

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

In the Matter of Application of Michael)
R. Davis for Change of Electric Supplier)
From Ozark Electric Cooperative, Inc. to)
The Empire District Electric Company d/b/a)
Liberty)
File No. EO-2025-0146

STAFF’S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its Recommendation states:

1. On November 4, 2024,¹ Michael Davis filed an Application with the Commission requesting a change of electric supplier from Ozark Electric Cooperative (Ozark Electric) to The Empire District Electric Company d/b/a Liberty. After several intervening orders and pleadings, the Commission ordered Staff to file a recommendation regarding Michael Davis’s application for a change of electric supplier no later than February 21, 2025.

2. Staff has conducted a thorough investigation of the Application and prepared a Memorandum. This Memorandum describes completely and in detail its investigation, findings, and conclusions. It is attached to this cover pleading as **Attachment I.**

3. Change of supplier cases where the proposed change is away from cooperatives are governed by Section 394.315.2, RSMo, (commonly referred to as the anti-flip flop law), which states in part:

¹ Unless otherwise indicated, all date references are to 2025.

...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.

4. The Commission does not use a single factor test when determining whether an application for a change of electric suppliers should be granted, and has stated that customer preference does not suffice as the only basis for ordering a change in supplier.² In previous cases the Commission has conducted a case-by-case analysis applying a ten-factor balancing test to analyze the meaning of "public interest" for a change of supplier. Those ten factors are:

- (A) Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;
- (B) Whether there are health or safety issues involving the amount or quality of power;
- (C) What alternatives a customer has considered, including alternatives with the present supplier;
- (D) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;
- (E) The effect the loss of the customer would have on the present supplier;
- (F) Whether a change in supplier would result in a duplication of facilities, especially in comparison with alternatives available from the present supplier, a comparison of which could 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;

² *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399, 405-407 (1988), Case No. EO-88-196.

- (G) The overall burden on the customer caused by the inadequate service including any economic burden not related to the cost of the electricity itself, and any burden not considered with respect to factor (F)(ii) above;
- (H) What efforts have been made by the present supplier to solve or mitigate the problems;
- (I) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
- (J) 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 suppliers.³

5. As explained in Staff's Memorandum, Staff has applied the ten-factor analysis in the instant case. Michael Davis brought the change of supplier application and bears the burden of proof.⁴ Based upon Staff's investigation, findings and application of the ten-factor test, Staff concludes that a rate differential was the principal impetus for the application, and Staff counsel concludes that Mr. Davis has not sustained his burden to show that granting the application will serve any public interest other than a rate differential.

6. Staff recommends that the Commission deny the application.

WHEREFORE, Staff prays that the Commission will accept this Report and Recommendation as compliant with its orders

³ *In the Matter of the Application of Brandon Jessip for Change of Electric Supplier from Empire District Electric to New-Mac Electric*, File No. EO-2017-0277 (December 20, 2017). See Report and Order, *In the Matter of the Application of Thomas L. Chaney for Change of Elec. Supplier*, 22 Mo. P.S.C. 3d 339, 342-343, File No. EO-2011-0391 (Dec. 12, 2012); Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE*, December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.

⁴ The Commission has determined in previous change of supplier cases that the burden of proof is on the applicant. See, Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE*, December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.

Respectively Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 20th day of February, 2025.

/s/ Paul T. Graham