

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

In the Matter of the Application of Jerry West                    )  
And Sharon West to Change the Electrical                        )  
Supplier for Part of their Property.                                )           Case No. EO-2009-0272

**UNION ELECTRIC d/b/a AMERENUE's  
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION  
AND FOR A DETERMINATION ON THE PLEADINGS AND MOTION FOR  
EXPEDITED TREATMENT OF REQUEST TO CANCEL HEARING**

**COMES NOW** Union Electric Company d/b/a AmerenUE (AmerenUE or Company), pursuant to 4 CSR 240-2.117(2) and 2.080(16), and for its *Motion to Dismiss for Lack of Subject Matter Jurisdiction and for a Determination on the Pleadings and Motion for Expedited Treatment of Request to Cancel Hearing*, regarding the Change of Electric Supplier filed by Jerry and Sharon West (the Wests) pursuant to 4 CSR 240-2.117, states as follows:.

1.       This case arises from the Wests' misplaced request, made under Section 393.106.2, whereby the Wests request a "change of supplier" from AmerenUE to Cuivre River Rural Electric Cooperative (Cuivre River). As outlined in more detail in the accompanying *Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and for a Determination on the Pleadings and Motion for Expedited Treatment of Request to Cancel Hearing* filed concurrently herewith (which is incorporated herein by this reference), the Wests ask the Commission to do something the Commission has no power or jurisdiction to do, that is, grant a "change of supplier" when in fact there exists only one supplier with authority to provide service to the Wests.

2.       The Wests seek a "change of supplier" under § 393.106, which applies only if two electric suppliers (e.g., an electric utility and a cooperative) both have a

concomitant right to serve a particular area.<sup>1</sup> *If, but only if*, that concomitant right exists, can the Commission then allow a change of suppliers for a “reason other than rate differential” if the Commission finds it is in the public interest to do so. However, where there is no such concomitant right, as here, § 393.106 is never triggered; it simply does not apply, and the Commission lacks subject matter jurisdiction to grant the relief sought by the Wests.

3. That this is true is conclusively demonstrated by the stipulated facts in this case, which are set forth in the Joint Stipulation of Facts and Law that was filed by all parties on September 16, 2009. As the stipulated facts make clear, the structure at issue is located within the corporate boundaries of Dardenne Prairie, a municipality with more than 1,500 residents. Dardenne Prairie is not a “rural area,” as defined in Section 394.020(3), and thus Cuivre River could only serve the structure at issue if there was a territorial agreement in place that provided that authority to Cuivre River. To the contrary, as the stipulated facts demonstrate, there is a territorial agreement in place and it gives *AmerenUE* the exclusive right to serve this structure. Consequently, only one electric supplier – AmerenUE – has a right to serve the Wests’ structure, which means there is no concomitant right to serve it which in turn means that the Commission lacks authority under Section 393.106.2 or otherwise to grant the relief requested by the Wests.

4. Consequently, a determination on the pleadings dismissing the Wests’ application with prejudice under 4 CSR 240-.2.117(2) is appropriate.

5. On September 22, 2009, the Commission issued its *Order Denying Motion For Leave To Amend Application*. Having denied that request, and given that this case

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<sup>1</sup> *In the matter of the Application of Wastach Investments, L.C.*, Case No. EO-2008-0031, 2008 WL 2444659 (Mo. P.S.C.), Order Granting Summary Determination and Dismissing Application (June 8, 2008) (citing *Union Elec. Co. v. Platte-Clay Elec. Coop*, 814 S.W.2d 643 (Mo. App. W.D. 1991))

must be dismissed as a matter of law, proceeding with the hearing scheduled for September 29, 2009 is unnecessary and inappropriate. Consequently, the Company requests that the hearing be cancelled, and requests expedited treatment of its request that the hearing be cancelled. This expedited request to cancel the hearing was made as soon as it could have been (one day after the Commission's *Order Denying Motion For Leave To Amend Application*) under the circumstances. Cancelling the hearing avoids the time and expense associated with holding an unwarranted and unnecessary hearing, and will not in any way harm any customer or the general public as a whole.<sup>2</sup>

WHEREFORE, AmerenUE requests that the Commission cancel the hearing currently scheduled for September 29, 2009, and after affording the Wests the opportunity provided by 4 CSR 240-2.080(15) to respond to this Motion, grant this Motion for Determination on the Pleadings and dismiss the Wests' Application, with prejudice.

Respectfully Submitted,

/s/ Wendy K. Tatro

**Steven R. Sullivan**, # 33102

Sr. Vice President, General  
Counsel and Secretary

**Wendy K. Tatro**, # 60261

Assoc. General Counsel  
Ameren Services Company  
P.O. Box 66149

St. Louis, MO 63166-6149

(314) 554-3484 (phone)

(314) 554-4014 (fax)

[ssullivan@ameren.com](mailto:ssullivan@ameren.com)

[wtatro@ameren.com](mailto:wtatro@ameren.com)

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<sup>2</sup> The Commission has routinely recognized that it should not waste the parties' and its own resources with hearings when a determination on the pleadings is appropriate. *See, e.g.,* Determination on the Pleadings, *In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041 (Oct. 7, 2004) ("[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest.").

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response was served on the following parties via electronic mail (e-mail) or via regular mail on this 23<sup>rd</sup> day of September, 2009.

General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[GenCounsel@psc.mo.gov](mailto:GenCounsel@psc.mo.gov)

Jeff R. Wagener  
Suite 400  
7701 Forsyth  
St. Louis MO 63105  
[jwagener@lathropgage.com](mailto:jwagener@lathropgage.com)

Jaime Ott  
General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[jaime.ott@psc.mo.gov](mailto:jaime.ott@psc.mo.gov)

Lewis Mills  
Office Of Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Jerry and Sharon West  
7333 Weldon Spring Road  
Dardenne Prairie, MO 63368

Andrew Sporleder  
Cuivre River Electric Cooperative, Inc.  
P.O. Box 1438  
700 E. Capital Ave  
Jefferson City MO 65102  
[asporleder@lawofficemo.com](mailto:asporleder@lawofficemo.com)

/s/ Wendy K. Tatro

Wendy K. Tatro