

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

Edward and Patricia Nelson,)	
)	
Complainant,)	
)	
v.)	Case No. EC-2005-0352
)	
Ameren Union Electric Company,)	
)	
Respondent.)	

STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its report, states:

1. On April 5, 2005, Edward and Patricia Nelson filed a complaint with the Commission against Union Electric Company d/b/a AmerenUE (AmerenUE) regarding a dispute over the movement of an electric transmission pole on Complainant's property that prevents Complainant from moving a new mobile home onto the property.
2. On May 6, 2005, AmerenUE filed its Answer to the Complaint and prayed the Commission to either set this matter for hearing, or, in the alternative, dismiss this Complaint.
3. On May 17, 2005, the Commission issued its Order Directing Staff Investigation ordering Staff to investigate the Complaint and to file a report of its findings with the Commission no later than June 16, 2005. The Staff has conducted an investigation of this Complaint and reports its findings in its Memorandum attached hereto as Exhibit 1 with supporting Schedules A, B, C and D.

4. In summary, for reasons explained in the attached Memorandum, the Staff believes that the scope of work and the estimated cost of AmerenUE's alternative design for relocating the pole on Mr. Nelson's property are both reasonable and authorized by AmerenUE's tariff Schedule No. 5, 2nd Revised, Sheet 159 of the General Rules and Regulations (Part III – Section N).

WHEREFORE, the Staff files its Memorandum attached hereto as Exhibit 1 as directed by the Commission.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

Robert S. Berlin
Associate General Counsel
Missouri Bar No. 51709

Attorney for the Staff of the
Missouri Public Service Commission
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Jefferson City, MO 65102
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bob.berlin@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all parties of record this 16th day of June 2005.

/s/ Robert S. Berlin

Edward and Patricia Nelson
10116 Old Highway 54
Eugene, MO 65032

Mr. Thomas M. Byrne
Managing Associate General Counsel
Ameren Services Company
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
tbyrne@ameren.com

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200 Madison Street, Suite 640
Jefferson City, MO 65102
opcservice@ded.mo.gov

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EC-2005-0352, Complainants Ed & Patricia Nelson vs. Union Electric
Company d/b/a/ AmerenUE

FROM: Alan J. Bax, Energy Department – Engineering Analysis

/s/Lena Mantle 6/16/05 _____
Energy Department / Date _____ General Counsel's Office / Date

SUBJECT: Staff Report

DATE: June 10, 2005

BACKGROUND

On February 25, 2005, Mr. Ed Nelson (Complainant) and Mr. Ed Nelson Jr. filed separate Informal Complaints with the Missouri Public Service Commission (MPSC) against the Union Electric Company d/b/a AmerenUE (AmerenUE or Company). The subject of the Complaint centers on who is responsible for the costs to relocate an electric utility pole located on the property the Nelsons own in the Indian Creek Subdivision in Barnett, MO. In his Complaint, Mr. Ed Nelson asserts that he contacted the Company's Customer Service Department on January 24, 2005 to inquire about the possibility of having AmerenUE relocate a pole because the pole "cuts his lot in half." The Complainant informed the Company representative that there was an existing cabin on the lot. He further told the AmerenUE representative that he wanted to remove the old existing cabin in order to install a manufactured home that he intended to purchase. In order to install the manufactured home, he told the AmerenUE representative that he needed to have the pole moved approximately 16 feet. The relocated pole would then be near the north corner of his property and would also be "in line" with the other poles" (see Figure 1 attached to this report in Schedule A). He further stated to the AmerenUE representative that the Company did not have an easement for the current pole location on his lot, and that he would give the Company an easement at the proposed pole location. The Complainant maintains that Company's Customer Service representative told him that, since he was building on the property, there would be "no problem" in having this pole moved. The representative purportedly informed Mr. Nelson that she would call the local district and that someone from that office would be in contact with him.

Mr. Nelson states that when he was first contacted by an estimator from the Company's Lakeside District office, the estimator informed him that Company records indicate that the pole "was located at the corner of the lot." When the estimator conducted an on-site inspection of Mr. Nelson's lot, he observed that the pole was not located in the corner of the lot as he had first indicated to Mr. Nelson. The Complainant says that the estimator told him that AmerenUE has an easement covering the current location of the pole and that there would be a cost to Mr. Nelson to have AmerenUE relocate the pole. Mr. Nelson says this was the first time that AmerenUE informed him that there would be a cost to him.

In a subsequent visit to Mr. Nelson's lot by the estimator, AmerenUE informed Complainant that the cost to move the pole would be around \$5,000. Mr. Nelson objected to paying this cost because the Company's Customer Service Department representative told him that there would be "no problem" which he understood to mean that there would be no charge to him for the Company to relocate the pole to the corner of his lot. Mr. Nelson told the estimator that the Customer Service representative should have made it clear when he talked with her on the phone that he may be charged a cost to move the pole.

Mr. Nelson spoke with the estimator's supervisor. The Company supervisor met with Mr. Nelson at his lot a few days later. At this meeting, the supervisor brought a copy of AmerenUE's easement. The Complainant claims that the supervisor told him that he would be responsible for the cost of: (1) relocating the pole to the corner of his lot because of the Company's easement and Tariff filed with the MPSC, and (2) repairing a pole on a nearby lot that was "leaning" and in an unsafe condition. The leaning pole on a nearby lot was the subject of the Informal Complaint filed by the Complainant's son; Mr. Ed Nelson, Jr. (This Informal Complaint was subsequently withdrawn when AmerenUE cleared up the misunderstanding over the leaning pole on the nearby lot. AmerenUE agreed to replace the leaning pole at no cost to the Nelsons.)

Not satisfied with this result, the Complainant contacted the MPSC through the informal complaint process. On February 28, 2005, the Staff of the Missouri Public Service Commission (Staff) contacted the Company and obtained copies of the easement and the written cost estimate of its proposed solution to relocate Mr. Nelson's pole. On March 2, 2005, Staff met with the Complainant at his property. Staff discussed the easement and informed Mr. Nelson that the MPSC was not the proper forum to construe the legality of the easement. (AmerenUE's easement documents are attached as Schedules B and C.) Staff discussed the Company's proposed pole relocation estimate with Mr. Nelson. Complainant did not understand the Company's detailed estimated cost of over \$10,000, and questioned the proposed design solution. The Staff told the Complainant that it would contact AmerenUE to further review its proposed estimate and explore possible alternatives. AmerenUE, in an effort to bring its proposed solution in line with its initial estimate of \$5,000, offered Mr. Nelson a discount of 50%, bringing the cost down to just over \$5,000. Mr. Nelson rejected this offer.

Following subsequent conversations with AmerenUE and the Complainant, Staff met with Mr. Nelson and Company personnel from the Lakeside District Office at the Complainant's property on March 22, 2005. The Company devised an alternative proposal to relocate the pole on Mr. Nelson's lot. The Company prepared a new estimate and Staff received a copy of it on March 31, 2005. Staff contacted Mr. Nelson and discussed the Company's new design proposal and new proposed charge at an estimated cost of \$3,139.77. Mr. Nelson was not satisfied with the revised plan and filed a Formal Complaint on April 5, 2005.

In the Formal Complaint, Mr. Nelson presents a synopsis of the narrative above. He asserts that the Company has made a number of mistakes. First, he was not informed of any cost by the Company's Customer Service Department when he first inquired about moving the pole. Second, the Company told him that its local district records indicated that the pole was located at the corner of his lot when in fact the pole is located toward the middle of his lot. Third, the

Company had a leaning pole in a lot nearby that needed to be replaced. The Complainant believes that he should not be held responsible to pay in order to correct these mistakes.

The Company filed its Answer on May 6, 2005. The Company admits, in general, to the accuracy of the Complainant's detailed descriptions of his interactions with Company employees with notable exceptions. For example, the Company denies that it told Mr. Nelson he would be responsible for the costs associated with replacing the "falling pole" (i.e., the leaning pole) on the nearby lot, and Company denies ever telling the Complainant that the pole on his lot was located in the wrong place. The Company placed an electric pole on this property in 1948, having purchased easements that authorize it to install and maintain this pole at the existing location. However, the Company believes that the Complainant should pay the estimated cost of relocating the pole on his property. The Company concluded by requesting the Commission to either refer this matter to a hearing or to dismiss the Complaint. On May 17, 2005, the MPSC issued an Order directing the Staff to conduct an investigation and submit a report to the Commission no later than June 16, 2005.

In the Company response to Data Request No. 1 in this case, the Staff received audio recordings of the phone calls made by the Complainant to the Company's Customer Service Department in January and February of 2005. In the first phone conversation on January 24, 2005, the Complainant says he wishes to tear down an existing home and build another one on a lot he purchased down at the "Lake". However, the insurance company prevents him from building a new home because it would be located underneath the power line that runs across the property. He inquires about the process of getting the pole moved. The Company representative says that before the Customer Service Department puts in a request to the district to have the pole relocated; Mr. Nelson needs to supply Customer Service with additional information. The Company made no overtures or comments about cost in this conversation - only comments by the service representative that the pole can be relocated. Immediately after this conversation, the Complainant completed the purchase of a 28' × 40' mobile home and arranged for the removal of the existing 20' × 20' cabin. In his Formal Complaint, the Complainant states that the removal of the cabin was completed "by the end of the week."

On January 28, 2005, the Complainant called the AmerenUE's Customer Service Department with the required information and told the Company "The wires would run over my house, and the pole would be right up against it." (See Photograph #1 attached to this report in Schedule D). He was told by the Customer Service representative that someone would be in touch with him about relocating the service (pole).

An estimator from the Company's local district office made first contact with the Complainant on January 28. The Company's records show that the pole is located near the back corner of the lot. The Complainant provided a description of the actual location of the pole which is not where the Company's records show it to be. (See Photograph 2 in Schedule D.) However, the Company's easement shows it to have an easement for the pole at its actual location. (See Schedules B and C.) Several days later, the Company estimator made AmerenUE's first on-site inspection. The cabin had been removed by this time. The Complainant asserts that the estimator provided him an estimate of about \$5,000 to relocate the pole.

On February 7, 2005, the Complainant again contacted the Company's Customer Service Department. In this recorded conversation, he mentioned that he had just been contacted by the estimator in the district, and the estimator said the cost of the design to move the pole would be between \$8,000 and \$10,000 dollars. The Complainant protested and asked the Customer Service representative to put him in touch with the estimator's supervisor.

The Complainant contacted the Company's local district supervisor, again voiced his displeasure with the estimate, questioned the validity of the easement, and asserted he was told he would be responsible for the replacement of the leaning pole on the nearby lot. The Complainant claims the supervisor informed him that the Company would evaluate the possibility of moving the pole and that in certain situations AmerenUE has moved facilities without cost to the customer. Based on the recorded conversation, the supervisor ultimately gave the Complainant an estimate of \$5,359.75. This represents an approximate 50% discount of the Company's calculated cost of \$10,719.45 because the supervisor had previously given the Complainant an earlier "off the cuff" estimate of "around \$5,000.00." The Complainant contacted the MPSC following this conversation and filed an Informal Complaint on February 25, 2005.

The Company's Customer Service Department did not mention the possibility of cost to the Complainant in the initial phone conversation on January 24, 2005. The Complainant maintains that the failure of Customer Service Department to mention that he might incur a cost to move the pole excuses him from those costs. Further, the Complainant questions whether the Company has a valid easement across his property, including the actual location of the pole. AmerenUE's records indicate that the pole is located near the property line near the north corner, the same location that the Complainant has requested the pole be moved. The Complainant has offered to pay the Company \$500.00 and to grant the Company a clear easement in return for having the pole moved. The Company asserts that the pole was originally installed in 1948, and that it has a valid easement. In addition, the Company stands behind its alternative design and proposed charge at the undiscounted estimated cost of \$3,139.77.

RECOMMENDATION

Schedule No. 5, 2nd Revised, Sheet 159 of the General Rules and Regulations (Part III – Section N) reads:

"Company may, at its sole discretion, upon customer's request, relocate any distribution facilities providing service to customer and/or other parties to a right-of-way acceptable to Company, on or off customer's premises, following the payment by customer of the Company's total estimated cost of said relocation."

The Staff believes that the scope of work and the estimated cost of the Company's alternative design are both reasonable and authorized by its tariff.

AmerenUE is current on all assessment fees and annual report filings. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing; however, the following cases are open:

1.	EE-2005-0400 –	Meter Variance
2.	EE-2005-0486 -	Meter Variance
3.	EC-2005-0110 –	Spigel Properties vs. AmerenUE
4.	EC-2005-0341 –	Jewell Turner vs. AmerenUE
5.	EO-2005-0369 –	Sale of Asset
6.	EC-2005-0398 –	Damon Anderson vs. AmerenUE
7.	EF-2003-0514 –	Permission to Secure additional debt
8.	EM-96-14 –	Experimental Alternative Regulation Plan
9.	EM-96-149 –	Experimental Alternative Regulation Plan
10.	EA-2005-0180 –	CCN for Noranda
11.	EC-2005-0313 –	Jennie Zbinden vs. AmerenUE
12.	EC-2002-1 –	Overearning Complaint

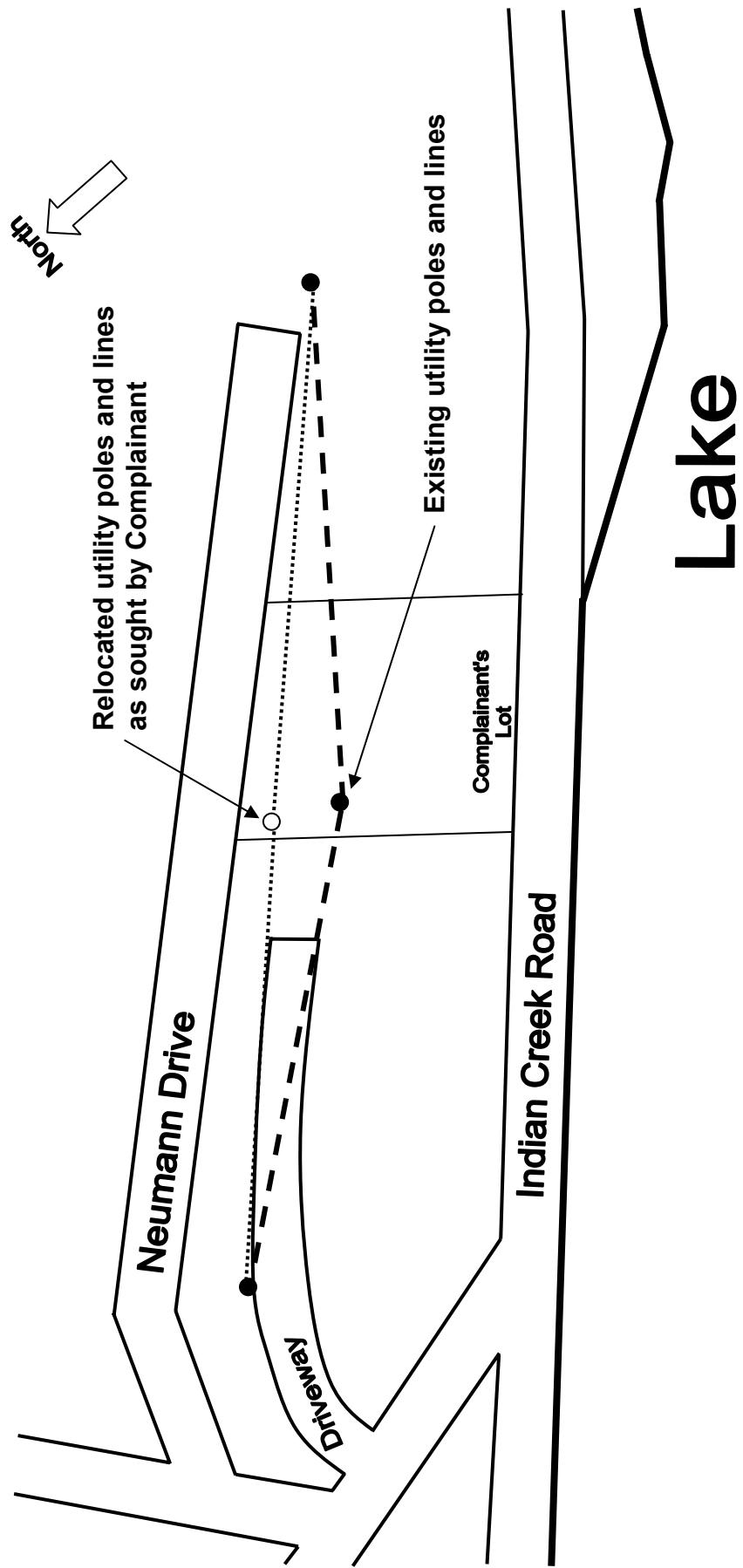


Figure 1: Diagram of Complainant's Lot and Vicinity. (Not to scale.)

KNOW ALL MEN BY THESE PRESENTS,

that Oscar F. Neumann and Ella M. Neumann, his wife

that heirs, successors and assigns hereinafter referred to as Grantor, whether one or more and whether an individual, individuals, or a corporation, for and in consideration of the sum of One and no/100-----

Dollars (\$1.00) -----) and other valuable consideration in hand paid, the receipt of which is hereby acknowledged, does hereby grant unto UNION ELECTRIC COMPANY, a Missouri corporation, its successors, assigns, licensees, agents, lessees, contractors, sub-contractors and tenants (hereinafter referred to as "Grantee"), the perpetual right and easement to construct, reconstruct, use, operate, maintain, add to the number of and patrol in electric or telephone and communication lines or lines, or both, consisting of poles, guys, anchors, wires, cables, fixtures, and appurtenances thereto, including transformers, on, over, across, or under the following described land, to-wit:

All grade, streets, drives and alleys and ten (10) feet adjacent thereto, in Indian Creek Resort Subdivision. Also a strip of land twenty (20) feet in width across the westerly curb of Tract No. 1 and across Lot No. 27 of said Indian Creek Resort Subdivision.

Said twenty (20) foot easement strip to be definitely established by the construction of an electric power line consisting of wood poles, wires, anchors, guy wires, crossarms, fixtures, etc., along said surveyed centerline.

Said Indian Creek Resort Subdivision being situated in and a part of the South Half of the Southeast Quarter of the Southeast Quarter of Section Thirteen and East Half of the Northeast Quarter of Section Twenty Four, all in Township 41 North, Range 17 West, Morgan County, Missouri and a plat thereof being recorded at Page 47, Book 1972 of Morgan County Records.

with the right of ingress and egress to and over the above described premises and the premises of Grantor adjoining the same, for all purposes herein stated, together with the right to trim or cut down or cause to be trimmed or cut down at any time and from time to time, any and all brush, saplings, trees, over-hanging branches or other obstructions upon said premises and the premises of Grantor adjoining the same which may be deemed to interfere with the construction, maintenance or use of, or enlarging the extent of, said line or lines; and the right to license, permit or otherwise agree to the use or occupancy of said line or lines by any other person, association or corporation for electric, telephone and communication purposes; and with the further right to remove at any time any or all of the said line or lines, and appurtenances thereto, erected upon, over or under said land by virtue hereof.

Grantor, for itself, its heirs, successors and assigns, does hereby warrant and covenant unto Grantee (1) that it is the owner of the above described land and has full right and authority validly to grant this instrument, (2) that Grantee may quietly enjoy the premises for the purposes herein stated, and (3) that it will not create or permit any obstruction of any kind or character that will interfere with the successful operation and maintenance of said line or lines for any of the purposes aforesaid.

IN WITNESS WHEREOF, we have hereunto set our hand and seal at
Rocky Mount, Mo. this 8th day of March 1974.

Oscar F. Neumann
Ella M. Neumann

Individual Signature

IN WITNESS WHEREOF, said _____ has caused these presents to be signed by its _____ president and the corporate seal hereunto affixed at _____ this _____ day of _____ 19_____.

ATTEST:

Secretary.

President

Corporate Signature



STATE OF MISSOURI,
COUNTY OF ST. LOUIS
NOTARY PUBLIC

On the 14th day of March, 1976, before me personally appeared George R. Johnson, and Ella M. Johnson, his wife, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same from act and deed.

Arthur W. Porter
Arthur W. Porter Notary Public

E 9691

Single Individuals

STATE OF MISSOURI,

of

On the 14th day of March, 1976, before me personally appeared George R. Johnson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that Ella M. Johnson executed the same from act and deed and the said Ella M. Johnson further declared to be single and unmarried.

My Commission expires

Notary Public.

Corporations

STATE OF MISSOURI,

of

On this 14th day of March, 1976, before me appeared George R. Johnson, to me personally known, who, being by me duly sworn, did say that he is President of Johnson's Service Center, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said George R. Johnson acknowledged said instrument to be the first act and deed of said corporation.

My Commission expires

Notary Public.

On the _____ day of _____, 19____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ excepted the name as _____ free act and deed and the said _____ further declared _____ to be single and unmarried.

Single (or joint) _____

My Commission expires _____

Notary Public

STATE OF MISSOURI,

of _____

On this _____ day of _____, 19____, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is _____ President of _____ and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said _____ acknowledged said instrument to be the free act and deed of said corporation.

My Commission expires _____

Notary Public

Corporation _____

My Commission expires _____

Notary Public

State of Missouri
County of Maries
In The Recorder's Office

6 CIRCUIT CLERK Clerk of the Circuit Court and ex-officio Recorder of said County do hereby certify that the within instrument setting was on the _____ day of March, A. D. 1906, in the office of John L. Nichols Clerk of Circuit Court of Maries County, duly filed for record in this office and is recorded in the records of this office in book 341, page 302, of pages 302.

BY WITNESS WHEREBY, I have hereunto set my hand and fixed my official seal of office to the City of Maries County and State of Missouri, this _____ day of March, A. D. 1906.

John L. Nichols
John L. Nichols

Union Electric Co.
P.O. Box 38
Lake Ozark, Mo.
65049

Schedule B 1-3

INDIAN CREEK RESORT SUB.

Future Development

Mr. John Smith

727

WEDNESDAY 5
#4 Tols. Terrell to 6, 7, 8, 34

سیاست و اقتصاد

24096

Schedule B 1-4

TOPIC 101-A

EASEMENT

THIS INDENTURE made this 8th day of July, 1948,
 by and between Oliver L. Gandy and by his wife, La. Gandy (his wife), Herbert H. French and
parties of the first part, and the UNION ELECTRIC COMPANY OF MISSOURI, a Missouri cor-
poration, party of the second part. WITNESSETH:

That for and in consideration of the sum of \$100.00 Dollars
 (\$100.00) and other valuable consideration in hand paid to the party of the first part
 by the party of the second part, the receipt of which is hereby acknowledged, said party of the first part
 hereby grant, bargain, sell and convey to the party of the second part, its successors

assigns, lessees and tenants the perpetual right and easement Twenty (20) feet
 in width, with the right, privilege and authority to the said party of the second part, its successors
 and assigns, to construct, erect, keep, operate and maintain a line or lines of poles, crossarm, wires,
 insulators, anchors, guy wires and appurtenances, for the purpose of transmitting electric energy or
 other power, and a telegraph and telephone line or lines in, on, along, over, through, across or
 under the following described lands situated in Carroll township in the county
of Jackson, in the State of Missouri, to-wit:

A strip of land 20 feet in width, being 10 feet on each side of a surveyed
centerline. Said surveyed centerline extends over part of the Northeast Quarter
or Section Twenty-four (24), Township Forty-and-one (41) North, Range Nineteen (19)
West and along or near the present County road

Said 20 foot easement strip is definitely established by the construction
of an electric distribution line consisting of wood poles, wires, anchors, guy
wires, crossarms, fixtures, etc., running said surveyed centerline.

Together with the right, privilege and authority to said party of the second part, its successors and assigns, to place, erect, keep, maintain, inspect, add to the number of, and relocate at will, poles, guys, anchors, crossarms or fixtures and string wires and cables, adding thereto from time to time, across, through, under or over the above described premises; to span, cut and remove from said premises or the premises of the party of the first part adjoining the same on either side any trees, overhanging branches or obstructions which may endanger the safety or interfere with the use of said poles, guy-anchors, crossarms and fixtures or the wires attached thereto; and the right of ingress and egress to and over said above described premises and any of the adjoining lands of the partizan of the first part at any and all times, for the purpose of paralleling the line or repairing, renewing or adding to the number of said poles, guys, splices, fixtures, and wires, and for doing anything necessary or convenient for the enjoyment of the easement herein granted; also the privilege of removing at any time any or all of said improvements erected upon, over, under or on said lands. The Grantor, for themselves, their heirs and assigns, hereby agrees, that they will not create or permit any obstruction that will interfere with the successful operation and maintenance of said transmission line for any of the purposes aforesaid.

IN WITNESS WHEREOF, the parties of the first part, have hereunto set their hands and sealed the day and year that above written.

WITNESS:

Oliver L. Gandy (SEAL)
Silvia L. Gandy (SEAL)
Herbert H. French (SEAL)
Paul E. French (SEAL)

STATE OF MISSOURI }
County of WILSON }
ss:

On the 8th day of July, 1940, before me personally appeared Oliver H. Gray and Sylvia L. Gray, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Given under my hand and seal of office the day and year first above written.

... by Commission order, May 22, 1951.

Frank J. Elwell

Novelty Fables

STATE OF MISSOURI.

County of Miller.....

On the 22nd day of July, 1948, before me personally appeared
Hanspett H. Treachael and Ruth E. Treachael (his wife) to me known to be
the persons so described and who executed the foregoing instrument and acknowledged that they
executed the same as their free act and deed.

Given under my hand and seal of office the day and year first above written.

My Commission expires May 11, 1961.

Nov. 11, 1961.

Notary Public

STATE OF MISSOURI

County of.....

BE IT REMEMBERED, that on this _____ day of _____, 19____, before
me, a Notary Public within and for the County of _____ and State of
Missouri, appeared _____ to me personally
known to be the person whose name is subscribed to the foregoing instrument as a witness thereto,
who being duly by me first sworn upon, has forth stated that he saw _____

IN WITH THE WEREWOLVES. "I have scarce got my hand, and I had no official seal
of the Sheriff of Marquette County and State of Michigan." This is a day of
Nearly Public.

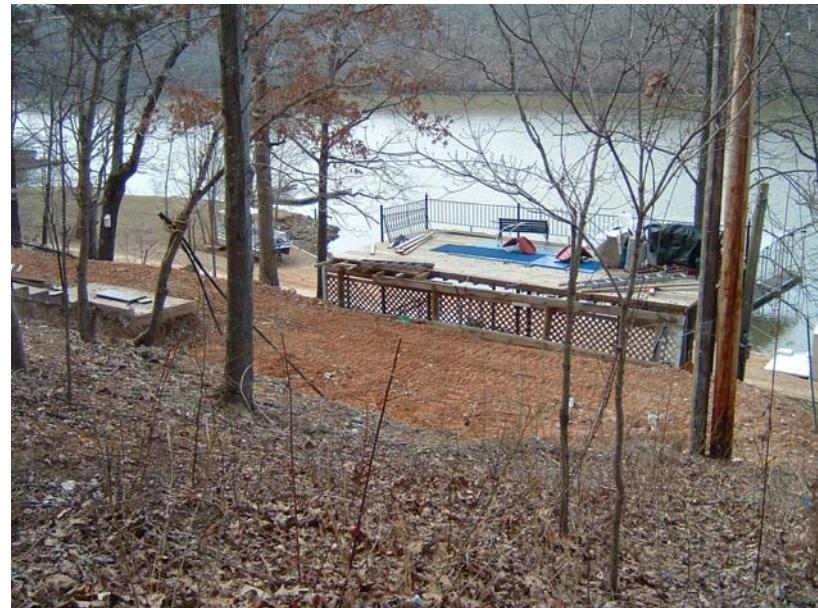
STATE OF MISSOURI

County of *Jefferson* County, State of *Michigan*, on the *10th* day of *July*, 19*4*, before me,
appeared *John C. Clegg*, to me personally known, who, being by me
duly sworn, did say that he is the *President* of *Michigan Lumber Company*, and that the seal affixed to the foregoing instru-
ment is the corporate seal of said corporation and that said instrument was signed, and sealed in
behalf of said corporation by authority of its Board of Directors and said
acknowledged said instrument to be the free act and deed of said corporation.

My Commissioner excites—



Photograph #1:
View of Complainant's property from southeast property line
showing the utility pole in question.



Photograph #2:
View of Complainant's property from north corner.
Utility pole in question is at right.