

2009 Annual Conference

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**Missouri Joint Municipal Electric Utility
Commission**

TOPICS

- Hot Weather Rule
- Cold Weather Rule
- Government Interaction
- FTC Red Flag Rule

Hot Weather Rule

- **Hot weather rule** (effective Aug. 28, 2008): From June 1 to September 30, utilities can not shut off service for nonpayment if the temperature is forecast to be above 95 degrees or the heat index above 105.

Hot Weather Rule

- **Hot weather rule, discontinuance of service prohibited, when. §660.123.** For purposes of this section, the hot weather rule shall mean the period of time from June first to September thirtieth, in which the discontinuance of gas and electric service to all residential users, including all residential tenants of apartment buildings, for nonpayment of bills where **gas** or **electricity** is used as the source of cooling or to operate the only cooling equipment at the residence, is prohibited in the following situations:
 - (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;
 - (2) On any day when utility personnel are not available to reconnect utility service during the immediately succeeding day or days and the National Weather Service local forecast between 6:00 a.m. and 9:00 p.m. predicts that the temperature during the period of unavailability shall rise above ninety-five degrees Fahrenheit or that the heat index shall rise above one hundred five degrees Fahrenheit; and
 - (3) **In any other applicable situations provided for in rules established and amended by the public service commission.**
- (L. 2008 S.B. 720 § 393.108)

Hot Weather Rule

- Under this section (Section 660, Social Services, Utilicare), it applies to not only to IOUs, but to all utilities.
- Public Service Commission is charged with making the rules for this statute, but the very next statute gives jurisdiction to the Department of Social Services.
- Was placed in section of statutes dealing with Utilicare funding and distribution of funds.

Hot Weather Rule

- Important to be aware of when planning shut offs.
- Could accidentally violate state law or Social Services rule.
- This summer, received phone call from PSC
 - Attorney General was looking into alleged municipal violation of rule
 - PSC does not want to attempt to enforce this rule on municipalities
 - Social Services was not prepared at that time to enforce statute.
 - May not be the case this summer.

Hot Weather Rule

- **SOLUTION: FOLLOW THE RULE AND THE LAW, WE DON'T WANT THE PUBLIC SERVICE COMMISSION, DEPARTMENT OF SOCIAL SERVICES, OR ATTORNEY GENERAL MONITORING US.**

Cold Weather Rule

- **Cold weather rule:** From November 1 to March 31, utilities can not shut off heat for nonpayment if the temperature is forecast to be below freezing.
- Allows arrearages to be paid over 12 month period.
- Allows reconnection without having to pay full arrearage.
- Prohibits disconnection of elderly, low income, or disabled who make a minimum payment.
- Requires extensive record keeping by the utility to show compliance. Burden on IOU gas utilities since 1977.

Cold Weather Rule

- Common misconception that this law applies to municipalities
- Flagrant disregard of this rule could lead to amendment to make it applicable to municipalities
- Good example of when public policy is reflected in law
 - May not be applicable to municipalities but don't want to create situation where it does
 - Good utility practice is to ensure safety first, fiscal soundness second.

Government Interaction

- Community Action Agencies (CAA)



Government Interaction

- Nineteen in the State
- Set up to help funnel state and federal aid to indigent people.
- Main sources of distributing LIHEAP and Utilicare funds

Government Interaction

- **LIHEAP**
 - Low-Income Home Energy Assistance Program
 - 2010: Is funded to the tune of \$4.5 BILLION with an additional \$590 Million held in contingency (President's discretion)
 - Missouri's share will be \$103.6 Million

Government Interaction

- Who qualifies?
 - The authorization provides that an eligible household's income must not exceed the greater of 150 percent of the poverty level or 60 percent of the State median income (In FY 2009, 75 percent of the State median income). Grantees may not set income eligibility standards below 110 percent of the poverty level, but they may give priority to those households with the highest home energy costs or needs in relation to income.
 - In Missouri, set at 110 percent, the lowest limit allowed.

Government Interaction

- **Utilicare:** State assistance program funded through the Department of Social Services and then channeled through the Community Action Agencies
- Funded at \$6.4 million last year
- Utilicare is administered in conjunction with LIHEAP, and is additional aid to help those in need who are facing the possibility of a utility shut off. Same state limit as LIHEAP, in that those at 110 percent of the poverty level qualify for Utilicare.

Government Interaction

- **Weatherization**
- CAA's also administer the state's funding for the Low Income Weatherization Program which is funded at over \$10 million this year. The program provides weatherization (insulation, air infiltration elimination, weather-stripping, windows, furnaces, etc) to homes with incomes at 150% of poverty or below.
- DNR did a study and of those who had received emergency assistance in three previous years under LIHEAP
 - 57% did not require any assistance in the three succeeding years after weatherization
 - and of those who did, they only needed 65% as much money for assistance.

Government Interaction

- Do we want to follow government procedures that we aren't required to follow?
- Do we want to make public policy or be on the receiving end of public policy?
- Do we want to view our utilities as social vehicles or businesses? Is there room for both?

Government Interaction

- Danger of doing nothing:
 - Someone always wants us to carry their water.
- Danger of doing something:
 - Compliance may be costly.
- **THE ANSWER:** Your community has local control of your utility; use common sense, and have solutions that fit your community expectations.

Government Interaction

- Hypothetical: Legislature decides to make ALL utilities follow the Cold Weather Rule.
- What would the municipals argument be?
- Illustrates the importance of staying out of the media, and not doing actions that result in extra government regulation.

FTC Red Flag Rule: Why us?

- Utilities, in the process of establishing service, often obtain and keep consumer information such as a billing address, social security number, date of birth, and other information by which a thief could fraudulently use that information to pretend to be that customer.
- Many utilities do not have written plans or policies in place to safeguard this information
- Some utilities may have known identity theft was occurring in their customer base, and did not act to prevent it.

FTC Red Flag Rule: When is the rule effective?

- On November 1, 2009, the rules will be effective for utilities and other entities.
- The FTC will suddenly find itself regulating many, many entities.
- No, the FTC is not being 'staffed up' to enforce this rule.
- Yes, the FTC will be making spot audits to see if the effected entity has a written plan on how they will comply with this rule.

FTC Red Flag Rule: How do we comply with the rule?

- Several steps, but not complicated.
- Utilities have a duty to:
 - Identify Red Flags
 - Detect Red Flags
 - Respond to Red Flags
- Utilities still have time to comply.

FTC Red Flag Rule: What if we don't comply?

- Fines of up to \$2,500 per violation
- Federal or state agencies can enforce the provisions
- Could also result in civil liability for utilities which fail to comply

FTC Red Flag Rule: What should we do?

- Develop a written plan to comply with the rule.
 - “Identity Theft Prevention Program”
- Elements of the Program
 - Identify Relevant Red Flags
 - Detect Red Flags
 - Respond Appropriately to Red Flags
 - Update the Program Periodically

FTC Red Flag Rule: Prepare a Program

- The Sample Plan we've provided can give ideas.
- Remember the Four Key Points: Identify, Detect, Respond, Update.
- Use existing written policies regarding accounts and personnel to craft your Program.
- Don't re-invent the wheel; if you have policies and training that are applicable, use them!
 - Policies on opening and closing customer accounts
 - Destruction of documents
 - Other policies that are applicable

FTC Red Flag Rule: Identifying Red Flags

- What Identifying Red Flags should you put in your plan?
 - Appendix A of the Rule....read it!
 - Alerts from Consumer Reporting Agencies
 - Suspicious Documents
 - Suspicious Personal Identifying Information
 - Other things that your utility may have had a bad experience with not specifically mentioned.
 - Good opportunity to review how you protect your customers and take care of your community.

FTC Red Flag Rule: What do I do after I write the Program?

- Take your Program to be approved by the appropriate body
 - City Council
 - Board of Public Works
 - Committee appointed by either of these bodies to review the Program

FTC Red Flag Rule: How do I Update my Program?

- You must prepare a written report to submit annually to either the body who approved the Program, or a designated Senior Manager/General Manager.
- Report should address how effective the Program has been, service provider arrangements, significant events involving customer identity theft and management's response, and, most importantly, recommendations for changes to the Program.
- No less than ANNUALLY!

FTC Red Flag Rule: What do I Update Annually?

- Some examples of areas to look to update annually:
 - The experience of the utility with creditor theft.
 - Changes in methods of identity theft.
 - Changes in methods to detect, prevent, and mitigate identity theft.
 - Changes in the type of accounts offered.
 - Changes in business arrangements between service providers or other entities that allow access to customer information.

FTC Red Flag Rule: How Should I Train?

- The person assigned responsibility for the Program has the responsibility to see that staff are appropriately trained.
- Part of the annual report should be on training and training recommendations.

FTC Red Flag Rule: Recent FTC Web Postings

- <http://ftc.gov/redflagsrule>
- Official Red Flag website for FTC.
- Has links for consumers to file complaints
- Also has downloads on compliance which are useful to review for those of us attempting to comply

FTC Red Flag Rule: Help from the FTC

- <http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus23.shtm>
 - This website provides a brief overview of the FTC Red Flag Policy and Rules.
 - Also contains links at the bottom of the page to all FTC Red Flag material that the FTC has published.
- As with all government advice, its helpful, but be careful relying on it; not a defense to a violation that you relied on their advice.

Questions?

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