

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Case Pending

Cuivre River Electric Cooperative, Inc., )  
Complainant, )  
v. )  
Union Electric Company, a corporation, )  
Respondent. )

Case No. EC-86-88

APPEARANCES: Rodric A. Widger, Attorney at Law, Stockard, Andereck, Hauck, Sharp & Evans, P.O. Box 1280, Jefferson City, Missouri 65102, for Complainant.

Thomas W. Dietrich and Paul A. Agathen, Attorneys at Law, P.O. Box 149, St. Louis, Missouri 63166, for Respondent.

David M. Harris, Attorney at Law, 10 South Broadway, Suite 1800, St. Louis, Missouri 63102, for Sisters of St. Mary d/b/a St. Joseph Hospital West.

Angela D. Turner, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On December 18, 1985, Cuivre River Electric Cooperative, Inc. (Complainant or Cuivre River) filed a complaint against Union Electric Company (Union Electric) for contracting to provide electric service to St. Joseph Hospital West (the hospital), located in an unincorporated area of St. Charles County, Missouri. The complaint alleges, first, that to Complainant's knowledge Union Electric does not have a certificate of convenience and necessity to serve the area in which the hospital is located. The second allegation is that Complainant began providing retail electric energy to the hospital, which is under construction, on June 28, 1985, and so is entitled to continue to supply retail electric energy at that location under Sections 393.106 and 394.315, RSMo Supp. 1984.

Union Electric filed a Motion to Dismiss and Alternative Answer to Complaint on January 17, 1986. Therein, Union Electric states that it has authority to provide the service to the hospital pursuant to Cuivre River Coop., Inc. v. Mo.

Edison Co., 7 Mo. P.S.C. (N.S.) 118 (1956) and In re: Missouri Edison Co., Case No. 12,171 (1951). Union Electric also denies in its answer that it is replacing Cuivre River as the power supplier.

By Order issued on January 27, 1986, the Commission denied Union Electric's Motion to Dismiss and scheduled a prehearing conference on April 9, 1986, and a hearing on April 10, 1986. An evidentiary hearing was held on that date. Therein, the parties waived the reading of the record pursuant to Section 536.080(2), RSMo 1978.

Initial briefs were filed by Cuivre River, Union Electric and Staff on June 2, 1986. Reply briefs were filed by Cuivre River, Union Electric and Staff on June 19, 1986. A response brief was filed by the Sisters of St. Mary, doing business as St. Joseph Hospital West on June 20, 1986.

#### 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:

Cuivre River and Union Electric presented a Stipulation of Facts as Exhibit 3 which was received into evidence. The Staff of the Missouri Public Service Commission (Staff) stated it had "...no problems with the facts as stipulated although our name doesn't appear on the last page of the stipulation and agreement." Mr. David Harris, attorney of record for the customer in this matter, the Sisters of St. Mary, d/b/a St. Joseph Hospital West, appeared presenting Mr. Robert Proost to testify on behalf of the Sisters of St. Mary. Besides Mr. Robert Proost's testimony and a response brief, the Sisters of St. Mary did not participate in this hearing. The Commission notes that no party objected to this Stipulation of Facts. At the hearing, a correction was made to the Stipulation of Facts. The amended Stipulation of Facts reads as follows:

### STIPULATION OF FACTS

1. Complainant ("Cooperative") is a cooperative corporation organized under the laws of the State of Missouri and a rural electric cooperative as referred to in Section 394.315, RSMo. (Cum. Supp. 1984). Its correct name, address of principal office and place of business, and telephone number are:

CUIVRE RIVER ELECTRIC COOPERATIVE, INC.  
1112 EAST CHERRY STREET  
P.O. BOX 160  
TROY, MISSOURI 63379  
(314) 528-8261

2. Respondent ("Union Electric") is a Missouri corporation engaged as a public utility and an electrical corporation within the meaning of Section 393.106, RSMo. (Cum. Supp. 1984). Its correct name, address and telephone number are:

UNION ELECTRIC COMPANY  
1901 GRATIOT STREET  
P.O. BOX 149  
ST. LOUIS, MISSOURI 63166  
(314) 554-2733

3. St. Joseph Hospital West ("St. Joseph") is a hospital and related medical office complex owned and operated by the Sisters of Saint Mary, under construction in an unincorporated portion of St. Charles County bounded on the north by Interstate 70 and on the remaining sides by the City of Lake St. Louis.

4. On August 13, 1982, no electrical power supplier had electric meters on the site now occupied by St. Joseph, nor on any of the individual parcels (1, 2, 3, and 4) that now compose this site.

5. The St. Joseph site was, on and prior to August 13, 1982, composed of four separate parcels of land as shown on Joint Exhibit No. 1. On and prior to August 13, 1982, parcels 3 and 4 were owned by a Missouri Partnership, known as S and J Investment, and parcels 1 and 2 were owned by Jos. McBride & Son Construction Co., Inc.

6. The owner/operator has never requested Complainant to supply electrical power to the Hospital and/or medical complex facilities, or to the site. Complainant supplied electrical power knowing that the owners had not reached a decision for permanent electrical service to this facility.

7. The Missouri Public Service Commission has transferred and assigned all certificates of convenience and necessity issued to Missouri Edison Company by the Missouri Public Service Commission to Union Electric Company, as its successor.

8. In Re: Missouri Edison Co., Case No. 12,171 (1951), the Missouri Public Service Commission issued a certificate of convenience and necessity to Missouri Edison Company to rebuild a transmission line from Wentzville to O'Fallon, Missouri to operate as a 34 kV, three-phase transmission line, with an under-built distribution line. Respondent proposes to serve the St. Joseph's complex from this line.

9. The Missouri Public Service Commission has previously held in Cuivre River Coop., Inc. vs. Missouri Edison Co., 7 Mo. P.S.C. (N.S.) 118 (1956), that Respondent has "a right to make connections from the electric line (line in question) authorized by the Commission in Case No. 12,171 for reasonable distances and reasonable purposes in order to serve its customers without obtaining any additional authority." 7 Mo. P.S.C. (N.S.) at 120.

10. On November 22, 1985, Respondent entered into an agreement with the owners and operators of the St. Joseph's complex to provide permanent electrical service to said complex.

11. Respondent has already built a required highway crossing spanning approximately 358 feet from its existing line, and has committed to establishing service, via two underground circuits, as soon as possible, to accommodate the owner's requirements and needs for service.

12. Joint Exhibit No. 1, is a Complainant prepared exhibit that accurately depicts the location of the parcels that make up the St. Joseph's site; the location of the existing services; and the location of the Complainant's proposed facilities for a permanent service to the site.

13. Joint Exhibit No. 2, is a Respondent prepared two-page exhibit that accurately depicts the location of its existing distribution facilities; the location of its extension of an overhead distribution line; the location of its proposed underground conduit service to this facility; and the location of its pad-mounted transformers.

So Agreed,

/s/

\_\_\_\_\_  
Thomas W. Dietrich  
Attorney for Union  
Electric Company

/s/

\_\_\_\_\_  
Rodric Widger  
Attorney for Cuivre River  
Electric Cooperative

The Commission notes that in addition to the Stipulation of Facts the parties presented evidence at a hearing. The following facts were ascertained based upon the evidence presented at that hearing.

J.S. Alberici, the design and build contractor for the hospital, requested that Cuivre River provide service at the hospital site to its trailer. On March 25, 1985, a meter was set by Cuivre River at the hospital site for J.S. Alberici. A second service request was made to Cuivre River by Bannes-Shaughnessy, the general contractor for Universal Medical Buildings, which is the general contractor for the professional office building. The hospital and the professional office building are joined together by a common wall. The trailer for the employees of the Sisters of St. Mary (Sisters) is being served by Cuivre River through a line from the meter connected for J.S. Alberici. At the time of the hearing Cuivre River was supplying the trailers with electric service.

Cuivre River entered into a verbal agreement with J.S. Alberici to provide three-phase temporary electric service at a cost of \$11,268.27 for the hospital. This agreement was reflected in Exhibit 18, a letter dated June 19, 1985. Cuivre River also agreed that if it provided permanent electric service to the hospital, the amount of the cost associated with the useable portion of the line would be reimbursed. Cuivre River set the meter for the three-phase temporary service to the hospital on June 28, 1985. At the time of the hearing Cuivre River had supplied the hospital with continuous electric service.

The Sisters negotiated with both Cuivre River and Union Electric for the provision of permanent electric service. Mr. Didion, Cuivre River's manager of system engineering, responded to all requests for information from the hospital's consultants. Cuivre River keeps track of minor outages and blinks as well as major outages. The hospital's power requirements are 400 KW. Cuivre River has served an oil pumping station that requires approximately 800 KW, an egg-producing plant which uses approximately 600 KW and various other industrial and commercial loads requiring approximately 400 KW. Cuivre River estimated that it would cost an additional

\$12,000-15,000 to make its service at the hospital permanent. This cost would be borne by Cuivre River.

The executive director of the hospital, Bill Schoenhard, decided to use Union Electric's electric service for the hospital rather than Cuivre River's electric service as shown by Exhibit 9, a letter dated November 22, 1985. The decision was based on Mr. Proost's recommendation. Mr. Proost is the corporate director of construction and physical facilities for the Sisters' Health Care System. Mr. Proost relied on their design consultants' recommendation since they have the liability on the project. Their consultants, J.S. Alberici and Colton Jester looked at two factors: cost and reliability of service. Mr. Proost did not think he received "...a relative recommendation from our consultants, that there was good recordkeeping relative to that subject [outage experience of the supplier] with Cuivre River." He did believe that the hospital had received adequate and reliable service for the period that the temporary service had been installed. In fact, both Union Electric and Staff agreed that Cuivre River could provide an adequate and reliable source of power to the hospital site.

Union Electric waived the cost of extending their line to serve the hospital. Though several witnesses testified to a \$20,000 cost amount being waived by Union Electric, the total cost of the job was \$64,681. The decision to waive the costs to the hospital was made by David Harrison, Vice President of Union Electric. Charles Hunsel, District Manager of Union Electric for the Wentzville District, recommended to Mr. Harrison that the costs be waived. Mr. Hunsel looked at the load Union Electric would pick-up from the hospital, the professional office building, and any possible future load in the area and weighed the potential revenue. In April of 1985, construction of a hotel was under study by McBride and Sons for the south side of I-70. Mr. Hunsel also considered the engineering since Union Electric installed facilities that were not necessary for adequate service but necessary to provide exceptionally reliable service. Mr. Harrison agreed that the charges should be waived.

Union Electric, after receiving a request for service from the Sisters, began construction on the overhead line across I-70 for the hospital in mid-January, 1985. Union Electric's overhead line crossing of the highway is 358 feet and additional extensions of 420 feet and 656 feet are to be made to provide service to the hospital. Union Electric had not begun serving the hospital at the time of the hearing.

Cuivre River presents three arguments supporting its allegation that Union Electric violated Section 393.106, RSMo Supp. 1984, and infringed upon its rights under Section 394.315, RSMo Supp. 1984. These arguments are:

1. The tract of land on which the hospital is being constructed was a metering point of Cuivre River as of August 13, 1982, and Cuivre River is entitled to supply all electric energy requirements at that location.

2. Cuivre River has full authority to supply electric energy to the hospital and professional office building and Union Electric may not lawfully serve where Cuivre River is already serving.

3. Union Electric has provided the Commission with no evidence supporting the proposition that a change of suppliers is in the public interest and the Commission should therefore find that it has no basis on which to order a change of suppliers.

Union Electric argues:

1. Union Electric, as successor to Missouri Edison Company has an appropriate certificate of convenience and necessity to provide electric service to the hospital, located in unincorporated St. Charles County, Missouri.

2. Sections 393.106 and 394.315, RSMo Supp. 1984, are clearly inapplicable to this factual situation, and therefore, Union Electric has not violated these sections by providing electric service to the hospital.

3. Provision of temporary electric service to an independent contractor of the hospital does not preclude Union Electric from providing permanent electric service, pursuant to Sections 393.106 and 394.315, RSMo Supp. 1984.

4. If the Commission determines that Sections 393.106 and 394.315, RSMo Supp. 1984, are applicable to this factual situation, then it should find that it is in the public interest to order a change in power suppliers to permit Union Electric to serve the hospital.

Staff contends that Union Electric cannot provide electric service to the hospital without violating applicable law and should therefore be ordered to cease construction and any service. Staff alleges:

1. That Union Electric has violated the second sentence of Section 393.106, RSMo Supp. 1984, even though Cuivre River was not supplying service to the hospital site on August 13, 1982.
2. That Sections 393.106 and 394.315, RSMo Supp. 1984, make no distinction between temporary and permanent service.
3. That Union Electric does not have a certificate of convenience and necessity to serve the hospital site.
4. That a change of supplier pursuant to Sections 393.106 and 394.315, RSMo Supp. 1984, is not in the public interest since Cuivre River is providing adequate and reliable service to the hospital and its proposed permanent service to the hospital is not as vulnerable as Union Electric's because of Union Electric's single overhead crossing across I-70.

Sisters of St. Mary d/b/a St. Joseph Hospital West in their response brief allege that Union Electric was chosen by the Sisters because (a) Union Electric was able to document outage history whereas Cuivre River could not and (b) the Sisters have a long history of reliable service from Union Electric whereas they have had no experience with Cuivre River.

The Commission must consider whether Union Electric has violated Section 393.106, RSMo Supp. 1984, by agreeing to provide electric service to the hospital and the professional office building.



Sections 393.106 and 394.315, RSMo Supp. 1984, provide:

Section 393.106 - Every electrical corporation and joint municipal utility commission shall be entitled to continue to supply retail electric energy to persons at metering points at which service is being provided on August 13, 1982. Notwithstanding any other provision of law to the contrary, no electrical corporation or joint municipal utility commission shall be permitted or required to supply retail electric energy to any person at a location where said person is receiving, or has within the last sixty days received, retail electric energy from another supplier of electric energy. Provided, however, that the commission may order otherwise after a finding that a change of suppliers is in the public interest for a reason other than a rate differential. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter.

Section 394.315 - Every rural electric cooperative shall be entitled to continue to supply retail electric energy to persons at metering points at which service is being provided on August 13, 1982. Notwithstanding any other provision of law to the contrary, no rural electric cooperative shall be permitted or required to supply retail electric energy to any person at a location where said person is receiving, or has within the last sixty days received, retail electric energy from another supplier of electric energy. Provided, however, that the public service commission may order otherwise after a finding that a change of suppliers is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter.

At the time of the hearing, Cuivre River had supplied retail electric energy to the hospital site including the trailers for the design and build contractor for the hospital, for the general contractor of the professional office building and for the employees of the Sisters and three-phase service to the hospital. As discussed earlier, the meter for service to the design and build contractor's trailer was set on March 25, 1985 and the meter to the hospital was set on June 28, 1985. At the time of the hearing Cuivre River was supplying the trailers and the hospital with electric service. Section 393.106, RSMo Supp. 1984, provides that no electrical corporation shall be permitted to supply retail electric energy to

any person at a location where said person is receiving, or has within the last sixty days received, retail electric energy from another supplier of electric energy. The Commission notes that the Missouri Supreme Court in interpreting Sections 393.106 and 394.315, RSMo Supp. 1984, stated: "The language of the statutes does not invite interpretation; it is clear and unambiguous." Missouri Pub. Serv. Co. v. Platte-Clay Electric Coop., Inc., 700 S.W.2d 838, 842 (Mo. en banc. 1985). Applying Section 393.106, RSMo Supp. 1984 to the facts in this case, the Commission finds that Union Electric has agreed to provide retail electric energy to the hospital and is in the process of constructing facilities to provide service when the hospital has been receiving retail electric energy from Cuivre River within the last sixty days.

Union Electric argues that the provision of temporary electric service to an independent contractor of the hospital does not preclude Union Electric from providing permanent electric service. The Commission notes that the Missouri Supreme Court in Missouri Pub. Serv. Co. v. Platte-Clay Electric Coop., Inc., 700 S.W.2d at 842 discussed a similar argument:

Appellant urges that the statutes makes a distinction between the kind of retail electric energy supplied on August 13, 1982. The plain language of Sections 393.106 and 394.315, makes no such distinction. Both single-phase and three-phase delta electricity are retail electric energy.

The new customers wanted changes in quantity and quality of service, requiring increased volumes and higher voltage. The court obviously concluded that these facts did not allow a change of supplier. These conditions did not change the fact that the customer was receiving "retail electric energy" under the plain language of the statute.

Similarly, the Commission finds that the plain language of Sections 393.106 and 394.315, RSMo Supp. 1984, makes no distinction between temporary and permanent electric service. Both temporary and permanent electric service result in the provision of retail electric energy. In addition, the 1984 statutory language refers to "any person at a location." Since neither the Sisters nor Union Electric argued that the requests for temporary service by the contractors were unauthorized, the

Commission finds that Cuivre River was providing service to persons at a location within the meaning of the statute.

The Commission finds that Union Electric's argument that a company must have been providing service since August 13, 1982 to be vested with any right under Section 393.106, RSMo Supp. 1984, ignores a portion of the second sentence of that statute in particular the phrase:

...no electrical corporation...shall be permitted...to supply retail electric energy... to any person at a location where said person is receiving or has within the last sixty days received retail electric energy from another supplier of electrical energy (emphasis added).

The Missouri Supreme Court has stated that every word, phrase or sentence in a statute should be given some meaning if possible. State on inf. Huffman v. Sho-Me Power Co-op, 354 Mo. 892, 191 S.W.2d 971, 976 (en banc. 1946). The Commission is of the opinion that the August 13, 1982, date in the first sentence of Sections 393.106 and 394.315, RSMo Supp. 1984, refers to the effective date of the statute, showing an intent to make the law prospective rather than retroactive, and entitles a supplier to continue to supply energy to persons at metering points being supplied on that date. The second sentence in these statutes makes no reference to a date but does prohibit a supplier from supplying energy if another supplier is either providing service or has provided service within the last sixty days. The Commission notes that it discussed this sentence in White River Valley Electric Coop., Inc. v. The Empire District Electric Co., 28 Mo. P.S.C. (N.S.) 83, 92 (1985) wherein it stated that:

Taken as a whole, the second sentence of Sections 393.106 and 394.315, RSMo Supp. 1984, removes the requirement to provide service while prohibiting the provision of service where service is already being provided, thus preventing the switching of suppliers by customers at locations where service is being received.

Therefore, the Commission finds that Union Electric's agreement to provide service while Cuivre River is providing electric service to the hospital is a violation of the second sentence of Section 393.106, RSMo Supp. 1984. The Commission believes that these statutes do apply to the factual situation in this case where Cuivre River

was providing electric service at the time Union Electric agreed to provide the Sisters with electric service at the hospital and professional office building.

Union Electric also alleges that because the legislature in its Senate Committee Substitute for H.B. 1486, 83d Missouri General Assembly, 2nd Session (1986) (referred to as newly enacted statutes, Sections 393.106 and 394.315), defines structures as not including any noncontiguous additions to or expansions of new structures upon which construction is commenced after August 13, 1986, that the legislature limited the application of the second sentence of the newly enacted Sections 393.106.2 and 394.315.2 to structures that were in existence on August 13, 1986. The Commission notes that August 13, 1986, is the effective date of those statutes. The Commission does not believe it is necessary to discuss the newly enacted statutes, Sections 393.106 and 394.315. In State ex rel. St. Louis-San Francisco Railway Company v. Buder, 515 S.W.2d 409 (Mo. en banc. 1974) the court stated that:

Article I, Sec. 13 of the 1945 Missouri Constitution, V.A.M.S., provides that no ex post facto law, nor law impairing the obligations of contracts nor retrospective in its obligations of contracts nor retrospective in its operation shall be enacted. There are, however, two recognized exceptions to the rule that a statute shall not be applied retrospectively: (1) where the legislature manifests a clear intent that it do so, and (2) where the statute is procedural only and does not affect any substantive right of the parties. 515 S.W.2d at 410.

In this case the legislature has stated that the acts only apply prospectively when it states that every electrical corporation or rural electric cooperative shall be entitled to supply retail electric energy to persons at structures at which service is being provided on August 13, 1986. In addition, the substantive right of Cuivre River to provide electric service to the hospital vested when Cuivre River began providing service; therefore, the statutes cannot be considered procedural. Since the legislature has stated the acts should apply prospectively and the statutes are not procedural in nature, the Commission finds that the newly enacted statutes cannot be applied retroactively. The facts in this case arose prior to August 13, 1986;

therefore, the issues must be governed by Sections 393.106 and 394.315, RSMo Supp. 1984.

Another issue which the Commission must consider is whether it is in the public interest to order a change in energy suppliers to permit Union Electric to serve the hospital and professional office building. See Section 394.315, RSMo Supp. 1984. The evidence shows that Cuivre River could provide adequate service to the hospital. Cuivre River was planning to provide service to the hospital using a loop construction which would provide a true source from two (2) independent substations with no common distribution circuits. Union Electric's greatest vulnerability is at its single overhead highway crossing, since its service to the hospital would go out if the line goes down. However, the Sisters were aware of this and still chose Union Electric to provide their permanent service while Cuivre River was providing the hospital with temporary service. The Sisters use Union Electric's services at several of their hospitals. According to Mr. Proost, the Sisters were not satisfied with Cuivre River's outage documentation. However, Mr. Didion testified that Cuivre River could provide information on minor outages and blinks on instantaneous trips, as well as major outages.

The Commission discussed the legislative intent of Sections 393.106 and 394.315, RSMo Supp. 1984, in White River Valley Electric Coop., Inc., 28 Mo. P.S.C. (N.S.) at 91. In that case, the Commission stated it was of the opinion that these statutes were to protect the suppliers and to prevent the waste of resources inherent in competing for customers. Though these two cases are factually different, the Commission believes this statement also applies in the case at hand.

In this case Union Electric went ahead and built its facilities even though Cuivre River was providing temporary service to the hospital and had filed a complaint against Union Electric on December 18, 1985, less than a month after the Sisters extended their request for service to Union Electric. Union Electric clearly took the risk of building facilities to the hospital and the professional office building and then not being able to serve them. The Commission notes that Cuivre

River has served facilities which have greater power requirements than the hospital. The Sisters indicated cost was a factor in their decision. The Commission notes that the statutes state that a rate differential is not a reason to order a change of suppliers. See Sections 393.106 and 394.315, RSMo Supp. 1984. The Commission further notes that Union Electric and Staff agreed that Cuivre River's proposed system would provide adequate and reliable service to the hospital site. The Commission also notes that Mr. Proost stated that Cuivre River had been providing adequate and reliable temporary service when the decision was made to use Union Electric's service for the hospital. Based on Mr. Didion's testimony, the Commission finds that Cuivre River has the ability to provide the hospital with detailed outage documentation. Neither Union Electric nor the Sisters showed that upon request that Cuivre River could not have provided the detailed documentation needed. The Commission does not believe that the Sisters' reasons for choosing Union Electric are sufficient reasons to change suppliers.

The Commission does not believe that customer preference by itself is sufficient reason to find that it is in the public interest to change suppliers. The Commission notes that the legislative intent of Sections 393.106 and 394.315, RSMo Supp. 1984, is to prevent duplication of facilities and the waste inherent in competing for customers. The purpose of these statutes would be defeated if customer preference alone was considered sufficient reason to change suppliers. The Commission believes that customer preference as a basis to change suppliers would result in many customers requesting a change of suppliers which would cause more duplication of facilities. Under the statutes, the customer or utility requesting a change of suppliers has the burden of proof to show that there is a reason for changing suppliers other than a differential in rates that would result in a benefit to the public. That burden has not been met in the instant case.

The Commission notes that in Re: Union Electric Co., 19 P.U.R. 3d 251 (No. Pub. Serv. Comm'n. 1957), it had to decide what would serve the public interest in

determining which of two utility companies' applications to serve a mine should be granted. The Commission stated that:

The customer's choice of the two companies is a persuasive showing but is not entirely controlling, and the wishes of the two utilities likewise is not the final determining factor to be considered... 19 P.U.R. 3d at 259.

The Commission then determined that to grant the Arkansas-Missouri Power Company a certificate to serve would be authorizing the placement of a "...weakening link between the generating resources of Union Electric and the iron mine. To do this would only go to serve the competitive relationship of the two utilities and would not be in the public interest." 19 P.U.R. 3d at 260. The Commission out of concern for public safety and employees' safety then granted the certificate to the other utility, Union Electric. The evidence showed that Arkansas-Missouri Power Company's proposal was to build three (3) 34.5 KV lines, while Union Electric's proposal was to build two (2) 138 KV lines. The mine's witness testified that if one of the 34.5 KV lines went out the voltage would drop as much as 14 percent and the voltage variation would be beyond what he considered to be good practice. However, he testified if one of the 138 KV lines went out then the voltage variation would amount to as much as  $\frac{1}{2}$  of one (1) percent, which would not be significant. The mine stated it preferred Union Electric be granted the certificate to furnish it service. The Commission notes that in that case customer preference alone was not determined to be the public interest.

Having reviewed the facts presented in this case, the Commission cannot find that a change of suppliers would be in the public interest. Therefore, the Commission finds that Cuivre River should be allowed to continue to provide electric service to the hospital and professional office building. At the time of the hearing, Cuivre River was providing temporary service to the hospital and professional office building. If Cuivre River is no longer providing such service and Union Electric is providing service, the Commission finds that Union Electric should cease and desist from providing retail electric service to the Sisters at St.

Joseph Hospital West and the professional office building as soon as Cuivre River can provide adequate and reliable service on a permanent basis. The Staff of the Missouri Public Service Commission should supervise the termination of Union Electric's service at the hospital and professional office building. In any event, Union Electric should cease and desist from providing electric service, pursuant to its agreement with the Sisters of St. Mary, to St. Joseph Hospital West and the professional office building, as soon as Cuivre River Electric Cooperative, Inc. can provide adequate and reliable service on a permanent basis.

Since the Commission has already found that the second sentence of Section 393.106, RSMo Supp. 1984, applies to the facts in this case, there is no need to address the issue of whether the tract of land on which the hospital is being constructed was a metering point of Cuivre River as of August 13, 1982.

In addition, since the Commission has found that Union Electric may not provide service to the hospital and professional office building, under the terms of Sections 393.106 and 394.315, RSMo Supp. 1984, there is no need to address the issue of whether Union Electric has authority to serve the hospital site.

The hospital site is in an unincorporated area in St. Charles County, Missouri. Chapter 394, RSMo contains the statutes regarding Rural Electric Cooperative Law. Section 394.020(3), RSMo 1978, defines rural area as "...any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof." Section 394.030, RSMo 1978, provides that "[c]ooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas." The Commission finds that Cuivre River is a cooperative as defined in Section 394.030, RSMo 1978, and that the hospital site is a rural area as defined in Section 394.020(3), RSMo 1978. Therefore, the Commission finds that Cuivre River has authority to serve the hospital site.



### Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

Complainant, Cuivre River, is a rural electric cooperative and is subject to the Commission's jurisdiction pursuant to Section 394.315, RSMo Supp. 1984. Respondent, Union Electric, is a public utility and is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo Supp. 1984.

The Commission has reviewed the Stipulation of Facts presented by the parties and finds that the Stipulation of Facts is reasonable and should be accepted and adopted as findings of fact in this case.

In this case, the Commission found that Union Electric's agreement to provide electric service to St. Joseph West Hospital and the professional office building while Cuivre River is providing electric service to the hospital, is a violation of Section 393.106, RSMo Supp. 1984. The Commission determined that Union Electric should cease and desist from providing electric service, pursuant to its agreement with the Sisters of St. Mary, to the St. Joseph Hospital West and the professional office building as soon as Cuivre River can provide adequate and reliable service on a permanent basis.

The Commission cannot determine that a change of suppliers pursuant to Section 394.315, RSMo Supp. 1984, would be in the public interest and therefore determines that Cuivre River should be allowed to continue to provide electric service to the hospital and professional office building.

It is, therefore,

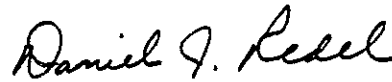
ORDERED: 1. That Union Electric Company shall cease and desist from providing electric service, pursuant to its agreement with the Sisters of St. Mary, to St. Joseph Hospital West and the professional office building, as soon as Cuivre River Electric Cooperative, Inc. can provide adequate and reliable service on a permanent basis.

ORDERED: 2. That the Staff of the Missouri Public Service Commission shall supervise the termination of Union Electric Company's electric service to St. Joseph Hospital West and the professional office building.

ORDERED: 3. That the Stipulation of Facts entered into by Cuivre River Electric Cooperative, Inc. and Union Electric Company be and hereby is, accepted and adopted as findings of fact in Case No. EC-86-88.

ORDERED: 4. That this Report and Order shall become effective on the 16th day of December, 1986.

BY THE COMMISSION



Daniel J. Redel  
Acting Secretary

(S E A L)

Steinmeier, Chm., Musgrave and  
Fischer, CC., Concur.  
Mueller and Hendren, CC., Dissent  
with Separate Opinion.

Dated at Jefferson City on this  
14th day of November, 1986.

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

Cuivre River Electric Cooperative, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. EC-86-88</u>
	)	
Union Electric Company, a corporation,	)	
	)	
Respondent.	)	

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DISSENTING OPINION OF COMMISSIONERS  
CONNIE B. HENDREN AND ALLAN G. MUELLER

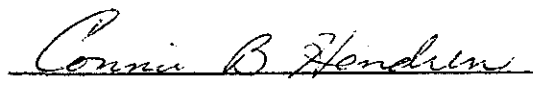
The majority has found by application of law that St. Joseph Hospital West is bound permanently to electric service by a supplier not of its choice. If temporary service chosen by the contractor is indeed binding for permanent service, it would appear that Cuivre River acted imprudently by agreeing to provide temporary electrical service, leading the customer to believe that permanent service was still to be negotiated; and the customer, indeed, prudently negotiated with both Cuivre River and Union Electric for permanent service. For Cuivre River to prevail as permanent provider when the customer has clearly expressed its desire to have Union Electric's service, based upon the belief that Union Electric will provide a more reliable source of electric service to its operation, seems arbitrary to the democratic system.

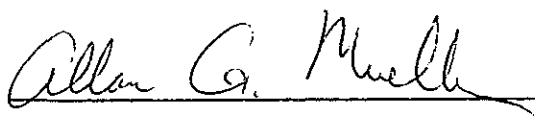
Cuivre River acted in a manner which seems contrary to its own arguments as to why it must now be the permanent electric service provider by (1) entering into the agreement with J.S. Alberici to provide temporary service; and (2) charging for the temporary connection in the amount of \$11,268.27 under the auspices of a credit if Cuivre River eventually provided permanent service, not when Cuivre River provided permanent service. As set out in Exhibit 18, Cuivre River indicates there is "some

question as to whether Cuivre River Electric will provide the ultimate service to the site," which would lead a reasonable person to feel that permanent service by Cuivre River was not being determined merely by its provision of temporary service.

Even though the Commission did not choose to discuss the newly enacted statutes, Sections 393.106 and 394.315, it appears that the result of this complaint might well have been different. Circumstances must be taken into account to interpret a law's applicability to reach a just determination. Therefore, we find that the majority erred in its finding that Union Electric is in violation of Section 393.106, R.S.Mo. (Supp. 1984).

Respectfully submitted,

  
Commissioner

  
Commissioner

Dated: November 14, 1986