

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

In the Matter of the Application of Matt)
Mylott for a Change of Electric Service)
Supplier from The Empire District Electric) **Case No. EO-2018-0118**
Company to White River Valley Electric)
Cooperative, Inc.)

STAFF RECOMMENDATION TO APPROVE CHANGE OF SUPPLIER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and files this *Staff Report and Recommendation to Approve Change of Supplier* (“Report”) with the Missouri Public Service Commission (“Commission”), and respectfully states as follows:

1. On November 2, 2017, Mr. Matt Mylott filed with the Commission his *Application for Change of Electric Service Provider*, and his *Amended Application for Change of Electric Service Provider* November 3, 2018, requesting the Commission authorize a change of the supplier of electric service from The Empire District Electric Company (“Empire”) to White River Valley Electric Cooperative, Inc. (“White River”) at 20577 State Highway 413, Reed Spring, Missouri.

2. On November 6, 2017, the Commission issued its *Order Directing Notice, Adding Parties, and Directing Responses to Application* making Empire and White River parties to the case, directing Staff to file a recommendation or a status report indicating when it will file its recommendation no later than December 6, 2017.

3. On December 6, Staff filed its *Status Report*, indicating to the Commission that it believed it would file its report no later than January 20, 2018. On December 8, 2017, the Commission issued its *Order Extending Time* directing Staff to file its recommendation no later than January 20, 2018.

3. Sections 393.106 and 394.315, RSMo, give the Commission jurisdiction over investor-owned electric corporations and rural electric cooperatives, respectively, to order a change to the supplier of electricity to a structure “on the basis that it is in the public interest for a reason other than a rate differential.” Commission Rule 4 CSR 240-3.140 and 4 CSR 240-2.060(1) detail the filing requirements for applications for authority to change electrical suppliers.

4. Staff has conducted an investigation and reviewed the information submitted in this case file. Staff’s *Memorandum* is attached hereto as Appendix A, and incorporated herein by reference. Staff, for the reasons stated therein, recommends the Commission approve Mr. Mylott’s *Amended Application for Change of Electric Service Provider* as being in the public interest, for reasons other than a rate differential.

5. As Staff relates in its *Memorandum*, Mr. Mylott recently acquired property located just south of Reed Springs, Missouri, with four existing structures; three of which are served by White River, and one by Empire. Mr. Mylott wishes to have three phase service provided to two buildings on his property; one of these structures currently receives single phase service from Empire. In his amended application, Mr. Mylott expressed a desire to have this service provided expeditiously, and have White River be the sole electric service provider for this property. Currently, White River has reported to have obtained the necessary permits and has installed a padmount transformer capable of providing the desired three phase service, while Empire believes it would be able to provide three phase service to the property by March 1, 2018. It is Staff’s opinion that in the current situation, Mr. Mylott’s request to have White River to be the sole electric service provider on his property located at 20577 State Highway 413,

Reed Springs, Missouri, in order to establish clarity, most expeditiously obtain three phase power, reduce the number of existing meters on his property, and prevent duplicative facilities would be in the public interest for a reason other than a rate differential.

6. Empire is current with its required filing of annual reports and its payment of assessment fees to the Commission. Staff is unaware of any pending or final unsatisfied judgments against Empire from any state or federal court involving customer service or rates within three years of the date of filing this *Joint Application*. White River is not required to provide annual reports or assessments to the Commission

WHEREFORE, for the foregoing reasons discussed in detail in the Staff's *Memorandum*, Staff respectfully recommends the Commission issue an Order approving Mr. Mylott's request for a change in electric service provider from Empire to White River for the structure at issue located at 20577 State Highway 413, Reed Springs, Missouri, as outlined in Mr. Mylott's amended application.

Respectfully submitted,

/s/ Mark Johnson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Mail, postage prepaid, on this 19th day of January, 2018, to all counsel of record.

/s/ Mark Johnson

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2018-0118, In the Matter of the Amended Application of
Matt Mylott for a Change in Electric Service Supplier from The Empire
District Electric Company to White River Valley Electric Cooperative,
Inc.

FROM: Alan J. Bax, Operational Analysis Department – Engr. Analysis Unit

/s/ Daniel I. Beck 01/19/18 /s/ Mark Johnson 1/19/18
Manager – Engr. Analysis Unit / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Change of Electric
Service Provider Request

DATE: January 19, 2018

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the amended Application of Matt Mylott for a Change in Electric Service Suppliers at 20577 State Highway 413, Reed Springs, Missouri, from The Empire District Electric Company (“Empire”) to White River Valley Electric Cooperative, Inc. (“White River”), concluding that the amended Application, in total, is in the public interest for reasons other than a rate differential pursuant to 393.106.2 and 394.315.2 RSMo 2000 and 4 CSR 240-3.140. The amended Application meets the filing requirements of 4 CSR 240-2.060 and 4 CSR 240-3.140.

OVERVIEW

On November 3, 2017, Mr. Matt Mylott filed an amended Application with the Commission seeking approval of a change in electric service providers from Empire to White River at 20577 State Highway 413, Reed Springs, Missouri. Mr. Mylott states in

the amended Application that both Empire and White River currently have meters on the property. Mr. Mylott indicates a desire to have three phase service provided to two of the three buildings on the property, one building currently receiving single phase service from White River and another building receiving single phase service from Empire. Mr. Mylott states a desire to have White River be the sole electric service provider for this property. Reasons cited by Mr. Mylott include that White River is able to provide three phase service more quickly and his assertion that having one electric service provider will increase safety in addition to reducing the number of meters on the property.

On November 6, 2017, the Commission issued an *Order Directing Notice, Adding Parties, and Directing Responses to Application* that directed Staff to send notice of this Application to both Empire and White River and make them parties to the case. This *Order* also directed Empire and White River to file a Response to the amended Application by December 6, 2017. White River filed its Response recommending approval on December 27, 2017. Empire filed a Response on January 4, 2018, which followed an *Order Directing Response* filed by the Commission on December 27, 2017, that directed Empire to file a Response to the amended Application by January 8, 2018. In addition, Staff was to file its recommendation by December 6, 2017. On December 6, 2017, Staff filed a Status Report in which it requested an extension until January 20, 2018, to file its recommendation. Staff's request for an extension was approved by the Commission in an *Order Extending Time* issued on December 8, 2017.

White River is organized under Chapter 394 RSMo 2000 to provide electric service to its members located in all or parts of five Missouri counties, including

Stone County, in which lies the property identified in the amended Application. The Commission has limited jurisdiction over rural electric cooperatives, such as White River, as specified in Chapter 394 RSMo 2000. For the purpose of this case, White River is subject to the jurisdiction of the Commission under Section 394.315.2 RSMo 2000.¹

Given that White River 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 White River from any state or federal court involving customer service or rates.

Empire is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2000. For the purposes of this case, Empire is subject to the jurisdiction of the Commission under Section 393.106.2 RSMo 2000.² Empire is current on its filing of annual reports and payments of its

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.t..."

² Section 393.106.2 states, in relevant part, that "...Once an electrical corporation or joint municipal utility commission, 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. The commission's jurisdiction 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.t..."

assessment dues. Staff is currently not aware of any unsatisfied judgments or decisions against Empire in any state or federal agency or court involving customer service or rates that would have bearing on the immediate Case. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

DISCUSSION

There are four existing structures on the property located at 20577 State Highway 413, Reed Springs, Missouri that are currently metered by White River or Empire. One structure is a well, which is illustrated on the attached Schedule AJB-1. This well has been metered by White River since 1964 according to White River's Response to Staff Data Request 1. The other three existing structures on this property are the three buildings illustrated on Schedule AJB-2. Building-1 and Building-2, positioned in the center of Schedule AJB-2, receive electric service from White River. There are two meters in Building-1 and one meter in Building-2, installed in 1985, 1988, and 1990, according to White River's Response to Staff Data Request No. 2. The final structure on the property (Building-3), depicted on the left side of attached Schedule AJB-2, has received single phase service from Empire since July 2004 according to Empire's Response to Staff Data Request No. 4. The property is located just south of the current city limits of Reed Springs, Missouri in an unincorporated section of Stone County, Missouri. While within the certificated area of Empire, the property is considered to be in a rural area, and is also a competitive area in that either Empire or White River could provide electric service to the property. Moreover, the property is not included in any current territorial agreement. Although White River had provided electric service to the

property for many years, the property owner in 2004 preferred to choose Empire as their provider of single phase service to a new structure built on the property.

Mr. Mylott recently acquired the property at an auction. As stated in the amended Application, Mr. Mylott desired to have three phase service delivered to Buildings 2 and 3, which currently are served by White River and Empire respectively with single phase service. He also wished to consolidate the number of meters on the property if possible. In consulting with White River and Empire regarding the provision of three phase service, Mr. Mylott asserts that Empire would need between two and six months in order to route additional lines along State Highway 413, which would enable Empire to provide the requested three phase service. In contrast, White River had an existing three phase line, directly on the other side of State Highway 413 from the property, capable of providing the desired three phase service in a matter of days upon acquiring necessary highway permits. Wishing to have three phase service sooner rather than later, and considering the opportunity to reduce the number of meters on the property and possibly consolidating to one electric service provider, Mr. Mylott filed this amended Application.

In its Response filed December 27, 2017, White River acknowledges that it has completed the installation of three phase service and that “this will timely and economically fulfill Mr. Mylott’s request to have a single electric service provider that provides three-phase power to all structures on his Property”. White River has reported to have obtained necessary permits and has installed a padmount transformer capable of providing the desired three phase service once the existing buildings have been renovated. Further, White River states, “...based on the historical and existing service now supplied to Mr. Mylott by White River, and because this change in electric service

supplier is in the public interest for a reason other than rate differential, White River requests this Commission to approve the Application, thereby allowing White River to extend three-phase service to Mr. Mylott's remaining building on his Property, so White River will be the sole electric service supplier for Mr. Mylott in accord with his request contained within the Application".

However, in its Response filed January 4, 2018, Empire denies that there is any basis to support the requested change in supplier pursuant to RSMO 393.106.2. While expressing "sympathy" for Mr. Mylott's situation, and "understanding" of his desire to have one electric service provider servicing all structures on his tract of land, Empire nonetheless states, "...Mr. Mylott's preference alone does not establish the necessary "public interest" for a requested change of supplier." Empire appears to be considering Mr. Mylott's preference as the only factor provided in support of his request to change electric service suppliers and notes a past Commission case in which "the Commission determined that a single factor test should not be used". Additionally, citing Case No. EC-2007-0106, Empire points to a "ten-factor balancing test" that it says the Commission uses in its analysis of specific change of supplier requests on a case-by-case basis. Empire further states, "Empire is not aware of any facts or circumstances that would make a change of supplier in the public interest in this case".

In its Response to Staff Data Request No. 3, Empire says that it would be able to provide three phase service to Mr. Mylott's property by March 1, 2018, or perhaps sooner, based on weather conditions. Empire has planned to install a reliability enhancement project for this immediate portion of its service area that includes replacing the existing single phase line routed along the west side of State Highway 413, which

fronts Mr. Mylott's property, with a three phase line. Once this is completed, Empire could provide three phase service either overhead or underground based on Mr. Mylott's preferences and/or building renovations. Empire reports that it currently has not received the necessary information from Mr. Mylott on how to proceed with its provision of three phase service.

Reducing or eliminating a duplication of facilities is frequently identified as a factor in an analysis of a change in electric supplier requests, often in the context of limiting/preventing multiple electric service providers on a given premises for safety purposes. In the current case, both Empire and White River have facilities and associated meters on the property for their respective provision of single-phase service (Empire since 2004, White River since 1964). Despite White River having four existing meters on the property in 2004 and providing service to the immediate neighboring structures on adjoining properties, the property owner at 20577 State Highway 413, Reed Springs, Missouri, in 2004, preferred to have Empire provide single phase service to the newest building constructed. In its Response to Staff Data Request No. 3, Empire indicated their belief that both Empire and White River could safely provide three phase service on the premises as long as there is only one provider of three phase service in each structure. Staff considers a single provider for a property, as well as subdivisions, neighborhoods etc., as preferable to multiple providers. However, there are many areas similar to this corridor of State Highway 413 where two electric providers are serving the same general area and the practice is not considered to be unsafe.

White River has already installed the equipment necessary to provide Mr. Mylott with three phase service. Upon completion of renovations by Mr. Mylott's

contractors/electricians, White River would reduce the number of its metering points on the property from 4 to 2. The meter serving the well needs to remain because the well serves a few locations, not just 20577 State Highway 413, Reed Springs, Missouri. If the change of supplier is granted, Empire's existing meter would be eliminated and the total number of metering points could be reduced from the original five meters to two. Thus, most of the reduction is due to consolidation through the new White River service point and not the elimination of the single Empire meter.

While Empire will be capable of providing requested three phase service to Mr. Mylott upon completion of its anticipated reliability project, and presumably with minimum associated expense that would otherwise have been incurred by Mr. Mylott if this project was not already planned, there is still an amount of time to installation that Mr. Mylott has indicated as excessive. While approximately two and one-half months have elapsed since the amended Application was filed on November 3, 2017, it appears that Empire could potentially have a three phase line installed before this change of supplier request can be decided by this Commission.

Empire's approximately 150' extension onto Mr. Mylott's property would be duplicative with White River having already installed the facilities necessary to provide the services requested by Mr. Mylott to any and all structures on his property. However, based on information from White River, these facilities that were installed just over a month ago have yet to be utilized.

In a recent change of supplier request case (EO-2017-0277), which Empire referenced in its Response filed January 4, 2018, the Commission, in its Order, listed ten

factors that it considers in analyzing the "...meaning of "public interest" for a change of supplier." These ten factors, along with Staff's analysis, are:

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

As described above, Mr. Mylott's request for three phase service cannot currently be met by Empire, while White River installed the necessary facilities to provide three phase service just over a month ago. Empire states it will have its three phase line routed along State Highway 413 fronting the property by March 1, 2018, at which time Empire will be able to provide the requested service.

- (2) Whether there are health or safety issues involving the amount or quality of power;

Multiple service providers on the same premise has typically been identified as a situation to avoid based on the premise that having a single provider mitigates potential safety issues. However, Staff is unaware of any reported incidents associated with both White River and Empire providing their respective single phase service to this property in nearly fourteen years. Moreover, Empire believes that both utilities can safely provide three phase service on the property in the future as long as there is only one three phase service provided per building.

- (3) What alternatives a customer has considered, including alternatives with the present supplier;

While Empire is currently opposing Mr. Mylott's request, Empire mentions its willingness to discuss alternatives, such as a territorial agreement. Staff is not aware of any discussions currently between the utilities of this sort, or whether any dialog possibly included Mr. Mylott.

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

Staff is unaware of any claims by Mr. Mylott of damaged equipment as a result of the electric service provided.

- (5) The effect the loss of the customer would have on the present supplier; In its Response, Empire does mention the detriment to its customer base should the change of supplier be approved. In response to Staff Data Request No. 3, Empire indicates that it currently has not received sufficient information from Mr. Mylott as to how to provide its three phase service. This unknown information would presumably include anticipated load, and thus a quantification of this would-be detriment has apparently not been determined. In its Response to Staff Data Request No. 4, Empire reports that the historical monthly bill for the structure at issue amounted to around \$200 with a usage of 1400 kWhs.
- (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;

With White River having installed a padmount transformer and associated facilities by mid-December capable of providing any and all service requested by Mr. Mylott, any equipment installed by Empire in its provision of three phase service to this property would be duplicative. As stated in his amended Application, Mr. Mylott asserted that it would take Empire between two and six months to be able to provide desired three phase service. Empire states that it will be routing a three phase line along the west side of State Highway 413, replacing the single phase line currently fronting Mr. Mylott's property, by March 1. There is no indication that Empire will be assessing

any charges associated with the installation of the three phase line, nor its associated facilities to provide Mr. Mylott with three phase service. To Staff's knowledge, the necessary renovations to the existing buildings on the property have not been completed to make use of White River's new equipment.

- (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;

Mr. Mylott asserted in his amended Application that he needed three phase power expeditiously, which White River could install more quickly and also has completed. Empire says it will have the ability to provide three phase service by March 1, 2018. The overall burden on the customer caused by the timing of Empire's extension and the economic development impact of the change of supplier has not been quantified.

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

As stated above under Factor (3), Empire currently opposes Mr. Mylott's request, but mentions its willingness to discuss alternatives, such as a territorial agreement. Staff is not aware of any discussions currently between the utilities of this sort, or whether any dialog possibly included Mr. Mylott.

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

As stated above for Factor (7), Mr. Mylott asserted in his amended Application that he needed three phase power expeditiously; however the overall burden on the customer caused by the timing of Empire's extension and the economic development impact of the change of supplier has not been quantified.

- (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.

In its Response filed December 27, 2017, White River claims to have contacted Empire in regard to providing three phase service to the building currently receiving single-phase service from Empire. However, White River says Empire had not responded to this inquiry. Subsequently, Empire filed its Response stating its opposition to the amended Application. As an alternative, Empire expressed its willingness to discuss a "...mutually-agreeable territorial agreement pertaining to the subject property..." Staff is not aware of any such discussions or results if they occurred. Furthermore, Staff does not know what the resulting effect on such discussions would be should the Commission approve the amended Application.

Its Staff's opinion, based upon the factors outlined above, Mr. Mylott's request to have White River be the sole electric service provider on his property located at 20577 State Highway 413, Reed Springs, Missouri, in order to establish clarity, most expeditiously obtain three phase power, reduce the number of existing meters on his property, and prevent duplicative facilities would, in total, be in the public interest for reasons other than a rate differential.

White River currently has four meters on the property in its provision of single phase service to a well, as well as two other structures on the property. These meters were installed in 1964, 1985, 1988 and 1990. White River also serves structures neighboring adjoining properties using its existing three phase line routed along the east side of State Highway 413 across from Mr. Mylott's property. Empire provides single

phase service to one structure on Mr. Mylott's property. This service was established in 2004. Empire currently has a single phase line routed along the west side of State Highway 413 fronting Mr. Mylott's property. Mr. Mylott recently acquired the property and desires to have three phase service. White River has installed the necessary equipment on Mr. Mylott's property to provide three phase upon Mr. Mylott completing the renovations to applicable structures. Empire currently is not able to provide Mr. Mylott with his requested three phase service, but states that it will install a three phase line routed along the west side of State Highway 413 by March 1 and thus provide Mr. Mylott with three phase service for minimum expense. Mr. Mylott expressed he needed three phase service sooner rather than later in his Application. With White River having already in place the ability to provide the requested service to any and all structures on the property, Empire's three phase service extension onto the property would be duplicative. While there has been no reported incident in the fourteen years of multiple service providers on the property, multiple service providers has not been recommended in change of electric suppliers requests, typically citing possible increased safety concerns associated with additional duplicative facilities. Despite Empire's reference to the "anti-flip-flop" law statute given them the stated right to maintain service that has been established to structures, it is more than just Mr. Mylott's preference that White River should be the sole electric service provider to this property. It was a personal preference of the property owner in 2004 that enabled Empire to provide single phase service to this property. White River has been providing electric service to this property for over 50 years, and has installed the facilities necessary to provide

Mr. Mylott's updated three phase service to enable him to utilize his property as desired in an expeditious fashion.

CONCLUSION

Staff recommends that the Commission approve Mr. Matt Mylott's amended Application, determining that his request for a change in electric service providers from Empire to White River at his recently acquired property at 20577 State Highway 413, Reed Springs, Missouri to be, in total, in the public interest for reasons other than a rate differential as required under Sections 393.106.2 and 394.315.2 RSMo 2000 and 4 CSR 240-3.140. Mr. Mylott's amended Application meets the filing requirements of 4 CSR 240-2.060 and 4 CSR 240-3.140.

