

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 DIRECTING STAFF TO PRODUCE WITNESS FOR DEPOSITION

Issue Date: April 22, 2011

Effective Date: April 22, 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 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" Staff did not object that Ms. Mantle had not been subpoenaed to appear for her deposition.

On April 21, the Commission denied Staff's motion to quash, finding that it was reasonable for Ameren Missouri to question the witness about new allegations and new positions she took in her surrebuttal testimony filed after her initial deposition. Thereafter, later on April 21, Staff filed a motion for clarification asking the Commission whether Ms. Mantle had to appear at the deposition despite having not been served with a subpoena to appear. Ameren Missouri responded to Staff's motion for clarification on April 22 and Staff replied later on April 22.

Both Staff and Ameren Missouri acknowledge that Missouri Civil Rule 57.03(a) requires parties to a case to appear for a deposition if the party is served with notice of the deposition. Staff however claims that Ms. Mantle is not a party and therefore must be served with a subpoena, as provided in Missouri Civil Rule 57.09, before she can be compelled to appear for a deposition. Ameren Missouri responds by pointing out that the established practice before the Commission has been that witnesses for parties appear for depositions based on the notice of deposition and without the necessity for issuance of a subpoena.

As Staff acknowledges, the long-standing practice before the Commission has been that parties produce their witnesses for deposition without demanding a subpoena. However, Staff claims that such cooperation is discretionary and can be ignored anytime a party does not want to produce a witness without a subpoena. Staff is incorrect. Civil Rule 57.03(a) states that “attendance of a party is compelled by notice.” Ms. Mantle is not herself a party but she is an employee of Staff, which is a party. Furthermore, she will be questioned about matters relating to her testimony as a witness for a party. Hence, under the applicable rule of civil procedure, she is compelled to appear at the deposition.

THE COMMISSION ORDERS THAT:

1. Lena Mantle shall appear at the scheduled deposition.

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 22nd day of April, 2011.