

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 6th  
day of May, 1994.

In the matter of the application of )  
Union Electric Company for a variance )  
from provisions of 4 CSR 240-14 to ) CASE NO. EO-94-224  
meet unregulated competition in )  
Clay County, Missouri. )

ORDER GRANTING VARIANCE

On January 24, 1994, Union Electric Company (UE) filed an application seeking a variance from the Commission's promotional practice rule (4 CSR 240-14). UE states that the requested variance is necessary in order for it to compete with the Platte-Clay Electric Cooperative (Cooperative) for potential load at a planned regional airport in Clay County Missouri.

The Clay County Regional Airport Committee (Committee), the developer of the airport, has required that electric lines within the airport be installed underground for safety reasons. UE estimates the total cost of the project will be approximately \$75,000 and that it will receive approximately \$77,000 in annual revenues based on the anticipated electricity usage of the airport. UE's tariff allows for the installation of overhead facilities at no cost to the customer if the anticipated annual revenues exceed the cost of the extension. If the customer requires underground facilities, the customer is responsible for the difference in cost between overhead and underground facilities. UE is seeking a variance that would allow it to waive the additional cost for underground facilities at the airport which totals approximately \$25,274. UE also proposes to provide the underground lighting conductors and scrapped mercury vapor street lights at no charge to the airport.

In it's application, UE offers three reasons it believes to be good cause for allowing the requested variance:

1. The \$25,274 to be waived is a minimal amount;
2. The service will be economically compensable to UE because the anticipated revenues will exceed the cost of the facilities within one year of initial service and it will position UE to be the electric supplier to a planned

industrial park adjacent to the airport; and

3. The Cooperative will be unwilling to negotiate territorial agreements if UE is unable to compete with the Cooperative.

On February 17, 1994, the Office of the Public Counsel (Public Counsel) filed a response to UE's application. Public Counsel does not take a position on the application itself, but requests that, if the application is approved, the Commission also allow UE to enter into an agreement with the airport to convert the mercury vapor lights to more energy efficient high-pressure sodium lights.

On March 17, 1994, the Staff of the Commission (Staff) filed a memorandum recommending that the Commission deny UE's application. In support of its recommendation, Staff states that because of the closed bid process, the Commission has no way of verifying the Cooperative's offer to the Committee. Staff argues that if UE believes customers such as the airport are economically compensable, then UE should modify its line extension policy to allow for the inclusion of additional underground costs if it meets UE's revenue tests, thereby eliminating the need to request a variance. Staff also states that, according to indications from UE, UE has not contacted the Cooperative for the purpose of negotiating a territorial agreement. Staff opines that it is not reasonable to use "unwilling to negotiate" as good cause if UE has not made an effort to contact the Cooperative concerning this issue within the last twelve months. Staff further states that UE has not complied with the provisions of 4 CSR 240-14.040 (2) which prohibits public utilities from offering or granting any additional promotional practice until a tariff filing showing the addition or variation has been made with the Commission. The rule also requires a copy of the filing be furnished to each public utility providing the same or competing utility service in any portion of the service area of the filing utility.

Staff points out that on January 29, 1993, the Commission denied a similar application by UE to obtain a variance from the promotional practices rule for the same proposed airport. Staff also points out that it is not recommending below-the-line accounting treatment for the charges proposed to be waived, but requests that, should the Commission approve the application, the Commission

reserve the right of Staff to propose such below-the-line treatment in future dockets. Furthermore, Staff recommends that, should the Commission approve UE's application, the approval should be subject to the following conditions:

1. That the Commission specify it is not acquiescing to any particular ratemaking treatment and that the ultimate disposition of this transaction will be addressed in UE's next rate case;

2. That UE be required to make an effort to reach a territorial agreement with the Cooperative;

3. That UE comply with 4 CSR 240-14.040 (2).

On March 25, 1994, UE filed a response to Staff's recommendation. UE objected to the recommendation that it be required to make an effort to reach a territorial agreement with the Cooperative stating that such a requirement would compel UE into a negotiation that may not be beneficial. UE also stated that it has attempted to negotiate a credible territorial agreement with the Cooperative, but that the Cooperative has a competitive advantage in the area and unless the Cooperative has something to gain from a territorial agreement, it will have no incentive to make significant compromises. UE argues that while it understands the benefit of territorial agreements, it should not be compelled into negotiations which divert efforts from productive negotiations with other electric cooperatives for less productive or harmful negotiations.

Upon review of UE's application, Public Counsel's response, Staff's recommendation, and UE's subsequent response, the Commission finds that UE has shown good cause for approval of the requested variance in this case. The record shows that the service UE seeks to provide will be economically compensable to UE within one year of initial service and that the amount to be waived by UE is minimal. Furthermore, UE must be able to compete with the Cooperative for the Cooperative to have any reason to negotiate with UE. In Case No. EO-91-386, the Commission determined that allowing promotional practices waivers as an incentive to encourage electric cooperatives to enter into territorial agreements is in the public interest and overrides Staff's concerns. The Commission is of the opinion that a variance in this case is consistent with its directives to encourage

territorial agreements and would provide an incentive for the Cooperative to negotiate with UE.

The Commission notes that on January 29, 1993, in Case No. EO-93-221, it denied UE a variance for the same proposed airport. The waiver was denied because UE had not used its "JUSTIFY" cost analysis program, the Commission considered the proposal to be too speculative, and the Commission found that the speculative nature of the proposal would discourage territorial agreements.

It should be pointed out that Staff has not objected to the "JUSTIFY" program not being used by UE in this case. Staff and UE indicate that the program is designed to apply to residential subdivisions and does not work for commercial or industrial customers. The Commission also points out that UE's proposal in this case is far less ambitious and speculative than its proposal in Case No. EO-93-221. The risk of loss to UE has been greatly reduced in this case because the amount to be waived by UE is much less than that proposed in Case No. EO-93-221.

The Commission acknowledges that it cannot verify the Cooperative's offer because of the closed bid process used by the Committee. However, the Cooperative's history has been that it has consistently provided customers such as the airport with underground facilities at no additional cost. Nothing has been shown to indicate that the Cooperative will alter what has been its consistent practice.

The Commission agrees with Staff that UE should consider modifying its line extension policy. However, the absence of such an action by UE is irrelevant to the issue of whether good cause exists to grant UE a variance in this case.

The Commission also agrees that UE should continue efforts to negotiate a territorial agreement with the Cooperative. However, negotiations must work both ways and the Commission is of the opinion that a variance in this case will allow UE to compete with the Cooperative and provide the Cooperative with an incentive to negotiate.

Furthermore, Staff is correct when it states that UE has not yet complied with 4 CSR 240-14.040 (2). However, UE cannot file a tariff showing an

additional promotional practice until that promotion has been allowed by the Commission. When the variance has been granted in this case, UE should fully comply with 4 CSR 240-14.040 (2).

Concerning Staff's request that the Commission reserve Staff's right to propose below-the-line accounting treatment in future dockets, Staff may make any proposal it wishes, but the Commission will withhold judgement until such proposal is made. Likewise, Public Counsel has requested that the Commission allow UE to enter into an agreement with the Committee to convert to high-pressure sodium lights. UE is free to enter into such an agreement, but the Commission will reserve judgement until such time as UE has submitted the agreement for approval.

Pursuant to 4 CSR 240-14.010 (2), the Commission may grant variances from its promotional practices rule for good cause shown. The Commission has found that UE has shown good cause to be granted a variance in this case. Thus the Commission determines that UE's application for a variance from the Commission's promotional practices rule should be approved.

**IT IS THEREFORE ORDERED:**

1. That Union Electric Company is hereby granted a variance from the provision of 4 CSR 240-14, as contemplated by this Order.
2. That, notwithstanding Ordered Paragraph 1, Union Electric Company shall fully comply with the provision of 4 CSR 240-14.040 (2).
3. That Union Electric Company shall pursue discussions of territorial agreements with all of its competing electric cooperatives.
4. That nothing in this Order shall be considered as a finding by the Commission of the reasonableness of the expenditures incurred pursuant to the variance granted by this Order.
5. That the Commission reserves the right to consider the ratemaking treatment to be afforded the expenditures incurred pursuant to the variance granted by this Order.

6. That this Order shall become effective on May 17, 1994.

BY THE COMMISSION

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins  
Crompton, CC., Concur.  
Kincheloe, C., Absent.