

**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**

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**REPORT AND ORDER**

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**Issue Date: November 17, 2022**

**Effective Date: December 17, 2022**

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OF THE STATE OF MISSOURI**

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

**PARTIES & APPEARANCES**

**APPLICANT JERRY L. COUNTRYMAN:**

**Jerry L. Countryman**, 451 N. Countryman Road, Ozark, Missouri 65721.

**THE EMPIRE DISTRICT ELECTRIC COMPANY (LIBERTY):**

**Diana C. Carter**, Director, Legal Services, Liberty Utilities, 428 E. Capitol Avenue, Suite 303, Jefferson City, Missouri 65101.

**WHITE RIVER VALLEY ELECTRIC COOPERATIVE:**

**Christiann D. Horton**, Carnahan Evans PC, 2805 S. Ingram Mill Road, P.O. Box 10009, Springfield, Missouri 65808

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**J. Scott Stacey**, Senior Staff Counsel, Public Service Commission, 200 Madison Street, P.O. Box 360, Jefferson City, Missouri 65102.

**REGULATORY LAW JUDGE:** Kenneth J. Seyer

# REPORT AND ORDER

## I. Procedural History

On February 25, 2022,<sup>1</sup> Jerry L. Countryman filed an *Application for Change of Electrical Service Provider* (“Application”) with the Commission requesting a change of electric supplier from The Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc. (White River).<sup>2</sup>

On February 28, the Commission ordered that Liberty and White River be made parties to this proceeding and that they respond to the Application.<sup>3</sup> Both of those parties did so on March 30.

On April 13, the Staff of the Commission filed a *Staff Recommendation* in which it recommended that 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.<sup>4</sup>

On July 21, the Commission ordered a procedural schedule that set an evidentiary hearing for October 3.<sup>5</sup> Written direct and rebuttal testimony was filed by the parties.

A joint list of issues was filed on September 22. The filing listed a single issue to be decided by the Commission:

Is it in the public interest for a reason other than a rate differential for the Commission to order a change of electric service provider from Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc. for Jerry Countryman’s asserted reason (having only one electric service provider for his two adjacent real estate parcels)?<sup>6</sup>

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<sup>1</sup> Unless otherwise noted, all dates refer to 2022.

<sup>2</sup> Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).

<sup>3</sup> *Order Directing Notice, Adding Parties, and Directing Responses to Application* (issued February 28).

<sup>4</sup> *Staff Recommendation* (filed April 13).

<sup>5</sup> *Order Setting Procedural Schedule* (issued July 21).

<sup>6</sup> *Joint List of Issues, List and Order of Witnesses, Order of Opening Statements and Order of Cross Examinations* (filed September 22).

Subsequently, the Commission held an evidentiary hearing on October 3.

## II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Liberty is an “electrical corporation” and “public utility,” as those terms are defined by Section 386.020, RSMo.<sup>7</sup>

2. White River is a rural electric cooperative.

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

4. Jerry L. Countryman currently resides at 451 N. Countryman Road, Ozark, Missouri.<sup>8</sup>

5. Mr. Countryman is a current customer of Liberty, receiving electric service for his residence and the five acre parcel upon which it is located. Liberty began providing electric service to Mr. Countryman’s residence in 1977.<sup>9</sup>

6. In 2010, upon the death of his mother, Mr. Countryman inherited from his parents’ trust a 22 ¼ acre parcel adjacent to his five acre parcel upon which stand a barn and shed.<sup>10</sup>

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<sup>7</sup> All statutory references are to the Revised Statutes of Missouri, as codified in 2016, unless otherwise noted.

<sup>8</sup> Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3.

<sup>9</sup> Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3; Tr. p. 24.

<sup>10</sup> Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); Tr., pp. 22, 24, 27.

7. From the 1940s through to the present, White River has provided electrical service to the 22 ¼ acre parcel.<sup>11</sup>

8. There is no territorial agreement between Liberty and White River in the area of Mr. Countryman's two parcels.<sup>12</sup>

9. Mr. Countryman filed an application with the Commission requesting that his electric service provider for his residence be switched from Liberty to White River.<sup>13</sup>

10. In his Application, for the reason he was requesting a change of electric supplier, Mr. Countryman wrote the following:

Due to inheritance of adjoining property, which is serviced by White River Valley Coop. Adjoining property has been serviced by [White River] since 1940's. My house and 5 acres has been serviced by Empire (now Liberty) since 1977. I do not need two electric utilities.<sup>14</sup>

11. Mr. Countryman did not allege in the Application, and did not communicate to Staff, that he was experiencing abnormal power, voltage, current or other problems with the electric service he was receiving from Liberty, nor did he express any safety concerns.<sup>15</sup> Likewise, Mr. Countryman presented no evidence regarding electric service problems or safety concerns.<sup>16</sup>

12. Mr. Countryman stated to Staff that he wanted to change his electric service to White River because Liberty's rates were increasing.<sup>17</sup>

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<sup>11</sup> Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); *Rebuttal Testimony and Exhibit A of Beau Jackson*, p.2.

<sup>12</sup> Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3; Exh. 200, *Rebuttal Testimony and Exhibit A of Beau Jackson*, p.1; Tr. p. 38.

<sup>13</sup> Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).

<sup>14</sup> Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).

<sup>15</sup> Exh. 3, *Application for Change of Electrical Supplier* (filed February 25); Exh. 300, *Rebuttal Testimony of Alan J. Bax*, Sch. 2 AJB r2, p. 10.

<sup>16</sup> Tr. 19-31.

<sup>17</sup> Exh. 300, *Rebuttal Testimony of Alan J. Bax*, Sch. 2 AJB r2, p. 10; Tr. 25.

13. Mr. Countryman has created a trust for the benefit of his sons that includes the five acre and 22 ¼ acre properties in question. Mr. Countryman stated he submitted his Application because he is “trying to clear up things where it’s down to one thing, one utility, et cetera.”<sup>18</sup> Mr. Countryman’s long range plans – in five to eight years – include converting a portion of the barn into a one-bedroom apartment, vacating his current house, and moving into the apartment in the barn.<sup>19</sup>

14. Liberty has been granted a certificate of convenience and necessity from the Commission to provide service to the five acre parcel that is currently Mr. Countryman’s residence.<sup>20</sup>

15. Liberty provides safe and reliable service to Mr. Countryman at the five acre parcel.<sup>21</sup>

16. 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 of its customers.<sup>22</sup>

17. White River would like to serve Mr. Countryman’s current residence, but believes the law prohibits it from doing so.<sup>23</sup>

18. White River estimates that, in order to provide electric service to Mr. Countryman’s residence, it would have to add two to three poles and 300-500 feet of line at a cost of \$8,000 to \$10,000.<sup>24</sup>

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<sup>18</sup> Tr. 22.

<sup>19</sup> Tr. 26.

<sup>20</sup> Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.

<sup>21</sup> Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.

<sup>22</sup> Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.

<sup>23</sup> Tr. 37.

<sup>24</sup> Tr. 36-38.

### III. Conclusions of Law

A. Although Mr. Countryman is not a person or an entity regulated by the Commission, he submitted himself to the Commission's jurisdiction when he filed his application pursuant to Section 393.106, RSMo.

B. Since Mr. Countryman brought the change of supplier application, he bears the burden of proof.<sup>25</sup> The burden of proof is the preponderance of the evidence standard.<sup>26</sup> In order to meet this standard, Mr. Countryman must convince the Commission it is "more likely than not" that his application should be granted.<sup>27</sup>

C. Section 393.106.2, RSMo, addresses the right of electrical corporations to provide electric service and the procedure to change electric suppliers. It states, in part:

Once an electrical corporation . . . 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. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter.

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<sup>25</sup> The Commission has determined in previous change of supplier cases that the burden of proof is on the applicant. See, Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE*, December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.

<sup>26</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>27</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999).

D. Similarly, Section 394.315.2, RSMo, addresses the right of rural electric cooperatives to provide electric service and the procedure to change electric suppliers. It states, in part:

Once a rural electric cooperative . . . 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, 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. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter.<sup>28</sup>

#### **IV. Decision**

The Commission has stated that customer preference does not suffice as the only basis for ordering a change in supplier.<sup>29</sup> In previous cases, the Commission has conducted a case-by-case analysis, applying a ten-factor balancing test to analyze the meaning of “public interest” for a change of supplier. Those ten factors are:

- A. Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;
- B. Whether there are health or safety issues involving the amount or quality of power;

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<sup>28</sup> Sections 392.106 and 393.315, RSMo, are commonly referred to as the anti-flip-flop statutes.

<sup>29</sup> *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.



- C. What alternatives a customer has considered, including alternatives with the present supplier;
- D. Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;
- E. The effect the loss of the customer would have on the present supplier;
- F. Whether a 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:
- (1) the distance involved and cost of any new extension, including the burden on others -- for example, the need to procure private property easements, and
  - (2) the burden on the customer relating to the cost or time involved, not including the cost of the electricity itself;
- G. 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 (F)(2) above;
- H. What efforts have been made by the present supplier to solve or mitigate the problems;
- I. The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
- J. 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.<sup>30</sup>

In this case, Liberty has provided electric service to Mr. Countryman's residence on the five acre parcel for over 40 years. Mr. Countryman cites no problems with reliability, voltage, safety, etc. in the electric service received from Liberty. Mr. Countryman does

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<sup>30</sup> 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*, 27 Mo. P.S.C. 3d 288, 298-299, File No. EO-2017-0277 (Dec. 20, 2017); Report and Order, *In the Matter of the Application of Thomas L. Chaney for Change of Elec. Supplier*, 22 Mo. P.S.C. 3d 339, 342-343, File No. EO-2011-0391 (Dec. 12, 2012); Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE*, December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), File No. EO-88-196.

not allege that Liberty is unable to meet his needs regarding the amount or quality of power; that power supplied by Liberty presents a health or safety issue; that Liberty's power supply damaged his equipment; that Liberty's provision of electric service to his residence negatively impacts economic development in the area; or that Liberty's electric service creates any burden on him not related to the cost of electricity itself. In fact, Mr. Countryman admitted to Staff that he wanted to change suppliers because Liberty was raising its rates.

If Mr. Countryman's request to change electric suppliers is approved, both of the utilities involved would be negatively impacted. Although White River would gain Mr. Countryman as a customer, in order to do so it would have to add poles and transmission lines at an estimated cost of \$8,000-\$10,000 – a cost that would have to be shared by all of White River's customers. Similarly, but conversely, losing Mr. Countryman as a customer would negatively impact Liberty because Liberty's total cost to provide electric service to the public is shared by all of its customers.

Even if it is in the public interest for Mr. Countryman to prevail, the Commission must also determine that the reason Mr. Countryman wishes to change suppliers is for a reason other than a rate differential. Rates are defined as what a customer pays for a unit of service.<sup>31</sup> A primary policy reason for the anti-flip-flop law is to provide some assurance to electric utilities that if they spend money to build facilities to provide service to a customer, they will be able to keep that customer, absent some compelling reason to allow a change of supplier.

After considering all the factors described above, the Commission concludes that

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<sup>31</sup> Report and Order, *In the Matter of the Application of Thomas L. Chaney for Change of Elec. Supplier*, 22 Mo. P.S.C. 3d 339, 344, File No.EO-2011-0391 (Dec. 12, 2012).

granting Mr. Countryman's request for a change of electric supplier would not be in the public interest. In addition, one of the reasons stated by Mr. Countryman that he requested a change in supplier was the raising of rates by Liberty. Changing electric service suppliers based on rate differential is prohibited by Section 393.106.3, RSMo, so Mr. Countryman's reason is not an appropriate ground for granting such a request.

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts as pleaded to the law to reach its conclusions, the Commission concludes that the pleadings support the conclusion that Mr. Countryman has failed to meet, by a preponderance of the evidence, his burden of proof to demonstrate that a change of electric supplier should be granted. Therefore, Mr. Countryman's application will be denied.

**THE COMMISSION ORDERS THAT:**

1. Jerry L. Countryman's application for a change of electric supplier is denied.
2. This report and order shall become effective on December 17, 2022.
3. This file shall close on December 18, 2022.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and  
Kolkmeier CC., concur and certify compliance  
with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge


**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 17<sup>th</sup> day of November, 2022.**



  
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**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**November 17, 2022**

**File/Case No. EO-2022-0226**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.