

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 26th  
day of January, 1993.

In the matter of the application of Union Electric )  
Company for a variance from provisions of ) CASE NO. EO-93-186  
4 CSR 240-14 to meet unregulated competition in a )  
subdivision in Lincoln County, Missouri. )

ORDER APPROVING VARIANCE

On December 10, 1992, Union Electric Company (UE or Company) filed an application to obtain a variance from the Commission's rule concerning utility promotional practices (4 CSR 240-14.010(2)), pursuant to tariff provisions contained in UE's Tariff Sheet No. 163. UE states that the proposed variance will allow it to compete with an unregulated electric cooperative for potential load in a planned development called Royal Oaks Estates subdivision. This subdivision is located north of Troy, Missouri, in Lincoln County.

UE is requesting an order from the Commission granting a variance which will allow it to offer to Mr. Michael Flynn, the developer of the subdivision, the installation of underground facilities at no cost for the Royal Oaks Estates subdivision. Under existing tariff provisions, a contractor is required to pay the additional costs to serve the subdivision underground versus the standard overhead method. The total waived cost pertaining to this application is \$11,500. The Company has requested expedited action from the Commission to provide it the flexibility to respond to the practices of Cuivre River Electric Cooperative (CREC). UE states that if it is unable to match CREC's practices in a timely manner, the Company is of the opinion that the customer may make the decision to take service from CREC in order to proceed with the development. Mr. Flynn has indicated to UE by letter dated August 21, 1992, that CREC has a practice of installing all of the underground facilities at no cost to the developer.

Commission Rule 4 CSR 240-14 allows that a variance from the Promotional Practice rule can be obtained from the Commission by application providing good cause. In its filing, UE stated its good cause to be that the additional service will allow the Company to more efficiently utilize the facilities it already has in place. UE has indicated in its filing that it has electric facilities in the immediate vicinity of the development and is capable of serving the subdivision. UE represents that existing customers may benefit by more efficient use of existing generation, transmission and distribution facilities and contributions the new customers would make toward existing fixed costs.

The Company uses a standard cost of \$1,600 per lot to install the underground distribution system. The total cost to serve this 46 lot subdivision is estimated to be \$73,600. Company has used its "JUSTIFY" program to establish the maximum investment in facilities necessary to support the new customers' anticipated annual revenues. This has been determined to be \$3,371 per residential customer for a total maximum investment of \$155,066.

On January 19, 1993, the Commission's Staff (Staff) filed its recommendation and therein stated that because of the complexity of the "JUSTIFY" program, Staff would need to commit significant resources to make an appropriate analysis.

Staff states that in the Commission's decision in UE's Case No. EO-91-386, the Commission determined that allowing waivers as an incentive to encourage rural electric cooperatives to enter into territorial agreements is in the public interest and overrides the concerns Staff may have with the "JUSTIFY" program. This filing is consistent with those directions to encourage territorial agreements and to afford equitable treatment between UE and CREC. Therefore, Staff recommends approval of this application. Staff also recommends

the ultimate disposition of the expenditures incurred pursuant to this waiver be addressed in the Company's next rate case.

In recommending approval, Staff further states that UE is the local distribution company for natural gas in the City of Troy and has a gas main in the vicinity of the subdivision. The Staff contacted both UE and the developer to question if natural gas was considered as an option for the subdivision. Both UE and the developer represented that extending the gas main was not as economical as the extension of electric service alone. Additionally, the developer noted that he would be required to pay nothing for extensions of electric service, and electric homes with ground source heat pumps were easier to sell than homes with gas furnaces. The developer also confirmed that CREC had made an offer to install free underground service.

On November 19, 1992, UE and CREC filed a joint application for approval of a written territorial agreement relating to a portion of St. Charles County, Missouri (Case No. EO-93-166). Staff further recommends UE continue its efforts to reach territorial agreements with CREC.

Having considered UE's application, attached exhibits, and Staff's recommendation, the Commission finds that good cause exists to approve the requested variance for reason that it will encourage UE and CREC to consummate further territorial agreements, it will avoid needless duplication of services, and it will allow UE to more efficiently use facilities already in place, all of which will be in the public interest. As no thorough analysis has yet been done of the UE "JUSTIFY" program, the Commission will take no position in that regard.

IT IS THEREFORE ORDERED:

1. That Union Electric Company is granted a variance from 4 CSR 240-14.010(2), pursuant to Union Electric Company's Rule III R. Unregulated Competition, Schedule 5, Sheet No. 163 of Union Electric Company's current tariff, which variance permits Union Electric Company to waive its excess

underground charges to provide service to a subdivision located north of Troy, Missouri, in Lincoln County, and known as Royal Oaks Estates.

2. That nothing in this order shall be construed as a finding by the Commission of the reasonableness or prudence of this expenditure of funds by Union Electric Company and, in addition, that this expenditure and disposition of funds for ratemaking purposes will be addressed in Union Electric Company's next rate case.

3. That this Order shall become effective on the 5th day of February, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

McClure, Chm., Rauch, Perkins,  
and Kincheloe, CC., Concur.  
Mueller, C., Dissents in separate  
opinion.

DISSENTING OPINION OF COMMISSIONER ALLAN G. MUELLER

CASE NO. EO-93-186

I respectfully dissent from the majority opinion in this case. Evidence in this case is insufficient to allow Union Electric Company (UE) to provide underground electric service at no cost to the developer. It is obvious that the developer is playing off the interest of the two possible providers of electric service, UE and Cuivre River Electric Cooperative (CREC), in order to get the best deal for installation of the underground electrical service. The developer is not concerned about the ultimate consumer or the general body of UE's ratepayers. No evidence is presented by the developer regarding the reliability of service or the difference in the rates charged to the residential class.

Evidence presented in this case is weak, at best, regarding the threat of CREC to provide the underground electrical service. The only document indicating the willingness of CREC to provide service at no cost is a rather informal letter by the developer, dated August 21, 1992, stating that

"It is common knowledge that Cuivre River Electric Cooperative will install all electric facilities underground at no cost to the developer of a residential subdivision."

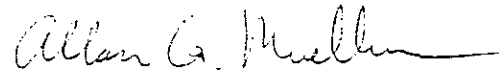
There are no documents from CREC stating that they will provide this service at no cost to the developer nor are there any sworn statements by the developer that he has made contact with CREC.

It may be to the benefit of the Commission and ratepayers that the next variance request of this type be set for an expedited oral hearing and a bench decision based on the evidence presented and questions asked. If the Commission continues to give carte blanche approval of variances to regulated utility companies in competition with the electric cooperatives there will never be an

incentive for both parties to sit down and negotiate a fair and equitable territorial agreement.

This case is a prime example of the need for territorial agreements between the electric cooperatives and regulated utilities and it is hoped that both entities consider the seriousness of developing these agreements. For this reason, I do not concur with the majority in this case.

Respectfully submitted,

A handwritten signature in cursive script, reading "Allan G. Mueller", written in dark ink.

Allan G. Mueller, Commissioner