

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Joint Application of the City of Odessa,)
Missouri and West Central Electric Cooperative for Approval) **Case No. EO-2008-0339**
of a Change in Electric Supplier for Certain Customer for)
Reasons in the Public Interest)

ORDER APPROVING CHANGE OF SUPPLIER

Issue Date: May 27, 2008

Effective Date: June 6, 2008

Background

On April 15, 2008, the City of Odessa, Missouri ("Odessa") and West Central Electric Cooperative ("West Central") (collectively "Joint Applicants") filed a joint application seeking Commission approval to change the electric supplier for one of Odessa's current customers, Action Products Company, Inc. ("Action"), to West Central.¹ The Joint Applicants assert that while Odessa has been the long-standing supplier for Action, that Action is located outside the incorporated limits of Odessa and that Odessa has no intention to annex Action's premises into its municipal boundaries. Included with the joint application is a diagram of the properties and existing electric lines and the verified written consent to the change in suppliers from Action. No proper party contested the application or requested a hearing.²

¹ Odessa currently supplies electric service to Action at its premises near Odessa in unincorporated Lafayette County. Action is an industrial customer receiving its electric service at 60 Hertz three-phase alternating current with a billing demand of greater than 100 kW.

² The pertinent statutes regulating a change in supplier, i.e. Sections 91.025.2 and 394.315.2, RSMo 2000, do not require the Commission to hold a hearing in these matters. In this instance, the case never progressed to contested case status because all parties consented to the change of supplier and no party to the action requested a hearing. Consequently, no hearing was required in this matter because no proper party

The Joint Applicants further stated that the change in suppliers is in the public interest for a variety of legal and economic reasons. Specifically, Odessa asserts it can more efficiently meet the needs of its citizens without having to consider the current and future demands associated with meeting the relatively large load requirements of Action, and it can more economically and efficiently procure power and reduce its operation and maintenance expenses related to serving its citizens by transferring Action to West Central. West Central is already upgrading its existing transmission facilities in the area of its service territory where Action is located and plans to purchase the facilities currently being used by Odessa to provide electric service to Action. West Central will also construct an extension from its existing transmission line to serve Action, and the provision of electric service to Action will add value to the Cooperative's decision to upgrade its existing facilities by improving the efficient use of the Cooperative's facilities in this portion of its service area.

Staff Recommendation

On May 15, 2008, the Staff of the Commission filed its verified recommendation advocating that the Commission approve the application. Staff found the Joint application to be in compliance with requirements set forth in the Commission's Rules for Applications and Applications for a Change of Electrical Suppliers.³ Moreover, Staff concluded that the proposed change of supplier is based upon the public interest for a reason other than a rate differential.

requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.* 776 S.W.2d 494, 495 -496 (Mo. App. 1989).

³ Commission Rules 4 CSR 240-2.060 and 4 CSR 240-3.140.

Relevant Statutory Authority

Section 91.025.2, RSMo 2000, pertaining to municipally owned or operated electric systems provides in pertinent part:

The public service commission, upon application made by a customer, 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 municipally owned or operated electric systems 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.

Section 394.315.2, RSMo 2000, pertaining to rural electric cooperatives essentially identically provides in pertinent part:

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.

These two statutes confer the jurisdiction and authority to the Commission to order a change of electric supplier, when properly requested, from a municipal electric system to a rural electric cooperative on the basis that it is in the public interest for a reason other than a rate differential.

Decision

The Commission has reviewed the application, the verified written consent to the change in suppliers from the customer affected by the proposed change, and Staff's verified recommendation and memorandum. The Commission, in its discretion, finds that

the Joint Applicants' request is in the public interest for a reason other than a rate differential.⁴ Therefore, the Commission will approve the application.

IT IS ORDERED THAT:

1. The Joint Application, filed by City of Odessa, Missouri and West Central Electric Cooperative for approval of a change in electric supplier to Action Products Company, Inc., located in unincorporated Lafayette County, is approved.
2. This order shall become effective on June 6, 2008.
3. This case may be closed on June 7, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 27th day of May, 2008.

⁴ The Commission notes that because this is a noncontested case there is no evidentiary record and no findings of fact or conclusions of law are required to support its order. In noncontested cases, the Commission acts on its discretion. As stated by the Court of Appeals in *State ex rel. Public Counsel v. Public Service Com'n*, 210 S.W.3d 344 (Mo. App. 2006):

"In a noncontested case ..., the administrative body acts on discretion or on evidence not formally adduced and preserved." *Phipps v. School District of Kansas City*, 645 S.W.2d 91, 94-95 (Mo. App. 1982). Given the nature of a noncontested case, requiring a showing that an agency's decision is supported by competent and substantial evidence would be "inherently contradictory." 1 MO. ADMINISTRATIVE LAW, *Public Service Commission*, Section 12.30 (Mo. Bar 3rd ed. 2000). This is because, in noncontested cases, "there is no record from the administrative body." *State ex rel. Fortney v. Joiner*, 797 S.W.2d 848, 852 (Mo. App. 1990).

Id. at 353 -355.