

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2023-0266, In the Matter of the Application of
John J. Lindsey for Change in Electric Supplier

FROM: Alan J. Bax, Industrial Analysis Division, Engineering Analysis Dept.

<u>/s/ Alan J. Bax / 05-03-2023</u> Industrial Analysis Division / Date	<u>/s/ Paul T. Graham / 05-03-2023</u> Staff Counsel's Office / Date
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SUBJECT: Staff Memorandum Recommending Denial of Change of Electric Service
Supplier Request

DATE: May 3, 2023

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission ("Staff") currently recommends that the Missouri Public Service Commission ("Commission") deny John J. Lindsay's *Application for Change of Electric Service Supplier* ("Application") for Stage Stop Campground, located at ** [REDACTED] **, which includes an accompanying shower house, and community well house ("Campground"). In addition, a neighboring rental home located at ** [REDACTED] ** is included with Mr. Lindsay's request to change electric service providers from The Empire District Electric Company, d/b/a/ Liberty ("Liberty") to New-Mac Electric Cooperative, Inc. ("New-Mac"). Staff has requested additional information from Mr. Lindsay in relation to the evidence he included in support of his request. However, this additional information has yet to be provided. This additional information may substantiate Mr. Lindsay's evidence in providing Staff a sufficient level of confidence in recommending Commission approval of Mr. Lindsay's Application, that on balance, Mr. Lindsay's request can be determined to be in the public interest for reasons other than a rate differential pursuant to 393.106.2 and 394.315.2 RSMo 2020. The Application does include the requirements as set forth in 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

OVERVIEW

On February 16, 2023, Mr. John J. Lindsey filed an Application with the Commission requesting the Commission order a change in electric service providers from Liberty to New-Mac for the Campground and neighboring rental home. Mr. Lindsey indicates in the Application that New-Mac has provided service to his personal home and shop located across the street from the Campground for twenty years. Mr. Lindsey desires to switch the electric service for the Campground and rental home to New-Mac alleging receiving inferior service quality and experiencing a lack of professional customer service when interacting with Liberty personnel upon contacting Liberty to report power quality incidents. In comparison, Mr. Lindsey reports the electric service provided by New Mac to personal home and shop has been comparatively better.

New-Mac is organized under Chapter 394 RSMo 2020 to provide electric service to its members located in all or parts of five Missouri counties, including Newton County, in which lies the properties identified in the Application. The Commission has limited jurisdiction over rural electric cooperatives, such as New-Mac, as specified in Chapter 394 RSMo 2020. For the purpose of this case, New-Mac is subject to the jurisdiction of the Commission under Section 394.315.2 RSMo 2020.¹

Given that New-Mac is a rural electric cooperative, the Commission does not require annual reports or assessment fees. Further, Staff is currently not aware of any pending or final unsatisfied decisions against New-Mac from any state or federal court involving customer service or rates within the last three years.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2020. For the purposes of this case, Liberty is

¹ Section 394.315.2 states, in relevant part, that:

...Once a rural electric cooperative, or its predecessor in interest, lawfully commence 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 except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. 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 and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction...

subject to the jurisdiction of the Commission under Section 393.106.2 RSMo 2020.² Liberty is current on its filing of annual reports and payments of its assessment dues. Staff is currently not aware of any unsatisfied judgments or decisions against Liberty in any state or federal agency or court involving customer service or rates that would have bearing on the immediate Case. The Staff is not aware of any other matter before the Commission that affects, or is affected by, this filing.

DISCUSSION

In his Application, Mr. John Lindsay indicates living in his personal home for twenty years and that he acquired the nearby properties, the Campground and his rental home, about seven years ago. Unlike his personal home, which receives electric service from New-Mac, the Campground and rental house are served by Liberty. Mr. Lindsay asserts that the quality of the electric service received from Liberty has been inferior to New Mac's electric service, both in the reliability and quality of service, as well as the level of customer service. Mr. Lindsay alleges that electric service is constantly flickering at the Campground, which has resulted in Mr. Lindsay having to replace multiple printers and computers. Mr. Lindsay also mentions having to replace multiple cameras and associated equipment (routers, GFIs and RV inverters) utilized in surveilling the Campground, which endangers his camping customers. He also lists two sewer pumps that prematurely failed and needed to be replaced, as well as a pressure switch and controller on the well pump.

When he contacts Liberty to report and/or discuss these numerous flickers, surges, and other power fluctuations, Mr. Lindsay asserts that Liberty personnel have essentially ignored the problems, reportedly indicating that "interruptions" like these are to be expected and have only

² Section 393.106.2 states, in relevant part, that:

...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 except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. 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. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction...

lasted a few seconds. As a consequence, Mr. Lindsay believes Liberty has not conducted a sufficient investigation into these power fluctuations.

Comparatively, Mr. Lindsay says he has not experienced such issues with the electric service to his personal home received from New-Mac. For example, he contends that power lost during an ice storm to his personal home and shop was restored within thirty minutes by New-Mac while Liberty took days to restore service to the Campground and rental house. As evidence of experiencing such power problems, Mr. Lindsay includes a Section in his Application (“Loss of Power Readings”), which contains photos of readings displayed on a power monitoring device. Mr. Lindsay proposes this illustrates that he has been experiencing numerous problems over the last few years. These power monitoring device screen shots include showing duration of these power disturbances along with activating backup power sources. Mr. Lindsay thus claims that a change in electric service providers is justified.

Both New-Mac and Liberty filed Responses to the Application on March 20, 2023. In its Response, New-Mac acknowledged providing electric service to Mr. Lindsay’s personal home and asserted that its existing facilities had sufficient capacity to take on the additional load requested in the Application should the Commission approve it. New-Mac indicated it had not taken a position regarding the merits of Mr. Lindsay’s Application.

Liberty, on the other hand, stated its opposition to the Application, asserting that it “...has adequately met the customer’s power needs in terms of amount and quality.” Liberty says it has three meters at the Campground plus a fourth meter at Mr. Lindsay’s rental house. Liberty contends that it has only received one call from Mr. Lindsay’s accounts regarding outages since April 2020. This outage was attributed to a transformer being struck by lightning during a storm. Moreover, Liberty maintains that it is “...not aware of any power surge issues at these locations...” Liberty opposes Mr. Lindsay’s request citing it does meet the “public interest standard” as necessitated by the “Change of Supplier” Statute 393.106.2 RSMo 2020, often referred to as the “Anti Flip-Flop Law”. Liberty goes on to say that,

...A change in supplier would lead to unnecessary expense and duplication of services and facilities. Further, when Liberty loses a customer, its remaining customers are negatively impacted, because Liberty’s total cost to provide electric service to the public is shared by all customers. Moreover, as previously noted by the Commission, a primary policy reason

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **

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

There does not appear to be any health or safety issues involving the amount or quality of power. Staff notes that Mr. Lindsay expressed in the Application that resultant damage to surveillance cameras allegedly due to experienced power fluctuations negatively impacted the safety and well-being of his camping customers.

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

Mr. Lindsay asserts that Liberty has not paid due diligence to his concerns expressed regarding the quality of service provided by Liberty. ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **

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

Mr. Lindsay claims to have suffered damaged equipment as a result of experiencing the power fluctuations as well as his customers to the Campground. Mr. Lindsay indicated that he had not filed a claim for these aforementioned damages with Liberty, but indicates he had provided compensation to some of his camping customers regarding alleged damages.

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

In its Response recommending the denial of Mr. Lindsay's request made in the Application, Liberty states that the lost revenues associated with these metered accounts would need to be made up by its remaining customer base.

(6) Whether the change in supplier would result in a duplication of facilities, especially in comparison with alternatives available from the present supplier, a comparison of which could 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;**

A change of supplier to New-Mac would not result in a duplication of facilities as asserted by Liberty in its Response to the Application. New-Mac has provided service to Mr. Lindsay's personal home and shop for over twenty years. New Mac indicates the existing facilities installed in this area are capable of providing the desired service requested by Mr. Lindsay should the Commission approve the Application. Thus, the same primary line used in providing service to Mr. Lindsay's home and shop would be used in New Mac's provision of service to the Campground and rental home. New Mac would install new service lines to the Campground and rental home that are attached to the aforementioned primary line and install their own meters.

(7) The overall burden on the customer caused by the inadequate service including any economic burden not related to the cost of the electricity itself and any burden not considered with respect to factor (6)(II) above;

Mr. Lindsay has indicated that both he and his customers at the Campground have experienced equipment damage due to power fluctuations in the electric service provided by Liberty. While Mr. Lindsay contends he has not sought compensation from Liberty in regard to his alleged damages, Mr. Lindsay does assert that he has provided some level of recompense to customers of the Campground for damages they alleged to have experienced during these incidents of power fluctuations.

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

Mr. Lindsay maintains that Liberty has not displayed a sufficient level of care/interest regarding his alleged issues of power quality. ** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **

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

Liberty states in its Response to the Application that the resultant loss of revenue, if the Application is approved, would have to be made up by its remaining customer base.

(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 suppliers.

This request for a change in electric service providers has no effect on any existing territorial agreements between Liberty and New-Mac.

CONCLUSION

Mr. Lindsay appears to be experiencing momentary power fluctuations at his Campground and rental home as indicative by his list of incident dates included in his Application

** [REDACTED]

[REDACTED] ** While Mr. Lindsay asserts that these power fluctuations have resulted in damaged equipment for both he and his camping customers³, Liberty maintains that recorded voltage fluctuations during this period are inherent to the system and consistent with normal operations.

** [REDACTED]

[REDACTED]

³ As noted earlier, Staff is awaiting receipt of requested additional qualifying information regarding the alleged power monitoring data as well as receipts concerning reported damaged equipment.

[REDACTED]

[REDACTED] ** However, Mr. Lindsay reports not experiencing such power fluctuations at his personal home and shop with the electric service being provided by New Mac. ** [REDACTED]

[REDACTED]

[REDACTED] ** While awaiting additional information regarding Mr. Lindsay's alleged evidence, Staff is currently recommending the Commission deny the Application. Without such corroboration of this evidence, Staff is unable to conclude that Mr. Lindsay has met the "in the public interest for reasons other than a rate differential" standard, as stated by Liberty, and as necessitated by Missouri State Statutes 393.106.2 and 394.315.2 RSMo 2020. The Application includes the filing requirements requesting a change of electric service providers per 20 CSR 4240-2.06 and 20 CSR 4240-3.140. Upon receipt of requested information from Mr. Lindsay, it may provide sufficient reasoning for Staff to conclude that, "on balance", Mr. Lindsay's request should be approved by the Commission as meeting the required "in the public interest for reasons other than a rate differential" standard.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)
John J. Lindsay for Change of Electric)
Supplier)

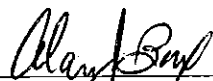
File No. EO-2023-0266

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.

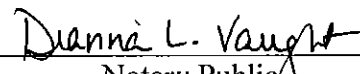
Further the Affiant sayeth not.



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 2nd day of May, 2023.



Notary Public

