

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

In the Matter of the Application of       )  
Gerald Fuemmeler for a Change       )  
of Electric Supplier                        )

Case No. EO-2016-0194

**STAFF RECOMMENDATION**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and respectfully states as follows:

1. On February 1, 2016, Gerald Fuemmeler filed an application with the Commission for a change of electric supplier, from Kansas City Power and Light Company (“KCPL”) to The City of Salisbury.

2. On February 2, 2016, the Commission issued its *Order Directing Notice and Order Directing Responses to Application*. In it, the Commission directed The City of Salisbury, KCPL, and KCPL Greater Missouri Operations Company (“GMO”) to file responses no later than March 2, 2016, and directed Staff to file its recommendation no later than March 16, 2016. On February 24, 2016, The City of Salisbury filed its response indicating its consent to the requested change. KCPL and GMO filed their response on March 1, 2016, indicating that the companies did not object to the change.

3. Sections 91.025 and 393.106, RSMo, (2000)<sup>1</sup> give the Commission jurisdiction over municipal utilities and investor-owned electric corporations, respectively, to order a change to the supplier of electricity to a structure “on the basis that it is in the public interest for a reason other than a rate differential.” Commission Rule 4 CSR 240-3.140(1) sets forth the requirements for applications for authority to

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<sup>1</sup> All statutory references are to RSMo 2000, as currently supplemented.

change electrical suppliers. Among other things, the rule requires that an application for approval of a change of electrical suppliers include: “(B) The name and address of the electrical supplier currently providing service to the structure” and “(C) The name and address of the electrical supplier to which the applicant wishes to change.” It is clear that the rule is meant to address a situation in which a change in electrical supplier is being requested for an existing structure currently receiving electrical service from a particular utility.

4. Upon reviewing the information contained in the Application, Staff has concluded that the request does not constitute a change of electrical suppliers under 4 CSR 240-3.140(1). In his application, Mr. Fuemmeler provides the following address: 611 East Patterson Ave, Salisbury, MO, 65281, and states that his current electric service provider is KCPL. He then indicates that he is requesting a change of supplier from KCPL to the City of Salisbury. The reason for the change of supplier given by Mr. Fuemmeler is that he needs three-phase electric service to efficiently utilize two newly constructed grain bins on his property, and the safest and most cost effective option would be to obtain service from the City. KCPL currently provides single-phase service to the other structures on Mr. Fuemmeler’s property; however, no electric utility currently provides permanent service to the newly constructed grain bins. Instead, Mr. Fuemmeler powers the grain bins himself using a three-phase generator. Because no particular utility provides electric service to the structures at issue, Mr. Fuemmeler’s request does not constitute a change of electrical suppliers, and should be rejected by the Commission.

4. Further, Staff has concluded that the City of Salisbury cannot lawfully serve the structures that are the subject of this Application. The newly constructed grain bins lie outside of the corporate boundaries of the City of Salisbury, and thus, cannot be lawfully served by the municipal electric utility.

5. It is the opinion of the Office of Staff Counsel that Subsection 386.800.1, RSMo, prohibits a city from serving structures beyond its corporate boundaries unless it could have lawfully done so before July 11, 1991, or was already lawfully serving the structure before July 11, 1991.

6. Subsection 386.800.1, RSMo, provides:

386.800.1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

- (1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991; or
- (2) The service is provided pursuant to an approved territorial agreement under section 394.312;
- (3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or
- (4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as provided in this subdivision, the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories. The proposed service

area shall be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission may grant the order upon a finding that granting of the applicant's request is not detrimental to the public interest. In granting the applicant's request the commission shall give due regard to territories previously granted to other electric suppliers.

7. The Legislature passed Section 386.800, RSMo, following the Missouri Southern District Court of Appeal's June 21, 1990, opinion in *Associated Electric Cooperative, Inc. v. City of Springfield*, 793 S.W.2d 517, (Mo. App. 1990). In that case, the Southern District held that the City of Springfield, governed by a city charter, could lawfully provide retail electric service beyond its corporate boundaries. Thus, the implementation of Section 386.800, RSMo, subsequently limited the City of Springfield's authority, as well as that of other municipalities, to provide retail electric service beyond its corporate boundaries.

8. The structures in question, while only by a matter of feet, are situated beyond the corporate boundaries of the City of Salisbury. The City of Salisbury and KCPL do not have a territorial agreement, and the City has never had the authority to serve the property on which the structures currently stand.

9. Although it may well be that allowing The City of Salisbury to provide service to the newly constructed grain bins would be in the public interest, Staff is of the opinion that an application for a change of electrical suppliers is not the appropriate vehicle for effecting the desired change. Rather, in this instance, the lawful annexation of the land on which the structures sit would best accomplish the change.

**WHEREFORE**, for the reasons stated, the Staff respectfully requests that the Commission issue an Order denying the relief requested in the subject Application filed February 1, 2016.

Respectfully submitted,

**/s/ Mark Johnson**  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Mail, postage prepaid, on this 16<sup>th</sup> day of March, 2016, to all counsel of record.

**/s/ Mark Johnson**

  
Notary Public