

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of September, 2010.

In the Matter of an Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale and Transfer of Certain Assets of AmerenUE to St. James Municipal Utilities and Rolla Municipal Utilities)
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File No. EO-2010-0263

ORDER REGARDING ORDER TO SHOW CAUSE

Issue Date: September 1, 2010

Effective Date: September 1, 2010

On March 24¹, Union Electric Company, d/b/a AmerenUE (“AmerenUE”), submitted an Application to the Commission. AmerenUE wants to transfer certain of its assets to St. James Municipal Utilities (“St. James”) and Rolla Municipal Utilities (“Rolla”), two wholesale customers of AmerenUE.

On July 30, the Commission issued an Order Setting Procedural Schedule. That order required the parties to file a List of Issues, Order of Witnesses, Order of Cross-Examination, Opening and Closing. Donna Hawley, a pro se intervenor, failed to comply. As a result, on August 27, the Commission ordered Ms. Hawley to show cause why she failed to comply with the Commission’s July 30 order.

On August 30, Ms. Hawley filed a Response to Show Cause and Request for Special Counsel. Ms. Hawley claimed she was unable to complete her response due to a pretrial hearing in a criminal case scheduled for August 25. She further requests a continuance for an indefinite amount of time, and requests the Commission appoint her

¹ All calendar references are to 2010 unless otherwise noted.

“special counsel”, as she is unable to understand the legal process before the Commission. Finally, she points out her visual and vocal cord disabilities also would prevent her from meaningfully participating in a hearing unless the Commission appoints counsel.

Commission Rule 4 CSR 240-2.116(3) states that a party may be dismissed from a case for failure to comply with any order issued by the Commission. Ms. Hawley failed to comply with the Commission’s July 30 order. Thus, the Commission may dismiss her.

Commission Rule 4 CSR 240-2.015(1) allows the Commission to waive its rule for good cause. Although the term “good cause” is frequently used in the law,² the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.³

Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁴ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁵

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and

² *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

³ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁴ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

reasonable not whimsical.”⁶ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁷

While the Commission is sympathetic to Ms. Hawley’s disability and her inexperience practicing before the Commission, her August 30 pleading taken as true does not constitute good cause for failing to obey a Commission order. For example, even though Ms. Hawley was apparently in court on August 25 pursuant to a July 7 order⁸, she makes no attempt to explain why she was unable to work on her list of issues, etc., from July 30 through August 24. Indeed, in that time period, Ms. Hawley filed two pleadings on August 3, a pleading on August 10, another on August 11, two on August 12, and one on August 17. What is more, her August 30 pleading still lacks the information required by the July 30 order.

Ms. Hawley’s August 30 pleading does not give the Commission good cause to waive its rule allowing dismissal of a party for failing to obey a Commission order. The Commission will dismiss Ms. Hawley.

THE COMMISSION ORDERS THAT:

1. Donna D. Hawley is dismissed from this case.
2. Donna D. Hawley’s request for special counsel is denied as moot.

⁶ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁷ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

⁸ *State v. Donna D. Hawley*, Circuit Court of Phelps County Case No. 10PH-CR00911.

3. This order shall become effective September 1, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
Gunn, and Kenney, CC., concur.

Pridgin, Senior Regulatory Law Judge