

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application of       )  
Thomas J. and Barbara A. Bakie for       )  
change of electric suppliers.           )  
CASE NO. EO-93-170

APPEARANCES:   Thomas J. Bakie, HCR 2, Box 1100, Kirbyville, Missouri 65679,  
                  Pro se.

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Electric Cooperative, Inc.

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Thomas H. Luckenbill, Assistant General Counsel, P. O.  
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of the Missouri Public Service Commission.

HEARING

EXAMINER:       Blaine E. Bensavage

REPORT AND ORDER

Procedural History

On November 23, 1992, Thomas J. Bakie and Barbara A. Bakie (Bakies or Applicants) filed an application with the Commission for a change of electric suppliers at their home in Kirbyville, Missouri, pursuant to Section 393.106, RSMo 1986. The Bakies are seeking authority to switch electric service from White River Valley Electric Cooperative, Inc. (White River) to The Empire District Electric Company (Empire). On December 2, 1992, the Commission issued an Order And Notice notifying both electric suppliers of the Bakies' application and ordering the suppliers to file their response thereto. On December 31, 1992, Empire filed its response to the Bakies' application, and on January 4, 1993,

White River filed its response to the Bakies' application. On January 7, 1993, the Bakies filed a response to White River's response.

On February 23, 1993, the Commission issued an Order And Notice Setting Prehearing Conference And Hearing Date. The date set for the prehearing conference and hearing was subsequently modified pursuant to a request by White River. On March 22, 1993, the Bakies filed a supplement to their application to update their application with respect to occurrences which took place subsequent to the filing of their application. On March 29, 1993, a hearing was held on the Bakies' application for change of electric suppliers. Prior to the hearing, it was determined that a prehearing conference was unnecessary. At the hearing, testimony was presented on behalf of the Bakies, the Staff of the Commission and White River.

#### Findings of Fact

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

Applicants are a husband and wife who live in a house located in Kirbyville, Missouri, and who currently receive electrical service from White River. White River is a rural electric cooperative with the general powers designated in Section 394.080, RSMo Supp. 1992. Empire is an electrical corporation and public utility as defined in Section 386.020, RSMo Supp. 1992. Applicants seek through this proceeding an order from the Missouri Public Service Commission authorizing them to change electric suppliers from White River to Empire.

The evidence presented on behalf of the Bakies indicates that the Bakies originally inquired about obtaining electric service from Empire in approximately 1978, but because a neighbor wouldn't allow the necessary lines to cross their property, the Bakies obtained service from White River instead. For

15 years the Bakies have received what they consider to be poor electrical service, with a decrease in dependability and quality and an increase in problems over the past seven years. The Bakies have experienced brown-outs, flickering lights, and loss of power to clocks, lights, well-pump, and hot water and room heaters. They also sustained equipment loss due to lightning, including a hot water heater, answering machine, microwave, well-pump, TV, computer power pack and surge protector. Over the years the service quality has not improved, even though Taney County has become less rural than it was in 1978. The Bakies do not believe that their experience is similar to that of other rural customers.

The evidence indicated that the power fluctuations became extreme in 1991. At one point the fire chief of Hollister came out to the Bakie residence when an orange flash was observed by the ceiling. White River was called. This problem with low voltage was subsequently determined to be a combination of loose ground wires inside the inside box, a main ground wire dangling loose from the locked outside pole box, and a loose neutral connector on White River's line caused by a "split-bolt" connector which had worked loose. After these problems were fixed, service at first was much improved, but later the fluctuations continued. In December 1991 the Bakies had Larry Gentry, a general contractor, check out their inside electrical box for ground connections, and in July 1992 the Bakies hired Polo Electric Company to check outlet wiring and all grounds.

The Bakies continued to have problems in 1993 after they filed their application for change of supplier. In January they experienced blinks on three days, and in February they also experienced problems on three days, including February 15th, when they had 15 blinks and four outages. The most recent problem occurred on March 25, 1993, after they filed the supplement to their application and before the date of the hearing. On an average the blinkings or outages occur on a monthly basis, and are hard on appliances and computer work in progress.

Mr. Bakie testified that the problems with the electric supply were affecting the use of his computer. Because of the problems, the computer programs will not function or will be incomplete. If a blink lasts for over five seconds, the computer will dump all data that is not already in storage. With a brown-out there are partial entries, things will not function, and the computer must be recycled. Mr. Bakie also expressed concern about the adequacy of the power supply in relation to a commercial pottery studio he intends to open, which would require the use of kilns and other heavy electrical equipment. Even a momentary loss of power could result in expense, loss of product, and loss of income.

With respect to the voltage levels at the Bakie residence, the evidence was that the summer peak day in 1992 at the Bakie tap was 121.8 volts, with no reason to expect a big drop in the voltage in the one-half mile to the Bakie residence. This figure falls in the favorable zone for regulated utilities. The evidence was that White River does not maintain records of normal voltage readings, and White River's sole witness indicated that he had no personal knowledge of any voltage checks made at the Bakie meter box. This witness also testified that he could not say for sure that the Bakies were not having a problem with a lack of power without a continuous run of testing at the Bakie residence over a period of time, although he also mentioned that White River has a SCADA computer which regularly monitors voltage at the substation level.

In approximately the summer of 1992 White River installed a lightning arrester near the Bakie residence. Testimony on this issue was contradictory. Mr. Bakie was apparently under the impression that this was the first lightning arrester to be installed on his line. However, the Commission finds, as was indicated by White River, that White River either added a second lightning arrester to the line serving the Bakie property, or replaced one that was already there. Whichever occurred, there is little dispute that the Bakies suffered from

severe lightning problems. The Bakies' experience with lightning problems did improve after the action taken by White River.

On February 6, 1993, the Bakies received a call from Chris Hammon of White River, who told them two cracked insulators had been replaced, and another one was arcing. The Bakies were called by Hammon again on March 3 and 4, 1993, and were told that an insulator at a horse arena had been causing difficulties since its installation. A great deal of the testimony focused on this latter insulator, which was installed at the arena grounds on the same phase as the Bakies. White River was informed by the manufacturer of this lightning arrester that some of its arresters were defective; however, this arrester was manufactured after the time period during which the manufacturer claimed the defective arresters had been manufactured. The arrester was installed at the arena grounds in June of 1991, and removed in February of 1993. It is not clear from the record whether the removal took place before or after February 15 and 23, when the Bakies had additional problems with their electric service.

The defect reported by the manufacturer involved a bad seal, which would allow moisture to collect and cause a failure. Mr. Bakie testified that problems were increased on rainy or damp days, and White River contends that this faulty arrester was the cause of the Bakies' problems and has now been rectified. There was also testimony regarding the length of time it took White River to locate the faulty arrester. White River presented testimony that there was no readily discernible pattern to the faulty arrester, and that an inspection program for cracked, visible problems did not yield any results. Eventually White River decided to look at all lightning arresters manufactured by that manufacturer, regardless of the date of manufacture. Bodendiecks, or fault locators, were used to try to find the problem. Ultimately White River used a computer file with manufacturer information on it to ride the line going to the Bakies, and took each lightning arrester down to test it. When the lightning

arrester at the horse arena was taken down, a high pot test was conducted, which showed a 200 milliamp fault at 7600 volts, which indicates it was not functioning properly.

White River gave explanations for several particular outages the Bakies experienced, and testified about the attempts it has made to correct the Bakies' service problems. According to White River, on September 9 a car ran through a pole, on February 15, the area experienced a heavy snow storm, and on March 25 a tree interfered with the line. White River has attempted to address the Bakies' service problems by replacing the bad lightning arrester at the horse arena, and by tightening the split-bolt connector and using compression connectors to take care of that problem, with the split-bolt connector scheduled for eventual replacement. In addition, White River believes the Bakies will benefit from improvements being made by White River. In October and November, 1992, White River converted a single-phase line to a three-phase line to better coordinate the end of the line, and is currently planning to build a double circuit 477 MCM line out of its Branson substation so that it can split up two particular loads that it has.

The Bakies are currently served by White River from a single-phase 7.6 Kv line approximately one-half mile in length, which serves a total of four customers. This lateral taps the three-phase feeder at a point about 4.5 miles from the substation, and the three-phase line continues for another five miles and becomes a single-phase line for another six miles to the end of that circuit. There are numerous single-phase taps from each phase of the three-phase feeder line. Empire has a single-phase line serving a 14 lot subdivision adjacent to the Bakie property, with the line approximately 100 feet from the Bakies' residence. This single-phase line is approximately one and one-half miles in length and connects to a three-phase line which extends about six miles to the substation.

The Bakies believe that they will get better service from Empire because they will not be at the end of a line, and hope there will be no more blinks or drops in voltage. Mr. Bakie testified that he was told on various occasions by professional electricians, and two people from White River, Joe Wilson and Ted Bookout, that service at the end of a power line is not all that steady. The conversation with Mr. Bookout took place approximately five years ago.

At the hearing on this matter Empire reiterated that it took no position on whether a change of supplier should be ordered in this case. The Staff of the Commission asserts, based on the 1992 summer peak day voltage reading, that the Bakies are not having a problem with low voltage. Staff also claims that although the Bakies have had some service problems, overall their service is about as good as could be expected, and therefore Staff recommends that the request for change of electric suppliers be denied.

The facts as presented concerning the Bakies' request for a change of electric supplier present a close case to the Commission. The Commission, though, finds that the evidence is that the Bakies have not received an adequate supply of electric power sufficient to meet their needs, particularly with respect to the quality of the power. Very few references were made to any health or safety issues in this case. Brief reference was made to Mrs. Bakie's mother, who lives with the Bakies, and who may need steady electricity for electrical equipment such as oxygen, for medical problems such as severe anemia and thrombocytosis, although this issue was never developed at the hearing. The orange flash spotted by the Bakies in their home probably represented a safety danger; however, the problem was found to be within both the Bakies' and White River's areas of maintenance responsibility, and the safety hazards were professionally attended to by both parties. White River has not presented any particular alternatives to the Bakies, inasmuch as White River feels that the

service problems were resolved with the replacement of the defective lightning arrester near the horse arena. The Bakies have had a substantial amount of equipment destroyed, primarily through lightning; however, the problem with lightning has lessened due to White River's installation of a second or replacement lightning arrester on the Bakies' line. The length of time it took for White River to adequately address the lightning problem is also not reasonable, and the Bakies' equipment continues to be damaged through low voltage.

The Commission finds that the cumulative effect of several factors weighs in the Bakies' favor. The Commission finds that White River's failure to respond adequately to the repeated problems experienced by the Bakies over a period of years shows a lack of concern by White River. Only after the Bakies initiated this case did White River attempt a systematic examination of its service line and eventually find one of the major problems affecting service to the Bakies. The Bakies are expecting to increase their reliability needs as they expand their business and White River has shown a lack of interest in ensuring low voltage levels will not affect the Bakies' business. In addition, the Bakies sought service from Empire initially but have been unable to obtain service until Empire constructed an extension to within a short distance of the Bakie property. Thus, little additional expenditure would occur if the Bakies change electric suppliers.

Based upon the evidence, the Commission finds that the Bakies' request to change suppliers is not based upon a rate comparison. The factors involved in the request are reliability of service, quality of service and a perception that White River was not responsive to their problems. Based upon the evidence regarding the electric service provided the Bakies by White River, the Commission finds it is in the public interest to grant the request to change the supplier.



### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The burden of proof in change of electric supplier cases is on the applicant. Re *Cominco American, Inc.*, 29 Mo. P.S.C. (N.S.) 399 (1988). The Commission utilizes a case-by-case analysis in determining whether an application for change of electric suppliers should be granted. *Cominco*, 29 Mo. P.S.C. (N.S.) at 405.

The Missouri Legislature enacted four statutes, commonly referred to as the "anti-flip-flop" laws, which assure electric suppliers the right to continue supplying retail electric energy to structures through permanent service facilities once service has commenced, except for certain limited circumstances under which the Commission may authorize a change of supplier. Section 91.025.2, RSMo Cum. Supp. 1992 relates to applications for change of supplier made by customers currently receiving service from a municipally owned or operated electrical system, while Section 393.106.2, RSMo Supp. 1992 -- inadvertently miscited by Applicants -- concerns applications for change of supplier by customers currently receiving service from an electrical corporation or joint municipal utility commission. The two remaining statutes deal with a situation where the customer who is seeking a change of supplier is currently receiving service from a rural electric cooperative. The two statutes state as follows:

Notwithstanding the provisions of subsection 2 of this section, after a public hearing upon a complaint, the public service commission may order that service be provided by another supplier if it finds that service from another supplier of electricity is in the public interest for a reason other than rate differential. Nothing in this section shall be construed as conferring upon the public service commission jurisdiction over the rates, financing, accounting or management of any electric cooperative.

Section 394.080.5, RSMo Supp. 1992.

The public service commission, upon application made an affected party, may order a change of suppliers on the basis

that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. 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, such questions being reserved to courts of competent jurisdiction.

Section 394.315.2, RSMo Supp. 1992.

In many cases involving change of electric suppliers, the issue arises in the context of a dispute between electric suppliers over which supplier has authority to service a particular customer. In contrast, cases which have commenced at the behest of a customer have been rare. The *Cominco* case appears to be the leading case on customer-initiated applications for change of electric suppliers, and provides a substantial amount of guidance regarding the standards to be applied in determining when a change of electric suppliers is appropriate. A close reading of *Cominco* elicits a number of factors which should be considered in reaching a determination on an application for change of suppliers.

The factors discussed in *Cominco* may be summarized as follows:

(1) Whether the customer's needs cannot be adequately met by the customer's present supplier, in terms of either the amount of power or quality of power, including voltage levels and breaks in the flow of electricity. This would include whether the customer has immediate needs and/or requires a backup source, etc.

(2) Whether there are any health or safety issues involving the amount or quality of power.

(3) Whether and what alternatives the customer has considered, including alternatives with the present supplier.

(4) Whether the customer's equipment has been damaged or destroyed due to 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 service or facilities as compared with alternatives by the present supplier. This comparison could include the following:

(A) The distance involved in the extension of service by the new supplier versus the distance involved in any alternative by the present supplier;

(B) The cost of the new extension versus the cost of any alternative by the present supplier;

(C) The amount of time needed to complete the new extension versus the amount of time needed to put into effect any alternative by the present supplier;

(D) The burden on the customer relating to cost, time, etc., with respect to a change in supplier versus alternatives by the present supplier, exclusive of the cost of the electricity itself;

(E) The burden on others relating to the extension of service by the new supplier versus alternatives by the present supplier; for example, the need to procure private property easements, the need to clear a path through a national forest, etc.

The factors elucidated in the *Cominco* decision are not exclusive, and the Commission may consider other pertinent factors, depending on the given fact situation. Other factors which may be considered include, but are not limited to, the following:

(1) The overall burden on the customer represented by the inadequate service, including an economic burden not related to the cost of electricity itself. This burden would not be limited to the comparative effect on the customer of duplication of service or facilities.

(2) Efforts made by the present supplier to solve and/or mitigate problems;

(3) Impact the Commission's decision may have on economic development, either individually or cumulatively;

(4) The effect a grant of authority for a change of suppliers may have on any territorial agreements between the two suppliers, or on the negotiation of territorial agreements.

The Commission has found, based upon several of the factors set out above, that the Bakies' request to change electric suppliers should be granted. Although no single factor was found to be determinative, the cumulative effect was found to support the change. The statutes' only guidance as to when a change of supplier should be granted is when the Commission finds it is in the public interest for a reason other than a rate differential. The Commission found that the public interest should be served in this case by granting the request and that rate differentials were not the reason for the change. As stated in *Cominco*, these determinations are to be made on a case-by-case basis utilizing the factors set out above, or, where appropriate, other factors that are relevant. In this case, the Commission concludes that the Bakies' request to change electric supplier is in the public interest and the Commission will so order.

**IT IS THEREFORE ORDERED:**

1. That the Bakies may change electric suppliers to their property located in Kirbyville, Missouri from White River Valley Electric Cooperative, Inc. to The Empire District Electric Company, as soon as The Empire District Electric Company has constructed the necessary facilities to provide service to the Bakie property.

2. That The Empire District Electric Company shall inform Commission Staff when the change of electric supplier ordered in Ordered Paragraph 1 is complete and the Bakies become a customer of Empire District Electric Company.

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

4. That this Report and Order shall become effective on August 17, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Mueller, Chm., McClure and  
Perkins, CC., Concur.  
Kincheloe, C., Concurs in separate opinion  
and certify compliance with the provisions  
of Section 536.080, RSMo 1986.  
Crumpton, C., Absent.

Dated at Jefferson City, Missouri,  
on the 6th day of August, 1993.

CONCURRING OPINION OF COMMISSIONER DUNCAN E. KINCHELOE  
Application of Thomas J. and Barbara A. Bakie  
Case No. EO-93-170

I fully concur and join in the Commission's Report and Order in this case. The purpose of this separate concurrence is simply to prevent future parties' misunderstanding of the Commission's finding that the Bakies' request to change suppliers is not based upon a rate comparison.

Whether a rate differential motivates a customer's decision to seek a change of supplier is irrelevant to the Commission's determination of the public interest in such a case. A customer's burden to prove that his application serves the public interest does not require a demonstration of his indifference to rates. Nor can a supplier successfully overcome relevant evidence of the public interest merely by showing that the customer is influenced, even primarily motivated, by a rate differential. In considering a proposed change of supplier, the statutes simply require the Commission to determine the public interest without regard to a rate differential.

The Commission's finding that the Bakies' request is not based upon rates only serves to underscore the fact that rates are not a factor in this case.

Respectfully submitted,

  
Duncan E. Kincheloe, Commissioner

Dated at Jefferson City, Missouri,  
on this 6th day of August, 1993.