

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Tri-County Electric Cooperative Association,)
)
Complainant,)
)
v.) Case No. EC-90-355
)
Union Electric Company,)
Respondent.)
)

In the matter of the application of Union Electric)
Company for a certificate of convenience and necessity)
authorizing it to construct a line in Adair County,) Case No. EA-90-250
Missouri.)
)

In the matter of Union Electric Company's request for)
waiver of certain tariff charges to Mr. Larry Hays) Case No. EA-91-54
in Adair County, Missouri,)
)

APPEARANCES: David C. Linton, Attorney, Union Electric Company, 1901 Chouteau,
Post Office Box 149 (M/C 1310), St. Louis, Missouri 63166, for Union
Electric Company.

Rodric A. Widger, 301 East McCarty Street, Post Office Box 1280,
Jefferson City, Missouri 65102, for Tri-County Electric Cooperative
Association.

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 March 21, 1990, Union Electric Company (UE) filed an application
requesting a certificate of convenience and necessity to construct distribution lines
and provide service to three persons in an unincorporated area of Adair County,

Missouri. That application was docketed as Case No. EA-90-250. The Commission ordered that notice of the application be given and an intervention date was set.

Tri-County Electric Cooperative Association (Tri-County) filed a timely application to intervene in Case No. EA-90-250 to which UE objected. On June 18, 1990, Tri-County filed a complaint against UE alleging that UE had constructed the distribution lines for which authority was sought in Case No. EA-90-250. Tri-County's complaint was docketed as Case No. EC-90-355. By order issued July 27, 1990, the Commission consolidated Cases No. EA-90-250 and EC-90-355 and granted Tri-County intervention in Case No. EA-90-250. The Commission also established a procedural schedule and set the matters for hearing.

On August 20, 1990, UE filed an application requesting a waiver of underground service charges for one of the persons for which authority to serve was sought in Case No. EA-90-250. The Commission, by order issued September 4, 1990, consolidated Case No. EO-91-54 with Cases No. EA-90-250 and EC-90-355 and modified the procedural schedule established in the latter dockets, but the same hearing dates were retained.

On October 11, 1990, UE filed an amended application in Case No. EA-90-250 requesting an area certificate of convenience and necessity rather than the line certification that it originally requested. UE requested an area certificate for sixteen square miles of territory in Adair County which included the territory where the original line authority was sought. UE also asserted that it had authority to serve the area requested in the amended application pursuant to the Commission decision in Case No. EA-87-159. The Commission by order issued October 26, 1990, denied a motion of Tri-County to suspend the procedural schedule in these cases.

Hearings were held in these cases on November 20, 1990. Briefs have been filed and these cases are ready for Commission decision. This Report And Order will address the three consolidated cases together since the issues involved overlap.

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.

EA-90-250

Union Electric Company, UE, is a regulated public utility which provides retail electric service to customers throughout a major portion of the state of Missouri, including Adair County. Although UE provides service to a large area of the state, it provides service by line certificate authority in many areas rather than by area certificates. This case originated when UE sought line certificate authority to build three extensions to its then-existing facilities in Adair County. UE sought authority for a line extension of approximately 1.2 miles from an under-build on a certificated 69 kv line to a subdivision on the property of Dwayne Pratte. This extension was proposed to be constructed along Highway 11. The second extension was from the Pratte property continuing along Highway 11 to the intersection of Farm Road 375-C and then along Farm Road 375-C to the property of Raymond and Annette Sweet, a distance of 1.8 miles. The third extension was proposed to be constructed from the intersection of Highway 11 and Farm Road 375-C continuing along Highway 11 for approximately 0.5 miles to the property of Larry Hays.

UE received a request to serve the Pratte property in December 1989. Dwayne Pratte, the owner of the property, also requested UE to waive its underground charges and temporary service charges to the proposed subdivision and installation charges for ten dusk-to-dawn lights. UE sought and obtained a waiver of the charges as requested, EAO 979, issued March 7, 1990. UE decided it could provide service to the Pratte property as a reasonable extension from a certificated line, and construction on the extension to the Pratte property was completed in April 1990. The extension to the Pratte property cost approximately \$34,928.

The second extension of the distribution line was requested by Annette Sweet, a UE employee. Sweet is proposing to build a home and wanted UE to provide electric service to that home. Sweet and her husband signed a revenue guarantee for the extension in which the Sweets are obligated to pay UE a minimum of \$44.53 per month for 36 months regardless of electricity used. The Sweet property is within one mile of the 69 kv line certificated in Case No. 16,577. The extension to the Sweet property has been completed at a cost of approximately \$51,132.

Larry Hays sought UE service to his proposed subdivision development in May 1990. UE filed its waiver request with the Commission on May 14, 1990. UE completed the extension to the Hays property on May 27, 1990. The Hays property is located within 1.5 miles of the 69 kv line certificated in Case No. 16,577. James C. Boettcher, District Manager of UE's Green Hills District, testified that the extension to the Hays property was built from the Sweet extension rather than the 69 kv line for engineering reasons. The cost of the extension to the Hays property is approximately \$39,392.

Tri-County Electric Cooperative Association, Tri-County, is a rural electric cooperative which supplies retail electric energy to customer members in Adair County. Schedules 1A and 1B to Exhibit 1 are maps which show the customers served by UE and Tri-County prior to and subsequent to the extensions which are the subject of these cases. These maps show that Tri-County has existing customers and facilities along Highway 11 where UE built the line extension to the Pratte, Sweet and Hays properties. Tri-County serves the Hays home near the property to which UE built the extension. UE had no other customer or distribution facilities in the area before these extensions.

By its amended application UE requested a certificate of convenience and necessity for 16 square miles of territory in Adair County. This area includes the three sections which include the property requested to be served by the line certificates in this case. UE has existing facilities in three other sections of the

16 square mile area requested. Staff indicates that although UE has received inquiries concerning service in the area, the only developments are at the Pratte and Hays properties. Staff also points out that the Commission has yet to issue an order in UE's area application case, EA-87-159, which will set the boundaries of UE's service territory based upon distribution lines existing on a set date.

In its initial decision in Case No. EA-87-159, the Commission granted UE area authority where it had distribution facilities. RE: *Union Electric Company Application (NE)*, Case No. EA-87-159 et al., Report And Order issued April 27, 1990; and RE: *Union Electric Company Application (NW)*, Case No. EA-87-159 et al., Report And Order issued April 27, 1990. The Commission granted a rehearing on the issue of which of UE's lines are distribution lines and has not issued its decision on rehearing.

In this case the evidence is that UE only has lines providing service in six sections of the 16 square mile area sought, including sections where the extensions in these cases are located. UE adduced little evidence of a need for service, except for a few inquiries, in the sections where it has no lines. The Commission finds that UE's evidence is insufficient to support a grant of area authority to all sections in the 16 square mile area sought.

Since three sections, those other than the sections where the extensions in this case are located, will be included in the area certificate to be granted in Case No. EA-87-159 if distribution facilities are located in those sections, the Commission will not grant an area certificate for those sections in this case. The decision in EA-87-159 will establish UE's service territory boundaries and whether those three sections should be included will be decided in that case.

The Commission finds that UE shall be granted area authority in any section where the extension to the Pratte property is located. The extension to the Pratte property was made pursuant to the Commission rulings concerning reasonable extensions from existing certificated lines. Also, the Commission approved a waiver of charges

for the extension in EAO 979. The Commission in EA-87-159 will be eliminating UE's line certificate authority for distribution service, and the granting of area authority for any section where the Pratte property extension is located is consistent with that decision.

The Commission finds that UE built the extensions to the Sweet and Hays properties without authority. UE filed this application in EA-90-250 to obtain authority to build the extensions. UE then built the extensions prior to a Commission decision. Under the Commission decisions concerning stacking of extensions, UE was required to obtain additional authority before building the extensions to the Hays and Sweet properties. RE: *Union Electric Company Waiver of Underground Charges (Union Electric Waiver)*, 29 Mo. P.S.C. (N.S.) 468 (1988); RE: *Howard Electric Cooperative v. UE (Howard Electric)*, 29 Mo. P.S.C. (N.S.) 474 (1988).

It is true that in Case No. EO-88-278 the Commission approved a stacked extension because of its proximity to an existing certificated line. RE: *Union Electric Waiver* at 471. The Commission, though, found that under the particular circumstances in that case that the stacked extension was reasonable and that it did not believe UE was attempting to extend into territory which it had not sought to serve. Those circumstances are not present in these cases and the evidence is that UE is seeking authority to serve in territory where it has not previously sought to serve. The existence of the 69 kv line does not alter this finding since UE served no customer from that line in these sections. In addition, the Commission specifically stated in the *Union Electric Waiver* case that until a decision was reached in EA-87-159 UE must seek additional authority to build extensions from extensions. RE: *Union Electric Waiver*, at 471. UE sought the authority required and then proceeded to build the extensions prior to the authority being granted.

The evidence concerning the costs of the Sweet extension reinforces the Commission's decision. The extension to the Sweet property cost \$51,132. Only one home is planned currently on the Sweet property and revenue generated after three

years will total \$1,603.20. For UE to build this extension without authority and with little chance of covering the costs over three years is imprudent.

Since the Sweet extension has been constructed the Commission finds that it would be unreasonable to require UE to remove the facilities. These facilities may at some time produce sufficient revenue to justify their cost. Rather than ordering the facilities to be removed, the Commission will not allow inclusion of the costs associated with the Sweet extension in rate base for recovery from other ratepayers.

The Hays extension suffers from the same infirmities as does the Sweet extension. UE sought authority to build the extension and then built it before it received the authority. The Hays extension is subject to the same policy stated by the Commission in the *Union Electric Waiver* case; that authority must be obtained before building an extension from an extension. Also, the evidence indicates that UE would not have built this extension if the waiver had been denied, but UE did not wait for approval or denial of the waiver to construct the extension.

As with the area in which the Sweet extension is located, the Commission, rather than order the facilities removed, finds it is more reasonable to disallow inclusion of the cost of the facilities in rate base. Since the facilities have been constructed and the Commission has expressed its belief that UE's line certificates should be absorbed by area certificates, the Commission will grant UE authority to serve in the three sections where the Pratte, Sweet and Hays extensions are located. If at some later time UE believes sufficient service is being provided from these lines to warrant their inclusion in rate base, UE may at that time seek Commission approval of rate base treatment of these facilities.

EC-90-355

Tri-County alleges in its complaint that UE did not have authority to make the extensions to the Pratte, Sweet and Hays properties. Tri-County also alleges that UE induced Pratte to take UE service with the promise of trees for landscaping Pratte's property. The evidence indicates that there was no such inducement. UE

employee Annette Sweet did make inquiries concerning trees for Pratte but not as part of the agreement to serve his property.

The Commission has addressed the lawfulness of the extensions in its decision above in Case No. EA-90-250.

EA-91-54

UE requested a waiver for underground charges for the Hays property on May 14, 1990. When Staff had not responded to that request, UE proceeded to build the extension and file a formal application for waiver of the charges. UE witness Boettcher testified that UE would, reluctantly, forgo recovery of the waived charges for the Hays extension. Boettcher also testified that if the Commission had denied the waiver request, UE would not have built the Hays extension.

Between March 7, 1990 and May 14, 1990, Commission Staff began a reconsideration of its procedures for determining whether to recommend a waiver of underground charges to meet unregulated competition. Specifically, Staff began considering costs other than waived charges in evaluating whether the revenue generated was sufficient to make the waiver economic. These other costs are the costs of facilities needed to extend service to the new customer(s), other distribution costs, and the costs of added generation capacity.

The cost of the Hays extension is \$39,392 and there is no guarantee of any recovery of these costs except the \$4,140 already received. A 14-home subdivision is planned by Hays but if and when the homes will be built is pure speculation. UE has sought a waiver of underground charges for the Hays property. UE did not have authority to serve the property and it is not reasonable to assume a waiver of charges would be granted before authority was granted. The Commission finds that the charges should not be waived; or, in the alternative, the Commission will grant the waiver if UE agrees that the amounts waived shall not be recovered in rates from other ratepayers.

Conclusions of Law

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

The Commission has jurisdiction over Case No. EA-90-250 pursuant to the provisions of Section 393.170, R.S.Mo. 1986. The Commission has jurisdiction over Case No. EC-90-355 pursuant to the provisions of Section 386.390, R.S.Mo. 1986. The Commission has jurisdiction over Case No. EA-91-54 pursuant to Section 393.130, R.S.Mo. 1986, and 4 CSR 240-14.010(2).

The Commission addressed the issue of UE extending service from existing certificated lines in two definitive cases. *Union Electric Waiver*, at 468; *Howard Electric*, at 474. In these cases the Commission recognized that UE had authority to make reasonable extensions from certificated lines but held that building a second extension, or "stacking" of extensions, was not authorized. *UE Waiver* at 471; *Howard Electric* at 477. To eliminate the problem UE filed an application for an area certificate, Case No. EA-87-159, to convert the areas served by line certificates to area certificates. A final decision is still pending in Case No. EA-87-159 to determine the exact boundaries of UE's service area.

The Commission has found that based upon prior decisions, UE could extend service to the Pratte property as a reasonable extension from a certificated line. The Commission found also that based upon its policy of encouraging area certificates, a certificate of convenience and necessity shall be granted for any section in which the Pratte extension is located. The Commission concludes that the granting of this authority is necessary and convenient for the public service.

The Commission has found that the extensions to the Sweet and Hays properties were built without authority. The Commission has determined UE should not be rewarded for proceeding with the construction without proper authority. The Commission, though, based upon its findings concerning these two extensions, concludes that UE should be granted an area certificate for the sections in which the Sweet and

Hays extensions are located. The Commission concludes that the granting of this authority is necessary and convenient for the public service.

In this case, though, UE built the facilities without obtaining authority and the Commission concludes these facilities should not be included in rate base. Although there is always some regulatory lag, the Commission's authority cannot be ignored. The Commission has concluded further that waiver of underground charges for the Hays property is not warranted unless UE agrees to absorb the lost revenue. It is unreasonable for UE to expect a waiver of charges for service to a location for which it did not have authority.

Under Missouri statutes, competition between regulated suppliers of retail electric energy and other suppliers, such as Tri-County, is allowed to occur. The Commission must decide, in each instance where a regulated utility seeks to serve additional territory, whether that service is in the public interest. Although duplication of existing facilities of nonregulated suppliers of retail electric service is a factor, it is not determinative. The Commission is not empowered to allocate service territory between regulated and nonregulated suppliers of retail electric service, and the only provision for allocation of service areas is by voluntary agreement pursuant to Section 393.312, R.S.Mo. (Cum. Supp. 1990). Since the Commission cannot allocate territory, its primary concern is whether it is reasonable to allow a utility to extend service into additional territory. The Commission has concluded in this case that the service to the three sections approved herein is in the public interest.

IT IS THEREFORE ORDERED:

1. That Union Electric Company be hereby granted a certificate of convenience and necessity for the three sections in Adair County where the line extensions to the Pratte, Sweet and Hays properties are located.

2. That Union Electric Company shall not include the cost of the extensions to the Sweet and Hays properties in rate base.

3. That the application for waiver of underground charges to the Hays property be hereby denied unless Union Electric Company informs the Commission within thirty (30) days of the effective date of this Report And Order that it will absorb the waived charges.

4. That this Report And Order shall become effective on the 26th day of February, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 13th day of February, 1991.