

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

In the Matter of the Application of)	
Thomas L. Chaney for a Change of Electric)	<u>File No. EO-2011-0391</u>
Supplier)	

POST-HEARING BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and for its *Post-Hearing Brief Of Staff* states as follows to the Missouri Public Service Commission (Commission):

SUMMARY

Although the solar rebate mandate is part of the public policy of the Renewable Energy Standard (RES) to promote the creation and use of electricity from renewable resources, it is Staff's recommendation that the Commission not find this change of supplier request to be in the public interest. Staff's recommendation is based on (1) the economics of changing the Applicant's electric supplier from Cuivre River Electric Cooperative, Inc. (Cuivre River) to Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and (2) the duplication of facilities that would result from doing so.

INTRODUCTION

On June 10, 2011, Thomas L. Chaney (Applicant) filed an *Application For Change Of Electric Service Provider (Application)* requesting the Commission to approve changing his electric supplier from Cuivre River to Ameren Missouri. As reasoning, the Applicant stated that he would like to support the green initiative and take advantage of the solar rebate offered by Ameren Missouri. Cuivre River and Ameren Missouri filed their responsive pleadings on July 6, 2011, and July 12, 2011, respectively, opposing the *Application*. On July 20, 2011, the Staff filed its

Recommendation To Deny Application. Staff based its recommendation in part on the location of the Company's facilities in relation to the Applicant, that other Cuivre River members would pay for Cuivre River's stranded costs if Cuivre River ceased service to the Applicant, and both Cuivre River's and Ameren Missouri's opposition to the *Application*.

On April 19, 2012, Ameren Missouri and Cuivre River filed a *Joint Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For A Determination On The Pleadings* and a *Joint Memorandum Of Law In Support Of Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For A Determination On The Pleadings*. The pleadings argued that there was no genuine issue as to any material fact, that Ameren Missouri lacked the ability to serve the Applicant's property due to a Commission approved territorial agreement between Ameren Missouri and Cuivre River and that the Commission lacked jurisdiction to decide this matter because of the territorial agreement. Both Staff and the Applicant filed responsive pleadings stating the Commission retained jurisdiction to decide whether the change of supplier was in the public interest for a reason other than a rate differential. After the parties filed replies, the Commission issued its *Order Denying Joint Motion To Dismiss For Lack Of Jurisdiction* on June 20, 2012, finding that the

Missouri statute grants jurisdiction to the Commission to order a change of supplier with regard to both rural and investor-owned electric companies. Both Ameren Missouri and Cuivre River have legal authority to serve Mr. Chaney's property except for the terms of their territorial agreement, which does not extinguish Mr. Chaney's statutory right to request a change of supplier.

Thereafter, on June 25, 2012, the Commission issued its *Order Directing Filing Of Facts*, directing the parties to file separate lists of facts for consideration in the

Commission's determination of the *Application*. All parties submitted lists of facts, however, Ameren Missouri's and Cuivre River's *Joint Stipulation Of Facts And Of Law* stated that questions of fact remained and requested the Commission set this matter for evidentiary hearing. The Commission convened an evidentiary hearing in this matter on September 10, 2012, and issued a briefing schedule thereafter. This post-hearing brief is pursuant to the Commission's Order.

Staff notes that at the evidentiary hearing, Ameren Missouri requested the Commission reconsider the joint motion to dismiss for lack of subject matter jurisdiction. When questioned by Judge Jones as to whether Ameren Missouri was raising any new arguments not presented in its April 19, 2012 *Joint Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For A Determination On The Pleadings*, Ameren Missouri answered that it was not.¹ For brevity, the Staff is not briefing the issue of subject matter jurisdiction within this brief, but will simply point the Commission back to the arguments and support contained in Staff's May 21, 2012 *Response To Deny Ameren Missouri's and Cuivre River Electric Cooperative, Inc.'s Joint Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For Determination On The Pleadings* and *Staff's Memorandum Of Law To Support Subject Matter Jurisdiction*.

JURISDICTION

Sections 393.106 and 394.315 RSMo 2000, the "anti-flip-flop" statutes, authorize the Commission upon application by an affected party, to order a change of electrical suppliers if doing so is in the public interest for a reason other than a rate differential. "The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service,

¹ Tr. p. 48, lines 9-18.

such questions being reserved to courts of competent jurisdiction.² A party “affected” by a matter is one “interested therein...with respect to any matter determined therein.”³

Mr. Chaney is an “affected party” under the change of supplier statutes because he is the named Cuivre River member for the electric account at 1110 St. Theresa Lane in Dardenne Prairie, Missouri.⁴ Ameren Missouri is a public utility and an electrical corporation subject to the jurisdiction of the Commission pursuant to Section 386.250, RSMo.⁵ Cuivre River is a rural electric cooperative organized pursuant to Chapter 394 of the Revised Statutes of Missouri.⁶ Under the Commission approved territorial agreement between Ameren Missouri and Cuivre River, Ameren Missouri is the predominant supplier in Dardenne Prairie, and any new customer in Dardenne Prairie would be served by Ameren Missouri.⁷

In 2008, the Missouri Secretary of State approved for circulation five (5) initiative petitions relating to renewable energy. All five (5) renewable energy petitions applied to electric corporations, but only three applied to electric corporations, electric cooperatives and certain municipal utilities. Missouri Proposition C, also known as the Clean Energy Initiative or the “Renewable Energy Standard” (RES) per Section 393.1020 RSMo, is the voter initiated state statute that appeared on the November 4, 2008 ballot in Missouri. The portfolio and rebate offer requirements of the voter initiated state statute apply to electric corporations only, as defined by Section 386.020 (15) RSMo (Supp. 2010). Proposition C created a renewable electricity standard in the

² Section 394.315.2, RSMo.

³ *State ex rel. Riverside Pipeline Co., L.P. v. Public Service Com'n of State*, 215 S.W.3d 76, 81 (Mo. banc 2007).

⁴ Staff Ex. 1, p. 1.

⁵ Ameren Ex. 1, p. 1.

⁶ *Id.*

⁷ Staff Ex. 1, p. 1.

state, which requires electric corporations, as defined by Section 386.020 RSMo, to increase their usage of renewable energy in stages and to "...make available to its retail customers a standard rebate offer of at least two dollars per installed watt for new or expanded solar electric systems cited on customers' premises, up to a maximum of twenty-five kilowatts per system...,⁸" given certain restrictions.

The questions presented to the Commission by the *Application* are (1) whether Mr. Chaney has any reason other than a rate differential for changing power suppliers, and if so (2) are any of those reasons in the public interest. Staff answers the former in the positive and the latter in the negative.

The Commission also has an issue of first impression before it, and that is how the goal of the Renewable Energy Statute, Sections 393.1025 and 393.1030 RSMo (Supp. 2010), is to be applied to a change of supplier request. Staff reviewed other jurisdictions for guidance, but was not able to find an applicable case to the matter pending before the Commission.

PUBLIC INTEREST

In this matter, it is Mr. Chaney that bears the burden of proving that the requested change of suppliers is in the public interest.⁹ When deciding whether a change of supplier is in the public interest, "[t]he Commission does not use a single factor test when determining whether an application for a change of electric suppliers should be granted. Instead, it conducts a case-by-case analysis applying a ten-factor balancing test.¹⁰" The ten factors are:

⁸ Section 393.1030.3 RSMo

⁹ *Smith v. Union Elec. Co.*, 2006 WL 3612848 (Mo.P.S.C. 2006) (Case No. EC-2007-0106) (internal citations omitted).

¹⁰ *Id.*

(1) Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power; (2) Whether there are health or safety issues involving the amount or quality of power; (3) What alternatives a customer has considered, including alternatives with the present supplier; (4) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply; (5) The effect the loss of the customer would have on the present supplier; (6) Whether a change in supplier would result in a duplication of facilities, especially in comparison with alternatives available from the present supplier, a comparison of which could include (a) the distance involved and cost of any new extension, including the burden on others—for example, the need to procure private property easements, and (b) the burden on the customer relating to the cost or time involved, not including the cost of the electricity itself; (7) the overall burden on the customer caused by the inadequate service including any economic burden not related to the cost of the electricity itself, and any burden not considered with respect to factor 6(b); (8) What efforts have been made by the present supplier to solve or mitigate the problems; (9) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and (10) The effect the granting of authority for a change of suppliers might have on any territorial agreements between the two suppliers in question, or on the negotiation of territorial agreements between the suppliers.

While an administrative agency is not bound by *stare decisis*,¹¹ Staff's recommendation in this matter was decided on factors five (5) and six (6). The detriment caused by these factors outweighs the public interest for the use of solar power created under the RES.

At hearing, Ameren Missouri's Division Supervising Engineer testified that "[t]ransfer of Mr. Chaney's residential service to Ameren Missouri will require Ameren Missouri to extend 500 feet underground primary cable and install a new pad transformer, service and meter (duplicating and paralleling Cuivre River's installed facilities) at a cost of approximately [\$7,100], none of which will be charged to Mr. Chaney."¹² Further, in September 2010, Cuivre River upgraded and rerouted service to

¹¹ *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

¹² Ameren Ex. 1, p. 2; Tr. p. 84, lines 9-25; Tr. p. 85, lines 1-4.

Mr. Chaney's structure at his request, but without cost to Mr. Chaney.¹³ "Transfer of Mr. Chaney's service to Ameren Missouri will cost Cuivre River's members \$3,525 in stranded investments and expense of retiring the service.¹⁴" "Cuivre River could reuse some of the facilities currently used to serve Mr. Chaney, like the meter and transformer, but could not use the service line again.¹⁵" This results in costs being borne by other Cuivre River members instead of being paid by Mr. Chaney's continued payments.¹⁶ From the perspective of Cuivre River and its members, the loss of a single customer would have a small negative impact.¹⁷ However, should other members be allowed to change suppliers to Ameren, the impact could be large.¹⁸ Even Mr. Chaney must incur costs to receive service from Ameren. Mr. Chaney "...would be required to incur expenses related of hiring a surveyor, digging a...trench and providing and installing conduit...provide Ameren Missouri with easements for this installation...excavate past his neighbors' homes...and directional bore conduit under the street.¹⁹" "This work could cost as much as \$2,500.²⁰"

Granting the change of supplier will also result in the duplication of facilities. "Transfer of Mr. Chaney's service to Ameren Missouri will not reduce the amount of right-of-way maintained by Cuivre River. The overhead conductor presently serving Mr. Chaney will continue to be required for service to other Cuivre River members.²¹" "...Ameren [Missouri] would be providing service from the adjacent corner of the

¹³ Ameren Ex. 1, p. 2.

¹⁴ Ameren Ex. 1, p. 2.

¹⁵ Staff Ex. 1, p. 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Ameren Ex. 1, p. 3.

²⁰ *Id.*

²¹ Ameren Ex. 1. p. 2.

property, but they would have to completely duplicate everything that we [Cuivre River] have in place.²² For these reasons, the economic detriments in this instance outweigh the RES' policy of using alternative generation.

RATE DIFFERENTIAL

The RES mandates that “each electric utility shall make available to its retail customers a standard rebate offer of at least two dollars per installed watt for new or expanded solar systems sited on a customer’s premises, up to a maximum of twenty-five kilowatts per system...”²³ If Ameren Missouri’s solar rebate is a rate differential, then there must be some other facts to support why a change of supplier is in the public interest. If the Commission decides the solar rebate is a “rate differential”, it may still grant Mr. Chaney’s request as long as there are sufficient facts to support an alternate public interest. It is the opinion of the Staff Counsel’s Office that the solar rebate is not a rate differential.

Section 386.020 (46) RSMo (Supp. 2010) provides a rate is

Every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof.

The solar rebate provided under the RES is a one time, non-recurring charge, unlike a rate a utility would charge for service. In the *Cardwell Lumber* case, Case No. EO-2011-0052, Staff testified that “[i]n the electric industry, rates are typically described as

²² Tr. p. 100, lines 8-11.

²³ Section 393.1030.3, RSMo

the price one would pay for some amount of usage.²⁴ The Staff maintains that position in this case.

Finally, Mr. Chaney does not stand to incur a positive rate differential should the Commission allow him to change suppliers. Even with a solar rebate, Mr. Chaney's "...overall cost of electricity will be the same or higher than either supplier."²⁵ Mr. Chaney testified "I expect an approximate cost of \$30,000 after the \$20,000 rebate..."²⁶ "This cost calculates down to, approximately, 12 cents a kilowatt hour after the rebate assuming a 25 year life span on the system."²⁷ Mr. Chaney's request in this matter is based on his interest in improving air quality and eliminating peaking power plants all together, not to gain a rate differential.²⁸

CONCLUSION

While Mr. Chaney's goals are admirable, the change of supplier will require the Commission to direct Ameren Missouri to provide service to a customer that it does not want, and require Cuivre River to stop serving a customer that it wants to keep. Due to the economics and duplication of facilities, a change of supplier is not in the public interest for a reason other than a rate differential. Staff recommends the Commission deny the Applicant's request for a change of supplier.

²⁴ *In the Matter of the Application of Cardwell Lumber, Inc., for Approval of a Change of Electric Supplier at its 5927 Highway 50 West, Jefferson City, Missouri Location from Union Electric Company to Three Rivers Electric Cooperative*, Case No. EO-2011-0052, Tr. p. 213, lines 13-16.

²⁵ Tr. p. 56, lines 18-20.

²⁶ Tr. p. 56, lines 20-21.

²⁷ Tr. p. 56, lines 22-24.

²⁸ Tr. p. 54, lines 18-20; Tr. p. 55, lines 16-18.

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez
Senior Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing have been sent by electronic mail to Thomas L. Chaney at tomeygun@gmail.com; Wendy K. Tatro, counsel for Ameren Missouri at AmerenMOService@ameren.com; Rodric A. Widger, counsel for Cuivre River at rwidger@lawofficemo.com; and Lewis Mills, counsel for the Office of the Public Counsel at opcservice@ded.mo.gov on this 19th day of October 2012.

/s/Jennifer Hernandez