BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Union Electric Company for a certificate of convenience and necessity authorizing it to own, control, manage, and maintain an electric power system for the public in most of the service territory of its former subsidiaries.	CASE NO. EA-87-159
In the matter of the application of Ralls Electric Service Co. for permission, approval, and a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage, and maintain an electric distribution system for the public located in the territory encompassing parts of Monroe, Ralls, Pike, Audrain, and Marion Counties.	CASE NO. EA-88-21
In the matter of the application of North Electric Service Co. for permission, approval, and a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage, and maintain an electric distribution system for the public located in the territory encompassing parts of Linn, Sullivan and Putnam Counties.	CASE NO. EA-88-33
In the matter of the application of Howard Electric Service Co. for permission, approval, and a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage, and maintain an electric distribution system for the public located in the territory encompassing parts of Howard, Randolph, Boone, and Chariton Counties.	CASE NO. EA-88-113

APPEARANCES: Debra H. Janoski, Attorney at Law, Katherine C. Swaller, and Paul A. Agathan, General Attorney, P. O. Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Rodric A. Widger, Attorney at Law, Stockard, Andereck, Hauck, Sharp & Evans, P. O. Box 1280, Jefferson City, Missouri 65102 for Howard Electric Service Co., North Electric Service Co., Ralls Electric Service Co., and 43 REA-Financed Electric Cooperatives.

Mark G. English, Deputy General Counsel, 1330 Baltimore Avenue, Kansas City, Missouri 64105, for Kansas City Power & Light Company.

Rex C. McCall, Attorney at Law, 301 East Central, Springfield, Missouri 65802, for the City of Springfield, Missouri and Missouri Association of Municipal Utilities.

Mark D. Wheatley, Assistant Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

Charles Brent Stewart, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On June 8, 1987, Union Electric Company (UE) filed an application, designated as Case No. EA-87-159, seeking a certificate of public convenience and necessity to provide electric service to the public in a substantial area in Missouri previously served by its former subsidiaries.

On August 12, 1987, Ralls Electric Service Co. (RESCO) filed an application, designated Case No. EA-88-21, seeking authority to render electric service as a regulated public utility in some of the same areas sought by UE.

On September 1, 1987, North Electric Service Co. (NESCO) filed a similar application seeking authority to render electric service as a regulated public utility in other portions of the area sought by UE.

On October 8, 1987, Howard Electric Service Co. (HESCO) also filed an application, designated Case No. EA-88-113, seeking a certificate to provide regulated electric service in portions of the area sought by UE.

By orders issued October 20, 1987 and October 28, 1987, the Commission consolidated the applications of RESCO, NESCO, HESCO with that portion of UE's application overlapping the other three requested service areas.

On December 4, 1987, the Commission suspended the proceedings in these cases pending the outcome of a Petition In Quo Warranto filed in the Circuit Court of Boone County, *State of Missouri ex rel. the City of Springfield v. Boone County Electric Cooperative*, Docket No. 427463. That petition challenges the lawfulness of the relationship between Boone Electric Cooperative and Boone Electric Service

Company, which was created and exists under the identical conditions as RESCO, NESCO and HESCO. On July 20, 1988, because of unexpected delays in the resolution of the the Petition In Quo Warranto, the Commission requested comments and suggestions as to whether it should proceed to a decision in these applications. On September 30, 1988, after receiving comments, the Commission ordered the resumption of proceedings. Hearings were conducted on March 2 and 3, 1989.

A discovery dispute has arisen in this matter as a result of refusal of HESCO, RESCO and NESCO to respond to the Commission's order granting the Staff's motion for an order to compel answers to Staff's data requests. During the course of the hearing the Staff's counsel offered an oral motion seeking a Commission finding that HESCO, RESCO and NESCO were in violation of the Commission's February 22, 1989 order. The Staff's counsel further moved for authority to seek statutory penalties against HESCO, RESCO and NESCO for being in violation of the Commission's order. The discovery dispute subsequently was resolved and Staff's motion was withdrawn.

At the conclusion of the hearing a briefing schedule was established. On June 1, 1989, Applicants HESCO, RESCO and NESCO filed their Motion To Suspend Briefing Schedule because of the enactment by the Missouri Legislature of House Bill No. 813. That bill would permit rural electric cooperatives, under certain circumstances, to expand their service in nonrural areas and further authorized the displacement of competition between electrical suppliers by written territorial agreements. The motion recited that intervenor cooperatives might withdraw their opposition to UE's area certificate application if its necessity is tied to territorial agreements and its convenience is measured against possible duplication of facilities. By order issued June 20, 1989, the Commission denied the Motion To Suspend Briefing Schedule.

Briefs and reply briefs have been filed on behalf of the four Applicants in this matter, the Staff, and the Office of the Public Counsel. Reply briefs have been filed by the Missouri Association of Municipal Utilities and a group of 43 Rural Electrification Administration Financed Power Suppliers who intervened in opposition to UE's application.

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:

At the outset of the hearing the parties offered the following stipulation of facts which the Commission adopts as a part of its findings.

> 1. As used in this document the following definitions apply: "Parent cooperative" includes Ralls Electric Cooperative, Inc.; Howard Electric Cooperative, Inc.; and North Central Missouri Electric Cooperative, Inc.; "Subsidiary companies" include RESCO, HESCO and NESCO; "Transmission and Generation Cooperatives" include Northeast Missouri Electric Power Cooperative, Inc.; N.W. Electric Power Cooperative, Inc.; Associated Electric Cooperative, Inc.; and Central Electric Power Cooperative, Inc.; "CFC" means the National Rural Utilities Cooperative Finance Corporation and "REA" means the Rural Electrification Administration.
>
> 2. The following persons, if called to testify at a hearing on this matter, and if asked the questions which appear in their respective pre-filed testimony would respond in the same manner as the answers contained in such testimony: J. C. Boettcher, D. Branstetter, V. Chirnside, D. W. Cobb, H. W. Combs, D. D. Groesbeck, D. L. Hagan, F. J. Hampton, C. M. Hunsel, C. S. Seabaugh, J. L. Smythe, and G. L. Waters; Kansas City Power & Light witnesses: G. A. Bullington and S. W. Cattron; Cooperative Intervenor witnesses: H. Buckallew, R. A. Burton, S. Estes, J. C. Farris, V. Gage, W. Hackman, G. G. Hilkemeyer, W. Honeycutt, B. L. Jahn, D. Nelson, W. E. Oestreich, B. L. Reeves, W. R. Ryan, D. L. Strode, E. Walters, D. H. Wilkerson; HESCO witnesses: R. A. Schmidt, W. H. Duke, and G. Deroos; RESCO witnesses: L. Toth, J. Deal, and G. Deroos; NESCO witnesses: W. H. Duke, R. A. Schmidt and G. Deroos.
>
> 3. Ralls County Electric Cooperative, Inc., North Central Missouri Electric Cooperative, Inc. and Howard Electric Cooperative, Inc. will supply or guarantee all financing required by their respective service companies.

4. RESCO, NESCO and HESCO have not investigated any sources of financing, other than their respective parent cooperatives.

5. The parent cooperatives of RESCO, NESCO and HESCO are contractually bound to purchase all of their electric power needs from their respective transmission cooperatives.

6. The general plant facilities, such as buildings and vehicles owned by the parent cooperatives of RESCO, NESCO and HESCO, will not be transferred to the respective subsidiary service companies.

7. CFC has not agreed nor has it refused to loan funds directly to NESCO, RESCO or HESCO.

8. NESCO, RESCO and HESCO, if granted certificates, may seek to serve in towns of over 1,500 in population "as franchise and certificate authority is obtained."

9. Federal law allows a Rural Electrification Act borrower to invest its own funds or make loans or guarantees not in excess of 15 percent to its total utility plant without restriction or prior approval of the administrator of the Rural Electrification Administration.

10. The Generation and Transmission Cooperatives providing electricity to the parent cooperatives have not "been asked" to allow the PSC Staff to audit their books.

11. Under proposed contracts, RESCO, NESCO and HESCO are not free to contract for power, engineering services or accounting services on their own, but instead would receive such services from their respective parent cooperatives.

12. The parent cooperatives will continue to exist and are legally free to compete with their subsidiary service companies and other regulated utilities in the area sought to be certified though they will have relinquished their existing facilities and easements.

13. The parent cooperatives' area coverage requirements under their REA mortgages obligate the cooperatives to serve all customers within their service territory who request service and who are not already receiving central station service.

14. The parent cooperatives' service territory for REA purposes will be coextensive with its subsidiary service company, but will also include those areas currently served by the parent cooperative but which are not now included in the service companies' applications.

15. The transfer of assets by the parent cooperatives to the service company subsidiaries must be approved by REA.

16. CFC has not committed to loaning funds to the parent cooperatives for purposes of reloaning to the subsidiary service companies though it has expressed a preference for this method when the financial need arises and an application is submitted.

17. There are no customers in the areas sought to be certified who are not receiving or who cannot obtain service within a reasonable time under the line extension policies of either an investor owned utility or a member owned electric cooperative.

18. In all of the counties requested by U.E. in its application electric service may also be obtained from rural electric cooperatives.

19. UE does not have existing facilities in portions of the territory it has requested.

20. UE's planning projections allow for the fact of the existence and service of rural electric cooperatives.

21. The proposed agreements between the parent cooperatives and their respective subsidiaries have not been executed.

22. All electric power suppliers engage in planning for system growth and make investment to meet future needs.

In addition to the Stipulation of Facts offered by the parties, the additional following facts were established by the evidence adduced during the hearing.

UE's Application

UE is a Missouri corporation duly qualified and authorized to operate as a regulated public utility within the meaning of Section 386.020(29), RSMo (Cum. Supp. 1989). The service territory sought by UE includes portions of the territories served by its former subsidiaries. Through mergers and other acquisitions, UE, or its predecessors, have served in portions of the area since approximately 1889. UE holds some area certificates as well as numerous line certificates in its requested service area. Recently UE has been subject to a number of complaints brought by rural electric cooperatives concerning extensions under its line authority. UE's extension policies have also been subject to criticism from the Commission Staff. UE's stated purpose in filing the instant application is to resolve any possible

misunderstanding about its certificated area, thereby minimizing future litigation before this Commission and the courts. By the instant application UE is requesting an area certificate for its existing service territory for which it does not already have an area certificate.

UE has engaged in long range planning to implement what it has always had considered its authority and its obligation to render electric service in the involved territory. The testimony of a number of UE district managers establishes that UE has adequate facilities to serve growth in the area in the immediate future with safe and reliable service. UE's existing distribution system in the area has an original cost of $224 million with an estimated replacement cost of $521 million. UE renders service to an estimated 125,680 customers in the proposed service area and has franchises from each city and county in which it seeks authority. If the area certificate is granted, UE would continue to operate much as it does now in the service territory. The evidence further indicates that UE's planning for the proposed service area is extensive enough that the Company has adequate facilities to handle its expected customer growth as well as the expected customer growth of the involved cooperatives.

There appears to be little doubt, and the Commission so finds, that UE is in all respects qualified and capable to render the proposed service in and around areas near its existing facilities. The service will be merely duplicative of what UE has been doing for years under an assumed authorization.

A group of 43 Rural Electrification Administration Financed Power Suppliers intervened primarily to protest UE securing authority to extend service to areas remote from UE's existing facilities. Cooperative witnesses objected to the possibility of increased duplication no matter how close a prospective customer may be to cooperative facilities. The 16 cooperative witnesses offered substantially the same prepared testimony consisting of 16 questions.

The Commission Staff and the Office of the Public Counsel both generally support the application of UE to the extent that it clarifies UE's present line certificate authority in the general vicinity of existing transmission and distribution facilities. Staff and Public Counsel, however, oppose UE's request for authority for a rural territory in several counties far from existing facilities. Staff opposes UE's request for remote areas because of the perceived liberality of UE's line extension policy. Under UE's current extension policies, UE could provide regulated service by extending lines an unreasonable distance for the contributions received, all to the detriment of existing ratepayers. It is the Staff's recommendation that any certificate granted to UE should include an area within the land sections where UE has existing facilities.

The Commission finds that the Staff's recommendation is consistent with past Commission policy and should be adopted. That recommendation will, to a large extent, respond to the primary concern expressed by the cooperative intervenors in this matter. Moreover, requiring future applications by UE when the public need arises is not perceived to be a substantial burden. The manager of UE's Capital District offered testimony to establish that, in that district, no extensions of more than one mile had been made in five years. Most overhead single-phase extensions were of approximately one-quarter mile in length with only five being in excess of one-half mile within that period of time. That prospective frequency of applications should not be an oppressive burden to UE and its certificate should be limited to the extent recommended by the Commission Staff and Public Counsel.

For all the foregoing reasons, the Commission determines that UE has proved that the public interest would be served by granting UE's application to the extent modified herein.

Electric Service Company Applications

Applicants HESCO, RESCO and NESCO to a large extent will be described collectively since the managers of the three Applicants offered substantially the same prepared testimony. The only significant variations was the first four questions dealing with witness' name, the name of his cooperative, the length of his service, and his background or experience.

The evidence shows that HESCO, RESCO and NESCO are wholly-owned subsidiaries of Howard Electric Cooperative, Ralls County Electric Cooperative and North Central Missouri Electric Cooperative, Inc., respectively. The subsidiaries are organized as general business corporations under Chapter 351 to operate as regulated public utilities under Commission jurisdiction. One hundred percent of the subsidiaries' stock will be acquired by the parent cooperatives along with a note and mortgage on all of the subsidiaries' assets.

Each parent cooperative will have the same board of directors as its respective subsidiary, and the subsidiaries will have no employees and will perform no services for themselves. All personnel and services such as maintenance, new construction, engineering and accounting will be provided by each parent pursuant to a proposed Operating Agreement. Each parent cooperative will pay all of the bills of its subsidiary in exchange for each subsidiary providing all of its income to its parent.

The subsidiaries' financing will be obtained from their respective parents primarily by way of borrowing funds from CFC expressly for the purpose of relending the money to the subsidiary. No other lender has committed to financing the subsidiary companies directly, and no other source of financing has been investigated. CFC is incorporated as a private, not-for-profit cooperative association, under the laws of the District of Columbia. Its principal purpose is to provide its member cooperatives with a source of financing to supplement the loan

program of REA. CFC makes loans to its rural electric utility system members to enable them to acquire, construct and operate electric distribution, generation, transmission and related facilities.

To properly understand the relationship between the various cooperative organizations, it may be helpful to review their history and development as described by the Applicants' chief operating officers. When Missouri Rural Electric Cooperatives were organized in the late 1930s and the early 1940s, each distribution cooperative secured its own local power supplier. As the cooperatives' power requirements increased it was decided that they must acquire their own long-term source. A group of rural electric cooperatives, including Howard Electric Cooperative, formed Central Missouri Electric Power Cooperative. Other distribution cooperatives in Missouri formed additional generation and transmission cooperatives (G&Ts) resulting in the formation of a total of six G&Ts, each supplying power to individual distribution cooperatives in their respective areas of operation. In the 1960s the six G&Ts formed Associated Electric Cooperative, Inc. for the purpose of building power plants to provide the G&Ts with their future power requirements. To supplement its own generation capacity, Associated Electric Cooperative, Inc. contracts for power from different sources, including the Southwestern Power Administration, a federal power marketing agency within the Department of Energy, established to market low cost hydroelectric power produced by certain federal water projects.

The power requirements of each applicant service company will be met by purchases from the parent cooperative under a proposed Power Purchase Agreement. The parent cooperatives are in turn obligated to purchase their power from their respective G&T. G&Ts in turn obtain all of their power requirements from Associated Electric Cooperative, Inc., which has been described a "super" G&T. Under this arrangement the power costs are established solely by the sellers.

The service companies propose a plan to maintain the existing rates presently charged by the parent cooperatives. The Rural Electrification Administration (REA) assists in establishing the parent cooperative's rates and REA must also approve the subsidiary electric service companies involved in these applications before such companies can begin operation. Under a proposed Facilities Purchase Agreement, the subsidiaries intend to acquire the distribution facilities of the parents; however, the general plant facilities, such as buildings and vehicles owned by the parent, will not be transferred.

Although the proposed subsidiaries plan to maintain the same rates presently being charged by the parent, the respective managers testified that they were unaware of the extent of additional expenses which will be incurred by virtue of being a Chapter 351 corporation and a public utility subject to the jurisdiction of this Commission. Some of those costs, which have not been taken into account, are filing an income tax return, paying the Public Service Commission assessment, compliance with the requirements of the Uniform System of Accounts, and payment of fees for a certificate authorizing the borrowing of money.

The prepared testimony of the cooperative managers addresses the justification of public need by stating that the applications are necessary to bring under control the needless duplication of facilities, and to avoid economic waste and destructive competition. During his cross-examinatio, the HESCO manager indicated that the primary reason for the application was to provide territorial integrity and to protect the cooperative's financial investment in the system. The NESCO witness corrected his prepared testimony to indicate that no major duplication between the cooperative's facilities and UE's facilities exist in NESCO's service area. In effect, the NESCO witness removed the most prominent expressed purpose for NESCO's application.

The service company applicants propose the use of a "closer to" principle to establish the authorized provider of service where the proposed service territories of the service company and UE would overlap. In the event that it is impossible to determine which provider of electric service has the closest facilities, the service companies propose that customer preference would prevail. The service company witnesses all stated that a number of states have a "closer to" principle embodied in statutes authorizing state public service commissions to make an allocation of territory. The service company operating witnesses acknowledged that they had not read any of the statutes and did not know, nor could they suggest, the precise method of implementing the "closer-to" plan.

All of the service company witnesses acknowledged that the parent cooperatives would not cease to exist and would still have authority to acquire customers of their own. Moreover, it was acknowledged by some of the service company witnesses that the cooperatives would retain an area-wide obligation to extend service to any customer requesting service. Neither the service area territory allocation nor the "closer to" principle, however, would bind the parent cooperative. In effect, a granting of the service companies' applications would present the possibility of three competitors in the involved territories whereas there are two existing at present.

It was also acknowledged by the cooperative witnesses that granting the service companies' applications, under the circumstances suggested, would not eliminate potential destructive competition for large commercial or industrial loads which may materialize in the service area. If an industrial plant located in the HESCO-UE territory is "closer to" UE facilities, that fact would not prevent the industrial customer from requesting and receiving service from Howard Electric Cooperative. Under those circumstances, the cooperative would still be permitted to pick and choose desirable customers without giving any consideration to the "closer

to" principle. It also was revealed that, in reality, there would still be a fourth unregulated competitor for larger desirable loads. It was acknowledged by the cooperative witnesses that industrial loads were very seldom served by the distribution cooperative such as Howard or Ralls, but those loads were undertaken by the G&Ts. As an example, it was pointed out that the substantial electric load of the Noranda Aluminum Plant at New Madrid, Missouri, was being furnished by Associated Electric Cooperative, the "super G&T".

In considering similar allegations in a prior application for a certificate by a cooperative, the Commission expressed difficulty in seeing how the proposal could achieve the stated goal of avoiding duplication.

> The Commission's jurisdiction over the cooperatives is limited to safety matters pursuant to Section 394.160, RSMo 1986, as amended, and the settling of change of supplier disputes pursuant to Sections 393.106 and 394.315, RSMo 1986, as amended. The Commission lacks the jurisdiction necessary to prevent the cooperatives from duplicating facilities in order to compete for prospective customers unless in so doing the cooperatives violate safety rules or the change of supplier statutes. Section 386.310(2), RSMo 1986, as amended. Sho-Me's General Manager, John Davis, admitted under cross-examination that Sho-Me's proposal provided for no restriction on cooperatives to refrain from extending distribution lines to gain the advantage of being closer to a prospective customer. Therefore, whether or not this certificate is granted, the cooperatives will be free to duplicate facilities in order to compete with other regulated providers there, provided they do so safely. *Application of Sho-Me Power Corporation et al.*, 29 Mo. P.S.C. (N.S.) 415, 418 (1988).

The Commission recognizes that the General Assembly statutorily has allowed competition between and among cooperatives, regulated utilities and municipalities. In fact, the General Assembly again acknowledged such competition with the passage of Section 394.312, RSMo (Cum. Supp. 1989).

The Commission finds that the possibility of controlling duplication by the granting of the instant electric service company applications is to a large extent illusory. When that fact is coupled with the absence of any potential customer being unable to receive service from existing suppliers, the only public need demonstrated

by the electric service company applicants in the instant cases is really the need of service companies or that of their parent cooperatives.

Intervenor Kansas City Power & Light Company (KCPL) is an electric corporation subject to the jurisdiction of this Commission and has been rendering electric service pursuant to area certificates of public convenience and necessity for portions of Howard, Randolph and Chariton Counties for more than 50 years. KCPL has a long history of rendering satisfactory service in the involved service territory and has adequate facilities to continue to absorb the customer increase which has been only approximately 1.6 percent annually in recent years. KCPL opposes the service company applications, especially where HESCO's proposed territory would overlap with KCPL's existing territory.

The Missouri Association of Municipal Utilities (MAMU) protested the granting of the authority sought by the service companies primarily on the grounds that the only real purpose of the applications is to secure protection of the cooperatives from investor-owned utilities. It is also pointed out by MAMU that public convenience and necessity has not been proven since there is no prospective purchaser not presently able to acquire electric service in any of the proposed territories. It is the contention of MAMU that the issue of line duplication is one for the General Assembly to address, not the Public Service Commission.

Both the Commission Staff and Public Counsel urge rejection of the service company applications as not being in the public interest. It is the contention of the Commission Staff that the true motivation behind the applications is to secure territorial protection which the parent cooperatives could not otherwise secure. It is also the Staff's contention that the public would not benefit by regulating subsidiaries of cooperatives as it is unlikely that the existing "single enterprise" structure of the cooperatives will be altered. It is contended that the granting of

the service company applications will add to, not diminish, competition. The Commission concurs in these contentions and shares these concerns.

The proposed electric service company certificate applications are also criticized because of the potential for evasion of meaningful regulation or jurisdiction of the Commission. The briefs of the Staff and the Public Counsel note that the failure of HESCO, RESCO and NESCO to timely provide adequate responses to data requests may be a forewarning of the difficulty being encountered by the Commission Staff in regulating a utility company that is so dependent on an unregulated cooperative parent.

UE, Kansas City Power & Light Company, Public Counsel, and Commission Staff all urge rejection of the service company applications because of the numerous unanswered questions concerning the legality of the relationships between the service companies and the respective cooperative parents. These parties assert that it would not serve the public interest to grant any certificate authority to subsidiaries of electric cooperatives until the Quo Warranto action pending before the Circuit Court of Boone County is resolved.

Reasons for the recommended rejection of the service companies' certificates also include what the Commission perceives to be a valid concern as to the ability of the operations to be financed by CFC. As previously indicated in this Report and Order, the service companies stipulated that CFC has made no agreement to loan such funds and that no other source of financing has been investigated.

Another ground urged for rejection of the proposed service company applications is the potential determination that the cooperatives have no legal authority to loan money to their subsidiaries. All three cooperatives are subject to the provisions of Section 394.080, RSMo which authorizes a cooperative to lend money in only two situations. Cooperatives are authorized to lend money to persons to whom electricity will be supplied for the purpose of wiring their premises. Additional

authority is extended to allow loans for the purpose of constructing, maintaining and operating electric refrigeration plants.

This Commission is unauthorized to resolve any of the legal disputes alluded to by the various parties in this matter. However, the Commission must remain aware of the real world problems created by the potential resolution of those disputes against the cooperatives. The resolution of any one of a number of those controversies unfavorably to the cooperatives would render a fatal blow to the proposed methods of operations as regulated utilities. These potential infirmities lend additional support for denying the service company applications.

For all the foregoing reasons, the Commission determines that HESCO, RESCO, and NESCO have failed to prove that the public interest would be served by granting their respective applications.

Conclusions

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

The instant applications are governed by Section 393.170, RSMo 1986, which requires an electrical corporation to secure a certificate of public convenience and necessity from this Commission prior to construction and operation of an electric plant. The applicable section grants the Commission the discretion to award a certificate if, after hearing, the Commission determines that the requested authority is necessary or convenient for the public service. *State ex rel. Public Water v. Public Service Commission*, 600 S.W.2d 147, 153 (Mo. App. 1980).

Convenience and necessity of the public is of paramount importance and the needs of the applicant utility are "only of secondary importance." *Public Water* at 156. In the case of HESCO, RESCO and NESCO, the actual need has been demonstrated to be that of the applicant service companies, or of their respective parent cooperatives, and no prospective user of their service has supported the service company

applications. To prove "public need" or "necessity" an applicant must show that the additional service would be an improvement to justify its cost and that the inconvenience to the public resulting from the lack of the utility's proposed service is sufficiently great as to amount to a necessity. *State ex rel. Beaufort Transfer Company v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973). To the contrary, the evidence establishes that all prospective users of electric service can secure that service from the parent cooperatives or from UE. Adding yet more suppliers, such as HESCO, RESCO and NESCO, will not diminish, and will only promote, destructive competition. The Commission further concludes that the adoption of the "closer to" framework in lieu of the traditional obligation to serve requirement is not in the public interest and is contrary to long-standing practice. *Sho-Me Power Company, et al.*, 29 Mo. P.S.C. (N.S.) 415, 418 (1988).

To a large extent, the authority of UE to provide service in its proposed service area has been presumed for years through existing line certificates. In recent times the existence of that authority has been questioned. The UE application has been filed only to resolve any potential doubts about its authority to perform the service in which it is actively engaged, such as those raised in *State ex rel. Union Electric Company v. Public Service Commission*, 770 S.W.2d 283 (Mo. App. 1989). UE's application also has been filed in response to the Commission's stated view that it is sound public policy for regulated utilities to convert line certificates into area certificates which more explicitly delineate the geographic territory in which the utilities are authorized to serve. *Sho-Me*, at 420. Even so, the Commission is reluctant to grant authority far abeyond the utility's existing facilities. *Sho-Me*, at 421-22.

This Commission has denied applications for certificates of convenience and necessity by a regulated utility in the absence of requests for the utility's service, even when the available alternatives were unregulated municipal utilities

and rural electric cooperatives. *In the matter of Empire District Electric Company*, 9 Mo. P.S.C. (N.S.) 349 (1960). However, in determining whether or not to grant a certificate, the Commission has consistently required the applicant to demonstrate the adequacy of its financing to permit conduct of the operations contemplated. If the applicant is unable to demonstrate sufficient financial strength, the proposed certificate should be denied. *In re: Miller Communications*, 25 Mo. P.S.C. (N.S.) 339 (1982). While the adequacy of UE's financing clearly has been shown, such is not the case with HESCO, RESCO and NESCO.

Several of the parties urge rejection of the applications of HESCO, RESCO and NESCO under the contention that some of the current activities and some of its contemplated activities are unlawful. This Commission has no power to declare or enforce any principle of law or equity. *Lightfoot v. The City of Springfield*, 236 S.W.2d 348 (1951). For that reason, we conclude that it would be improper for us to attempt to resolve the numerous legal issues inherent in the attacks contained in the briefs of the parties. While we decline to attempt to resolve those issues, the Commission nevertheless cannot simply ignore their potential resolution against the service companies as one of the many factors inherent in a public interest determination under Section 393.170, RSMo 1986.

Finally, the Commission concludes that a grant of authority which would be instrumental in diverting activities and resources of REA cooperatives from their traditional rural role would be an assumption of authority not granted the Commission by the General Assembly. The Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and the powers reasonably incidental to those expressly conferred powers. *State ex rel. and to the use of Kansas City Power & Light Company v. Buzard*, 168 S.W.2d 1044 (1943). The General Assembly of this state created the Public Service Commission for the expressed purpose of regulating public utilities. Subsequently, the General Assembly

enacted Chapter 394 of the statutes of the state of Missouri, thereby creating rural electric cooperatives for the purpose of rendering electric service in rural areas not generally served by public utilities. The General Assembly is well aware of the coexistence of the regulated and unregulated suppliers of electricity and of the competition such coexistence engenders. The Commission notes that the General Assembly recently enacted Section 394.312, RSMo (Cum. Supp. 1989), wherein it provided the alternative of territorial agreements among suppliers to displace destructive competition. While such agreements clearly are voluntary, the Commission encourages all the Applicants herein to earnestly explore this newly-created option. The Commission notes further that Section 386.310, RSMo (Cum. Supp. 1989), precludes the Commission from allocating territory or granting territorial rights among suppliers based on safety reasons. In the absence of a clear legislative mandate for the Commission to assign protected service territories among regulated and unregulated providers of electric service on a statewide basis, the Commission declines to attempt to do so on a piecemeal basis under the scheme propsoed herein by the applicant service companies.

For all of the foregoing reasons, the applications of HESCO, RESCO and NESCO should be denied and the application of UE should be substantially granted, limited to the extent recommended by the Commission Staff in this matter.

It is, therefore,

ORDERED: 1. That the applications of Ralls Electric Service Co. in Case No. EA-88-21, North Electric Service Co. in Case No. EA-88-33 and Howard Electric Service Co. in Case No. EA-88-113 be, and are, hereby denied.

ORDERED: 2. The application of Union Electric Company is hereby granted to the extent described herein.

ORDERED: 3. That within thirty (30) days from the effective date of this Report and Order Union Electric Company shall file for Commission approval proposed

tariffs containing a metes and bounds description of the service area herein involved and a service area map in compliance with 4 CSR 240-2.060(2)(A)(7).

ORDERED: 4. That this Report and Order shall become effective on the 30th day of May, 1990.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch, McClure, and Letsch-Roderique, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri, on this 27th day of April, 1990.