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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re Union Electric Company: request for a blanket waiver)
of underground charges, temporary service charges and meter) Case No. EO-90-31
charges in the city of Kearney.)
)

APPEARANCES: David C. Linton, Attorney, and Paul A. Agathen, General Attorney,
Union Electric Company, 1901 Chouteau Avenue, Post Office Box 149,
St. Louis, Missouri 63166, for Union Electric Company.

Rodric A. Widger, Stockard, Andereck, Hauck, Sharp & Evans, Post
Office Box 1280, 301 East McCarty Street, Jefferson City, Missouri
65102, for Platte-Clay Electric Cooperative, Inc.

Michael C. Pendergast, Regulatory Affairs Attorney, The Kansas Power
and Light Company 818 Kansas Avenue, Topeka, Kansas 66612, for The
Kansas Power and Light Company.

John B. Coffman, Assistant Public Counsel, Office of Public Counsel,
Post Office Box 7800, Jefferson City, Missouri 65102, for the Office
of Public Counsel and the public.

Robert J. Hack, Assistant General Counsel, Missouri Public Service
Commission, Post Office Box 360, Jefferson City, Missouri 65102, for
the staff of the Missouri Public Service Commission.

HEARING

EXAMINER: Cecil I. Wright.

REPORT AND ORDER

On August 11, 1989, Union Electric Company (UE) filed an application requesting the Commission authorize UE to waive underground charges, temporary service charges and meter base charges in the city of Kearney, Missouri. The Commission gave notice of the application. The Kansas Power and Light Company and Platte-Clay Electric Cooperative, Inc., filed timely applications to intervene which were granted.

A hearing was held in this matter January 19, 1990, and parties have filed their briefs.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Union Electric Company (UE) is a regulated public utility corporation which provides retail electric service under certificates of convenience and necessity granted by this Commission. UE, as a regulated public utility, provides service under rates and conditions as prescribed by tariffs approved by this Commission. In this case UE seeks authority to waive the provisions of its tariffs which establish charges for underground extensions, temporary service, and meter bases for new customers in Kearney, Missouri. Kearney is a municipality with a population, based upon the 1980 census, of 1,433. Through growth and annexations, it is expected that Kearney's population will exceed 1,500 persons at the time of the 1990 census.

UE has authority to serve a portion of Clay County, Missouri, which includes the city of Kearney. UE, or its predecessor, Missouri Power & Light Company, has served the city of Kearney since the 1920s. Platte-Clay Electric Cooperative, Inc. (Platte-Clay) provided service to areas outside Kearney's municipal boundaries but as Kearney expanded, areas served by Platte-Clay were annexed. The evidence indicates that UE now has approximately 482 customers in Kearney while Platte-Clay has approximately 552 customers. Because of the historical development, UE serves the center or core of Kearney and Platte-Clay serves the area surrounding the center.

Since 1986 UE has added 19 new customers in Kearney while Platte-Clay has added 229 new customers. Some of the new customers added by Platte-Clay were at locations where UE had provided service in the past. Platte-Clay, through an aggressive marketing program, has effectively prevented UE from adding new load in Kearney. One of the reasons for Platte-Clay's success is that it does not charge new customers for meter bases, undergrounding or temporary service. Platte-Clay installs the meter bases and owns them. Platte-Clay can install underground extensions in this area at

less cost than overhead and so does not charge for undergrounding. Platte-Clay provides temporary service without charge in anticipation that it will provide permanent service to the customer.

UE's tariffs require UE to charge a customer for underground extensions where the underground costs are more than the overhead costs. UE will provide the overhead extensions at no charge. Since UE estimates its underground costs using a company average, its underground costs are more than overhead costs. This is true even though the soil conditions in Kearney are such that underground facilities might actually cost less than overhead. UE tariffs establish a charge for temporary service and UE requires the customers to pay for meter bases.

The crux of this case is that before the passage of Section 394.080.2 in 1989 UE was assured of being the only supplier of new retail electric service in Kearney once Kearney exceeds 1,500 residents in the 1990 census. With the passage of this new statute allowing a cooperative to continue to serve new customers where the cooperative is the predominant supplier, UE is now faced with the possibility of continued competition from Platte-Clay within Kearney after 1990. While this competition is not a certainty, since no court has yet decided what conditions make a cooperative the predominant supplier, UE's request for a blanket waiver is a response to the possibility of this continued competition.

The Commission is acutely aware of the competition between cooperatives and regulated utilities. This competition is allowed through the statutory scheme enacted by the legislature and the Commission has addressed this competition through grants of waivers for regulated utilities for specific customers or developments where there is unregulated competition. As regulated utilities have followed the population into rural areas, competition has intensified. The Commission has not been granted the authority to divide and assign territory among the competing suppliers and therefore can only provide minimal relief to the regulated utility where the competition from an unregulated cooperative justifies a waiver of a regulated utility's tariff.

Under Commission jurisdiction, rates charged by public utilities must be just and reasonable and provided subject to tariffs approved by the Commission. A function of the just and reasonable consideration is whether the rates recover the costs of providing the service. The majority of a regulated utility's ratepayers should not be required to pay rates which allow a minority of ratepayers to receive service at a lesser rate or without charge without a reasonable justification. A waiver of the charges requested by UE would mean all ratepayers would cover the costs unless the revenues generated were compensatory.

The Commission is particularly concerned about a request for a blanket waiver since it will not be able to look at the costs being waived for a particular customer nor at the revenue to be generated by that customer. Usually the revenues generated by a new customer must recover the costs in a one to three year period before the Commission approves a waiver of any charges. This calculation, though, does not include energy costs. A blanket waiver would remove the Commission's oversight.

Staff has proposed the Commission grant the blanket waiver but only until December 31, 1991. Staff proposes at that time the Commission review the costs incurred by UE pursuant to the waiver and the revenues generated to determine whether to extend the waiver for an additional period.

The Commission finds that the granting of a blanket waiver in this instance is not reasonable. Two factors weigh against such a grant. First, the provisions of Section 394.312, R.S.Mo. (Cum. Supp. 1989), provide for cooperatives and regulated utilities to avoid destructive competition by entering into territorial agreements which specifically designate the electric service area served by each. The Commission believes that only through these territorial agreements can the duplication of facilities now occurring be prevented under the current statutory scheme. Platte-Clay is now duplicating UE's facilities in Kearney while UE, by this case, is seeking authority which would allow it to duplicate Platte-Clay's. The Commission is unaware of any attempt by UE or Platte-Clay to avoid duplication by means of a territorial

agreement. The Commission finds that granting UE this waiver at this time will not be in the best interests of UE's ratepayers or other citizens of Missouri and suggests that the suppliers earnestly consider the alternative of a territorial agreement.

The second factor is UE's new tariff approved by this Commission in November 1989. This tariff will reduce the time for reviewing specific requests for a waiver of tariffed charges. Commission Staff has indicated its intention to process these requests within ten days.

UE's witness Alberti testified that UE's reputation in Kearney was such that few persons considered UE as a potential supplier. Alberti testified the new tariff would not provide an adequate remedy to this conception. The record shows that since November UE has made no requests for waiver under its new tariff and UE has made little or no effort to utilize that tariff to meet Platte-Clay's competition.

The Commission has determined that UE will not be granted the blanket waiver at this time. Authorizing additional duplication of facilities is not in the public interest and the Commission will not authorize such duplication without first encouraging the parties to attempt to negotiate a territorial agreement. The legislature has provided this new method of reducing the competition among suppliers of electric energy and the Commission believes the negotiation process should be given a chance.

In addition, UE has made no attempt to utilize its new tariff which substantially reduces the time needed to approve specific waivers. Until some attempt is made to utilize this tariff the Commission does not believe granting a blanket waiver is appropriate.

The Commission, though, cannot justify allowing cooperatives to encroach on territory where regulated utilities have historically served or are in a better position to serve. The cooperative's policies of offering undergrounding free of charge, no charge for temporary service and no charge for meter bases places

regulated utilities at a disadvantage. If a territorial agreement is not forthcoming between Platte-Clay and UE, the Commission may, in the future, determine that a blanket waiver is the only method by which UE can effectively compete with Platte-Clay. If no agreement is reached by December 31, 1990, the Commission would expect UE to again seek a blanket waiver as sought in this case.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction over the subject matter of this case pursuant to the provisions of Chapters 386 and 393, R.S.Mo. 1986. Commission rule 4 CSR 240-14.010(2) provides for waiver of tariffed charges for good cause shown where the waiver would constitute a promotional practice. UE in this instance has sought a blanket waiver of the tariffed charges for underground extensions, temporary service and meter bases within the city of Kearney.

The good cause advanced by UE in support of the waiver is the competition of Platte-Clay for customers within Kearney and the policies of Platte-Clay which allow Platte-Clay to provide underground extensions, meter bases and temporary service free of charge.

The competition between a cooperative, such as Platte-Clay, and a regulated utility, such as UE, is authorized by the legislature since this Commission has been provided no authority to assign service territories as between regulated utilities and cooperatives. In deciding whether a public utility should be granted a certificate of convenience and necessity to provide utility service to an area, the Commission considers whether the competition which would occur if the certificate is granted would be undesirable and whether it would be a duplication of service. *State ex rel. Public Water Supply District No. 8 of Jefferson County v. PSC*, 600 S.W.2d 147, 154 (Mo. App. 1980). The Commission's responsibility is to determine whether the competition would be in the public interest and the interest of the utility is secondary. 658 S.W.2d 448, 454 (Mo. App. 1983).

Similar considerations occur when the Commission must decide whether to allow a regulated utility a blanket waiver of tariff provisions so it can compete with an unregulated cooperative. The Commission must consider whether the competition and duplication of facilities which would occur is desirable and in the public interest.

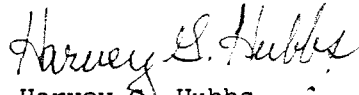
The Commission has found in this case that a blanket waiver is not in the public interest at this time. The intent of the provisions of Section 394.312 is to encourage voluntary territorial agreements as a substitute for competition. The Commission has found and concludes that a blanket waiver should not be granted which would result in additional competition and duplication until the parties have an opportunity to negotiate an agreement. The application for a blanket waiver will be denied.

It is, therefore,

ORDERED: 1. That the application of Union Electric Company for a blanket waiver of underground charges, temporary service charges and meter base charges in Kearney, Missouri, is hereby denied.

ORDERED: 2. That this Report And Order shall become effective on the 1st day of May, 1990.

BY THE COMMISSION


Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
McClure and Letsch-Roderique, CC.,
Concur and certify compliance with
the provisions of Section 536.080,
R.S.Mo. 1986.

Dated at Jefferson City, Missouri,
on this 20th day of April, 1990.