

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 19th  
day of May, 1993.

In the matter of the application of Union Electric )  
Company for a variance from provisions of 4 CSR 240-14 )  
to meet unregulated competition in Camden County, ) Case No. EO-93-263  
Missouri. )  
)

**ORDER DENYING VARIANCE FROM PROMOTIONAL PRACTICES RULE**

On March 22, 1993 Union Electric Company (UE) filed an Application pursuant to 4 CSR 240-2.060 and 4 CSR 240-14.010(2) requesting a variance from the Commission's promotional practices rules for good cause. UE states that it has a significant service commitment in the area of the Lake of the Ozarks. UE states that Peter Brown is a real estate developer affiliated with the Four Seasons Corporation and is developing a major resort and residential community on Shawnee Bend in rural Camden County, Missouri. The first phase of this development will consist of 400 all-electric homes. UE is in competition in the general area with Co-Mo Electric Cooperative, Inc. (Co-Mo), which is a rural electric cooperative not regulated by the Commission. Mr. Brown has approached UE and requested that it meet the unregulated competition of Co-Mo by contributing \$2.50 per foot toward the cost of trenching for the combined installation of water and electric cables. UE states that it estimates that the offer to contribute \$2.50 per foot toward the trench would cost it \$125,000 at most. UE states that it has analyzed the project pursuant to its JUSTIFY program and that it calculates that the first phase alone would justify an investment of \$1,003,600. UE states that the entire construction investment to serve the first phase will total \$753,660. UE states that the service will require a 4,600-foot underwater cable line extension to the development and that underground service will be provided within the development free of charge in accordance with its

tariffs. However, UE's tariffs require the developer to provide the trench and conduit at his cost.

UE states that there is good cause to grant the variance because the costs to provide the contribution to the trenching costs are economically justified. In addition, UE believes that there is an understanding that the utility that serves the first phase of the project will be best suited to serve the remaining phases of the project. UE believes that the existing customers will benefit by more efficient use of existing generation, transmission and distribution facilities and by the contribution the new customers will make to existing fixed costs. UE also states that there is good cause to grant the variance because, to the extent UE is unable to compete with Co-Mo, Co-Mo will be unwilling to negotiate territorial agreements.

Co-Mo filed an Application To Intervene in this action on March 25, 1993 to which UE objected in its Reply filed on April 6, 1993. On April 13, 1993 the Commission issued its Order Denying Intervention (to Co-Mo), Denying Expedited Treatment, And Requiring Recommendation (of Commission's Staff). On April 27, 1993 the Staff filed its recommendation that the Application be denied. Staff states that Co-Mo is the predominant supplier of electricity in the area to be developed by Peter Brown and that UE is the predominant supplier of electricity on the other side of the lake from the development in question here. Staff states that in previous variance requests granted by the Commission, UE was allowed to install the distribution and service lines underground at no cost to a developer. That type of variance did not allow for a cash payment to the developer. Staff is fearful that a procedure of a cash payment to a developer encourages "bidding contests" between regulated electric utilities and unregulated electric cooperatives to determine which one would be willing to spend the most money to attract developers and customers. On April 30, 1993, UE filed a Motion For Hearing which essentially was a response to Staff's

recommendation. UE states that its present variance request is actually less of a risk in that, in the typical offer, UE finances a service to the developer which it waives in total. In the present offer, it is only partially financing a service to the developer. The developer actually provides the service in the present case.

After considering the Application of UE, the Staff's Response thereto, and UE's Reply to Staff, the Commission determines that UE's Application for a variance from the promotional practices rules should be denied without a hearing. A variance from Chapter 14--Utility Promotional Practices of the Commission rules is authorized by 4 CSR 240-14.010(2), which states:

"On written application by a utility the commission may grant variances from the rules contained in this chapter for good cause shown. The utility filing the application shall show proof of service of a copy of the application on each public utility providing the same or competing utility service in all or any portion of the service area of the filing utility."

There is no statutory requirement of a hearing for variances from the Commission's promotional practices rules. The applicable rule specifically states "[o]n written application by a utility" the Commission may grant variances from the rules contained in this chapter for good cause shown. There is no requirement that a hearing be conducted on an application for a variance from Chapter 14. Therefore, in this case the Commission determines that it can reach its decision on variances from the promotional practices rules -- Chapter 14 -- based upon the written application of the utility and any additional comments that it might solicit from the utility company or the Commission's Staff.

The Commission is of the opinion that good cause has not been shown by UE for the granting of a variance from the promotional practices rules as required by 4 CSR 240-14.010(2). The Commission rules set out promotional practices standards at 4 CSR 240-14.030(1):

"All promotional practices of a public utility or its affiliate shall be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers."

The Commission has expanded upon the whole concept of competition and variances from the Commission's promotional practices rules in *In re Union Electric Company*, 30 Mo. P.S.C. (N.S.) 171:

"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."

The Commission in that case was particularly concerned with encouraging the regulated electric utility and the unregulated electric cooperative to enter into the statutory scheme enacted by the legislature to deal with rural electric competition. The statutory scheme is the territorial agreement as defined in Section 394.312, R.S.Mo. (Supp. 1992). This section provides a means for unregulated electric cooperatives and regulated electric utilities to avoid destructive competition by entering into territorial agreements which specifically designate the electric service area served by each. The purpose of this section is to avoid duplication of facilities and have electric utilities and electric cooperatives act in the public interest. The Commission was also concerned in that case with the need to be assured that: "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." The Commission was concerned that any waiver of charges be recovered and compensated for by future revenues from those receiving the waiver or those benefiting from the waiver. The Commission also made another statement in that case that sheds light on the competition aspect:

"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."

In the present case UE would be moving across the Lake of the Ozarks with an underwater cable to service an area called Shawnee Bend that is to be developed for residential lots. Shawnee Bend lies on a peninsula that is already served by Co-Mo. The Commission does not wish to delve into the issue of which is the potentially most economically desirable electricity supplier to Shawnee Bend, UE or Co-Mo. By way of comparison, UE must extend a line 4,600 feet to the first lot of the subdivision it would service, while Co-Mo must extend a line 2,800 feet to the first lot of the subdivision it would service. The Commission fully understands that UE has been certificated to provide electric service to the area in question. However, this is not an area UE has "historically served" or necessarily is in "a better position to serve" (than Co-Mo). The Commission also has reservations as to the economic feasibility of the proposed expansion by UE. UE's JUSTIFY program is based upon a 30-year period that calculates the net present value of the revenues anticipated from the development over a 30-year period and then compares that value to the net present value of the additional generation, transmission, distribution and other costs estimated to be necessary to serve such customers over the same 30-year period using its most recent forecast. The program then calculates the maximum initial expense that would cause the project to break even over the 30-year period. While UE's JUSTIFY program indicates the whole investment will ultimately be compensated by the development's revenues, this is only a projection. The Commission supports UE's use of such a program, but it will not be bound by its outcomes. The Commission is not totally convinced of the economic viability of this development on Shawnee Bend. Other developments at the Lake of the Ozarks have been less than fully successful. The JUSTIFY program assumes the

development's success. The Commission cannot automatically do that since it must be concerned that existing ratepayers do not end up subsidizing an unsuccessful venture.

The Commission is concerned with promoting territorial agreements between regulated utilities and unregulated cooperatives. However, an area of competition must necessarily exist first. UE is concerned that if Co-Mo is able to attract customers by offering these inducements which UE is unable to match, there will be little advantage for Co-Mo to negotiate an agreement. This argument somewhat gets the chicken before the egg. It appears at the present that UE, in an expansion to the Shawnee Bend area, would be the likely encroacher upon Co-Mo's territory that it has historically served.

The Commission is of the opinion that for the foregoing reasons, the standards governing promotional practices are not met in this case. The Commission specifically has substantial questions whether granting the variance from the promotional practices rules would be reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers. The Commission is of the opinion that if UE persists in its desire to extend service to the Shawnee Bend area, the investors should be initially responsible for all the costs. The Commission would reserve the right in future rate cases to consider whether these investment expenses incurred by UE for extending electric service to the Shawnee Bend area were reasonable. The Commission, in denying the waiver requested by UE, would make its ruling limited to the present circumstances and the limitations implicit in the promotional practices rules themselves. Future growth in this area of the Lake of the Ozarks could certainly make expenditures for electric expansion a reasonable cost of service. This Commission, again, however, will reserve judgment as to any necessary determination to future rate cases.

IT IS THEREFORE ORDERED:

1. That the Application by the Union Electric Company for a variance from the Commission's Chapter 14--Utility Promotional Practices rules filed on March 22, 1993 be hereby denied.

2. That this order shall become effective on the 2nd day of June, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., concur.