

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 28th
day of August, 1992.

In the matter of the application of)
Union Electric Company for a variance)
from provisions of 4 CSR 240-14 with) CASE NO. EO-93-16
regard to Three Rivers Electric Cooperative)
in a subdivision in Cole County Missouri.)

ORDER GRANTING VARIANCE AND OVERRULING VARIOUS PLEADINGS BY COOP

On July 16, 1992,¹ Union Electric Company (Company or UE) applied pursuant to 4 CSR 240-14.010(2) for an expedited Commission order authorizing UE to install, at no cost, underground electrical distribution facilities to serve approximately ninety (90) single family homes in Scarborough Estates and Westport subdivisions, in Cole County, Missouri.

Company seeks a variance from Chapter 14 of the Commission's Utility Promotional Practices Rule. Unless waived or varied for good cause, Chapter 14 prohibits the no-cost installation of underground electric lines as Company herein proposes.

Company's verified application states that the variance should be granted because: (a) UE is faced with unregulated competition by Three Rivers Electric Cooperative (Coop), which is in a position to install a no-cost underground electrical distribution system in the area sought by Company; (b) Company has an in-place distribution system and customer base on three sides of the subdivisions it now proposes to serve, and it would promote efficiency to also extend service to the new areas; (c) Company has a favorable estimate regarding its cost recovery for said installation,² and (d) Company agrees that

¹Unless otherwise stated, all dates occur in 1992.

²Company states the undergrounding will cost \$105,289.00.

it has the burden to prove, in its next rate proceeding, that the cost of such installation should be recovered from Company's ratepayers.

On July 17, Coop filed a six page pleading designated as an "answer" wherein Coop makes a "response" to UE's application, complains of lack of formal notice regarding same, denies certain facts alleged by UE, and concludes with Coop's "suggestion" that the Commission deny UE's motion for expedited treatment, set the case for hearing, and "declare that it does not have the jurisdiction to grant the variance requested."

On July 24, UE filed comments primarily addressing Coop's answer filed on July 17. UE therein suggests that the Commission treat Coop's answer as an application to intervene, deny said application, or - in the alternative -that the Commission find that Coop's answer was "improperly filed."

On July 27, Coop filed "opposing comments" apparently intended to further dispute UE's variance request. Coop's opposing comments conclude as follows: "WHEREFORE, on the basis of the foregoing, Three Rivers respectfully suggests that Union Electric Comments not be well taken, and this case should proceed under contested case rules. In the alternative, should the Commission agree with any of the 'comments' of Union Electric, Three Rivers respectfully requests that it be specifically granted leave to file a motion to intervene with supporting suggestions." On the same day, Coop filed a Motion to Compel Answers to Data Requests.

On July 28, Coop moved to dismiss UE's variance request, stating that there was no "immediate and clear need" for the variance. The record reveals no further pleadings or filings in this matter by Coop.

On August 18, the Staff of the Missouri Public Service Commission filed its recommendation, a copy of which was provided to Coop. At page 2, Staff states "there have been several filings in this case which would appear to make it more complex and confusing than the typical underground waiver case. However,

the confusion injected by these filings during July, 1992 does not necessitate disapproval of this waiver request."

The Commission concludes that the "filings" Staff refers to are those filed by Coop, a somewhat bewildering collection of an answer, suggestions, responses, requests, motions, and argument. Coop has never filed an application to intervene, as required by Commission Rules. As a result, Coop's "Answer" enjoys no status as a legal pleading; the same is true regarding Coop's late-filed responses, requests, motions, and suggestions. Nor is Coop's July 27th request for leave to file a motion (quoted above) an application to intervene. No would-be party to any matter before this agency is required to seek the Commission's "leave" to seek intervention; nor does any procedure exist whereby one must first obtain leave to file a "motion" to intervene. Those seeking intervention simply follow the Commission Rules and apply for intervention. As stated, leave to apply, or to file a motion to apply, is not - and has never been - required. Nor does the Commission choose to characterize Coop's Answer as an application to intervene, as UE has suggested. Coop has never applied to be a party, and cannot become a party simply by filing things. The Commission therefore denies and overrules Coop's gratuitous filings.

Staff recommends that UE's application for variance be approved, although noting that Staff does not agree with, and cannot audit, UE's "Justify" Program. Company used said program to establish what would be, in UE's view, its "maximum" permissible investment in this project. Said program, according to UE, would justify an investment of \$301,680.00.

Notwithstanding its Justify Program, Company estimates that its undergrounding costs in this matter will be \$105,289.00. Staff also recommends that UE continue its efforts to enter into a territorial agreement with Coop. The Commission concurs: a territorial agreement would eliminate the need for

applications of this nature and, over time, conduce to efficiencies by both UE and Coop.

Having considered Company's verified application, and Staff's favorable recommendation and attached schedule 1,³ the Commission finds that good cause exists to approve said variance. Said variance will permit Company to more efficiently utilize the electrical facilities it already has in place; this variance will also permit Company to meet unregulated competition by Coop without penalizing UE's ratepayers. In addition, granting said variance may encourage UE and COOP to, at some future point, enter into a territorial agreement.

IT IS THEREFORE ORDERED:

1. That Union Electric Company is hereby granted a variance from 4 CSR 240-14.020(5)(6), pursuant to Rule III R. Unregulated Competition, in Schedule 5, Sheet No. 163, of Union Electric Company's current tariff for electrical services; said variance permits Company to waive its excess underground charges now prescribed by tariff and extends only to the undergrounding of electrical distribution facilities to serve approximately ninety (90) single family homes in Scarborough Estates Subdivision and Westport subdivisions, in Cole County, Missouri.

2. That all motions, responses, answers, requests, and other filings made herein by Three Rivers Electric Cooperative are overruled.

3. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of the value for ratemaking purposes of the construction project herein involved, nor as an acquiescence in the value placed upon said construction project by Union Electric Company or any other party with an interest in said project.

³Schedule 1 purports to show 29 instances where, since 1985, Coop has installed no-cost underground facilities to various developers and customers.

4. That this order shall be effective on September 9, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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