

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

In the Matter of the Application of )	
Cardwell Lumber, Inc., for Approval of )	
a Change of Electric Supplier at its 5927 )	Case No. EO-2011-0052
Highway 50 West, Jefferson City, Missouri )	
Location from Union Electric Company to )	
Three Rivers Electric Cooperative. )	

**POST-HEARING BRIEF OF AMEREN MISSOURI**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and for its post-hearing brief, states as follows:

**INTRODUCTION**

Cardwell Lumber, Inc. (Cardwell), a customer of Ameren Missouri since 2004, has requested the Missouri Public Service Commission (Commission) allow it to switch electrical providers so that it can be served by Three Rivers Electric Cooperative (Three Rivers). The reason behind Cardwell's request can be summed up as a preference for being served by a cooperative rather than by Ameren Missouri. This reason, however, provides an insufficient basis under Missouri law to allow the Commission to order a change of supplier. Ameren Missouri has served Cardwell, is currently serving Cardwell and should continue to serve Cardwell in the future.

**ARGUMENT**

Controlling Missouri law is sometimes referred to as the anti-flip-flop law. This law states:

Once an electrical corporation...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 that structure...<sup>1</sup>

Ameren Missouri is an electrical corporation that is lawfully supplying retail electric energy to a structure through permanent facilities. “Structure” is defined in the law as

...an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier.<sup>2</sup>

As Ameren Missouri witness Mr. David Hagan, Supervising Engineer for the district in which Cardwell is located, testified, Ameren Missouri’s meter is attached to the first pole of Cardwell’s electric apparatus, that is, on Cardwell’s distribution system.<sup>3</sup> The pole to which the meter is attached is owned by Cardwell<sup>4</sup> and is the beginning of the electrical apparatus which takes electricity from Ameren Missouri and distributes it to Cardwell’s operations at this location. Clearly, Ameren Missouri meets the requirements of the statute and is entitled to the protections provided by Missouri law.

Indeed, if Cardwell is taking the position that Ameren Missouri’s facilities are not “on or adjacent” to Cardwell, it would be a concerning argument.<sup>5</sup> Three Rivers’ opening statement made it clear that they disagreed with this position,<sup>6</sup> and with good reason.

Three Rivers has many meters that are attached to poles on the Three Rivers system

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<sup>1</sup> Section 393.106.2 RSMo.

<sup>2</sup> Section 393.106.1(2) RSMo.

<sup>3</sup>Tr. p. 149, l. 2-22.

<sup>4</sup> Id.

<sup>5</sup> Cardwell believes the pole on which the meter is mounted belongs to Ameren Missouri. It does not. Whether or not Cardwell had actual knowledge of who owns that pole has contributed to the misunderstandings that have brought forth in this case but do not change the fact that the pole is owned by and the responsibility of Cardwell.

<sup>6</sup> Tr. p. 30, l. 8-21.

rather than being mounted on the customer's home.<sup>7</sup> This is different than Ameren Missouri's practice because our meters are not on our own pole. Using Cardwell's interpretation, these homes are not protected by Missouri's anti-flip-flop laws.<sup>8</sup>

As Cardwell has noted, Missouri law does permit a change in electrical supplier, but only under limited circumstances. The law states:

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.<sup>9</sup>

In previous cases, the Commission has characterized this exception as a "drastic remedy"<sup>10</sup> and has repeatedly found that customer preference alone to be an insufficient basis to order a change in electric supplier.<sup>11</sup> "The Commission does not believe that customer preference by itself is sufficient reason to find that it is in the public interest to change suppliers."<sup>12</sup>

There are four arguments which have been made by Cardwell in pleadings and at the hearing. First, that Cardwell's facilities are in poor condition and, accordingly, pose safety concerns. Second, that Cardwell has had reliability concerns with its service from Ameren Missouri. Third, that Cardwell will gain some financial advantage as Three Rivers is willing to pay a portion of the costs which will be incurred to change the system

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<sup>7</sup> Tr. p. 173, l. 6-23.

<sup>8</sup> Ameren Missouri is not arguing for that outcome but rather is pointing out a consequence of Cardwell's argument, if indeed the Commission were to adopt their interpretation.

<sup>9</sup> Section 393.106.2 RSMo.

<sup>10</sup> Case No. EO-93-295; Case No. EO-93-303 and Case No. EO-93-312, Report and Order, May 27, 1994, p. 13. This case dealt with a request to leave a cooperative rather than an investor owned utility, however the statutory language is the same.

<sup>11</sup> Case EO-88-196, *In the Matter of Cominco American, Inc. for Authority to Change Electric Suppliers*, 1988.

<sup>12</sup> Case No. EC-2007-0106, *Order Denying Joint Motion to Dismiss*, December 5, 2006.

from a primary metered service to secondary service. Finally, Cardwell states that it prefers to be served by a cooperative rather than by Ameren Missouri.

There is little doubt that Cardwell's own electric apparatus is in poor condition and in need of repair. Cardwell admits that it has not maintained the system since it purchased the property in 2004. While agreeing that Cardwell's system has not been maintained, Mr. Hagan testified that he had inspected the system and did not believe it presents an immediate threat of collapse<sup>13</sup> or otherwise poses a threat to the safety of Cardwell's employees.<sup>14</sup> Because Cardwell is surrounded by a fence which prevents the general public from freely accessing the property, its electrical apparatus does not pose a safety threat to the public either.<sup>15</sup> Further, a properly trained individual can safely work on this system, despite the lack of maintenance.<sup>16</sup> Finally, as Mr. Cardwell noted multiple times while he was on the witness stand, neither Ameren Missouri nor Three Rivers is willing to take over ownership of this apparatus and so, in a situation where secondary service is provided to Cardwell, Cardwell will have to remove its system regardless of who is the electric service provider.<sup>17</sup> Given this fact, there is no public interest inherent in switching electric providers to Three Rivers related to this factor.

The second justification is reliability. The reality, however, is that any reliability problem comes from Cardwell's electrical apparatus rather than from concerns with the service provided by Ameren Missouri. As set forth in the *Joint Stipulation of Facts and Law* in this case, Cardwell has not experienced an extended outage on Ameren Missouri's system in the past three years. Cardwell did have two outages in 2009, but both were the

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<sup>13</sup> Tr. p. 178, l. 7-15.

<sup>14</sup> Tr. p. 178, l. 16-18.

<sup>15</sup> Tr. p. 178, l. 19-22; p. 134, l. 22-25.

<sup>16</sup> Tr. p. 162, l. 25; p. 163, l. 10.

<sup>17</sup> Tr. p. 125, l. 9-11; p. 107, l. 18-25; p. 78, l. 25 through p. 79, l. 5.

result of failures of fuses on Cardwell's electrical system.<sup>18</sup> The last outages on this portion of Ameren Missouri's system were in 2007 and were the result of major storms.<sup>19</sup>

To address Cardwell's concerns about voltage fluctuations, which caused their boiler to trip off and interrupt operations, Ameren Missouri installed a power quality monitor at the boiler building. That monitor did not record any problems on Ameren Missouri's distribution system.<sup>20</sup> Even Mr. Cardwell admitted that although he knew when the boiler tripped off, there was no way for him to know that the problem was Ameren Missouri's system rather than his own.<sup>21</sup>

Mr. Hagan testified about the effort Ameren Missouri put into ensuring it provides Cardwell with reliable service and further testified that he believed Cardwell has received and continues to receive reliable service from Ameren Missouri.<sup>22</sup> There is no history of poor electric service and thus no public interest benefit which would justify the change of electric suppliers related to reliability.

The third reason is related to who would bear the cost of the work required to convert Cardwell from a primary metered service to a secondary service. At the hearing, however, Mr. Cardwell insisted that his desire to change electric providers was not motivated by financial concerns.<sup>23</sup> Ameren Missouri will take Mr. Cardwell at his word, knowing that the Commission cannot justify a change in electrical supplier for the reason of a rate difference.

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<sup>18</sup> *Joint Stipulation of Facts and Law*, November 5, 2010, p. 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, p. 4.

<sup>21</sup> Tr. p. 139, l. 7-17.

<sup>22</sup> Tr. p. 176, l. 4-7; p. 184, l. 14 through p. 185, l. 16.

<sup>23</sup> Tr. p. 111, l. 17 through p. 112, l. 19.

The final reason to justify a change in electrical suppliers given by Cardwell is that Cardwell prefers to be served by a cooperative.<sup>24</sup> Mr. Cardwell's testimony demonstrated that he felt Ameren Missouri was unwilling to work with him in the manner he expected and that he felt a cooperative would approach it differently. First of all, Ameren Missouri regrets that Mr. Cardwell received a negative impression of the Company. There were clearly different expectations regarding responsibilities between the parties. Ameren Missouri is not a cooperative and must operate in a manner that is consistent with its tariffs. It is clear that Mr. Cardwell did not know what to expect as an owner of a primary metered system and has been disappointed that Ameren Missouri hasn't treated Cardwell as a customer receiving secondary service (changing out fuses, dealing with downed lines) even though Cardwell was only paying for primary service.<sup>25</sup> As Mr. Hagan explained at the hearing, the primary service rate is a lower kilowatt-hour rate in exchange for the fact that the customer owns and maintains its facilities.<sup>26</sup>

Nonetheless, even if the Commission takes Mr. Cardwell's assertions as true, they do not constitute a reason in the public interest to order a change in electrical supplier. Mr. Cardwell is upset with Ameren Missouri. That is something that the Company will continue to attempt to resolve. In the meantime, the public interest is not served by a customer moving to another provider for no other reason than the fact that they are upset. That would render Missouri's anti-flip-flop laws meaningless, as no one would need a reason to change suppliers other than to say that they desired to do so. It is possible to imagine that Cardwell's relationship with Three Rivers might fail to be as rosy as Mr. Cardwell expects. Would the Commission then allow Cardwell to switch back to

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<sup>24</sup> Tr. p. 139, l. 7-17.

<sup>25</sup> Tr. p. 137, l. 21-25; p. 150, l. 20 through p. 151, l. 6.

<sup>26</sup> Tr. p. 148, l. 4-11.

Ameren Missouri merely because the cooperative relationship wasn't what he expected? Neither is a sufficient reason to change electric suppliers, which is why the Commission has previously held that customer preference alone cannot provide the basis to allow a change of electrical supplier.

In some previous Commission decisions, the Commission has reviewed ten factors to determine if a request was in the public interest. Recently, they were set forth in Case No. EO-2007-0106. The factors are as follows:

- (A) Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;
- (B) Whether there are health or safety issues involving the amount or quality of power;
- (C) What alternatives a customer has considered, including alternatives with the present supplier;
- (D) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;
- (E) The effect the loss of the customer would have on the present supplier;
- (F) Whether a change in supplier would result in 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 electricity itself;
- (G) 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 (F)(ii) above;
- (H) What efforts have been made by the present supplier to solve or mitigate the problems;
- (I) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
- (J) 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.<sup>27</sup>

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<sup>27</sup> EC-2007-0106, *Order Denying Joint Motion to Dismiss*, December 5, 2006.

Remembering that Cardwell has the burden of proof<sup>28</sup> in this case and must demonstrate a reason in the public interest other than rates, a review of these ten factors shows that it cannot meet its burden.

Factor A - Ameren Missouri is capable of meeting Caldwell's power needs for both amount and quality of power.

Factor B – There are no health or safety issues with Ameren Missouri's service. The only potential safety issue is the condition of Cardwell's electric apparatus. However, it does not present an immediate safety threat and will have to be removed regardless of which utility is providing electric service.

Factor C – Cardwell admitted that Ameren Missouri is just as able as Three Rivers to provide alternatives which would put Cardwell on secondary service.<sup>29</sup>

Factor D – There is no evidence that problems with Ameren Missouri's service have resulted in damage to Cardwell's equipment. While Cardwell's boiler tripped off, there is no evidence it was due to problems with Ameren Missouri's system and indeed it is more likely that Cardwell's electrical apparatus is the root of the problem.

Factor E – The impact of the loss of this customer on Ameren Missouri will not be financially significant.<sup>30</sup> It would, however, significantly lessen the burden of proof upon a customer requesting a change of supplier. Ameren Missouri receives requests from cooperative customers who want to be served by Ameren Missouri. Any lessening of the burden of proof requirement would increase the number of customers who would qualify to change suppliers.<sup>31</sup> Over time, there would be a financial impact unacceptable

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<sup>28</sup> Id.

<sup>29</sup> Tr. p. 145, l. 4-11.

<sup>30</sup> Tr. p. 196, l. 3-6.

<sup>31</sup> Tr. p. 175, l. 19 through p. 176, l. 3; p. 174, l. 19 through p. 175, l. 2.



for Ameren Missouri and for the cooperatives alike. This would circumvent the protection provided by the statute and undermine the very intent of the anti-flip-flop laws, as they have been historically interpreted.

Factor F – Allowing Cardwell to change suppliers would not result in significant duplication of facilities, but as is stated above, it would set a lower threshold for future customer requests and could ultimately result in more and more duplication of facilities. Requiring Cardwell to stay with Ameren Missouri would not impose a significant financial burden upon Cardwell. As Exhibit 16 shows, even presuming it cost Cardwell \$10,000 to install the facilities necessary in order for it to receive secondary service from Ameren Missouri, Cardwell would save that amount in its electric bill in less than two years. There was no testimony that this expenditure would be detrimental to Cardwell, indeed, that is unlikely given the short pay off period for this investment.

Factor G – There is no burden placed upon Cardwell from inadequate electric service because there is no evidence that Ameren Missouri has provided anything less than adequate service.

Factor H – Ameren Missouri has made very real efforts to work with Cardwell to resolve the concerns as they are raised. A power quality monitor was placed on Cardwell's boiler in order to determine if Ameren Missouri's system was experiencing fluctuations in power voltage. The Company has directed its lead engineer responsible for this area to provide Cardwell with information about its system and options for putting Cardwell on secondary service.

Factor I – The Commission's decision in this case will have very little economic impact at this time. Mr. Cardwell testified that Cardwell did not have firm plans to sell or

expand its plant at this location other than to add a sander.<sup>32</sup> Mr. Cardwell did not testify that the addition of this sander would require additional employees, in fact he implied the work could be handled by current employees.<sup>33</sup> Additionally, accepting Mr. Cardwell's testimony on this issue allows through the back door a factor which the Commission cannot decide the case on – customer preference. Cardwell prefers to be served by Three Rivers and so has issued an ultimatum that it will not expand its operations unless it is allowed to be served by Three Rivers. Allowing a threat to justify a change in electric supplier is not in the public interest any more than approving a change of supplier request based solely on customer preference.

Factor J – This factor is inapplicable in this case because there is no territorial agreement between Ameren Missouri and Three Rivers for this location, nor are there any plans to negotiate one at this time.<sup>34</sup>

The challenge before the Commission in this case is to determine whether or not Cardwell has demonstrated that there is a reason, other than rate differential, that switching electrical suppliers is in the public interest. There is no evidence that the public interest would benefit from a decision to allow Cardwell to be served by Three Rivers. The Commission has previously found customer preference is not, in and of itself, to be sufficient to meet the public interest standard. The term 'public interest' implies a benefit to something larger than Cardwell, to the public as a whole, including Cardwell, members of Three Rivers, Ameren Missouri customers and the public at large.<sup>35</sup> It is the total interest rather than one company's preference, which must be assessed by the

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<sup>32</sup> Tr. p. 144, l. 1-22.

<sup>33</sup> Tr. p. 145, l. 1-3.

<sup>34</sup> *Joint Stipulation of Facts and Law*, November 5, 2010, p. 2.

<sup>35</sup> Case No. EO-93-295, Report and Order, May 27, 1994, p. 19.

Commission in this case.<sup>36</sup> Ameren Missouri sees no evidence in the record that the request to change electric suppliers benefits Ameren Missouri's customers, Three Rivers' customers or the public as a whole. Accordingly, the Commission must deny Cardwell's request.

WHEREFORE, AmerenUE respectfully requests that the Commission deny Cardwell Lumber, Inc.'s application for change of electric service provider.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a AmerenUE

/s/ *Wendy K. Tatro*

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Dated: November 24, 2010

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<sup>36</sup> Case No. EA-2009-0118, Report and Order, March 18, 2009, p. 10.

## **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile, U.S. Mail or e-mail to the following parties on this 24th day of November, 2010:

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