

**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                    )                    Case No. ER-2011-0028  
Increase Its Revenues for Retail Electric Service.            )

**STAFF’S RESPONSE TO AMEREN MISSOURI’S  
REQUEST TO STRIKE A PORTION LENA MANTLE’S  
SURREBUTTAL TESTIMONY**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through Staff Counsel’s Office, and respectfully request that the Commission deny Union Electric Company d/b/a Ameren Missouri’s request to Strike a Portion of Lena Mantle’s Surrebuttal Testimony or otherwise disallow. In support of its request, Staff states the following:

1. Staff filed surrebuttal testimony which stated that Ms. Mantle’s was aware of utilization of fuel adjustment clause sharing mechanisms in at least two other states. Ms. Mantle included as schedules a Wyoming Public Service Commission decision and a Utah Public Service Commission decision each pertaining to the respective approximate 70-30 fuel adjustment clause sharing mechanism. (See Mantle Surrebuttal, p. 15, line 22 – p. 16, line 8, Schedules LMM-S2, LMM-S3).

2. Despite Ameren Missouri’s contention that Ms. Mantle’s attachment of the Wyoming and Utah Orders addressing those states’ respective 70-30 sharing mechanisms is inadmissible hearsay; these reports and orders are public records and are exempt from the general rule against the admissibility of hearsay evidence. Further, Ms. Mantle’s attachment of the orders approving the 70-30 sharing mechanisms is well within the realm of materials upon which an expert is entitled to rely. Finally, Ms. Mantle’s reference on pages 15 and 16 to the 70-30 sharing mechanisms is flatly not hearsay – she

is stating her awareness of a fact that she attained by reading public records which also happen to be materials upon which she is entitled to rely.

3. The Commission also has the ability to take Official Notice over the report and orders. Revised Statute of Missouri Section 536.070, (2000) states “In any contested case: . . . (6) Agencies shall take official notice of all matters of which the courts take judicial notice. . . . (9) Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests of justice so require, sustain any objection to such evidence which would be sustained were the proffered evidence offered in a civil action in the circuit court, but if it does sustain such an objection, it shall give the party offering such evidence reasonable opportunity and, if necessary, opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence to which such objection is sustained.”

4. Ameren Missouri’s attempt to censor these documents and Ms. Mantle’s testimony in support of Staff’s recommendation is especially disingenuous in light of Ameren Missouri’s recent Response to Staff’s Request for Rulings on the Objections from the Deposition of Lena Mantle on April 25, 2011 – this very witness – in which it claimed that:

Staff has now three times sought to obstruct the Company’s rights under the Missouri Rules of Civil Procedure to obtain discovery of information that is relevant to the subject matter of this rate case or that is reasonably calculated to lead to the discovery of admissible evidence.

Staff does not routinely engage in multi-state surveys since the regulatory practice of other states is often of limited relevance to Missouri regulatory practice, and other states' rulings are not binding legal precedent on this Commission. Staff is, however, mindful of frequent Commission inquiry into the regulatory practices of other States. When Staff is aware of information that may be helpful to this Commission in rendering its decision, whether or not that information played any part in the initial formation of Staff's recommendation, Staff generally endeavors to make that information available to this Commission. That is exactly what it has done here.

5. Both the Utah and Wyoming Commission's decisions speak for themselves. Ms. Mantle is not a lawyer, and is not offering her legal interpretation of the orders or how Missouri's statute is comparable to the ones in effect in Wyoming or Utah.

6. Ameren Missouri's pleading concludes as follows:

...that the Commission enter an order that strikes or otherwise disallows the Surrebuttal Testimony of Lena M. Mantle, page 15, line 22 through page 16, line 8, and the two commission decisions denominated as Schedules LMM-S2 and LMM-S3 to Ms. Mantle's surrebuttal testimony, **and that prevents Staff witness Mantle, or any other witness, from presenting that testimony or otherwise entering it into evidence in this case.** [emphasis added]

This unprecedented request to completely bar not only the prefiled testimony of a particular witness, but any reference by any witness to the mere existence of the Wyoming and Utah 70-30 sharing mechanisms goes beyond any reasonable protection of a due process right, and must be rejected.

**WHEREFORE**, Staff respectfully request that the Commission deny Ameren Missouri's *Motion to Strike a Portion of Lena Mantle's surrebuttal testimony* p. 15, line 22 – page 16, line 8, and Schedules LMM-S2 and LMM-S3.

Respectfully submitted,

/s/ Jaime N. Ott

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3<sup>rd</sup> day of May 2011.

/s/ Jaime N. Ott