

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

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

**SOUTHWAY STORAGE, LLC'S
STATEMENT OF POSITIONS AND PRE-HEARING BRIEF**

COMES NOW Applicant Southway Storage, LLC (“Southway”), by and through counsel, and for its Statement of Positions and Pre-Hearing Brief, respectfully states as follows:

Introduction

On December 12, 2023, Southway filed an Application For Change Of Electric Service Provider (“Application”) with the Commission. Southway is requesting a change in electric supplier from the Empire District Electric Company d/b/a Liberty (“Liberty”) to White River Electric Cooperative (“White River”) at the property located at the southwest corner of F Highway and Highway 65 in Ozark, MO. The property was recently annexed into the city limits of Ozark Missouri, which allows Liberty to be the recognized electric service provider to the property because its franchise agreement with the City of Ozark.

In its Application, Southway stated that the reason it is requesting the change in electric service provider is as follows:

The property currently does not have any electric service. White River has power on the same side of the property and within 1/4 of a mile. White River serves the southwest side of highway 65. The cost to provide service at the requested property is much less with White River and also much more feasible without any boring under highway 65.

Liberty Utilities will have to bore underneath highway 65 to bring power across to my property. The cost is substantial making it unfeasible to obtain power from this utility.

Southway believes that boring under the highway is necessary because at a March 2, 2023, meeting at the Ozark Planning Development Department in Ozark, MO, where representatives from both Liberty and White River were present, it was suggested by the city that any new electric facilities would need to be installed underground. However, Liberty has indicated that it does not need to install its facilities underground. Even Liberty is correct, as noted below, Liberty's costs of extending facilities to the property are exponentially more than White River's costs to extend its facilities.

Liberty filed a Response to the Application on January 12, 2024. Liberty asserts that because of its franchise agreement with the City of Ozark, the property is now in its certificated service area and that it is not aware of any legal basis to allow White River to begin providing electric service to this Property.

White River also filed its Response to the Application on January 12, 2024. White River makes mention of its ability to provide looped electrical service to the Property at very minimal expense due to having existing facilities routed upon it. White River also emphasized that Liberty's extension across Highway 65 would be a duplication of services, since White River already had existing facilities on the property.

On March 12, Commission Staff filed its Recommendation. Staff recommended that the Commission approve the Application for the following reasons:

1. White River has multiple ways available to it with its existing facilities on and/or near the Property to deliver a much more economical means of providing the requested electric service.¹
2. White River's cost extension will consist of tapping its existing underground line at a cost of approximately \$22,500.00, a cost that will be covered completely by White River.²

¹ Staff's Official Case File Memorandum, March 12, 2024, p. 5.

² Staff's Official Case File Memorandum, March 12, 2024, p. 5, 6.

3. Liberty will have to extend duplicative facilities across a major US Highway at a considerable higher comparative cost (\$88,629.38), a cost to be paid in advance of construction by Southway Storage.³

Issue 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?

Yes. Section 393.106.2, RSMo., gives the Commission jurisdiction over both Liberty and White River, as well as the authority, to order a change of electric supplier on the basis that it is in the public interest for a reason other than a rate differential.

Section 386.610, RSMo., provides the Commission with guidance on what is in the public interest:

A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.

See also PSC v. Mo. Gas Energy, 388 S.W.3d 221, (Mo. App. W.D. 2012) (“public interest includes factors related to ‘efficient facilities and substantial justice between patrons and public utilities.’”).

Here, as Staff noted in its recommendation, Liberty would have to extend duplicative facilities across a major highway at quadruple the cost of White River’s costs to provide services. This alone is sufficient for the Commission to find that it is in the public interest to approve the Application.

³ Staff’s Official Case File Memorandum, March 12, 2024, p. 6.

However, an additional factor is that because of the proximity of White River's facilities to Southway's property, the cost of extending facilities to provide service is much cheaper for White River than for Liberty. This is much more economically efficient, which is also in the public interest.

Issue 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?

Yes. As noted in Southway's response to Issue 1 above, avoiding duplication of facilities and providing economic efficiency are reasons for the Commission to approve the Application for reasons other than a rate differential.

Issue 3: Should the Commission's 10-factor test guide its analysis on the public interest determinations in this case?

Yes. On pages 6-9 of its Recommendation,⁴ Staff analyzes the facts in this case under the 10-factor test, and concludes that it is in the public interest for the Commission to approve the application. Staff also notes on page 9 that the Commission has approved such an application based on similar facts in the past:⁵

Additionally, Staff notes the relative comparison of the current case to that of Case No. EO-2002-1105. The applicant in that case was building a new home on a property that had been annexed into the City of Smithville, which therefore placed the property in question in the exclusive service territory of Evergy Missouri West's predecessor Aquila, Inc. Its facilities were over a mile from said property, while the respective rural electric cooperative had an existing line near/bordering the property. The Commission did approve the request for a change in electric service providers in this case.

FN: The Commission's *Report and Order* in Case No. EO-2011-0052 states in relevant part,

...Nevertheless, if the Commission does not grant a change of supplier, the line running across Highway 50 will remain and pose a possible safety issue. Further, Cardwell will either shut its doors or, if Cardwell develops the property, it will

⁴ Staff's Official Case File Memorandum, March 12, 2024, p. 6-9.

⁵ Staff's Official Case File Memorandum, March 12, 2024, p. 9.

choose to employ Three Rivers as the supplier for any new structures. This will result in duplicative services. If the Commission grants the change of supplier, Cardwell will remain open and may even expand its operations....

Issue 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?

No. Southway believes that the only relevant law is Section 393.106.2, RSMo., which gives the Commission jurisdiction over both Liberty and White River, as well as the authority, to order a change of supplier on the basis that it is in the public interest for a reason other than a rate differential. Additionally, the 10-factor test is relevant for the public interest determination. Both support that White River is the appropriate electric service provider for the property.

Issue 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?

Yes. As discussed in Southway’s responses to Issues 1-5, according to the facts and the law, it is in the public interest to have White River serve the property because it makes the best and most efficient, effective use of existing facilities at the least cost to Southway, and prevents an otherwise duplication of facilities should Liberty provide such service.

Issue 6: Does the anti-flip-flop statute (Section 393.106, 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?

Yes. Although there are no existing structures on the property that would directly invoke the anti-flip-flop statutes (section 303.106 for Liberty, section 394.315 for White River), those statutes do provide guidance for the Commission. The spirit of these statutes is to recognize the rights of utilities that have provided electric service to properties prior to annexations.

Issue 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?

Yes. As discussed in Southway's responses to Issues 1-6, the Commission's duty is to take into account all of these factors when determining the public interest.

Issue 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?

No. As noted in its responses to Issues 1-7, Southway believes that it is not just and reasonable to require it to pay confiscatory facility extension charges when another provider that is willing to provide electric service has facilities much closer to the property and will not charge anything for facility extension, nor is it just and reasonable to require Liberty to build duplicative facilities and make Southway pay for them.

WHEREFORE, Southway submits its Statement of Positions and Pre-Hearing Brief, and respectfully requests that this Commission grant its Application for a change in electric supplier from Liberty to White River, and granting such other relief as it is deemed necessary.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2024, a copy of the foregoing has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

/s/ Terry M. Jarrett
Terry M. Jarrett