

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 29th
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 in)
Clay County, Missouri.)
CASE NO. EO-93-221

ORDER DENYING APPLICATION

On January 12, 1993, Union Electric Company (UE) filed an application with the Commission requesting a variance from the Commission's promotional practices rules to allow UE to engage in a competitive bidding procedure to serve a proposed regional airport in Clay County, Missouri. In its application, UE requested waiver of certain charges normally collected from certain new customers in order to allow it to compete with an unregulated utility (Platte-Clay Electric Cooperative, Inc.) in the bidding process for potential load of a planned regional airport, to be located near Mosby, in Clay County, Missouri. In addition, UE requested a protective order for information filed separately under seal, which order was granted by the Commission on January 15, 1993. Finally, on January 22, 1993, Platte-Clay Electric Cooperative, Inc. (PCEC) filed a motion to intervene in this matter which was denied by the Commission on January 27, 1993.

UE is a Missouri corporation with its principal place of business located at 1901 Choteau, 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. PCEC, the apparent competitor in this bidding process, is a rural electric cooperative under Chapter 394, RSMo, engaged in the business of distributing electricity to its members, including those in Clay County, Missouri, and as such is unregulated by the Commission as to its rates, charges, terms and conditions of service.

UE, as good cause for this requested variance, states that PCEC in the upcoming bidding process to provide service to a proposed regional airport, is not regulated regarding the services it may offer as an inducement for potential customers to choose its service. UE is regulated by this Commission and is generally prohibited from competing for new electrical customers by offering services for less than actual cost. UE further states that it is UE's understanding that the electrical supplier of the airport will be regarded as a "partner" in the development of a planned adjacent industrial park, a theoretically high growth area. In addition, under protective order, UE provided the Commission with a report containing the proposed terms and conditions of the bid and UE's economic justification for those figures.

The Staff of the Commission (Staff) filed its recommendation in this matter on January 27, 1993. While the overall Staff recommendation in this matter stated that the application should be approved, this recommendation contained several substantial reservations and was not in any way unanimous among the contributing staff members. Staff's overall recommendation was to approve the requested variance subject to several caveats, those being - (1) that UE continue its efforts to reach territorial agreements with PCEC, (2) that UE account for any charges waived pursuant to the application as a credit to the plant in service account, i.e., as if no waiver of the tariffed charges had occurred and UE had collected the tariffed charges, and (3) that the Commission's Order include language stating that approval does not constitute any determination of the ratemaking treatment to be accorded this transaction and that such determination will be made in UE's next ratemaking case. This final provision is typically a standard part of the Commission's Order in cases granting waivers of this nature.

Staff, in support of its recommendation, first states that the accounting treatment is appropriate for two reasons, those being -- first, that

any facilities installed by UE pursuant to this waiver will still represent contributed plant, but with UE in effect being the contributor, and second, the Staff feels that this recommendation is fully consistent with UE's statement in its application that it recognizes it will have the burden of proof in subsequent rate cases to recover waived costs from ratepayers.

Finally, Staff states that in 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 in this matter. Staff states that Commission approval of this filing would be consistent with the Commission's policy in previous cases in that it may encourage territorial agreements.

Alternatively, in Staff's filing, substantial concern was expressed regarding the financial justification for granting of this waiver and for the overall outlay of funds by UE to complete the project. Staff concludes that the anticipated load does not justify the expense. In addition, Staff states that economic justification for the waiver depends on at least three additional factors, none of which are predictable and, additionally, the timing of additions and upgrades to subtransmission lines, distribution substations, and distribution backbone lines to serve the area. This opinion was based on review of the economic justification used by UE and filed under a protective order with the Commission.

It was also pointed out by Staff that UE did not use its "JUSTIFY" program to establish the maximum investment in facilities necessary to support the new customers' anticipated annual revenues. UE states that the "JUSTIFY" analysis was inappropriate in this situation and that UE used "more specific" costs.

Having fully considered UE's application and concurrently filed confidential material and Staff's recommendation, the Commission finds, for the

following reasons, that good cause has not been shown to exist sufficient to justify approval of the requested waiver in this case.

First, in regard to UE's failure to use their "JUSTIFY" program, this failure is regarded as problematic by the Commission. It has been UE's consistent practice in the past to use this system of cost analysis on virtually all of UE's waiver requests. UE has consistently maintained that the "JUSTIFY" system is accurate in assessing the cost benefits of various capital outlays to build load. UE maintains that the instant request is singularly unsuited to application of the "JUSTIFY" analysis, partly due to the speculative nature of the project. UE's failure to use a cost-analysis program relied on by UE itself in many prior applications in combination with UE's explanation that the project is unsuited to analysis under the program is, per se, sufficient reason for the Commission to regard the request for waiver as being contrary to the Commission's current promotional practices policy and lacking in good cause.

Secondly, in regard to the nature of the proposal by UE, the Commission holds that, in agreement with portions of Staff's recommendation, the transaction itself is far too speculative to be regarded as cost effective. Before UE's own cost justification would be successful, no fewer than three future occurrences must take place in a favorable fashion, none of which have any guarantee of happening. This venture could be regarded, not as a prudent business investment, but rank speculation. The Commission holds this type of activity does not reflect the current posture of the Commission in the granting of waivers of the promotional practices rules nor does it reflect what the Commission considers to be in the best interest of ratepayers or the general public.

Thirdly, the Commission holds that the granting of this waiver would not encourage the negotiation of territorial agreements by UE but would, in fact, discourage them. It is the Commission's position that granting a waiver based on this type of speculative situation would be a clear abrogation of the

promotional practices rules and is certainly not the posture of the Commission. The instant promotional practices rules were designed to prevent regulated utilities, and, therefore, monopolies, from forcing ratepayers to bear the burden of needless and inefficient expenditure of funds for unnecessary promotional activities. As the Commission has stated previously, on occasion and in the right circumstances, the Commission has the authority, and does, waive the promotional practices rules allowing the regulated utilities to freely compete in the market place without being bound by various tariff restrictions. This, however, is a much different situation than the Commission has been presented with in the recent past, as pointed out above, and is clearly not in the public interest.

Therefore, for the above reasons, the Commission holds that the application for waiver filed by UE is denied.

IT IS THEREFORE ORDERED:

1. That the application for waiver filed by Union Electric Company on January 12, 1993, is denied for reasons as set out above.

2. That this Order shall become effective on the 9th day of February, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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