

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

In the Matter of the Application of Jerry L. Countryman for)
Change of Electric Supplier from The Empire District Electric) Case No. EO-2022-0226
Company d/b/a Liberty to White River Valley Electric Cooperative)

LIBERTY’S POSITION STATEMENT

COMES NOW The Empire District Electric Company d/b/a Liberty, and for its Position Statement, respectfully states as follows to the Missouri Public Service Commission (the “Commission”):

Issue: Is it in the public interest for a reason other than a rate differential for the Commission to order a change of electric service provider from The Empire District Electric Company d/b/a Liberty (“Liberty”) to White River Valley Electric Cooperative, Inc. (“White River”) for Jerry Countryman’s asserted reason (having only one electric service provider for his two adjacent real estate parcels)?

Liberty’s Position:

On this single issue presented to the Commission for determination, Liberty agrees with White River and the Staff of the Commission (“Staff”) that Mr. Countryman’s request should not be granted because it does not satisfy the legal standard. In support of this position, Liberty pre-filed the Rebuttal Testimony of Jeffery Westfall, Liberty’s Central Region Senior Director of Electric Operation – T&D (Transmission & Distribution).

RSMo. §393.106, commonly referred to as Missouri’s anti-flip flop law, governs Mr. Countryman’s request. This statute provides, in part, that “(o)nce an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure . . .” The purpose of this statute is to “prevent customers from switching back and forth between two available electric suppliers to take advantage of rate differences” – a

strong public policy of our state. *Empire Dist. Elec. Co. v. Southwest Elec. Co-op.*, 863 S.W.2d 892, 896 (Mo. App. S.D. 1993).

Because the subject property has been permanently served by Liberty for decades, and is not the subject of a current annexation by the city of Ozark or a territorial agreement between Liberty and White River, the Commission's consideration of Mr. Countryman's change of supplier request must center on a public interest determination. With previous change of supplier requests, the Commission has conducted a fact-specific analysis applying a ten-factor balancing test. In this case, the Application fails to demonstrate any grounds which would support the grant of Mr. Countryman's Application under the Missouri statute and the Commission's balancing test. Further, when Liberty loses a customer, its remaining customers are negatively impacted, because Liberty's total cost to provide electric service to the public is shared by all customers.

As previously noted by the Commission, a primary policy reason for the anti-flip flop law is to provide assurance to electric utilities like Liberty that if they spend money to build facilities to provide service to a customer, they will be able to keep that customer absent a compelling reason to allow a change. Mr. Countryman's sole basis for his request – to have one provider serve his two adjacent parcels – is not a compelling reason.

WHEREFORE, Liberty respectfully submits this Position Statement and requests that the Commission adhere to existing precedent and statutory law in this cause and issue an order denying Mr. Countryman's Application.

Respectfully submitted,

/s/ Diana C. Carter

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Certificate of Service

I hereby certify that the above document was filed in EFIS on this 27th day of September, 2022, with notification of the same being sent to all counsel of record. This pleading was also sent by electronic transmission to all parties/counsel of record.

/s/ Diana C. Carter