

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 14th  
day of April, 1995.

Jimmie & Kathy Tyre for change of )  
Electric Supplier, City of Slater/ )  
Central Missouri Electric Cooperative, )  
Sedalia, Missouri. )

CASE NO. EO-95-40

ORDER GRANTING CHANGE OF SUPPLIER

On August 8, 1994, Jimmie D. Tyre, Jr. and Kathy Tyre (Applicants) filed an application for an order authorizing a change of electrical suppliers from their present supplier, the City of Slater, Missouri (City) to Central Missouri Electric Cooperative (CMEC), Sedalia, Missouri. The application indicates that Applicants' property is now located outside the city limits of the City of Slater, but is adjacent to and contiguous with other land presently served by CMEC.

Attached to the application are documents entitled "Agreement" which the application claims were executed by officials of the City and CMEC. One agreement consents to the discontinuance of electric service to the Applicants by the City, and the other consents to the provision of electrical service to the Applicants by CMEC. Neither agreement is notarized nor contains any indication of the authority of the signing person to bind the entity purported to be bound thereby, and in the case of CMEC, the position or title of the person purportedly signing on its behalf is not disclosed. On September 30, 1994, the Commission issued an Order Directing Staff Report and Requesting Response to Application, which was sent to the City and CMEC, in addition to the Applicants. The Order referenced the deficiencies noted above, and invited responses thereto. This invitation was apparently declined, as no pleadings were filed addressing the Commission's concerns.

Section 91.025.2, RSMo 1994 authorizes a change in electric supplier where the customer seeking a change is currently receiving service from a municipally owned or operated electrical system, or its predecessor in interest. The statute provides that the Public Service Commission may order a change in suppliers where the change is in the public interest for a reason other than a rate differential.

On October 3, 1994, the Staff of the Commission filed its recommendation indicating that the City desires to discontinue service to the applicants since the applicants are located outside the city limits, and notes that the Applicants are located on land adjacent to land currently served by CMEC. Staff points out that both the City and CMEC have consented to the change, per Exhibits B and C attached to the application, and concludes that it is in the public interest not to have a municipal utility serving outside of its city limits, and recommends that the Commission issue an order approving the application for change of supplier.

It appears that § 386.800 may apply to this situation. Section 386.800 provides as follows:

1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned utility prior to July 11, 1991; or

(2) The service is provided pursuant to an approved territorial agreement under Section 394.312, RSMo;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, RSMo, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within

the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. ...

2. Any municipally owned electric utility may extend, pursuant to lawful annexation, its service territory to include any structure located within a newly annexed area which has not received permanent service from another supplier within ninety days prior to the effective date of the annexation.

Sections 386.800.1 and 386.800.2, RSMo 1994. If the City commenced service to the Applicants after July 11, 1991, such provision of service would be contrary to this statute unless the City had annexed the territory or entered into a territorial agreement with the supplier in whose service territory the Applicants are located. The application merely states that the Applicants' premises "are not located outside the city limits ...". Neither the application nor Staff's recommendation indicates when the City commenced service to the Applicants, or what set of circumstances occurred which restricted the city limits to exclude the land on which Applicants' premises are located, which presumably had formerly been located within the city limits.

The Commission has reviewed this matter in its entirety, and is of the opinion that despite the Commission's preference for more information, there is sufficient information in the application and Staff's recommendation from which to conclude that a change in electrical suppliers is in the public interest. While the consents of the City and CMEC are not notarized and do not contain the authority of the signing person to bind the entity purported to be bound thereby, the application does contain the information that the application was prepared by Adam B. Fischer, an attorney for CMEC, at the request of and in accommodation to the Applicants. While the better practice is to provide consents which are notarized and which disclose the authority of the signing party, the Commission is satisfied that the City and CMEC have received notice of the claims made in Applicant's application, and have chosen not to respond.

Nevertheless, the Commission finds that it would be appropriate to order the Records Department of the Commission to serve a copy of this order upon the City and CMEC by certified mail.

The Commission is also of the opinion that since Applicants are no longer located within the City's city limits, the City could not properly provide electrical service to the Applicants, absent annexation, a territorial agreement, or commencement of service prior to July 11, 1991. Given this fact, and Staff's explanation that the City desires to discontinue service to the Applicants because they are located outside of the City, and that the Applicant's premises are located adjacent to land presently served by CMEC, the Commission is of the opinion that in the unique circumstances presented in this proceeding, it is appropriate to allow the Applicants to change electrical suppliers as requested. None of the parties seek to litigate any issue in this case, and it does not appear that there are any factual matters in dispute. Given Staff's recommendation and the context in which this case has arisen, the Commission determines that a change in suppliers is in the public interest for a reason other than a rate differential.

**IT IS THEREFORE ORDERED:**

1. That Jimmie Tyre and Kathy Tyre may change electric suppliers to their premises located as described in Exhibit A attached to the application, from the City of Slater, Missouri, to Central Missouri Electric Cooperative, as soon as Central Missouri Electric Cooperative has constructed the necessary facilities to provide service to the Tyre property.

2. That Central Missouri Electric Cooperative shall inform the Commission Staff when the change of electric supplier ordered in Ordered Paragraph 1 is complete and the Tyres become a customer of Central Missouri Electric Cooperative.

3. That Commission's Staff will monitor the change of supplier and file a memorandum with the Commission when it is satisfied that the change of supplier has been successfully and safely accomplished.

4. That the Records Department of the Commission shall serve a copy of this order on the City of Slater, Missouri, and Central Missouri Electric Cooperative by certified mail as set forth above.

5. That this order shall become effective on April 25, 1995.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.