

Respondent.

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File No. EC-2019-0168

Effective Date: September 20, 2019

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Jill Covington Beatty,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2019-0168</u>
)	
Union Electric Company,)	
d/b/a Ameren Missouri,)	
)	
Respondent.)	

APPEARANCES

Jill Covington Beatty

Complainant, appeared pro se

Sara E. Giboney

For Respondent, Union Electric Company
d/b/a Ameren Missouri

Casi Aslin

For Staff of the Missouri Public Service Commission

Regulatory Law Judge

Paul T. Graham

REPORT AND ORDER

On April 23, 2019, the Missouri Public Service Commission (the “Commission”) conducted an evidentiary hearing on the Complaint of Jill Covington Beatty (“Ms. Beatty”) against Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”).

Introduction

Ms. Beatty filed a complaint alleging Ameren Missouri overcharged her for service at her Cape Girardeau (the “Cape Meadows”) address by failing to credit her account with an energy assistance payment she claimed was made in 2014, and otherwise by overcharging her when the residence was vacant and required little electricity.¹ She alleged that as a result, the Company transferred an incorrect balance when she opened service at a Caruthersville (the “3rd Street”) address in 2016. She alleged this also resulted in the Company’s improperly requiring a deposit for her 3rd Street address. She alleged Ameren Missouri then improperly discontinued her 3rd Street service on July 28, 2016.

Ms. Beatty alleges the discontinuance was improper because it was based on a prior incorrect Cape Meadows bill and improper deposit requirement and because it occurred despite a documented medical hardship and when the heat index was one hundred degrees.

¹ Ms. Beatty’s current complaint incorporates two earlier ones: Files EC-2010-0142, and EC-2017-0198. The 2010 Complaint was dismissed without prejudice on June 26, 2010, because Ms. Beatty failed to show cause why she did not appear at a prehearing conference. Ms. Beatty voluntarily dismissed the 2017 Complaint at an evidentiary hearing scheduled for October 4, 2017, in Caruthersville, Missouri, before any witnesses had been sworn or testimony or evidence had been taken.

Ms. Beatty's current case repeats the complaints she made in EC-2017-0198, and the Commission will dispose of both cases on the basis of the April 23, 2019, hearing. Although the current case also incorporated Ms. Beatty's EC-2010-0142 case, she presented no evidence concerning that case at the April 23, 2019, hearing. Staff witness Contessa King, however, testified Staff had investigated the 2010 claim, offered Staff's Exhibit No. 1, which was received in evidence, and stated that Staff had concluded that the Company had violated no applicable statutes, regulation or tariffs.² The Commission will decide the allegations made in File No. EC-2010-0142 based on the evidence received at the April 23 hearing.

Findings of Fact

1. From June 6, 2012 through March 12, 2014, Ms. Beatty resided at the Cape Meadows address.³

2. Ms. Beatty owed \$306.88 on the Cape Meadows account as of November 22, 2013.⁴ An energy assistance payment of \$251.00 was then credited to the account on November 29, 2013.⁵ That was the last payment on the account. Ms. Beatty closed the account on March 12, 2014.⁶ In the meantime, the bill for December 2013 service was \$141, and for January 2014 the bill for service was \$160.⁷ The unpaid balance as of March 12, 2014, on the Cape Meadows account stood at \$545.97.⁸

² Tr. 59.

³ Staff's report from the prior cases was included in Staff's Exhibit 1, admitted into evidence at the April 23, 2019, hearing. Tr. 58.

⁴ Tr. 81.

⁵ Tr. 81.

⁶ Staff's Exhibit 1.

⁷ Tr. 118.

⁸ Tr. 111.

3. After terminating her Cape Meadows service with Ameren Missouri in 2014, Ms. Beatty left the state of Missouri⁹ until she moved and established new service with the Company at the 3rd Street address in Caruthersville on May 20, 2016.¹⁰

4. On May 23, 2016, the Company advised Ms. Beatty that because of an unpaid \$545.97 bill still owed on the Cape Meadows account, it required a \$118.00 deposit (in three installments) to establish service at the 3rd Street address.¹¹

5. On June 10, 2016, the Company billed Ms. Beatty \$636.58, which included the \$545.97 owed on the Cape Meadows account, current charges of \$51.28, and a deposit installment of \$39.33.¹²

6. On June 21, 2016, the Company advised Ms. Beatty it would not withdraw the deposit requirement.¹³

7. On July 12, 2016, the Company mailed Ms. Beatty a bill for \$804.35, which included a deposit installment of \$39.33, current charges of \$127.67, a prior balance of \$636.58, and late charges of \$0.77.¹⁴

8. On July 12 and July 15, 2016, the Company mailed disconnection notices to Ms. Beatty requiring payment of \$636.58 by July 27, 2016.¹⁵

9. On July 20, 2016, the Company advised Ms. Beatty she could prevent disconnection by paying \$441.00 by July 27, 2016, and the remaining balance in three installments.¹⁶ She declined.¹⁷

⁹ Tr.24

¹⁰ Tr. 26-27.

¹¹ Staff's Exhibit 1, p. 2.

¹² Staff's Exhibit 1, p. 2.

¹³ Staff's Exhibit 1, p. 2.

¹⁴ Staff's Exhibit 1, p. 2.

¹⁵ Staff's Exhibit 1, p. 2.

¹⁶ Staff's Exhibit 1, Attachments.

¹⁷ Staff's Exhibit 1, p. 18.

10. The Complaint made no allegations and neither party adduced evidence or argument as to whether the Company did or did not advise the Commission's consumer services department of the dispute or obtain the department's authorization to discontinue service prior to service discontinuance on July 28, 2016.

11. The Complaint made no allegations and neither party adduced evidence or argument as to whether the amount that the Company required Ms. Beatty to pay by July 27, 2016, \$441.00, exceeded the lesser of an amount not to exceed 50% of the charge in dispute or an amount based on usage during a like period under similar conditions.

12. On July 28, 2016, the Company advised Ms. Beatty she might be eligible for a medical hardship extension, but had to provide a doctor's statement within 24 hours.¹⁸ On July 29, 2016, the Social Security Office sent a letter to the Company.¹⁹ The Company advised Ms. Beatty this letter was insufficient for a medical hardship extension. The Company told her the letter had to have a doctor's letterhead and be signed either by a doctor or a nurse practitioner.²⁰ Neither in her pleadings nor at the April 23, 2019, hearing did Ms. Beatty claim or present evidence of the existence of a "medical emergency" on July 28, 2016. The evidence does not support a conclusion that when Ms. Beatty's service was discontinued on July 28, 2016, either she, a member of her family, or a permanent resident of the premises had an existing medical emergency.

¹⁸ Staff's Exhibit 1, p. 3.

¹⁹ Staff's Exhibit 1, p. 3.

²⁰ Ameren Missouri's Exhibit 1C, log entries for July 28-29, 2016.

13. On August 4, 2016, Ms. Beatty called the Company and reported a \$236.58 payment,²¹ and on August 5, 2016, the Company reconnected Ms. Beatty's service.²²

14. Ms. Beatty testified the heat index was "probably" one hundred degrees when her service was discontinued.²³ Ameren Missouri introduced evidence of the weather forecast for Cape Girardeau for July 28, 2016.²⁴ The forecast for that date in Cape Girardeau was highs in the upper 80s.²⁵ The service discontinuance was in Caruthersville, and no party adduced evidence of the National Weather Service local forecasted temperature or heat index for Caruthersville, Missouri, for the twenty-four hours commencing at 6:00 a.m. on July 28, 2016. The evidence does not support a conclusion that the National Weather Service issued a Caruthersville local forecast between 6:00 a.m. and 9:00 p.m. on July 28, 2016, for the following twenty-four hours predicting a temperature above ninety-five degrees Fahrenheit or a heat index above one hundred five degrees Fahrenheit.

Conclusions of Law

A. Section 386.390.1, RSMo, permits any person to make a complaint setting forth any act or thing done or omitted to be done by any public utility "in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission. . . ."

²¹ Staff's Exhibit 1, p. 3.

²² Staff's Exhibit 1, p. 3.

²³ Tr.112.

²⁴ Ameren Missouri's Exhibit No. 11. Ameren Missouri's witness Krcmar testified that the data in this exhibit was from the National Weather Forecast "for the area that Ms. Beatty resided in." Tr. 97

²⁵ Tr.97.

B. Ameren Missouri is a “public utility” as defined in Section 386.020 (43), RSMo.

C. As authorized by Section 386.390.1, RSMo, Ms. Beatty has filed a Complaint alleging Ameren Missouri’s actions were in violation of provisions of law, as she is allowed to do by Section 393.130, RSMo. The Commission has jurisdiction in this case.

D. Commission Rule 4 CSR 240-2.070 (4) provides:

“A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.”

D. A complainant has the burden of proving the Company’s alleged acts and/or omissions violated the law or its tariff.²⁶

E. The determination of witness credibility is left to the Commission, “which is free to believe none, part or all of the testimony.”²⁷

F. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.²⁸ The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot determine damages.²⁹

G. The Company’s tariff on transfers of balances provides:

²⁶ *State ex rel GS Technologies Operating Co., Inc. v. Public Service Comm’n.*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2003).

²⁷ *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers’ Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

²⁸ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

²⁹ See, e.g., *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

“In the event of disconnection or termination of service at a separate customer metering point, premise or location, Company may transfer any unpaid balance to any other service account of the customer having a comparable class of service.”³⁰

H. Commission Rule 4 CSR 240-13.030 (1) states:

“A utility may require a deposit or other guarantee as a condition of new residential service if—

(A) The customer has outstanding with a utility providing the same type of service, an unpaid bill which accrued within the last five (5) years and, at the time of the request for service, remains unpaid and not in dispute. . . .”

I. The Company’s tariff on deposits provides:

“Company may, as a condition to furnishing service initially, require any applicant for residential service to make a cash deposit or furnish a written guarantee of a responsible party, due to any of the following:

(a) The applicant has an unpaid bill, which accrued within the last five (5) years and at the time of the request for service, remains unpaid and not in dispute with a utility for the provision of the same type of service. . . .”³¹

J. Commission Rule 4 CSR 240-13.050 (1) states:

“Service may be discontinued for any of the following reasons:

(A) Nonpayment of an undisputed delinquent charge;

(B) Failure to post a required deposit or guarantee. . . .”

K. Ms. Beatty’s first claim is that Ameren Missouri wrongly discontinued her service when she did not owe \$545.97 on the Cape Meadows account. Ms. Beatty’s Complaint, evidence, and arguments require the Commission to determine the amount due on the Cape Meadows account. The Commission concludes Ms. Beatty owed \$547.97 on the Cape Meadows account and that this amount was delinquent per the

³⁰ Ameren Missouri’s Exhibit 4.

³¹ Ameren Missouri’s Exhibit 5.

Commission's deposit rule 4 CSR 240-13.030(1) and service discontinuance rule 4 CSR 240-13.050(1) when she established service at the 3rd Street address.

L. Ms. Beatty's Complaint did not allege Ameren Missouri violated the dispute resolution procedures established in Commission's Rule 4 CSR 240-13.045, and no claim, evidence, or argument on that score was presented at the April 23, 2019 hearing. Based on the Complaint and Staff's contacts with Ms. Beatty, Staff filed no report concerning these procedures.³² The Commission cannot conclude that Ameren Missouri had notice of any such issue or that given notice and an opportunity to do so, it could not have adduced evidence that it complied with the Commission's dispute resolution procedures. Accordingly, the Commission cannot conclude that Ameren Missouri violated the Commission's Rule 4 CSR 240.133.045 dispute resolution procedures, its deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1), when it required a deposit for the 3rd Street Service and then discontinued the 3rd Street Service on July 28, 2016.

M. Commission Rule 4 CSR 240.13.050(9) states:

"Notwithstanding any other provision of this rule, a utility shall postpone a discontinuance for a time not in excess of twenty-one (21) days if the discontinuance will aggravate an existing medical emergency of the customer, a member of his/her family or other permanent resident of the premises where service is rendered. Any person who alleges a medical emergency, if requested, shall provide the utility with reasonable evidence of the necessity."

³² Commission Rule 4 CSR 240.13.045 (2) requires a utility to record the date, time, and place a dispute is made; investigate it promptly and thoroughly, and attempt to resolve it. Subsection 4 requires the utility to contact the Commission's consumer service department prior to service discontinuance and provides for discontinuance then with the department's permission. Subsections 5 and 6 state that pending a dispute resolution, service may continue if the customer pays the undisputed part of the bill. It also says that if that amount cannot be agreed on, then the customer will "pay to the utility the lesser of an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute."

The Commission finds the evidence insufficient to conclude that Ms. Beatty, a member of her family or any permanent resident of the premises where service was rendered had an existing medical emergency per Commission Rule 4 CSR 240.13.050(9) when service was discontinued on July 28, 2016.

M. Section 393.108, RSMo, sets out Missouri's "hot weather rule." It states service discontinuance for nonpayment is prohibited:

"(1) On any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicts that the temperature shall rise above ninety-five degrees Fahrenheit or that the heat index shall rise above one hundred five degrees Fahrenheit."

The Commission finds the evidence was insufficient to conclude that the National Weather Service had issued a forecast between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicting that for Caruthersville, Missouri, the temperature would rise above 95 degrees Fahrenheit or that the heat index would rise above 105 degrees Fahrenheit.

N. Ms. Beatty asks for money damages. The Commission has no jurisdiction to make such an award.³³

³³ *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950).

Decision

Ms. Beatty incorporated two prior cases into her current Complaint.³⁴ Accordingly, the Commission's Report and Order will fully dispose of all allegations made in those cases as well as in the current case and will do so on the evidence admitted into the record at the April 23, 2019, evidentiary hearing.

Ameren Missouri discontinued Ms. Beatty's service on July 28, 2016, because she had not taken up the Company on its offer to continue her service if she paid \$441.00 by July 27, 2016, against a balance due of \$636.56, with the rest to be paid in installments. Part of the total \$636.56 was for service which Ms. Beatty had received beginning May of 2016 at the 3rd Street address, part was for a deposit, and a balance of \$545.97 was carried over for service at the Cape Meadow address prior to March 12, 2014.

Ms. Beatty disputed the Cape Meadows bill of \$545.97 and the resulting deposit requirement. She claimed the Cape Meadows bill did not properly reflect a 2014 energy assistance payment. Ms. Beatty relied wholly upon her Exhibit 16 to show she had not been properly credited a \$251.00 energy assistance payment for 2014. However, Exhibit 16 documented a 2013 payment, not a 2014 payment, and her account records showed a credit for the 2013 payment. It is the Commission's decision Ms. Beatty's Cape Meadows bill for \$545.97 properly credited all energy assistance payments.

Ms. Beatty also claimed her Cape Meadows bill was too high because she had actually moved out of the Cape Meadow address prior to the March 12, 2014 date her service was terminated. The Commission is free to believe none, part, or all of Ms.

³⁴ EC-2010-0142; and EC-2017-0198.

Beatty's testimony that although she maintained her service up to March 12, 2014, she was not actually using it.³⁵ It is the Commission's decision that Ms. Beatty's bill in the amount of \$545.97 correctly reflected her service usage. It is, further, the Commission's decision that that amount was delinquent per the Commission's deposit rule 4 CSR 240-13.030 (1) and its service discontinuance rule 4 CSR 240-13.050 (1),

Commission Rules 4 CSR 240-13.030 and 4 CSR 240-13.050 allow a utility to require a deposit and discontinue service where the delinquency is not in dispute. Ms. Beatty put the bill amount before the Commission for decision. She did not put the Company's compliance with Commission's dispute procedures before the Commission. Her Complaint made no claim and she offered no evidence or argument that Ameren Missouri did not comply with the Commission's dispute rules 4 CSR 240-13.045 (4), (5) and (6). The Staff filed no report concerning these rules. These rules were not addressed in any post-hearing filings. Thus, the Commission is unable to find the Company has ever been on notice of any alleged violations of these rules or, if placed on proper notice, could not have rebutted them. It is the Commission's decision, accordingly, that Ms. Beatty did not sustain her burden of proof that Ameren Missouri violated the Commission's deposit rule 4 CSR 240-13.030 (1) or its service discontinuance rule 4 CSR 240-13.050 (1) when the Company required a deposit and then discontinued service at the 3rd Street address on July 28, 2016.

The next point of decision is whether the Company violated Commission Rule 4 CSR 240-13.050(9), the existing medical emergency rule, when it discontinued service

³⁵ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission*, 509 S.W.3d 757, 764 (Mo. App. W.D. 2016).

despite Ms. Beatty's Social Security letter. Here the burden of proof rule again determines the issue. First, Ms. Beatty did not produce the letter at the hearing or describe its contents in her testimony. Accordingly, the Commission cannot determine whether the letter was reasonable evidence of an existing medical emergency, as required by the Commission rule. Second, and dispositive, Ms. Beatty simply offered no evidence (or even a claim) of any "existing medical emergency." It is the Commission's decision, accordingly, that Ms. Beatty failed to sustain her burden to show Ameren Missouri violated Commission Rule 4 CSR 240-13.050(9), the "existing medical emergency" rule, when it discontinued her service on July 28, 2016.

The final point of decision is whether the Company violated Section 393.108(1), RSMo, Missouri's "hot weather" rule, when it discontinued service on July 28, 2016. Ameren Missouri introduced evidence of the temperature forecast for Cape Girardeau, Missouri, while the 3rd Street service discontinuance occurred in Caruthersville, Missouri. However, it was Ms. Beatty's burden to prove the violation. She testified only that the heat index on July 28, 2016, was 100 degrees.³⁶ She did not produce evidence from the National Weather Service showing a Caruthersville local forecasted July 28, 2016, temperature above 95 degrees or a local forecasted July 28, 2016, heat index above 105 degrees and did not sustain her burden of proof.

Ms. Beatty's evidence at the April 23, 2019, hearing was limited to the issues described in this Report and Order. Ms. Beatty has also placed her Complaint in File No. EC-2010-0142 before the Commission for decision. She offered no evidence concerning that file. Based upon Staff's investigation and report and upon all the

³⁶ Tr.112.

evidence received on April 23, 2019, it is the Commission's decision that Ameren Missouri committed no violations of applicable statutes, regulations or tariff as alleged or implicated in File No. EC-2010-0142.

In summary, it is the Commission's decision that in charging \$545.97 to Ms. Beatty's Cape Meadows account, requiring a deposit to open service at her 3rd Street address, and discontinuing service at her 3rd Street address on July 28, 2016, Ameren Missouri violated no statute, regulation, or tariff within the Commission's jurisdiction, properly pleaded and concerning which evidence was presented. The Commission's decision disposes of all claims properly before it per the pleadings and the evidence presented at the hearing on April 23, 2016, in the current case and in Files EC-2010-0142 and EC-2017-0198; and, in any event, the Commission has no jurisdiction to grant Ms. Beatty the money damages relief she has requested.

Any application for rehearing must be filed before the effective date of this Order.

THE COMMISSION ORDERS THAT:

1. All claims of Jill Covington Beatty made in the Complaint in this case and in Files EC-2010-0142 and EC-2017-0198 are denied.
2. The Report and Order shall become effective on September 20, 2019.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Graham, Regulatory Law Judge

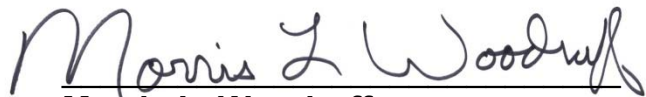
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 21st day of August 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 21, 2019

File/Case No. EC-2019-0168

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.