

# 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.             )  
**File No. EO-2009-0272**

## ORDER DENYING MOTION FOR LEAVE TO AMEND APPLICATION

Issue Date: September 22, 2009

Effective Date: September 22, 2009

The Missouri Public Service Commission is denying the motion for leave to amend (“the motion”) the application for change of supplier (“application”) as untimely.

### A. Procedural Background

Jerry West and Sharon West (“the Wests”) filed the motion, with a proposed amended complaint attached, on September 10, 2009. On September 21, 2009, Union Electric Company d/b/a AmerenUE (“AmerenUE”) and Cuivre River Electric Cooperative, Inc. (“Cuivre River”) filed a joint response to the motion; and the Commission’s staff (“Staff”) filed a response to the motion.

The motion is subject to the following standard.

Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission.<sup>1</sup>

More than ten days has passed since the Wests filed the application for change of supplier<sup>2</sup> and since intervenor WIK adopted the Wests’ application.<sup>3</sup> Also, the

---

<sup>1</sup> 4 CSR 240-2.080(2).

<sup>2</sup> November 14, 2008. Because the Wests made their application on a complaint form, the Commission assigned the application file no. EC-2009-0193. On January 22, 2009, the Commission changed that number to the current number, better reflecting the relief that the Wests seek because the Wests sought only a change of supplier.

<sup>3</sup> June 1, 2009.

remaining parties have filed responsive pleadings as follows: AmerenUE on December 19, 2008;<sup>4</sup> Cuivre River on February 11, 2009; Staff on March 20, 2009. Therefore, the Wests and WIK (“applicants”) cannot amend the application without leave.

The hearing is scheduled for September 29, 2009, seven days from the date of this order.

### B. Relief Requested

The application seeks a change in the supplier assigned to them under a Commission-approved territorial agreement.<sup>5</sup> In support of their motion for leave, applicants ask to amend the application with newly-discovered grounds for changing their supplier. The motion alleges that the Commission did not consider certain facts—namely, those described in the application—when the Commission approved the territorial agreement. Applicants argue that the territorial agreement is therefore not in the public interest.

### C. Analysis

The motion constitutes an action separate from the application, different in procedure and in relief, as follows.

An application for a change of supplier vests no right to a hearing for two reasons. First, the application statute includes no right to a hearing:

The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential[.<sup>6</sup>]

---

<sup>4</sup> Under file no. EC-2009-0193.

<sup>5</sup> Case No. EO-93-166 (March 5, 1993).

<sup>6</sup> Section 394.315.2, RSMo 2000 (emphasis added).

Second, case law provides that the Commission may grant an unopposed application without hearing.<sup>7</sup>

Any challenge to a territorial agreement includes the right to a hearing:

The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the **same manner as other complaints** before the commission. The commission **shall hold an evidentiary hearing** regarding such complaints [. <sup>8</sup>]

“[O]ther complaints] also include the right to a hearing before decision.<sup>9</sup> Thus, every complaint initiates a “contested case.” <sup>10</sup> A contested case is a formal hearing process that includes the right to certain pre-hearing procedure<sup>11</sup> including discovery.<sup>12</sup>

Also, a challenge to a territorial agreement does not result in a change of supplier:

If the commission determines that a territorial agreement that is the subject of a complaint is no longer in the public interest, it shall have the authority to suspend or revoke the territorial agreement.[<sup>13</sup>]

That statute authorizes only suspension or revocation of the territorial agreement, not a change of supplier. The public interest considerations for suspending or revoking the territorial agreement are not necessarily the same as for changing a supplier.

---

<sup>7</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989). The due process of law entitles AmerenUE to a hearing in a meaningful manner and time because AmerenUE opposed the deprivation of its property rights. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

<sup>8</sup> Section 394.312.7, RSMo Supp. 2008 (emphasis added).

<sup>9</sup> Section 386.390.5, RSMo 2000.

<sup>10</sup> Section 536.010(4), RSMo Supp. 2008.

<sup>11</sup> See, e.g., Section 536.070(12), RSMo 2000.

<sup>12</sup> 4 CSR 240-2.090(1); Section 536.073(2), RSMo 2000.

<sup>13</sup> Section 394.312.7, RSMo Supp. 2008.

Thus, granting the motion would initiate a new complaint action. In such action, respondent parties are entitled to 30 days for filing an answer.<sup>14</sup> Also, the Commission must provide notice of hearing:

. . . no fewer than ten (10) days before the time set for the hearing, unless the commission finds the public necessity requires that the hearing be held at an earlier date.<sup>15</sup>

Fewer than ten days before the hearing remain, and Applicants have not argued that the public necessity requires less notice. Even if we deemed the proposed amended complaint filed as of the motion's filing date, the remaining seven days before hearing are too short to prepare for hearing. Applicants have sought no continuance of the hearing date. The motion is, therefore, untimely and the Commission will deny it.

**THE COMMISSION ORDERS THAT:**

1. The Motion for Leave to Amend Application is denied.
2. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**

( S E A L )



Steven C. Reed  
Secretary

Jordan, Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 22<sup>nd</sup> day of September, 2009.

---

<sup>14</sup> 4 CSR 240-2.070(7).

<sup>15</sup> 4 CSR 240-2.070(11).