

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a ) File No. ER-2011-0028  
Ameren Missouri's Tariff to Increase Its Annual ) Tariff No. YE-2011-0116  
Revenues for Electric Service )

## ORDER OVERRULING STAFF'S OBJECTION TO DEPOSITION QUESTIONS

Issue Date: May 3, 2011

Effective Date: May 3, 2011

On April 18, 2011, the Commission's Staff filed a motion asking the Commission to quash Ameren Missouri's deposition of Staff witness Lena Mantle, which Ameren Missouri had scheduled for April 25. Staff complained that this would be the second deposition of Ms. Mantle as Ameren Missouri previously deposed her on April 13. Staff also objected that this second deposition, scheduled for the day before the hearing begins, is "unnecessary, oppressive, harassing, and will obstruct and impede Staff's preparation for the evidentiary hearing ...." On April 21, the Commission denied Staff's motion to quash Ms. Mantle's deposition.

In its order denying Staff's motion to quash, the Commission stated that it was reasonable for Ameren Missouri to question Ms. Mantle at a second deposition about new allegations and positions set out for the first time in her surrebuttal testimony. The Commission found that Staff had not established sufficient cause to quash the deposition and denied Staff's motion. The Commission's order did not place any limits or restrictions on Ameren Missouri's ability to question Ms. Mantle during her deposition.

Later on April 21, after the Commission denied Staff's motion to quash, Staff filed a motion asking the Commission to clarify its order. In that pleading, Staff claimed that it should not have to produce Ms. Mantle as its witness because she had not been subpoenaed to appear for the deposition. On April 22, the Commission ordered Staff to produce its witness for the deposition without a subpoena

The deposition proceeded on April 25 and Ameren Missouri questioned Ms. Mantle extensively. Subsequently, on April 29, Staff filed a pleading entitled "Staff's Request for Rulings on the Objections from the Deposition of Lena Mantle on April 25, 2011." Staff's pleading explains that it objected to all questions asked by Ameren Missouri's counsel at the April 25 deposition that Ameren Missouri could have asked at Ms. Mantle's earlier deposition. Staff claims those questions are objectionable because that subject was asked and answered in the earlier deposition. Staff further claims that based on the Commission's April 22 order, the April 25 deposition was to be "narrowly tailored to new allegations or positions made in Ms. Mantle's surrebuttal testimony." On that basis, Staff asks the Commission to strike any and all questions that are deemed beyond the narrowly tailored scope and limited purpose of the second deposition.<sup>1</sup>

Ameren Missouri responded to Staff's pleading on May 2 by defending its questioning of Ms. Mantle as appropriately concerning positions she espoused in her surrebuttal testimony after her initial deposition had been taken. Ameren Missouri also points out that the Commission has not issued a protective order that would limit the company's ability to question the witness at a second deposition.

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<sup>1</sup> Staff attached the transcript of both depositions, but did not specify any particular questions that it believes to be improper.

Before addressing the merits, the Commission notes that Staff's pleading is premature. At this time, Ameren Missouri has questioned the witness and a transcript of that deposition has been made. However, Ameren Missouri has not yet attempted to enter that deposition into evidence or in any other way use the deposition at the hearing. Indeed, if Staff had not attached the deposition transcripts to its pleading, the Commission would be oblivious to the contents of that deposition. The Commission has no basis to take any action in response to Staff's objection until Ameren Missouri attempts to use the deposition in some manner. Simply striking questions and answers from a deposition that has not been offered into the record and is not otherwise before the Commission would be a pointless act. Nevertheless, the Commission will address the merits of Staff objections so that the hearing can proceed without further argument and delay.

Under Missouri Civil Rule 56.01(c), the Commission could have established a narrowly tailored purpose and scope for the second deposition. However, Staff never asked for and the Commission never granted such a protective order. The Commission's April 21 order simply denies Staff's motion to quash the deposition, nothing more. The April 22 order directs Staff to produce the witness for the deposition, but again never establishes any restriction on Ameren Missouri's ability to question the witness. Such a protective order cannot reasonably be implied from the Commission's discussion of the reason why Ameren Missouri sought to take a second deposition. Quite simply, there is no basis for Staff's objection to Ameren Missouri's questions to Staff witness about matters that were or could have been addressed in the first deposition.

In issuing this order, the Commission is not ruling upon any other objection Staff may raise at the hearing regarding Ameren Missouri's use of Ms. Mantle's deposition.

**THE COMMISSION ORDERS THAT:**

1. Staff's objection to Ameren Missouri's questions at the second deposition of Lena Mantle about matters that were or could have been addressed in the first deposition is overruled.

2. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Morris L. Woodruff, Chief Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 3<sup>rd</sup> day of May, 2011.