

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

In the Matter of the Application of Scott )  
Nameth for Change of Electric Supplier )  
from City of Butler to Osage Valley )  
Electric Cooperative )  
)  
)  
)

Case No: EO-2023-0050

**RESPONSE OF THE CITY OF BUTLER, MISSOURI TO APPLICATION OF SCOTT  
NAMETH TO CHANGE ELECTRIC SERVICE PROVIDER**

COMES NOW the City of Butler, Missouri (“City”) by and through its undersigned counsel, and for its response to the Application (“Application”) of Scott Nameth (“Mr. Nameth”) for Change of Electric Supplier from the City’s Municipal Electric Utility to Osage Valley Electric Cooperative (“Osage Valley”), respectfully states as follows:

1. City lacks sufficient information to admit or deny Application Paragraph 1, as there is no address listed. Therefore, City denies the Application Paragraph 1.
2. Notwithstanding, upon information and belief, the address of the property Mr. Nameth is applying for a change of electric suppliers is 1161B NE County Rd. 63, Butler, MO 64730.
3. City admits to the factual allegations of Application Paragraphs 2, 3, and 4. Application.
4. With regard to Paragraphs 5 and 6 of the Application, the City admits that Section 386.800 RSMo prohibits the City from providing electricity at retail to any new construction outside of the City’s corporate boundaries. City also admits that one or more of residents of the Evergreen Estates subdivision, lying outside of the City’s corporate boundaries, have reached out to the City to request electric service to new

construction. City denies all factual allegations of Paragraphs 5 and 6 not admitted herein.

5. City notes that Section 393.160, commonly known as Missouri's anti-flip flop law, is applicable to the case at hand. This statute provides 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 statute then provides a limited exception: the Commission "upon application made by 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."
6. Regarding the application of this exception to the flip flop prohibition, the basis for the change in supplier must be one other than a rate differential (what a customer pays for service), and customer preference will not suffice. Rather, Section 393.160.2 expresses that the Commission may only order a change of supplier if it "is in the public interest".
7. With previous change of supplier requests, the Commission has conducted a fact-specific analysis applying a ten-factor balancing test in determining whether the potential change in supplier is in the public's interest.<sup>1</sup>
8. The ten factors are as follows:
  - a. Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;

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<sup>1</sup> In the Matter of the Application of Cominco American, Inc. for Authority to Change Electrical Suppliers, 29 Mo. P.S.C. (N.S.) 399, 405-507 (1988), Case No. EO-88-196.

- b. Whether there are health or safety issues involving the amount or quality of power;
  - c. What alternatives a customer has considered, including alternatives with the present supplier;
  - d. Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;
  - e. The effect the loss of the customer would have on the present supplier;
  - f. 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:
    - i. the distance involved and cost of any new extension, including the burden on others -- for example, the need to procure private property easements, and
    - ii. the burden on the customer relating to the cost or time involved, not including the cost of the electricity itself;
  - g. 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 (F)(ii) above;
  - h. What efforts have been made by the present supplier to solve or mitigate the problems;
  - i. (The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
  - j. 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.
9. Mr. Nameth has failed to allege facts to point any of these factors in their favor. The City has lawfully provided retail electric in a safe and reliable manner to Mr. Nameth's property since the structure on his property was built prior to 1991. Moreover, when the City loses a customer, its remaining customers are negatively impacted, because the City's total cost to provide electric service to the public is shared by all customers.

A primary policy reason for the anti-flip flop law is to provide assurance to electric utilities, including municipally owned ones like with the City, 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.

10. With great effort and cost, the City and Osage Valley worked together to rectify any concerns raised by Mr. Nameth. These efforts have culminated in the filing of a joint application for a territorial agreement pursuant to Sections 386.800.1(2) and 394.312 RSMo, so as to allow any new structures that may be built on Mr. Nameth's property in the future to be lawfully served retail electric by the City. This Territorial Agreement would provide clarity on the question of who shall lawfully provide retail electric services to Mr. Nameth's property as well as their neighbors who also filed petitions to change electric suppliers.
11. With this application for the Territorial Agreement is still pending approval by the Commission, a decision by the Commission to grant Mr. Nameth's Application would have a profoundly negative impact on the application for the Territorial Agreement. Moreover, granting Mr. Nameth's Application would increase the risk of duplicative services.
12. The City is unaware of any fact or circumstances that would make a change of supplier in the public's interest.

WHEREFORE, City respectfully requests that the Commission dismiss or deny the Application and grant such additional or further relief as is just and proper under the circumstances.

Respectfully Submitted

**LAUBER MUNICIPAL LAW, LLC**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned certifies copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all the below parties and counsel of record on this 5<sup>th</sup> day of October, 2022

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*/s/ Anthony Hernandez* \_\_\_\_\_  
**Attorney for City of Butler, Missouri**