BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. EA-79-119

In the matter of the application of UNION ELECTRIC COMPANY for permission and authority to construct, operate and maintain two combustion turbine generating units in the State of Missouri.

APPEARANCES: Michael F. Barnes, Attorney at Law, and William E. Jaudes, Attorney at Law, 1901 Gratiot Street, P. O. Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Kent M. Ragsdale, Assistant Public Counsel, Office of the Public Counsel, P. O. Box 1216, Jefferson City, Missouri, 65102, for the Public.

Treva J. Hearne, Assistant General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri, 65102, for the Staff of the Commission.

Daniel F. Lyman, Assistant Attorney General, P. O. Box 899, Jefferson City, Missouri 65102, for the Missouri Department of Natural Resources.

Herman Barken, Associate County Counselor, County Government Center, 41 South Central, Clayton, Missouri 63105, for St. Louis County, Missouri.

REPORT AND ORDER

Introduction

On November 20, 1978, Union Electric Company (Company) filed its application with the Commission, seeking authority to construct, operate and maintain two (2) combustion turbine generating units within its service area, as more specifically described below.

On January 9, 1979, the matter was set for hearing on March 22, 1979, before the Commission in its hearing facilities located in

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the City of Jefferson, Missouri. On February 27, 1979, Staff of the Commission requested that prefiled testimony and exhibits be ordered in this proceeding. On the same date, Company filed an amended application with the Commission. The original application sought authority to place the units at the Company's Meramec Power Plant property. The amended application changes the location of one (1) of the units to the Sioux Power Plant property. Corresponding changes were made in the amended application to reflect the correct electrical capacity figures and costs.

On March 2, 1979, the Commission established dates for the filing of prepared testimony and exhibits. Company and Staff timely filed prepared testimony and exhibits according to the schedule. On March 2, 1979, the Office of the Public Counsel filed certain Interrogatories on the Company. On March 14, 1979, St. Louis County filed an application to intervene, which was granted. The Missouri Department of Natural Resources was granted permission to participate without intervention in the following degree: to be served with copies of the case papers including, but not limited to, all pleadings, transcripts, prefiled testimony and exhibits. On March 21, 1979, Company answered Public Counsel's Interrogatories.

On the day set for hearing, Union Sarah Community Corporation and Utility Consumers Council of Missouri sought a delay in the proceedings by sending a telegram to the Commission. No one representing the aforementioned parties appeared at the hearing and the hearing proceeded as scheduled. At the conclusion of the hearing, the parties waived the provisions of Section 536.070, RSMo 1978, and

expressed their desires not to file briefs. As such, this matter was submitted for decision by the Commission.

On May 4, 1979, the General Counsel of the Commission filed his motion to dismiss this application along with suggestions in support of said motion. On May 25, 1979, Company filed an Answer to the foregoing motion and requested the Commission to deny the same and enter its Order of approval to build the requested units. On June 21, 1979, the General Counsel filed a further motion requesting oral argument in this matter. By Order dated June 29, 1979, the Commission granted the motion for oral argument and the same was held on July 10, 1979. At the conclusion of the oral argument, the matter was again submitted for decision by the Commission.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

I. Company

Union Electric Company (Company) is a Missouri corporation with its principal place of business located at 1901 Gratiot Street, St. Louis, Missouri 63166. Company is engaged in rendering electric service in eastern and central Missouri and steam heating service in a portion of downtown St. Louis. The aforementioned operations are performed under the jurisdiction of the Missouri Public Service Commission. It is also engaged in rendering electric service in portion of Illinois and gas service in Alton, Illinois, and vicinity,

subject to the jurisdiction of the Illinois Commerce Commission, as well as electric service in southweastern Iowa, subject to the jurisdiction of the Iowa State Commerce Commission. Company has approximately 774,000 retail electric customers and fifteen (15) electric wholesale for resale customers in the States of Missouri and Iowa. Company's steam service in downtown St. Louis is offered to approximately 395 customers.

II. Proposed Construction

Company proposes to construct, operate and maintain two (2) combustion turbine generating units. One (1) unit would be constructed on a site at the east-central portion of Company's Meramec Power Plant property and northwest of the power plant proper. The Meramec Power Plant is located at 8200 Fine Road, at the confluence of the Mississippi and Meramec Rivers in St. Louis County, Missouri. The other unit would be built on a site in the central portion of Company's Sioux Power Plant property. The Sioux Power Plant is located in St. Charles County, Missouri, on Highway 94, approximately twenty (20) miles northwest of downtown St. Louis. Both of the proposed units are located within the boundaries of Company's certificated service area.

The two (2) proposed combustion turbine units are oil-fired peaking units. Each unit will have a maximum peak summer capacity rating of 51 megawatts and an operating load summer rating of 48 megawatts. Company's normal practice is to run peaking units at the operating load summer rating to reduce maintenance.

The units' major parts consists of two (2) gas generators and two (2) axial flow turbines which drive a single tandem connected air-cooled generator; an exciter which supplies electric current used to produce a magnetic field in the generator; and two (2) air motors for initial starting.

The two (2) air motors along with their air storage system would provide the units with blackstart capability. The air pack drives the air motor, which in turn starts the turbine until the unit starts firing off its own fuel. This feature enables the units to be started without any external power source. Blackstart capability would be of use in case Company experienced a blackout. In this case the combustion turbines could be running in approximately five (5) to ten (10) minutes. The Company proposes to locate the units at the Meramec and Sioux Plants so the blackstart capability of these machines could be used to start the Sioux and Meramec baseload turbines from a cold start if necessary.

It is estimated that the unit at Meramec would cost approximately $8,800,000, and the Sioux unit would cost approximately $9,700,000. The original plan to place both the units at Meramec would have cost approximately $17,600,000. The additional cost generated by the separation of the units is due to increased equipment cost. Moreover, at the Sioux Plant additional landfill, fuel storage facilities and additional installation and engineering costs would be required.

The units would burn No. 2 distillate fuel oil. The Meramec site has fuel storage of 1,500,000 gallons which provides for 150

hours of operation at a burn rate of 5,000 gallons per hour, for one (1) existing and the proposed unit. The Sioux Plant would have fuel storage of 600,000 gallons which would provide for 120 hours of operation for the one (1) new unit. A 600,000-gallon tank was proposed because its cost is only $100,000 more than a 300,000-gallon tank, and at a future date, another combustion turbine could be built at this location utilizing this tank.

Company anticipates that over the thirty (30) year lives of the units, they will operate between 200 to 400 hours annually. Under peaking conditions, the units can run ten (10) hours per day, five (5) days per week. Company's peak period is during the months of June, July and August.

Company has considered the effect upon air quality in the areas and the units would be designed to comply with federal, state and local air quality and emission standards. All environmental permits have been applied for. Both the Meramec and Sioux units would be in compliance with the noise control code of St. Louis County, although the Sioux unit is located in St. Charles County which has no existing noise control regulations.

Company estimated the installation of the proposed units to cost 18.5 million dollars. Company expects to finance the construction out of funds available in its treasury, a portion of which may be obtained through new financing. The amount and nature of any new financing will be submitted to the Commission for approval.

Company chose the Meramec and Sioux locations for several reasons. First, no additional transmission facilities or manpower

would be required. Second, the units need distilled water to control nitrous oxide emissions and each site has an existing source. The blackstart capability of the units was an integral factor in site selection. The Meramec baseload capacity is located in the middle of Company's system. In the event of a system failure, the peakers could be used to start the baseload turbines. Recovery of the baseload unit could be accomplished in one and one half hours. In addition, the baseload capacity of Meramec is small enough to be brought back up quicker than those located at Labadie and Rush Island. The same reasoning applies to the placement of the other unit at Sioux, which lies in the north part of the system. The placement of the units at Sioux would also provide letdown power to the baseload unit to minimize the chance of damage in a shutdown situation.

Company made the management decision to build these and other units in 1975. The units were ordered in June of 1978.* Late in 1974, Company made the decision to cancel two 600 megawatt coal-fired units being constructed at Rush Island. In Case No. ER-77-154, the Company requested and a majority of the Commission allowed Company to amortize the cost of the canceled Rush Island Units 3 and 4 over a five (5) year period. In March of 1976, Company ordered 165 megawatts of combustion turbines from General Electric. No Commission review or approval was sought by the Company. In May of

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*Company's application was filed with the Commission on November 20, 1978.

1978, Company placed another order for 102 megawatts of combustion turbine capacity.

At the time Company ordered the units, no purchase power contracts had been secured to give Company additional capacity. In October of 1978, total capacity coming into 1979 was reduced by 775 magawatts. The reduction in capacity was caused by a permanent derating of 45 megawatts at Meramec due to the fuel used and a temporary derating of 730 megawatts on units at Meramec, Labadie and Sioux due to environmental problems concerning emissions. At this time, Company sought out power purchases to cover the deratings. In January of 1979, Company contracted for the purchase of JOPPA power in the amount of 500 megawatts, 360 megawatts and 240 megawatts in the summers of 1979, 1980 and 1981 respectively. With the 360 magawatts of JOPPA purchased power, Company's adjusted capacity was 7,035 megawatts. The peak demand was forecasted to be 5,990 megawatts with a corresponding adjusted demand of 5,767 giving Company a reserve margin of 1,268 megawatts or a 22% reserve in 1980.

In view of projected high reserve levels in 1979 and 1980, Staff recommended that Company carry out an aggressive interchange sales program in those years. In addition, Staff considered a combustion turbine schedule for 1981. If Company were to put in this combustion turbine schedule for 1981, Staff saw no point in incurring the additional expense of separating the two (2) 1980 combustion turbine units at this time. However, the Staff recommended tnat since

this combustion turbine would not be needed to meet the 1981 peak demand forecast with a 15% reserve margin, this unit should be eliminated.

Conclusions

The Public Service Commission of the State of Missouri has arrived at the following conclusions:

The threshold question to be addressed in this proceeding is whether electric utilities under the Commission's jurisdiction must obtain our approval through the issuance of a certificate of convenience and necessity before it can build plant within its certificated area.

Initially, it is relevant to discuss what function a certificate of convenience and necessity fulfills in the administrative process. A certificate of convenience and necessity does not grant a utility any powers it does not already possess. On the other hand, a certificate cannot take away any right or power then existing to the utility. The corporate powers of a utility are not found in a certificate of convenience and necessity. State ex rel. City of Sikeston v. Missouri Utilities Company, 53 SW2d 394, 399 (Mo. banc 1932). A certificate only permits a utility to utilize those rights and privileges already conferred upon it. State ex rel. Harline v. Public Service Commission, 343 SW2d 177 (Mo. App. KCD 1960).

In the Harline case, the court held that all corporate powers of a utility are derived from the State by virtue of its

charter, which includes all enacted statutes. A utility derives from Section 351.385, RSMo 1978) all powers necessary or convenient to affect any or all purposes for which it is formed. Section 393.010, RSMo 1978 confers on the utility the special power to manufacture, sell and furnish electricity.

Having considered the above, then of what value is a certificate of convenience and necessity? The Commission is delegated the statutory authority to grant or deny an application for a certificate, after hearing, to protect the public interest. The statutory power gives the Commission a tool to regulate competition between utilities and to avoid the needless duplication of electric facilities. Thus, when a certificate is granted for a certain area, the Commission has determined through findings of fact and conclusions of law that the utility should operate within the certificated area. The certificate is the triggering mechanism that allows the utility to use the powers it already possesses.

Section 393.170, RSMo 1978 entitled "Approval of Incorporation and Franchises-Certificates," provides in part that no electric corporation shall begin construction of an electric plant without first having obtained the permission and approval of the Commission. Section 386.020.5, RSMo 1978 defines electric plant as including all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits,

ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or not be used for the transmission of electricity for light, heat or power. Section 393.120 RSMo 1978 provides that the definitions in Section 386.020 shall apply to and determine the meaning of all such words, phrases or terms used in Section 393.110 to 393.290.

The foregoing Section 393.170 has previously been considered by the courts of this State. The construction emerging from the appellate decisions involving this section is that the "permission and approval" of the Commission, as expressed in a certificate of convenience and necessity, is only required ". . .(1) for any new company or additional company to begin business anywhere in the state, or (2) for an established company to enter new territory." State ex rel Harline vs. Public Service Commission of Missouri, 343, S.W.2d 177, 182. In State ex rel. Doniphan Telephone Company v. Public Service Commission, 377 S.W.2d 469, 474, the Court stated ". . .the Commission shall pass upon the question of public necessity and convenience for any new or additional company to begin business anywhere in the state or for an established company to enter new territory." The most recent case of similar import is Empire District Electric Company vs. Cox, 588 S.W.2d, 263.

The Commission therefore concludes that a certificate is only needed when an electric corporation starts in business or if it attempts to expand its authority in an entirely new area. Such conclusion is entirely consistent with the heading of Section 393.170

entitled "Approval of Incorporation and Franchises-Certificates."

An argument could be made that the above cases are not applicable to the instant situation as they concern transmission lines as opposed to plant. The Commission believes such an argument would be without merit as electric transmission lines are a part of the definition of plant as contained in Section 386.020.

The Commission notes that while dicta, the St. Louis Court of Appeals summarily assumed that proposed plant to be constructed within a certificated area does not need the approval of this Commission by the following statement found in State ex rel. Utility Consumers Council v. Public Service Commission, 562 SW2d 688, 690 (Mo. App. St. Louis 1978):

> Since the plant was to be constructed beyond the regular service territory of the Company, it was necessary to apply to the Commission for a certificate of convenience and necessity.

For a further discussion on this topic see: Public Service Commission v. Kansas City Power and Light Company, 31 SW2d 67, 71 (Mo. banc 1930) and State ex rel. Doniphan Telephone Company v. Public Service Commission, 377 SW2d 469, 474 (Mo. Ap. KCD 1964).

Accordingly, the Commission is of the opinion that it is not necessary for electric utilities to come before us to obtain permission to build plant within their certificated areas. The Commission is cognizant of the fact that a utility has the right to

control and manage its business within certain parameters and that the Commission does not possess the power of management incident to ownership. However, the Commission realizes that the building of plant is a risky and expensive proposition. Therefore, the Commission will entertain requests from utilities to approve plant construction within their certificated areas only if all necessary information and facts are presented for a learned and rational decision. By so doing, the utility would remove the contigency of obtaining a rate base determination after the plant was built, and thus the possibility that the Commission would find and conclude that the plant was not needed after monies had been expended to build the same.

However, in the instant case, the Company has placed the Commission in a position where a meaningful decision cannot be made. The Commission concludes that the application in this matter was not timely filed. The real decision to build the units in question, was made in 1975. When the two (2) Rush Island 600-megawatt units were discontinued, the Company chose to embark on the construction of combustion turbines or to secure adequate purchased power to make up needed capacity. In the instant proceeding, Company divulged that it made plans to construct twenty-eight 50-megawatt combustion turbines to replace 1,200 megawatts of cancelled coal-fired units. The Company made this decision in 1975 but did not ask for Commission review or approval to construct these twenty-eight (28) units. All units were to be constructed within the Company's certificated service area. Due

to a reduced growth of energy demand by its customers, the Company changed its plans once again and decided to seek Commission approval to construct two (2) of the combustion turbines.

Company ordered the units in June of 1978. The original application was filed with the Commission on November 20, 1978. Obviously, the Commission has been put into a position where a meaningful decision cannot be made. Thus, Company's application will be dismissed due to its untimely nature and lack of adequate information. If the Company chooses to construct these units, the determination of whether this plant is appropriate or needed to serve the public interest will be made in a rate proceeding after the plant is constructed and when the Company decides to present it to the Commission.

In summary, the Commission recognizes and concludes that utilities do not have to come before it to obtain authority to build plant within their respective certificated areas. However, if the utility so proceeds without Commission approval, the determination of whether such a unit or units are needed to serve the public will be made after monies have been expended when the plant is proposed to be placed in rate base in a rate case. Such a course of action may not be in the best interests of the utility or the public; therefore, the Commission leaves open the option of approving the addition of plant when and if it is provided with full information and the facts concerning the same. If utilities seek Commission approval of any plant construction in their certificated area or accept Commission

regulation of their expansion plans, the Commission expects their construction programs over the next twenty (20) years to be submitted with full and complete information updated annually. Such information would include all units proposed, projected load forecasts and full cost information to support a least-cost approach to meeting energy needs. Further, in addition to annual updates of all information, the Commission would expect timely information on any changes proposed in such plans.

Having considered the above, the Commission concludes this matter should be dismissed.

It is, therefore,

ORDERED: 1. That the application filed on behalf of Union Electric Company in Case No. EA-79-119, be, and it is, hereby dismissed.

ORDERED: 2. This Report and Order shall become effective October 20, 1980.

BY THE COMMISSION

D. Michael Hearst

D. Michael Hearst
Secretary

(S E A L)

Slavin, Chm., McCartney, Fraas,
Dority and Bryant, CC., Concur.

Dated at Jefferson City, Missouri,
this 20th day of October, 1980.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, this 20th day of October 1980

D. Michael Hearst

D. Michael Hearst
Secretary