

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

In the Matter of the Application of Kathy)
Castrogiovanni for Change of Electric)
Supplier from City of Butler to Osage)
Valley Electric Cooperative)
) Case No: EO-2023-0041
)
)

**RESPONSE OF THE CITY OF BUTLER, MISSOURI TO APPLICATION OF KATHY
CASTROGIOVANNI 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 Kathy Castrogiovanni (“Ms. Castrogiovanni”) 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 admits to the factual allegations of Application paragraphs 1 and 3.
2. The City denies Application paragraphs 2 and 4, as it is not the current electric service provider for the address/location of the property referenced in Paragraph 1 since the property is a vacant lot lying outside the City’s corporate boundaries.
3. With regard to Paragraphs 5 and 6 of the Application, the City admits that Ms. Castrogiovanni’s property referenced in Paragraph 1 lies outside of the corporate boundaries for the City and 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 denies all factual allegations of Paragraphs 5 and 6 not admitted herein.
4. 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.”

5. 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”.
6. In the instant case, is not currently providing electricity to Ms. Castrogiovanni property referenced in Application paragraph 1. However, City did acknowledge that it cannot grant a request by Ms. Castrogiovanni to provide electricity to her property on the basis that Section 386.800 RSMo prohibits the City from providing electricity to any new construction outside of its corporate boundaries unless such is permitted under a Territorial Agreement as governed by Section 394.312 RSMo.
7. While, the City wishes to provide retail electric in a safe and reliable manner to Ms. Castrogiovanni’s property, it understands the need to do so in accordance with State law.
8. With great effort and cost, the City and Osage Valley worked together to rectify any concerns raised by Ms. Castrogiovanni. 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 the City to lawfully provide retail electric to Ms.

Castrogiovanni's property and to any new structures that may be built on Ms.

Castrogiovanni's property. This Territorial Agreement would provide clarity on the question of who shall lawfully provide retail electric services to Ms. Castrogiovanni's property as well as her neighbors who also filed petitions to change electric suppliers.

9. With this application for the Territorial Agreement is still pending approval by the Commission, a decision by the Commission to grant Ms. Castrogiovanni's Application would have a profoundly negative impact on the application for the Territorial Agreement. Moreover, granting Ms. Castrogiovanni's Application would increase the risk of duplicative services since many of Ms. Castrogiovanni's neighbors are lawfully sold retail electric by the City and that such neighbors are also subject to the pending Territorial Agreement. Such outcomes would not be in the public's interest.
10. Finally, because the City is not currently providing electricity to Ms. Castrogiovanni's property, the issues raised in Ms. Castrogiovanni's Application to change supplier is not ripe for consideration.

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

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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 5th day of October, 2022

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