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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of January, 1993.

In the matter of the application of Union)
Electric Company for a variance from provisions)
of 4 CSR 240-14 to meet unregulated competition) Case No. EO-93-156
in a subdivision in Cole County, Missouri.)

ORDER APPROVING VARIANCE

On November 12, 1992, Union Electric Company (UE) filed an application requesting a variance from the Commission's Promotional Practices Rules (4 CSR 240-14.010 et seq.) to waive its excess underground charge in order to provide underground electrical service to a subdivision currently under construction located in Cole County, Missouri. An unregulated rural electric cooperative, Three Rivers Electric Cooperative (TREC), may also provide underground service to the subdivision and, as it is unregulated, may offer said service at no cost. UE seeks a variance from Chapter 14 of the Commission's Promotional Practices Rules as Chapter 14 currently prohibits the no-cost installation of underground electrical lines. UE is a Missouri corporation with its principal place of business located at 1901 Chouteau, St. Louis, Missouri 63103, is engaged in the business of the transmission and sale of electrical service in the State of Missouri and, as such, is regulated by the Commission as an electrical utility.

As good cause for the variance, UE states that it is faced with unregulated competition by TREC, which is in a position and is allegedly willing to install electrical underground facilities at no cost to the contractor in a subdivision called Bradford Court, located generally five miles east of Jefferson City, Missouri near Taos, Missouri and fully described in Exhibit 2 of UE's application. UE further states that it has facilities in the immediate vicinity, is capable of serving the subdivision, and by doing so, more

efficiently use the facilities it already has in place. UE maintains that it has made financial analysis of the proposed service in accordance with its "JUSTIFY" program, finding that the anticipated revenue from the development supports the proposed expenditure of funds. Finally, UE believes that, to the extent it is unable to compete with TREC, TREC will be unwilling to negotiate appropriate territorial agreements, thus causing needless duplication of facilities.

The Staff of the Commission (Staff) filed its recommendation in this matter on December 15, 1992. Staff stated that, pursuant to the Commission's decision in Case No. EO-91-368, also involving UE, the Commission has determined that allowing waivers as an incentive to encourage rural electric cooperatives to enter into territorial agreements is in the public interest. Staff states that this request by UE is consistent with the Commission's policy. Although Staff expressed some concern with the UE "JUSTIFY" program and, due to its complexity, did not complete a thorough analysis of UE's cost figures, Staff recommends approval of this application.

Staff noted additionally that correspondence and meetings have been recently held between UE and TREC regarding a territorial agreement, the latest meeting being October 11, 1992.

Having considered UE's application and attached exhibits and Staff's recommendation, the Commission finds that good cause exists to approve the requested variance for reason that, (1) it will encourage UE and TREC to consummate a territorial agreement, (2) it will avoid needless duplication of services, and (3) it will allow UE to more efficiently use facilities already in place, all of which will be of benefit to the public and in the public interest. As no thorough analysis has, as 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 UE's current tariff, which variance permits UE to waive its excess underground charges to a subdivision known as Bradford Court Subdivision located near Taos, Missouri only, as set out in Exhibit 2 of Union Electric Company's application.

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

3. That this order shall become effective on the 15th day of January, 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-93-156

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 Three Rivers Electric Cooperative (TREC), 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 or the treatment plant.

Evidence presented in this case is weak, at best, regarding the threat of TREC to provide the underground electrical service. The only document indicating the willingness of TREC to provide service at no cost is a rather informal memorandum addressed to "Larry" by the developer stating that "Three Rivers Electric has offered to install all of the above items plus several others at no cost...." There are no documents from TREC 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 TREC. The Order approves a variance for that portion of the subdivision outlined in Exhibit 2 (engineering drawings), however, there is a reference made by the developer in his request to UE that the subdivision will be built in two stages. It is unclear whether Exhibit 2 includes both stages of the subdivision.

UE's evidence using the "JUSTIFY" program is, at best, also weak. The "JUSTIFY" program does not seem to be much more than a cursory review of the number of lots times the average kilowatt hours sold on the UE system. The

"JUSTIFY" program, in my opinion, does not seem to be as complicated or complex as indicated by the Staff and could be more clearly and thoroughly explained by the parties.

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,


Allan G. Mueller, Commissioner