

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

<b>In the Matter of the Application of</b>	)	
<b>Barrel 53 Cooperage for Change of</b>	)	<b>Case No. EO-2021-0305</b>
<b>Electric Supplier</b>	)	

**HOWARD ELECTRIC COOPERATIVE’S RESPONSE  
TO ORDER DIRECTING FILING**

**COMES NOW** Howard Electric Cooperative, (“Howard”) by and through its attorneys of record, and for its Response to Order Directing Filing, states as follows:

1. On March 19, 2021, Barrel 53 Cooperage, LLC (“Barrel 53”) filed an application to change its electric supplier from Howard to Union Electric Company, d/b/a Ameren Missouri (“Ameren”) at Barrel 53’s location at 7239 Highway A, Higbee, Missouri (“Premises”).

2. On March 22, 2021, the Commission issued its Order Directing Filing wherein it ordered Howard to respond on or before April 21, 2021, to the application filed by Barrel 53.

**I. Background**

3. Howard is a Missouri rural electric cooperative, operating on a non-profit business model and providing low cost, safe and reliable electric power to its member/consumers in Howard, Chariton and Randolph counties in Missouri.

4. Barrel 53 is a member of Howard.

5. The buildings and facilities comprising the Premises are not within an area subject to a Territorial Agreement between Howard and Ameren.

6. The Premises consists of two buildings on the west side of State Highway A. The largest building (marked as Building “A” on the attached Exhibit 1) is located approximately 500

feet west of Highway A, was constructed in 2014 and pursuant to an Agreement for Electric Service, dated September 25, 2014 (attached hereto as Exhibit 2) between Howard and Barrel 53, was served with three-phase power by Howard. As a result of this request, Howard invested approximately \$75,562 in constructing new three-phase service to serve Building “A” in 2014.

7. In 2020 Barrel 53 built a second, much smaller building (marked as Building “B” on Exhibit 1) within approximately fifteen (15) feet of Howard’s three-phase service and the existing Building “A”. To serve Building “B”, Barrel 53 obtained underground single-phase electric service from Ameren. Up to the point in time when Building “B” received service from Ameren, all buildings and facilities on the Premises were served by Howard.

8. The same three-phase service line of Howard that serves Building “A” on the Premises also provides three-phase service to another nearby cooperage and is used to provide stepped-down, single-phase service to a church and a barn in the area.

9. Howard charges a demand charge to every single one of its members, whether residential, commercial or large power. Howard’s service to Barrel 53 is billed pursuant to a rate schedule set forth within the Agreement for Electric Service (Exhibit 2). Outside of individual agreements for electric power, such as the Agreement for Electric Service, Howard has three rates comprised of a demand and energy charge that could apply to businesses; small commercial, large power rate 3 and large power rate 4. Barrel 53’s current rate is the most financially beneficial to it in light of its power and demand requirements when compared to any other power rate offered by Howard for which it may qualify.

## **II. Missouri Law Governing Change of Electric Supplier**

10. Missouri law does not support Barrel 53’s request to change electric suppliers. The relevant Missouri law at Section 394.315 RSMo. states: “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 ...”

11. An exception to the above cited statutory language, also found within Section 394.315 RSMo., allows the Missouri Public Service Commission (“Commission”) to order a change of supplier on the basis that it is in the public interest for a reason other than a rate differential. It is Howard’s position that it is not in the public interest for the Commission to grant Barrel 53’s request for change of electric supplier.

12. Barrel 53’s concern for the needs of public safety are questionable in that the one and only building on the Premises served by Ameren (Building “B”) was built in 2020 by Barrel 53 and located a mere fifteen (15) feet from the already existing Building “A” and three-phase electric facilities of Howard. Barrel 53 in requesting service from Ameren for Building “B”, created this alleged concern. Howard was already present on the Premises and could have easily provided electric power to Building “B” located fifteen (15) feet away from Howard’s three-phase facilities and Building “A” already served by Howard.

13. Howard’s poles and facilities are clearly marked with a metallic identification marker indicating ownership by Howard with a phone number for emergency notifications. Emergency responders are trained to find these markers and identify the relevant power provider, making it relatively easy for emergency responders to identify the power provider for Building “A”. In stark contrast, the underground service obtained from Ameren by Barrel 53 for Building “B” does not readily make it easy for emergency responders to identify the power provider to Building “B” as the facilities are located underground.

14. Barrel 53's assertions about the cessation of duplicate services to the Premises have no bearing on the request for change of provider, as receiving duplicate bills is not something that is in the public interest.

15. Barrel 53's contention that no duplicate facilities will be necessary for Ameren to provide services to the entire Premises is false and misleading:

a. If Barrel 53's request for change of supplier is granted, the existing and currently constructed overhead three-phase facilities of Howard will not be removed or change in any manner. Howard's three-phase service facilities will remain in place pursuant to recorded easements and will continue to provide electric service to a nearby competitor cooperage's buildings, a church and a barn.

b. However, if the request is granted, Ameren will need to construct additional facilities or upgrade existing facilities to the Premises as the sole Ameren served building on the Premises (Building "B") is served with underground single-phase power only.

c. Barrel 53 states accurately in its application in paragraph 7.a. that "The nature of Applicant's operations are industrial, and include the operation of electric-powered heavy machinery." Currently, this heavy machinery requires three-phase service from Howard.

d. If the request for change of supplier is granted, Ameren will need to construct or upgrade its single-phase service to three-phase service to adequately provide power to Barrel 53's Building "A" which is now served with three-phase service from Howard. Such construction or upgrading by Ameren will result in duplicate facilities on or about the Premises of Barrel 53 and as such is not in the public interest.

16. Barrel 53's statements attributed to Ameren in regard to associated costs of providing power to Building "A" as being "zero or minimal" do not account for the necessary upgrading of service from underground single-phase to three-phase service. Ameren will no doubt have to incur costs, which most likely must be recovered in accordance with the relevant Commission approved tariff, for upgrading of service from single-phase to three-phase service or extension of new three-phase facilities.

17. Furthermore, the supposed statement of Ameren that no additional infrastructure or construction would be necessary to provide electrical power to Building "A" does not account for the necessary extensions of new three-phase service facilities or the upgrading of service from underground single-phase service to three-phase service for Building "A" as currently utilized by Barrel 53 and as now provided by Howard.

18. Barrel 53 incorrectly asserts that granting their request for change of provider will positively impact the area's economic development:

a. Economic downturns and fewer orders for oak barrels resulting from COVID-19 will not be changed by granting Barrel 53's request for change of supplier. As clearly stated in Barrel 53's application, the pandemic is the reason why eight of fourteen employees have been laid off: "Applicant's business operations have been severely impacted by the unprecedented global pandemic of COVID-19. Due to the pandemic, orders to Applicant are down dramatically." The application continues: "Indeed, due to COVID-19, Applicant has already had to lay off eight (8) of its fourteen (14) employees."

b. Howard's understanding of Ameren's rate structure for three-phase power service is that Ameren would also charge Barrel 53, whose kW demand varies monthly between 100kW and 148kW, as an industrial customer, a monthly demand charge (or

some other equivalent charge by another name) that would, especially in light of future rate increases by Ameren, result in similar operational costs for Barrel 53 as currently incurred from Howard.

c. Howard, at this time, is not forecasting any rate increase to its members, including Barrel 53, for at least the next three years.

d. Howard is sensitive to all of its members' struggles during the COVID-19 pandemic and works with all member businesses to get through these unprecedented times. Howard, in response to the unprecedented pandemic economic conditions over the past year, observed Barrel 53 foregoing making any payment towards its bill balance in four of the last twelve months, all the while maintaining continuous electric service for Barrel 53's operations.

e. Historically Howard has charged a demand component to their commercial members' monthly bills. In 2016 Howard's Board of Directors approved adding a demand component to every member's monthly bill. This demand amount is set monthly based upon each individual locations highest demand for the month. Starting in April 2018 the demand component of the bill for Barrel 53 and other large commercial accounts was altered in the member's favor such that the monthly demand would be determined based upon the member's highest demand for the previous eleven months, but for those months where the demand is below the highest demand set, the minimum, "floor" for the demand charge is now 80% of the highest demand set over the past eleven months, not 100% of the highest demand set over the past eleven months.

f. For every single user of Howard electric service, whether residential, industrial or a large power user, each receives a demand charge for each month. Statements made

by Barrel 53 that businesses near the Premises receive electric service without a demand charge are completely false.

19. The Agreement for Electric Service dated September 25, 2014 (Exhibit 2) has an Initial Term of ten (10) years. Per the agreement, termination for any reason by Barrel 53 during the Initial Term requires Barrel 53 to pay all charges due to Howard per the contract, including but not limited to, the monthly contract minimum, for all remaining months of the Initial Term. If the Commission grants Barrel 53's request, the payment of this contractual amount will not, and was not intended to, recover all amounts Howard expended in constructing the three-phase line to provide service to Barrel 53. This shortfall will have to be made up by the remaining member/consumers of Howard as a part of any future rate increase.

20. Barrel 53's application to change electric suppliers should not be granted, as none of the arguments in favor of the request rise to the level of being in the public interest. In contrast, there is a public interest to not having customers switch electric suppliers. Howard's facilities that serve the Premises have been in place for many years. Ameren, to serve the Premises with three-phase service, will have to duplicate the already existing facilities of Howard. If the request were granted, Howard's three-phase facilities would still remain and the remaining members of Howard would be left with making up the shortfall for the original expenditure of funds to construct such facilities. No part of Barrel 53's request demonstrates a public interest for a reason other than a rate differential. The language of Section 394.315 RSMo. is clear and entitles Howard to continue serving Barrel 53 unless it is in the public interest for the Commission to order a change of electric supplier, which Barrel 53 has not and cannot demonstrate.

WHEREFORE, Howard Electric Cooperative respectfully requests that the Commission deny Barrel 53 Cooperage, LLC's application for change of electric service provider.

**JOHNSON & SPORLEDER, LLP**

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**ATTORNEYS FOR HOWARD  
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## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was served electronically on the following parties on this 21<sup>st</sup> day of April, 2021 to:

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