

**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.)	

RESPONSE OF AMERENUE

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or Company), and for its response (Response) to Cardwell Lumber, Inc.'s (Cardwell) application for change of electric service provider (Application), states as follows:

1. On August 25, 2010, Cardwell filed its Application requesting its property at 5927 Highway 50 West, Jefferson City, be served by Three Rivers Electric Cooperative (Three Rivers) rather than by AmerenUE.

I. BACKGROUND

2. The property in question is within the certified service territory of AmerenUE. AmerenUE is the current provider of electric service at this location and has served this property since the initial owner of the property chose AmerenUE (at the time Missouri Power & Light) as its electric service provider. There is no Territorial Agreement governing this area.

3. Unlike the majority of AmerenUE customers, Cardwell is served by AmerenUE as a Small Primary Service (SPS) customer, where Cardwell owns and maintains all electrical facilities on its property. Cardwell is solely responsible for maintaining and servicing these facilities and is solely responsible for the condition of these facilities. AmerenUE bears no responsibility for this work.

4. AmerenUE agrees that it is not necessary for Cardwell to be served under the Company's SPS rate, as the facility is no longer used as a manufacturing plant. Cardwell's offices at this location could be served under AmerenUE's Small General Service (SGS) rate.

5. AmerenUE's tariffs govern when a customer is charged for a modification such as would be required for Cardwell to convert to a SGS customer. The relevant tariff can be found at Schedule 5, Sheet 159, attached as Schedule 1 to this *Response*. The tariff states that when a modification of the Company's distribution system is requested by an existing customer and no additional revenue is anticipated from the change, the customer shall pay, in advance, the total estimated cost associated with such change.

6. In this case, AmerenUE will experience a decrease in revenue if Cardwell moves to the SGS rate.¹ Accordingly, AmerenUE is required, by tariff, to charge Cardwell for the changes to Cardwell's primary facilities.

II. MISSOURI LAW GOVERNING CHANGE OF SUPPLIER

7. Without AmerenUE's consent, Missouri law does not support Cardwell's request to change electric suppliers. Missouri 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 the structure..."²

¹ The customer charge for SPS is \$258.77/month and for SGS it is \$9.28/month. Additionally, SPS has a minimum demand rate while SGS does not. SPS was more economical for Cardwell when their load was very high, but is less economical for them at their current usage levels.

² Section 393.106 RSMo. The counterpart to this statute is 394.315 RSMo, which provides the same protection to cooperatives.

8. AmerenUE does not agree to a change of electric service provider for Cardwell.

9. There is an exception to the above cited statutory language. The statute allows the Missouri Public Service Commission (Commission) to order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential.³ It is AmerenUE's position that it is not in the public interest for the Commission to grant Cardwell permission to change its electric service provider.

10. Cardwell's Application cites four reasons to demonstrate that a change in electrical suppliers is in the public interest. First, that Cardwell's facilities are in poor shape, are hard to work on and have safety concerns. Second, that Cardwell has had problems with their service from AmerenUE. Third, that AmerenUE will not pay to take over and rebuild Cardwell's facilities while Three Rivers is willing to pay a significant portion of those costs. Fourth, that Cardwell prefers to be served by a cooperative rather than an investor owned utility (IOU).

11. The fact that Cardwell's facilities are in need of work or replacement does not provide a reason why a change in electric suppliers is "in the public interest." While AmerenUE agrees that Cardwell's facilities are fairly old and could be simplified and improved, Cardwell enjoyed the savings of being on a primary metered rate for many years. As with any facilities, some money must be reinvested from time to time in order to maintain those facilities in good working order.

12. Similarly, the fact that Three Rivers is willing to pay for part of the replacement costs of this facility, while AmerenUE can not (because of tariff restrictions), does not justify a change in electric supplier. It may work to Cardwell's

³ Id.

financial benefit to have the costs, for which they alone are responsible, underwritten by Three Rivers, but it does not make it in the public interest for that to occur. If customers are able to switch to a different electric service provider merely because that provider provides a financial incentive, it would undermine the stability and purpose of Missouri's anti-flip-flop laws, which were designed to protect both utilities and cooperatives by ensuring they be allowed to continue serving their current customers. Finding the willingness of a cooperative to underwrite costs for a customer as "in the public interest" would be tantamount to allowing a customer to switch for a rate differential. "Essentially, the second sentence is designed to preclude customers from switching back and forth between electrical suppliers on the basis of rates and charges."⁴

Cardwell's public interest argument here falls short. The public does not benefit from changing electric service providers, the public benefits from Cardwell upgrading its facilities – an obligation that is Cardwell's alone and which could occur regardless of whether they are served by AmerenUE or Three Rivers. Cardwell should not be allowed to argue that their unwillingness to finance an upgrade is a legitimate reason to abandon AmerenUE as an electric service provider.

13. Cardwell cites problems with the service provided by AmerenUE as another justification, but overstates the issues that have occurred historically.

AmerenUE's records indicate that Cardwell has had no extended outages in 2010 to date.

There were two outages (one 45 minutes and one 56 minutes) in 2009. However, each of these outages was caused by the failure of a 12kV fuse on Cardwell's system. In

⁴ Union Electric v. Cuivre River, 726 S.W.2d 415, 417 (Mo. Crt. App. 1987). This quotation refers to 394.315 RSMo, which is the anti-flip-flop law for cooperatives., but the language is the same except that it references cooperatives.

both cases, Cardwell asked AmerenUE to replace the fuse and the Company complied with those requests.

There were no extended outages in 2008.

Cardwell did suffer extended outages in 2007. In June, lightning struck a 69kV line and the line had to be repaired. Cardwell was out of service for one hour and 12 minutes. In August, a relay problem caused the loss of supply to AmerenUE's Jefferson City area. The Company has since revised its coverage scheme for better protection against this type of outage. Cardwell was out of power for one hour and 50 minutes. In December of 2007, during the severe ice storm which damaged a large portion of AmerenUE's service territory, Cardwell was out of service for 45 hours and 22 minutes. Importantly, Cardwell's outage was longer than the rest of AmerenUE's customers in that area because their facilities were also damaged and had to be repaired before service could be restored.

In total, Cardwell has experience six momentary interruptions during 2008, 2009 and 2010. Four of those occurred during major storms.

AmerenUE has also worked with Cardwell to investigate their claim of voltage problems. AmerenUE installed a power quality monitor on their boiler located at the end of their system to continually monitor their voltage level between January 3, 2008 and January 11, 2008. While the boiler tripped out during this time period, the monitor showed voltage levels were well within limits during the entire period. All data recorded was shared with Cardwell, along with our suggestion that they check the settings on the boiler's protective controls.

AmerenUE has had multiple contacts with Cardwell and has worked to ensure they receive reliable electric service. The interruptions experienced by Cardwell do not provide a basis upon which the Commission can find a change of supplier in the public interest.

14. Finally, Cardwell's Application indicates it prefers to be served by a cooperative rather than by an IOU. While this may be a fact, it does not provide the Commission with a basis upon which it may order a change of supplier. Preference does not equate to being in the public interest. AmerenUE has offered to work with Cardwell and/or the contractor of their choice to convert this account to a secondary metered account that would relieve Cardwell of the responsibility of ownership of the primary facilities. However, AmerenUE cannot underwrite the cost of this work.

15. Cardwell's application to change electric suppliers sets forth many reasons why it is in Cardwell's corporate and financial interest to switch to Three Rivers, but fails to address the real question. That is, why is it in the public interest? There is a public interest in not having customers switch electric suppliers. AmerenUE's facilities that serve Cardwell have already been constructed and in place for many years. It would be necessary for Three Rivers to duplicate those facilities. There is no public benefit from that occurring. The language of the statute is clear and entitles AmerenUE to continue serving Cardwell unless it is in the public interest for the Commission to order a change of electric supplier, which Cardwell cannot demonstrate.

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*

Thomas M. Byrne, #33340
Managing Associate General Counsel
Wendy K. Tatro, #60261
Associate General Counsel
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-1310
St. Louis, MO 63166-6149
(314) 554-2514 (Telephone)
(314) 554-3484 (Telephone)
(314) 554-4014 (Facsimile)
AmerenUEService@ameren.com

Attorneys for AmerenUE

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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 September, 2010:

Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360
GenCounsel@psc.mo.gov
Eric.Dearmont@psc.mo.gov

Lewis R. Mills
Missouri Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230
Lewis.mills@ded.mo.gov
opcservice@ded.mo.gov

Cardwell Lumber Inc.
S. Craig Johnson
P.O. Box 1606
304 E. High Street, Ste. 100
Jefferson City, MO 65102
craigsjohnson@berrywilsonlaw.com

Three Rivers Electric Cooperative
Andrew Sporleder
1507 E. McCarty St., Suite B
Jefferson City, MO 65101
sporlederlawfirm@centurylink.net

/s/ *Wendy K. Tatro*
Wendy K. Tatro