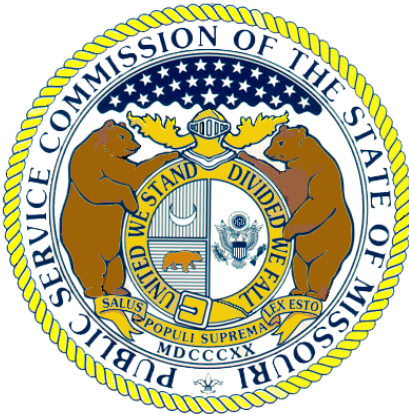


BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI



Eric E. Vickers

Complainant,

v.

Union Electric d/b/a Ameren Missouri,

Respondent.

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File No. EC-2011-0326

REPORT AND ORDER

Issue Date: December 21, 2011

Effective Date: January 20, 2012

APPEARANCES

APPEARING FOR ERIC E. VICKERS:

Eric E. Vickers, 1100 Wyoming, St. Louis, Missouri 63118.

APPEARING FOR UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI:

Sara E. Giboney, Smith Lewis, L.L.P., 111 South Ninth Street, Suite 200, Columbia MO 65205-0918,

and

Wendy K. Tatro, Associate General Counsel, Ameren Services Company, 1901 Chouteau Avenue, St. Louis MO 63166-6149.

APPEARING FOR THE OFFICE OF THE PUBLIC COUNSEL AND THE RATEPAYERS:

Lewis Mills, Public Counsel, Governor Office Building, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102.¹

APPEARING FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Kevin Thompson, Chief Staff Counsel, and **Meghan McClowry**, Legal Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Harold Stearley, Deputy Chief Regulatory Law Judge

¹ The Office of the Public Counsel entered an appearance at the prehearing conference held on September 20, 2011. Public Counsel made no other appearance in this matter.

REPORT AND ORDER

I. Procedural History

On April 4, 2011, Eric E. Vickers filed a formal complaint against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). Mr. Vickers alleges that Ameren Missouri fails to properly comply with the Commission’s regulations with regard to entering into cold weather rule (“CWR”) agreements. Specifically, he claims that Ameren Missouri fails to appropriately confirm such agreements in writing.

Mr. Vickers asserts that he was inappropriately required to make a higher payment, an 80% payment on the balance on his account as opposed to a 10% payment, in March 2011 to establish a CWR payment arrangement because Ameren Missouri improperly claimed he had defaulted on a previous CWR agreement. Mr. Vickers contends that since he did not receive written confirmation of a CWR agreement until he made his initial payment in March 2011, there was no earlier CWR agreement that he could have defaulted upon. Because of Ameren Missouri’s alleged failure to comply with the law, Mr. Vickers requests that Ameren Missouri be enjoined from enforcing the 80% payment of his outstanding bill that he paid under protest in March to maintain his electric service. He further requests unspecified damages.²

Ameren Missouri answered the complaint and sought its dismissal. The Commission’s Staff investigated and found no violations of any statute, regulation or Commission-approved tariff. However, because there were material facts in dispute, the Commission held an evidentiary hearing on October 31, 2011 to address Mr. Vickers’

² Mr. Vickers originally brought his complaint on behalf of himself and as though he was representing a class of individuals. He also originally included the Commission as a defendant. On August 10, 2011, the Commission dismissed the class action portion of the complaint and dismissed the Commission as a defendant. EFIS Docket Entry Number 35, *Order Dismissing Complaint In Part and Granting Leave To Amend Complaint*.

allegations.³

Although Mr. Vickers raises issues regarding his electric service account with Ameren Missouri and his billing information, which under traditional evidentiary rules waives any privilege of confidentiality for having placed the subject matter of the privileged information in dispute,⁴ he asserts that he would like to maintain the confidentiality of his billing records.⁵ To be sensitive to Mr. Vickers' request, the Commission will maintain the confidentiality of Mr. Vickers' account number, the electric usage, and the dollar amounts charged and payments on his bills. Exhibits containing that information are currently protected by a highly confidential classification. However, to the extent that relevant conduct and the relevant dates of that conduct relate to Mr. Vickers' complaint (all matters that he placed at issue that are dispositive to his allegations) the Commission will disclose that evidence in the body of this order with appropriate citation to the record.

II. Findings of Fact and Conclusions of Law

A. The Parties - Findings of Fact

1. **Eric E. Vickers** ("Complainant") is a residential customer of Ameren Missouri appearing before the Commission on behalf of himself. He resides at 1100 Wyoming Avenue, St. Louis, Missouri 63118.⁶

³ Transcript, Volumes 3 and 4. In total, the Commission admitted the testimony of 4 witnesses and received 11 exhibits into evidence. Post-hearing briefs were filed on November 28, 2011 and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

⁴ *State ex rel. Behrendt v. Neill*, 337 S.W.3d 727, 728 -729 (Mo. App. 2011); *State ex rel. Dean v. Cunningham*, 182 S.W.3d 561, 567 (Mo. banc 2006); *State ex rel. Svejda v. Roldan*, 88 S.W.3d 531, 533 (Mo. App. 2002); *State ex rel. St. John's Regional Medical Center v. Dally*, 90 S.W.3d 209, 217 (Mo. App. 2002); *Geldback Transport, Inc. v. Delay*, 443 S.W.2d 120, 121 -122 (Mo. 1969).

⁵ Transcript pp. 29-30.

⁶ Transcript, pp. 27-28, 38-41. See also EFIS Docket Entry No. 25, *Complainant Response to Commission Order*, filed on July 5, 2011.

2. Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") is an integrated electric utility serving approximately 1.2 million retail electric customers in its approximately 24,000 square mile service territory in Missouri. More than 1 million of its customers are residential customers located in 508 communities in 59 of Missouri's counties. In addition to operating and maintaining the approximately 10,500 MW of generating capacity needed to serve its customers, the Company operates and maintains approximately 33,000 miles of distribution lines, approximately 630 distribution substations, and approximately 2,900 miles of transmission lines.⁷

3. The Office of the Public Counsel ("Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."⁸ Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."⁹ Although Public Counsel did not file a notice of its intention not to participate in this matter, Public Counsel only appeared at one of the two prehearing conferences and it did not appear for the evidentiary hearing. Nor did Public Counsel file any pleadings in this matter.¹⁰

4. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a

⁷ *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service*, Report and Order in file No. ER-2011-0028, issued July 13, 2011, effective, July 23, 2011, 2011 WL 2962024, 3 (Mo. P.S.C. 2011). See also Exh. No 100, Direct Testimony of Warner L. Baxter, pp. 4-5, in File Number ER-2011-0028.

⁸ Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁹ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

¹⁰ Transcript, Volumes 1-4. See also the EFIS docket entries for File Number EC-2011-0326. Public Counsel is subject to dismissal pursuant to Commission Rule 4 CSR 240-2.090 and 2.116.

notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.¹¹

Conclusions of Law – Jurisdiction and Burden of Proof

Although Mr. Vickers is not a person or an entity regulated by the Commission, he submitted himself to the Commission's jurisdiction when he filed his complaint pursuant to Section 386.390, RSMO 2000. Ameren Missouri, on the other hand, provides electric service to customers throughout the service area certificated to it by the Commission.¹² Ameren Missouri is an "electrical corporation" and "public utility" as those terms are defined by Section 386.020, RSMo Supp. 2010, and is subject to the Commission's jurisdiction, supervision, control and regulation as provided in Chapters 386 and 393, RSMo.

Because Mr. Vickers brought the complaint, he bears the burden of proof. The burden of proof is the preponderance of the evidence standard.¹³ In order to meet this standard, Mr. Vickers must convince the Commission it is "more likely than not" that Ameren Missouri violated an applicable statute, a rule, or a provision of a Commission-approved tariff in relation to executing its cold weather rule agreement with him.¹⁴

B. Witnesses and Witness Credibility

Findings of Fact

5. A total of four witnesses provided testimony at the evidentiary hearing. Those

¹¹ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

¹² See File Numbers EM-2007-0374 and EN-2009-0164.

¹³ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

¹⁴ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

witnesses were: Mr. Vickers, Gay Fred for the Commission's Staff, and Cathy Hart and Michael Horn for Ameren Missouri.

6. The following witnesses are subject matter experts for their individual fields of expertise as identified in their testimony and the exhibits admitted into the record:¹⁵

Gay Carol Fred is the Commission's Consumer Services Manager. She has held this position for eight years and has been employed by the Commission for twenty-five years. She possesses technical and other specialized knowledge regarding processing consumer complaints, investigations into utility service issues and the applications of the Commission's customer service rules. She has a thorough knowledge of the Commission's customer service rules and has been actively involved with drafting revisions to those rules and continues to evaluate them for further revisions.¹⁶

Cathy Hart has held the position of Ameren Missouri's Customer Services Supervisor for almost ten years. She possesses technical and other specialized knowledge regarding: Ameren Missouri's: (1) methods of conducting business; (2) record keeping; (3) billing practices; (4) customer service protocols; and (5) cold weather rule agreements. Her expertise is outlined in her testimony and it will assist the Commission with understanding the evidence and determining facts in issue in this matter. She is qualified as an expert by the uncontroverted evidence of her knowledge, skill, and experience.¹⁷

Michael Horn has held the position of Ameren Missouri's Credit Collections Supervisor for almost ten years. He possesses technical and other specialized knowledge regarding: (1) bankruptcies; (2) non-service billings; (3) collection agencies; (4) corporate financial analysis; and, (5) Ameren Missouri's Red Flag program. He also possesses technical and other specialized knowledge regarding: Ameren Missouri's: (1) methods of conducting business; (2) record keeping; (3) billing practices; (4) customer

¹⁵ Section 490.065 sets forth the standard of admissibility of expert testimony in civil cases, including contested case administrative proceedings. *State Board of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 153 (Mo. banc 2003). Pursuant to Section 490.065 a witness qualifies as an expert if he or she is able to assist the finder of fact with **any** scientific, technical or other specialized knowledge. (Emphasis added). Specific fact or opinion testimony offered by any expert is evaluated for its weight and credibility. Lacking certain knowledge or experience is not a basis for total exclusion of an expert's testimony. An expert's competence hinges on his or her knowledge being superior to that of the factfinder, and his or her opinion must aid the factfinder in deciding an issue in the case. *Duerbusch v. Karas*, 2008 WL 2345862, 7 (Mo. App. 2008). The expert is not required to be an expert in all subject matters in order to assist the finder of fact.

¹⁶ Transcript, pp. 49-80.

¹⁷ Transcript, pp. 80-152.

service protocols; and (5) cold weather rule agreements. His expertise is outlined in his testimony and it will assist the Commission with understanding the evidence and determining facts in issue in this matter. He is qualified as an expert by the uncontroverted evidence of his knowledge, skill, experience, training, and education.¹⁸

7. Eric E. Vickers, the Complainant, did not provide testimony involving scientific, technical and other specialized knowledge. Nor did he establish any expertise regarding a utility's billing practices, record keeping, customer service protocols, cold weather rule agreements or the Commission's rules. Mr. Vickers provided testimony regarding his personal knowledge on the issues surrounding the payments on his electric bill and events surrounding his cold weather rule agreement with Ameren Missouri. Mr. Vickers is not a subject matter expert.¹⁹

8. The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each and every portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.

9. Any finding of fact reflecting the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

Conclusions of Law – Witness Testimony

Witness credibility is solely a matter for the fact-finder, "which is free to believe none,

¹⁸ Transcript, pp. 152-173.

¹⁹ Transcript, pp. 37-48.

part, or all of the testimony.²⁰ An administrative agency, as fact-finder, receives deference when choosing between conflicting evidence.²¹ In fact, the Commission “may disregard and disbelieve evidence which in its judgment is not credible even though there is no countervailing evidence to dispute or contradict it.”²²

The Commission receives deference when reaching decisions based on technical and scientific data.²³ And an agency has reasonable latitude concerning what methods and procedures to adopt in carrying out its statutory obligations.²⁴ Consequently, it is the agency that decides what methods of expert analysis are acceptable, proper, and credible while satisfying its fact-finding mission to ensure the evidentiary record, as a whole, is replete with competent and substantial evidence to support its decisions.²⁵

The Commission is entitled to interpret any of its own orders in prior cases as they may relate to the present matter.²⁶ When interpreting its own orders, and ascribing a proper meaning to them, the Commission is not acting judicially, but rather as a fact-finding agency.²⁷ Consequently, factual determinations made with regard to the Commission’s prior orders receive the same deference shown in relation to all of the Commission’s

²⁰ *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

²¹ *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009)

²² *Veal v. Leimkuehler*, 249 S.W.2d 491, 496 (Mo. App. 1952), citing to *State ex rel. Rice v. Public Service Commission*, 359 Mo. 109, 116-117, 220 S.W.2d 61, 65 (Mo. banc 1949).

²³ *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117, 128 (Mo. App. 1982), citing to *Smithkline Corp. v. FDA*, 587 F.2d 1107, 1118 (D.C.Cir.1978); *Cayman Turtle Farm, Ltd. v. Andrus*, 478 F.Supp. 125, 131 (D.C.Cir.1979).

²⁴ *Id.* citing to *Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm’n*, 539 F.2d 824, 838 (2d Cir.1976), *vacated for mootness*, 434 U.S. 1030, 98 S.Ct. 759, 54 L.Ed.2d 777 (1978).

²⁵ *Id.*

²⁶ *State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri*, 610 S.W.2d 96, 100 (Mo. App. 1980). *State ex rel. Missouri Pacific Freight Transport Co. v. Public Service Commission*, 312 S.W.2d 363, 368 (Mo. App. 1958); *State ex rel. Orscheln Bros. Truck Lines v. Public Service Commission*, 110 S.W.2d 364, 366 (1937).

²⁷ *Id.*

findings of fact. Indeed, even where there are mixed questions of law and fact, a reviewing court views the evidence in the light most favorable to the Commission's decision.²⁸

C. Cold Weather Rule Agreements

Findings of Fact - CWR Agreements Generally

10. When Ameren Missouri receives a request for a CWR agreement it: (1) examines the customer's records to see if they have had a CWR payment agreement; (2) if not, it determines the initial payment for a CWR agreement calculating 12 percent of total owed and adding one budget billing amount; (3) splits the remaining amount into 12 monthly payments; (4) explains the terms of the agreement with the customer; (5) asks the customer if they agree to those terms; and (6) makes an agreement with the customer on a date for the initial payment to be made.²⁹

11. If a customer is eligible for a CWR payment agreement, Ameren will calculate the minimum amount due for the initial payment, but if the customer declines to enter the agreement, then the entire past balance is due to avoid disconnection.³⁰

12. The Commission's CWR dictates the method of calculating initial and reinstatement payments, but the utility and the customer can agree to a different amount.³¹

13. The majority of customers seeking a CWR payment arrangement call Ameren on the date of the scheduled disconnection or a date very close to the date of the scheduled disconnection.³²

²⁸ *State ex rel. Coffman v. Pub. Serv. Comm'n*, 121 S.W.3d 534, 541-542 (Mo. App. 2003). See also *State ex rel. Inter-City Beverage Co., v. Mo. Pub. Serv. Comm'n*, 972 S.W.2d 397, 401 (Mo. App. 1998).

²⁹ Transcript, p. 82.

³⁰ Transcript, p. 84-85.

³¹ Transcript, pp. 69, 170.

³² Transcript, p. 83-84.

14. If the customer is scheduled for disconnection of service because of a delinquent balance they must make the initial payment the same day they are calling to arrange the CWR payment agreement or no later than the day of the scheduled disconnection.³³

15. The Commission's CWR requires the initial payment to be made prior to the utility company providing written confirmation of the CWR agreement.³⁴

16. Providing written confirmation of a CWR agreement following receipt of the initial payment is the practice of all regulated Missouri utilities covered under the Commission's CWR.³⁵

17. Written confirmation of the CWR agreement provides the customer with on-going protection for the 12-month payment arrangement established for the amount the customer needs to pay on a monthly basis to prevent any threat of service discontinuance.³⁶

18. Ameren Missouri routinely confirms CWR agreements in writing with its customers.³⁷

19. There is an express exception to the requirement for written confirmation of a CWR agreement that applies when the extension of the due date of the customer's payment to prevent disconnection of service will not exceed two weeks. This exception,

³³ Transcript, p. 83.

³⁴ Transcript, pp. 58, 69-70, 76-78.

³⁵ Transcript, pp. 67-68. As the Commission Staff's states in its investigation report: "... it has been Consumer Services Staff experience that all gas and electric Local Distributing Companies (LDCs) have applied the provisions of the CWR payment agreement, payment calculations and initial payments in the same manner and accurately. Had the interpretation of the rules been incorrect or applied incorrectly by any or all (LDCs), the Commission can rest assured that the Commission Staff would have been aware of such violations prior to Mr. Vickers allegations and would have brought such violations before the Commission. Staff Exh. 1.

³⁶ Transcript, p. 61.

³⁷ Transcript, pp. 59, 86.

among other things, allows a customer to enter a verbal CWR agreement prior to obtaining written confirmation.³⁸

20. In most cases the extension of the due date of the customer's payment to prevent disconnection of service does not exceed two weeks from when the oral CWR agreement is made.³⁹

21. The ability to enter a CWR agreement verbally, prior to written confirmation, allows for an expedited process to prevent a customer from being disconnected from service pending the time required to memorialize the agreement in writing.⁴⁰

22. It would confuse a customer to receive written confirmation of a CWR agreement if the customer defaults on making the initial payment, because the customer would be getting confirmation of a breached, and thus a non-enforceable, agreement. Failure to make the initial payment results in a new bill being issued, and reinstatement of a CWR agreement after default on the initial payment would require different terms of payment than the defaulted-upon CWR agreement.⁴¹

23. If a utility company issues written confirmation of a CWR agreement prior to the initial payment actually being paid, the customer would be removed from threat of disconnection. This would disqualify a customer from being eligible to having the initial payment made through the Low Income Home Energy Assistance Program ("LIHEAP").⁴²

³⁸ Transcript, pp. 45, 70-71, 74-79. "Extension Agreement" is defined in 4 CSR 240-13.015(N) and "means a verbal agreement between the utility and the customer extending payment for fifteen (15) days or less."

³⁹ Transcript, p. 70.

⁴⁰ Transcript, pp. 70-71

⁴¹ Transcript, pp. 80, 86.

⁴² Transcript, pp. 69, 103-104.

24. To the knowledge of the Commission's Consumer Services Department, there has been no confusion with regard to interpreting the provisions of the Commission's CWR prior to this complaint.⁴³

25. The majority of people who enter into CWR agreements with Ameren Missouri understand the terms of the agreements and the procedure for making the initial payment and receiving subsequent written confirmation of the agreement.⁴⁴

26. Ameren Missouri does not receive complaints or inquiries from the majority of people who enter into CWR agreements and most customers comply with the terms of the agreements.⁴⁵

Findings of Fact - Mr. Vickers' CWR Payment Arrangements

27. Ameren Missouri sent Mr. Vickers a disconnection notice on December 14, 2010 because he had a delinquent balance.⁴⁶ Mr. Vickers had not made a payment on his November 15, 2010 electric bill.⁴⁷

28. Mr. Vickers was billed for electric service provided for the period between November 15, 2010 and December 14, 2010 on December 15, 2010.⁴⁸

29. On January 3, 2011, Mr. Vickers called Ameren to inquire about entering into a Cold Weather Rule ("CWR") payment arrangement on his account. He was advised of

⁴³ Transcript, p. 72.

⁴⁴ Transcript, pp. 147-150.

⁴⁵ Transcript, p. 151.

⁴⁶ Transcript, pp. 95-96; Ameren Exhs. 1, 2 and 3. Ameren's Account Activity Statement (Ameren Exh 2) reflects the bill amount one day prior to the billing date reflected in statements mailed to Mr. Vickers (Ameren Exh. 9). Thus, for December, the regular bill transaction is recorded on December 14, 2010, while the billing date on the bill sent to Mr. Vickers is December 15, 2010. Disconnection notices are issued on the same date the transaction is recorded on the Account Activity Statement (Ameren Exh. 3).

⁴⁷ Ameren Exh. 2. Mr. Vickers had a previous delinquency for having failed to make any payments between May 12, 2010 and September 27, 2010, but he brought his payments up to date between September 28, 2010 and October 13, 2010.

⁴⁸ Ameren Exh. 1, 2, and 3.

the amount that would be required as a minimum payment that would be due by January 10, 2011 to avoid discontinuance of service.⁴⁹ This amount was based upon electric service provided between October 13, 2010 and December 14, 2010 for which no payment had been received, and any other outstanding arrearage (the amount owed on all pre-existing and current bills).⁵⁰

30. Had Ameren Missouri not extended the payment deadline to January 10, 2011 Mr. Vickers' initial payment would have been due on January 3rd, the day his account was set for disconnection.⁵¹ Ameren Missouri's representative knew Mr. Vickers would not be disconnected due to the cold weather so the initial payment deadline was extended until January 10, 2011.⁵²

31. The seven-day extension of the due date for payment was less than two weeks, so written confirmation of the verbal CWR agreement was not required.⁵³

32. On January 6, 2011, a representative from Ameren Missouri left a notice at Mr. Vickers' home informing him that his service would not be disconnected because of the weather. Having received this notice, Mr. Vickers called Ameren Missouri again. In that January 6, 2011 phone call he admitted he entered into a CWR payment arrangement with Ameren Missouri on January 3, 2011. He also confirmed the dollar amount of the required initial payment and confirms that the initial payment is due by January 10, 2011 to prevent discontinuance of his electric service. Ameren Missouri's representative also informed Mr.

⁴⁹ Transcript, pp. 43-44, 95-97, 144-146, 156-157. Staff Exh. 1; Ameren Exhs. 4, 5, 6, 8 and 9.

⁵⁰ Transcript, pp. 82, 156-157; Ameren Exhs. 1, 2, 3, 4, 5, 8 and 9.

⁵¹ Ameren Exhs. 3 and 4. A disconnection date is referred to as "Auto Cut Out" on Ameren Missouri's computer screen shots. Ameren Exh. 3. A customer is up for "a cut," or subject to disconnection because of a delinquent balance. Transcript, p. 83.

⁵² Ameren Exh. 4; Transcript 96-102.

⁵³ See Finding of Fact Number 19 and accompanying footnote.

Vickers that once the initial payment was made that Mr. Vickers needed to call Ameren back with his receipt number.⁵⁴

33. On January 10, 2011, Mr. Vickers called Ameren Missouri. Mr. Vickers confirmed the terms of the CWR agreement that required his initial payment to be made on that same day, January 10th. He then inquired into the consequences of not paying on January 10th, and Ameren Missouri's representative informed him that he would owe the full balance on his bill. Mr. Vickers also inquired what would happen if he did make the initial payment on January 10th, and Ameren Missouri's representative explained how the monthly payment would be established pursuant to the CWR agreement. Ameren Missouri's representative further explained that Mr. Vickers would be subject to disconnection again on January 14, 2011 and the initial payment deadline was extended until January 14th. Ameren Missouri's representative explained that failure to make the initial payment by the January 14th deadline would constitute a default on the CWR arrangement. Mr. Vickers confirmed that he agreed to the terms of the CWR agreement. Mr. Vickers was again advised that once the initial payment was made that he needed to call Ameren back with his receipt number.⁵⁵

34. The additional 4-day extension of the due date for payment resulted in a total extension that was still less than two weeks, so written confirmation of the verbal CWR agreement was not required.⁵⁶

35. Mr. Vickers did not make the required initial payment for his CWR agreement by the January 14, 2011 deadline and he defaulted on the CWR agreement.⁵⁷

⁵⁴ Transcript, pp. 95-97, 144-146, 156-157. Staff Exh. 1; Ameren Exhs. 4, 5, 6, 8 and 9.

⁵⁵ Transcript, pp. 95-97, 144-146, 156-157. Staff Exh. 1; Ameren Exhs. 4, 5, 6, 8 and 9.

⁵⁶ See Finding of Fact Number 19 and accompanying footnote.

36. As of January 17, 2011, no payment had been received on Mr. Vickers' account.⁵⁸ Ameren Missouri issued a new bill requiring payment of the total balance and issued another disconnection notice.⁵⁹

37. Because Mr. Vickers had defaulted on the CWR agreement, no confirmation letter for the agreement was required pursuant to the Commission's CWR.

38. Despite the fact that Mr. Vickers had defaulted on his CWR agreement, his electric service was not disconnected in January because of the weather.⁶⁰

39. On February 9 and 14, 2011, additional disconnection notices were issued, and on February 15, 2011, Ameren Missouri issued a new bill reflecting that the total balance was due.⁶¹

40. On February 19, 2011, Mr. Vickers called Ameren Missouri and requested to be put on a CWR payment agreement. Mr. Vickers admitted to having defaulted on his January CWR agreement. Mr. Vickers was given the opportunity to reinstate his CWR agreement with an initial payment deadline of February 24, 2011. Ameren Missouri, exercising its discretion, lowered the amount normally required for reinstatement. Mr.

⁵⁷ Transcript, pp. 43-44, 57-58, 61, 78-79, 95-97, 102, 105-106, 144-146, 156-157. Staff Exh. 1; Ameren Exhs. 1, 2, 3, 4, 5, 6, 8 and 9. Mr. Vickers admits he made a verbal agreement "of sorts" with Ameren Missouri in January 2011, and that he failed to make the initial payment. (Transcript, pp. 43-44). Mr. Vickers admits he defaulted on the verbal agreement in multiple phone recordings. (Ameren Exhs. 4, 5, and 6). Ameren Missouri witness Michael Horn credibly testified that Mr. Vickers admitted that he had entered a CWR agreement in January 2011, and had defaulted on it. (Transcript, p. 157). Mr. Vickers' claims that he had not defaulted on the CWR agreement are not credible.

⁵⁸ Transcript, pp. 79, 105-106; Staff Exh. 1; Ameren Missouri Exhs. 1, 2 and 3.

⁵⁹ Transcript, pp. 79, 105-106; Ameren Missouri Exhs. 1 and 2. As noted earlier, the billing date is one day later than the transaction appearing in the Account Activity Statement, thus the bill date in January 18, 2011.

⁶⁰ Transcript, p. 96. See also Ameren Exhibits 1, 2, and 3 which establish that service was still being provided.

⁶¹ Transcript, pp. 106-110; Ameren Missouri Exhs. 1, 2 and 3.

Vickers was advised as to the dollar amount of monthly installment payments to follow. Mr. Vickers agreed to the terms of the reinstatement agreement.⁶²

41. The terms of reinstatement agreements require a higher initial payment to catch the customer up on the payments that were missed plus the current bill.⁶³

42. The extension of the due date for payment was less than two weeks so written confirmation of the verbal reinstatement agreement was not required.⁶⁴

43. Mr. Vickers failed to make the initial payment and defaulted on the reinstatement agreement.⁶⁵

44. Because Mr. Vickers had defaulted on reinstating the CWR agreement, no confirmation letter of the agreement's reinstatement was required pursuant to the Commission's CWR.

45. Mr. Vickers' electric service was not disconnected in February because of the weather.⁶⁶

46. Mr. Vickers had made no payments on his electric service account during the months of December 2010, and January and February 2011.⁶⁷

47. On March 11, 2011, Ameren Missouri issued another disconnection notice.⁶⁸

48. On March 14, 2011, Mr. Vickers called Ameren Missouri. Mr. Vickers again acknowledged that he had defaulted on the CWR agreement made in January. Mr. Vickers

⁶² Transcript, pp. 106-110; Staff Exh. 1; Ameren Missouri Exh. 6.

⁶³ Transcript, pp. 85-86; 134-135, 139-140, 157-159.

⁶⁴ See Finding of Fact Number 19 and accompanying footnote.

⁶⁵ Transcript, pp. 106-110; Ameren Missouri Exh. 6.

⁶⁶ Transcript, pp. 106-110; Ameren Missouri Exhs. 1, 2 and 3.

⁶⁷ Transcript, p. 110; Ameren Missouri Exhs. 1, 2 and 3.

⁶⁸ Ameren Missouri Exh. 3.

was again offered terms to reinstate the CWR agreement based upon the current amount of the outstanding balance on his account for electric service.⁶⁹

49. The Commission's CWR determines the amount of the payment required to reinstate the defaulted-upon agreement, unless the utility and customer agree to a different amount.⁷⁰

50. Due to an oversight on the part of Ameren Missouri, the amount of the initial payment offered to Mr. Vickers to reinstate the defaulted-upon CWR agreement was lower than what would normally have been offered.⁷¹

51. Mr. Vickers did not make a payment towards his account until March 15, 2011, and the amount he paid was less than the required amount to reinstate the CWR agreement.⁷²

52. On March 16, 2011, Ameren Missouri called Mr. Vickers to inform him that he had not made a sufficient payment to reinstate the defaulted-upon CWR agreement. An additional disconnection notice was issued, and Mr. Vickers was advised that he needed to complete the payment by the end of the day. Mr. Vickers did not make the payment on March 16, 2011, and Ameren Missouri gave him an extension until March 17, 2011 to make the required payment to reinstate the defaulted-upon CWR agreement.⁷³

53. Because Mr. Vickers' next billing transaction would have occurred on March 16, 2011, and because he did not complete the initial payment before the end of the day on March 16, 2011, the reinstatement charge for the defaulted-upon CWR agreement

⁶⁹ Transcript, pp. 112-116, 157-158, 168, 170-173.

⁷⁰ Transcript, p. 170.

⁷¹ Transcript, pp. 112-113.

⁷² Transcript, pp. 157-158.

⁷³ Transcript, pp. 157-160, Ameren Missouri Exhs. 1, 2, 3, 7 and 9.

would normally have included all the March-related charges and the reinstatement payment should have been much higher since Mr. Vickers failed to meet the March 16, 2011 deadline. Ameren Missouri's willingness to grant the extension until March 17, 2011 reduced the payment required to reinstate the defaulted-upon CWR agreement.⁷⁴

54. Mr. Vickers made an additional payment in an attempt to make the required payment to reinstate his defaulted-upon CWR agreement. He paid slightly less than what was required, but Ameren Missouri accepted his payment and confirmed the arrangement to reinstate his defaulted-upon CWR agreement.⁷⁵

55. On March 24, 2011, Ameren sent to Mr. Vickers, by email and in hard copy, written confirmation of the reinstatement of his defaulted-upon CWR agreement, following receipt of the initial payment as described in Findings of Fact above. The letter stated the terms of his CWR payment agreement at the time of reinstatement.⁷⁶

56. The terms of the reinstated CWR agreement required Mr. Vickers to pay each current month's bill on time and in full, and a monthly installment payment on the remaining charges that were still in arrears.⁷⁷

57. Mr. Vickers was required to make his CWR installment payment and the payment for his March billing period by April 7, 2011.⁷⁸

58. Mr. Vickers filed this complaint on April 4, 2011.⁷⁹

⁷⁴ Transcript, pp. 113-115; Staff Exh. 1, Appendix A. The total time of the extension granted for Mr. Vickers to make the initial payment was for less than two weeks so confirmation in writing prior to receiving the initial payment was not required. See Finding of Fact Number 19 and accompanying footnote.

⁷⁵ *Id.*

⁷⁶ Transcript, pp. 112-116; Vickers' Exh. A; Ameren Missouri Exh. 7; Staff Exh. 1.

⁷⁷ *Id.* See also Transcript, pp. 157-160.

⁷⁸ *Id.*

⁷⁹ EFIS Docket Entry No. 1, *Formal Complaint Against Ameren Missouri and Missouri Public Service Commission*, filed April 4, 2011.

59. Mr. Vickers defaulted on the April 7, 2011 payment and defaulted on the reinstated CWR agreement.⁸⁰

60. Mr. Vickers has paid varying amounts towards his electric bill between June and the date of the evidentiary hearing, none of which were in conformity with the defaulted-upon, reinstated CWR agreement.⁸¹

61. As of the date of the evidentiary hearing, Mr. Vickers remained in significant arrears on his electric bill.⁸²

62. Mr. Vickers does not assert that Ameren Missouri has failed to provide the electric service for which he was billed, or that he did not receive the benefit of the electric service that was provided.⁸³

63. Mr. Vickers has no dispute with the amount he was charged by Ameren Missouri on his electric bills for the electric service he received.⁸⁴

64. Mr. Vickers does not assert that the amount charged to reinstate his CWR agreement exceeded the amount he owed Ameren Missouri for electric service, or that it exceeded the amount directed by the Commission's CWR to be charged when a customer defaults on a CWR agreement.

65. Mr. Vickers does not contest his payment history or the amounts he remains in arrears on his electric bill for services he has received from Ameren Missouri.

66. Mr. Vickers does not dispute the amount that he currently owes to Ameren Missouri for electric service he has received.⁸⁵

⁸⁰ Transcript, p. 116, Ameren Missouri Exhs. 1, 2 and 3.

⁸¹ Ameren Missouri Exhs. 1, 2, and 3.

⁸² Ameren Missouri Exhs. 1, 2 and 3.

⁸³ Transcript, p. 160.

⁸⁴ *Id.*

67. There is no evidence in the record to support a claim that Ameren Missouri fails to provide safe and adequate service.

68. The Commission's Staff investigated Mr. Vickers' complaint and filed a report of its investigation. In that report, Staff recounts its efforts to assist Mr. Vickers resolve his concerns regarding the application of the Commission's CWR prior to the filing of his complaint. Staff included in its report a number of e-mail exchanges between Mr. Vickers and Gay Fred, the Commission's Consumer Services Manager, and Wendy Tatro, Legal Counsel for Ameren Missouri. Staff completed a thorough investigation and acted professionally at all times when corresponding with Mr. Vickers.⁸⁶

Conclusions of Law – Mr. Vickers' CWR Payment Arrangements

The Commission's Cold Weather Rule ("CWR") is codified at 4 CSR 240-13.055.

The stated purpose of the rule is:

This rule protects the health and safety of residential customers receiving heat-related utility service by placing restrictions on discontinuing and refusing to provide heat-related utility service from November 1 through March 31 due to delinquent accounts of those customers.

A portion of the CWR defines the requirements for low-income elderly or disabled customers to register to receive assistance under the Low Income Home Energy Assistance Program ("LIHEAP"). Other portions pertain to how the regulated utility must provide discontinuance notices, when discontinuance is prohibited, how CWR agreements are executed, and how a utility recovers the reasonable operating expenses incurred because of the CWR.

The sections of the CWR pertinent to this complaint are 4 CSR 240-13.055(6) "Discontinuance of Service" and (10) "Payment Agreements." These Sections provide:

⁸⁵ *Id.*

⁸⁶ Staff Exh. 1.

(6) Discontinuance of Service.

From November 1 through March 31, a utility may not discontinue heat-related residential utility service due to nonpayment of a delinquent bill or account provided—

- (A) The customer contacts the utility and states his/her inability to pay in full;
- (B) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section (10) of this rule;
- (C) The customer complies with the utility's requests for information regarding the customer's monthly or annual income; and
- (D) There is no other lawful reason for discontinuance of utility service.

(10) Payment Agreements.

The payment agreement for service under this rule shall comply with the following:

- (A) A pledge of an amount equal to any payment required by this section by the agency which administers LIHEAP shall be deemed to be the payment required. The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two (2) weeks.

(B) Payment Calculations.

1. The utility shall first offer a twelve (12)-month budget plan which is designed to cover the total of all preexisting arrears, current bills and the utility's estimate of the ensuing bills.
2. If the customer states an inability to pay the budget plan amount, the utility and the customer may upon mutual agreement enter into a payment agreement which allows payment of preexisting arrears over a reasonable period in excess of twelve (12) months. In determining a reasonable period of time, the utility and the customer shall consider the amount of the arrears, the time over which it developed, the reasons why it developed, the customer's payment history and the customer's ability to pay.
3. A utility shall permit a customer to enter into a payment agreement to cover the current bill plus arrearages in fewer than twelve (12) months if requested by the customer.

4. The utility may revise the required payment in accordance with its budget or levelized payment plan.

5. If a customer defaults on a cold weather rule payment agreement but has not yet had service discontinued by the utility, the utility shall permit such customer to be reinstated on the payment agreement if the customer pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due.

(C) Initial Payments.

1. For a customer who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12)- month budget bill amount calculated in subsection (10)(B) of this rule unless the utility and the customer agree to a different amount.

2. For a customer who has defaulted on a payment plan under the cold weather rule, the initial payment shall be an amount equal to eighty percent (80%) of the customer's balance, unless the utility and customer agree to a different amount.

These sections of the CWR provide a four-step procedure for initiating and executing a CWR agreement:

- (1) The customer contacts the utility and states his/her inability to pay in full (Section (6));
- (2) the utility **receives** an initial payment (Section (6)) (emphasis added);
- (3) the customer enters into a payment agreement; where the initial payment and payment agreement comply with section (10) of the CWR (Section (6) and (10)(B) and (C)); and, after the initial payment is received,
- (4) the utility confirms the terms of any payment agreement in writing, unless the extension [of the due date of the customer's payment to prevent disconnection of service] granted the customer does not exceed two (2) weeks (Section (10)(A)).

The rules mandate how the calculation of the initial payment and the subsequent payments are made, unless the utility and the customer agree to a different amount. And, the

reasons behind the order of completing these steps were delineated at the evidentiary hearing. Written confirmation follows the receipt of the initial mandated payment for several reasons.

First, allowing a customer to enter into a CWR agreement by phone expedites the arrangements to prevent disconnection. Thus, a customer could be disconnected during the time period it would take to execute a written agreement, and virtually all customers seeking a CWR agreement are calling at a time when they are delinquent on their bill and are rapidly approaching their disconnection date. The majority of defaulting customers call in very close to, or on, their disconnection date. To avoid disconnection at that point in time, the customer must either pay the entire past due balance or a smaller CWR payment.

Second, if a customer fails to make the initial payment and defaults on the CWR agreement and confirmation in writing had previously been provided, that customer would have received written confirmation of a breached, non-enforceable agreement. At the time of the default, the customer would actually be subject to completely different terms of a CWR agreement as required by Section 10(B) and (C) of the rule in order to reinstate the agreement. Those terms would differ substantially from the oral agreement reached between the customer and the utility. Consequently, if the customer had received written confirmation of terms to an agreement that no longer is in effect, this would create confusion for the customer.

Third, Section 10(A) specifically allows for a pledge of a LIHEAP payment to satisfy the initial payment. However, LIHEAP payments are only authorized if the customer's account is delinquent, in collections and faces the threat of disconnection. Issuing the written agreement takes the customer out of collections. So if the customer is taken out of collections prior to the receipt of the LIHEAP payment then that customer is no longer

qualified for that payment and it will not be made. In effect, issuing the written agreement too early has the effect of disqualifying the customer from receiving the LIHEAP assistance.

Mr. Vickers did not make his initial payment as required by the Commission's CWR and by his verbal agreement with Ameren Missouri in January. Consequently, he defaulted on his CWR agreement and no written confirmation of the breached agreement was required. Subsequent to his default, Mr. Vickers was given the opportunity to reinstate his CWR agreement, and again he defaulted. Mr. Vickers finally made the initial payment for reinstating his CWR agreement in March 2011, following which Ameren Missouri appropriately provided written confirmation of the reinstatement agreement. After making this one payment, Mr. Vickers promptly defaulted on the next payment required under the reinstatement agreement.

Mr. Vickers' premise that Ameren Missouri failed to confirm his CWR agreement in writing and thus there was no CWR agreement in January is erroneous. Ameren Missouri followed the proper practice and procedure for setting up a CWR payment agreement with Mr. Vickers in compliance with the Commission's rules. Written confirmation of Mr. Vickers' CWR agreement was not required until Ameren Missouri received the initial payment. Because Mr. Vickers' foundational premise is in error, his argument that he was inappropriately charged a higher amount for a CWR payment arrangement is also incorrect. Because Mr. Vickers defaulted on the CWR agreement he made with Ameren Missouri in January, Ameren Missouri appropriately charged him the amount required to reinstate the defaulted-upon CWR agreement pursuant to the Commission's rules. In fact, due to the timing of granting the extension of the due date for payment in March, and due to an error in calculation, Ameren Missouri agreed to charge less than what the CWR formula would have required. Ameren Missouri's discretion to charge less is permitted by the rule.

In his post-hearing brief, Mr. Vickers raises a new argument. Mr. Vickers contends that Ameren Missouri violated 4 CSR 240-13.055(11). This rule provides:

If a utility refuses to provide service pursuant to this rule and the reason for refusal of service involves unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customer's premises, the utility shall maintain records concerning the refusal of service which, at a minimum, shall include: the name and address of the person denied reconnection, the names of all utility personnel involved in any part of the determination that refusal of service was appropriate, the facts surrounding the reason for the refusal and any other relevant information.

Mr. Vickers claims that because Ameren Missouri threatened to refuse him service in March if he did not pay the amount required to reinstate his CWR agreement that Ameren Missouri's failure to maintain a tape recording of his January 6, 2011 phone conversation would be a violation of this rule. Again, Mr. Vickers is incorrect.

Commission Rule 4 CSR 240-13.055(11) only applies if service is actually refused, and only if the refusal is because of unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customer's premises. Mr. Vickers has never been subjected to a disconnection of service despite the continual unpaid balance on his electric bill. Nor does Mr. Vickers' inability to pay his bill qualify as one of the reasons for refusal of service as specified in the rule. Finally, Ameren Missouri introduced the tape-recorded phone conversation that occurred on January 6, 2011. Obviously, this record was maintained. If Mr. Vickers is referring to the January 3, 2011 phone conversation, it is true that Ameren Missouri admitted that it did not have that recording.⁸⁷ However, Ameren Missouri did offer into evidence its exhibit 8, directly preserving the record of that conversation. Moreover, Ameren Exhibits 4, 5 and 6 all reference the original CWR

⁸⁷ Transcript, pp. 121-122.

agreement established on January 3 and provide a record of that phone conversation.⁸⁸ In any event, as previously noted, this rule does not even apply to Mr. Vickers' situation because Ameren Missouri never refused to provide Mr. Vickers electric service and never refused to provide service for a reason articulated under this rule.

The substantial and competent evidence in the record as a whole supports the conclusion that Ameren Missouri has not violated any Commission statutes, rules, orders or a Commission-approved company tariff as alleged by Mr. Vickers. It also does not escape the attention of the Commission that Mr. Vickers has only paid amounts toward his electric bills that he owes Ameren Missouri for electric service provided. He has never paid for a service he has not received and he remains in arrears on his electric bills.

III. Final Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts, as it has found them, to the law to reach its conclusions, the Commission has reached the following final decision. The substantial and competent evidence in the record as a whole supports the conclusion that Mr. Vickers has failed to meet, by a preponderance of the evidence, his burden of proving that more likely than not Ameren Missouri violated any Commission statute, regulation, order or tariff provision in relation to the application of the Commission's CWR.⁸⁹ Mr. Vickers' complaint will be denied on the merits.

⁸⁸ Mr. Vickers did not object to the admission of Ameren Missouri's Exhibits 4, 5 and 6, The tape recorded conversations he had with Ameren Missouri representatives wherein he admits he defaulted upon the CWR agreement he entered into with Ameren Missouri on January 3, 2011.

⁸⁹ Ameren Missouri elucidates a defense in terms of any challenge that could be made as to whether the CWR agreement was a valid and enforceable contract. However, no contract claim has been brought before the Commission. Moreover, the Commission cannot enforce, construe nor annul contracts, nor can it enter a money judgment. The Commission also does not have the authority to do equity or grant equitable relief. *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n of State of Mo.*, 116 S.W.3d

THE COMMISSION ORDERS THAT:

1. Eric E. Vickers' Complaint is denied.
2. This Report and Order shall become effective on January 20, 2012 .
3. This file shall close on January 21, 2012.

BY THE COMMISSION



**Steven C. Reed
Secretary**

(S E A L)

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur;
Stoll, C., not participating,
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of December, 2011.

680, 696 (Mo. App. 2003); *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 49 (Mo.1937); *Am. Petroleum Exch. v. Pub. Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo.1943).