

**ORIGINAL**

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**ILLINOIS COMMERCE COMMISSION**

**ILLINOIS COMMERCE COMMISSION**

**SHERMAN C. IMLER and  
LISA R. IMLER**  
  
**Complainant**

**v.**

**ADMINISTRATIVE LAW JUDGE YODER**

**AMEREN ILLINOIS COMPANY  
D/B/A AMEREN ILLINOIS**  
  
**Respondent**

**BRIEF OF COMPLAINANT – SHERMAN C. IMLER AND LISA R. IMLER**

**ILLINOIS COMMERCE  
COMMISSION  
2014 MAY 12 P 12:51  
CHIEF CLERK'S OFFICE**

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## II.

### **INTRODUCTORY STATEMENT**

On August 19, 2013, Sherman C. Imler, III, and Lisa R. Imler ("Complainants"), filed a complaint with the Illinois Commerce Commission ("Commission"), when attempts to resolve a dispute with Ameren Illinois Company, d/b/a Ameren Illinois, ("Ameren"), over the disconnection of their electric service and the demand for a security deposit were unsuccessful .

**III.**

**ISSUES PRESENTED FOR REVIEW**

- 1) Did Complainant's qualify for a deferred payment arrangement pursuant to 83 Ill. Admin. Code 280.110, during July 19, 2013 through August 5, 2013?
- 3) Are online transactions valid and enforceable when performed in good faith?
- 4) Is Ameren Online required to post their policies regarding deferred payment agreements online ?
- 5) If customers utilize Ameren Online to schedule payments, and the terms are unacceptable to Ameren, do they have to notify their customers of same before discontinuing service?
- 6) Can Ameren appropriate the Complainant's monthly payments toward the security deposit before a finder of fact determines if said deposit is owed?
- 7) Can Ameren appropriate LIHEAP benefits toward the security deposit before a finder of fact determines if said deposit is owed?

**IV.**

**STATEMENT OF JURISDICTION**

**ARTICLE IV-General Powers and Duties of the Commission – (220 ILCS 5/4-1 01)**

**The Commerce Commission shall have general supervision of all public utilities, except as otherwise provided in this Act, shall inquire into the management of the business thereof and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine those public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipment and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with this Act and any other law, with the orders of the Commission and with the charter and franchise requirements.**

V.

**STATEMENT OF FACTS**

Ameren Illinois Company/ Illinois Power, ("Ameren"), has provided electric and natural gas services to Complainant's at 311 Forrest St. Danville, IL 61832, ("subject property"), since 1995. Ameren generates bills for the subject property between the 27<sup>th</sup> and 30<sup>th</sup> of each month, with due dates between the 19<sup>th</sup> and 21<sup>st</sup>.

The Complainants, who conduct a majority of their business affairs online, utilize Ameren's online services ("Ameren Online"), to pay their bill, check usage and at one time received their monthly statements.

On Friday, August 2, 2013, Complainant, Lisa R. Imler, utilized Ameren Online, to make a hundred dollar payment. The Complainant's do not dispute that the payment due date was July 19, 2014, however unforeseen circumstances (Lisa R. Imler had recently become unemployed), caused them to suffer financial hardships, delaying their payment.

On Monday, August 5, 2013, the Complainant, Lisa R. Imler, used the features available on Ameren Online to schedule an electronic funds transfer in the amount of five hundred dollars to be debited from her checking on August 19, 2013. Two hundred and ninety-one dollars would be applied to the remaining balance of July and the additional two hundred and eight dollars would be applied to the August 20, 2013 bill. Ameren Online provided confirmation numbers, and Ameren forwarded separate emails confirming both transactions with instruction to not respond to the emails. See attached A and B.

On August 12, 2013, Complainant, Lisa R. Imler contacted Ameren to report a power outage. The Complainant was advised that the service was disrupted due to non-payment. Ameren would not restore service to the subject property until

Complainants paid two hundred and ninety-one dollars. Payment was made, and power was restored August 12, 2013.

On August 19, 2013, the Complainant's received a demand for a security deposit due to disconnection. Complainant, Lisa R. Imler contacted Ameren speaking with Marsha and her Supervisor Hadley. *See C Transcript*. Complainant were advised, while Ameren does allow extensions and deferred payment arrangements, they would not honor the online transactions because Complainant's didn't speak to a "live representative.

Ameren Attorney, Eric Dearmont confirms the basis for this dispute and the reasons for this complaint during the April 3, 2014 evidentiary hearing. *See Transcript, page 52 (lines 7-9)..MR. DEARMONT: (7) – "I" ..(8)- "think that's part of the dispute here about what (9) the online transaction was versus what it wasn't."*

VI.  
ARGUMENT

**A.**

**83 Ill. Admin. Code 280.110, Deferred Payment Agreements**

When the Complainants accessed Ameren Online, on August 5, 2013, they were essentially requesting an extension of time or deferred payment of their July 19, 2013, bill.

Pursuant to 83 Ill. Admin. Code 280.110, Deferred Payment Agreements, applicants and customers who have past due utility bills "shall" have the opportunity" to enter into a deferred payment agreement to pay off the debt to avoid disconnection unless the customer has defaulted on a deferred payment plan in the last 12 months.

At the time the Complainants utilized Ameren Online and conducted their online transactions, they qualified for a deferred payment arrangement/agreement. This is verified by the testimony given by Melanie S. Brown, Ameren's witness, during the evidentiary hearing of April 3, 2014. Page 51, lines 12-18.

Ameren's response to the Complaint, bullet number three, admits that "it administers an online website where customers can pay their bills, as well as schedule immediate and future payments." Ameren Online operates only in accordance with the information and direction supplied by its programmers. The online site allows customers to pay on their accounts as well as schedule dates for electronic funds transfers. The Complainants we're not notified by pop up blockers or other devise that in order to request or apply for a extension or deferred payment, a "live representative" must be contacted.

The Complainant's have testified multiple times that Ameren Online didn't advise them to contact a "live representative," during their online transactions, See Transcript C

discussions with Ameren employees, page 2, lines 7-14, page 8 lines 3-4, page 8 lines 9-11, page 9 lines 18-21, page 13, lines 1-2, page 14 lines 29-31, page 15 lines 3-15, and lines 25-28.

Ameren Online did not notify the Complainant's, that they could not set up an extension or request a "deferred payment arrangement" on line.

Instead, Ameren forwards two separate emails confirming the Complainants online transactions with instruction "not to respond". Why didn't Ameren send an email advising Complainant's that their agreement was unacceptable over the internet, and that a live representative would have to be contacted? The Complainant's would have had ample time to contact an Ameren representative to arrange an extension or deferred payment arrangement prior to disconnection had they only known to do so.

## **B.**

### **5 ILCS 175/1-101 GOVERN ONLINE TRANSACTIONS**

Everyday millions of individuals conduct business via the internet, i.e. World Wide Web. Electronic commerce consists of the exchange of data to facilitate the financing and payment aspects of business transactions. This is an effective and efficient way of communicating and one of the most effective and useful ways of conducting business.

Pursuant to 5 ILCS 175/5-130, this statute governs online transactions.

Admissibility into evidence. (b) Information in the form of an electronic record shall be given due evidentiary weight by the trier of fact. In assessing the evidential weight of an electronic record or electronic signature where its authenticity is in issue, the trier of fact may consider the manner in which it was generated, stored or communicated, the reliability of the manner in which its integrity was maintained, the manner in which its originator was identified or the electronic record was signed, and any other relevant

information or circumstances.

The Complainant's qualified for a deferred payment arrangement, under 83 Ill. Admin. Code 280.110, at the time their online transactions were performed and the above statues is merely a reference the parties intentions at that time.

**ARTICLE VIII.SERVICE OBLIGATIONS AND CONDITIONS (220 ILCS 5/8-101)**

Sec. 8-101. Duties of public utilities; nondiscrimination. Nothing in this Section shall be construed to prevent a public utility from accepting payment electronically or by the use of a customer-preferred financially accredited credit or debit methodology.

Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Whether or not the Complainant's online transactions constitute an agreement, extension or "deferred payment" is for the finder of fact.

**D.**

**Discontinuance of electrical services is regulated under 83 Ill. Admin. Code Part 280.130 and 220 ILCS 5/8-101 et seq.**

Eligibility for and discontinuance of electrical, gas, water and sanitary sewer utility service are regulated under 83 Ill. Admin. Code Part 280.130 and 220 ILCS 5/8-101 et seq. Section 280.130 discontinuance of Service states;

2 (g) Utility service shall not be discontinued and shall be restored if discontinued where a customer has established, renegotiates, or is reinstated onto a deferred payment agreement pursuant to Section 280.110 and has not defaulted on such agreement.

The Complainant's qualified for a deferred payment arrangement pursuant to 83 Ill. Admin. Code 280.110 during the time they made their online transactions. Rather than notify the Complainant's that they need to speak to a "live representative to set up their payment arrangement, Ameren's August 5, 2013 email instructs

Complainant's not to respond. The Complainant's had no way of knowing, nor were they notified that their request for an extension or deferred payment agreement could not be performed on Ameren Online.

#### **E.**

#### **Misappropriation of Funds**

After receiving their current electric and natural gas bill, Complainant's learned that Ameren applied their monthly obligations toward the security deposit, leaving a balance on their account which should be zero. When Complainants contacted Ameren, they were advised Ameren could not discuss the issue due to the current status of this complaint before the Commission. Ameren employee George and Matt Gray advised the Complainant's to take up the matters with the Commission. Attempts to clarify this matter with Ameren's attorney of record, Eric Dearmont have been unsuccessful. Can Ameren apply any of the Complainant's monthly payments or benefits received by LIHEAP to the security deposit before the Commission issues an order?

### **VII.**

### **CONCLUSION**

Ameren Online should be required to notify their customers to contact a "live representative" when requesting deferred payment arrangements or extensions online. If Ameren customers perform operations on Ameren Online, that are unacceptable or require immediate attention, their emails should reflect the same, rather than instructing the customer not to respond

The Complainant's would have had ample time to contact Ameren personally to utilize the deferred payment plan provided under 83 Ill. Admin. Code 280.110, had Ameren notified them that their online transactions of August 2, and August 5, 2013

were unacceptable.

The purpose of, **83 Ill. Administrative Code 280.10**, is to establish fair and equitable procedures within in the scope of its policy. Taking into account the duty of the utility, customer, applicant and user to demonstrate good faith and fair dealings.

**WHEREFORE**, Complainant's respectfully request that the Illinois Commerce Commission find , no security deposit is warranted, the Complainant's were entitled to a deferred payment arrangement pursuant to 83 Ill. Admin. Code 280.110, duriand Ameren is not permitted to apply any portion of a customer's monthly payments or LIHEAP benefits toward a security deposit while a dispute is pending before the Commission, as well as any other relief the Commission finds just and reasonable.

Respectfully Submitted,

  
Sherman and Lisa Imler, Complainant's.

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Sherman C. Imler and Lisa R. Imler  
Complainants

v.

Ameren Illinois Company  
d/b/a Ameren Illinois  
Respondent

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**NOTICE OF FILING**

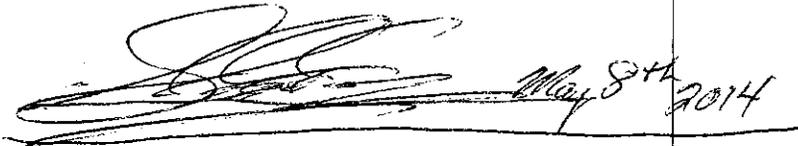
TO: Counsel for Ameren Illinois  
Eric Dearmont  
1901 Chouteau Ave.  
Saint Louis, MO 63166

Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Ave.  
Springfield IL 62701

PLEASE TAKE NOTICE THAT on May 8<sup>th</sup> 2014, we mailed the following documents to be filed with the Illinois commerce Commission, **COMPLAINANTS BRIEF**, a copy which is attached hereto.

**PROOF OF SERVICE**

I, Lisa Imler, certify that I served this notice by mailing a copy to all parties of record by depositing the same in the U.S. Mail, this 8<sup>th</sup>, day of May, 2014.

  
May 8<sup>th</sup> 2014

State of ILLINOIS County of VERMILION  
Signed (or affirmed) before me on this 8  
day of May, 20 14  
by Sherman C. Imler,  
Notary Public Mary Ruane

"OFFICIAL SEAL"  
TRACY TURNER  
Notary Public, State of Illinois  
My Commission Expires 02/23/2017