

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

In the Matter of the Application of Matthew Delia)	
For Change of Electric Supplier from Southwest)	<u>File No. EO-2023-0108</u>
Electric Cooperative to Empire District Company)	
d/b/a Liberty)	

STAFF’S REPORT AND RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and makes the following report and recommendation. For the reasons stated in Staff’s Official Case File Memorandum, Staff cannot recommend granting the application as it stands. To address the deficiencies in the application as described herein, Staff recommends that the Commission order Mr. Delia to respond to Staff’s report and show cause why the Commission should not deny the application.

On September 19, 2022,¹ Matthew Delia (Mr. Delia) filed an Application for Change of Electric Service Provider (application) asking to change suppliers from Southwest Electric Cooperative (Southwest) to The Empire District Electric Company d/b/a Liberty (Liberty). On November 2, the Commission ordered Liberty and Southwest to file a response to the application no later than December 2 and Staff to file a recommendation or to suggest a recommendation deadline, no later than December 19. Southwest and Liberty responded to the application on November 29 and December 2 respectively; and the Commission granted Staff a deadline extension to January 18, 2023, for its report and recommendation.

¹ All date references will be to 2022 unless otherwise stated.

Mr. Delia's requests the change of supplier because he wishes to change from a smart meter to an analog meter for health reasons.² He alleges that when he asked for the meter change, Southwest informed him that it no longer supports analog meters. He alleges that Liberty services the surrounding neighborhoods and told him it could install and support an analog meter. In their respective Responses to the Application, both Southwest and Liberty state that they do not install or support analog meters. Both also state that their technology does not use radio frequencies. Liberty states that its customers may "opt out" of the smart meter program, choosing to have a non-transmitting meter for an additional fee.

Staff has conducted the investigation described fully and in detail in its Official Case File Memorandum filed with this pleading. Staff's memorandum assesses the application per the ten "public interest" factors set out in Case No. EO-2017-0277.³ Taking into consideration that Mr. Delia has not alleged actual health problems or that a smart meter has caused health problems and applying the ten public interest factors, Staff concludes that granting the application is not in the public interest.

As stated, Mr. Delia has not alleged that he is experiencing health problems or that Southwest's smart meter is their cause. He has not, specifically, alleged that radio frequencies have caused him problems. Staff's investigation has revealed that Southwest's meters use a power-line carrier technology that does not use radio frequencies. Moreover, Liberty likewise employs a power-line carrier technology that uses no radio frequency. Finally, neither utility installs nor supports analog meters.

² Mr. Delia states only: "Would like to change electric meter on house from a smart meter to an analog meter for health reasons."

³

In summary, assuming Mr. Delia's issue is with radio frequency technology, if the Commission grants Mr. Delia his request, he will end up where he is now: He will not have escaped radio frequency based technology because Southwest does not use it now; and he will not have gained analog based service because neither utility offers it. This scenario amounts to "duplication of services"—with an initial price tag of nearly \$14,000.

In summary, Staff does not recommend granting Mr. Delia's application. Staff Counsel recommends that the Commission order Mr. Delia to respond to Staff's report and show cause why his application should not be denied.

WHEREFORE, Staff respectfully requests that the Commission accept this report and recommendation as in compliance with its orders.

Respectfully Submitted,

/s/ Paul T. Graham #30416

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CERTIFICATE OF SERVICE

The undersigned by his signature below certifies that the foregoing pleading was served upon all persons who have entered an appearance of record in this matter on this January 18, 2023, by electronic filing in EFIS.

/s/ Paul T. Graham

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2023-0108 – In the Matter of the Application of Matthew Delia
for Change of Electric Supplier from Southwest Electric Cooperative to The
Empire District Electric Company d/b/a Liberty

FROM: Alan J. Bax – Industry Analysis Division/Engineering Analysis Dept.

/s/ Alan J. Bax 01/18/2023 /s/ Paul T. Graham 01/18/2023
Engineering Analysis Dept. / Date Staff Counsel Office / Date

SUBJECT: Staff Memorandum Recommending Denial of Application

DATE: January 18, 2023

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) deny the Application of Matthew Delia (“Application”) that requests a change in electric service providers from the Southwest Electric Cooperative Inc. (“Southwest”) to The Empire District Electric Company d/b/a Liberty (“Liberty”). The Staff believes the Commission should conclude that the Application is not in the public interest pursuant to 393.106, 394.315 and 416.041 RSMo (2020). The Application contains the necessary filing requirements contained in 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

OVERVIEW

On September 19, 2022, Matthew Delia filed this Application citing experiencing health concerns associated with the smart meter currently installed at the property located at 416 W. Saddle Club Road, Fair Grove, Missouri, 65648 in Greene County, in conjunction with the electric service being provided by Southwest. In requesting to change his electric service provider to Liberty, Matthew Delia asserts that Liberty will install an analog type

meter in its provision of service, as compared to Southwest's smart meter, which he contends Southwest informed him that it no longer provided and/or supported an analog type meter. Mr. Delia indicates that Liberty services other nearby, neighboring homes and further claims that Liberty confirmed it would install and service an analog type meter.

Southwest is a rural electric cooperative organized under Chapter 394 RSMo (2020) to provide electric service to its members in all or parts of eleven Missouri counties, including Greene County, in which lies the property that is the subject of the Application. Although the Commission has limited jurisdiction over rural electric cooperatives, Southwest is subject to the jurisdiction of the Commission in this case pursuant to Section 394.315 RSMo (2020)¹.

As a rural electric cooperative, Southwest is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against Southwest from any state or federal court involving customer service or rates within three years of the date of this filing.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo (2020)². Liberty is authorized to provide electricity around the area that is the subject of this Application.

¹ Section 394.315.2 states, in relevant 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...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..."

² In this case, Liberty is specifically subject to Section 393.106.2, which states in relevant part, "Once an electrical corporation or joint municipal utility commission, 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...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..."

Liberty is current on all assessment fees and annual report filings. The Staff is not aware of any other matter before the Commission that affects, or is affected by, this filing. Staff is not aware of any pending or final unsatisfied decision against Liberty from any state or federal court involving customer service or rates within the last three years that would affect, or is affected by, this filing.

DISCUSSION

In its Response, filed November 29, 2022, Southwest recommended that the Application be denied. Southwest acknowledges it no longer supports an analog type meter, as noted in the Application, in favor of implementing a smart meter. However, Southwest expresses its opposition to the premise that modern smart meters cause health concerns. Moreover, Southwest employs a power-line carrier technology in its meters that do not use radio frequencies, the factor that some claim to be the reason for experiencing health issues. Southwest states its belief that Liberty also no longer offers or supports an analog type meter and asserts to have so informed the Applicant.

In addition, in support of recommending a denial of the Application, Southwest indicates that a change of electric service supplier is not in the public interest as it would result in an unnecessary duplication of facilities and cause undue expense as well.

Liberty also recommended that the Commission deny Matthew Delia's request to change electric service providers in its Response to the Application filed December 2, 2022. While stating it would happy to serve the Applicant, Liberty similarly expressed that its provision of service would be unnecessarily duplicative and costly. In addition, Liberty acknowledged it no longer installs or services analog-type metering. Liberty installs smart meters, which also employs the same power-line carrier technology used by Southwest. However, Liberty asserts

to have informed the Applicant of its opt-out provision, which, if desired and implemented, Liberty agrees to “disengage” the communication capability of the smart meter for an immediate associated payment and subsequent on-going service fees.³ These tariff sheets are attached to this Staff Recommendation as Schedule AJB-1 and Schedule AJB-2.

The Commission, in its *Report & Order* in Case No. EO-2017-0277, listed ten factors that it considers in analyzing the “...meaning of “public interest” for a change of supplier.” These ten factors, along with Staff’s analysis are:

- (1) Whether the customer’s needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;

Southwest has provided safe and reliable service to Mr. Delia at 416 W. Saddle Club Road, Fair Grove, Missouri. There is no indication of either service related or safety concerns noted in the Application regarding power quality or reliability.

- (2) Whether there are health or safety issues involving the amount or quality of power;

While the Applicant does not identify any problems associated with the availability or quality of service being provided by Southwest, the Applicant expresses to be experiencing health issues caused by Southwest’s utilization of a smart meter.

- (3) What alternative a customer has considered, including alternative with the present supplier;

³ The applicable tariff sheets regarding Liberty’s opt-out provision:
The Empire District Electric Company d.b.a. Liberty – Rules and Regulations:
P.S.C. Mo. No. 6, Section 5
Original Sheet No. 11
The Empire District Electric Company d.b.a. Liberty – Credit Action Fees_Schedule CA:
P.S.C. Mo. No. 6, Section 3
Original Sheet No. 5

Staff is not aware of any possible alternatives being discussed between Southwest and/or Liberty, such as a Territorial Agreement. Southwest does not currently offer an opt-out provision to its members regarding the installation and operation of a smart meter, nor does it indicate implementing such a provision in the future. In addition, in its Response to Staff Data Request No. 0003, Southwest indicates it has not discussed possibly relocating the meter with the Applicant. While Liberty, like Southwest, states that it no longer supports analog meters, it does offer an opt-out provision that includes an agreement to disable the communication device inherent to their smart meter with an associated immediate cost and /on-going fees.

- (4) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;

Staff is not aware of any service problems experienced by Mr. Delia or claims submitted for damaged equipment as a result of the electric service currently provided by Southwest.

- (5) The effect the loss of the customer would have on the present supplier;

In its Response, Southwest mentions a negative impact thrust on its remaining members should the change of supplier request be approved.

- (6) Whether the change in supplier would result in a duplication of facilities, especially in comparison with the alternatives available from the present supplier, a comparison that should include;

- (i) The distance involved and cost of any new extension, including the burden on others – for example, the need to procure private property easements, and

- (ii) The burden on the customer relating to the cost or time involved, not including the cost of the electricity itself.

In its Responses to Staff Data Requests, while acknowledging that its provision of electric service would be duplicative, Liberty estimates extending its service to Mr. Delia would cost nearly \$14,000.00. In addition, there would be an initial charge and on-going monthly fees associated with implementing Liberty's opt-out provisions regarding its smart meter installation.

- (7) The overall burden on the customer 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 factor 6(ii) above;

Mr. Delia has not indicated experiencing any service related or safety concerns regarding the electric service received from Southwest.

- (8) What efforts have been made by the present supplier to solve or mitigate problems;

Again, Mr. Delia has not alleged experiencing any service related or safety issues concerning the provision of electric service from Southwest. Staff is not aware of any discussions between Southwest and Liberty regarding a possible Territorial Agreement or if Mr. Delia has been included in such discussions if these discussions have taken place. Southwest indicates in its Response to Staff Data Request that it has not had conversations with Mr. Delia regarding relocating their meter.

- (9) The impact the Commission's decision may have on economic development on an individual or cumulative basis;

Mr. Delia has not indicated to be experiencing any problems regarding the safety, reliability or quality of service being delivered by Southwest. Although Southwest mentions the negative impact to its remaining members should the Application be approved, this negative impact has not been quantified.

- (10) The effect the granting of authority for a change of suppliers might have on any territorial agreements between the two suppliers in question, or on the negotiation of territorial agreements between the electric service suppliers.

There are no existing Territorial Agreements between Southwest and Liberty that include the parcel at 416 W. Saddle Club Road, Fair Grove, Missouri 65648. Staff is not aware of any discussions between Southwest and Liberty regarding any Territorial Agreements nor the effect on such negotiations if the Commission should approve the Application.

Staff believes that Mr. Delia has not provided sufficient reasoning in support of his Application. Both Southwest and Liberty indicate that they informed Mr. Delia that they no longer install and/or support analog type meters. Both utilities install a meter that similarly employs a power-line carrier technology that does not use radio frequencies, the factor that some claim to be the reason for those alleging to be experiencing health issues. Although Liberty currently provides an opt-out provision that would disengage the communication capability of its smart meter, a provision that Southwest does not offer, Staff believes this does not provide sufficient reasoning on which to recommend approving the Application, as the availability of such opt-out procedure is subject to change in the future. Therefore, Staff recommends the Commission deny Mr. Delia's request to change electric service providers.

CONCLUSION

For the reasons stated above, Staff is of the opinion that the Commission should deny the Application of Matthew Delia requesting a change of suppliers from Southwest to Liberty, concluding that the Application is not in the public interest pursuant to Sections 393.106, 394.315, and 416.041 RSMo (2020). The Application contains the necessary filing requirements contained in 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

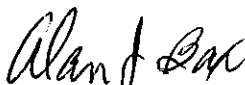
In the Matter of the Application of)
Matthew Delia for Change of Electric)
Supplier from Southwest Electric)
Cooperative to The Empire District Electric)
Company d/b/a Liberty) **File No. EO-2023-0108**

AFFIDAVIT OF ALAN J. BAX

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW ALAN J. BAX, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

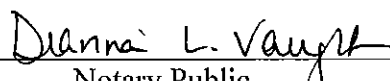
Further the Affiant sayeth not.



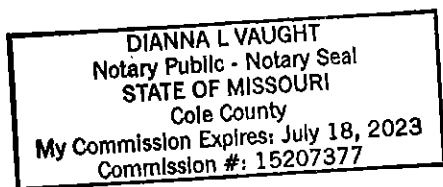
ALAN J. BAX

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 17th day of January, 2023.



Notary Public



THE EMPIRE DISTRICT ELECTRIC COMPANY d.b.a. LIBERTY

P.S.C. Mo. No. 6 Sec. 5 Original Sheet No. 11

Canceling P.S.C. Mo. No. _____ Sec. _____ Original Sheet No. _____

For ALL TERRITORY

RULES AND REGULATIONS

- d. In permanent type parks, the park owner or operator may apply for service in the park's name for certain mobile home sites classified and used as "transient locations." The park owner or operator can be the only applicant, and payment of the bills for utility service rendered is the responsibility of the owner or operator. Resale of electric service is prohibited.
- e. In order that the proper rate schedule may be applied to each service location, the park owner or operator will assume responsibility for advising the Company of mobile home movement or equipment changes that affect the eligibility of the meter for special service rate schedules.

G. TERMINATION OF SERVICE

Written or verbal notice of termination must be given by the Customer at an office or call center of the Company. Customer will be responsible for payment for all service used by him/her as determined by final readings of meters on the termination date requested by the Customer. Customer shall not, by such notice, be relieved of any accrued obligations under service contract and applicable rate schedules. In the event that a customer fails to notify the Company, their service responsibility will end when a new customer takes service.

Service through any meter being billed to a mobile home park owner or operator will be terminated at his/her request after proper notice to the occupant. In such cases a reconnection charge will be billed to the park owner or operator upon restoration of service.

H. ADVANCED METERING INFRASTRUCTURE (AMI) OPT-OUT

Customers receiving Residential Service have the option of opting out of AMI meter reading and electing non-standard metering service. In such instances, the two-way communication portion of the AMI meter will be disabled. Alternatively, if requested by the customer, and if a non-AMI meter is available to the Company, a non-AMI meter will remain or be installed. Customers requesting non-standard metering service after initial AMI installation will be charged a one-time setup charge per meter. For all customers requesting non-standard metering service, a monthly recurring Non-Standard Meter Charge will apply.

For customers that chose to opt-out prior to the AMI meter being set (i.e., there is no additional visit to the premises to disable the two-way communication portion or install a non-AMI meter): the one-time setup fee will not be assessed, but the ongoing monthly fee will still be applicable.

In circumstances where a customer has multiple meters at the same premises, the monthly Non-Standard Meter Charge will apply to the first meter, and the monthly Non-Standard Subsequent Meter Charge will apply to all additional meters of that customer located on the same premises.

In the normal course of business, Company replacement of meters may occur. To the extent that a customer denies, either through physical impediments, verbal denial or threats of violence, access to property or metering installation, or fails to establish a suitable time for access, customers will be notified, in writing, that failure to provide access will result in customer being considered an opt-out customer not sooner than 30 days after Company's notice. Company's notification will include information for the customer to understand the financial impact of the opt-out status.

Charges are listed on the Credit Action Fees Schedule CA.

DATE OF ISSUE August 17, 2020 DATE EFFECTIVE September 16, 2020
ISSUED BY Sheri Richard, Director Rates and Regulatory Affairs, Joplin, MO

FILED
Missouri Public
Service Commission
ER-2019-0374; EN-2021-0038;
YE-2021-0041

THE EMPIRE DISTRICT ELECTRIC COMPANY d.b.a. LIBERTY

P.S.C. Mo. No. 6 Sec. 3 Original Sheet No. 5

Canceling P.S.C. Mo. No. _____ Sec. _____ Original Sheet No. _____

For ALL TERRITORY

**CREDIT ACTION FEES
SCHEDULE CA**

AVAILABILITY:

This schedule is available to any customer requiring the special services listed below.

RATE:

Customer advance for temporary service line (per Rules and Regulations, Chapter III, Section B1d)	\$ 25.00
Charge for insufficient funds check or return of electronic payment (per Rules and Regulations, Chapter V, A13).....	\$ 20.00
Customer charge for trip to premises to collect non-payment fee (per Rules and Regulations, Chapter V, F8)	\$ 15.00
Reconnection fee-Remote Connection/Disconnection(per Rules and Regulations, Chapter V, F11)	
During normal business hours	\$ 10.00
Reconnection fee-Onsite Connection/Disconnection (per Rules and Regulations, Chapter V, F11)	
During normal business hours	\$ 30.00
Outside normal business hours	\$ 50.00
Charge for meter reading (per Rules and Regulations, Chapter V, Section A3)	
During normal business hours	\$ 5.00
Outside normal business hours	\$ 10.00
Opt-out Charges (Per Rules and Regulations, Chapter II, Section H)	
One-time setup charge	\$ 150.00
Non-Standard Meter Charge – per month	\$ 45.00
Non-Standard Subsequent Meters Charge – per month	\$ 10.00

Effective January 1, 2003, interest rate paid upon return of a deposit, per annum, compounded annually (per Rules and Regulations, Chapter V, C5b), shall be equal to the prime rate published in the Wall Street Journal as being in effect on the last business day of December of the prior year, plus 1%.

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