

## MEMORANDUM

**TO:** Missouri Public Service Commission Official Case File  
File No. EO-2024-0098, In the Matter of the Application of Heather L. Cline  
for Change in Electric Supplier from Liberty Utilities to Southwest Electric  
Cooperative

**FROM:** Alan J. Bax, Associate Engineer, Engineering Analysis Department

/s/ Alan J. Bax                      11-02-2023  
Industrial Analysis Division / Date

**SUBJECT:** Staff Memorandum Recommending Dismissal of Application

**DATE:** November 2, 2023

### STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) dismiss the Application of Heather L. Cline (“Ms. Cline”) for a Change in Electric Service Suppliers (“Application”) at \*\* [REDACTED] \*\* Bolivar, Missouri 65613, located in Polk County, from The Empire District Electric Company d/b/a Liberty Utilities, Inc (“Liberty”) to Southwest Electric Cooperative, Inc. (“Southwest”), 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 September 18, 2024, Ms. Cline filed an Application with the Commission seeking approval of her request to change electric service providers from Liberty to Southwest at \*\* [REDACTED] \*\* Bolivar, Missouri 65613 in Polk County. Ms. Cline indicated in her Application that Liberty has provided electric service to her home, located outside the city limits of Bolivar, for six years. However, despite utilizing spray foam insulation, installing high efficiency appliances and using propane as a back-up heating source in the winter, Ms. Cline says her monthly electric bill charges are up to \$130.00 more than most of her neighbors who have Southwest as their electric service provider. Ms. Cline asserts Liberty rates are unreasonable.

Ms. Cline does not identify experiencing any service or safety related issues regarding her electric service in her Application.

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

Given that Southwest is a rural electric cooperative, the Commission does not require Southwest to file annual reports or pay assessment fees. Further, Staff is currently not aware of any pending or final unsatisfied decisions against Southwest 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 (2021). For the purposes of this case, Liberty is subject to the jurisdiction of the Commission under Section 393.106.2, RSMo (2021).<sup>2</sup> Liberty is current on its filing of annual reports and payments of its assessment dues. Staff is currently not

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<sup>1</sup> 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].

<sup>2</sup> 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].

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

Ms. Cline indicates that electric service was initiated at \*\* [REDACTED] \*\* Bolivar, Missouri 65613 with Liberty six years ago. Ms. Cline contends that initially, in order to obtain electric service from Southwest, it would be necessary to gain an easement from a neighboring property on which to route Southwest facilities from across State Highway 32. Ultimately, Ms. Cline agreed to Liberty providing electric service to her new home, located in Polk County, at \*\* [REDACTED] \*\* Bolivar, Missouri 65613 despite the majority of neighboring nearby properties receiving electric service from Southwest. Ms. Cline indicates to have taken efficiency measures in building her home that include spray foam insulation, installing highly efficient appliances, and utilizing propane as compared to heating strips as a back-up heating source. Despite these measures, Ms. Cline experiences monthly bills up to \$130.00 higher than her neighbors, who have homes similar to Ms. Cline but have Southwest as their electric service provider.

In Southwest's Response to the Application, filed on October 16, 2023, Southwest recommends that the Commission dismiss the Application. Southwest states in Paragraph 3, "A change in electric supplier in the case is not in the public interest, nor is such request supported by Missouri law or the regulations promulgated by the Missouri Public Service Commission on this subject matter." Southwest continues, stating, "...that a change in electric suppliers would lead to unnecessary expense and duplication of services and facilities." Thus, Southwest suggests that maintaining the status quo of Liberty being the electric service provider to \*\* [REDACTED] \*\* Bolivar, Missouri 65613 is the correct action.

In Liberty's Response, filed on October 12, 2023, Liberty recommends the Commission deny Ms. Cline's Application. Liberty notes that Ms. Cline's stated reason for her desire to have Southwest be her 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.<sup>3</sup> Although Liberty makes mentions of a “ten factor balancing test” used by the Commission in a “facts-based analysis” in making their decisions in such Cases, as listed in the Commission’s *Report and Order* in Case No. EO-2017-0277, Liberty asserts that no such test can be applied given the Application fails to state a claim on which it can be appropriately analyzed. Liberty believes it has continually provided safe and reliable electric service to Ms. Cline at just and reasonable rates unlike the assertions made by Ms. Cline. In addition, Liberty notes that approving Ms. Cline’s request would negatively impact its other customers, placing an additional burden on the remaining customer base.

In reaching out to Ms. Cline, Staff verified the information regarding the initiation and continuing provision of the electric service provided by Liberty that is identified in her Application. Ms. Cline did not offer any information regarding experiencing abnormal power, voltage, current or other problem with her electric service being provided, nor did she have any safety concerns. Ms. Cline mentioned to Staff that she wanted to change to Southwest because of the charges applied by Liberty on her bills. Staff would agree with Southwest and Liberty that Ms. Cline’s lone stated reason for requesting a change of electric service providers, that Liberty’s rates are unreasonable, is not sufficient or adequate in overcoming the public interest determination contained in the prevailing anti flip-flop laws.

As referenced by 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;

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<sup>3</sup> Terminology often used in the electric utility industry in referencing the Missouri Statutes that relate to requests to change electrical service providers. Applicable MO Statute for electric utility type, collectively referred to as the “anti flip-flop” laws:

Investor Owned Utilities – (“IOUs”) – 393.106.2  
Rural Electric Cooperatives (“RECs”) – 394.315.2  
Municipal Electric Systems (“Municipals”) – 91.025.2

Liberty has provided safe and reliable service to Ms. Cline at \*\* [REDACTED] \*\* Bolivar, Missouri, 65613 for six years. 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 Liberty.

- (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. Southwest recommends dismissing the Application, but is capable of providing desired electric service if Ordered by the Commission. Liberty has also recommended a denial of Ms. Cline'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 Ms. Cline 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, Southwest indicates that it would be necessary to obtain easements from two property owners, that a densely wooded area would need to be cleared, a necessary highway crossing would need to be constructed, and either boring or underbuilding Liberty's existing transmission line. While Southwest did not provide a cost estimate for these activities, based on Staff's experience, the expense to Ms. Cline for these activities would be significant. Thus, Southwest providing electric service would result in unnecessary expense and be duplicative as well.

- (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;

Ms. Cline has not indicated experiencing any service related or safety concerns regarding the electric service received from Liberty.

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

Again, Ms. Cline has not alleged experiencing any service related or safety issues concerning the provision of electric service from Liberty. Staff is not aware of any discussions between Liberty and Southwest regarding a possible Territorial Agreement or if Ms. Cline has been included in such discussions should such discussions have taken place.

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

Staff does not expect a Commission's decision in this matter to have an economic development impact on an individual or cumulative basis.

- (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 Southwest that include the parcel at \*\* [REDACTED] \*\* Bolivar, Missouri, 65613. Staff is not aware of any discussions between Liberty and Southwest 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 Ms. Cline's Application, determining that her request for a change in electric service providers from Liberty to Southwest at \*\* [REDACTED] \*\* Bolivar, Missouri, 65613 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) as well as 20 CSR 4240-3.140. In her Application, Ms. Cline only expresses her contention that Liberty's rates are unreasonable, and that she has not been experiencing any service related problems or safety issues regarding her electric service. Liberty has provided electric service to this property for six years. Her desire to have Southwest be the electric service provider because Liberty's rates are excessive is inadequate/insufficient in meeting the necessary public interest standard included in the applicable statutes and regulations and is ample reason to deny Ms. Cline's Application. Further, Southwest indicated significant construction activities, including a highway crossing, would be required if the Commission were to grant Ms. Cline's Application.

