

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

In the Matter of the Application of Southway)
Storage for Change of Electric Supplier from) File No. EO-2024-0194
The Empire District Electric Company d/b/a)
Liberty to White River Valley Electric)
Cooperative, Inc.)

LIBERTY’S RESPONSE TO APPLICATION

COMES NOW The Empire District Electric Company d/b/a Liberty (“Liberty” or the “Company”), and for its response to the Application of Southway Storage, LLC (the “Applicant”), Liberty respectfully states as follows to the Missouri Public Service Commission (the “Commission”):

1. On December 12, 2023, an application was filed herein, requesting that the electric supplier for the property located at the southwest corner of F Highway and Highway 65 in Ozark, Missouri, be changed from Liberty to White River Valley Electric Cooperative, Inc. (“White River”).

2. On December 18, 2023, the Commission issued its *Order Directing Notice, Adding Parties, and Directing Responses to Application*, directing Liberty and White River to file responses to the application and directing the Staff of the Commission to file a recommendation.

3. Regarding paragraph one of the application, Liberty admits that Applicant’s property is located at the southwest corner of F Highway and Highway 65 in Ozark, Missouri.

4. Regarding paragraph two of the application, Liberty admits that Applicant’s property falls within its service territory, granted by a Commission-issued Certificate of Convenience and Necessity (“CCN”), and admits that there is no electric service currently provided to the property.

5. Regarding paragraphs three-five of the application, Liberty acknowledges that Applicant is requesting that the Commission order a change of electrical supplier for the property from Liberty to White River, for the stated reason that it would be “more feasible” for Applicant to receive electric service from White River.

6. Regarding paragraph six of the application and the allegation that Liberty “will have to bore underneath Highway 65 to bring power” to the property, at a substantial cost, thus making it “unfeasible to obtain power” from Liberty for this property, Liberty states as follows:

a. The subject property was recently annexed into the city of Ozark, making the property part of Liberty’s service territory. The annexation occurred more than 90 days ago.

b. Prior to annexation, White River did not provide electric service to this property.

c. There is no territorial agreement in place for the subject property or the neighboring area.

d. Liberty is not aware of any legal basis to allow for White River to begin providing electric service to this property.

e. Although Liberty currently does not serve the subject property and does not have other customers on that corner, Liberty serves many commercial customers (including several strip centers, Walmart, and Lowes) on the opposite corner.

f. There may be a cost of approximately \$50,000 to bring electric service to the subject property, but Liberty has not been provided with sufficient information to perform an accurate estimate as to how any costs may be borne by the Applicant.

g. It does not appear that boring under the highway will be required to bring electric service to the property, as overhead lines are a reasonable alternative.

h. There are no known reliability or service issues with Liberty’s service to this area.

7. Liberty is a “public utility” and an “electric corporation” pursuant to RSMo. §393.1700.1, with its Missouri operations subject to the jurisdiction of the Commission as provided by law. As such, Liberty is obligated to serve the Applicant’s property in accordance

with the Commission-issued CCN. Further, Liberty is ready, willing, and able to serve the property and provide safe and reliable electric service thereto.

8. RSMo. §393.106 and §394.315, commonly referred to as Missouri’s anti-flip flop law, typically govern change of supplier requests. RSMo. §394.315 refers to rural electric cooperatives (like White River), while §393.106 refers to electric 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).

9. 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.” In this situation, a change of supplier is not in the public’s interest, rather it is solely the stated preference of the Applicant due to estimated costs.

10. Additionally, as previously noted by this Commission, RSMo. §393.106 only authorizes the Commission to consider a change of supplier request if two electric suppliers, such as an electric investor-owned utility and an electric cooperative, both have a concomitant right to serve a particular area. *Order Granting Summary Determination and Dismissing Application*, In the Matter of the Application of Wasatch Investments for Change of Electric Supplier, Case No. EO-2008-0031 (May 29, 2009), citing *Union Elec. Co. v. Platte-Clay Elec. Coop.*, 814 S.W.2d 643 (Mo. App. W.D. 1991). If, and only if, that concomitant right exists, may the Commission order a change of supplier for a reason other than rate differential, presuming the Commission finds it is in the public interest to do so. Liberty is not aware of a legal basis to allow White River to provide service to this property within the city limits of Ozark, Missouri.

WHEREFORE, Liberty respectfully requests that the Commission adhere to existing precedent and statutory law in this cause and issue an order denying and dismissing Southway Storage's application. Liberty seeks 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 January, 2024, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter