

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

In the Matter of the Application of )  
Thomas A. Marshall for Change of )  
Electric Service Provider from SEMO )  
Electric Cooperative to Sikeston Board of )  
Municipal Utilities. )

Case No. EO-2007-0309

**STAFF INVESTIGATION REPORT AND RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and, for its report and recommendation that the Commission deny Thomas A. Marshall's Application for Change of Electric Service Provider, states as follows:

1. On February 15, 2007, Thomas A. Marshall filed an Application for Change of Electric Service Provider from SEMO Electric Cooperative to Sikeston Board of Municipal Utilities.
2. On February 27, 2007, the Missouri Public Service Commission issued an Order in which it, among other things, ordered Staff to investigate the merits of the application, file a report on that investigation, including in the report whether Sections 386.800 and 394.312, RSMo 2000, are applicable, and make a recommendation as to whether the application should be granted by April 10, 2007. Staff requested an extension to May 1, 2007, to make its filings and the Commission granted that request.
3. In its Memorandum, attached hereto as Appendix A, the Staff reports on its investigation and, for the grounds stated in the Memorandum, recommends the Commission deny Mr. Marshall's application for a change of electric service provider from SEMO Electric Cooperative to the Sikeston Board of Municipal Utilities.

4. In his application, Mr. Marshall states that his farm and home have been served by SEMO since 1950, and his property was annexed by the City of Sikeston in 1999. Mr. Marshall wishes to avail himself of city services, in particular he desires the lower electric rates provided by Sikeston. Mr. Marshall further states he has no service quality issues with the electric service provided by SEMO.

5. Section 394.315, RSMo 2000, provides, in pertinent part:

Once a rural electric cooperative, 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 except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The 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 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.

6. The Staff found no basis upon which the Commission could lawfully determine granting Mr. Marshall's Application would be in the public interest. Furthermore, Mr. Marshall's stated reason for seeking a change in electric service providers is because of a rate differential, which, pursuant to section 394.315 RSMo, is impermissible.

7. Section 386.800.3, RSMo 2000, provides, that if a municipality seeks to provide electric service to structures already being served by another utility in an area the municipality is newly annexing, the municipality must provide notice of its intent within sixty days after the effective date and within six months begin negotiations on a territorial agreement. Because the area which includes Mr. Marshall's property was annexed in 1999, this statute is inapplicable in this case.

8. Section 394.312 RSMo 2000, provides, in part, “Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.”

9. SEMO Electric Cooperative and Sikeston Board of Municipal Utilities have neither negotiated nor presented to the Commission a territorial agreement that would affect Mr. Marshall’s property.

10. Staff recommends the Commission deny Mr. Marshall’s Application for Change of Electric Supplier because the Staff has found no basis upon which granting the application would be in the public interest for reasons other than a rate differential.

WHEREFORE, for the foregoing reasons discussed in detail in the Staff’s Memorandum, the Staff recommends the Commission issue an Order in which it denies Mr. Marshall’s Application for Change of Electric Service Provider from SEMO Electric Cooperative to Sikeston Board of Municipal Utilities.

Respectfully submitted,

/s/ Blane Baker

Blane Baker

Legal Counsel

Missouri Bar No. 58454

Attorney for the Staff of the  
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-5472 (Telephone)

(573) 751-9285 (Fax)

[blane.baker@psc.mo.gov](mailto:blane.baker@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 1<sup>st</sup> day of May, 2007.

/s/ Blane Baker

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2007-0309, In the Matter of the Application of Thomas A. Marshall for Change of Electric Supplier

FROM: James L Ketter, Energy Department – Engineering Analysis

<u>/s/ James L. Ketter 5/1/07</u> Energy Department / Date	<u>/s/ Blane Baker 5/1/07</u> General Counsel's Office / Date
---	--

Subject: Staff Report of investigation and recommendation to the Commission it deny Thomas A. Marshall's Application for Change of Electric Supplier

Date: May 1, 2007

## **OVERVIEW**

On February 15, 2007, Thomas A. Marshall filed a verified application seeking Commission approval to change his electric supplier from an electric cooperative to a municipal utility, *i.e.*, SEMO Electric Cooperative (SEMO) to the Sikeston Board of Municipal Utilities (Sikeston). The request is for electric service supplied at 19106 US Highway 61 North, Sikeston, Missouri.

On February 27, 2007, the Commission issued an Order Directing Notice and Order Directing Filing. In that order, the Commission added Sikeston and SEMO as parties to this case, ordered they be given notice of the application and set a filing date of March 27, 2007 for their responses to the application. The Commission also ordered the Staff investigate the merits of the application and file a report on the results of its investigation by April 10, 2007, in particular addressing whether either Section 386.800 or Section 394.312, RSMo 2000, have any application to this case. SEMO and Sikeston filed their responses to the application on March 14 and March 16, 2007 respectively. On April 10, 2007, the Staff requested an extension of the filing date to May 1, 2007, that was granted April 17, 2007.

Mr. Marshall states that his farm and home have been served by SEMO since 1950. His property was annexed by the City of Sikeston in 1999 and consequently, Mr. Marshall pays city taxes as a property owner. Mr. Marshall wishes to take advantage of city services, including electricity and water, and, as he expressly stated in his verified application, desires the lower electric rates offered by Sikeston. In its investigation, Staff found that Mr. Marshall presently receives electric service to a grain storage facility and an irrigation pump from Sikeston that were added after annexation. He states that it is his desire to have one supplier of electric service to his property, namely Sikeston. Mr. Marshall states that there are no service quality issues regarding electric service from SEMO.

In its response to the application, Sikeston states that it is ready and able to provide electrical service to Mr. Marshall's residence if this application is granted. Sikeston supports the application for change of electric supplier.

In its response to the application, SEMO states that it has provided electric service to Mr. Marshall's residence since 1951, and that Mr. Marshall admits there are no service problems at issue to support a change of supplier. SEMO states that there is not sufficient cause under the statutes to support a finding that a change of electric supplier is in the public interest. SEMO states that it opposes the application for change of electric supplier.

### **DISCUSSION**

Quality of electric service provided by SEMO is not an issue. Mr. Marshall states that he would prefer to have one electric supplier and that as a taxpayer within the city limits he prefers the lower electric rates of Sikeston. If the Commission grants Mr. Marshall's application SEMO's electric facilities it is now using to serve Mr. Marshall will become "stranded" and of no value to SEMO since, due to the City of Sikeston having annexed the area, SEMO, cannot lawfully serve new customers within the city limits. SEMO may only continue to provide the same service that was in place prior to annexation.

Section 394.315 RSMo 2000 states that once a cooperative lawfully commences supplying retail electric energy to a structure through permanent service facilities, it has the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure. Exceptions to this statute include alternatives provided by Section 386.800 RSMo 2000 dealing with municipal annexation and Section 394.312 RSMo dealing with territorial agreements.

Provisions of Section 386.800 RSMo 2000 allow a municipally owned electric utility to serve structures in newly annexed areas that have permanent electric service pursuant to specific notice requirements, negotiated purchase provisions and provisions for a territorial agreement between the electric suppliers. Based on the Staff's investigation, the City of Sikeston did not choose to exercise its right to seek to provide electric service to structures within the time limits of the statute after annexation in 1999, which included Mr. Marshall's property.

Section 394.315.2 RSMo 2000, provides, in part, "[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."

Provisions of Section 394.312 RSMo 2000 allow territorial agreements to displace competition and establish boundaries between the electric service providers. This remains an option, but neither electric supplier has pursued a territorial agreement for the area in question.

### **STAFF RECOMMENDATION**

Based on its investigation, it is the Staff's recommendation the Commission deny Mr. Marshall's application for a change in electric supplier from SEMO to Sikeston

because the Staff has found no basis upon which the Commission could find granting the application would be in the public interest for reasons other than a rate differential. Further, it is the Staff's opinion that Sikeston has not and now cannot avail itself of the provisions of Section 386.800 RSMo 2000 to take over from SEMO the provision of electric service to Mr. Marshall at this property after annexation. Provisions of Section 394.312, RSMo 2000 regarding territorial agreements are available to SEMO and Sikeston to establish exclusive service territories if they choose to pursue this option; however, this application does not encompass them.

The City of Sikeston operates a municipal utility that provides electric service to its citizens, and it is not required to file annual reports with or pay assessments to the Commission. SEMO is a rural electric cooperative and no annual reports or assessments are required from the Commission. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

My commission expires 9-21-10