

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Hearing

MAY 4, 2009  
Jefferson City, Missouri  
Volume 1

In The Matter Of The Application)  
Of Jerry West And Sharon West To)Case No. EO-2009-0272  
Change The Electrical Supplier )  
For Part Of Their Property )

DANIEL R.E. JORDAN, Presiding  
Regulatory Law Judge

REPORTED BY:

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FOR: Staff of the Missouri Public  
Service Commission.

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

2 JUDGE JORDAN: The Commission is calling  
3 Case No. EO-2009-0272. I am Daniel Jordan,  
4 regulatory law judge of the Missouri Public Service  
5 Commission. I'll begin by taking entries of  
6 appearance. Mrs. West, will you state your name for  
7 the record, please.

8 MS. WEST: Sharon West.

9 JUDGE JORDAN: And for AmerenUE?

10 MS. TATRO: Wendy Tatro, T-a-t-r-o, 1901  
11 Chouteau Avenue, St. Louis, Missouri 63103, AmerenUE.

12 JUDGE JORDAN: And Ms. Tatro, you have a  
13 representative of your client with you?

14 MS. TATRO: I do. I have Robert  
15 Schnell, S-c-h-n-e-l-l.

16 JUDGE JORDAN: Thank you. And for  
17 Cuivre River?

18 MR. SPORLEDER: Andrew Sporleder, 700  
19 East Capital, Jefferson City, Missouri 65101,  
20 representing Cuivre River Electric Cooperative.

21 JUDGE JORDAN: And Mr. Sporleder, do you  
22 have a representative of your client today?

23 MR. SPORLEDER: I do not.

24 JUDGE JORDAN: Okay. That's fine.  
25 That's all right. And for Staff, please?

1                   MS. OTT: Jaime Ott, P.O. Box 360,  
2   Jefferson City, Missouri 65102, and I have Alan Bax  
3   with me.

4                   JUDGE JORDAN: All right. We are  
5   convening a prehearing conference on the action  
6   instituted by Jerry and Sharon West to change  
7   electrical supplier. And here's how I'd like to  
8   proceed today. The first part of this discussion  
9   will be on the record. We'll discuss procedures in  
10  these types of cases. We can get into some of the  
11  substantive law if we like and discuss what we think  
12  that requires.

13                  I'd also like the parties to use this  
14  opportunity to discuss the possibilities for  
15  settlement, and that you can do off the record  
16  outside of my presence so that you can feel free to  
17  discuss the issues candidly and openly and frankly  
18  without changing the process, without me hearing  
19  anything you might not want me to hear.

20                  I also want to mention that the  
21  Commission does make mediation services available to  
22  the parties to explore the possibilities for  
23  settlement. And maybe this is a case in -- in which  
24  some facilitated negotiations may be useful, so I'd  
25  like you to consider that as well.

1                   Now, if -- if the parties do elect  
2 mediation, then the mediator will not be me because  
3 I'm assigned to the -- to recommend a decision in the  
4 case. But everyone in my division, that is all the  
5 regulatory law judges, they all have training in  
6 mediation and they're all quite capable of -- of  
7 helping out in that regard. Any questions so far?

8                   (NO RESPONSE.)

9                   JUDGE JORDAN: Not hearing any. I'd  
10 like to talk about the procedure in case we do go to  
11 hearing. A hearing in this action will be an  
12 evidentiary hearing. It will be like a Circuit Court  
13 trial much like you see on TV with the parties  
14 presenting evidence and making objections and those  
15 things coming into the record; that is, those things  
16 on which the Commission will base its decision  
17 subject to the law of evidence.

18                   Law of evidence is relaxed a bit for an  
19 administrative proceeding like this, but the  
20 fundamentals of evidentiary law still apply. Hearsay  
21 comes to mind, for example. You'll want to take a  
22 look at a couple of statutes that I anticipate will  
23 be important in this regard, and one is §536.070,  
24 that's 536.070, in the Revised Statutes of Missouri.

25                   And in case we require evidence of

1 something on which I cannot make an intelligent  
2 recommendation on my own, matters of accounting or  
3 economics or engineering, safety, things like that,  
4 you'll also want to take a look at \$490.065 which  
5 relates to expert testimony. Those are two  
6 provisions I anticipate will be important in the  
7 presentation of evidence.

8 In this action the burden of proof is on  
9 the Wests to show the need for a change of supplier.  
10 The order of proof I anticipate according to our  
11 regulations is as follows: First, the Wests will  
12 make their case, then AmerenUE will have a chance to  
13 make its case and then Cuivre River will make a case  
14 if it chooses to, and then Staff.

15 And once we've had the evidentiary  
16 hearing, once everyone has made their case and -- and  
17 rebutted everyone else's case if they feel they need  
18 to, then the reporter will prepare a written  
19 transcript of the events at the hearing and you can  
20 use that, all parties can use that to prepare written  
21 argument which the parties have the right to do also.

22 When the written argument, also called  
23 briefs, is in, then I will take those documents and I  
24 will take all the matters that came into the record  
25 and I will look at the transcript. And what I do is

1 I prepare sort of a recommended decision to the  
2 Commissioners. The Commissioners make the final  
3 decision in this matter. Are there any questions so  
4 far?

5 (NO RESPONSE.)

6 JUDGE JORDAN: I don't hear any  
7 questions from anyone, so I guess I must be doing a  
8 really good and thorough job. Is everyone still on  
9 the line?

10 MS. TATRO: UE's still here.

11 JUDGE JORDAN: Okay. And Cuivre River's  
12 still there?

13 MR. SPORLEDER: Yes, we're still here.

14 JUDGE JORDAN: Well, I'm -- I'm very  
15 flattered by your rapt attention. And no questions  
16 so far?

17 MR. SPORLEDER: No.

18 JUDGE JORDAN: Okay. All right. Here's  
19 the standard that -- let me -- let me start this way  
20 in discussing procedures so far. We had an order  
21 early on sort of reshuffling the way we looked at  
22 this case. The Wests filed a case as a complaint and  
23 they did that because the regulations say after  
24 you've made your informal complaint, then you can  
25 file a formal complaint. I just want it to be clear

1     that the Wests don't lose any points for having used  
2     the complaint form for starting a case. I don't  
3     think complaint is quite the right word for it. The  
4     case does relate to a territorial agreement.

5                 There is in the statutes regarding  
6     territorial agreements provisions for filing a  
7     complaint as to a territorial agreement. I don't  
8     think that's for customers, I think that is for  
9     parties to the territorial agreement when they think  
10    it doesn't work for them anymore.

11                So I've gone ahead and restructured this  
12    thing as an application for change of supplier. I  
13    think that's the more applicable statute, the one  
14    that I'm certain applies. And -- but that's --  
15    that's not a -- that's not a strike against the  
16    Wests. I just want that to be clear.

17                The standard under that statute is that  
18    when an affected party -- and that means -- that  
19    includes a customer -- files an application, the  
20    Commission may order a change of suppliers on the  
21    basis that it is in the public interest for a reason  
22    other than rate differential.

23                So I see two matters in that single  
24    provision, and that is in -- I'm -- I'm reading from  
25    §394.315.2, that is 394.315.2, and there are two



1 things. Whatever the reason may be, it's got to be  
2 something other than rate differential. The other  
3 part is that it has to relate to the public interest.  
4 We have a definition of public interest that I have  
5 seen in our statutes, and that is in §386.610 in the  
6 Revised Statutes of Missouri, and that's in the 2000  
7 volumes.

8                   And that is the public interest includes  
9 factors -- well, when we're talking about public  
10 interest, we're talking about specifically efficient  
11 facilities and substantial justice between patrons  
12 and public utilities. I see there two issues in that  
13 provision as well. No. 1 is efficient facilities,  
14 and it's the efficient use of these two suppliers'  
15 facilities. But also the second part is substantial  
16 justice between the patrons and the public utilities.  
17 That is that the Wests get a fair shake from the  
18 suppliers that are available to them or may be  
19 available to them.

20                   Those are the issues that I anticipate  
21 coming up in our hearing should we go to hearing. Of  
22 course, we don't have to do it if the parties can  
23 work out a settlement, and the parties can often work  
24 out some kind of solution that is better than the  
25 Public Service Commission can provide them. Bear in

1 mind that of all the people in the room, the Public  
2 Service Commission is going to know the least about  
3 your issues and what you need to get out of this --  
4 these events.

5 All right. I'm going to pause some more  
6 for -- for questions. Any questions so far from  
7 anyone?

8 MS. OTT: No.

9 JUDGE JORDAN: None from Staff. Anyone  
10 else?

11 MS. TATRO: None from AmerenUE.

12 MR. SPORLEDER: None from Cuivre.

13 JUDGE JORDAN: All right. All right.  
14 Well, I'd like to get the conversation started as to  
15 these issues by asking the Wests to talk about some  
16 of the issues they've raised in their application and  
17 other filings as to issues they mention with regard  
18 to -- to safety, for example. And then I'd like to  
19 hear from AmerenUE and Cuivre River and Staff if they  
20 have positions on these. Ms. -- Mrs. West, would you  
21 like to begin?

22 MS. WEST: Sure. And I would first like  
23 to say I beg your indulgence if I get out of  
24 procedural policies and how things are supposed to  
25 run. I'm not an attorney and I'm not really sure I'm

1 always doing the right thing because I tend to just  
2 kind of put it on the table and say this is the way  
3 it is. So again, if I get out of line somehow and  
4 I'm not supposed to be going in a certain direction,  
5 if you'll just let me know, I'll be more than happy  
6 to get where I need to be back on track.

7 JUDGE JORDAN: Sure. We want to make  
8 our procedure available and accessible to people  
9 presenting their own case, and this is even less  
10 formal than a hearing.

11 MS. WEST: Okay.

12 JUDGE JORDAN: So if you just want to  
13 give us a quick summary of -- of your position on  
14 these issues, I think that would be a good way to get  
15 started.

16 MS. WEST: Okay. This property has been  
17 serviced by Cuivre River. I've lived on this  
18 property for almost 13 years. The whole time that  
19 I've lived on this property, this property's been  
20 serviced by Cuivre River. All of the surrounding  
21 properties on my side of the road are all Cuivre  
22 River properties also.

23 I built two houses. There was one  
24 existing house there that was serviced by Cuivre  
25 River and that house was very old. We tore it down

1 and put up a new house, my son lives in that house.  
2 The new house which would have been at then the only  
3 property or house that had never been serviced by  
4 Cuivre River is located on the back of the property.

5 In the front house there is a well.  
6 That well services my business and the barn that's  
7 behind over on this side of the business, but it  
8 services the whole thing because the whole property  
9 is on a well except for the new house in the rear.

10 My -- my problem with this whole thing  
11 is that this well that is in this house, like I said,  
12 supplies water to everyone. Without power, then I  
13 would be without water. Having two suppliers on this  
14 property, first of all, I have to have two poles.  
15 Since it is a business that is here, I have to have  
16 two transformers, two poles. And if Ameren's service  
17 goes out to just this one little house up here in the  
18 front, it shuts my whole business down.

19 I work with live animals, we board  
20 animals. Without water, that's a safety hazard with  
21 animals. There are a lot of things that we need  
22 water to clean up after them. And I guess you could  
23 go along with the argument that says, well, power  
24 won't be out for all that long and, you know, you'll  
25 be able to get your water back, but what you're doing

1 is you're shutting down my business.

2                   Also if there would be a fire or  
3 something like that, it's hard to tell which power  
4 company -- I have employees that work here. I'm not  
5 there all the time, so it's not like this is my house  
6 and this is where I live and I can handle which goes  
7 to where.

8                   But I have employees, and a lot of these  
9 employees are young people because we employ -- I  
10 employ 49 people. And so for them to have to  
11 remember who does what to where, it's a little bit  
12 hard. And that was my safety concern was that how  
13 do -- how do we get this all -- how do we shut power  
14 down if we need to. And I train my employees. It's  
15 not like I just have people running around, but  
16 again, that -- it leads for some confusion on that  
17 part of these people and expecting them to have to  
18 know what all of those things are.

19                   The other part of -- doesn't have  
20 anything to do with safety. If you want me to  
21 address that at a different time, I can, or I can go  
22 on with what I'm saying, yeah.

23                   JUDGE JORDAN: Tell us what -- you have  
24 another grounds for seeking a change of supplier; is  
25 that correct?

1 MS. WEST: Okay. And -- and I would  
2 just like to say something. I keep hearing change of  
3 supplier. I don't consider myself to be changing  
4 supplier, I want to keep the one I have.

5 JUDGE JORDAN: Okay. Now --

6 MS. WEST: I have had Cuivre forever.

7 JUDGE JORDAN: I'm glad you mentioned  
8 that because if I understand correctly, new  
9 construction is supposed to be subject to AmerenUE;  
10 is that correct?

11 MS. WEST: Correct.

12 JUDGE JORDAN: Okay. So AmerenUE has  
13 the right to supply any new construction. That's --  
14 and let me clarify. That's why I -- why I termed  
15 this change of supplier.

16 MS. WEST: Okay. And I understand  
17 where -- to me, it's a play on words.

18 JUDGE JORDAN: Okay.

19 MS. WEST: To me I look at everything on  
20 this property should be Cuivre's. There is no Ameren  
21 on this property at this time.

22 JUDGE JORDAN: Uh-huh.

23 MS. WEST: Ameren was asked to provide a  
24 temporary pole during the construction process and  
25 they said, "Let Cuivre do it, it's not economical and



1 me take your two things. Number one -- you have  
2 another representative if you'd like?

3 MS. OTT: Yes, Dan Beck.

4 JUDGE JORDAN: Dan Beck has -- has come  
5 into the room. Very good. And let me see if I can  
6 get a handle on -- on this arrangement. As Mrs. West  
7 has described it, is that how -- just with regard to  
8 territory and the right to supply, is that how  
9 AmerenUE sees it? Have -- have I accurately  
10 described it?

11 MS. TATRO: Somewhat.

12 JUDGE JORDAN: Okay.

13 MS. TATRO: I mean, the territory -- and  
14 this is all laid out in our answer, and I don't know  
15 that I really need to repeat all of it here, but the  
16 territory is governed by a territorial agreement  
17 which was approved by this Commission --

18 JUDGE JORDAN: Right.

19 MS. TATRO: -- back in 1993 that really  
20 states that new structures are to be served by  
21 AmerenUE. So I -- I understand how she doesn't see  
22 it as a change of supplier --

23 JUDGE JORDAN: Right.

24 MS. TATRO: -- but according to the  
25 rules, I mean, that's -- that's what it is.



1 JUDGE JORDAN: And that's -- that's --  
2 that's been my perspective, and then -- that --

3 MS. TATRO: Yeah. So I --

4 JUDGE JORDAN: -- from the territorial  
5 agreement we're talking about a change.

6 MS. TATRO: Correct.

7 JUDGE JORDAN: Okay. All right.

8 MS. TATRO: I don't know that I really  
9 want to get into all the specifics that she's -- I  
10 mean, that kind of seems to me some of the  
11 information she was just discussing is more  
12 appropriate for a hearing than a --

13 JUDGE JORDAN: Uh-huh, uh-huh.

14 MS. TATRO: -- prehearing conference, so  
15 I -- I -- I won't -- I'll choose not to respond to  
16 some of that right now, although I will say UE has  
17 tried to work with them to determine what kind of  
18 facilities would be placed to serve the property.

19 JUDGE JORDAN: Okay. And Cuivre River,  
20 is this the -- the description that we've given of  
21 the -- the territory and the rights to it pursuant to  
22 agreement, is that -- does that meet your  
23 understanding, Mr. Sporleder?

24 MR. SPORLEDER: Yeah, yeah. We would  
25 concur with that description of the territorial

1 agreement. And from our perspective, we are -- we  
2 are sympathetic to the -- to the Wests' complaints,  
3 but we are -- we're constrained by the -- the legal  
4 requirements of the contract. And that's a really  
5 brief synopsis of our position.

6 JUDGE JORDAN: Well, that is -- that is  
7 fine. That tells me where you're coming from anyway.  
8 And since we are getting into more of the details as  
9 to how this might work or might be worked out or  
10 might not be worked out, this may be a good time for  
11 me to make my exit and for us to go off the record so  
12 that the parties may discuss these issues a little  
13 more freely. Does -- does -- I hope that sounds  
14 appropriate to everyone?

15 MS. TATRO: I think that's fine, your  
16 Honor.

17 JUDGE JORDAN: All right. And -- but  
18 before I go, I want to make sure that I don't leave  
19 without answering anyone else's questions, and -- and  
20 if -- if anyone has any questions for me and wants to  
21 get my perspective on how I see procedures so far.  
22 Yes, Mrs. West?

23 MS. WEST: I -- again, this may not be  
24 appropriate at this time, but there are two parts of  
25 this territorial agreement I would like some

1 clarification on because as I read it as a layperson,  
2 I see it that -- that the definition of structure  
3 would be definitely this house here that was already  
4 there. And then the section 6 on page 5...

5 JUDGE JORDAN: Well, that sounds like  
6 the kind of thing that the parties can help you walk  
7 through.

8 MS. WEST: That -- okay. Okay. That's  
9 fine.

10 JUDGE JORDAN: This would be a good time  
11 for the parties to all walk through these documents  
12 together --

13 MS. WEST: Okay.

14 JUDGE JORDAN: -- and you can share your  
15 views on them and what they require, and that would  
16 be good and the kind of detail I don't need to hear  
17 now and probably ought not to hear just yet.

18 MS. WEST: Okay.

19 JUDGE JORDAN: But certainly, it could  
20 be subject to -- to an evidentiary presentation at  
21 the hearing if we go to hearing. Does anyone else  
22 have any questions for me?

23 (NO RESPONSE.)

24 MR. SPORLEDER: No, no questions, your  
25 Honor.

1                   JUDGE JORDAN: All right. Okay. Well,  
2 in that case, I will take my files and I'll leave the  
3 room and I will leave the line open. All right,  
4 then. We will go off the record. Good day,  
5 everyone.

6                   (WHEREUPON, the recorded portion of the  
7 prehearing conference was concluded.)

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