

In the Matter of the Application of Nickie)
Hertzog for a Change of Electric Supplier) **Case No. EO-2012-0343**

3. On June 4, 2012 Osage Valley filed its responsive pleading opposing the Applicant's request for change of supplier because the basis of the request for change of supplier is due to a rebate offered by GMO. Osage Valley believes the rebate constitutes a rate differential and change of supplier for this reason is prohibited by state statute, citing § 394.315 RSMo.

Analysis

4. §§ 393.106 and 394.315 RSMo, the “anti-flip-flop” statutes, authorize the Commission upon application by an affected party, to order a change of electrical suppliers if doing so is in the public interest for a reason other than a rate differential.

5. In Staff’s *Memorandum*, attached hereto and marked as highly confidential, the Staff maintains that sufficient facts exist for the Commission to find that the change of supplier request is not in the public interest for a reason other than a rate differential.

6. The Application requests a change of supplier only for the purpose of obtaining a solar rebate. As part of its determination in this case, as well as the matter in File No. EO-2011-0391, the Commission must consider whether a solar rebate is a “rate differential” as found in §§ 393.106 and 394.315, RSMo. If the Commission determines a solar rebate is a “rate differential”, then it must deny the *Application* unless it concludes another basis to support a public interest finding.

7. It is the opinion of Staff counsel that a solar rebate is not a “rate differential”. Proposition C, now Sections 393.1025 and 393.1030 RSMo, was a voter initiative that was passed in November 2008. The requirement in Section 393.1030.3 that each electric utility make available a rebate of at least two dollars per installed watt comes from the voter initiative. When investor-owned utilities provide a rebate, they are complying with a statute adopted by initiative.

8. There are competing interests in this recommendation: (1) the Renewable Energy Standard and the statute’s policy of encouraging the use of renewable resources; and (2) the economics of a change of supplier, those costs including

potential stranded costs borne by the remaining cooperative customers and the cooperative itself, cost to the customer to install new infrastructure and the costs to the utility to do the same. Whether the change of supplier is in the public interest for a reason other than a rate differential will be dependent upon the weighing and outcome of these considerations.

Other Matters

9. For the Commission's information, Staff provides updates on matters related to challenges of the Renewable Energy Standard rules. First, the solar rebate provision is no longer a part of the appeal of the RES rules. On August 8, 2011, the Missouri Retailer's Association (MRA) dismissed both counts of its August 5, 2010 Petition For Writ Of Review And For Declaratory Judgment. MRA was the only party to the consolidated Case Nos. 10AC-CC00512, 10AC-CC00511, 10AC-CC00513, 10AC-CC00528, and 10AC-CC00536 to assert the solar rebate provision of Section 393.1030.3 as unconstitutional. Second, on December 27, 2011, the Cole County Circuit Court ruled that the Commission's interpretation of the statutorily mandated one-percent rate impact is unlawful and unreasonable. The issue is currently on appeal in the Western District Court of Appeals under Case No. WD74896. The parties to WD74896 are currently briefing the issue.

9. GMO is neither delinquent in the filing of its calendar year Annual Report nor the payment of its fiscal year assessment.

WHEREFORE, the Staff respectfully files this *Recommendation to Deny Application* for the Commission's information and consideration, and respectfully recommends that the Commission deny the *Application for Change of Electric Service Provider*.

Respectfully submitted,

/s/ Goldie Tompkins

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed, sent by facsimile or hand-delivered to all counsel of record this 27th day of August, 2012.

/s/ Goldie Tompkins

Goldie Tompkins

The Staff Memo
And
Attachments
Are Deemed Highly Confidential
In Their Entirety