

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

In the Matter of the Application of Larry Duggar)
for Change of Electric Supplier from the Empire)
District Electric Company d/b/a Liberty to)
New-Mac Electric Cooperative, Inc.) **File No. EO-2021-0389**

STAFF RECOMMENDATION

COMES NOW Staff of the Missouri Public Service Commission, through counsel, and states as follows:

1. On May 6, 2021 Larry Duggar submitted his *Application for Change of Electric Service Provider* (“Application”) requesting that the Commission order a change of electric supplier from Empire District Electric Company d/b/a Liberty (“Liberty”) to New-Mac Electric Cooperative, Inc. (“New-Mac”) for his residence. Mr. Duggar’s residence is located in ** [REDACTED] **, which is in ** [REDACTED] ** County. He wants to switch providers because he believes Liberty’s billing is too high and is confusing and its customer service is unsatisfactory.¹

2. Sections 393.106 and 394.315, RSMo, the “anti flip-flop” statutes, authorize the Commission, upon application of an affected party, to order a change of electric suppliers if doing so is in the public interest for a reason other than a rate differential.

3. Mr. Duggar is not regulated by this Commission; he submitted himself to the Commission’s jurisdiction when he filed his application.

4. Liberty is an electric corporation subject to Commission jurisdiction, as specified, in part, by Chapter 393, RSMo. Liberty is authorized to provide electricity at the area that is the subject of this application.

¹ Application, ¶5.

5. New-Mac is a rural electric cooperative, organized under Chapter 394, RSMo, providing electric service to its members located in five Missouri counties, including ** ██████████ ** County. New-Mac is not regulated by this Commission, but pursuant to §394.080.5, the Commission “may order that service be provided by another supplier if it finds that service from another supplier of electricity is in the public interest for a reason other than a rate differential.”

6. On May 10 the Commission ordered Liberty and New-Mac to respond to Mr. Duggar’s application by June 9 and Staff to file a report by June 25. Staff received two extensions of its report’s due date. Staff’s report is due July 23.

7. New-Mac writes in its June 8 response that it takes no position regarding the sufficiency of Mr. Duggar’s application, but it has the ability to be Mr. Duggar’s electric provider if his Application is approved.²

8. Liberty writes in its June 9 response that (1) none of the factors in the Commission’s ten factor test support Mr. Duggar’s application, (2) remaining customers are negatively affected after a customer loss because all customers share the cost to provide service, and (3) it provides safe and reliable service at Commission-approved rates.³

9. Because Mr. Duggar brought this change of supplier application, he bears the burden of proof.⁴ The burden of proof is the preponderance of the evidence standard.⁵ Staff recommends that the Commission analyze whether it is in the public interest, for a

² *Response of New-Mac Electric Cooperative, Inc. to Application of Larry W. Duggar*, June 8, 2021, ¶¶ 2 – 3.

³ *Response to Application*, June 9, 2021, ¶¶ 3 – 5.

⁴ *Report and Order, In the Matter of the Application of Brandon Jessip for Change of Electric Supplier from Empire District Electric to New-Mac Electric*, Dec 20, 2017, File No. EO-2017-0277, P. 7.

⁵ *Id.*

reason other than a rate differential, to grant Mr. Duggar's request in light of the ten factor test the Commission has previously used.⁶ These ten factors are listed and analyzed on pages six through nine of the Staff Recommendation, attached to this document.

10. Staff recommends that the Commission deny Mr. Duggar's Application, because he has not shown by the preponderance of the evidence that it is in the public interest for him to switch providers from Liberty to New Mac. "In addition, one of the primary reasons why Mr. [Duggar] requested a change in supplier was the amount of electric bills for electric service provided by Empire. Basing a change of supplier request on the difference in amounts charged by electric providers is prohibited by Section 393.106, so Mr. [Duggar's] reason is not an appropriate ground for granting such a request."⁷

11. The bases for Staff's recommendation include the following:

- Liberty is adequately meeting Mr. Duggar's needs;
- There are no health or safety issues involving the amount or quality of power Liberty delivers to Mr. Duggar's residence;
- ** [REDACTED]
[REDACTED] ; **
- Mr. Duggar does not report that Liberty damaged or destroyed his equipment;
- There is no evidence that switching to New-Mac will alleviate Mr. Duggar's concerns with his electric service; and

⁶ *Id.* at 9 – 10.

⁷ *Id.* at 11.

- Liberty states that losing revenue from Mr. Duggar would be made up by its remaining customer base.

WHEREFORE, Staff submits this Staff Recommendation for the Commission's information and consideration and recommends that the Commission deny Mr. Duggar's Application.

Respectfully submitted,

/s/ Karen E. Bretz

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to counsel for Liberty and New-Mac and by U.S. mail to Mr. Duggar at his address of record on this 22nd day of July, 2021.

/s/ Karen E. Bretz

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2021-0389, In the Matter of the Application of Larry W. Duggar
for a Change in Electric Service Supplier from The Empire District Electric
Company d/b/a Liberty to New-Mac Electric Cooperative, Inc.

FROM: Alan J. Bax, Associate Engineer
Industry Analysis Division – Engineering Analysis Department

/s/ Claire M. Eubanks, PE 7/22/2021 /s/ Karen Bretz 7/22/2021
Engineering Analysis Dept. / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Denial of Change of Electric Service
Supplier Request

DATE: July 22, 2021

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) deny Larry W. Duggar’s *Application for Change of Electric Service Supplier* (“Application”) for his residence at ** [REDACTED] ** from The Empire District Electric Company, d/b/a/ Liberty (“Liberty”) to New-Mac Electric Cooperative, Inc. (“New-Mac”). Staff concludes that the Application is not in the public interest pursuant to 393.106.2 and 394.315.2 RSMo 2016 and 20 CSR 4240-3.140.

OVERVIEW

On May 6, 2021, Mr. Larry W. Duggar filed an Application with the Commission requesting the Commission order a change in electric service providers from Liberty to New-Mac for his residence at ** [REDACTED] **. Mr. Duggar indicates in the Application that New-Mac currently has a pole located just off his property that could be used to receive electric service from New-Mac. Mr. Duggar wants to switch to New-Mac because of Liberty’s alleged confusing billing practices, poor customer service, and high bills.

On May 10, 2021, the Commission issued an *Order Directing Notice, Adding Parties, and Directing Responses to Application* directing that notice of this Application be sent to both Liberty and New-Mac and making them parties to the case. This *Order* directed Liberty and New-Mac to

file a Response to the Application by June 9, 2021. New-Mac filed its Response on June 8, 2021, and Liberty filed its Response on June 9, 2021. In addition, Staff was to file its recommendation by June 25, 2021. On June 22, 2021, Staff requested additional time in which to file its Recommendation until July 9, 2021, a request that was approved by the Commission in its *Order Granting Motion for Extension of Time to File a Staff Report* issued on June 22, 2021. On July 9, 2021, Staff filed a second motion requesting additional time to file a report, which the Commission approved in its *Second Order Granting Motion for Extension of Time to File a Staff Report* issued July 9, 2021.

New-Mac is organized under Chapter 394 RSMo 2016 to provide electric service to its members located in all or parts of five Missouri counties, including ** [REDACTED] ** County, in which lies the property identified in the Application. The Commission has limited jurisdiction over rural electric cooperatives, such as New-Mac, as specified in Chapter 394 RSMo 2016. For the purpose of this case, New-Mac is subject to the jurisdiction of the Commission under Section 394.315.2 RSMo 2016.¹

Given that New-Mac is a rural electric cooperative, the Commission does not require annual reports or assessment fees. Further, Staff is currently not aware of any pending or final unsatisfied decisions against New-Mac from any state or federal court involving customer service or rates.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2016. For the purposes of this case, Liberty is

¹ Section 394.315.2 states, in relevant part, that:

...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...

** [REDACTED]

[REDACTED] ** Mr. Duggar filed this Application requesting to have New-Mac be his electric service provider.

In its Response to the Application, while New-Mac did not take a position as to the merits of whether the Application met the statutory requirements for such a request, New-Mac acknowledged its ability to provide electric service to Mr. Duggar should it be authorized.

Liberty stated in its Response that Mr. Duggar had not identified any lawful or compelling reasons that would justify a switch in electric service providers. Liberty asserted its electric service is safe and reliable and is delivered at just and reasonable rates. Therefore, Liberty maintains that the Application does not meet the statutory requirement necessary for such requests, which is that such requests need to be considered in the public interest for reasons other than a rate differential.

In this Application, Mr. Duggar repeated his belief that Liberty's bills this past winter season were excessive and again asserted that Liberty personnel were not friendly in their interactions/discussions. Mr. Duggar did not mention having any problems regarding the quality of the electric service being delivered, such as power fluctuations or low voltages. Staff requested information regarding his billing and associated payment history, as well as various communications between Mr. Duggar and Liberty over the most recent twenty-four (24) months.

** [REDACTED]

[REDACTED] **

** [REDACTED] ** In its Report and Order in ER-2019-0374, the Commission expressed concern with Liberty's customer service related to the large number of estimated bills received by Empire's customers. The Commission further ordered Liberty to complete a number of tasks related to meter reading and billing, including regular reporting to Staff. A customer's individual concerns with either their

(4) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;

Mr. Duggar does not claim to have suffered any damage to his personal equipment as a result of the electric service being provided by Liberty.

(5) The effect the loss of the customer would have on the present supplier;

In its Response recommending the denial of Mr. Duggar's request in the Application, Liberty states that losing the revenue associated with this account would need to be made up by its remaining customer base.

(6) Whether the 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;**

Based on Staff's investigation, a change of supplier to New-Mac would not result in a duplication of facilities. New-Mac has an existing pole across the street from Mr. Duggar's residence that could be utilized in routing a service to Mr. Duggar should his request be authorized.

(7) 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 (6)(ii) above;

At this time, there is no indication that the electric service being provided by Liberty to Mr. Duggar is either inadequate, unsafe, or of insufficient quality. Further, there is no evidence that switching to New-Mac would reduce and/or alleviate the concerns Mr. Duggar has expressed with his current service.

(8) What efforts have been made by the present supplier to solve or mitigate problems;

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(9) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and

Liberty states in its Response to the Application that the resultant loss of revenue, if the Application is approved, would have to be made up by its remaining customer base.

(10) 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.

This request for a change in electric service providers has no effect on any existing territorial agreements between Liberty and New-Mac.

CONCLUSION

Staff recommends that the Commission deny the Application of Larry W. Duggar determining that his request for a change in electric service providers from Liberty to New-Mac at ** is not in the public interest pursuant to Sections 393.106.2 and 394.315.2 RSMo 2016 and 20 CSR 4240-3.140. In his Application, Mr. Duggar indicates that his reasons for requesting a change in electric service provider are that Liberty's billing and payment arrangements are confusing, that Liberty has been rude in their discussions with him, and that his bills are too high. However, upon analyzing recent account statements along with the associated billing history of Mr. Duggar, while the account statement could very well be confusing, especially in consideration of Liberty's inadvertent mistake in applying a payment meant to be applied to Mr. Duggar's past due account balance to another account, Liberty has consistently attempted to assist Mr. Duggar regarding his bills. It is Staff's opinion that Mr. Duggar has not met the statutory requirement for requesting a change in electric service providers.

