

0027

1

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

2

3

TRANSCRIPT OF PROCEEDINGS

4

Settlement Conference

5

August 23, 2004

6

Jefferson City, MissouriVolume 2

7

8

In the Matter of the Application of )  
Union Electric Company d/b/a AmerenUE )

9

For a Metering Variance to Serve Brentmoor ) Case No.  
At Oaktree ) EE-2004-0267

10

11

KEVIN A. THOMPSON, Presiding,  
Deputy Chief Regulatory Law Judge

12

13

14

REPORTED BY:

Jennifer L. Leibach, RPR, CCR(T)

15

MIDWEST LITIGATION SERVICES

16

17

18

19

20

21

22

23

24

25

0028

1 A P P E A R A N C E S

2

3 THOMAS M. BYRNE, Attorney at Law  
1901 Chouteau Avenue  
4 St. Louis, Missouri 63101  
(314) 554-2514

5

FOR: Union Electric Company

6

7 RICHARD BYRD, Attorney at Law  
100 North Fourth street, Suite 1100  
8 St. Louis, Missouri 63103  
(314) 889-8000

9

FOR: Brentmoor at Oaktree

10

11 DIANA VUYLSTEKE, Attorney at Law  
BRYAN CAVE, LLP

12 211 North Broadway, Suite 3600  
St. Louis, Missouri 63102  
13 (314) 257-2543

14 FOR: River's Edge Properties, LLC

15

JOHN COFFMAN, General Counsel  
16 P.O. Box 2230  
Jefferson City, Missouri 65102  
17 (573) 751-5565

18 FOR: Office of the Public Counsel and  
the Public

19

20 DENNIS FREY, General Counsel  
P.O. Box 360  
21 Jefferson City, Missouri 65102  
(573) 751-8702

22

FOR: Staff of the Public Service  
Commission

23

24

25

0029

1

PROCEEDINGS

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JUDGE THOMPSON: Good morning, my name is Kevin Thompson. I'm a Regulatory Law Judge assigned to preside over this matter, which is a settlement conference in a pair of consolidated cases EE-2004-0267, which is the application of Union Electric Company doing business as AmerenUE for metering variance to serve Brentmoor at Oaktree, and EE-2004-0268, which is the application of Union Electric Company doing business as AmerenUE for metering variance to serve River's Edge Properties. Why don't we go ahead and take oral entries of appearance at this time. Who is representing UE, Mr. Byrne?

MR. BYRNE: Yes, your Honor. My name is Tom Byrne, I'm an attorney representing Union Electric Company. My address is 1901 Chouteau Avenue, St. Louis, Missouri, 63103.

JUDGE THOMPSON: Okay. How about the intervenors?

MR. BYRD: Richard Byrd of Polsinelli Shalton Welte and Suelthaus. We represent Brentmoor at Oak Tree, the intervenor.

JUDGE THOMPSON: Very well.

MS. VUYLSTEKE: Diana Vuylsteke on behalf of River's Edge, with the law firm Bryan Cave LLC, 211 North Broadway, Suite 3600, St. Louis, Missouri, 63102, and we are

0030

1 an intervenor, but also an applicant as well. We filed a  
2 separate application for variance that was in addition to the  
3 one that was filed by UE.

4 JUDGE THOMPSON: Okay. Very well. Thank you.  
5 I left Staff and Public Counsel for last because I'm a little  
6 bit confused as to whether the party here is the variance  
7 committee or whether Staff and OPC are participating or  
8 litigating, I should say, in their own rights. Mr. Frey,  
9 advise me.

10 MR. FREY: Your Honor, I believe we filed, the  
11 Staff did, in connection with the variance committee's second  
12 recommendation in this case. We included a statement that  
13 Staff's position is that we are not representing the variance  
14 committee, but that this case should be tried de novo at this  
15 point and it would be the Staff as a party as well as Public  
16 Counsel.

17 JUDGE THOMPSON: Very well. And so you're  
18 here on behalf of Staff?

19 MR. FREY: Yes.

20 JUDGE THOMPSON: Thank you. Mr. Coffman.

21 MR. COFFMAN: Your Honor, John B. Coffman  
22 today, appearing on behalf of the Office of the Public  
23 Counsel, PO Box 2230, Jefferson City, Missouri, 65102, and it  
24 is my opinion of the rule that the variance committee meets  
25 and consists of certain ex officio members and makes a

0031

1 recommendation, and that after that recommendation is made,  
2 that the, you know, that myself and the members of the Staff  
3 will go back to their representative corners and represent  
4 their own parties going forward. So I don't think that the  
5 committee would be a proper party at this point in the  
6 proceeding.

7 That's my understanding of the rule, and would  
8 note that when the variance committee met for the second time  
9 and made a recommendation, I did not join that  
10 recommendation, and voted not to join that and do not, at  
11 this point, support that recommendation. At this point, I am  
12 leaning towards supporting the applicants in this matter,  
13 although I suppose I could be persuaded by further evidence  
14 to modify that position.

15 JUDGE THOMPSON: Very well. Thank you.  
16 Mr. Frey.

17 MR. FREY: And may I enter my appearance,  
18 then, formally, Judge?

19 JUDGE THOMPSON: Fire away.

20 MR. FREY: Okay. Dennis L. Frey, representing  
21 the Staff of the Missouri Public Service Commission, Post  
22 Office Box 3670, Jefferson City, Missouri, 65102. Thank you.

23 JUDGE THOMPSON: Thank you. Okay. Do any of  
24 the parties have anything to bring to my attention at this  
25 time? Very good. This is entitled a settlement conference.

0032

1 It's what we used to call a late prehearing conference.

2 We're all learning new names of things.

3 I don't know that the function has changed.

4 It's an opportunity to hear from the parties how the status  
5 of their preparation according to the procedural schedule is  
6 going, an opportunity for you to raise any controversies that  
7 might have arisen, and most importantly, a chance to bring  
8 you all together face-to-face in the same room and force you  
9 to talk about settlement.

10 I don't know whether that's likely to be a  
11 fruitful discussion or not, but here you are. The room is  
12 yours until 5:00 p.m., and since you don't have any further  
13 need of me, I'm going to leave. So hearing nothing further,  
14 we'll go ahead and adjourn the recorded portion of the  
15 prehearing conference, and I urge you to have fruitful and  
16 constructive discussions. I will, of course, be upstairs if  
17 you need me.

18 MR. BYRD: Your Honor.

19 JUDGE THOMPSON: Yes, sir.

20 MR. BYRD: At this time, would it be  
21 appropriate to raise issues regarding requests for data or  
22 would that be a different time?

23 JUDGE THOMPSON: You can raise anything you  
24 want. I'll just tell you that, of course, it might come as a  
25 surprise to your adversaries, but they can scream all about

0033

1 that as anyone. So go ahead, stand up and do whatever you  
2 want.

3 MR. BYRD: Just to provide a little  
4 preliminary information, we will be planning on objecting,  
5 just give notice to Staff, Data Request No. 3 to Brentmoor as  
6 being excessive and irrelevant. That as a Staff Data Request  
7 for Brentmoor to, and I quote, provide a listing of all  
8 requirement communities in Missouri of which our Executive  
9 Director has personal knowledge, or which are listed in  
10 documents or information such as trade association journals,  
11 et cetera. For each, we are to provide location, street  
12 addresses, city, date construction was begun, where they're  
13 separately metered and billed, and whether the service is  
14 provided under residential or non-residential rate schedules.

15 There are hundreds, if not thousands, of such  
16 communities, some of which are under various licensures, some  
17 of which do not require licensures, and such that information  
18 is not readily available. We're talking many hundreds of  
19 hours of attorney time and attempting to respond to this  
20 question, and I just wanted to give advance notice we will be  
21 objecting to that data request.

22 JUDGE THOMPSON: Okay. Very well. Anything  
23 else? Okay. Going once, going twice, all right. We'll go  
24 ahead and adjourn the recorded portion, then, at this time.  
25 As you know, our new procedures provide for prompt, expedited

0034

1 resolution of discovery disputes, so as soon as you get that  
2 objection letter in, Staff, the ball will be in your court  
3 then to ask for a discovery conference, hearing, whatever  
4 we're calling them, and you can attend by telephone,  
5 Mr. Byrd, if you don't want to make another trip up here, and  
6 we'll get that resolved very quickly. Okay. Great. Thank  
7 you.

8 WHEREUPON, the recorded portion of the  
9 settlement conference was concluded.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25