

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
January, 2007.

In the Matter of the Application of The Citizens)
of Iron County, Northwest End of Reynolds)
County, Edgehill and Black Area, for Change)
of Electrical Supplier.)

Case No. EO-2007-0155

ORDER DISMISSING APPLICATION WITHOUT PREJUDICE

Issue Date: January 11, 2007

Effective Date: January 11, 2007

On October 13, 2006,¹ a group of electric service consumers, identifying itself as the “Citizens of Iron County, Northwest End of Reynolds County, Edgehill and Black Area” (“Citizens”), filed a request with the Missouri Public Service Commission for a change in electric supplier. Citizens are currently receiving electric service from Union Electric Company d/b/a AmerenUE (“AmerenUE”), and their request is to revert back to having service provided by Black River Electric Cooperative (“Black River”). Citizens maintain that Black River previously provided its electric service for a period of greater than 50 years. Citizens’ request includes a signed petition bearing approximately 104 names, and five written complaints regarding the provision of service by AmerenUE. Citizens’ application was not filed by, or signed by, an attorney authorized to practice law in Missouri.

¹ All dates throughout this order refer to the year 2006, unless otherwise noted.

On October 17, the Commission issued notice, set an intervention schedule and directed AmerenUE, Black River, and the Staff of the Missouri Public Service Commission to respond to Citizens' request. No requests for intervention were filed and AmerenUE, Black River and Staff all recommend that this matter be dismissed on the merits.

On November 28, the Commission set a prehearing conference in this matter for January 2, 2007. In the order setting the prehearing conference, the Commission made note that Citizens' request included a petition with multiple signatories. Citizens, having filed an application for a change of electrical supplier, and being an association of multiple individuals, was directed to Commission Rule 4 CSR 240-2.040(5), specifically addressing practice before the Commission, which states:

A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

Citizens was advised that no individual signatory to its list of members could prosecute its request before the Commission on behalf of the association as a whole. Individuals, who are not attorneys authorized to practice in the State of Missouri, may not engage in the legal representation of any other person, corporation, association or any other entity. Individual, natural persons may only represent themselves.

Citizens was directed that if it desired to see its application prosecuted as a single action with representation for all of the individual signatories, the association would have to retain an attorney authorized to practice law in Missouri to serve as the association's representative. Citizens was also advised that as an alternative to prosecuting its action as an association, individual members could choose to individually petition the Commission for a change of electric supplier, or could file an individual complaint against AmerenUE. Citizens was also advised that should any individual association member pursue a

separate action with the Commission, and should a full evidentiary hearing be held, that individual could, at his or her discretion, call any of the other individuals listed on its petition as witnesses to provide sworn testimony on his or her behalf.

Citizens was allowed a full month prior to the prehearing conference to provide adequate time for its members to decide on which procedural approach it would utilize to conform to proper practice before the Commission. Citizens was advised that should it require additional time to secure proper legal representation, it should file a motion for a continuance to have the prehearing conference reset. Citizens was finally advised that should the association decline to obtain proper legal representation, its application might face dismissal.

On December 27, Tom Goughenour, a signatory to Citizens' petition, called the regulatory law judge in this matter and indicated that procedurally Citizens would not be able to retain legal counsel to pursue its application. Mr. Goughenour stated that because the association was unable to obtain legal counsel, and given the available alternatives, it preferred to dismiss the current action and stated that multiple members of the association would proceed with individual complaints.

On January 2, 2007, the prehearing conference was held at the Governor Office Building in Jefferson City. A phone bridge was made available to all of the parties. AmerenUE and Black River elected to participate by phone. Staff entered its appearance in person. No representative for Citizens or the Office of the Public Counsel entered an appearance.

On January 3, 2007, the Commission received a letter from Mr. Charles Freeman. Mr. Goughenour had represented that Mr. Freeman is the organizer of Citizens and was responsible for the circulating the petition for the application for a change of supplier.

Mr. Freeman echoes Mr. Goughenour's position, that it is the desire of Citizens, given the available options, to dismiss the current application and proceed with individual complaints. Mr. Freeman's request for a voluntary dismissal complies with Commission Rule 4 CSR-2.116(1) in that it was filed before the filing of any prepared testimony or evidence, and it was served upon all parties to this action.

The question before the Commission is how to best proceed with this action to protect the petitioners' due process rights. At the prehearing conference, Staff suggested that the Commission treat the application for a change in supplier as a consolidated complaint action, filed by all of the petitioners. While this option appears workable at first blush, it is problematic because the Commission has no way of determining which, if any, of the individual signatories to the petition wish to be parties to either an individual or a consolidated complaint. Many individuals are willing to sign petitions, but are unwilling to become a party to a legal action. Bearing this in mind, the most legally cognizable approach appears to be dismissing the action, as it is currently filed, without prejudice.

The individual signatories to the petition accompanying the change of supplier application will have the opportunity to pursue their action in the form of either individual complaints or individual applications for a change of electric suppliers. Any similar actions filed with the Commission can be consolidated for the convenience of the parties.²

Commission Rule 4 CSR 240-2.040 requires that legal entities, such as Citizens, obtain legal counsel in order to practice before the Commission. Citizens did not obtain legal counsel to proceed as an association before the Commission. Additionally, Commission Rule 4 CSR 240-2.090 states: "Failure to appear at a prehearing conference

² Section 386.390.2, RSMo 2000; 4 CSR-240-2.070(12); 4 CSR 240-2.110(3).

without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown." Citizens, after being fully advised of all of the options for proceeding with this matter, elected not to appear at the prehearing conference and did not request a continuance. Moreover, the individuals representing themselves to be the spokespersons for Citizens have requested their current application be dismissed so that they may proceed with individual self representation. These individuals are apprised of the fact that multiple individual actions involving the same legal issues may be consolidated for the convenience of the parties.

IT IS ORDERED THAT:

1. The application for change of electrical supplier filed by Citizens of Iron County, Northwest End of Reynolds County, Edgehill and Black Area on October 13, 2006, and assigned case number EO-2007-0155, is hereby dismissed without prejudice.
2. This order shall become effective on January 11, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Stearley, Regulatory Law Judge