

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

In the Matter of the Application of Heather L. Cline for)
Change of Electric Supplier from The Empire District Electric) Case No. EO-2024-0098
Company d/b/a Liberty to Southwest Electric Cooperative)

RESPONSE TO APPLICATION AND MOTION TO DISMISS

COMES NOW The Empire District Electric Company d/b/a Liberty, and for its Response to Application and Motion to Dismiss regarding the change of supplier request of Heather Cline, Liberty respectfully states as follows to the Missouri Public Service Commission (the “Commission”):

1. On September 18, 2023, Heather L. Cline (the “Applicant”) filed an application with the Commission requesting a change of electric supplier from Liberty to Southwest Electric Cooperative (the “Application”).

2. With its *Order Directing Notice and Directing Responses to Application*, the Commission directed Liberty and Southwest Electric Cooperative (the “Cooperative”) to respond to the Application and directed the Staff of the Commission to file a recommendation.

3. In paragraph five of the Application, the Applicant states that the request for a change of electric supplier is because Liberty “charges both kilowatt per hour and service fees beyond what is considered reasonable. We currently get charged a customer charge, usage charge (kilowatts used), energy efficiency program cost, energy efficiency invest cost, fuel charge and taxes.”

4. The Applicant continues by stating a comparison between Empire’s rates and the Cooperative’s rates and then comments that “(i)f Liberty Utilities is allowed to charge and set their own unreasonable pricing structure, customers should have a choice in their service provider.”

5. Liberty is a “public utility” and an “electric corporation” pursuant to RSMo. §393.1700.1(6), with its Missouri operations subject to the jurisdiction of the Commission as provided by law.

6. RSMo. §393.106 and §394.315, commonly referred to as Missouri’s anti-flip flop laws, govern change of supplier requests. RSMo. §394.315 refers to rural electric cooperatives, while §393.106 refers to electrical corporations (like Liberty) and joint municipal utility commissions. The purpose of the statutes is to “prevent customers from switching back and forth between two available electric suppliers to take advantage of rate differences” – a strong public policy of our state. *Empire Dist. Elec. Co. v. Southwest Elec. Co-op.*, 863 S.W.2d 892, 896 (Mo. App. S.D. 1993).

7. RSMo. §393.106.2 governs the Application here and provides, in part, that “(o)nce 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 statute further provides that the Commission, upon application, may order a change of supplier “on the basis that it is in the public interest for a reason other than a rate differential.”

8. With previous change of supplier requests, the Commission has conducted a fact-specific analysis applying a ten factor balancing test to determine if the requested change is in the public interest. No such test may be applied here, however, as the Application fails to state a claim on its face.

9. As noted, a change of supplier request may lawfully be granted only “on the basis that it is in the public interest **for a reason other than a rate differential.**” RSMo. §393.106.2 (emphasis

added). The Application contains no alleged basis for the requested change of supplier other than a difference in rates.

WHEREFORE, Liberty respectfully requests that the Commission dismiss the Application and grant such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

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Certificate of Service

I hereby certify that the above document was filed in EFIS on this 12th day of October, 2023, with notification of the same being sent to all counsel of record. This filing was also sent by electronic transmission and/or ordinary mail to all parties/counsel of record.

/s/ Diana C. Carter