

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 7th  
day of April, 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 ) CASE NO. EO-93-266  
Cole County, Missouri. )

ORDER APPROVING VARIANCE

On March 23, 1993, 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 an excess underground charge to provide trench, conduit and service cable for underground service to a branch bank building of Mid American Bank, currently under construction by Mr. Ken Otke, and located in Wardsville, Cole County, Missouri. An unregulated rural electric cooperative, Three Rivers Electric Cooperative (TREC), is also capable of providing underground service to the building and, as it is unregulated, may presumably be capable, if not willing, to offer that 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 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 requested variance, UE states that it is faced with unregulated competition by TREC. In its application UE states, as support for the proposition that TREC is willing to furnish the requested service at no charge, "Mr. Otke has implied that TREC is interested in serving the bank building. Mr. Otke represented that it is TREC's common practice to provide underground free of charge." UE further states that it has facilities which are

located on or immediately adjacent to the property in question. UE maintains to the extent it is unable to compete with TREC, TREC will be unwilling to negotiate a territorial agreement with UE. UE states that the cost to provide the underground service for which it seeks the waiver is less than the estimated annual revenue from the service and is "...within the spirit of its tariffs...".

The application also contains a request for 10-day expedited treatment, for reason that "A delay in approval beyond ten days from the date of filing of this application will grant TREC additional time to induce Mr. Otke to take its service and increase the possibility that he will have to take service from TREC in order to proceed with the building."

The Staff's recommendation was filed on April 2, 1993. In its recommendation Staff points out that UE did not use its "JUSTIFY" program to establish the maximum investment in facilities necessary to support the new customer's anticipated annual revenues. Staff states, however, that the annual net revenue estimated by UE is greater than the estimated overhead distribution extension costs, which the Staff states satisfies UE's Tariff Sheet No. 149.

Staff visited the site and stated in its recommendation that it "...is convinced that there will be some very limited duplication of UE's existing facilities if TREC serves the customer." Staff found that TREC's distribution line was across the street from the site while the UE line runs near the bank property line. Staff attempted to obtain the terms of TREC's offer from UE, but to no avail, as UE informed the Staff that TREC had advised Mr. Otke not to disclose those terms.

Staff stated pursuant to the Commission's decision in Case No. EO-91-386, also involving UE, that 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 and overrides the concerns the Staff may have regarding UE's estimates of long-run costs and revenues of this

project. Staff states that approval of this agreement may provide incentive to negotiate territorial agreements for the cooperative but may act as a disincentive for UE. Finally, while recommending approval of the application, Staff recommended the ultimate disposition of the expenditures pursuant to the waiver be addressed in UE's next rate case, and that UE continue its efforts to reach territorial agreements with TREC.

Having considered UE's application, and the Staff's recommendation, which Staff notes was completed in an expedited fashion only with difficulty due to the lack of substantive information from UE, the Commission reaffirms its policy in regard to the encouragement of territorial agreements as set out in Case No. EO-91-386. That policy, as reiterated in several subsequent decisions, states that request for variance will be granted on a showing of good cause for reason that (1) the consummation of territorial agreements will be encouraged, (2) needless competition and duplication of services, which will be counterproductive and non-beneficial to ratepayers, will be avoided, and (3) facilities will be used in an efficient manner. The Commission would clearly state that the good cause showing offered by UE in this particular request is marginal regarding the possible duplication of services, the threat of competition by TREC, and any encouragement which might be provided for either Company to engage in territorial agreements.

Perhaps the most obvious deficiency presented in UE's application is the assumption that TREC is willing to furnish approximately \$4500 worth of service at no charge merely to build load and prevent UE from obtaining this account. No affirmative statement is cited in UE's application showing any actual commitment which has or may be made by TREC, to say nothing of actual documented verification. In this regard, the Commission will no longer accept a showing of good cause premised on assumptions, implications, or unfounded potentialities.

Additionally, the Commission is of the opinion that, in a case of this nature, cost figures presented without any supporting documentation are totally inadequate to demonstrate the economic benefit of such a proposal. No indication exists as to how either the cost figures or the revenue figures offered by UE were determined. The Commission has never been, and is not now, inclined to grant variances on unsupported figures such as those presented by UE.

Finally, it is the opinion of the Commission that this case is a prime example of the need for the rapid development of territorial agreements between the regulated utilities and electric cooperatives. The Commission has no future intention of giving carte blanche approval of variances of this type without a clear and substantial good cause showing by the utility of the need for and feasibility of such a variance.

IT IS THEREFORE ORDERED:

1. That Union Electric Company is granted a variance from the provisions of 4 CSR 240-14.010(2), pursuant to tariff provisions contained in Union Electric Company's Tariff Sheet No. 163, which variance permits Union Electric Company to waive its excess underground charges for a building currently under construction in Wardsville, Missouri, to be a branch bank of Mid American Bank.

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 ratemaking procedure.

3. That this Order shall become effective on the 20th day of April,

1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

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