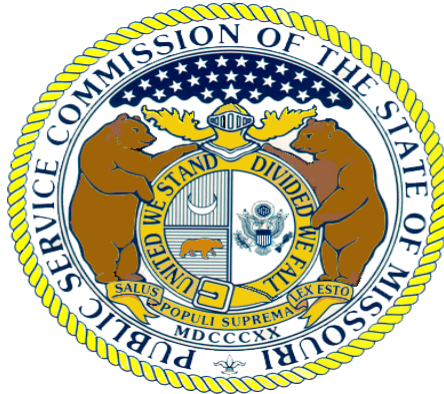


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of
Thomas L. Chaney for Change of Electric Supplier

)

File No. EO-2011-0391

REPORT AND ORDER

Issue Date: December 12, 2012

Effective Date: January 11, 2013

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

In the Matter of the Application of)
Thomas L. Chaney for Change of Electric Supplier) **File No. EO-2011-0391**

Appearances

Thomas Chaney, *pro se* applicant,

Rodric A. Widger, Attorney for Cuivre River Electric Cooperative, Inc.

Wendy Tatro, Attorney for Union Electric Company d/b/a Ameren Missouri

Jennifer Hernandez, Attorney for the Staff of the Missouri Public Service Commission

Judge: Kennard Jones, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: Because it is not in the public interest to grant a change of supplier, this order denies Thomas Chaney's request to change his electric provider from Cuivre River Electric Cooperative, Inc. to Union Electric Company d/b/a Ameren Missouri.

Background

On June 10, 2011, Thomas L. Chaney filed an application to change his electric supplier from Cuivre River Electric Cooperative to Union Electric Company d/b/a Ameren Missouri. The Commission issued notice of the application. There were no requests to intervene.

Both Cuivre River and Ameren Missouri filed responses opposing the application. The Staff of the Commission later filed its Recommendation and subsequent update also opposing the application. After a prehearing conference was held, Cuivre River and Ameren Missouri filed a joint motion to dismiss the application for lack of subject matter

jurisdiction. The Commission denied the motion and directed the parties to file statements of fact. Although the parties agree on the facts, the companies requested an evidentiary hearing, which was held on September 10, 2012. Thereafter, the parties filed post-hearing briefs.

The Commission may grant a change of supplier if the change is in the public interest and the request is for a reason other than a rate differential. Although the Commission concludes that Mr. Chaney's reason for wanting a change of supplier is for a reason other than a rate differential, the Commission will deny his request because it is not in the public interest. As Mr. Chaney argues, the use of solar power is generally in the public interest. And, to a large extent, Ameren Missouri has served this interest by last year paying just under \$3 million in solar rebates with demand rising this year. However, the specific stranded investment, duplicative services and the potential for an exodus of customers from coops to investor-owned electric companies for the purpose of solar rebate eligibility outweigh the interest germane to the use of solar energy.

After considering all of the facts presented, the Commission makes the following findings and conclusions.

Findings of Fact

The parties have filed stipulations of fact. Although the Commission sets out the following facts, there are no facts in dispute.

1. Ameren Missouri is an electric utility.¹
2. Cuivre River is a rural electric cooperative.²

¹ Docket Item No. 46, Joint Stipulation of Facts and of Law, filed by Ameren Missouri and Cuivre River.

² *Id.*

3. Mr. Chaney is currently receiving electric service from Cuivre River at 1110 St. Theresa Lane in Dardenne Prairie.³

4. Cuivre River and Ameren Missouri have a territorial agreement which provides that Cuivre River will serve the property located at 1110 St. Theresa Lane in Dardenne Prairie.⁴

5. Mr. Chaney has filed an application with the Missouri Public Service Commission requesting that his electric service provider be changed from Cuivre River to Ameren Missouri.⁵

6. The basis for Mr. Chaney's request for a change of supplier is so he can take advantage of Ameren Missouri's solar rebate program.⁶

7. In 2008, the Missouri Secretary of State approved for circulation 4 initiative petitions relating to renewable energy.⁷

8. All 5 renewable energy petitions applied to electric corporations, but only 3 applied to electric corporations, cooperative and municipals.⁸

9. Missouri Proposition C, also known as the Clean Energy Initiative or the "Renewable Energy Standard" codified at Section 393.1020 is the voter initiated state statute that appeared on the November 4, 2008 ballot in Missouri.⁹ Proposition C applies only to investor-owned electric utilities.

³ *Id.*

⁴ *Id.*

⁵ Docket Item No. 1.

⁶ Docket item No. 46, Joint Stipulation of Facts and of Law, filed by Ameren Missouri and Cuivre River, paragraph 17.

⁷ Docket Item No. 45, Staff's List of Facts, paragraph 4.

⁸ *Id.*, paragraph 5.

⁹ *Id.*, paragraph 6.

10. Ameren Missouri's tariff, MO P.S.C. Schedule No. 5, 3rd Revised Sheet No. 151 would require Mr. Chaney to install the necessary conduit for service, while Ameren Missouri would install the cable in the customer's conduit system.¹⁰

11. At a cost of \$3,000, Mr. Chaney would need to install approximately 500 feet of conduit to connect and receive service from Ameren Missouri's system.¹¹

12. Cuivre River could reuse some, but not all, of the equipment currently being used to serve Mr. Chaney.¹²

13. A change of supplier for Mr. Chaney from Cuivre River to Ameren Missouri would result in Cuivre River members paying for stranded equipment costs of \$3,525, instead of Mr. Chaney paying the costs through payment as a continuing customer.¹³

14. Mr. Chaney is knowledgeable about the solar panels he intends to install, the effectiveness of those panels, as well as the installer.¹⁴

15. The life expectancy of the solar array planned by Mr. Chaney is 25 years.¹⁵

16. Mr. Chaney does not intend to install solar panels if he cannot take advantage of the rebate program offered by Ameren Missouri.¹⁶

17. Cuivre River does not have a solar rebate program.¹⁷

18. In 2011 Ameren Missouri paid out \$2,964,306 toward 226 solar rebates¹⁸.

¹⁰ *Id.*, paragraph 20.

¹¹ *Id.*, paragraph 21.

¹² *Id.*, paragraph 22.

¹³ *Id.*, paragraph 23 and Tr. p. 75, lines 21-23.

¹⁴ Tr. pp. 57-59.

¹⁵ Tr. p. 56, line 24.

¹⁶ Tr. p. 65, lines 23-25.

¹⁷ Tr. p. 71, lines 19-21.

¹⁸ Tr. p. 71, lines 8-10.

19. Requests for solar rebates have increased in 2012.¹⁹

20. A new part of Ameren Missouri's distribution system will have to be extended to Mr. Chaney's residence if he becomes an Ameren Missouri customer.²⁰

21. The cost of the Ameren Missouri extension to Mr. Chaney's residence will be approximately \$7,100.²¹

22. Mr. Chaney would not incur the above cost. Instead the extension would go into Ameren Missouri's rate base and be recovered over time from Ameren Missouri's ratepayers.²²

23. The stranded investment to Cuivre River will be \$3,525.²³

24. Cuivre River offers rebates for ground source heat pumps and high efficiency air source heat pumps.²⁴

25. There would be some duplication of facilities if this change of supplier is granted.²⁵

26. If Mr. Chaney is allowed to change suppliers, after the solar panel rebate, he would spend \$30,000 to install solar panels on his home.²⁶

Conclusions of Law

Jurisdiction

Because Cuivre River and Ameren Missouri have a territorial agreement governing Mr. Chaney's property, the companies insist that the Commission lacks jurisdiction. The

¹⁹ Tr. p. 75, lines 1-3.

²⁰ Tr. p. 75, lines 16-20.

²¹ Tr. p. 84, lines 23 – p. 85, line 1.

²² Tr. p. 76, lines 16-17.

²³ Tr. p. 75, lines 21-23.

²⁴ Tr. p. 98, lines 2-12.

²⁵ Tr. p. 100, lines 6-11.

²⁶ Tr. page 65, lines 7 – 22.

Commission disposed of this issue in its Order Denying Joint Motion to Dismiss, issued on June 20, 2012.

Missouri statutes grant jurisdiction to the Commission to order a change of supplier with regard to both rural and investor-owned electric companies.²⁷ Those statutes state that the “public service commission, upon application made by an affected party, may order a change of supplier on the basis that it is in the public interest for a reason other than a rate differential. . . .” Through Missouri law, the Commission concludes that it has jurisdiction over this application.

Finally, as the party asserting this cause of action, the burden of proof lies with Mr. Chaney.²⁸

Public Interest

Although the Commission’s decisions have no precedential value,²⁹ the Commission has used 10 factors in analyzing the meaning of “public interest”³⁰ and will examine the application of those factors in this case as follows.

1. *Can the customer’s needs be adequately met by the present supplier with respect to either the amount or quality of power?*

Mr. Chaney has not complained of the amount or quality of power he receives from Cuivre River. This factor is not an issue.

²⁷ Sections 394.315 and 393.106, RSMo.

²⁸ *Stofer v. Dunham*, 208 S.W. 641 (Mo. App. 1919).

²⁹ *State ex rel. AG Processing, Inc. v. Public Service Comm’n*, 120 S.W.3d 732, 736 (Mo. Banc 2003).

³⁰ Commission Case Nos. EO-88-196, EO-87-314, EO-93-170, EO-93-295, EC-2007-0106 and EO-2011-0052.

2. *Are there any health or safety issues involving the amount or quality of power of the current supplier?*

There are no health or safety issues involving the amount or quality of the power provided by Cuivre River.

3. *What alternatives has the customer considered, including alternatives with the present supplier?*

Cuivre River does not offer a solar rebate program to its customers. However, Cuivre River does offer other incentives or conservation programs to its customers; notably, rebates for ground source heat pumps and high efficiency air source heat pumps.

4. *Has the customer's equipment been damaged or destroyed as a result of a problem with the electric supply*

Mr. Chaney has not alleged that anything has been damaged or destroyed as a result of any problem with Cuivre River's electric supply.

5. *What effect would the loss of the customer have on the present supplier?*

The stranded investment to Cuivre River would be \$3,525. Cuivre River's remaining customers would then have to bear the burden of Cuivre River's stranded investment.

6. *Would the change of supplier result in a duplication of services or facilities, especially in comparison with alternatives available from the present supplier, which would include (a) the distance involved and the cost of any new extension, including the burden on others, and (b) the burden on the customer relating to the cost of time involved, not including the cost of the electricity itself?*

Although Mr. Chaney would bear the costs of installing approximately 500 feet of conduit to receive service from Ameren Missouri, there will be a duplication of facilities and stranded investment by Cuivre River; the burden of which will fall to its remaining customers.

7. *What overall burdens on the customer are caused by the inadequate service, including any economic burden not related to the cost of electricity itself, and any burden not considered with respect to the previous above?*

Mr. Chaney has alleged no facts relevant to these types of burdens

8. *What efforts have been made by the present supplier to solve or mitigate the problems?*

Mr. Chaney has alleged no problems with his present supplier, Cuivre River. This factor is not an issue.

9. *What impact might the Commission's decision have on economic development, on an individual or cumulative basis?*

To grant Mr. Chaney's request would stimulate economic development in that \$30,000 worth of solar panels would be purchased. The Commission is concerned that customers of Cuivre River and perhaps other electric cooperatives, who live near the service area of an investor-owned electric company, may leave the cooperatives in order to take advantage of the solar-panel rebate. This would be devastating to cooperatives.

10. *What effect might the grant of authority have on any territorial agreements between the two suppliers in questions, or on the negotiation of territorial agreement between the two suppliers?*

Because the property in question is described in the territorial agreement between Cuivre River and Ameren Missouri as property that is to be served by Cuivre River, the grant of this authority would disturb the expressed wishes of both Cuivre River and Ameren Missouri as set out in that territorial agreement.

For a Reason Other than a Rate Differential

The second prong of the relevant statutes is that Mr. Chaney's reason for requesting the change of supplier must be for something other than a rate differential. Mr. Chaney has stated that he seeks to change suppliers in order to take advantage of Ameren Missouri's

solar rebate program. He is knowledgeable about the project and is able to bring it to fruition. The veracity of his intentions are therefore not at issue.

Ameren Missouri's rates are described in its tariff. There has been no reference to those rates by any party. The Commission has reasoned that rates are defined as what a customer pays for a unit of service.³¹ The Commission finds no reason to expand that very narrow definition and will therefore conclude that Mr. Chaney's reason for seeking a change of supplier is for a reason other than a rate differential.

Decision

Ameren Missouri, Cuivre River and the Staff of the Commission all agree that a change of supplier in this case will not be in the public interest. The possible benefit stemming from Mr. Chaney's use of solar panels is realized through the success of Ameren Missouri's solar rebate program. The success of the program minimizes the potential marginal benefit of Mr. Chaney's use of solar panels. As such, the potential benefit of his participation is outweighed by the stranded investment, duplication of facilities and the potential of encouraging cooperative members to seek solar rebates through investor-owned electric companies. Finally, approval of the application will frustrate the intention of the companies' territorial agreement.

Though the Commission concludes that Mr. Chaney's reason for seeking a change of supplier is for a reason other than a rate differential, in light of the analysis of the public interest, the Commission must deny the application because it is not in the public interest to grant the change of supplier.

³¹ Commission Case No. EO-2011-0052.

THE COMMISSION ORDERS THAT:

1. The application for a change of supplier filed by Thomas L. Chaney is denied.
2. This order shall become effective on January 11, 2013.
3. This case shall be closed on January 12, 2013.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett and Stoll, CC., concur;
Kenney, C., dissents, with separate
dissenting opinion to follow;
certify compliance with the provisions of
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 12th day of December, 2012.