

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

**WHITE RIVER VALLEY ELECTRIC COOPERATIVE'S RESPONSE
TO ORDER DIRECTING FILING**

COMES NOW White River Valley Electric Cooperative, Inc. ("White River"), by and through its attorney's undersigned and of record, and for its Response to Order Directing Filing in this cause, states to the Commission as follows:

1. On December 12, 2023, Garrett Stancer and Southway Storage filed an Application with the Commission requesting a change of electric supplier from The Empire District Electric Company d/b/a Liberty ("Liberty") to White River.
2. On December 18, 2023, the Commission issued its Order Directing Filing wherein it ordered White River to respond on or before January 12, 2024 to the Application filed by Mr. Stancer and Southway Storage.
3. White River generally admits the assertions set forth in the Application and submits the following as further response herein.

I. Background

4. 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.
5. Mr. Stancer appears to have ownership interest in or an affiliation with a

Missouri limited liability company named 65F, LLC having a registered agent identified as Jacob Stancer and a registered agent and principal office address of 2160 N. Fox Hollow Dr., Nixa, Missouri 65714-9708 (See **Exhibit A** attached hereto).

6. 65F, LLC (“Owner”) is the record owner of the real estate believed to be the subject of this Application, said real estate depicted in the attached **Exhibit B**, located at the southwest corner of the intersection of US Highway 65 and State Highway F near Ozark, Missouri, and consisting of a 33-acre tract (the “Property”).

7. The Property is believed to be within the City Limits of Ozark, Missouri, 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 as evidenced by its facilities and lines that traverse the Property and surrounding area.

8. Mr. Stancer is also believed to be in the process of developing the Property through the Owner, possibly for a property storage facility (i.e., Ridgeway Storage), and has considered how the Property will be served with electrical power, with request being made that White River be his choice of electric supplier for the permanent service to the new structure that will replace the permanent structure that has now been demolished.

9. White River has historically provided electric service to a permanent structure (a home) on the Property but does so no longer. Its cooperative member discontinued electric service some time ago; and on information and belief, the home has been demolished.

10. **Exhibit C** is an aerial map that depicts White River’s existing facilities related to the Property. This map shows the electric distribution line that crosses the

southwestern portion of the Property and the electric line extension that once served the permanent structure located thereon.

11. 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.

12. White River can provide looped electrical service to the Property with very minimal investment due to its existing facilities located upon it. 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.

13. 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.

II. Missouri Law Governing Change of Electric Supplier

14. In 2021, Missouri law governing a change of electric supplier was significantly amended by our state legislature in certain respects, allowing, in some circumstances, more "consumer choice" relating to electric service suppliers, but with limitations now codified in state statute.

15. In particular, Section 394.315.2, RSMo. is controlling here and provides in relevant part that:

Once a rural electric cooperative, or its predecessor in interest, lawfully commences 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....

3. Notwithstanding the provisions of this section and sections 191.025, 393.106, and 394.080 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure.

See also Section 393.106, RSMo. for similar statutory provisions related to investor-owned electrical corporations like Liberty.

16. Because the Property and the home once upon it were permanently served by White River, and because the structure has since been demolished with intention to replace it with a new structure, White River may provide permanent service to the new structure upon the request of the Owner. This is also supported by a public interest determination should the Commission proceed with that analysis in this case.

17. Missouri law provides that “[t]he 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*. The Commission’s jurisdiction ... 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.” § 394.315.2, RSMo.; *See also*, § 393.106.2, RSMo. (emphasis

supplied).

18. The pivotal issues in this case are whether the public interest is better served by allowing White River to provide permanent service to the Property considering its annexation into the City of Ozark and whether the Applicant's "choice" for White River's permanent service should be honored and allowed.

19. While White River is certainly capable of providing best-in-class electric service to the Property, and would be honored to do so, public policy of this state has supported the statutory provisions and caselaw jurisprudence on Missouri's "anti-flip-flop" law.

20. The "anti-flip-flop" laws were enacted in 1982 to further restrict competition for existing electrical customers. Section 394.315 refers to rural electric cooperatives like White River and Section 393.106 refers to electrical corporations like Liberty. See *Mo. Pub. Serv. Comm'n v. Platte-Clay Elec. Co-op, Inc.*, 700 S.W.2d 838, 841 (Mo. banc 1985); *Union Elec. Co. v. City of Jackson*, 791 S.W.2d 890, 891 (Mo. App. E.D. 1990).

21. The purpose of these statutes is to "prevent customers from switching back and forth between two available electric suppliers to take advantage of rate differences"—a strong public policy of our state. *Empire Dist. Elec. Co. v. Southwest Elec. Co-op.*, 863 S.W.2d 892, 896 (Mo. App. S.D. 1993).

22. Accordingly, the Commission has deployed a 10-factor test to guide its analysis in public interest determinations and has a methodology utilizing sound reasoning in change of supplier cases best summarized below.

III. PSC 10-Factor Test on Change of Supplier Cases

1. Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;

2. Whether there are health or safety issues involving the amount or quality of power;
3. What alternatives a customer has considered, including alternatives with the present supplier;
4. Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;
5. The effect the loss of the customer would have on the present supplier;
6. 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;
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;
8. What efforts have been made by the present supplier to solve or mitigate the problems;
9. The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
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.

IV. Application of Facts to Law

23. The Application filed herein provides the Commission some additional relevant elements for consideration under the 10-factor test analysis outlined above, namely the proximity of White River facilities and the significant cost to bring electric power to the Property should Liberty serve it, largely due to the assumption that Liberty's line extension would require boring under US Highway 65 to bring power to the eastern boundary line of the Property.

24. Because Liberty does not have nearby facilities, factors 1, 3, 6, and 7 weigh in favor of White River's permanent service to the Property.

25. Factors 2, 4, and 5 appear to have no significant bearing on the 10-factor

analysis as they address facts and circumstances that are not invoked by this Application.

26. Factor 8 – centering on the efforts of the electric suppliers to mitigate the issue presented, may be neutralized between White River and Liberty as each likely has done preliminary engineering analysis to determine their respective abilities to serve the Property.

27. Factor 9 addresses the economic impact that the Commission’s decision will have on development. This factor weighs in White River’s favor considering the costs involved to bringing power to the Property. With White River providing a more cost-effective alternative due to the close proximity of its facilities and lines, more investment can be placed into the construction of improvements upon the Property which will have positive economic advantages for the Owner.

28. Lastly, Factor 10 is also a neutral factor in the analysis because no Territorial Agreement between White River and Liberty exists for the Property, nor are there any present negotiations ongoing that involve a new Territorial Agreement for the Property in question.

29. In sum, Missouri law supports White River’s permanent service to the Property under the 2021 Amendments recently enacted on this subject which promote more consumer “choice” for electrical suppliers, the Applicant desires White River to serve the Property and the new structure thereon once built as replacement for that which was demolished, and the 10-factor test for public interest determinations weights in favor of White River’s supply. Accordingly, under the facts and circumstances set forth in this case, the Commission 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 approve the Applicant’s request to

have White River serve the Property.

WHEREFORE, above considered, White River Valley Electric Cooperative respectfully requests that the Commission issue its Order granting the relief set forth in the Application filed in this cause, thereby allowing White River to serve the Property on behalf of its Owner and all permanent structures to be located thereon, and for such other and further relief the Commission deems just and proper.

Respectfully submitted,

CARNAHAN EVANS PC

/s/ Christiaan D. Horton

By _____
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Exhibits

Exhibit A – Owner Secretary of State Filings

Exhibit B – Aerial of Property

Exhibit C – Aerial Map with White River Facilities & Lines

CERTIFICATE OF SERVICE

The hereby certify that the above document was filed in EFIS on this 12th day of January 2024 with notice of the same sent to all counsel of record. A copy was also provided by U.S. mail, postage prepaid to the pro se Applicant and by electronic transmission to counsel for Staff, OPC and The Empire District Electric Company.

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