

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference

6
7 March 23, 2010
8 Jefferson City, Missouri
9 Volume 1

10 In the Matter of the Application)
11 of Gary Roof for Change of)Case No. EO-2010-0166
12 Electric Supplier.)

13
14 DANIEL JORDAN, Presiding
15 SENIOR REGULATORY LAW JUDGE

16
17
18 REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR
19 Midwest Litigation Services
20 3432 W. Truman Boulevard, Suite 207
Jefferson City, MO 65109
(573) 636-7551

21
22
23
24
25

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

2 For Staff of the Missouri Public Service Commission:

3 Ms. Jennifer Hernandez
4 Public Service Commission
200 Madison Street
5 P.O. Box 360
Jefferson City, MO 65102
6 (573) 751-5472

7 For Platte-Clay Electric Cooperative, Inc.:

8 Mr. Robert C. Hess, II
Husch Blackwell Sanders
9 235 E. High Street
Jefferson City, MO 65101
10 (573) 635-9118

11 For AmerenUE:

12 Ms. Wendy Tatro
13 Attorney at Law
1901 Chouteau Avenue
14 St. Louis, MO 63103
(314) 554-343415 Ms. Sarah Giboney
16 Smith Lewis
111 South Ninth Street
17 Columbia, MO 65201

18 For Gary Roof:

19 Mr. Gary Roof
20 10123 N Highway
Excelsior Springs, MO
21
22
23
24
25

1 P R O C E E D I N G S

2 JUDGE JORDAN: We will go ahead and go on the
3 record. The Commission is calling case -- calling the
4 case of Gary Roof versus Platte-Clay Electric Cooperative.
5 That is File No. EO-2010-0166.

6 I'm Daniel Jordan. I'm the Regulatory Law Judge
7 assigned to this case. I will begin by taking entries of
8 appearance. And I'll also want any representatives of the
9 clients to identify themselves on the record, also.

10 Mr. Roof, entry of appearance just means where
11 -you say your name and where you live. Or work, in the
12 case of the lawyers. And their client representatives.
13 Okay?

14 MR. ROOF: Okay.

15 JUDGE JORDAN: Okay. Then we'll start with the
16 complainant, Mr. Roof.

17 MR. ROOF: Gary Roof, 10123 Excelsior Springs.

18 THE COURT REPORTER: I couldn't hear his
19 address.

20 JUDGE JORDAN: Will you repeat your address,
21 please? This phone line is a little bit faint. I've got
22 it all the way up, but it's still pretty quiet.

23 MR. ROOF: My name is Gary Roof, 10123 N
24 Highway, Excelsior Springs.

25 JUDGE JORDAN: Okay. Reporter, did you get

1 that?

2 THE COURT REPORTER: Yeah.

3 JUDGE JORDAN: Okay. Thank you, Mr. Roof. Is
4 it Roof or Roof?

5 MR. ROOF: Roof, R-o-o-f.

6 JUDGE JORDAN: Right. Roof. And in St. Louis
7 County, we'd say Roof. Some of us would anyway. All
8 right. For -- let see. For -- let's start with the main
9 respondent here, the primary respondent here, which is the
10 cooperative.

11 MR. HESS: Robert Hess with the law firm of
12 Husch, Blackwell, Sanders in Jefferson City for Platt-Clay
13 Electric Cooperative, Inc.

14 JUDGE JORDAN: Okay. And, Mr. Hess, do you have
15 a representative of your client today?

16 MR. HESS: No. Just me today.

17 JUDGE JORDAN: Okay. That's fine. And for the
18 utility?

19 MS. TATRO: Sarah?

20 MS. GIBONEY: Go ahead, Wendy.

21 MS. TATRO: Okay. Wendy Tatro, 1901 Chouteau
22 Avenue, St. Louis, Missouri, 63103. I do have an
23 engineer, Glen Walker, with me here today as well.

24 MS. GIBONEY: And this is Sarah Giboney, Smith
25 Lewis, LLP.

1 JUDGE JORDAN: Hello?

2 MS. GIBONEY: Hello.

3 JUDGE JORDAN: I think that was a little

4 feedback. Is everyone still on the line?

5 MR. ROOF: I'm here.

6 JUDGE JORDAN: Oh, good. Good, good.

7 MS. GIBONEY: Sarah Giboney, Smith Lewis, LLP,

8 representing AmerenUE. 111 South Ninth Street, Columbia,

9 Missouri, 65201.

10 JUDGE JORDAN: Okay. Thank you. And does

11 Ameren -- does AmerenUE have a representative of its

12 client?

13 MR. WALKER: Glen Walker. I'm a supervising

14 engineer with AmerenUE. I'm located in Mexico, Missouri.

15 JUDGE JORDAN: Okay. Thank you very much. And

16 Staff? Would Staff enter its appearance?

17 MS. HERNANDEZ: My name is Jennifer Hernandez,

18 and I'm appearing on behalf of the Staff of the Missouri

19 Public Service Commission. Address -- excuse me -- is

20 P.O. Box 360, Jefferson City, Missouri, 65102. And I have

21 with me Allen Bax who is here for discussions at the

22 off-the-record portion.

23 JUDGE JORDAN: Okay. Okay. Thank you. And

24 looking about the room, I don't see a representative from

25 the Office of Public Counsel here. Is there one on the

1 line? I don't hear anyone on the line, so Office of
2 Public Counsel has elected not to make an appearance at
3 this proceeding.

4 All right. This is how our prehearing
5 conference will proceed. The first part will be on the
6 record with the reporter, and it will be recorded and
7 become part of the record in the case.

8 We will discuss procedure. We can talk about
9 procedural issues. The parties can discuss substantive
10 issues we want. And I hope we will also discuss the
11 possibility for settlement of this case.

12 The second part of this proceeding will be off
13 the record. I will leave the room, the reporter will stop
14 recording, and the parties can speak in -- in confidence.
15 During that time, I hope that the parties can resolve any
16 procedural issues between them, and I hope that they will
17 discuss the possibilities for settlement.

18 And in connection with that, I remind the
19 parties that the Public Service Commission does offer
20 mediation services. All the Regulatory Law Judges have
21 had training in the settlement of -- of civil cases. And
22 it is our experience that parties can generally fashion a
23 remedy more suited to all their needs than -- than
24 government tribunals often can.

25 That being said, I will also emphasize that if

1 the parties want to litigate this case, we are here to do
2 that. And the parties always have the right to go to
3 hearing. Any questions so far?

4 MS. GIBONEY: No.

5 JUDGE JORDAN: Okay. Hearing none, I'm going to
6 go on to the next topic of my little speech, which is the
7 preparation for hearing.

8 Mr. Roof, you -- you -- being the pro se
9 litigant, this is mostly for your benefit, but there is a
10 technique for preparing for hearing, which you may already
11 have some exposure to.

12 The procedure is called discovery. It is how
13 one party gets information about the other party's case.
14 It consists of the service of devices like
15 interrogatories, requests for admissions, the taking of
16 depositions, things like that in which you can figure out
17 what the party has as far as facts. And that helps you
18 assess both their -- their case and -- and your own. And
19 all parties have the right to do that in this case.

20 MR. ROOF: Okay.

21 JUDGE JORDAN: Okay. And it's a good way to
22 prepare for hearing. And it also assists in the -- in the
23 settlement of cases as well. Are there any -- are there
24 any pending discovery issues or any other prehearing
25 motions pending just now? I'm seeing shaking heads in the

1 room. Anyone on the line?

2 MS. GIBONEY: No.

3 MR. ROOF: No.

4 JUDGE JORDAN: No. I didn't think -- I didn't
5 think so. I didn't think so. Well, then we'll go on and
6 talk about the hearing procedure itself.

7 The hearing is an evidentiary hearing. That is,
8 it's very much like a trial that you would see in Circuit
9 Court. There's no jury. What there is is me who acts as
10 the Judge would in a -- in a judicial proceeding. That
11 is, I conduct the proceeding. I make rulings in the
12 course of it. I do rule on the admissibility of evidence.
13 And whatever decision I recommend to the Commission will
14 be based on evidence of record.

15 Now, when we talk about evidence, we're getting
16 into a body of law. And I'm going to give a -- I'm going
17 to mention a statute, which is about 90 percent of what
18 controls the admissibility of evidence. The statute is
19 Section 536.070.

20 And what that statute does is describe how the
21 law of evidence is relaxed in a certain degree for certain
22 purposes getting certain things into evidence. When we
23 talk about evidence, that's like what one sees on
24 television in court, except it's going to be real life.

25 I will also say that why while the law of

1 evidence can be complicated at times, the Commission is
2 here to listen to and -- and decide the pro se litigant's
3 case and not throw up obstacles. Okay?

4 So Mr. Roof, I'm going to reiterate that if you
5 feel that you need to go to hearing, we will hear your
6 case.

7 MR. ROOF: Okay.

8 JUDGE JORDAN: Okay. If we do go to hearing,
9 the order of proof will be as follows: Mr. Roof will make
10 his case in chief first presenting his evidence. That
11 that's, you know, testimony and documents and things like
12 that, which can certainly include your own sworn
13 testimony.

14 All -- all of it must be taken under oath. And
15 then the regulated utility. And -- actually, first, it
16 will be the co-op first and then the regulated utility,
17 which is AmerenUE, and then Staff will go last.

18 Our reporter will prepare a transcript of the
19 hearing. We'll have all the exhibits and documents all
20 put together. The parties will have the right to file
21 written argument. And from all that, I will draft a
22 decision that will constitute my recommendation to the
23 Commission.

24 The Commission is the final decision-maker here.
25 They are the Governor's appointees, so they feel great

1 responsibility to decide the issues that come to the
2 Commission. In the meantime, I do things -- I make such
3 decisions and orders as they delegate to me. But they'll
4 want to decide this themselves, I'm pretty sure. Any
5 questions so far? I'm seeing --

6 MS. HERNANDEZ: No, your Honor.

7 JUDGE JORDAN: Seeing none in the room. Anyone
8 on the line have any questions for me about what we've
9 discussed so far?

10 MR. ROOF: No.

11 MS. GIBONEY: No.

12 JUDGE JORDAN: Okay. Just so we know what the
13 standard of -- is in this case, the statutes provides that
14 the Commission may order a change of supplier when it
15 finds that such a change is in the public interest for a
16 reason other than rate differential. So I just want to
17 make that explicit.

18 And the statute setting that forth -- I'm going
19 to give you the citation, also -- is Section 394.315 in
20 the Revised Statutes of Missouri. And that's about all I
21 have to say right now.

22 This room is available to us for about 11 more
23 minutes. If the parties need more than that, I can
24 certainly arrange space for that as well. I hope the
25 parties will continue to discuss these issues when we get

1 off the record. It's a good opportunity to do so while
2 everyone is -- is in the same space physically and
3 electronically. Anything else before we go off the
4 record, then?

5 Okay. I want to mention one more thing. I'm
6 going to be leaving later this morning. But my secretary,
7 Leslie Myers, will be able to get in contact with me if
8 you need to consult with me for any procedural matters.
9 Okay? I'll be here for a little while today. After that,
10 I'll be gone, but you can still get a hold of me if you
11 feel you need to. Okay?

12 MS. GIBONEY: Thank you.

13 JUDGE JORDAN: You're entirely welcome. Is
14 there anything else that I can do for anyone while I'm
15 still here with you?

16 MR. ROOF: No thank you.

17 MR. HESS: I do think we're going to probably
18 need another space. I don't know if ten minutes -- I
19 don't know what everybody else thinks, but it will --

20 MS. TATRO: It's not long.

21 MR. HESS: There's a number of us, and so if
22 everybody says something, I think that --

23 JUDGE JORDAN: Okay. There are -- there are
24 conference rooms on this floor. The big hearing room is
25 taken. This is going to be taken up with some kind of a

1 hearing, which I didn't know about when I -- when I
2 scheduled this.

3 MS. HERNANDEZ: I can check on 810. And then we
4 have a conference phone in there, too, so --

5 JUDGE JORDAN: That's good.

6 MS. HERNANDEZ: But I will -- I have Mr. Roof's
7 number to give him a call back, but I -- do you have
8 Sarah's?

9 MS. TATRO: I have Sarah's. Yes.

10 MS. HERNANDEZ: And did you have --

11 MS. TATRO: I can get Glen. Okay. I can get
12 information to both of them. Will we use the same call-in
13 number?

14 MS. HERNANDEZ: No. I'd have to call them.

15 MS. TATRO: Okay.

16 MR. HESS: Okay. So with -- those of you on the
17 phone, hang tight for a couple minutes, and we will give
18 you a call in about five or ten minutes.

19 MR. ROOF: Okay.

20 JUDGE JORDAN: Well, you still have the room for
21 about 11 minutes. I appreciate Staff's facilitation of
22 this. Can I prevail upon Staff to file a memorandum at
23 the end of the day telling me whether the parties will be
24 going to hearing or settling or -- or where they are?

25 MS. HERNANDEZ: Sure.

1 JUDGE JORDAN: Okay. Tomorrow will be fine. So
2 -- yeah. Is there anything else that I can do for the
3 parties before I leave you? I'm not hearing any in the
4 room in Jefferson city. Anyone on the line? Can I do
5 anything for you before --

6 MS. GIBONEY: I don't believe.

7 MR. ROOF: No. I don't think so.

8 JUDGE JORDAN: Okay. Well, then I will leave
9 the room, and we will go off the record. Thank you very
10 much.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16

17

18

19

20 Monnie S. Mealy, CSR, CCR #0539

21 Registered Professional Reporter

22

23

24

25