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August 16, 2002

Via Fed/Ex (Telephone 573-751-3234)

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

FILED²
AUG 19 2002
Missouri Public
Service Commission

RE: Application for Permission to Construct a New 345 kV
Transmission Line to be known as the Callaway-Franks;
MPSC Case No. EO2002-351

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of Union Electric Company's Suggestions in Opposition to Intervenors' Motion to Dismiss Application, plus one additional copy. Please acknowledge receipt of this filing by stamping the additional copy of the enclosed Suggestions and returning it to me in the enclosed self-addressed envelope.

Copies of these Suggestions have been served upon counsel for all parties of record.

Thank you for your assistance.

Sincerely,


James B. Lowery

smp
Enclosure
c w/enc:

Bruce H. Bates, Missouri Public Service Commission
John B. Coffman, Deputy Public Counsel
Joseph H. Raybuck
James B. Deutsch/Marc H. Ellinger

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²
AUG 19 2002

Missouri Public
Service Commission

Application of Union Electric Company)
for Permission and Authority to Construct,)
Operate, Own and Maintain a 345 kilovolt)
Transmission Line in Maries Osage, and)
Pulaski Counties, Missouri ("Callaway-Franks)
Line"))

Case No. EO-2002-351

**UNION ELECTRIC COMPANY'S SUGGESTIONS IN OPPOSITION TO
INTERVENORS' MOTION TO DISMISS APPLICATION**

COMES NOW Applicant, Union Electric Company ("UE"), and files these Suggestions
in Opposition to Intervenor's Motion to Dismiss Application.

BRIEF STATEMENT OF THE CASE

This proceeding concerns an Application, submitted pursuant to Section 393.170, RSMo.,
for permission and authority to construct a 345 kilovolt ("kV") electric transmission line. UE's
Application was filed on January 18, 2002, and Intervenor's motions to intervene out of time
were sustained by the Commission by Order dated May 30, 2002. A Prehearing Conference was
held on June 13, 2002, and, pursuant to the Commission's Order Adopting Procedural Schedule,
UE filed its direct testimony on July 11, 2002. Intervenor and Staff filed direct testimony on
August 9, 2002.

Concurrently with the filing of their direct testimony, Intervenor also filed a Motion to
Dismiss Application contending, for the first time, that UE's Application is defective under 4
CSR 240-2.060(4). UE respectfully submits that Intervenor's contentions are without merit, and
that their motion should be denied.

ARGUMENT

1. UE's Application Complies with the Commission's Rules.

Intervenors first suggest that UE failed to comply with the Commission's rule regarding the inclusion of plans and specifications in its Application. Intervenors also complain that a list of utility lines to be crossed by the proposed electric transmission line was omitted in violation of the rule. At bottom, Intervenors contend that these alleged failures on the part of UE preclude them from presenting their case justifying dismissal of UE's Application. Though Intervenors had ample opportunity to do so, they did not make any of these contentions prior to seeking intervention. Furthermore, Intervenors did not make these contentions at the Prehearing Conference when Intervenors agreed to the procedural schedule in this case, nor did they make them prior to submission by UE, Intervenors, and Staff of detailed testimony.

An examination of UE's Application refutes each of Intervenors' contentions. Paragraphs 3 and 4 of UE's Application, including Exhibits 1 - 3 thereto, detail the legal description and route of the proposed line. Intervenors' contention that they cannot identify the parcels affected is therefore incorrect. It is true that the precise route was not at the time of filing, and is not today, absolutely fixed, in part because UE is continuing to attempt to work with property owners in the area to make adjustments in the route where feasible. See, e.g. Direct Testimony of Geoffrey D. Douglass, filed July 8, 2002. Furthermore, Paragraph 5 of the Application specifically advises Intervenors that 43 miles (nearly 80%) of the route of the line will occupy existing easements which, in the vast majority of cases, were granted by Intervenors or their predecessors in title.

Intervenors further complain that they are somehow prejudiced because they have been “prohibited” from identifying the “manner in which such parcels are affected.” Paragraphs 6 and 7 of UE’s Application specifically provide for the plans and specifications to be used in building the proposed line. The Application provides that the construction will be predominantly two-pole “H” frame structures averaging 80 feet in height, and that construction will meet all requirements of 4 CSR 240-18.010. That regulation incorporates the National Electrical Safety Code which, as the Commission knows, contains detailed standards governing construction of electric facilities such as the proposed line. Most of the Intervenors have almost identical structures on their property today, a fact specifically pointed out by UE in Paragraph 6 of its Application, which provides that UE’s plans and specifications call for structures similar to the existing Central Electric line that parallels much of the proposed route.

Intervenors’ other substantive point alleges that UE did not comply with 4 CSR 240-2.060(4)(B).1, which relates to identifying other utilities to be crossed by the line. Paragraph 10 of UE’s Application lists each and every utility or company with underground facilities whose facilities will be crossed by the line. The purpose of the rule is to ensure that all such utilities and companies are advised of the proposed project so that they may have an ample opportunity to intervene in the proceeding and may, if applicable, raise any concerns. That purpose has been fully served by UE’s Application, as evidenced by the letters of no objection filed by UE from each and every such utility or company in this case.

2. **UE's Application Exceeds the Standards Consistently Applied by the Commission with respect to 4 CSR 240-2.060.**

After receiving Intervenors' Motion to Dismiss, UE consulted with the Commission's Staff to verify, as it believed to be the case, that UE's Application was fully consistent with the meaning, intent, and interpretation long applied by the Commission's Staff and the Commission with respect to 4 CSR 240-2.060. Those contacts indicate that the Commission has, in interpreting and applying Section 4 CSR 240-2.060, consistently accepted applications containing less, not more detail, than the detail contained in UE's Application, a fact that indicates that UE's Application was more than sufficient under the rule and allows any interested party to understand UE's route, plans and specifications. UE has further been advised that the Commission's Staff has not been hindered or prejudiced in any way by the alleged deficiencies in the Application.

It is a well-settled principle of administrative law that the reasonable interpretation and application of administrative rules by those charged with their application and enforcement is entitled to substantial weight. See, e.g., Willard v. Red Lobster, 926 S.W.2d 550, 553 (Mo. App. E.D. 1996). The Commission's prior interpretation and application of the rule at issue demonstrates the sufficiency of UE's Application.

3. **Intervenors are not prejudiced.**

As discussed in part above, UE's Application complies with the Commission's Rules and is consistent with the longstanding application and interpretation thereof. Even if, *arguendo*, there exists some technical deficiency in UE's Application, dismissal is an entirely inappropriate remedy that is contrary to the public interest because no prejudice has resulted from any such

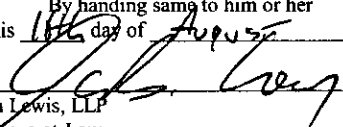
technical deficiency. The lack of prejudice is amply demonstrated by the discussion contained hereinabove, and by the Direct Testimony of 37 Intervenor filed on August 8, 2002. That testimony contains detailed complaints about the location of the line, how it will be constructed, and its impact on Intervenor. Clearly, Intervenor are able to determine the impact of the line, and to marshal arguments against UE's Application. Not a single additional item of information that Intervenor now claim should have been in the Application would have aided them further in reaching the one fundamental conclusion that is evident in all of their testimony; that is, that they do not want this line anywhere near them – period. In sum, Intervenor have not shown any prejudice justifying dismissal.¹

For the foregoing reasons, Intervenor's Motion to Dismiss should be denied.

CERTIFICATE OF SERVICE

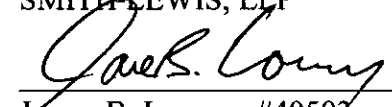
The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys or parties of record to the above action:

- By enclosing same in envelopes addressed to each at the address as disclosed in the pleadings of record herein, with first class postage prepaid and by depositing said envelopes in a U.S. Post Office mailbox in Columbia, Missouri
 - By leaving same at the business office with a clerk, secretary, or another attorney
 - By transmitting the same by facsimile to him or her at _____ m. to facsimile number _____
 - By handing same to him or her
- On this 11th day of August, 2002.



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¹And even if the rule at issue technically requires additional detail, a fact not borne out by past Commission interpretations and a fact which UE denies, the Commission need not follow the technical letter of its rule in cases where prejudice does not result, as here. See, e.g. Missouri Nat. Educ. Ass'n v. Missouri State Bd. of Mediation, 695 S.W.2d 894, 897 (Mo. banc 1985) (“[F]ailure of an agency to comply with its own rules may invalidate its actions *only* when prejudice results” (emphasis added)).