

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Osage Valley)
Electric Cooperative for Approval of a Change)
in Electric Suppliers for Austin Powder Central)
States, L.L.C.)

File No. EO-2012-0119

ORDER APPROVING CHANGE OF SUPPLIER

Issue date: November 23, 2011

Effective Date: December 1, 2011

On October 18, 2011, the Osage Valley Electric Cooperative ("Osage") filed an application seeking Commission approval for a change in electric supplier. The requested change affects a single customer, Austin Powder Central States, L.L.C. ("Austin") located in Montrose, Missouri. Austin currently receives its electric service from KCP&L Greater Missouri Operations Company ("GMO").

On November 17, 2011, the Commission's Staff filed its recommendation to approve the change of supplier request. In its recommendation Staff delineates the reasons justifying the approval as follows:

GMO provides electric service to Austin by a primary 69 kV line and a 69 kV/34.5 kV substation. Just outside of this substation is a switch pole, which is the demarcation point between GMO and Austin Powder of ownership and responsibility for maintaining their respective electrical facilities. From this switch pole Austin Powder has approximately a half mile of primary 34.5 kV line, then a substation with associated transformer and lines distributing electricity to the structures on its site. Austin Powder has concerns with meeting federal safety standards, in particular Office of Safety and Health Administration regulations in operating and maintaining its electrical facilities. The current electrical facilities are designed to provide high-voltage, three-phase service to a mining operation. Austin Powder is not mining and needs only a lower-voltage, single-phase secondary line service. GMO has no other customers near Austin Powder; Osage is the predominant nearby electricity supplier, and has a nearby single phase overhead distribution line. It is more economical to tap Osage's existing line than for GMO to change its

transformer to provide secondary service. Further, GMO plans to remove the existing 69 kV/34.5 kV substation and other facilities over which it is currently serving Austin Powder. If Osage serves Austin Powder, Austin Powder will no longer need to maintain the approximately half mile of primary 34.5 kV line, substation with associated transformer and high voltage lines on its site. Therefore, changing the supplier of electricity to Austin Powder's structures from GMO to Osage is in the public interest for a reason other than a rate differential.

The application is within the Commission's jurisdiction to decide.¹ Because no law requires a hearing this is a non-contested case.² Non-contested cases do not require formal proceedings or hearings before the Commission, and as such, there is no evidentiary record.³ Consequently, the Commission bases its decision on the verified filings.

Section 393.106.2, RSMo 2000, gives the Commission authority to order a change of supplier on the basis that it is in the public interest for a reason other than a rate differential. The Commission has reviewed the application, the verified written consent to the change in suppliers from the customer and suppliers affected by the proposed change, and Staff's verified recommendation and memoranda, and finds that the request is in compliance with all applicable statutes and rules and is in the public interest for a reason other than a rate differential. Therefore, the Commission will approve the application.

¹ See Sections 393.106 and 394.315, RSMo 2000, and 4 CSR 240-2.060 and 4 CSR 240-3.140.

² Section 536.010(4) defines a "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."

³ *Sapp v. City of St. Louis*, 320 S.W.3d 159, 163 (Mo. App. 2010). "The key to the classification of a case as contested or noncontested is the requirement of a hearing. The term "hearing," as used in section 536.010(4) means a proceeding at which a 'measure of procedural formality' is followed. Procedural formalities in contested cases generally include: notice of the issues (section 536.067); oral evidence taken upon oath or affirmation and the cross-examination of witnesses (section 536.070); the making of a record (section 536.070); adherence to evidentiary rules (section 536.070); and written decisions including findings of fact and conclusions of law (section 536.090)." (Internal citations omitted). *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 507 (Mo. banc 2009).

THE COMMISSION ORDERS THAT:

1. The Application, filed by Osage Valley Electric Cooperative for approval of a change in electric supplier is approved.
2. This order shall become effective on December 1, 2011.
3. This file may be closed on December 2, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Harold Stearley, Deputy Chief Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 23rd day of November, 2011.