

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

13
RFO Binder

Howard Electric Cooperative,)
)
 Complainant,)
)
 v.) Case No. EC-87-148
)
 Union Electric Company,)
)
 Respondent.)
)

APPEARANCES: Rodric A. Widger, Attorney at Law, Stockard, Andereck, Hauck, Sharp & Evans, Post Office Box 1280, Jefferson City, Missouri 65102, for Howard Electric Cooperative.

Ronald K. Evans, Attorney at Law, and Katherine C. Swaller, Attorney at Law, Union Electric Company, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Carol L. Bjelland, Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for Office of Public Counsel and the public.

Andrew J. Snider, Assistant General Counsel, and Charles Brent Stewart, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for William L. McDuffey.

HEARING

EXAMINERS: C. Gene Fee, Melody Schroer, Cecil I. Wright.

REPORT AND ORDER

On May 15, 1987, Howard Electric Cooperative (Howard or Complainant) filed its complaint against Union Electric Company (UE or Respondent). Howard alleges that UE has unlawfully extended service to a customer in an area where it does not have the appropriate certificate authority. Howard also alleges that UE has, without proper authority, waived the cost of this extension and that UE has solicited cooperative members to become customers of UE in violation of Section 393.106,

R.S.Mo. 1986, and in derogation of the cooperative's rights under Section 394.315, R.S.Mo. 1986.

Respondent filed its answer on June 18, 1987, denying any unlawful action in connection with the subject extension of service.

By Order issued July 15, 1987, the Commission set a hearing in this matter and ordered the pre-filing of testimony. Pursuant to a letter from UE requesting procedural revisions, the hearing was rescheduled for October 8, 1987.

On August 21, 1987, Respondent filed an amendment of answer to the complaint asserting that Respondent received a certificate of convenience and necessity in Case No. 4373 which, among other things, authorized it to serve the area of Moberly, Missouri and vicinity. Respondent states that the customer in question lives three to four miles from Moberly and thus resides in the vicinity.

On October 7, 1987, the Commission's Staff filed a motion to withdraw prepared direct testimony and withdraw Staff as a party. Also on October 7, 1987, a subpoena was served by the Commission's Secretary upon Staff's witness, Mr. William McDuffey, at the request of Complainant.

The hearing was held on October 8, 1987 as scheduled, and Complainant and Respondent have filed posthearing briefs. The reading of the transcript was not waived by all parties.

Findings of Fact

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact:

Complainant, Howard Electric 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, R.S.Mo. 1986.

Respondent, Union Electric Company, is a Missouri corporation duly organized and existing under the laws of the State of Missouri. Respondent is a

Public utility within the meaning of Section 393.106, R.S.Mo. 1986, and is engaged in the business of supplying electricity in parts of Missouri.

This dispute has arisen as a result of the construction by UE of an electric line extension to serve a new customer. In early January, 1987, Mr. James Oliver, Jr. requested electric service from Union Electric for a home which he and his family were building in Randolph County, Missouri, along or near County Highway BB, approximately three to four miles southwest of the City of Moberly, Missouri. This site had formerly been the residence of a third party. Howard served this residence until it burned. Howard's meter pole and transformer remain on the land.

UE informed the Olivers that Howard already had facilities on the site of their new home. In March, 1987, UE contacted Howard regarding the Olivers' need for service. Howard then contacted the Olivers on three or four separate occasions. The Olivers, however, renewed their request for UE service.

UE agreed to extend a line to serve the Olivers and began construction of the line in June, 1987, after this complaint was filed. The construction was completed on July 27, 1987, and since that date the Olivers have received service from UE. UE constructed the line to serve the Olivers as a second extension from a certificated line. The second extension is 1.6 miles in length and the first extension from the certificated line is 1.4 miles in length.

The estimated work order cost for the second extension is \$33,465, and the estimated total sales cost of service to the Olivers is \$40,903. UE employed its "Rules Governing Extension of Overhead Distribution System" in extending service. These rules are a part of its schedule of rates on file with and approved by the Commission and UE required the Olivers to provide a revenue guarantee.

A witness for UE testified at the hearing that UE expects to pick up new customers along the line extension when anticipated development occurs. In addition, UE intends to tie approximately 1,000 to 1,500 feet of the new line extension to an

existing line serving customers in Moberly. The purpose of such a tie would be to convert the existing line from 2,400 volts to 7,200 volts to eliminate voltage problems.

Howard contends that UE is without lawful authority to make the line extension to the Olivers. UE contends, however, that the line was a reasonable extension off a line for which UE had received a certificate of public convenience and necessity in Case No. 8764. UE also states that the line extends into an area covered by a certificate granted to Central Missouri Power & Light (the predecessor of Missouri Power & Light Company which has merged into UE) in Case No. 4373.

UE cites Cuivre River Electric Coop., Inc. v. Missouri Edison Company, 7 Mo. PSC (N.S.) 118 (1956), in support of its argument that the extension was reasonable and lawful. In Cuivre River the Commission determined that Missouri Edison Company had the authority to make extensions from its authorized line for reasonable distances and reasonable purposes without obtaining additional authority. Prior to making that extension, Missouri Edison had been granted authority by the Commission to increase the voltage of their transmission line for the purpose, among others, of extending service to any residential and industrial customers asking for service. Thus, the Commission found an extension of 2.5 miles to serve a subdivision with 125 residents to be reasonable under those facts.

The Commission has also approved an extension from a certificated line of 1-1/4 miles. RE: Diekroeger, 9 Mo. P.S.C. (N.S.) 127 (1960). The Commission, in approving the extension in Diekroeger, stated: "An electric company has the right to make connections from an electric line authorized by the Commission in a previous case for reasonable distances and purposes and providing such service can be rendered by extending a lateral distribution line from its main transmission line." Diekroeger, at 138-139.

Following the line of cases, the Commission finds that reasonable extensions may be made by an electric utility without additional authority from the

Commission. The Commission finds, though, that second extensions or "stacking" of extensions are not authorized by these decisions and are not reasonable extensions of service from a main transmission line as allowed in Diekroeger or Cuivre River. The Commission has determined that allowing the stacking of extensions would allow UE to move into territory where it has not shown a need for service and where the Commission has not found service by UE to be in the public interest. UE should seek additional authority where it seeks to build a second extension from an existing extension from a certificated line.

One of the most important reasons for utility regulation is the belief that utilities provide better service at a lower cost under monopoly conditions. Wasteful duplication is also eliminated. If utilities are allowed to make unlimited extensions off extensions, without first seeking approval of this Commission, these purposes would be thwarted. Consequently, the Commission determines that extensions made from electric lines, other than the main transmission line, are not reasonable. The Commission has stated that utilities should convert their line certificates into area certificates which more explicitly delineate the geographic territory to which utilities are authorized to serve. RE: Sho-Me Power Corporation, et al., Report And Order at 7-8 (issued May 6, 1988).

UE in this case, though, asserts it had authority to serve the Olivers under an area certificate granted in Case No. 4373. In Case No. 4373 the Commission granted a certificate to Central Missouri Power & Light Company (to which UE is successor) authorizing it to serve Moberly, Missouri and other communities "together with the operation in the vicinities of the communities". Since the Olivers reside three to four miles from Moberly, UE argues the extension to their home was in the "vicinity" of Moberly and therefore authorized.

Because Commission rules now require applicants for service areas to provide a metes and bounds description of the requested area, terms such as "vicinity" are no longer used. The original meaning of this term can only be

understood by reference to the situation existing at the time. In the early 1900s, orders granting certificates of authority to serve an area, such as the order in Case No. 4373 (issued June 2, 1925), occasionally authorized the utility to serve the vicinity of that area. At that time no rural electric cooperatives existed to serve outlying unincorporated rural areas. Consequently, if a need for service arose, utilities were allowed to extend their services into these rural areas. The formation of rural electric cooperatives in the 1930s brought service to many of these areas, thereby eliminating the need for public utility companies to make such extensions. Consequently, while it may have been desirable to allow public utilities to serve the "vicinity" of a community sixty years ago, it is now no longer necessary unless the Commission determines service to a particular person or area is in the public interest.

The Commission, though, finds that UE could have reasonably interpreted the authority obtained in Case No. 4373 to allow service to the Oliver residence. The Commission has not addressed this issue prior to this case. The Commission, under current circumstances, might find an extension of three to four miles from Moberly unreasonable. Since the Commission has not addressed this issue before, it will only apply this finding prospectively. Thus, even though the Commission has found the second extension to the Olivers from the certificated line to be without authority, the Commission finds that UE did not violate Section 393.170, since it could reasonably have decided it could serve the Olivers from the authority granted in Case No. 4373. The Commission finds that UE did not violate Section 393.170 in providing service to the Olivers.

Issues were raised in the proceeding concerning whether UE complied with its rules and regulations in providing service to the Olivers. From the evidence, the Commission finds that there is no showing that UE violated its tariffs in providing service to the Olivers.

Howard also alleges that UE has solicited customers from the Complainant. No evidence was presented to prove this allegation and that issue is therefore dismissed.

Conclusions

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

The Commission has jurisdiction over the matters in this complaint pursuant to Sections 386.390 and 393.170, R.S.Mo. 1986. The Commission has found that Respondent constructed a line extension in Randolph County, Missouri, along or near County Highway BB, approximately three to four miles from Moberly, Missouri, in order to render service to a new residence owned by Mr. James Oliver, Jr. The Commission has determined that such extension was not reasonable since it was a second extension from a line certificate. The Commission, though, found that UE could reasonably decide it had authority to extend service to the Olivers under the authority of Case No. 4373 and therefore service to the Olivers was reasonable under these circumstances and not in violation of Section 393.170. The Commission determined that UE did not violate its tariffs in providing service to the Olivers. The Commission also determined that Respondent did not solicit customers from Complainant in violation of Section 393.106, R.S.Mo. 1986.

The Commission determines that Respondent's objection to Exhibit 1, Question and Answer 17, is sustained.

It is, therefore,

ORDERED: 1. That Union Electric Company did not violate Section 393.170, R.S.Mo. 1986, or its tariffs by extending service to the James Oliver, Jr. residence. This complaint is hereby dismissed.

ORDERED: 2. That the objection made by Union Electric Company to Exhibit 1, Question and Answer 17, is hereby sustained.

ORDERED: 3. That this Report And Order shall become effective on the 30th day of August, 1988.

BY THE COMMISSION

Harvey G. Hubbs

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave,
Hendren and Fischer, CC., Concur
and certify compliance with the
provisions of Section 536.080,
R.S.Mo. 1986.
Mueller, C., Absent.

Dated at Jefferson City, Missouri,
on this 19th day of August, 1988.