

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

In the Matter of the Application of Jerry L. Countryman for Change of Electric Supplier from The Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc.	)	)	)	)	)
	)	)	)	)	)
	)	)	)	)	)
	)	)	)	)	)
	)	)	)	)	)
	)	)	)	)	)

Case No. EO-2022-0226

**WHITE RIVER VALLEY ELECTRIC COOPERATIVE’S RESPONSE  
TO ORDER DIRECTING FILING**

**COMES NOW** White River Valley Electric Cooperative, Inc. (“White River”), by and through its attorney’s undersigned and of record, and for its Response to Order Directing Filing in this cause, states to the Commission as follows:

1. On February 25, 2022, Jerry L. Countryman filed an Application with the Commission requesting a change of electric supplier from The Empire District Electric Company d/b/a Liberty (“Liberty”) to White River.
2. On February 28, 2022, the Commission issued its Order Directing Filing wherein it ordered White River to respond on or before March 30, 2022 to the Application filed by Mr. Countryman.

**I. Background**

3. White River is a Missouri rural electric cooperative, operating on a non-profit business model and providing low cost, safe, and reliable electric power to its members in Christian, Douglas, Ozark, Stone, and Taney Counties in Southwest Missouri.
4. Mr. Countryman is a current customer of Liberty and receives service at his five-acre homestead located at 451 N. Countryman Road, Ozark, MO 65721 which is located outside the City’s limits (the “Countryman Home”), and has received retail

residential electric service from Liberty since circa 1977 at that location.

5. Mr. Countryman, according to the verified Application filed herein, inherited the adjoining property to that identified above which is also outside the city limits of Ozark, Missouri, in a rural area, and White River is and has been the electric supplier for this adjoining property since the 1940's—basically since the inception of the Cooperative.

6. The buildings, improvements, and facilities that are the subject of this case are not within an area subject to an existing Territorial Agreement between White River and Liberty.

7. It is believed that the Countryman Home presently receives 200-amp residential electric service from Liberty. Liberty's overhead electric distribution line terminates behind this home and runs a stretch of about 715 feet across the Countryman Home parcel to the meter pole, consisting of a wire span with four (4) utility poles across the western edge of the property.

8. It is anticipated that Liberty will demand reimbursement for the cost to remove its infrastructure referenced above should a change in supplier be granted.

9. In addition, White River would need to build facilities (extend lines and poles) to serve the Countryman Home and anticipates the need to construct a 325-foot wire span using 2 or 3 poles for this purpose.

10. Gleaning from the Application, it appears that the principal purpose advanced by Mr. Countryman for a change of supplier is his desire to have one single utility provider.

## **II. Missouri Law Governing Change of Electric Supplier**

11. In 2021, Missouri law governing a change of electric supplier was

significantly amended by our state legislature in certain respects, allowing, in some circumstances, more “consumer choice” relating to electric service suppliers, but with limitations now codified in state statute.

12. In particular, Section 393.106, RSMo. is controlling here and provides in relevant part that:

Once an electrical corporation [Liberty] ... 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 except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312.

See *also* Section 394.315, RSMo. for similar statutory provisions related to rural electric cooperatives.

13. Because the Countryman Home has been permanently served by Liberty for decades, and is not the subject of a current annexation by the City of Ozark, any change of supplier entertained by the Commission must center on a public interest determination.

14. Missouri law provides that “[t]he public service 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*. The commission’s jurisdiction ... 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.” § 393.106.2, RSMo.; See *also*, § 394.315.2, RSMo. (emphasis supplied).

15. The pivotal issue in this case is whether the public interest is better served

by allowing a change of supplier, from Liberty to White River, for service to the Countryman Home.

16. While White River is certainly capable of providing best-in-class electric service to the Countryman Home, and would be honored to do so, public policy of this state has been well settled in cases such as this one, and the 2021 amendments to the above statutory provisions did not alter our “anti-flip-flop” law that has been tested in our reviewing courts on many prior occasions.

17. The “anti-flip-flop” laws were enacted in 1982 to further restrict competition for existing electrical customers. Section 394.315 refers to rural electric cooperatives like White River and Section 393.106 refers to electrical corporations like Liberty. See *Mo. Pub. Serv. Comm’n v. Platte–Clay Elec. Co-op, Inc.*, 700 S.W.2d 838, 841 (Mo. banc 1985); *Union Elec. Co. v. City of Jackson*, 791 S.W.2d 890, 891 (Mo. App. E.D. 1990).

18. The purpose of these statutes is to “prevent customers from switching back and forth between two available electric suppliers to take advantage of rate differences”—a strong public policy of our state. *Empire Dist. Elec. Co. v. Southwest Elec. Co-op.*, 863 S.W.2d 892, 896 (Mo. App. S.D. 1993).

19. The Commission has deployed a 10-factor test to guide its analysis in public interest determinations, as in this case, and has a methodology utilizing sound reasoning in change of supplier cases best summarized below.

### **III. PSC 10-Factor Test on Change of Supplier Cases**

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:
  - (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;
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)(ii) above;
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.

#### **IV. Application of Facts to Law**

20. Missing from the comprehensive 10-factor list above is a determinative factor related to an applicant's desire not to have two (2) electric suppliers, in and of itself.

21. Because Liberty desires to continue its electric service to the Countryman Home, the applicant carries the burden to establish that a change of electric supplier is in the public interest.

22. The Application filed herein does not provide the Commission with any additional relevant elements for consideration under the 10-factor test analysis outlined above that otherwise reveal a sound basis to diverge from the recognized anti-flip-flop policy settled by our Missouri courts.

23. Moreover, if the proverbial shoe were on the other foot, White River would be advocating for its right to continue to serve the Countryman Home under the specific

facts and circumstance of this case, and would challenge any attempt to negate that right provided by law for these same reasons.

WHEREFORE, above considered, White River Valley Electric Cooperative respectfully requests that the Commission adhere to existing precedent and statutory law in this cause, which would dictate that Liberty be allowed to continue to serve the Countryman Home, and preemptively establish by advisory opinion that White River be allowed to continue to serve the adjacent parcel herein identified, thus maintaining the *status quo* under these facts and circumstances, and for such other and further relief the Commission deems just and proper.

Respectfully submitted,

CARNAHAN EVANS PC

*/s/ Christiaan D. Horton*

By \_\_\_\_\_

Christiaan D. Horton  
Missouri Bar No. 46003

CARNAHAN EVANS PC  
2805 S. Ingram Mill Road  
P.O. Box 10009  
Springfield, MO 65808-0009  
Phone: (417) 447-4400  
Fax: (417) 447-4401  
Email: [chorton@CarnahanEvans.com](mailto:chorton@CarnahanEvans.com)  
*Attorneys for White River Valley  
Electric Cooperative, Inc.*

## CERTIFICATE OF SERVICE

The hereby certify that the above document was filed in EFIS on this 30th day of March, 2022, with notice of the same sent to all counsel of record. A copy was also provided by U.S. mail, postage prepaid to the pro se Petitioner and by electronic transmission to counsel for Staff, OPC and The Empire District Electric Company.

Missouri Public Service Commission  
Staff Counsel Department  
200 Madison Street Suite 800  
PO Box 360  
Jefferson City, MO 65102  
[staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)

Office of the Public Counsel  
200 Madison Street Suite 650  
PO Box 2230  
Jefferson City, MO 65102  
[opcservice@opc.mo.gov](mailto:opcservice@opc.mo.gov)

ATTORNEY FOR THE EMPIRE  
DISTRICT ELECTRIC COMPANY  
D/B/A LIBERTY:  
Diana C. Carter, MBE #50527  
The Empire District Electric Company  
Director of Legal Services – Central Region  
428 E. Capitol Ave., Suite 303  
Jefferson City, Missouri 65101  
Joplin Office Phone: (417) 626-5976  
Cell Phone: (573) 289-1961  
E: [Diana.Carter@libertyutilities.com](mailto:Diana.Carter@libertyutilities.com)

ATTORNEY FOR WHITE RIVER  
VALLEY ELECTRIC COOPERATIVE

*/s/ Christiaan D. Horton*

---

Christiaan D. Horton, MBE #46003  
Carnahan Evans PC  
2805 S. Ingram Mill Road  
Springfield, Missouri 65804  
T: 417-447-4400  
F: 417-447-4401  
E: [Chorton@CarnahanEvans.com](mailto:Chorton@CarnahanEvans.com)