

## MEMORANDUM

**TO:** Missouri Public Service Commission Official Case File  
File No. EO-2024-0165, In the Matter of the Application of Trevor Ferrer for  
Change of Electric Supplier

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

/s/ Alan J. Bax 01-19-2024  
Industrial Analysis Division / Date

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

**DATE:** January 19, 2024

### STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) dismiss the Application of Trevor Ferrer (“Mr. Ferrer”) for a Change in Electric Service Suppliers (“Application”) at 3264 Boysenberry Drive, Joplin, Missouri 64804, located in Jasper County, from The Empire District Electric Company, d/b/a Liberty Utilities, Inc (“Liberty”) to New-Mac Electric Cooperative, Inc. (“New-Mac”), concluding that the Application is not in the public interest for reasons other than a rate differential pursuant to Sections 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 November 9, 2023, Mr. Ferrer filed an Application with the Commission seeking approval of his request to change electric service providers from Liberty to New-Mac at 3264 Boysenberry Drive, Joplin, Missouri 64804, located in Jasper County. Mr. Ferrer indicated in his Application that he had purchased a home in need of a complete remodel, requiring major renovations. When desiring electric service be installed in his home, Mr. Ferrer contacted Liberty, believing this was his only option, as he was moving from a property located within the city limits of Joplin, MO, a city that has a franchise agreement with Liberty.

New-Mac provides electric service to its members located in all or parts of five Missouri counties, including Jasper County, in which lies the property identified in the Application. The Commission has limited jurisdiction over rural electric cooperatives, such as New-Mac, as partially specified in Chapter 394, RSMo (2021). For the purpose of this case, New-Mac is subject to the jurisdiction of the Commission under Section 394.315.2, RSMo (2021).<sup>1</sup> New-Mac is not required to file annual reports or pay assessment fees. Further, Staff is currently not aware of any pending or final unsatisfied decisions against New-Mac 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 required 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.

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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[n].

<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 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].

## DISCUSSION

Mr. Ferrer indicates that electric service was initiated by Liberty at 3264 Boysenberry Drive, Joplin, Missouri 64804, at his request, within the last several months. However, upon learning from a neighbor that they received electric service from New-Mac, Mr. Ferrer says to have contacted New-Mac and subsequently filed an Application with the Commission seeking a change in electric service providers from Liberty to New-Mac. Mr. Ferrer contends being unaware of the possibility that he evidently had a choice in who provided electric service to his property, and believes that receiving electric service from New-Mac "...makes more sense logistically and financially..." Mr. Ferrer also expresses his willingness to reimburse Liberty for their expenses in extending its electric service to this property.

In its Response to the Application, Liberty recommends dismissing the Application. Liberty indicates continually servicing this property since 1991, along with several neighboring properties as identified in its Answer to Staff Data Request No. 0006. Liberty asserts that it has the right to maintain its service to this property citing Sections 393.106.2 and 394.315.2 RSMo 2021, often referred to as the "anti flip-flop" statutes<sup>3</sup>. Liberty further contends that the Application does not contain or reference sufficient evidence that could be considered as meeting the applicable standard for such requests to change electric suppliers, that is "...being in the public interest for reasons other than a rate differential." Moreover, Liberty reports completing two substantive work orders within the past year in upgrading their service to this property. These work orders are more thoroughly explained in Liberty's Confidential Answer to Staff Data Request Nos. 0005 and No. 0007, which are included in Confidential Schedule AJB-1 attached to this Staff Recommendation.

In its Response to the Application, New-Mac reports to have provided electric service to this property for nearly ten years (1982-1991), a time period prior to when Liberty indicates to have established its electric service in 1991. Although not providing electric service to Mr. Ferrer's property in over thirty years, New-Mac reports four other properties nearby that they currently

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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

serve in its Answer to Staff Data Request No. 0002<sup>4</sup>. Despite providing service to this property in the past, New-Mac takes no position as to whether the Application meets the required standards necessary for requesting a change in electric service providers, nor does it acknowledge having any communications with Mr. Ferrar as indicated in its Answer to Staff Data Request No. 0003<sup>5</sup>. Nonetheless, New-Mac asserts to have sufficient capability to serve this property as illustrated in its Answers to Staff Data Request Nos. 0001 and 0004<sup>6</sup>

In reaching out to Mr Ferrer, Staff verified the information contained in his Application regarding the notification and subsequent initiation of Liberty's electric service. This matched with the information provided by Liberty in its Answer to Staff Data Request No. 0007<sup>7</sup>. Additionally, Mr. Ferrer did not offer any information regarding experiencing abnormal power, voltage, current or other problem with the electric service being provided, nor were there any safety concerns expressed.

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;

While Liberty has only recently been the provider of electric service to Mr. Ferrer at 3264 Boysenberry Drive, Joplin, Missouri 64804, Liberty contends to have provided safe and reliable service to this premise since 1991. In addition, as noted earlier, Liberty reports having completed two work orders within the past year in upgrading its service to this property. 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.

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<sup>4</sup> Staff Data Request No. 0002, along with New-Mac's Response, is included as a part of Confidential Schedule AJB-1.

<sup>5</sup> Staff Data Request No. 0003, along with New-Mac's Response, is included as a part of Schedule AJB-1.

<sup>6</sup> Staff Data Request Nos. 0001 and 0004, along with New-Mac's Responses, are included as a part of Confidential Schedule AJB-1.

<sup>7</sup> Staff Data Request No. 0007, along with Liberty's Response, is included as a part of Confidential Schedule AJB-1.

- (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. New-Mac expressed taking no position as to the merits of the information contained in the Application, but asserts being capable of providing desired electric service if Ordered by the Commission, as illustrated in its Answer to Staff Data Request Nos. 0001 and 0004. Liberty has recommended that Mr. Ferrer's Application be dismissed, asserting Mr. Ferrer has provided insufficient reasoning to conclude that his request to change electric service providers is in the public interest for reasons other than a rate differential.

- (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 made by Mr. Ferrer 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;

Although Liberty would be negatively impacted, along with its remaining customer base should the change of supplier request be approved, this impact would be negligible, especially if Mr. Ferrer agreed to reimburse Liberty for their costs<sup>8</sup>, \*\* [REDACTED] \*\*, of extending its electric service to 3264 Boysenberry Drive, Joplin, Missouri 64804.

- (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.

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<sup>8</sup> Liberty's response to Staff Data Request No. 0005, included in Confidential Schedule AJB-1.

In its Answers to Staff Data Requests Nos. 0001 and 0004, New-Mac illustrates how it would extend its electric service to Mr. Ferrer at 3264 Boysenberry Drive, Joplin, Missouri 64804. As Liberty has already reestablished its electric service to Mr. Ferrer, at his request, New-Mac providing electric service would be duplicative. There would be costs associated with New-Mac's provision of service<sup>9</sup> \*\* [REDACTED] \*\*, which would be in addition to Mr. Ferrer reimbursing Liberty for its costs in extending the service to the renovated property.

- (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. Ferrer 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, Mr. Ferrer has not alleged experiencing any service related or safety issues concerning the provision of electric service from Liberty. Liberty asserts to have recently completed two work orders, illustrated in its Answer to Staff Data Request No. 0005, in upgrading its service to 3264 Boysenberry Drive, Joplin, Missouri 64804. In addition, as shown in its Answer to Staff Data Request No. 0007, Liberty has worked with Mr. Ferrer in relation to choosing a more favorable rate schedule.

- (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.

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<sup>9</sup> Included in New-Mac's Response to Staff Data Request No. 0004, both of which are a part of Confidential Schedule AJB-1.

There are no existing Territorial Agreements between Liberty and New-Mac that include the parcel at 3264 Boysenberry Drive, Joplin, Missouri 64804. Staff is not aware of any discussions between Liberty and New-Mac regarding any Territorial Agreements, nor the effect on such negotiations, if the Commission should approve the Application.

### **CONCLUSION**

Staff recommends that the Commission should dismiss Mr. Ferrer's Application, determining that his request for a change in electric service providers from Liberty to Southwest at 3264 Boysenberry Drive, Joplin, Missouri 64804 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 his Application, Ms. Ferrer admits to requesting and receiving electric service from Liberty, only to subsequently desire to undo this misinformed request and have New-Mac be his electric service provider instead, offering to reimburse Liberty for their costs associated with their extension of electric service. Mr. Ferrer has not identified any service or safety related problems with Liberty's service to 3264 Boysenberry Drive, Joplin, Missouri 64804. Furthermore, Liberty has consistently been providing electric service to this property for over thirty years. Despite New-Mac reporting having served this premise for nearly ten years prior to Liberty's initializing its electric service in 1991, New-Mac does not take a position as to the merits of Mr. Ferrer's Application and asserts having no communications with Mr. Ferrer. His desire to have New-Mac be the electric service provider, having previously sought and received electrical service from Liberty, would be duplicative. Despite Mr. Ferrer's offer to reimburse Liberty for their costs associated with its extension of electric service, contending that service from New-Mac would "...make more sense...logistically and financially...", Mr. Ferrer effectively requesting a do-over does not seem practical. Staff recommends the Commission conclude his Application contains insufficient reasoning to be considered as being in the public interest for reasons other than a rate differential and further recommends the Commission dismiss the Application.

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

In the Matter of the Application of Trevor        )  
Frerer for Change of Electric Supplier        )        **File No. EO-2024-0165**

**AFFIDAVIT OF ALAN J. BAX**

STATE OF MISSOURI    )  
                                  )    ss.  
COUNTY OF COLE     )

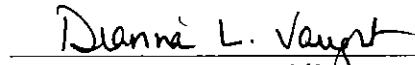
COMES NOW ALAN J. BAX, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
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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 17<sup>th</sup> day of January 2024.

  
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Notary Public

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 18, 2027 Commission Number: 15207377
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## Data Response Display - EO-2024-0165 - 0001.0

### Request Summary ▼

**Submission No.**

EO-2024-0165

**Request No.**

0001.0

**Requested Date**

12/1/2023

**Due Date**

12/21/2023

**Issue**

General Information & Miscellaneous

**Company Information****Requested From**

New-Mac Electric Cooperative, Inc. (Electric) (Cooperative)

Megan E. McCord

mmccord@reclawfirm.com

**Requested By**

MO PSC Staff (Other)

Ron Irving

ron.irving@psc.mo.gov

**Brief Description**

Detailed Circuit/Facilities Description

**Description**

Please provide a detailed description of the circuit/facilities that New-Mac Electric Cooperative would use to serve Mr. Frerer should Mr. Frerer's request to change electric service providers in this case is approved. Please include all system protection equipment back to the substation for both the normal and alternate feeder circuits. Data Request submitted by Alan Bax (alan.bax@psc.mo.gov).

**Request Security**

Public (DR)

**Response Date**

12/21/2023

**Response**

The primary feed would be from Spring City substation on Feeder 1 along 3.54 miles of three phase 477MCM ACSR, 1.62 miles of three phase 1/0ACSR, 1.83 miles of single phase #4 ACSR and .03 miles of single phase #2 ACSR. The circuit includes two hydraulic line reclosers and the electronic substation breaker. The secondary feed would be from Spring City substation on Feeder 7 along 8.15 miles of three phase 4/0 ACSR, 3.37 miles of single phase #4 ACSR, 1.00 miles of three phase 1/0 ACSR and .03 miles of single phase #2 ACSR. This feed would include 4 hydraulic line reclosers, 1 electronic line recloser and electronic substation recloser.

**Objections****Response Security**

Public (DR)

**Rationale****Attachments ▼**

No Attachments Found

**File No. EO-2024-0165**

**SCHEDULE AJB-1  
Data Request No. 0002**

**HAS BEEN DEEMED**

**CONFIDENTIAL**

**IN ITS ENTIRETY**

## Data Response Display - EO-2024-0165 - 0003.0

### Request Summary ▼

**Submission No.**

EO-2024-0165

**Request No.**

0003.0

**Requested Date**

12/1/2023

**Due Date**

12/21/2023

**Issue**

General Information & Miscellaneous

Company Information

**Requested From**

New-Mac Electric Cooperative, Inc. (Electric) (Cooperative)

Megan E. McCord

mmccord@reclawfirm.com

**Requested By**

MO PSC Staff (Other)

Ron Irving

ron.irving@psc.mo.gov

**Brief Description**

Communication with Mr. Frerer

**Description**

Please provide a detailed summary of all communications (phone calls, letters, e-mails etc.) conducted with Mr. Frerer in relation to providing service to his property. Data Request submitted by Alan Bax (alan.bax@psc.mo.gov).

**Request Security**

Public (DR)

**Response Date**

12/21/2023

**Response**

None.

**Objections**

**Response Security**

Public (DR)

**Rationale**

**Attachments ▼**

No Attachments Found

**File No. EO-2024-0165  
Schedule AJB-1  
Data Request No. 0003**

**File No. EO-2024-0165**

**SCHEDULE AJB-1**

**Data Request Nos. 0004, 0005, 0006 and 0007**

**HAVE BEEN DEEMED**

**CONFIDENTIAL**

**IN THEIR ENTIRETY**