

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
August, 2007.

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

**ORDER GRANTING APPLICATION FOR CHANGE OF
ELECTRIC SUPPLIER**

Issue Date: August 7, 2007

Effective Date: August 17, 2007

Syllabus: This order grants, on the basis of the stipulated facts before the Commission and the governing law, Thomas A. Marshall's application for a change in the electric service provider to his residence in Sikeston, Missouri from the SEMO Electric Cooperative ("SEMO") to the Sikeston Board of Municipal Utilities ("BMU").

Background and Procedural History

On February 15, 2007,¹ Thomas A. Marshall of Sikeston, Missouri filed a verified application with the Missouri Public Service Commission for a change in electric service provider from SEMO to BMU. In the cover letter accompanying his application, Mr. Marshall stated that all four property owners surrounding him are also within the city limits of Sikeston, but are receiving electric service from BMU, not SEMO. Although he has no service quality or safety issues with the electric service provided by SEMO, Mr. Marshall

¹ Unless otherwise specified, all dates refer to the year 2007 and all statutory references are to RSMo 2000.

averred that since he is now a Sikeston taxpayer, he would like to be able to take advantage of the electric services provided by BMU, which are also less expensive than those provided by SEMO. He further stated that since BMU already provides electric service to a grain storage facility he owns, which is located adjacent to his home, he would like to have only one electric service provider (and receive only one monthly electric bill) instead of having two providers and receiving two electric bills every month.

Mr. Marshall's application was accompanied by a January 30 letter from Alan W. McSpadden, the Operations Manager for BMU, which states that BMU is now serving new electrical loads within the annexed area and indicates that the system has more than adequate capacity to provide service to that area, including the property owned by Mr. Marshall.

On February 27, the Commission served notice of Mr. Marshall's application on SEMO and BMU, joined them as necessary parties to this proceeding, and directed them to respond to the application by March 27. The Commission also ordered its Staff to investigate the merits of the application and to file a report concerning the results of its investigation, along with its recommendation as to whether the application should be approved or rejected. Finally, the Commission observed that the critical statutory determination would ultimately be whether Mr. Marshall could demonstrate that granting his requested change in electric suppliers from SEMO to BMU would be "in the public interest for a reason other than a rate differential," as required by Section 394.315.2.²

² Sections 394.315.2 and 394.080.5 govern changes from a rural electric cooperative to other types of electrical suppliers. Section 393.106.2 is similarly worded, but it covers changes from an electrical corporation or joint municipal utility commission to another supplier. Likewise, Section 91.025.2 governs applications for a change of supplier from a municipally owned or operated electric system.

SEMO filed its reponse on March 14. Although SEMO acknowledged that nearly all of the factual allegations in the application were true, SEMO opposed the application, arguing that Mr. Marshall had “not alleged sufficient cause under the statute to support a finding that a change of electric supplier at his residence is in the public interest” on the basis of something other than a rate comparison.

In its response, which was filed on March 16, BMU supported Mr. Marshall’s application. BMU admitted everything alleged in the application, stated that it had no objection to granting the relief requested therein, and averred that it was ready, willing, and able to provide electric service to Mr. Marshall’s home should his application be granted.

After asking for and receiving an extension of time to do so, Staff filed its report on May 1, in which it recommended that the Commission deny Mr. Marshall’s application for a change of electric service provider from SEMO to BMU because its investigation revealed “no basis upon which granting the application would be in the public interest” for a reason other than the lower electric rates offered by BMU. Staff also noted that although Section 394.312.1 authorizes rural electric cooperatives like SEMO and municipally owned utilities such as BMU to enter into written territorial agreements, SEMO and BMU have evidently neither negotiated nor presented to the Commission a territorial agreement that would affect Mr. Marshall’s property.

By order dated May 9, the Commission scheduled a prehearing conference for May 31. On May 24, SEMO filed a “Motion for Order Granting Relief By Consent of Parties and Canceling Pre-Hearing Conference,” in which SEMO withdrew its objection to the relief requested by Mr. Marshall and joined in his application to the extent the relief he seeks may be granted upon mutual consent of the parties, as opposed to being ordered as a matter of

right under the controlling law after a contested evidentiary hearing. SEMO also maintained that an evidentiary hearing on the merits of the application was unnecessary since it had resolved its differences with Mr. Marshall through agreement and now not only had no objection to a change of electric suppliers for Mr. Marshall, but also *joined* him in requesting such relief. SEMO further stated that given these circumstances, granting his application would “relieve the parties of additional burdens of further participation in this proceeding.” Accordingly, SEMO requested that the Commission cancel the scheduled prehearing conference and enter an order granting Mr. Marshall a permissive change of electric supplier from SEMO to BMU.

The Commission then afforded all parties an opportunity to oppose SEMO’s dispositive motion by filing an appropriate pleading with the Commission by no later than May 30. Since one of the primary benefits of a prehearing conference is to permit the parties to pursue settlement discussions, the order further specified that if no such opposing pleading was filed before the deadline, the prehearing conference would be cancelled.

On May 30, Staff filed a pleading opposing SEMO’s motion on the ground that, in its view, no party “has as yet shown any basis for a change of electric supplier as being in the public interest pursuant to section 394.315 RSMo.” Staff’s pleading further stated that “[u]ntil such time as it is shown [to Staff’s satisfaction] that the change of electric supplier is in the public interest,” Staff “will not divert from [its prior] recommendation that Mr. Marshall’s Application for Change of Electric Supplier be denied.” Accordingly, the prehearing conference was conducted on May 31 as previously scheduled.

During that conference, the parties agreed to prepare a set of stipulated facts so the Commission could consider Mr. Marshall's application before they incurred the time, expense, and uncertainty of a formal evidentiary hearing. The parties submitted those stipulated facts on July 25. Finally, on August 2, Staff filed a pleading in which it reversed course and supported the relief sought by Mr. Marshall, explaining that the stipulated facts "are sufficient for the Commission to determine [that] a change of supplier from SEMO Electric Cooperative to the Sikeston Board of Municipal Utilities for electric service to Mr. Marshall's residence . . . is in the public interest for a reason other than a rate differential in accord with the requirements of section 394.315." The matter is now ripe for decision, and the Commission will finally dispose of this case on the basis of the law and the stipulated facts before it.

Stipulated Facts

The parties have unanimously stipulated to the following facts. Applicant Thomas A. Marshall currently receives electrical service from SEMO at his residence. He has lived at this residence for over 50 years, and has been served by SEMO the entire time. SEMO presently serves Mr. Marshall's residence with a "two-pole tap," meaning that there are two utility poles and two spans of overhead conductors (approximately 480 feet of 8A copper conductor) that SEMO uses to provide electric service to Mr. Marshall's residence. These facilities are used by SEMO only for providing electric service to Mr. Marshall's residence. SEMO also uses a single 25kva transformer, a 15-foot 200 amp meter loop and a residential meter to provide electric service to Mr. Marshall's residence. These facilities are also only used for providing electric service to Mr. Marshall's residence.

If SEMO ceases to serve Mr. Marshall's residence, SEMO may retire all of these facilities and realize savings in maintenance expense.

Due to annexation, Mr. Marshall's residence is now located within the city limits of Sikeston. BMU provides electrical service to Mr. Marshall's property where his residence is sited, except to the residence itself. In addition to the service from SEMO at his residence, Mr. Marshall currently receives service from BMU at a grain-drying bin on the same property as his residence. BMU also provides electric service to the parcels of ground owned by others that abut Mr. Marshall's property where his residence is sited, and Mr. Marshall's residence is the only one within the city limits of Sikeston that is served by SEMO. This situation could be hazardous to Sikeston emergency responders, who may not realize that Mr. Marshall's residence is being served by SEMO despite being located within the city limits of Sikeston.

Mr. Marshall currently receives two monthly bills for electric service to the property upon which his residence is located – one from SEMO, and one from BMU. If he was to receive electric service only from BMU at his property where his residence is located, he would only receive one bill for electric service. Furthermore, if BMU was authorized to provide electric service to Mr. Marshall's residence, it would do so via underground facilities, which are generally more aesthetically pleasing than overhead facilities, and are generally subject to fewer outages. Mr. Marshall, SEMO and BMU all consent to the electric supplier to Mr. Marshall's residence being changed from SEMO to BMU.

Analysis

As mentioned earlier in this order, the critical determination for the Commission is whether, under the circumstances presented by this case, granting Mr. Marshall's

application for a change in his electrical supplier would be in the public interest for a reason other than a rate differential. The Commission finds that this test has clearly been met here.

To begin with, granting Mr. Marshall's application would permit SEMO to realize savings in maintenance expenses by retiring the facilities that are presently dedicated solely to providing service at his residence. It would also reduce the danger to Sikeston emergency responders (who may not realize that Mr. Marshall's residence is the only one located within the city limits of Sikeston that is being served by SEMO), and allow Mr. Marshall to receive only one monthly bill for electric service rather than two. Permitting a change in electric suppliers from SEMO to BMU would also enable Mr. Marshall to receive electric service via underground facilities, which are generally more aesthetically pleasing than overhead facilities, and are generally subject to fewer outages.

Moreover, all of the key stakeholders in this case, including the affected customer (Mr. Marshall), the current electrical supplier (SEMO), and the requested electrical supplier (BMU), are in agreement that a change in Mr. Marshall's electrical supplier from SEMO to BMU should be granted. The governing statute, Section 394.315.2, is clearly designed to protect the interests of those stakeholders, *in addition* to those of the public at large. Meanwhile, Commission Rule 4 CSR 240-3.140(1)(H) provides that verified statements from the current and requested electrical suppliers indicating their mutual agreement to a change in a given customer's electrical supplier are required to be filed along with the application whenever such agreement exists. Therefore, the fact of the current and requested suppliers' mutual agreement to a change in electrical supplier is a relevant variable in the public interest equation.

Furthermore, the Office of the Public Counsel, whose statutory mandate it is to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission,”³ expressed no opposition to the relief sought or supported by Mr. Marshall, SEMO, and BMU when given an opportunity to do so. This, too, weighs significantly in favor a finding that the requested change is in the public interest.

Additionally, in its Motion for Order Granting Relief By Consent of Parties and Canceling Pre-Hearing Conference, SEMO made it perfectly clear that the reason it withdrew its objections, resolved its differences with Mr. Marshall through mutual agreement, and now actually *supports* his application was to “relieve the parties of additional burdens of further participation in this proceeding.” Since “[p]ublic policy favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation,”⁴ the Commission finds that approving the requested change in electrical suppliers is also in the public interest since it will avoid the wasted time and expense of continued litigation, not to mention being conducive to amicable and peaceful relations between the parties.⁵

For all of these reasons, the Commission finds, on the basis of the law and the stipulated facts before it, that the requested change of supplier is in the public interest for a

³ Section 386.710.1(2). See also 4 CSR 240-2.040(2) (“The public counsel represents the interests of the public before the commission.”)

⁴ 15A Am. Jur. 2d *Compromise and Settlement* § 5 (2007). See also *Miners' & Farmers' Bank of Aurora v. American Bonding Co.*, 186 S.W. 1139, 1140 (Mo. App. S.D. 1916) (“[T]he law favors settlements and compromises based upon valid considerations.”); *Sanger v. Yellow Cab Co.*, 486 S.W.2d 477, 481 (Mo. banc 1972) (internal quotation marks omitted) (“The law favors settlements fairly made.”)

⁵ “The resolution of controversies and uncertainties by means of compromise and settlement generally is faster and less expensive than litigation. The use of compromise and settlement also is conducive to amicable and peaceful relations between the parties to a controversy.” 15A Am. Jur. 2d *Compromise and Settlement* § 6 (2007).

reason other than a rate differential. Accordingly, the Commission will approve Mr. Marshall's application.

IT IS ORDERED THAT:

1. Thomas A. Marshall's application for a change in the electric service provider to his residence in Sikeston, Missouri from the SEMO Electric Cooperative to the Sikeston Board of Municipal Utilities is granted.

2. This order shall become effective on August 17, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Lane, Regulatory Law Judge