

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

In the Matter of the Application of Jerry L.)
Countryman for Change of Electric)
Supplier from Empire District Electric)
Company d/b/a Liberty to White River)
Valley Electric Cooperative, Inc.)
File No. EO-2022-0226

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and respectfully states as follows:

1. On February 25, 2022, Jerry L. Countryman submitted his *Application for Change of Electric-Service Provider* (“Application”) requesting the Commission order a change of electric supplier from the Empire District Electric Company d/b/a Liberty (“Liberty”) to White River Valley Electric Cooperative, Inc. (“White River”) for his residence. Mr. Countryman’s residence is located in Ozark, Christian County, Missouri. Mr. Countryman wants to switch providers at his residence because he inherited the adjoining property that is serviced by White River Valley and he wants only one service provider for both properties.¹

2. Sections 393.106 and 394.315, of the Revised Statutes of Missouri (“RSMo”) (2021), otherwise known as the “anti-flip-flop” statutes, authorize the Commission, upon application of an affected party, to order a change of electric suppliers if doing so is in the public interest and for a reason other than a rate differential.

3. Mr. Countryman is not regulated by this Commission; however, he submitted himself to the jurisdiction of the Commission when he filed his Application.

¹ Application, ¶5.

4. Liberty is an electric corporation subject to Commission jurisdiction, as specified in Chapter 393, RSMo (2021). Liberty is authorized to provide electricity at the area that is the subject of this application.

5. White River is a rural electric cooperative, organized under Chapter 394, RSMo (2021), providing electric service to its members located in five counties, including Christian County. The Commission has limited jurisdiction over rural electric cooperatives such as White River, but pursuant to § 394.080.5, RSMo (2021), the Commission “may order that service be provided by another supplier if it finds that service from another supplier of electricity is in the public interest for a reason other than a rate differential.”

6. On February 28, 2022, the Commission ordered Liberty and White River to respond to Mr. Countryman’s application by March 30, 2022, and Staff to file its recommendation by April 15, 2022.

7. White River wrote in its March 30, 2022, response that even though it was capable of providing best-in-class electric service to the Countryman home, it requested that Liberty be allowed to continue to serve the Countryman home and White River continue to serve the adjacent parcel.²

8. White River further states that none of the factors in the Commission’s ten factor test support Mr. Countryman’s application, as missing from the comprehensive list is a determinative factor of an applicant’s desire not to have two electric suppliers in and of itself. Moreover, White River claims the application does not provide the Commission

² Response of White River Valley Electric Cooperative, Inc. to Application of Jerry L. Countryman, March 30, 2022, ¶¶ 16 & Request for Relief.

with any additional elements for consideration under the ten factor test that otherwise would reveal a sound basis to diverge from the recognized anti-flip-flop policy.³

9. Liberty wrote in its March 30, 2022, response that: (1) Liberty continues to provide a safe and reliable service to Mr. Countryman at the just and reasonable rates approved by the Commission; (2) the Application fails to demonstrate any grounds which would support the grant of Mr. Countryman's Application under Missouri statute and the Commission's balancing ten factor test; and (3) when Liberty loses a customer, its remaining customers are negatively impacted because Liberty's total cost to provide electrical service to the public is shared by all customers.⁴

10. Because Mr. Countryman brought this change of supplier application, he bears the burden of proof.⁵ The burden of proof is the preponderance of the evidence standard.⁶ The ten factors addressed in the *Matter of the Application of Brandon Jessip for Change of Electric Supplier* and in the responses from White River and Liberty are listed and analyzed on pages six through nine of the Staff Recommendation, which is attached.

11. Staff recommends the Commission deny Mr. Countryman's Application because he has not shown by the preponderance of the evidence that it is in the public interest for him to switch providers from Liberty to White River. One of the reasons why Mr. Countryman requested a change in supplier was he wanted only one service provider, which is not part of the ten factor test. His second reason for wanting to change suppliers

³ Response of White River Valley Electric Cooperative, Inc. to *Application of Jerry L. Countryman*, March 30, 2022, ¶¶ 20-22.

⁴ Response of Liberty to *Application of Jerry L. Countryman*, March 30, 2022, ¶¶ 10-11.

⁵ Report and Order, *In the Matter of the Application of Brandon Jessip for Change of Electric Supplier from Empire District Electric to New-Mac Electric*, Dec. 20, 2017, File No. EO-2017-0277, P. 7.

⁶ *Id.*

is due to Liberty rates increasing. Basing a change of supplier request on the difference in amounts charged by electric providers is prohibited by Section 393.106, RSMo, so Mr. [Countryman's] reason is not an appropriate ground for granting such a request.⁷

12. The basis for Staff's recommendation include the following:

- Liberty is adequately meeting Mr. Countryman's needs;
- There are no health or safety issues involving the amount or quality of power Liberty delivers to Mr. Countryman's residence;
- Staff is unaware of any possible alternatives being discussed;
- Mr. Countryman does not report that Liberty damaged or destroyed his equipment;
- There is no evidence that switching to White River would alleviate Mr. Countryman's concerns with his electric service, as Mr. Countryman has stated no problems with his service;
- Liberty states that losing revenue from Mr. Countryman would impact its remaining customer base; and
- White River states it would need to extend its facilities to Mr. Countryman's residence. Additionally, White River expects Liberty would require payment for the removal of its existing facilities.

WHEREFORE, Staff submits this Staff Recommendation for the Commission's information and consideration, and recommends that the Commission deny Mr. Countryman's Application.

⁷ *Id.* at 11.

Respectfully submitted,

/s/ J. Scott Stacey

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to counsel of record for Liberty and White River and by U.S. mail to Mr. Countryman at his address of record on this 13th day of April, 2022.

/s/ J. Scott Stacey

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2022-0226, In the Matter of the Application of
Jerry L. Countryman for Change in Electric Supplier from The
Empire District Electric Company d/b/a/ Liberty to White River Valley
Electric Cooperative, Inc.

FROM: Alan J. Bax, Industrial Analysis Department – Engr. Analysis Unit

/s/ Alan J. Bax 4/13/2022 /s/ J. Scott Stacey 4/13/2022

Engineering Analysis Unit / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Dismissal of Application

DATE: April 13, 2022

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) dismiss the Application of Jerry L. Countryman (“Mr. Countryman”) for a Change in Electric Service Suppliers (“Application”) at 451 N. Countryman Road, Ozark, Missouri 65721, from The Empire District Electric Company d/b/a Liberty Utilities, Inc. (“Liberty”) to White River Valley Electric Cooperative, Inc. (“White River”), concluding that the Application is not in the public interest for reasons other than a rate differential pursuant to 393.106.2 and 394.315.2, RSMo (2021) and 20 CSR 4240-3.140. The Application meets the filing requirements of 20 CSR 4240-2.060 and 20 CSR 4240-3.140.

OVERVIEW

On February 25, 2022, Mr. Countryman filed an Application with the Commission seeking approval of his request to change electric service providers from Liberty to White River at 451 N. Countryman Road, Ozark, Missouri 65721. Mr. Countryman indicated in his

Application that Liberty has provided electric service since 1977 to his home, which is located on a five acre parcel. He stated the adjoining property, which he inherited, had been served by White River since the 1940s and expressed a desire in his Application that White River be the sole provider of electric service to the entire property. Mr. Countryman does not identify experiencing any service or safety related issues regarding his electric service in his Application.

On February 28, 2022, the Commission issued an *Order Directing Notice, Adding Parties, and Directing Responses to Application* that directed its Data Center to send notice of this Application to both Liberty and White River and make them parties to the case. This *Order* also directed Liberty and White River to file a Response to the Application by March 30, 2022. In addition, the Commission ordered Staff to file a Recommendation on the Application by April 15, 2022.

White River is organized under Chapter 394, RSMo (2021) to provide electric service to its members located in all or parts of five Missouri counties, including Christian County, in which lies the property identified in the Application. The Commission has limited jurisdiction over rural electric cooperatives, such as White River, as specified in Chapter 394, RSMo (2021). For the purpose of this case, White River is subject to the jurisdiction of the Commission under Section 394.315.2, RSMo (2021).¹

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

Given that White River 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 White River from any state or federal court involving customer service or rates.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo (2021). For the purposes of this case, Liberty is subject to the jurisdiction of the Commission under Section 393.106.2, RSMo (2021).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

Mr. Countryman indicates that electric service was initiated with White River on the family farm in the 1940s. His parents carved a five acre portion of this property and gave it to Mr. Countryman in the late 1970s. On this five acre parcel, Mr. Countryman constructed the house that is the subject of this Application at 451 N. Countryman Road, Ozark,

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[n]."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 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[n]."

Missouri 65721. At that time, Mr. Countryman made the choice to have Liberty be the electric service provider to the newly constructed home despite White River being the electric service provider on his parents' farm since the 1940s. Thus, since the late 1970s, Liberty has been the electric service provider to Mr. Countryman's home on his five acres, while White River has consistently been the electric service provider to structures on the original "homestead." Mr. Countryman inherited the property, in its entirety, in 2010. Therefore, for nearly the last dozen years, Mr. Countryman has maintained the two electric service providers on this property. Only recently has Mr. Countryman preferred to have a single electric service provider to the entire property and hence filed his Application with the Commission to have White River be this sole electric service provider.

In White River's Response to the Application filed on March 30, 2022, while acknowledging that it is capable of serving the property in its entirety, White River has nonetheless recommended that the Commission maintain the status quo; that is, asserting that the current arrangement of two electric service providers on the property should be retained. White River lists ten factors that the Commission noted in its *Report & Order* in Case No. EO-2017-0277, and states that the Application "...does not provide the Commission with any additional relevant elements for consideration...that would otherwise reveal a sound basis to diverge from the recognized anti flip-flop policies..." State statutes 393.106 and 394.315, RSMo (2021), are often referred to as "anti flip-flop statutes", associated with electric service being established by investor-owned utilities (such as Liberty) and rural electric cooperatives (White River) respectively (see footnotes 1 and 2 above). White River maintains that Mr. Countryman has only noted his recent preference to have one electric service provider

on this property in his Application, a reason that in and of itself is insufficient/inadequate in meeting the required standards of these aforementioned statutes.

In Liberty's Response, also filed on March 30, 2022, Liberty recommends the Commission deny Mr. Countryman's Application. Liberty notes that Mr. Countryman's desire to have a single electric service provider is not a sufficient basis on which to overcome the necessary public interest determination included in the aforementioned anti flip-flop laws. Liberty also references a "ten factor balancing test" used by the Commission in a "facts-based analysis" in making their decisions in such past Cases. Liberty asserts it has continually provided safe and reliable electric service at just and reasonable rates and Mr. Countryman has provided no information to the contrary. In addition, Liberty notes that approving Mr. Countryman's request would negatively impact its other customers, placing an additional burden on the remaining customer base.

In reaching out to Mr. Countryman, Staff verified the information regarding the initiation and continuing provision of the respective electric services provided by White River and Liberty that he identifies in his Application. Mr. Countryman did not offer any information regarding experiencing abnormal power, voltage, current or other problem with either electric service being provided, nor did he have any safety concerns. Mr. Countryman mentioned to Staff that he wanted to change to White River, as Liberty's rates were increasing. Staff would agree with White River and Liberty that Mr. Countryman's lone stated reason for requesting a change of electric service providers, desiring to have one electric service provider for the entire property, is not sufficient or adequate in overcoming the public interest determination contained in the prevailing anti flip-flop laws cited by both White River and Liberty.

As referenced by both White River and Liberty, 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;

Liberty has provided safe and reliable service to Mr. Countryman at 451 N. Countryman Road, Ozark, Missouri, 65721 since the late 1970s. There is no indication of either service related or safety concerns noted in the Application.

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

Staff is not aware of any reported incidents associated with the electric service being provided by either White River or Liberty on the property since the late 1970s.

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

Staff is unaware of any possible alternatives being discussed, such as a Territorial Agreement. White River has recommended maintaining both service providers on the property and Liberty has recommended a denial of Mr. Countryman's Application.

- (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 claims by Mr. Countryman of damaged equipment as a result of the electric service provided.

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

In its Response, Liberty mentions a negative impact thrust on its remaining customer base 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 Response, White River estimates it will need to extend its facilities approximately 325 feet, requiring two or three poles and associated conductor in providing electric service to Mr. Countryman's home at 451 N Countryman Road, Ozark, Missouri, 65721. White River also expects that Liberty would require payment for its existing facilities utilized in its current provision of electric service, which includes at least four poles and associated conductors spanning over a distance of greater than 700 feet.

- (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. Countryman has not indicated experiencing any service related or safety concerns regarding the electric service received from either Liberty or White River.

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

Again, Mr. Countryman has not alleged experiencing any service related or safety issues concerning the provision of electric service from either White River or Empire. Staff is not aware of any discussions between Liberty and White River regarding a possible Territorial Agreement or if Mr. Countryman has been included in such discussions if these discussions have taken place.

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

Mr. Countryman has received safe and reliable service from Liberty continuously since the late 1970s. Although Liberty mentions the negative impact on its customer base 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 Liberty and White River that include the parcel at 451 N. Countryman Road, Ozark, Missouri, 65721, nor the greater property as a whole. Staff is not aware of any discussions between Liberty and White River regarding

any Territorial Agreements nor the effect on such negotiations if the Commission should approve the Application.

CONCLUSION

Staff recommends that the Commission should deny Mr. Countryman's Application, determining that his request for a change in electric service providers from Liberty to White River at 451 N. Countryman Road, Ozark, Missouri, 65721 is not in the public interest for reasons other than a rate differential as required under Sections 393.106.2 and 394.315.2, RSMo (2021) and 20 CSR 4240-3.140. In his Application, Mr. Countryman only expresses his desired preference to have one electric service provider on the entire property. He has not experienced any service related problems or safety issues regarding his electric service. Liberty and White River have both provided electric service to this property since the late 1970s. His desire to have but one electric service provider on the property, in and of itself, is inadequate/insufficient in meeting the necessary public interest standard included in the applicable statutes and regulations and is not included in the list of ten factors the Commission has identified in its "public interest" consideration of such requests. Moreover, Mr. Countryman's statement to Staff that he desired to change to White River service because Liberty's rates were increasing is a reason in and of itself to deny Mr. Countryman's Application.

BEFORE THE PUBLIC SERVICE COMMISSION
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Jerry L. Countryman for Change of Electric)
Supplier from Empire District Electric)
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Valley Electric Cooperative, Inc.)

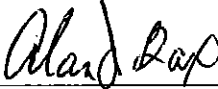
File No. EO-2022-0226

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.

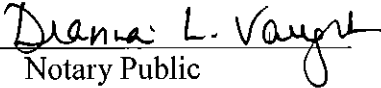
Further the Affiant sayeth not.



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 12th day of April, 2022.

_____ 
Notary Public

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: July 18, 2023
Commission Number: 15207377