
15 the (10) (A) provision about a written confirmation?

16 A. No. Your question was where is it in the  
17 rule where there would be a provision for where if  
18 you disagreed with the terms that were in writing,  
19 and that would fall under disputes.

20 Q. So that if Ameren or a utility sends a  
21 customer a written confirmation and the customer does  
22 not accept that, is there an agreement?

23 A. There's an agreement, but now apparently  
24 there's a dispute about the agreement because what  
25 you're reading is something that you're not in

1 agreement with, so that would become a dispute.

2 Q. Oh. So it's an agreement, but it's a  
3 disputed agreement?

4 A. At that point, most -- in a lot of  
5 customers' circumstances it's an agreement that  
6 they're acceptable too.

7 Q. Do you know why the rule requires that  
8 agreements be confirmed in writing? Do you know what  
9 protection that gives the consumer?

10 A. It gives the consumer the ongoing  
11 protection for the 12-month payment arrangement  
12 that's been established for what amount they will  
13 need to pay on a monthly basis to prevent any ongoing  
14 threat of discontinuance of service.

15 Q. Is there anything that which would have  
16 prevented Ameren from issuing in January a written  
17 confirmation of the agreement they contend that they  
18 had with me?

19 A. I think the issue is there was no initial  
20 payment made so they're not sure they have an  
21 agreement if you haven't made the initial payment as  
22 promised or as verbally communicated on the phone  
23 with the utility at that time.

24 Q. So what you're saying is that you don't  
25 know whether or not they had the opportunity at that

1 point to issue a written confirmation.

2 On the day -- when the -- you said you  
3 listened to tapes; is --

4 A. Uh-huh.

5 Q. -- that correct?

6 A. That's correct.

7 Q. Could Ameren on that day have issued a  
8 written confirmation?

9 A. They could have, but unfortunately I don't  
10 think you would have received it before the  
11 discontinuance date would have fell and therefore it  
12 wouldn't have been viable.

13 Q. But you're saying they could have issued  
14 on that day when the verbal agreement is made, they  
15 could have issued a confirmation in writing?

16 A. I think we can issue anything in writing  
17 on any --

18 Q. That's not --

19 A. -- particular day.

20 Q. -- what I asked you.

21 That's not what I --

22 A. I can't --

23 Q. -- asked you.

24 In fact --

25 COURT REPORTER: I'm sorry.

1                   MR. THOMPSON: Objection, badgering the  
2                   witness.

3                   COURT REPORTER: I can only take one  
4                   person --

5                   JUDGE STEARLEY: Excuse me, Counsel. For  
6                   our court reporter's sake we can only have one person  
7                   talking at a time. I believe, Mr. Vickers, you were  
8                   trying to get a yes or no answer to the question. If  
9                   you're having or finding the witness in your opinion  
10                  to be nonresponsive, please ask me to direct the  
11                  witness to answer the question.

12                  MR. VICKERS: Thank you.

13                  JUDGE STEARLEY: And let's back up. And  
14                  do why know -- do you know what question is before  
15                  you, Ms. Fred?

16                  THE WITNESS: Yes.

17                  JUDGE STEARLEY: Or do you want to repeat  
18                  it?

19                  MR. VICKERS: Yes, please.

20                  THE WITNESS: Okay.

21                  BY MR. VICKERS:

22                  Q.     Do you know of anything which would have  
23                  prevented Ameren from confirming in writing the  
24                  agreement they said they made with me in January?

25                  A.     I can't speak for Ameren.

1           Q.     I'm asking you as a member of the PSC  
2     staff, charged with enforcing a law which says there  
3     shall be -- the agreement shall be confirmed in  
4     writing, was there anything in your investigation  
5     that you found which would have prevented Ameren  
6     from, on that day, issuing a confirmation in writing  
7     of this alleged verbal agreement?

8           MR. THOMPSON:  Objection, Judge.  Ms. Gay  
9     Fred has already explained how the Commission staff  
10    interprets and understands that rule which is that a  
11    written confirmation isn't produced until after the  
12    initial payment is made as promised.  I think at this  
13    point the Complainant is simply badgering the  
14    witness.

15           JUDGE STEARLEY:  I'm going to overrule  
16    the objection.

17           And, Ms. Fred, you can answer that  
18    question with a yes or no.

19           THE WITNESS:  No.

20    BY MR. VICKERS:

21           Q.     No, you found nothing that would have  
22    prevented them from doing that; is that what you're  
23    saying?

24           A.     I answered no.

25           Q.     Well, then let me state the question again



1           so I know what you're answering no to.

2                       In your investigation did you find  
3           anything that would have prevented Ameren from  
4           issuing on the day that they claimed there was a  
5           verbal agreement with me, a confirmation of that  
6           agreement in writing?

7                       MR. THOMPSON:  Objection, asked and  
8           answered.

9                       JUDGE STEARLEY:  It has been asked and  
10          answered; sustained.

11       BY MR. VICKERS:

12               Q.     Now, in your investigation, you -- in the  
13          Exhibit, you have a March 24th letter?

14               A.     Yes.

15               Q.     Now, what is that letter?

16               A.     Hang on just a moment, let me pull that.

17                       Okay.  That letter is a letter of  
18          confirmation of the Cold Weather Rule payment  
19          agreement that you entered into, and it's also stated  
20          as a reinstatement.

21               Q.     Now, did you ever ask, inquire of me  
22          whether I had entered into this agreement that this  
23          March 24th letter states?

24               A.     No.  I don't believe I did.

25               Q.     Why not?

1           A.     I believe because about the same time that  
2     I opened the email, I also received another email  
3     from yourself that I was copied on; it was not  
4     directed to me, wherein you were advising that you  
5     object to the -- to this being an agreement that you  
6     entered into.

7           Q.     So you're aware that I said this was not  
8     an agreement I'd entered into, correct?

9           A.     That's what the email says, yes.

10          Q.     So then do I, as far as you know, have an  
11     agreement or ever had an agreement with Ameren under  
12     the Cold Weather Rule?

13          A.     You had an agreement as stated by the  
14     March 24th letter after making the initial payment --

15          Q.     Let me rephrase that.

16          A.     Okay.

17          Q.     Do you know of any written agreement other  
18     than this document, this March 24th letter?

19          A.     No. I know of no other agreement in  
20     writing.

21          Q.     Do you know of any agreement in writing  
22     that I signed?

23          A.     No, I do not.

24          Q.     Now, you say that Ameren issues  
25     confirmations in writing?

1 A. Yes.

2 Q. You've seen these?

3 A. These are similar to the letter you  
4 received on March 24th, yes.

5 Q. And are you saying that these are only  
6 issued by Ameren after a payment is made by the  
7 customer?

8 A. Yes. For Ameren and other utilities as  
9 well.

10 Q. So again, so I'm clear, you're saying that  
11 the only time Ameren issues confirmations in writing  
12 is when the initial payment is made?

13 A. For Cold Weather Rule payment agreement,  
14 yes.

15 MR. VICKERS: I have no further  
16 questions.

17 JUDGE STEARLEY: All right. Thank you,  
18 Mr. Vickers.

19 Any questions from the bench?  
20 Commissioner Davis.

21 QUESTIONS BY COMMISSIONER DAVIS:

22 Q. Is there anything you wish to add,  
23 Ms. Fred?

24 A. I guess I would just add that to the best  
25 of my knowledge all utilities handle payment, Cold

1 Weather Rule payment agreements in the same manner as  
2 Ameren. After they receive the initial payment from  
3 the customer, they confirm that with a letter to the  
4 customer outlining the terms of that agreement and  
5 what their monthly payment amount would be on an  
6 ongoing basis for the next 12-month period.

7 So this is not uncommon in my practice to  
8 see these type of confirmations from the utilities,  
9 whether it be a gas or electric utility company.

10 COMMISSIONER DAVIS: Okay. No further  
11 questions, Ms. Fred.

12 JUDGE STEARLEY: Commissioner Kenney?

13 COMMISSIONER KENNEY: Can you hear me?

14 JUDGE STEARLEY: Yes.

15 THE WITNESS: Yes.

16 QUESTIONS FROM COMMISSIONER KENNEY:

17 Q. Hi, Ms. Fred. How are you?

18 A. I'm fine; how are you?

19 Q. I'm doing well.

20 Let me make sure I'm clear. The written  
21 confirmation came in this case after the initial  
22 payment was made in March, correct?

23 A. Correct.

24 Q. And there was no written confirmation of  
25 any verbal discussion in January?

1           A.     Correct.

2           Q.     And can you walk me through again the  
3           provision in our rules that indicates that the  
4           written confirmation isn't required until after the  
5           initial payment is received?

6           A.     Under 13.055(6)(B), we refer to the  
7           utility receives an initial payment and customer  
8           enters into a payment agreement, both of which are in  
9           compliance with Subsect-- Subsection (10) of this  
10          rule.

11                    So then if you go over to Section (10)  
12          where we talk about (A), a LIHEAP pledge can account  
13          for the initial payment, and then (B), payment  
14          calculations after that initial payment has been  
15          received.

16                   And if you go on down to Subparagraph (C),  
17          it actually states what the initial payment, how  
18          that's calculated and the amount that can be  
19          requested.

20          Q.     So (C) is to determine the amount of the  
21          initial payment but it's (6)(B) read in conjunction  
22          with (10)(A) that leads us to the conclusion that the  
23          written confirmation doesn't come until after the  
24          first payment is received?

25          A.     Yes.

1           Q.     And then the second half of (10) (A), the  
2     last sentence in the last clause after the comma,  
3     Unless the extension granted the customer does not  
4     two weeks, what does that mean?

5           A.     That is -- that's been used in a couple  
6     different ways.  Primarily it means that if they're  
7     calling the day before disconnect trying to make a  
8     payment arrangement and they don't have time to get  
9     something in written form to confirm the agreement,  
10    they can do it verbally by phone and then follow  
11    through with written agreement after the fact.

12                   Unless the extension granted the customer  
13    does not exceed two weeks, that would be if it's  
14    beyond two weeks, there should be time to send that,  
15    but in most cases it's never beyond two weeks when  
16    agreements are made.

17           Q.     Well, what does the extension refer to?  
18    Does the extension come --

19           A.     The extension is the --

20           Q.     -- from --

21           A.     -- due date --

22                   The extension is the due date from the  
23    customer's payment to prevent discontinuance of  
24    service.

25           Q.     So the extension is from the due date

1 before discontinuance of service. Okay.

2 So it's -- if it's beyond two weeks from  
3 that. So if a person -- so if the due date was the  
4 10th -- well, let's say the due date was the 15th and  
5 the customer called on the 1st, then a written  
6 confirmation would be required before the initial  
7 payment is received?

8 A. Well, it certainly would give the  
9 opportunity for that written agreement to go out to  
10 that customer before because it would given them --  
11 be giving them enough time to actually send it  
12 through the mail to the customer.

13 Q. And when did -- when did the Cold Weather  
14 Rule go into effect?

15 A. November 1 through March 31st.

16 Q. No, I'm saying --

17 A. Oh, you mean --

18 Q. I'm sorry; that question wasn't clear.

19 When was this provision codified into the  
20 code of state regulations?

21 A. Well, 1977 I believe was the full extent  
22 of the Cold Weather Rule as we know it today with  
23 some additional provisions added more recently back  
24 in 2002, 2004 time frame.

25 Q. And are the -- are the Chapter 13 rules in

1 the process of being rewritten as we speak?

2 A. Yes, they are.

3 Q. Is the Cold Weather Rule being rewritten  
4 at all?

5 A. No, it's not.

6 Q. Okay. Has there been any confusion with  
7 the interpretation of these provisions before?

8 A. Not to my knowledge.

9 Q. Is there some definition somewhere else in  
10 the rule that indicates that the extension period is  
11 referring to the time from the disconnect-- from the  
12 disconnection date?

13 A. Just a minute.

14 Q. So in other words would a customer know  
15 that that's what the extension refers to by looking  
16 at some other portion of the rule that defines it?

17 A. If you go under definitions under 13.010,  
18 there's a definition for an extension agreement means  
19 a verbal agreement between the utility and the  
20 customer extending payment for 15 days or less.

21 Q. Okay. And you made reference to some  
22 taped telephone conversations between Mr. Vickers and  
23 Ameren's customer service department?

24 A. Yes.

25 Q. Are you in possession of those tapes or



1 does Ameren have those tapes?

2 A. Ameren has them; I have a copy of them.

3 Q. Does -- do you know if -- does Commission  
4 staff intend to introduce them into evidence?

5 A. No, we were not.

6 JUDGE STEARLEY: Ms. Giboney?

7 MS. GIBONEY: Ameren does intend to  
8 introduce those into evidence.

9 COMMISSIONER KENNEY: I'm sorry; I didn't  
10 hear that.

11 JUDGE STEARLEY: Ms. Giboney wanted to  
12 reflect that Ameren plans on entering that into  
13 evidence, Commissioner.

14 COMMISSIONER KENNEY: Okay. All righty.  
15 I don't have any other questions. Thank you.

16 THE WITNESS: You're welcome.

17 JUDGE STEARLEY: All right. Any recross-  
18 examination based on questions from the bench from  
19 Ameren Missouri?

20 MS. GIBONEY: No.

21 JUDGE STEARLEY: All right. Mr. Vickers.

22 MR. VICKERS: Yes, your Honor.

23 RECROSS-EXAMINATION BY MR. VICKERS:

24 Q. Did I understand you correctly in  
25 answering the Commissioner's question that a customer

1       can get a confirmation in writing before making an  
2       initial payment?

3           A.     If it's 15 days before the period in  
4       question. We were actually referencing the second  
5       sentence of (10) (A) regarding the extension granted  
6       to the customer does not exceed two weeks.

7           Q.     So you're saying again, if it's 15 days  
8       before the disconnection date, then it can be  
9       confirmed in writing without an initial payment?

10          A.     I think the 15 days comes in from the  
11       definition of extension which is under definitions in  
12       10.01, so I'm not sure I understand your question.

13          Q.     Well, let me try to clarify. When you  
14       were answering the Commissioner's question about this  
15       last phrase in (A) --

16          A.     Uh-huh.

17          Q.     -- unless the extension granted customer  
18       does not exceed two weeks --

19          A.     Yes.

20          Q.     -- I thought I heard you say that a  
21       customer can get a formal agreement, written  
22       agreement without making an initial payment as you  
23       interpreted that.

24          A.     No, and I'm sorry. If I -- that may be  
25       misinterpreted what I meant, because that's not what

1 I meant. What I'm saying is if the utility, they can  
2 confirm in writing the terms of the payment agreement  
3 under this rule if it exceeds two weeks. If the  
4 agreement they're entering into exceeds two weeks.

5 So as the illustration from the  
6 Commissioner, if it was the 15th, the due date, but  
7 they called in on the 1st, they would have time to  
8 give them something in writing prior to that due date  
9 of the 15th.

10 Q. And prior to them making an initial  
11 payment?

12 A. I still think the initial payment's  
13 required under (6) (B).

14 Q. Okay. Now, you're aware of the  
15 consequences if someone, a customer, defaults on an  
16 agreement under the Cold Weather Rule, am I correct?

17 A. That they're in threat of dis-- possible  
18 disconnect, yes.

19 Q. And do they also not receive the benefit  
20 of installment payments?

21 A. Right. Because they haven't entered into  
22 an agreement without the initial payment.

23 Q. And so you're aware that Ameren claimed  
24 that I defaulted on the agreement in January?

25 A. That's my understanding, yes.

1           Q.     Do you know how many customers Ameren  
2     claims have defaulted on agreements that were not in  
3     writing?

4           A.     No.

5           Q.     You wouldn't know unless they complained I  
6     take it?

7           A.     Right.

8           MR. VICKERS: I have no further  
9     questions.

10          COMMISSIONER KENNEY: I have another  
11     question; I'm sorry.

12          JUDGE STEARLEY: Go ahead, Commissioner  
13     Kenney.

14     QUESTIONS BY COMMISSIONER KENNEY:

15          Q.     I misunderstood you also, Ms. Gay. So  
16     you're saying that (6) (B) standing alone by itself  
17     requires an initial payment before a written  
18     confirmation of the agreement?

19          A.     I'm saying (B) says the utility receives  
20     an initial payment and the customer enters into a  
21     payment agreement, both of which are in compliance  
22     with this section. So when it says, The utility  
23     receives an initial payment, yes, they would have to  
24     receive --

25          Q.     But that --

1           A.     -- the initial payment.

2           Q.     But that section's referring to whether --  
3     or the circumstances under which service can be  
4     discontinued, right?

5           A.     Right. Well, it says the utility may not  
6     discontinue heat-related residential utility service  
7     due to nonpayment for a delinquent bill or account  
8     provided (A), and then (B), utility receives initial  
9     payment. So it's saying --

10          Q.     Okay.

11          A.     -- utility may not discontinue if they  
12     receive an initial payment and the customer enters  
13     into a payment agreement.

14          Q.     But the agreement is entered into at the  
15     point at which they have a verbal discussion, the  
16     customer and the utility, correct?

17          A.     Yes.

18          Q.     Okay. So just so I'm clear, the provision  
19     in (10) (A) that reads, Unless the extension granted  
20     the customer does not exceed two weeks, that  
21     provision does or does not require a written  
22     confirmation if it's longer than two weeks?

23          A.     Does -- if it's longer than two weeks, it  
24     does require written confirmation.

25          Q.     Okay.

1           A.     If it's longer than two weeks.

2           Q.     Then the utility has to provide a written  
3 confirmation prior to the initial payment?

4           A.     No. I still read -- I still understand --

5           Q.     Okay.

6           A.     -- they have to make the initial payment.

7           COMMISSIONER KENNEY: Okay. All right.

8 All right. Thank you.

9           JUDGE STEARLEY: All right. Thank you,  
10 Commissioner.

11                   Any additional cross-examination based on  
12 Commissioner Kenney's latest question?

13           Mr. Vickers.

14           MR. VICKERS: Thank you.

15 FURTHER RECROSS-EXAMINATION BY MR. VICKERS:

16           Q.     You said if longer than two weeks, a  
17 written confirmation is required?

18           A.     Yes.

19           Q.     If what is longer than two weeks?

20           A.     The extension requested.

21           Q.     Was that my situation in January?

22           A.     Well, in -- this is according to my  
23 investigation, that on January 6th you called, you  
24 entered into a verbal agreement and you were to  
25 make that payment by January 10th. But by

1 January 10th you had not made the -- the initial  
2 payment.

3 Still on January 17th there was no payment  
4 made. So it wasn't until your next bill cycle you  
5 got another -- and then apparently they didn't hear  
6 from you in February, or if they did, they voided it  
7 because of the Cold Weather Rule, cold weather  
8 protections, you were not subject to disconnect in  
9 February.

10 So it wasn't again until March that you  
11 received a disconnect notice and the process  
12 basically starts again.

13 Q. So it was longer than two weeks?

14 A. Well, initially you had to pay before  
15 that, January 10th because that's -- because your  
16 payment was due by then.

17 MR. VICKERS: No other questions.

18 THE WITNESS: Okay.

19 JUDGE STEARLEY: All right. If there's  
20 no other questions from the Commissioners, we'll go  
21 to redirect.

22 Commissioner Davis, Commissioner Kenney,  
23 anything further?

24 COMMISSIONER KENNEY: No thank you.

25 JUDGE STEARLEY: All right. Redirect.

1 REDIRECT EXAMINATION BY MS. McCLOWRY:

2 Q. Ms. Fred, would it confuse a customer to  
3 get a written confirmation of an agreement that  
4 customer had already defaulted on by failing to make  
5 an initial payment?

6 A. Yes, usually.

7 MS. McCLOWRY: No further questions.

8 JUDGE STEARLEY: All right. Ms. Fred,  
9 thank you for your testimony. You may step down.

10 THE WITNESS: Thank you.

11 JUDGE STEARLEY: And Ameren, you may call  
12 your first witness.

13 MS. GIBONEY: Ameren calls Cathy Hart.

14 JUDGE STEARLEY: Ms. Hart, please raise  
15 your right hand.

16 (Witness sworn.)

17 JUDGE STEARLEY: Thank you. You may be  
18 seated.

19 And, Counsel, you may proceed.

20 MS. GIBONEY: Thank you.

21 CATHY HART, having been sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. GIBONEY:

23 Q. Could you state your name please.

24 A. Cathy Hart.

25 Q. Cathy, are you employed with Ameren



1 Missouri?

2 A. Yes, I am.

3 Q. Could you tell us your title and job  
4 responsibilities briefly.

5 A. I'm customer service supervisor, and I  
6 handle any investigations or inquiries that come  
7 through the PSC.

8 Q. How long have you held that position?

9 A. For nine years and ten months.

10 Q. So as long as the Cold Weather Rule  
11 basically has been in effect?

12 A. Yes.

13 Q. Okay. Do you have general knowledge about  
14 Ameren Missouri's methods of doing business?

15 A. Yes, I do.

16 Q. Specifically with respect to the billing  
17 practices and the customer service protocols?

18 A. Yes.

19 Q. Do you also have knowledge about its  
20 recordkeeping?

21 A. Yes, I do.

22 Q. Are you here today as a representative of  
23 Ameren?

24 A. Yes, I am.

25 Q. In preparing for your testimony, did you

1 review company documents and records?

2 A. Yes.

3 Q. Let me ask you first about the Cold  
4 Weather Rule payment agreements generally. When a  
5 customer calls in and requests a Cold Weather Rule  
6 payment agreement, what does the company do?

7 A. We first look at the -- the customer's  
8 records to see if they've had a Cold Weather Rule  
9 payment agreement. If they have not, then we take  
10 the total of the bill and we take 12 percent of that  
11 plus one budget billing amount. That is the down  
12 payment for that customer to begin the Cold Weather  
13 Rule payment agreement. We then split the remaining  
14 into 12 monthly payments.

15 We go over the agreement with the  
16 customer, and that is to be sure and pay everything  
17 in full as each bill comes so that it does not  
18 default.

19 Q. Okay. Do you ask the customer if they  
20 agree with the terms as you described them?

21 A. Yes, we do.

22 Q. Do you ask the customer when they'll make  
23 the initial payment that you described?

24 A. Yes. We do give them an initial payment  
25 date to make that, what the payment is and the date

1 to make it.

2 Q. Okay. And an initial payment is required;  
3 is that correct?

4 A. Yes, it is.

5 Q. And in fact if a customer is up for cut as  
6 we would say, subject to disconnection because of a  
7 delinquent balance, when would they need to make that  
8 initial payment in order to avoid a disconnect?

9 A. They would need to make it that day if --  
10 if they are -- if it's on the day of disconnection,  
11 then they're going to need to make it immediately.  
12 If it's the day before, you know.

13 Q. By the -- by the cut date basically?

14 A. Yes. Before the -- before the  
15 disconnection date.

16 Q. Is it your experience that most customers  
17 calling in for a Cold Weather Rule payment agreement  
18 are calling on the date that they're scheduled to be  
19 cut?

20 A. Very close to it, if not on it.

21 Q. Is there a customer who calls in two weeks  
22 in advance of that something like that and asks for  
23 that agreement?

24 A. Has there been? I'm sorry? Could --  
25 could you say that part again?

1           Q.     Sure.  Is that -- is it common for  
2 customers to call in well in advance of a cut date or  
3 before they're delinquent to ask for that payment  
4 agreement?

5           A.     The majority do not call well in advance.  
6 Most of those are pretty close to the disconnection  
7 date.

8           Q.     In fact they're calling in to see how they  
9 can avoid a disconnect; is --

10          A.     That's correct.

11          Q.     -- that correct?

12                 When they call in, are they advised  
13 generally that they will either need to pay the  
14 amount shown in the disconnect notice, the entire  
15 delinquent balance, or they may be eligible for the  
16 Cold Weather Rule?

17          A.     Yes.  We first -- if they are eligible for  
18 the Cold Weather Rule, we will give them the minimum  
19 amount to make and by the date that it needs to -- to  
20 be paid.  If not and they choose not to go into that  
21 agreement, then the past due balance is due.

22          Q.     And typically would that past due balance  
23 be greater than the initial payment that is  
24 scheduled --

25          A.     Yes --

1 Q. -- to be paid?

2 A. -- it is.

3 Q. So to avoid disconnect, at that point  
4 their choice is to pay the larger entire past due  
5 balance or a smaller Cold Weather Rule payment  
6 agreement but also agree to be under the terms of the  
7 agreement?

8 A. That's correct.

9 Q. Okay. What if a customer calls in on a  
10 Cold Weather Rule agreement and has already defaulted  
11 once? What --

12 A. Then --

13 Q. -- do they need to do to be eligible to  
14 reinstate it?

15 A. We do offer reinstatement and that is they  
16 would need to make any payments that they have failed  
17 to make in the past through the defaulting of that.

18 So if they had failed to make two -- two  
19 payments, then they would need to make those two  
20 monthly billing payments plus the two installments  
21 that they had missed. And I'm just giving that as an  
22 example.

23 But whatever they've missed, they would  
24 actually need to pay to come up to --

25 Q. Current?

1           A.     Come up to the current amount, yes.

2           Q.     As a practice does the Company send  
3 written confirmation of the terms of the Cold Weather  
4 Rule payments agreements it enters into?

5           A.     Once the initial payment is made, yes.

6           Q.     Okay.  If a customer fails to make the  
7 initial payment after the date the new bill would go  
8 out, does that essentially cancel that written  
9 agreement being sent out?

10          A.     Yes, it would.

11          Q.     Do you also -- we heard Ms. Fred's  
12 testimony.  Do you believe it would be confusing to a  
13 customer to receive a Cold Weather Rule payment  
14 agreement letter after they defaulted?

15          A.     Yes, very much.

16          Q.     They would be subject to different terms  
17 to reinstate than the terms stated in the letter; is  
18 that correct?

19          A.     Yes.  We would -- we would need to figure  
20 up anything that they had missed in order to  
21 reinstate, yes.

22          Q.     Are you familiar with Mr. Vickers' account  
23 history?

24          A.     Yes, I am.

25          Q.     Ms. Hart, I'm asking you --

1                   COMMISSIONER DAVIS: Is this -- is this  
2                   HC or?

3                   MS. GIBONEY: Yes. Let me just --

4                   COMMISSIONER DAVIS: Okay. I'm just  
5                   clarifying.

6                   BY MS. GIBONEY:

7                   Q. I've handed you what been marked Ameren  
8                   Missouri Exhibit 1 and it is HC.

9                   Do we need to -- we will be discussing  
10                  that. Should we --

11                  JUDGE STEARLEY: If you're going to  
12                  discuss specifics that need to be confidential, yes,  
13                  we will go into in-camera.

14                  (REPORTER'S NOTE: At this point, an  
15                  in-camera session was held, which is contained in  
16                  Volume 4, pages 88 through 130.)

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1 JUDGE STEARLEY: All right. We are back  
2 in public forum.

3 MR. VICKERS: Thank you.

4 CATHY HART, having been sworn, testified as follows:

5 CROSS-EXAMINATION BY MR. VICKERS:

6 Q. Referring again to the March 24th letter.

7 A. Uh-huh.

8 Q. You note that I made a payment of \$645.23?

9 A. Yes.

10 Q. When that payment was made, was an  
11 explanation given by me why that amount was paid? Do  
12 you recall that?

13 A. It was made to you -- explanation given to  
14 who?

15 Q. To Ameren.

16 A. Who did you speak to at Ameren is my  
17 question?

18 Q. I'm just asking, do you know?

19 A. I -- are you asking if it was made to me?  
20 Because no, it was not. There was not an explanation  
21 made to me --

22 Q. I'm asking --

23 A. -- if that's what you're asking.

24 Q. -- are you aware of any communication to  
25 Ameren explaining why that particular amount was

1           made?

2           A.     No.

3           Q.     How -- you testified that it would be  
4           confusing to customer to advise them that they  
5           have -- that they are in default under the Cold  
6           Weather Rule?

7           A.     I thought -- are you talking about when  
8           Ms. Giboney asked me if it would be confusing if they  
9           received a letter before they had actually made their  
10          initial payment?

11          Q.     Yes.

12          A.     Is that what you're referring to?

13          Q.     Yes.

14          A.     That would be very confusing because then  
15          the customer would think that they were on a payment  
16          agreement, had already made their initial payment,  
17          when they actually had not.

18          Q.     So you're saying that I would have been  
19          confused if after January 3rd, I had received a  
20          letter confirming the agreement that you allege was  
21          made on that day? I would have been confused by  
22          that?

23          A.     You would have been confused by our letter  
24          because it would have stated that you had -- it would  
25          have confirmed the agreement that you had made

1           basically.

2           Q.     How do you -- what makes you think I would  
3           have been confused by that?

4           A.     Because we always send out the letter  
5           after the initial payment is made. And if that -- if  
6           that would have gone out and you had not made your  
7           initial payment, then it would, in the eyes of the  
8           customer, I think it could have been confusing for  
9           that customer to think, Did I make an initial payment  
10          as requested or had I not or what's happening here.  
11          I think it would be totally confusing.

12          Q.     So let me understand. Are you saying that  
13          the reason Ameren doesn't send out a confirmation in  
14          writings of the verbal agreements is because you  
15          think it would be confusing to the customer --

16          A.     It would --

17          Q.     -- to get that in writing?

18          A.     Well, it would be in confusing. And also  
19          it's not what our customer service representatives  
20          would have discussed with you on the phone. And  
21          the -- one of the requirements that we would have  
22          asked of a customer would have been to make an  
23          initial payment to actually have this agreement  
24          ongoing.

25                        So by not making that initial payment and

1       then sending out a letter to say, You are on a  
2       payment agreement, those are -- we actually would be  
3       saying something that we had not said to that  
4       customer on the phone. So yes, I think it would be  
5       very confusing.

6           Q.     It would have been confusing -- it would  
7       be confusing to tell a customer that if they don't  
8       make the initial payment agreed to over the phone,  
9       that they'll be in default? You think that would be  
10      confusing to a customer?

11          A.     We explain the terms of those agreements  
12      on the phone when -- when we first speak to you,  
13      yes. So the customer is aware of that.

14          Q.     What is the consequence when a customer  
15      defaults on an agreement under the Cold Weather Rule?

16          A.     Well, once they default, they actually  
17      could come up for nonpay disconnection if the weather  
18      is not too cold. That's probably the main thing.

19          Q.     Do they have to pay more?

20          A.     You mean --

21          Q.     In a reinstatement?

22          A.     Yes. That's what I was going to ask. So  
23      are you asking me in a reinstatement, would they owe  
24      more money? They would if they had missed payments  
25      in between the time that the original agreement was

1 set up and the time that they called back, yes.

2 Q. So every time Ameren would reinstate  
3 somebody for defaulting on agreement, that customer  
4 would have to pay more?

5 A. They would have to actually catch up the  
6 payments that they had missed. So in effect, yes, it  
7 would be more just because they hadn't made enough  
8 payments within the course of staying on a regular  
9 monthly payment schedule. If they've missed two  
10 payments within there, they're going to need to catch  
11 up those two.

12 So it's a reinstatement of the original  
13 Cold Weather Rule payment agreement, yes.

14 Q. Do your representatives advise customers  
15 of the consequence of a default?

16 A. Yes, we do.

17 Q. On the --

18 A. We certainly do.

19 Q. And did you hear that in the phone  
20 conversations?

21 A. Yes, we did.

22 Q. You heard that in the conversations  
23 that -- on those three tapes?

24 A. Yes.

25 Q. Where the Ameren representative advised me

1 of the consequences?

2 A. Those had to be paid in full by the  
3 delinquent date to avoid disconnection, yes, I did  
4 hear that.

5 Q. No. That's not what I'm asking you.

6 A. Okay.

7 Q. Did he advise of a consequence of a  
8 default under the Cold Weather Rule?

9 A. That is what I was just talking about.

10 Q. Okay.

11 A. That's what I was just talking about.

12 Q. You heard him say, You have to pay more?

13 A. I -- what I hear them saying and the  
14 consequences to me means he would say, You need to  
15 make your full monthly payment by the delinquent date  
16 to avoid a default on your payment agreement. That,  
17 to me, is letting you know what the consequence are,  
18 defaulting on that particular agreement.

19 Q. You don't know whether or not that was  
20 said on the 3rd when this agreement was allegedly  
21 entered into, do you?

22 A. I don't have the call on the 3rd.

23 Q. Is there any reason why Ameren cannot  
24 issue a written confirmation immediately after a  
25 verbal agreement is entered into?



1           A.     Well, as I said earlier, the reason why we  
2     would not do that is because a couple things. It's  
3     going to be confusing to the customer. They have --  
4     would not have followed our requirement of an initial  
5     down payment. And if that customer, if we had gone  
6     ahead and had the payment agreement go forward at  
7     that point without the initial payment, then if they  
8     were able to get emergency assistance, it would have  
9     taken that account out of collections, out of any  
10    nonpay disconnection. So those are a couple reasons  
11    why we wouldn't do that.

12          Q.     So are saying that you don't -- Ameren  
13    doesn't issue a written confirmation be-- for the  
14    benefit of the consumer because you don't want to  
15    confuse the consumer?

16          A.     That's one of the reasons. The other is  
17    the energy assistance money that I mentioned.

18          Q.     Is there any cost savings to Ameren by not  
19    issuing these confirmations in writing?

20          A.     You know, I -- I can't even speak to that  
21    because I'm not in the accounting end of that. So I  
22    don't know.

23          Q.     Then is it the case that when Ameren finds  
24    consumers have defaulted on their Cold Weather Rule  
25    agreements, that those defaults are all based on

1 verbal agreements?

2 A. The defaults, since we are a telephone  
3 contact center -- I'm trying to even think of one  
4 that would not come through the telephone. The  
5 majority I would say -- I -- I don't know of any that  
6 wouldn't.

7 Q. And you would agree that this default that  
8 Ameren claims that I had was based on a verbal  
9 agreement?

10 A. That's correct.

11 Q. Alleged verbal agreement?

12 A. Uh-huh.

13 Q. Do you work closely with Ms. Fred at the  
14 PSC?

15 A. I work close enough with her and her  
16 staff. Yes, I work pretty closely because of all the  
17 inquires and complaints, anything that comes through.

18 Q. Because you were asked if Ameren had ever  
19 gotten any feedback or interpretation from the PSC  
20 staff about this practice of not putting these  
21 agreements in writing.

22 A. Uh-huh.

23 Q. You have had those discussions?

24 A. No. I'm just -- no. I have not had any  
25 discussions because it's never been brought to my

1 attention that we were not following the rules and  
2 regs as we should. If there was a question about  
3 anything, she would have brought that to my  
4 attention.

5 MR. VICKERS: No further questions.

6 JUDGE STEARLEY: All right. Questions  
7 from the bench. Commissioner Davis, any questions?

8 COMMISSIONER DAVIS: No questions. Thank  
9 you, ma'am.

10 JUDGE STEARLEY: Commissioner Kenney?

11 COMMISSIONER KENNEY: No thank you.

12 JUDGE STEARLEY: I just --

13 COMMISSIONER KENNEY: Thank for your  
14 time.

15 JUDGE STEARLEY: I just had one quick  
16 question, Ms. Hart.

17 THE WITNESS: Yes.

18 JUDGE STEARLEY: Just for clarity.

19 QUESTIONS BY JUDGE STEARLEY:

20 Q. Did I hear it correctly you say that  
21 they -- when there is a default in your calculating  
22 the amount that needs to be paid for reinstatement,  
23 that that's based on the time of the first default?

24 A. If the reinstatement is based -- it's  
25 always based -- the down payment is based on the

1 amount that has lapsed between the first payment  
2 agreement that was set up and the reinstatement of  
3 the second one, because it's just a catch-up period  
4 for the amount of payments that were -- that were not  
5 made.

6 Q. Okay. So is it Ameren's position on the  
7 tapes that you played that there was more than one  
8 agreement that was defaulted upon?

9 A. Let's see. The January 3rd. It was just  
10 a reinstatement. I think the -- the calls that were  
11 made after January 3rd, the offer was there of the  
12 payment -- the down payment to be made, but none of  
13 those were made, none of those payments were made.  
14 So in order to have a reinstatement, that's why I  
15 sent letter on March 24th.

16 JUDGE STEARLEY: Okay. Thank you.

17 THE WITNESS: Does that answer your  
18 question?

19 JUDGE STEARLEY: Just trying to clarify.  
20 Any other cross-examination based upon questions from  
21 the bench?

22 MR. THOMPSON: No, thank you, Judge.

23 JUDGE STEARLEY: Mr. Vickers?

24 MR. VICKERS: No, thank you.

25 JUDGE STEARLEY: All right. Redirect.

1 REDIRECT EXAMINATION BY MS. GIBONEY:

2 Q. Ms. Hart, I want to make a -- try to clear  
3 up a few things.

4 Because of orders to cut that had expired  
5 and because of cold weather, the initial payment that  
6 was discussed in the January 3rd call, that did not  
7 actually become delinquent until January 14th; is  
8 that correct?

9 A. Yes, that's correct.

10 Q. Okay. So on the call on January 3rd --

11 MR. VICKERS: Objection.

12 BY MS. GIBONEY:

13 Q. -- and the call on January 6th --

14 MR. VICKERS: Objection.

15 JUDGE STEARLEY: Hold on just a second.

16 Yes, Mr. Vickers, what's the objection?

17 MR. VICKERS: I'm going to object to any  
18 discussion about any agreement on January 3rd because  
19 there is no evidence of that other than hearsay.  
20 There are no tapes.

21 MS. GIBONEY: May I establish a  
22 foundation for that discussion?

23 JUDGE STEARLEY: Certainly.

24 BY MS. GIBONEY:

25 Q. Ms. Hart, did you review the contact notes

1 in this case?

2 A. Yes, I did.

3 Q. Did you also listen to the January 6th  
4 call in which the January 3rd call was discussed?

5 A. Yes, I did.

6 MR. VICKERS: Objection as to hearsay.

7 JUDGE STEARLEY: Hearsay of what,  
8 Mr. Vickers?

9 MR. VICKERS: Of the conversations.

10 MS. GIBONEY: Mr. Vickers --

11 MR. VICKERS: If there's -- if there's an  
12 actual record or document, then counsel has to  
13 produce that. If there are tapes of these other  
14 proceedings, why is there not a tape of the -- the --  
15 what is the most critical date, the one they say an  
16 agreement was made.

17 MS. GIBONEY: Mr. Vickers' statements  
18 would obviously be admissions, so there's no hearsay  
19 objection to Ms. Hart testifying about those. The  
20 contact notes are customer records or are -- excuse  
21 me, are company records on which she's entitled to  
22 rely as the corporate representative. And she also  
23 heard the tape of the Ameren representative and  
24 Mr. Vickers discussing that call.

25 JUDGE STEARLEY: Okay. Do we have the

1 contact records offered?

2 MS. GIBONEY: No. That's something she  
3 reviewed in preparation. I don't know whether you  
4 have the contact notes for January 3rd with you.

5 THE WITNESS: I don't recall unless I  
6 would look at those. I mean, I don't have them with  
7 me.

8 MS. GIBONEY: But you reviewed those --

9 THE WITNESS: Yes.

10 MS. GIBONEY: -- in preparing for your --

11 THE WITNESS: I did review them.

12 MR. VICKERS: Well, she can testify to  
13 what she knows, but she's testifying about a  
14 conversation she heard some others had or context of  
15 conversations others had.

16 MS. GIBONEY: The customer contact notes  
17 are business records of the -- of the business.  
18 Those are things that they routinely rely on in going  
19 over accounts with customers. She's stated that  
20 she's looked at those. She's here as a  
21 representative of the company.

22 MR. VICKERS: Well, if they're  
23 business --

24 MS. GIBONEY: She's entitled to rely on  
25 them.

1                   MR. VICKERS: If they're business  
2 records, produce the business records and establish  
3 her as someone who can testify to business records.

4                   MS. GIBONEY: That's fine. We can rely  
5 on the January 6th and 10th calls for that admission.

6                   JUDGE STEARLEY: I was going to say, what  
7 was the initial question again? I've lost that now  
8 with all our discussion.

9                   MS. GIBONEY: I was asking I believe of  
10 Ms. Hart whether the January 3rd and 10th -- and 6th  
11 and 10th calls, that the initial payment that was  
12 discussed under all those calls was not delinquent  
13 until January 14th.

14                  THE WITNESS: That's correct.

15                  MS. GIBONEY: And I am asking that --

16                  JUDGE STEARLEY: I'm going to sustain the  
17 objection as to January 3rd, and you can proceed with  
18 your questioning regarding the other timelines.

19 BY MS. GIBONEY:

20                  Q. All right. On January 6th and on January  
21 10th, we heard the calls where Mr. Vickers discussed  
22 his payment agreement, correct?

23                  A. Yes.

24                  Q. And on those two calls the initial payment  
25 that was discussed was not actually delinquent until



1 January 14th, correct?

2 A. That's right.

3 Q. And so --

4 MR. VICKERS: I'll object to leading the  
5 witness.

6 MS. GIBONEY: Just trying to move this  
7 along.

8 MR. VICKERS: And I -- I've allowed that,  
9 but you're going a little too far.

10 JUDGE STEARLEY: If you will rephrase,  
11 Counsel.

12 BY MS. GIBONEY:

13 Q. Was there a delinquency and a payment of  
14 an initial payment amount as of January 6th?

15 A. No.

16 Q. Was there a delinquency in an initial  
17 payment amount as of January 10th?

18 A. No.

19 Q. When was that payment agreement amount  
20 actually due?

21 A. 14th of January.

22 Q. Okay. So do those calls on the 6th and  
23 the 10th both address the same agreement?

24 A. Yes.

25 Q. Okay. In other words the call on the 10th

1 is not a reinstatement discussion; it's  
2 reaffirming --

3 MR. VICKERS: Objection as to leading.

4 BY MS. GIBONEY:

5 Q. Is the call on the 10th a reinstatement --  
6 a reinstatement discussion or is it a discussion of  
7 the pending payment agreement?

8 A. It's a discussion of the payment  
9 agreement.

10 Q. All right. Now, in the call on  
11 January 10th, did you hear Mr. Vickers answers as to  
12 whether he agreed with the terms of the agreement?

13 A. Yes, I did.

14 Q. Did he say yes?

15 A. Yes, he did.

16 Q. On the call on February 19, did the Ameren  
17 representative advise him that he had breached the  
18 payment agreement?

19 A. Yes, she did.

20 Q. Did you hear him say in answer to that,  
21 Right?

22 A. Yes, I did.

23 Q. Okay. If we listen to that call again, is  
24 that what we'll hear?

25 A. Yes, it is.

1           Q.     All right. We had some discussion earlier  
2     about what would constitute a confusing payment  
3     agreement letter. If a customer makes their initial  
4     payment on time and the letter goes out, that letter  
5     is clear, isn't it?

6           A.     Yes, it is.

7           Q.     All right. If a customer does not make  
8     the payment by the date that they've been told to  
9     make the payment, would that letter -- would a letter  
10    that went out reflect that agreement?

11          A.     No.

12          Q.     Okay. Because they hadn't made the  
13    payment?

14          A.     Exactly.

15          Q.     All right.

16          A.     Yes.

17          Q.     So they would get a letter indicating they  
18    made a payment that they had not made?

19          A.     And that's where the confusion would lie,  
20    yes.

21          Q.     And it would indicate that they were not  
22    in breach, when in fact they were in breach?

23          A.     That's correct.

24          Q.     All right. And you do send written  
25    confirmations of the agreements?

1           A.     Yes, we do.

2           Q.     And when do you send those?

3           A.     After the initial payment is made.

4           Q.     All right. In the call on the 10th, did  
5 you hear the representative advise Mr. Vickers of the  
6 remaining balance?

7           A.     Yes, I did.

8           Q.     Did you hear her advise him of the monthly  
9 installments?

10          A.     Yes, I did.

11          Q.     Did you hear her advise him that he needs  
12 to pay each payment in full by the due date?

13          A.     Yes, he did.

14          Q.     And that if he's a day late, the entire  
15 bill will be due?

16          A.     Yes, I did.

17          Q.     Is that a consequence, the entire bill  
18 being due?

19          A.     Yes, it is.

20          Q.     All right. Was he asked if you understood  
21 and accepted the terms of the agreement?

22          A.     Yes.

23          Q.     And he said yes?

24          A.     Yes, he did.

25          Q.     All right. Did the rep advise him that he

1           needed to call in the payment receipt number?

2           A.     Yes.   After he made the payment.

3           Q.     All right.   How does that work?   What's a  
4           payment receipt number?

5           A.     When they -- you can either go to Speed  
6           Pay, which is Western Union.   That can be over the  
7           phone.   They will give a receipt number as to the  
8           payment that's made, and it has an amount in it.  
9           It's -- we would decode that.   It's a long, probably  
10          about anywhere from 13 to 15, and I can't state  
11          exactly, but 13 to 15 numbers.   We would be able to  
12          tell what date it was made from that, how much the  
13          payment was.

14                    If they go to -- the customer goes to one  
15          of our payment stations like Schnucks or Dierbergs  
16          and makes the payment, they're handed a receipt that  
17          has the same number, type of number on it.   That  
18          customer calls in, gives us that receipt number, and  
19          then we'll -- we can tell that the payment's been  
20          made.

21          Q.     Is this procedure understood by the  
22          majority of people who call in for the Cold Weather  
23          Rule payment agreement?

24          A.     Yes, it is.

25          Q.     And is that procedure followed by the

1 majority of people who ask for --

2 MR. VICKERS: I'll object --

3 THE WITNESS: Yes, it is.

4 MR. VICKERS: -- as to form. She doesn't  
5 know what the majority of people think. That's why  
6 it should be in writing.

7 BY MS. GIBONEY:

8 Q. Do you receive inquiries or complaints  
9 from the majority of people who enter into Cold  
10 Weather Rule payment agreements?

11 MR. VICKERS: Objection --

12 THE WITNESS: No.

13 MR. VICKERS: -- as to the relevance.

14 MS. GIBONEY: Mr. Vickers has raised the  
15 issue --

16 JUDGE STEARLEY: Yeah, hold on just a  
17 moment. That objection will be overruled. That is  
18 relevant to this matter.

19 So you may answer.

20 And if you'll all please slow down just a  
21 tiny bit and pause and give me a chance to rule on  
22 objections and statements, that would be greatly  
23 appreciated.

24 THE WITNESS: Could you repeat the  
25 question, I'm sorry?

1 BY MS. GIBONEY:

2 Q. I'll try. Do you receive complaints or  
3 inquiries from the majority of people who enter into  
4 Cold Weather Rule agreements regarding whether they  
5 understand the terms?

6 A. No.

7 Q. Okay. And do most people comply?

8 A. Most people comply.

9 Q. Okay. And especially do they -- do most  
10 people, in particular I should say, do most people  
11 comply with respect to making the initial payments?

12 A. Yes, they do.

13 Q. So most people who have these agreement  
14 make the initial payment and then they're sent a  
15 written confirmation letter?

16 A. That's correct. Or it will default.

17 Q. I may have asked this, and I apologize.  
18 But again, if a customer could wait until he chose to  
19 send back in writing confirming the agreement until  
20 he made an initial payment, could that customer  
21 prolong a disconnect indefinitely if that were the  
22 way the Cold Weather Rule payment agreement worked?

23 A. Yes, it would. Because it would cancel  
24 the disconnection.

25 Q. And again, when a customer's in

1       disconnect, they need to make that payment right  
2       away; is that correct?

3           A.     Yes, it is.

4           MS. GIBONEY: No further questions.

5           JUDGE STEARLEY: All right. Ms. Hart,  
6       thank you for your testimony.

7           MR. VICKERS: I have some recross.

8           JUDGE STEARLEY: I'm sorry?

9           MR. VICKERS: Some recross.

10          JUDGE STEARLEY: We've already gone  
11       through our rounds of recross. Ms. Giboney's just  
12       completed redirect. This witness is excused.

13               And at this point prior to us picking up  
14       our last witness, we're going to take about a ten  
15       minute recess. If nobody else needs a break, I want  
16       to give our court reporter a rest here since we're  
17       been going for well over two and a half hours. So  
18       we'll reconvene in about ten minutes.

19               (Off the record.)

20          JUDGE STEARLEY: All right. All right.  
21       We are back on the record and you may call your  
22       second witness.

23          MS. GIBONEY: Before we call Mr. Horn,  
24       there may be some items in his direct that also  
25       involve some highly confidential information. Just



1 wanted to bring that to your attention.

2 JUDGE STEARLEY: All right. We'll go  
3 ahead and get him sworn in. And if we start going  
4 that way, let me know and I'll take us in-camera.

5 MS. GIBONEY: Ameren Missouri calls  
6 Michael Horn.

7 JUDGE STEARLEY: Mr. Horn, if you'd  
8 please raise your right hand.

9 (Witness sworn.)

10 JUDGE STEARLEY: You may be seated. And  
11 you may proceed.

12 MICHAEL HORN, having been sworn, testified as  
13 follows:

14 DIRECT EXAMINATION BY MS. GIBONEY:

15 Q. Mr. Horn, can you state your name for the  
16 record.

17 A. Michael Horn.

18 Q. And are you employed with Ameren Missouri?

19 A. Yes, I am.

20 Q. What's your title and job  
21 responsibilities?

22 A. I'm the supervisor of credit and  
23 collections. I supervise the areas of bankruptcies,  
24 nonservice billings, collection agencies, the red  
25 flag program. In addition to that I also conduct

1 detailed financial analysis on corporations and write  
2 the Credit Watch newsletter.

3 Q. How long have you held that position?

4 A. That would be nine years, ten months.

5 Q. Do you have general knowledge about Ameren  
6 Missouri's method of doing business?

7 A. I do.

8 Q. Do you have that knowledge with respect to  
9 billing and collection?

10 A. I do.

11 Q. And customer service?

12 A. I do.

13 Q. Do you also have knowledge about its  
14 recordkeeping with respect to those subjects?

15 A. I do.

16 Q. Are you here today as a corporate  
17 representative of the company?

18 A. I am.

19 Q. In preparing for this testimony, have you  
20 reviewed company records?

21 A. Yes.

22 Q. What records have you reviewed generally?

23 A. Generally the account statement, contacts,  
24 billings, possibly the actual bills.

25 Q. All right. I only have one copy, but I'll

1 show it to you.

2 A. Okay.

3 Q. I'm handing you what's been marked Ameren  
4 Missouri Exhibit 8-HC. Can you identify this  
5 document?

6 A. Yes. This is a printout of some contacts  
7 that were made on the telephone with Mr. Vickers on  
8 his account.

9 Q. Are contact notes made by the  
10 representative at the time the call is made?

11 A. Yes. It actually shows the time.

12 Q. What is the point of the contact records?

13 A. It's to maintain records so that anyone  
14 else subsequently that had reason to be in the  
15 account would understand what transactions have  
16 transpired prior to this and what conversations took  
17 place.

18 MS. GIBONEY: At this time I'd move for  
19 admission of Ameren Missouri Exhibit 8-HC.

20 MR. VICKERS: No objection.

21 JUDGE STEARLEY: No objection. It shall  
22 be received into the record.

23 (Ameren Missouri Exhibit 8-HC was  
24 received into evidence.)

25 MS. GIBONEY: Would you like to see that,

1 Judge, before we discuss it?

2 JUDGE STEARLEY: Yes, I would. Is that  
3 your only copy, Counselor?

4 MS. GIBONEY: Yes, it is, I'm sorry.

5 JUDGE STEARLEY: All right. If we're  
6 done in time, perhaps you can make a copy in the data  
7 center. If not, I don't know if you need it at the  
8 end of the day. You can leave it with me or the  
9 court reporter.

10 MS. GIBONEY: I can leave with the court  
11 reporter if that's okay.

12 JUDGE STEARLEY: That would be fine.

13 BY MS. GIBONEY:

14 Q. All right. I'll hand you back Exhibit  
15 8-HC. Does that contact note page reflect a call  
16 made on January 3rd?

17 A. Yes, it does, at 2:42 p.m.

18 Q. All right. Does that reflect that the  
19 call was regarding a Cold Weather Rule payment  
20 agreement?

21 A. Yes, it does.

22 Q. All right. What does it tell you about  
23 the call?

24 A. It says that Eric Vickers was advised to  
25 pay -- he promised to pay \$441 by 1/10/11 and to call

1 back with the receipt number to set up a PEG.

2 Q. And PEG is a payment agreement?

3 A. Yes.

4 Q. Okay. All right. We've talked about  
5 reinstatement of a defaulted payment agreement. Did  
6 you have a conversation with Mr. Vickers about that  
7 around March 14th?

8 A. It was on March 14th.

9 Q. All right. Can you tell us what he said?

10 A. Well, initially in that conversation he  
11 denied having a Cold Weather Rule payment agreement  
12 from January that was in default. We went through a  
13 discussion of how that payment agreement was made and  
14 he agreed with me at that time that based upon what I  
15 was saying to him and what his actions were, that he  
16 had indeed entered into a payment agreement in  
17 January that had defaulted.

18 Q. Did you discuss how he could reinstate  
19 that payment agreement?

20 A. I did.

21 Q. What were the terms of the reinstatement?

22 A. The terms of reinstatements basically are  
23 to catch up on the payments that were missed plus the  
24 current bill.

25 Q. Do the regulations require that a customer

1 agree to the terms of a reinstatement?

2 A. No. It merely states that it can be  
3 offered.

4 Q. Okay. Doesn't it in fact say that the  
5 Company shall permit a customer to reinstate or --

6 A. I believe that's the actual terminology.

7 Q. So you advised Mr. Vickers how he could  
8 reinstatement the payment agreement?

9 A. That is correct. That's the dollar  
10 amounts we discussed.

11 Q. Was that payment of the 1,680 that we've  
12 heard testimony about earlier today?

13 A. Yes.

14 Q. All right. Did Mr. Vickers make that  
15 payment on the 14th?

16 A. He did not.

17 Q. Did he make a payment?

18 A. Yes. He made a payment I believe of  
19 six-hundred-and-some dollars.

20 Q. Okay. Was that on the 15th?

21 A. Yes.

22 Q. All right. What did you do after  
23 Mr. Vickers made that payments?

24 A. On the 16th I actually called him and  
25 advised him the remaining amount due in order to

1       reinstate that payment agreement.

2           Q.     Okay. Do you normally -- do Ameren  
3       representatives typically call a customer to advise  
4       them of those things?

5           A.     No.

6           Q.     Why did you do that?

7           A.     Basically because the difficulties on the  
8       account. I've been aware of problems on this account  
9       going back to April of 2010 and I understood that he  
10      was basically forcing the issue, trying to get an  
11      arrangement for far less than what was going to be  
12      allowed. So I wanted to make it very clear of the  
13      dollar amounts due in order to reinstate that payment  
14      agreement.

15          Q.     Did you advise him that the \$645 payment  
16      did not reinstate the payment agreement?

17          A.     That is correct.

18          Q.     All right. Did you give him a deadline by  
19      which he needed to make the balance of the payment?

20          A.     It was the end of that day.

21          Q.     Did he make the payment by the end of that  
22      day?

23          A.     No, he did not.

24          Q.     Did you authorize an extension of that  
25      time to pay the remainder, until the 17th?

1           A.     No.

2           Q.     Was he allowed however to make that  
3 payment on the 17th?

4           A.     After he made the payment on the 17th, we  
5 did allow reinstatement.

6                   MS. GIBONEY: Okay. No further  
7 questions.

8                   JUDGE STEARLEY: All right. Cross-  
9 examination from Staff.

10                   MR. THOMPSON: Thank you, Judge

11 CROSS-EXAMINATION BY MR. THOMPSON:

12           Q.     Good afternoon, Mr. Horn.

13           A.     Good afternoon.

14           Q.     As far as you know in the period of time  
15 of January 2011 until today, has Mr. Vickers ever  
16 disputed the amount that he owes for service?

17           A.     There was a -- I guess January of 2011,  
18 no, not to my knowledge.

19           Q.     Okay. And as far as you know has  
20 Mr. Vickers ever indicated that he did not receive  
21 the service or all of the service that he'd been  
22 billed for?

23           A.     I'm sorry. Again?

24           Q.     If you know, has Mr. Vickers during that  
25 period that we mentioned, ever disputed that he did



1 not receive all or some of the services that he's  
2 been billed for?

3 A. No.

4 Q. Okay. And with respect to Exhibit 8, the  
5 contact notes, were you here during the examination  
6 of Cathy Hart?

7 A. Yes.

8 Q. And are those, in fact, the contact notes  
9 that were referred to during the examination of  
10 Ms. Hart?

11 A. Yes.

12 MR. THOMPSON: Okay. Thank you. No  
13 further questions.

14 JUDGE STEARLEY: Cross-examination,  
15 Mr. Vickers?

16 MR. VICKERS: Let me see that.

17 CROSS-EXAMINATION BY MR. VICKERS:

18 Q. How you doing, Mr. Horn?

19 A. Good.

20 Q. Maybe you can clarify something. On your  
21 direct examination you said that on that contact  
22 sheet it said, quote, I promised to pay. Are those  
23 words there?

24 A. Not in that sense, no. It says, advised  
25 to pay 441 by 1/10/11, call back with a receipt

1           number, set up a payment agreement.

2           Q.     Now, you testified that that sheet said  
3           that I promised to pay. Those were your exact  
4           words.

5           A.     Yes.

6           Q.     Those words are not on that contact sheet,  
7           are they?

8           A.     Our contacts are not verbatim, sir.

9           Q.     Well, I'm just asking you to testify  
10          what's on that contact sheet. There is nothing on  
11          that contact sheet that says Mr. Vickers promised to  
12          pay?

13          A.     By the --

14          Q.     Do -- just answer the question. Is there  
15          any -- are those words, Prom-- Vickers promised to  
16          pay on there?

17          A.     Those words are not; however the --

18          Q.     Thank you.

19          A.     -- January 10th --

20          Q.     Thank you. Thank you.

21                  So when you sat here and testified that  
22          that document said that I promised to pay, that was  
23          not correct?

24          A.     I would beg to differ.

25          Q.     Okay. How many customers in a year's time

1       avail themselves of the Cold Weather Rule?

2           A.     I don't have those figures, sir.

3           Q.     You were here when Ms. Hart testified that  
4       a majority of people comply with --

5           A.     I believe the question was regards to  
6       making the initial payment.

7           Q.     Well, how many people are we talking  
8       about?

9           A.     That are in Cold Weather Rule payment  
10      agreements?

11          Q.     Yes.

12          A.     I don't have that figure.

13          Q.     So how are you able to make the statement  
14      that most of the people comply, when you don't know  
15      the exact number?

16          A.     I guess that would be based upon the  
17      number of cold weather PEGs that we do have which is  
18      quite sizable, but I couldn't tell you the exact  
19      number, sir.

20          Q.     How sizeable, thousands, hundreds of  
21      thousands?

22          A.     Tens of thousands.

23          Q.     Tens of thousands.

24          A.     We have a million residential customers.

25          Q.     So you have tens of thousands of customers

1       who have entered into these Cold Weather Rule  
2       agreements?

3           A.     Well, payment agreements in general is  
4       what I was referring to, Mr. Vickers.

5           Q.     Well, I'm --

6           A.     Again, I do not have exact figures on the  
7       difference between a payment agreement and a cold  
8       weather payment agreement.

9           Q.     So that when Ms. Hart sat here and  
10       testified that the majority of people comply with the  
11       Cold Weather Rule, you have no way of knowing whether  
12       or not that's a true statement?

13          A.     Based upon the number of disconnects that  
14       we would have to do for those that would not comply  
15       with it, it would be very sizeable. And I would know  
16       about those because of the areas that I supervise.

17          Q.     Do you know how many of your customers  
18       under the Cold Weather Rule have written  
19       confirmations of their agreements?

20          A.     Once they make a payment, the initial  
21       payment, they all get a copy of the letter confirming  
22       the agreement.

23          Q.     Is it a form letter?

24          A.     I've never actually seen the letter, but I  
25       believe it would be a form letter. It would be

1 generated out of the computer.

2 Q. So you've never actually seen a letter  
3 confirming --

4 A. I've never had to enter into a Cold  
5 Weather Rule agreement.

6 Q. So again, you've never seen a  
7 confirmation --

8 A. There was no reason for me to have seen  
9 it; I know it's done.

10 Q. Okay. And you know it's done, what,  
11 because somebody told you?

12 A. Because of our company records.

13 Q. But you've never seen in those records a  
14 confirmation in writing. How long have you worked  
15 with the company?

16 A. I'm not quite understanding your question.

17 Q. You have never seen in Ameren's records a  
18 confirmation in writing of a Cold Weather Rule  
19 agreement?

20 A. I've never had to see a Cold Weather Rule  
21 agreement.

22 Q. So then you don't know whether or not they  
23 are done or not?

24 A. I have to trust the company records on  
25 which I rely.

1           Q.     Well, what records are you relying on when  
2     you say that these written confirmations --

3           A.     You know, Mr. Vickers, just because I  
4     haven't seen an actual document doesn't mean it  
5     doesn't exist.

6           Q.     Well, I understand that.

7           A.     Okay.

8           Q.     You're saying you rely on records.  What  
9     records have you seen that you relied on?

10          A.     I rely on the accounting system to tell me  
11     what's due on the accounts, the contacts on the  
12     accounts, all of it.

13          Q.     Are customers aware that they're being  
14     recorded when they make an agreement under the Cold  
15     Weather Rule?

16          A.     It's not my area; I really wouldn't know.

17          Q.     So when a customer calls up, for example  
18     the tapes that -- where I allegedly made an  
19     agreement, are you aware of whether or not Ameren  
20     advises customers that they're being recorded about  
21     this agreement?

22          A.     I couldn't tell you how a conversation  
23     occurs actually between the customer and the customer  
24     service center because I've never actually had to  
25     make such a phone call.  It's not my area of

1 expertise as I stated earlier what my job duties  
2 were.

3 Q. So I'm trying to understand the purpose of  
4 your testimony then if you don't know anything about  
5 the Cold Weather Rule being applied by Ameren.

6 A. I didn't say that.

7 Q. Okay. Well, you don't know whether or  
8 not when these verbal agreements are made if the  
9 customers are advised they're being recorded. You do  
10 not know that?

11 A. I do not know if there's any advisement of  
12 a call being recorded.

13 Q. And you do not know because you've never  
14 seen a written confirmation?

15 A. About the call being recorded?

16 Q. Of the Cold Weather Rule agreement.

17 A. I've never actually seen the confirmation.

18 Q. Okay. And you don't have any knowledge  
19 about the conversation that I had on January the 3rd  
20 with Ameren?

21 A. By the contacts. We just went over that.

22 Q. All you know is what is on the contact  
23 sheet?

24 A. Right. We did not have a conversation  
25 until March 14th.

1 Q. Okay.

2 A. When you actually confirmed that you had  
3 made an agreement in January.

4 Q. Well, I think you testified that I had  
5 denied having an agreement when we talked?

6 A. Initially you did, but during our  
7 conversation you admitted to it.

8 Q. Okay. Now, do you have a recording of  
9 that conversation?

10 A. Don't believe so.

11 Q. Do you have something in writing where I  
12 agreed to that?

13 A. I would think that by the fact that you  
14 made the payments necessary --

15 Q. I'm just asking --

16 A. -- to reinstate --

17 Q. Mr. Horn, I'm just asking, do you have  
18 something in writing?

19 A. From you?

20 Q. From me or anything that you wrote  
21 confirming this conversation that you and I had where  
22 you say I agreed that I had entered into this  
23 agreement?

24 A. I wouldn't have a reason to make such a  
25 confirmation in writing, Mr. Vickers.



1 Q. So you don't? You don't --

2 A. I believe that's what I said.

3 Q. So then what we're left with is your  
4 testimony saying that I denied having an agreement,  
5 but then later on I said there is an agreement?

6 A. Correct.

7 Q. Okay.

8 A. It's a fairly lengthy phone conversation  
9 if you don't recall.

10 Q. How long did you say you've been with  
11 Ameren again?

12 A. It was nine years, ten months; January 16,  
13 2002.

14 MR. VICKERS: I have nothing further.

15 JUDGE STEARLEY: Questions from the  
16 bench? Commissioner Davis, questions for this  
17 witness?

18 COMMISSIONER DAVIS: No questions. Thank  
19 you, sir.

20 JUDGE STEARLEY: Okay. Commissioner  
21 Kenney?

22 COMMISSIONER KENNEY: No questions.  
23 Thanks for your time.

24 JUDGE STEARLEY: All right. Since there's  
25 no questions from the bench, there'll be no recross.

1 Redirect Ameren.

2 REDIRECT EXAMINATION BY MS. GIBONEY:

3 Q. Do your customer contact center reps note  
4 a payment agreement if a customer has not agreed?

5 A. No, they do not.

6 Q. All right. So if that is indicated in  
7 your customer contact notes, would that be an  
8 indication that the customer has verbally said they  
9 agreed to that?

10 A. Yes. I believe by the fact there's an  
11 arbitrary date of January 10th confirms it also.

12 Q. And once again, when we're talking about a  
13 reinstatement of a defaulted agreement, does Ameren  
14 require that the customer agree to those terms?

15 A. No.

16 Q. Do the regs require that the customer  
17 agree to those terms?

18 A. No.

19 Q. Are those the terms on which the cust--  
20 the Company shall reinstate?

21 A. Yes.

22 Q. Okay. Pardon me. This will be Exhibit  
23 9-HC, two pages.

24 All right. I'm handing you what I've  
25 Ameren Missouri Exhibit 9-HC. Can you identify that?

1           A.     These are further contacts from our  
2     system.

3           Q.     All right.  And are those pages 2 and 3 of  
4     the same set of contacts notes that we looked at  
5     before?

6           A.     Yes.

7           Q.     All right.  Are those contacts entered in  
8     the same way as we described before in the --

9           A.     That is correct.

10          Q.     In the ordinary course of the Company's  
11     business?

12          A.     That is correct.

13                 MS. GIBONEY:  Okay.  I'd ask for  
14     admission of Ameren Missouri Exhibit 9-HC?

15                 JUDGE STEARLEY:  Any objections?

16                 MR. VICKERS:  No objection.

17                 MR. THOMPSON:  No objection.

18                 JUDGE STEARLEY:  It'll be received and  
19     admitted into the record.

20                 (Ameren Missouri Exhibit 9-HC was  
21     received into evidence.)

22     BY MS. GIBONEY:

23           Q.     Mr. Horn, I'll direct your attention to  
24     a -- is there an entry for March 16th?

25           A.     Yes, at 10:23 a.m.

1 Q. Who made that entry?

2 A. It was myself.

3 Q. All right. Does that entry reflect the  
4 conversation that you described earlier?

5 A. Yes. Little bit further information, but  
6 yes.

7 Q. Does that entry reflect that -- a  
8 disagreement and then an agreement about the prior  
9 Cold Weather Rule payment agreement?

10 A. No, not on the 16th.

11 Q. Is there a different date?

12 A. It would be the 14th that we had that  
13 initial conversation.

14 Q. My apologies. Does that customer contact  
15 note, was that also made by you?

16 A. Yes.

17 Q. And that reflects the conversation you had  
18 with Mr. Vickers on the 14th?

19 A. Yes.

20 Q. All right. Does that contact note reflect  
21 the discussion that you mentioned earlier?

22 A. Yes.

23 Q. All right. Does it say that he initially  
24 denied it and then agreed that he did enter into an  
25 agreement?

1           A.     It specifically says that he agreed it was  
2     finally; then he tried to say it was not, but he did  
3     agree to it.

4           MS. GIBONEY:   Okay.   That's all I have.

5           JUDGE STEARLEY:   All right.   That  
6     concludes redirect.   Mr. Horn, you may step down.  
7     Thank you for your testimony.

8           MS. GIBONEY:   May I offer an evidentiary  
9     brief?

10          JUDGE STEARLEY:   I'm sorry?

11          MS. GIBONEY:   May I offer an evidentiary  
12     brief on a contract issue?

13          JUDGE STEARLEY:   Certainly.

14          MS. GIBONEY:   Just for the Commission's  
15     consideration.

16          MR. THOMPSON:   Thank you.

17          COMMISSIONER KENNEY:   What is that?

18          JUDGE STEARLEY:   It's an evidentiary  
19     hearing brief.   Ms. Giboney, at your earliest  
20     opportunity will you file this is in EFIS?

21          MS. GIBONEY:   Yes, I will.

22          JUDGE STEARLEY:   And this, I presume, is  
23     going to be separate and apart from your post-hearing  
24     brief?

25          MS. GIBONEY:   We may include it in the

1 post-hearing brief as well.

2 JUDGE STEARLEY: All right. And we've  
3 heard from all the witnesses. Does any party wish to  
4 make a closing statement or do you all just wish to  
5 proceed with the briefing schedule? Mr. Vickers?

6 MR. VICKERS: Briefing schedule's fine,  
7 your Honor.

8 JUDGE STEARLEY: All right. Anyone  
9 else?

10 MR. THOMPSON: Judge, are we going to get  
11 copies of those last two exhibits that Ameren  
12 offered?

13 JUDGE STEARLEY: Yes. Ms. Giboney's  
14 nodding her head in the affirmative.

15 MS. GIBONEY: If we can go to the data  
16 center now and make copies of those.

17 JUDGE STEARLEY: I think we can conclude  
18 our housekeeping here pretty quickly and then be able  
19 to get down there. Any other final matters we need  
20 to take up? All right. Well, let's look at our  
21 calendar.

22 Shelley, you think you can expedite the  
23 transcript for Monday, November 7th?

24 COURT REPORTER: Yes.

25 JUDGE STEARLEY: And we'll do post-

1       hearing briefs 20 days after that which actually  
2       falls on a Sunday, so post-hearing briefs will due on  
3       November 28.

4               MR. THOMPSON: One round or two rounds,  
5       Judge?

6               JUDGE STEARLEY: One round. All right.  
7       Ms. Giboney, you're going to make copies of those  
8       last two exhibits in the data center for all parties  
9       and our court reporter will then have the originals.

10              MS. GIBONEY: Okay.

11              JUDGE STEARLEY: Good. Is there anything  
12       else we need to address before we adjourn?

13              MS. GIBONEY: No, your Honor.

14              JUDGE STEARLEY: All right. The  
15       evidentiary hearing in File EC-2011-0326 is hereby  
16       adjourned and I thank you all very much.

17              (Off the record.)

18              (Ameren Missouri Exhibit Nos. 1 through 9  
19       were marked for identification.)  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE

2 I, Shelley L. Mayer, a Certified Court Reporter,  
3 CCR No. 679, the officer before whom the foregoing  
4 hearing was taken, do hereby certify that the  
5 witness whose testimony appears in the foregoing  
6 hearing was duly sworn; that the testimony of said  
7 witness was taken by me to the best of my ability  
8 and thereafter reduced to typewriting under my  
9 direction; that I am neither counsel for, related  
10 to, nor employed by any of the parties to the action  
11 in which this hearing was taken, and further, that I  
12 am not a relative or employee of any attorney or  
13 counsel employed by the parties thereto, nor  
14 financially or otherwise interested in the outcome  
15 of the action.

16  
17  
18 \_\_\_\_\_  
19 Shelley L. Mayer, CCR  
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21  
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