

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of March, 1992.

In the matter of the application of Union Electric)
Company to sell certain substation equipment, or,) CASE NO. EM-92-118
in the alternative, motion to dismiss.)

ORDER APPROVING SALE

On December 2, 1991, Union Electric Company (UE or Company) filed an application requesting the Commission's approval for the sale of certain of its substation equipment to Metal Containers Corporation (MCC). The substation equipment is located in Arnold, Missouri.

With its application UE filed a motion to dismiss citing lack of jurisdiction, which was denied by the Commission on December 20, 1991. The Commission gave interested parties 30 days to intervene and the City of Arnold, Missouri, was granted intervention but subsequently withdrew from this proceeding. The Commission cancelled a prehearing conference set in this case upon withdrawal of the City of Arnold.

On February 27, 1992, the Commission's Staff (Staff) filed a memorandum in this case recommending that the Commission approve the proposed sale subject to three conditions. Company responded to Staff's recommendation on March 5, 1992, and Staff replied to Company's response on March 6, 1992. On March 16, 1992, the Office of Public Counsel (Public Counsel) filed a reply to Company's response.

The Commission, upon consideration of the verified application of Company and the pleadings filed herein by Company, Public Counsel and Staff, determines that a hearing is unnecessary to resolve the matters at issue herein and finds and concludes as follows.

UE is a Missouri corporation with its executive offices at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and provides electric, gas, steam heating and water utility service within this state as a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended.

The Commission has jurisdiction of this case pursuant to Section 393.190, RSMo 1986, which provides, in pertinent part, that no electric corporation shall sell, transfer, or otherwise dispose of any part of its works or system necessary or useful in the performance of its duties to the public without having first secured from the Commission an order authorizing it to do so.

UE proposes to sell a portion of its substation to MCC as a result of which MCC will qualify for Rider B credits thereby lowering the amount MCC currently pays UE for electrical service. UE estimates that the annual level of these credits would be approximately \$83,000. UE states that the net book value of the substation equipment to be sold to MCC is approximately \$10,200 but that said equipment will be sold to MCC for its reproduction cost which is approximately \$40,200. Company anticipates that, if the Commission approves this sale, additional customers will ask to purchase substations and/or transformers in order to receive a more favorable rate. Company estimates roughly that 30 such customers may seek to buy such equipment over the next five years. UE states that the tax impact of such sales would be *de minimus*.

Staff recommends approval of this sale providing that (1) UE makes appropriate accounting entries on the date of retirement of the assets; (2) applicable provisions of the Commission's rule on electric safety, 4 CSR 240-18.010, and in Section 386.310, RSMo (Supp. 1991) are observed; and (3) the gain generated from the sale be given above-the-line treatment as an addition to the depreciation reserve thereby reducing UE's rate base to the benefit of its

customers. Public Counsel recommends approval of the sale if the Commission adopts Staff's third condition, but recommends denial if that condition is not adopted.

Company agrees to the first two of Staff's conditions but opposes the third. Staff supports approval because MCC has stated that it will purchase substation equipment elsewhere if the Commission denies approval of this sale. Therefore, Staff notes that UE will suffer loss of revenue once MCC qualifies for Rider B credits whether MCC buys the substation equipment from UE or another source. Thus, Staff recommends that the sale be approved so that UE obtains the gain from the sale to offset the loss of revenue arising from MCC's qualification for Rider B credits.

Staff argues that the remainder of UE's customers will eventually be asked to pay more in rates to make up for the loss of revenue from MCC and, therefore, the gain from the sale of the substation equipment should flow to UE's ratepayers.

UE opposes above-the-line treatment for the gain from the sale because this Commission has never given ratepayers the benefit of the gain from the sale of utility property. Company points to decisions of this Commission which state that ratepayers do not acquire any right, title or interest in Company's property simply by paying their electric bills and although ratepayers do pay for the operation, maintenance and tax expense associated with utility plant along with a rate of return on it, they concomitantly receive the use of that property. Although UE admits that the Commission has not considered itself bound by previous decisions, UE argues that the Commission should behave consistently with its prior decisions and the general dictates of the Uniform System of Accounts (USOA). Under the USOA, gain on the sale of utility property is generally considered a below-the-line transaction.

Finally, UE argues that any loss from application of Rider B credits will not be borne by UE's other ratepayers until UE's next rate case at which time the net book value of the equipment sold would be removed from rate base.

Staff responds that, while this Commission has yet to allow the gain from the sale of utility property to flow to ratepayers, many other jurisdictions have done so and the Commission has made it clear in the past that it would rule on this question on a case-by-case basis. In addition, Staff asserts that the revenue foregone from MCC as a result of MCC's qualifying for Rider B will be recovered in future rate cases from the other UE ratepayers and will not be offset by a similar reduction associated with the cost of owning and operating the substation.

The Commission may not withhold approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest since to deny a property owner the opportunity to dispose of such assets, in the absence of a showing of detriment to the public, would be to deny the property owner an important aspect of property ownership. *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 335 Mo. 448, 73 S.W.2nd 393, 400 (Mo. banc. 1934). *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2nd 466, 468 (Mo. App. 1980).

The Commission determines that Company's ratepayers will suffer no detriment at this time resulting from this sale. The Commission further determines that Company's ratepayers will be exposed to the risk of detriment in Company's next rate case as a result of this sale and will be protected from such detriment in that future rate case only if the Commission reserves the right to examine the ratemaking treatment afforded this transaction until UE's next rate case and exercises that right at that time.

Because ratepayers will not be exposed to the risk of detriment until UE's next rate case, the Commission will withhold judgment on the treatment of

the gain associated with the proposed sale until UE's next rate case. In UE's next rate case any offsetting effect of removal of the substation from Company's rate base can be weighed against the amount of any revenue loss resulting from the sale which UE might seek to recover in rates from other ratepayers. To the extent that ratepayers are still subjected to potential detriment even considering the effect of the removal of this substation from Company's plant, the Commission will consider the appropriate treatment of this gain to protect ratepayers from all remaining harm.

Based upon the foregoing analysis the Commission determines that no showing of detriment to the public as a result of this sale has been demonstrated and the proposed sale should be authorized.

IT IS THEREFORE ORDERED:

1. That the proposed sale by Union Electric Company to Metal Containers Corporation of certain substation equipment located in Arnold, Missouri, be authorized hereby as set forth in this application of Union Electric Company subject to the conditions set forth herein.

2. That Union Electric Company be directed hereby to enter appropriate accounting entries as outlined by the Commission's Staff as of the date of retirement of the assets described herein.

3. That Union Electric Company be directed hereby to abide by the electric safety requirements set forth in the Commission's Rule, 4 CSR 240-18.010, and in Section 386.310, RSMo (Supp. 1991).

4. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties herein involved or as an acquiescence in the value placed upon such properties by Union Electric Company, and the Commission reserves the right to consider the ratemaking treatment to be afforded this sale and any gain accruing to Union Electric Company as a result of this sale in any later proceedings.

5. That this order shall become effective on the 31st day of March,
1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins, and Kincheloe, CC., Concur.