

**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 The Empire District Electric) File No. EO-2024-0194
Company d/b/a Liberty Utilities to)
White River Valley Electric Cooperative, Inc.)

**STATEMENT OF POSITION / PRE-HEARING BRIEF
OF WHITE RIVER VALLEY ELECTRIC COOPERATIVE, INC.**

COMES NOW White River Valley Electric Cooperative, Inc. (“White River”), and for its Statement of Position regarding the List of Issues set forth in the Joint List of Issues filed by the Staff of the Missouri Public Service Commission (“Commission”) on August 12, 2024, hereby submits the following in accord with the Order Setting Procedural Schedule in this cause:

Issue No. 1. Notwithstanding the provisions of Section 394.315.2, RSMo. and sections 91.025, 393.106, and 394.080 to the contrary, can White River Electric provide new permanent electric service to a new structure and to other new structures anticipated with the commercial development of a parcel of property, at the request of the owner of the property, when such property once had a home and water well served by White River but no longer does because service was discontinued, the home was demolished and water well abandoned, the property no longer receives electric service from White River, and where such property is now within the city limits of Ozark, Missouri and therefore within territory served by Liberty?

White River should be allowed, by Commission Order, to provide new permanent electric service to the Applicant for new structures anticipated with the commercial development of the Applicant’s property. White River is a Missouri

rural electric cooperative, operating on a non-profit business model and providing low cost, safe, and reliable electric power to its members in Christian, Douglas, Ozark, Stone, and Taney Counties in Southwest Missouri. Southway Storage (“Applicant”) owns and/or controls the real estate believed to be the subject of this Application, said real estate depicted in White River Exhibit 200. This property is located at the southwest corner of the intersection of US Highway 65 and State Highway F near Ozark, Missouri, and consists of a 33-acre tract m/l (the “Property”). The Property is within the City Limits of Ozark, Missouri (White River Exhibits 201 and 207), and the City of Ozark is served by The Empire District Electric Company d/b/a Liberty; however, the Property was in a rural area prior to recent annexation and White River served that rural area and still does today as evidenced by its facilities and lines that traverse the Property and surrounding area (see White River Exhibits 202, 203, and 204).

The Applicant desires White River as the electrical service provider for the Property for Applicant’s planned storage facility. White River has historically provided electric service to a permanent structure (a home) on the Property but does so no longer. Its former cooperative member discontinued electric service some time ago; and on information and belief, the home has been demolished. White River also provided electric service to a water well pump on the property and that service was also previously abandoned. The buildings, improvements, and facilities that are the subject of this case are not within an area subject to an existing Territorial Agreement between White River and Liberty. White River can provide looped electrical service to the Property with very minimal

investment due to its existing facilities located upon it and nearby. The single-phase line serving the Property currently taps the three-phase line that runs to the north and west of the Property and the three-phase line to the south. Essentially, the western and southern portions of the Property are surrounded by White River lines with optionality for electrical service injection points. On information and belief, Liberty's line extension to serve the Property would be much more costly and would duplicate electrical facilities that could otherwise be avoided if the Applicant's request were granted. The Commission should be guided by its 10-factor test which weighs in favor of White River's service to the Property on the facts and circumstances of this case. *In the Matter of the Application of Brandon Jessop for Change of Electric Supplier from Empire District Electric to New-Mac Electric, EO-2017-0277 (2018).*

Issue No. 2. Is the public interest better served by allowing White River Electric to provide permanent service to the Property considering its annexation into the City of Ozark and Applicant's "choice" for White River's permanent service that is based on reasons other than a rate differential?

The public interest is better served if White River is the electric supplier because Liberty's costs to serve the Property will be a reported \$88,629.38. Per its tariff, these costs must be borne by the customer—Southway Storage here. The cost to White River will be approximately \$22,000 to serve the Property, but the Applicant will not be required to pay this sum or any portion of it to receive such service from White River. See *White River's Response to Staff Data Request 0006.1*.

Issue No. 3. Should the Commission’s 10-factor test guide its analysis on the public interest determinations in this case?

White River asserts that the 10-factor test must guide the Commission’s decision in this case. The anti flip-flop statutes are not applicable and this test provides a solid framework to determine whether charges are “just and reasonable” under the circumstances.

Issue No. 4. Does Missouri law support White River’s permanent service to the Property under the 2021 Amendments which promote more consumer “choice” because the Applicant in this case desires White River to serve the Property and the 10-factor test for public interest determinations weighs in favor of White River’s supply?

Our legislature recently revised Section 386.800.2 RSMo. (2021) demonstrating a policy shift in which preference of landowners and prospective electric customers is prioritized—in other words, their “choice” matters. This Statute was an integral part of recent cases EO-2022-0190 and EO-2022-0332 in which the developer preferred to have the rural electric cooperative provide electric service to a proposed new development in an area that had recently been similarly annexed into the exclusive service territory of an investor-owned utility. Admittedly, the provisions of this statute were not invoked timely by the Applicant or White River when the Property was annexed by the City of Ozark so its application is not warranted here. The statute provides, in relevant part, that:

... Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area

proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime *within forty-five days prior to the effective date of the annexation*, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section 394.312 to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

- (1) The preference of landowners and prospective electric customers;
- (2) The rates, terms, and conditions of service of the electric service suppliers;
- (3) The economic impact on the electric service suppliers;
- (4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;
- (5) Avoiding the wasteful duplication of electric facilities;
- (6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and
- (7) Preventing the waste of materials and natural resources....

Issue No. 5. Is the Applicant's request to have White River Electric serve the Property, on balance, in the public interest because it makes the best and most efficient, effective use of existing facilities at the least cost to the Applicant, and prevents an otherwise duplication of facilities should Liberty Utilities provide such service?

White River maintains that this issue must be answered in the affirmative based on the economics of the line extensions necessary to serve the Property. White River's cost is 1/4th that of Liberty's cost to establish electric for the Property, and the Applicant will not bear any portion of that cost.

Issue No. 6. Does the anti flip-flop statute (Section 393.106 [sic Section 394.315], RSMo.) have any legal import on the determination of the issues in this case when there is no existing structure on the property that has received electric service from either White River Electric or Liberty Utilities?

Neither anti flip-flop statute, Section 394.315, RSMo., nor Section 393.106, RSMo., controls this case outcome. White River has no standing under the former because it has no “concomitant right” with Liberty’s right to provide electric service to the subject property. White River’s prior service ended some time ago, and Liberty never served the Property. Liberty has no standing under the latter because there is no “change of service” as defined by the statute.

Issue No. 7. Must the Commission’s order in this case take into consideration its duties to enforce the Section 393.130, RSMo, “just and reasonable” mandates and prohibitions by recognizing the costs that will be incurred by Liberty Utilities (and charges to the Applicant) to bring electric service to the Property, upholding the legal mandate that Liberty Utilities must provide safe and adequate service at just and reasonable rates and cannot charge unjust or unreasonable rates, in the Commission’s determination establishing which utility should serve the Property with permanent electric service?

The Commission’s order in this case must be aligned with its duties to enforce the Section 393.130, RSMo., “just and reasonable” mandates and prohibitions. Because this statute requires Liberty to provide safe and adequate service at “just and reasonable rates” and because it strictly prohibits Liberty from charging unjust or unreasonable rates, White River’s much lower cost, and

certainly no cost to the Applicant, must be considered central to the Commission's final order. The Applicant can obtain the same service for substantially less or nothing from White River. White River has the service facilities substantially "at the ready." No Liberty asset will be stranded nor will Liberty or its customers be deprived of any investment previously made to serve the Property if White River is allowed to serve it. Yet, a denial of the application will cost the Applicant \$88,629.38 while granting it will avoid that cost completely. These logical elements lead to a reasoned and legally supportable conclusion that it is best for White River to serve the Property, arguably for all parties involved, and this outcome is in the public interest.

Issue No. 8. May the Commission deny the application consistent with the Commission's duty to ensure that every public utility is required to furnish and provide instrumentalities and facilities at charges that are just and reasonable?

Should the Commission deny the application, the result will ultimately allow Liberty to seek recovery of a significant sum from its customers and ratepayers for the costs incurred to extend service to the Property. How can Liberty justify this expense based on the anticipated load and revenue that it is chasing with its desire to serve in this instance? It would likely take decades for Liberty's capital investment to be repaid, and those charges, under the circumstances, would not be just and reasonable. Accordingly, White River asserts that this issue must be answered in the negative.

WHEREFORE, above considered, White River respectfully requests that the Commission grant the relief requested by the Applicant in this cause, allowing White River

to serve the Property of the Applicant herein with permanent electric service for those new structures contemplated thereon, and for such other and further relief deemed just and appropriate under the circumstances.

Respectfully submitted,

CARNAHAN EVANS PC

/s/ Christiaan D. Horton

By _____

Christiaan D. Horton
Missouri Bar No. 46003

CARNAHAN EVANS PC
2805 S. Ingram Mill Road
P.O. Box 10009
Springfield, MO 65808-0009
Phone: (417) 447-4400
Fax: (417) 447-4401
Email: chorton@CarnahanEvans.com
*Attorneys for White River Valley Electric
Cooperative, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above document was filed in EFIS on this 23rd day of August, 2024, with notice of the same sent to all counsel of record. A copy was also provided by electronic transmission to counsel for Applicant, counsel for Staff, OPC, The Empire District Electric Company.

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street Suite 800
PO Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
200 Madison Street Suite 650
PO Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

ATTORNEY FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY
D/B/A LIBERTY:
Diana C. Carter, MBE #50527
The Empire District Electric Company
Director of Legal Services – Central Region
428 E. Capitol Ave., Suite 303
Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E: Diana.Carter@libertyutilities.com

Terry M. Jarrett, Esq.
Healy Law Offices, LLC
306 Monroe Street
Jefferson City, MO 65101
Telephone: (573) 415-8379
Facsimile: (573) 415-8379
Email: terry@healylawoffices.com

ATTORNEY FOR WHITE RIVER
VALLEY ELECTRIC COOPERATIVE

/s/ Christiaan D. Horton

Christiaan D. Horton, MBE #46003
Carnahan Evans PC
2805 S. Ingram Mill Road
Springfield, Missouri 65804
T: 417-447-4400
F: 417-447-4401
E: Chorton@carnahanevans.com