

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

In the Matter of the Tariff Filings of Union)
Electric Company, d/b/a Ameren Missouri, to)
Increase Its Revenues for Retail Electric Service.)

Case No. ER-2011-0028

**MOTION TO STRIKE, OR OTHERWISE DISALLOW, THE PREPARED
DIRECT, REBUTTAL AND SURREBUTTAL TESTIMONIES
OF PETREE A. EASTMAN**

Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), hereby moves the Missouri Public Service Commission (“Commission”) for an order striking, or otherwise disallowing, the prepared direct, rebuttal and surrebuttal testimonies of Petree A. Eastman, which were filed in this case on February 10, 2011, March 25, 2011 and April 15, 2011, respectively, on behalf of a group of municipal intervenors collectively known as “The Municipal Group.” As shown herein, Ms. Eastman does not meet the minimum legal requirements for an “expert witness”; consequently, she is incompetent, as a matter of law, to provide evidence in this case that consists of testimony regarding her opinions and conclusions.

In support of its motion, Ameren Missouri states as follows:

1. Under Section 490.065.1, RSMo, only persons who are qualified based on their “knowledge, skill, experience, training, or education” may testify “in the form of an opinion or otherwise” in any legal proceeding within the state of Missouri. Witnesses who do not satisfy the statutory standard may still provide testimony, but that testimony must be limited to facts. Such witnesses are legally incompetent to give testimony regarding their opinions or conclusions. *See Sullivan v. Union Elec. Light & Pwr. Co.*, 56 S.W.2d 97, 104 (Mo. 1932).

2. Although the language of Section 490.065.1, RSMo, suggests the statutory requirements for expert testimony prescribed therein apply only to civil actions, in *State Bd. of Reg. for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 154 (2003), the Missouri Supreme Court, sitting *en banc*, held that the standard also applies to proceedings before administrative and regulatory agencies, such as the Commission. “While contested administrative proceedings are not required to follow the ‘technical rules of evidence,’ the ‘fundamental rules of evidence’ applicable to civil cases also are applicable in such administrative hearings. . .The standards for admission of expert testimony constitute such a fundamental rule of evidence.” *Id.* at 154-55.

3. In *Gaddy v. Skelly Oil Co.*, 259 S.W.2d 844 (1953), the Missouri Supreme Court described both the minimum qualifications of an expert witness. “[A]n expert witness is one who by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or of deducing correct conclusions.” *Id.* at 150. The court went on to state, “the expert’s opinion must not be a mere guess or conjecture but must be based upon facts and adequate data,” and the witness’ “positive opinion must have to support it, reasons and testimony which will give it sufficient probative force to be substantial evidence.” *Id.*

4. There is nothing in Ms. Eastman’s prepared testimonies that establishes the educational or experiential foundation necessary for her to give expert testimony in this proceeding. As stated therein, her direct testimony is intended to achieve two objectives: 1) to “challenge Ameren’s proposed tariff and rate structure for the Lighting Class,” and 2) to “propose an alternative rate design for the Lighting Class.” But her prepared testimonies do not suggest, much less establish, that she has the knowledge, skill, experience, training, or education

that are required by law to qualify her to provide the opinion testimony on the class cost of service and rate design issues she is attempting to address.

5. As stated at page 1 of her prepared direct testimony, the education and work experience on which Ms. Eastman bases the opinions stated in her testimony are limited to the following:

- A BA degree from Webster University;
- A JD degree from St. Louis University;
- A Masters degree in city planning from the University of California at Berkeley;
- Tenure (length unknown) as “Assistant City Manager and chief sustainability officer” for University City, Missouri, where her “primary responsibilities included research and analysis of programs and processes for improved efficiency and quality of services” which included being “regularly called upon to seek methods of reducing costs or increasing revenues without negatively impacting the high level of service demanded by the community”; and
- Previous employment experience (employer undisclosed) that she describes as “similar in nature as well.”

6. The transcript of Ms. Eastman’s deposition in this case (a copy of which is attached to this motion as Appendix A¹) provides further evidence that she fails to satisfy the minimum requirements for an expert witness in the areas of class cost of service and rate design.

As stated in that transcript, Ms. Eastman:

- Has never before testified on an issue related to a class cost of service study;
- Has never before testified about a rate design issue;
- Has no formal training related to cost of service studies;

¹ Ms. Eastman’s deposition is being attached without the exhibits.

- Has never conducted a cost of service study;
- Has no formal training on rate design methodology;
- Has never been involved in designing rates for an electric utility;
- Admits she is not an expert on utility revenue requirement issues, class cost of service studies, rate design issues, or utility tariffs;² and
- Has never reviewed the street lighting tariffs of any Missouri utility other than Ameren Missouri.³

7. These statements by Ms. Eastman, herself, clearly establish that she has none of the knowledge, skill, experience, training, or education that are required by law to qualify her as an expert witness in this case. Her academic credentials, though impressive, provided her no training in class cost of service studies or rate design, and her experience in city government, both in University City and elsewhere, did not augment or supplement her educational background with any actual work experience in either tariff analysis, class cost of service studies, or electric utility rate design.

8. Moreover, the materials she reviewed to prepare her testimonies appear to have been limited to the current and proposed lighting tariffs and lighting cost studies of Ameren Missouri alone.⁴ So not only does she lack the training and experience required to qualify her to

² Cf. *In the Matter of the Joint Application of Great Plains Energy Incorporated*, 266 P.U.R.4th 1 (Mo.P.S.C. 2008), where the Commission specifically found that Staff witness Robert Schallenberg, while an expert accountant and auditor (areas in which he had formal education, training and experience), was not an expert in a variety of other public utility regulatory and ratemaking areas. Important to the Commission's conclusion that Mr. Schallenberg was not an expert in these areas were his own admissions that he was not an expert, the same circumstance that is present here. Regardless of her admissions, it is apparent that Ms. Eastman does not meet the minimum qualifications necessary to qualify as an expert under Section 490.065.1.

³ Appendix A, pp. 23-25.

⁴ Id., pp. 24-25.

provide expert testimony, the scope of her inquiry was so narrow that her opinions and conclusions are of no probative value. A witness' mere "understanding about an issue is not competent evidence . . . and what a witness 'thought' or 'didn't think' does not usually constitute substantial evidence." *Dill v. Poindexter Tile Co.*, 451 S.W.2d 365, 372 (Mo.App. 1970). Yet mere understanding is all Ms. Eastman has to offer.

WHEREFORE, for all the reasons stated herein, Ameren Missouri hereby requests the Commission to enter an order that strikes, or otherwise disallows, the prepared testimonies of Petree A. Eastman and that grants the Company such other relief as the Commission deems reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion To Strike, Or Otherwise Disallow, The Prepared Direct, Rebuttal And Surrebuttal Testimonies Of Petree A. Eastman was served on all parties of record via electronic mail (e-mail) on this 18th day of April, 2011.

/s/ Wendy K. Tatro _____
Wendy K. Tatro