

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric            )  
Company d/b/a Ameren Missouri for a Variance            )  
From the Provisions of Commission Rule 4 CSR            )  
240-14 to Meet Unregulated Competition in a            )  
Subdivision in Cole County, Missouri                    )        **File No. EE-2013-0511**

**STAFF’S RECOMMENDATION TO APPROVE  
APPLICATION FOR VARIANCE  
AND MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through counsel, and for its recommendation in this matter respectfully states:

1. Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) filed an application on June 6, 2013, asking the Commission to grant the Company a variance from 4 CSR 240-14 and from the Company’s tariff in order to allow Ameren Missouri to offer the installation of an underground electric conduit system and associated trenching at no cost to the developers of a subdivision in Cole County, Missouri. The Application included Ameren Missouri’s motion for expedited treatment, which requested that the Commission grant the variance no later than June 30, 2013.

2. Ameren Missouri states the variance is necessary for the Company to compete with offers made to the subdivision developers by the unregulated Three Rivers Electric Cooperative (“Three Rivers”). On June 6, the Commission ordered that notice of Ameren Missouri’s application be mailed to Three Rivers, and ordered Staff to file its recommendation or a status report in this matter no later than June 17, 2013.

3. Staff's *Memorandum*, attached hereto as Appendix A and incorporated by reference, recommends the Commission grant Ameren Missouri's request for the variance and motion for expedited treatment.

4. As explained in Staff's *Memorandum*, Ameren Missouri's request relates to the planned construction of new 44-home subdivision on an unincorporated tract of land along Wardsville Road in Cole County, Missouri, to be called Markway Meadows. In March 2013, the developers of Markway Meadows sent a letter to Ameren Missouri asking whether the Company would be willing to provide underground electric service to the subdivision free of charge, as Three Rivers offered to do. However, Ameren Missouri cannot provide underground electric service at no cost to the developers unless the Commission enters an order granting the Company variances from Commission Rule 4 CSR 240-14 and from the Company's tariff.

5. Absent the variances, Ameren Missouri's tariff<sup>1</sup> provides that developers who request underground service in a residential subdivision will initially provide, at its cost, all trenching and installation of a complete conduit system as the developers' contribution to the underground system. According to Ameren Missouri's application in this matter, the estimated total capital cost to provide underground service to Markway Meadows is \$94,748. The estimated cost of trenching and installation of the conduit system—which, absent the waiver, would be the developers' responsibility—is approximately \$26,000.

6. Section 393.130 provides:

2. No... electrical corporation... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive

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<sup>1</sup> MO P.S.C. Schedule No. 5, 3<sup>rd</sup> Revised Sheet No. 152, General Rules and Regulations Section III.K.3(a).

from any person or corporation a greater or less compensation for... electricity... or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

7. Further, Section 393.140(11) RSMo provides that no gas, electric or water corporation:

shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by and device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

8. However, discrimination as to rates and charges is not unlawful unless it is arbitrary or unjust.<sup>2</sup> Therefore, the Commission cannot authorize a utility to make an exception in the application of an approved rule, unless the rule specifically provides for the possibility of such an exception.<sup>3</sup>

9. In this matter, Ameren Missouri's tariff specifically provides that the Company may waive all or part of the charges associated with extensions of service and/or construction deposits in order to "effectively compete with offers made to developers and/or customers by unregulated competition after notifying the Missouri

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<sup>2</sup> *State ex rel. Kennedy v. PSC*, 42 S.W.2d 349, 352 (Mo. 1931).

<sup>3</sup> *Id.*

Public Service Commission and receiving an order granting the waiver for good cause shown.”<sup>4</sup>

10. As the tariff states, the Company cannot waive the developers’ up-front trenching and conduit system installation costs without approval from the Commission, because Commission Rule 4 CSR 240-14.020 generally prohibits a utility from providing installation or equipment at a price that is “less than actual cost or value.” Rule 4 CSR 240-14.010(2) provides that the Commission may grant variances from the Chapter 14 rules on written application by a utility showing good cause.<sup>5</sup>

11. The Commission has explained that “good cause” generally means “a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”<sup>6</sup> To constitute good cause, “the reason or legal excuse given must be real not imaginary, substantial not trifling, and reasonable not whimsical.... some legitimate factual showing is required, not just a party’s mere conclusion.”<sup>7</sup>

12. In EO-93-166, the Commission stated that variances of the promotional practices rule are granted only on a limited, case-by-case basis. In that case, the Commission approved a blanket variance for a highway corridor after finding that that the variance did not create unjust discrimination, encourage duplication of facilities or contradict Commission precedent, and that the variance resulted in an economic benefit for the utility and its customers.<sup>8</sup>

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<sup>4</sup> P.S.C. MO., ILL.C.C., IA. ST. C. C. Schedule No. 5 Original Sheet 202.

<sup>5</sup> 4 CSR 240-14.010(2).

<sup>6</sup> For this and other citations regarding the definition of “good cause,” see *Harold v. Laclede Gas Co.*, GC-2007-0311, *Order Directing Filing*, Jan. 23, 2008, fn. 1.

<sup>7</sup> *Id.*

<sup>8</sup> “The Commission’s prior decisions do not have precedential effect, although the Commission does seek consistency in order to provide reliable guidance.” *Christ v. Southwestern Bell*, TC-2003-0066, *Order Denying Rehearing and Motion for Leave To Amend*, filed February 4, 2003, p. 5.

13. In this matter, Staff's investigation found that the variance as requested by Ameren Missouri will not encourage duplication of facilities, because both Ameren Missouri and Three Rivers already have electric infrastructure in the area. Rather, the variance will allow Ameren Missouri to make efficient use of its existing three-phase overhead distribution lines situated along Wardsville Road.

14. Further, Staff found that the requested variance will not create unjust discrimination, because the Company's tariff expressly provides for such variances and because the Company submitted evidence that it will receive an economic benefit by providing service to the new structures, and that such service will benefit existing customers. The variance does not permit Ameren Missouri to offer any potential customer a special rate not found in the Company's tariff.

15. Staff also recommends that the Commission's order state that the Commission is not making a decision about ratemaking treatment in this matter, since the costs and benefits of the variance are estimates, and not yet known and measurable at this time.

16. Finally, Commission Rule 4 CSR 240-23-.010(10)<sup>9</sup> reflects the Commission's preference for locating all newly installed electrical corporation-owned residential subdivision distribution facilities underground.

17. Commission Rule 4 CSR 240-2.080(14) states that a motion for expedited treatment must be supported by an explanation of "[t]he harm that will be avoided, or the benefit that will accrue... if the commission acts by the date desired by the party..."

In this case, Ameren Missouri states that the developers of Markway Meadows have

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<sup>9</sup> "Where reasonable and consistent with utility easements and applicable law, electrical corporations are to locate all newly installed electrical corporation-owned residential subdivision distribution facilities underground. This provision applies to residential subdivisions with average lots no larger than 0.5 acres."

indicated that they must make a selection of electric service no later than June 30, 2013, and that if the Company cannot assure developers that the proposed variance has been granted, the developers will take service from Three Rivers. Therefore, Staff recommends the Commission grant Ameren Missouri's request for expedited treatment and issue its order granting the variance no later than June 30, 2013.

WHEREFORE, Staff recommends that the Commission enter an order granting Ameren Missouri: (1) a variance from its tariff provisions MO P.S.C. Schedule No. 5, 5<sup>th</sup> Revised Sheet No. 152, Section III.K.3(a), which requires developers to provide all trenching and installation of a complete conduit system as the developer's contribution to an underground distribution system for Markway Meadows subdivision in Cole County, Missouri, and (2) a variance from Commission Rule 4 CSR 240-14 regarding Ameren Missouri's service to Markway Meadows subdivision in Cole County, Missouri.

Respectfully Submitted,

**/s/ John D. Borgmeyer**

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### **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 17<sup>th</sup> day of June, 2013.

**/s/ John D. Borgmeyer**

**MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EE-2013-0511 – In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for a Variance from the Provisions of Commission Rule 4 CSR 240-14 to Meet Unregulated Competition in a Subdivision in Cole County, Missouri.

FROM: Alan J. Bax - Tariff, Safety, Economic and Engineering Analysis

<u>/s/ Daniel I. Beck</u> 06/17/13	<u>John D. Borgmeyer</u> 06/17/13
Engineering Analysis / Date	Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Application

DATE: June 17, 2013

**STAFF RECOMMENDATION**

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Application of Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) requesting a variance from the provisions of its tariff and Commission Rule 4 CSR 240-14 (“Application”), for good cause shown, in regard to its provision of electric service to a proposed new subdivision, to be known as Markway Meadows (“Markway Meadows”), in Cole County, Missouri. This would authorize Ameren Missouri to provide, at no charge, the related costs associated with a request for underground electric service by the developer of Markway Meadows pursuant to Ameren Missouri’s tariff entitled “Unregulated Competition Waivers,” Schedule of Rates for Electricity, Schedule No. 5, Sheet No. 202 and 4 CSR 240-14. These costs would otherwise be the responsibility of the developer pursuant to Ameren Missouri’s tariff “General Rules and Regulations,” “Distribution System Extensions,” “Residential Subdivision Extensions,” Schedule No. 5, 5<sup>th</sup> Revised Sheet No. 152. Staff notes that the costs included in the Application are estimates and are not known at this time. Staff recommends the Commission note in its Order that no ratemaking treatment of this transaction is being considered/offered and that any effects of this transaction will be analyzed within the context of Ameren Missouri’s next general rate case.

**OVERVIEW**

On June 6, 2013, Ameren Missouri filed a request for expedited treatment, pursuant to 4 CSR 240.2.080(14), regarding its Application for a variance from its tariff and the Commission’s Utility Promotional Practices Rule (4 CSR 240-14) associated with installing underground electric service to Markway Meadows, a subdivision to be built in Cole County, Missouri. Ameren Missouri is seeking a Commission decision by June 30, 2013.

On June 6, 2013, the Commission issued an Order for Staff to file a Recommendation by June 17, 2013.

Ameren Missouri is current on all assessment fees and annual report filings. Staff is not aware of any pending actions or unsatisfied judgments or decisions against Ameren Missouri in any state or federal agency or court involving customer service or rates occurring within three years of this filing. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

### **DISCUSSION**

In its Application, Ameren Missouri asserts that the developers of Markway Meadows, Mr. Jude and Mrs. Mary Markway (“the Markways”), approached Ameren Missouri in regard to delivering underground electric service to a development in which they intended to eventually construct 44 single family dwellings (an illustration of the planned development is included in the Application). Typically, a prospective developer would provide, at its cost, all trenching and the installation of a complete conduit system as its contribution to Ameren Missouri’s underground distribution system pursuant to Section III.K.-3.a of Ameren Missouri’s tariff.<sup>1</sup> This conduit system includes all materials necessitated in the provision of underground electric service including transformer pads, switchgear pads, pedestals, pulling boxes and other subsurface structures. Ameren Missouri provides all these associated materials at no cost to a developer.

The Markways advised Ameren Missouri that Three Rivers Electric Cooperative (“Three Rivers”), a competing electric service provider, has offered to serve the development with underground electric system at no cost to the Markways. The Application includes a letter addressed to Ameren Missouri from the Markways stating that such an offer from Three Rivers has been received. The Markways would prefer to have Ameren Missouri provide the underground electric system to their prospective new subdivision given that they, and their immediate neighbors, currently receive electric service to their homes from Ameren Missouri. However, this would be contingent on the ability of Ameren Missouri to match the offer of Three Rivers to install an underground electric system at no charge. Three Rivers is not regulated by the Commission as to its rates, charges, terms of service, etc. and thus Three Rivers may make such an offer in attempting to persuade a potential developer in selecting them as their electric service provider. Three Rivers indeed currently provides electric service to another subdivision located just south of the proposed site of Markway Meadows and is thus capable of providing underground electric service to the new proposed subdivision.

The Markways desire to have a decision made by Ameren Missouri as to its ability to provide requested electric service by June 30, 2013. Thus, Ameren Missouri’s

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<sup>1</sup> General Rules and Regulations, Underground Extensions, Residential Subdivision Extensions, Requirements of Applicant/Developer, Schedule No. 5, 5<sup>th</sup> Revised, Sheet No. 152.



Application reflects a request for expedited treatment. Pursuant to 4 CSR 240.2.080(14), the section of the Commission's Rules that address motions for expedited treatment, Ameren Missouri wishes to avoid the possibility that the Markways will select Three Rivers as its electric service provider as asserted in its Application.

Ameren Missouri's tariff entitled "Unregulated Competition Waivers," Schedule of Rates for Electricity, Schedule No. 5, Sheet No. 202 allows Ameren Missouri to seek a waiver from all or part of any charges associated with extensions, such as the current Application, upon requesting and receiving authorization for such a waiver from the Commission for good cause shown. Pursuant to 4 CSR 240-2.06 and 4 CSR 240-14, Ameren Missouri has filed this current Application, proffering that approving this waiver request promotes a more efficient use of the Company's distribution system given that Ameren Missouri has an existing distribution line running along the front side of the proposed subdivision location with ample capacity to serve Markway Meadows. In addition, Ameren Missouri includes a spreadsheet in its Application that it says demonstrates that granting a waiver in this case is economically justified, as it illustrates a benefit to its existing customer base.

As the Commission has noted in past cases involving similar waiver requests, such as Case No. EO-90-31, it is highly aware of the competition that can exist between cooperatives (like Three Rivers) and regulated utilities (like Ameren Missouri). In considering whether its actions in a particular case will result in a just and reasonable outcome, the Commission should not allow a minority of ratepayers to receive service at a lesser rate or at no charge at the expense of the majority of ratepayers without reasonable justification. The Commission noted in Case No. EO-90-31 that approval of such waiver requests should promote the public interest. In other variance request cases, such as Case No. EO-93-166, the Commission considered whether its decision would contribute to a duplication of facilities, a factor that is usually preferred to be limited and is often cited in territorial agreements entered into between competitive electric service providers. The Commission generally encourages competing providers to enter into territorial agreements because such agreements typically promote a more efficient use of applicable electric facilities. In Case No. EO-93-166, a factor the Commission noted as contributing to its approval of a waiver from utility promotional practices along the "Highway T corridor" was that the requesting utility (Union Electric) already had a distribution line installed along the entire length of the corridor thus approving Union Electric's request for a waiver in that case did not promote additional duplication of facilities. The Commission also explained that not approving the waiver request posed a risk to the investment made by Union Electric, given the otherwise competitive advantage held by Union Electric's competitor. Nevertheless, the Commission required that Union Electric demonstrate that its entire customer base would benefit from approving its waiver request, in addition to the recognized benefit to itself pursuant to 4 CSR 240-14.030(1).

Applying the Commission's previous decisions to the matter, given that the proposed subdivision lies in an unincorporated portion of Cole County, Markway

Meadows is a project that is subject to competition for the requested underground electric service between Ameren Missouri and Three Rivers. Each electric service provider has sufficient capability to serve the subdivision from nearby existing facilities, and thus approving Ameren Missouri's waiver request would not promote any additional duplication of facilities and actually promote a more efficient use of its facilities as proffered by Ameren Missouri in its Application.

In its Application, Ameren Missouri includes an analysis that shows the Markway Meadows project requires a capital investment of \$94,748, and will result in incremental energy sales of 1124 MWh per year. Based on these estimates, Ameren Missouri calculated that its requested variance will result in a very small rate reduction for its customers. This estimate of \$94,748 includes the cost of all materials, including transformer pads, switch pads, pedestals, and pull boxes. Staff has obtained from Ameren Missouri an estimate of the portion of the capital costs associated only with the trenching and installation of the conduit system. These charges—approximately one-third of the \$94,748—represent the amount that the developer would otherwise be expected to pay and the amount for which which Ameren Missouri is seeking a Commission-approved waiver.

### **CONCLUSION**

As previously noted, Staff recommends that the Commission approve the Application of Ameren Missouri, granting a variance from its tariff Section III.K.-3.a and from the Commission's utility promotional practices rule 4 CSR 240-14, which would allow Ameren Missouri to provide the requested underground electric system to a proposed new subdivision in an area of unincorporated Cole County, Missouri, a subdivision to be known as Markway Meadows, with no charges being assessed or incurred to the Markways. Ameren Missouri has a distribution line running along the front side of the new subdivision location. Therefore, granting the request for the waiver in the immediate case will not lead to a duplication of facilities; rather, it will allow for a more efficient use of Ameren Missouri's existing facilities. Three Rivers, a competitor of Ameren Missouri's in providing underground electric service for Markway Meadows, is able to provide an incentive to the Markways of installing the electric system at no charge as an enticement for the Markways to select them to provide the desired electric service. Pursuant to its tariff, Ameren Missouri is allowed to offer a similar service to the Markways upon seeking and receiving a waiver from the Commission in regard to the applicable charges associated with the trenching and installation of the conduit system that would otherwise be the responsibility of the Markways. Absent this waiver, the Markways have indicated to Ameren Missouri that they plan on selecting Three Rivers as its electric service provider to Markway Meadows, despite their stated preference for Ameren Missouri. Ameren Missouri's request for expedited treatment is reasonable, given the assertion that the Markways have reportedly stated a choice of electric service providers needs to be made by June 30, 2013. Ameren Missouri included a financial analysis that illustrates a minute benefit to its customer base should this waiver request be granted, as required by 4 CSR 240-14.030(1). Staff is not making a recommendation as

to the effect approving this transaction will have on Ameren Missouri rates. The capital costs noted in the Application are estimated and only could be properly analyzed when known. Staff suggests that the Commission note that no ratemaking matter is being addressed in this matter and that any effect of this transaction will be addressed in Ameren Missouri's next general rate case proceeding.

