

# 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 Highway 50 West, Jefferson )  
City, Missouri Location from Union Electric )  
Company to Three Rivers Electric Cooperative )

**File No. EO-2011-0052**

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## REPORT AND ORDER

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**Issue Date:** January 5, 2011

**Effective Date:** January 15, 2011

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### **Appearances**

**Craig S. Johnson**, Johnson & Sporleder, LLP, 304 East High Street, Suite 200, Post Office Box 1670, Jefferson City, Missouri 65102, for Applicant, Cardwell Lumber, Inc.

**Wendy K. Tatro**, Associate General Counsel, Union Electric Company, d/b/a Ameren Missouri, Post Office Box 66149, 1901 Chouteau Avenue, St. Louis, Missouri 63101, for Union Electric Company, d/b/a Ameren Missouri.

**Andrew J. Sporleder**, Johnson & Sporleder, LLP, 304 East High Street, Suite 200, Post Office Box 1670, Jefferson City, Missouri 65102, for Three Rivers Electric Cooperative.

**Lewis R. Mills, Jr.**, Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**Eric Dearmont**, Legal Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Commission, Independent of the Commission

**JUDGE: Kennard Jones, Senior Regulatory Law Judge**

### **REPORT AND ORDER**

**Syllabus:** Through this order, the Missouri Public Service Commission concludes that Cardwell Lumber's request to change its electric supplier is for a reason other than a rate differential and that such request is in the public interest. The Commission therefore finds in favor of the applicant and will grant the requested relief.

## **Background**

On August 21, 2010, Cardwell Lumber, Inc., filed an application with this Commission seeking approval to change its electric supplier from Union Electric Company d/b/a Ameren Missouri to Three Rivers Electric Cooperative. Cardwell is a Small Primary Service customer of Ameren, which is a configuration that holds Cardwell responsible for maintaining electric facilities beyond the “metering point.”

Cardwell states that its reasons for wanting a change of supplier are: the need to replace the primary facility distribution system with facilities that Cardwell is not responsible for maintaining; its preference for rural cooperative service; dissatisfaction with Ameren’s service, its right to use Three Rivers to serve new structures; its desire to have a single power supplier and avoid duplication of services; and, the absence of any adverse impact on Ameren.

Ameren opposes the change, arguing that the necessity of having to repair or replace Cardwell’s facilities does not provide a reason for why a change of supplier is in the public interest. The Staff of the Commission agrees that the application should be denied, but alternatively argues that Cardwell’s request constitutes a rate differential.

The Commission held an evidentiary hearing on November 12. The parties submitted post-hearing briefs on November 24. Citing to Commission decisions, all of the parties set out the following factors that may be considered when determining whether a change of supplier is in the public interest:

1. The customer’s needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;
2. Health or safety issues involving the amount or quality of power;

3. Alternatives the customer has considered, including alternatives with the present supplier;

4. 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 of supplier would result in a duplication of services or facilities, especially in comparison with alternatives available from the present supplier, which would include (a) the distance involved and the cost of any new extension, including the burden on others, and (b) the burden on the customer relating to the cost of time involved, not including the cost of the electricity itself;

7. 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)(b) above;

8. Efforts that 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 might have on any territorial agreements between the two suppliers in question, or on the negotiation of territorial agreements between suppliers.

The law with regard to changes of electric suppliers is that the Commission may order a change of supplier on the basis that it is in the public interest for a reason other

than a rate differential.<sup>1</sup> Although the above factors have been used by the Commission in past cases, the Commission's decisions have no precedential value.<sup>2</sup> Applications for changes of supplier are therefore decided on a case-by-case basis.

### **Findings of Fact**

1. Cardwell Lumber, Inc. is a Missouri corporation engaged in the lumber business at 5927 Business Highway 50 West, St. Martins, Missouri.<sup>3</sup>
2. Union Electric Company d/b/a Ameren Missouri is an electric utility subject to the jurisdiction of the Missouri Public Service Commission.<sup>4</sup>
3. Three Rivers Electric Cooperative is a rural electric cooperative.<sup>5</sup>
4. On August 21, 2010, Cardwell Lumber, Inc. filed an application with this Commission seeking approval to change its electric supplier from Ameren to Three Rivers Electric Cooperative.<sup>6</sup>
5. Cardwell is a primary customer of Ameren, which means after a certain metering point, Cardwell is responsible for maintenance of the electrical system serving its facilities, which includes 15 poles and 18 transformers.<sup>7</sup>
6. Upon moving onto the property, Cardwell did not know what to expect as an owner of a primary metered system.<sup>8</sup>

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

<sup>2</sup> *State ex rel. AG Processing, Inc. v. Public Service Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

<sup>3</sup> Stipulated to by parties.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Application filed on August 21, 2010.

<sup>7</sup> Transcript, page 52, lines 8-11.

<sup>8</sup> Transcript, page 137, lines 21-25.

7. Cardwell has businesses in Novelty and Frankford, Missouri which are served by cooperatives and Cardwell is not responsible for maintenance of those systems.<sup>9</sup>
8. Because Cardwell receives service under a small primary service rate, Ameren saves on the investment in the installation and the customer receives a lower kilowatt hour rate.<sup>10</sup>
9. Ameren told Cardwell that it would be cheaper to pay the rate for a primary metering system and maintain the system, which should stand a long time, than it would be to change to a secondary metering system.<sup>11</sup>
10. The metering pole belongs to Cardwell. The meter box belongs to Ameren. The transformers attached to the pole belong to Ameren and the fuses on top of the pole belong to Cardwell.<sup>12</sup>
11. If the fuses on top of the primary metering pole have tripped, then the line to the meter is cold.<sup>13</sup>
12. Cardwell has been told by Meyer Electric, a contractor, that the fuses are Ameren's responsibility.<sup>14</sup>
13. Although the fuses at the top of the metering pole belong to Cardwell, Ameren has repaired/replaced a fuse at least once.<sup>15</sup>

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<sup>9</sup> Transcript, page 76, lines 18-24.

<sup>10</sup> Transcript, page 148, lines 4-11.

<sup>11</sup> Transcript, page 99, line 18- page 100, line 8.

<sup>12</sup> Transcript, page 149, line 22 – p. 150, line 7.

<sup>13</sup> Transcript, page 181, lines 23-25.

<sup>14</sup> Transcript, page 75, lines 13-21.

<sup>15</sup> Transcript, page 185, lines 11-14.

14. Although Ameren's service manual states that the pole upon which the primary meter is located does not belong to Ameren, this is not stated in the company's tariff.<sup>16</sup>
15. Cardwell has been unclear as to whether it is responsible for maintaining the primary metering pole, including the fuses that sit on top of the pole.<sup>17</sup>
16. Cardwell does not have any in-house employees that are qualified to do work on high voltage lines.<sup>18</sup>
17. Cardwell does not want to be in the business of maintaining poles, lines, transformers, etc. and specifically does not want to be a primary customer.<sup>19</sup>
18. In order to serve Cardwell's property, Ameren's line must cross Highway 50 to the primary service pole on Cardwell's side of the Highway.<sup>20</sup>
19. Three Rivers' service pole is on the same side of the highway and within 10-12 feet of Cardwell's office.<sup>21</sup>
20. In 2007, because it was no longer interested in maintaining the high voltage system, Cardwell asked Ameren to come out and look at the system.<sup>22</sup>
21. In 2007, upon looking at Cardwell's system, Ameren told Cardwell that the system was deteriorated and that it was not interested in taking it over; further, that if Ameren did

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<sup>16</sup> Transcript, page 191, lines 13-20.

<sup>17</sup> Transcript, page 61, lines 22-25; page 65, line 22 – page 66, line 9.

<sup>18</sup> Transcript, page 76, lines 13-17.

<sup>19</sup> Transcript, page 78, lines 11-19.

<sup>20</sup> Transcript, pages 56-58.

<sup>21</sup> Transcript, pages 56-58.

<sup>22</sup> Transcript, page 82, lines 6-19.

take it over, it would be very expensive. Despite Cardwell's prompt, Ameren did not give an estimate of the cost.<sup>23</sup>

22. Cardwell approached Ameren a second time about Ameren taking over the system and was again not given a quote, but was told that it would cost an "arm and a leg."<sup>24</sup>

23. As a result of the December 2007 ice storm, Cardwell had lines down in its yard and, because Ameren had to attend to its own facilities and did not have the manpower or time, it could not assist Cardwell.<sup>25</sup>

24. In 2008 Cardwell sought to change its electric supplier from Ameren to Three Rivers due to transformer, pole and line liability and the problems with Ameren.<sup>26</sup>

25. Cardwell's 2008 application was not filed by an attorney and was dismissed by the Commission on April 4, 2009, for failure to prosecute.<sup>27</sup>

26. All parties agree that the electrical system Cardwell is now responsible for maintaining has to be repaired or replaced, as Ameren and Three Rivers have made it clear that they want no part of the current system.<sup>28</sup>

27. Since 2004, when it moved onto the premises, Cardwell has spent about \$13,000 with Meyer Electric for maintenance or repair of the system.<sup>29</sup>

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<sup>23</sup> Transcript, page 83, lines 11-22.

<sup>24</sup> Transcript, page 84, lines 3-7.

<sup>25</sup> Transcript, page 84, lines 23-25. Page 158, lines 7-22.

<sup>26</sup> Exhibit 15.

<sup>27</sup> See Case No. EO-2009-0246.

<sup>28</sup> Transcript, page 78, line 22 – page 79, line 2. Joint Stipulation of Facts and Law.

<sup>29</sup> Transcript, page 88, lines 12-14.



28. Cardwell has discussed with Ameren reconfiguring the lines and poles on Cardwell's property in order to make room for business operations, but Ameren was not amenable to any alternatives suggested by Cardwell.<sup>30</sup>

29. Cardwell has been under the impression that Ameren tells Cardwell what it wants to do and that's the end of the conversation.<sup>31</sup>

30. Cardwell's relationship with Ameren is strained and has been for some time. When Cardwell asks Ameren for things, Ameren tries to direct Cardwell in the direction that Ameren wants to go, rather than trying to address Cardwell's needs. Cardwell does not experience this at its other locations where it is served by rural cooperatives.<sup>32</sup>

31. Cardwell states that this case is not about rates.<sup>33</sup>

32. Cardwell understands that because it is a primary customer, it pays a lower monthly bill than it would if it were a secondary customer.<sup>34</sup>

33. Specific information concerning how much Cardwell would save, while staying with Ameren, if it went from a primary service rate to a general service rate, was not given to Cardwell until the date of the evidentiary hearing.<sup>35</sup>

34. If the Commission's order is unfavorable to Cardwell, then the company will shut its doors. If it is favorable, the company will grow its business.<sup>36</sup>

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<sup>30</sup> Transcript, page 103, line 16 – p. 104, line 10.

<sup>31</sup> Transcript, page 105, lines 1-10.

<sup>32</sup> Transcript, page 126, lines 14-16.

<sup>33</sup> Transcript, page 107, lines 5-6.

<sup>34</sup> Transcript, page 121, lines 20-23.

<sup>35</sup> Transcript, page 196, lines 7-17. Page 144, lines 7-22.

<sup>36</sup> Transcript, page 122.

35. Cardwell intends to expand the business into millwork and retail lumber.<sup>37</sup>
36. Cardwell will want Three Rivers to serve any new facilities on the property, while, without a change of supplier, the old facilities will continue to be served by Ameren.<sup>38</sup>
37. If Ameren had given Cardwell a bid when they first talked, Cardwell would not have pursued this case to hearing.<sup>39</sup>
38. Outages experienced by Cardwell were compounded by problems with their own system.<sup>40</sup>
39. Cardwell has had no outages due to Ameren for the last 3 years.<sup>41</sup>
40. Ameren's 2009 Missouri jurisdictional revenues were \$2.63 billion.<sup>42</sup>
41. Cardwell's total bill for the year 2009 was \$10,668.
42. If Cardwell gets permission to change suppliers, Ameren would not suffer any significant stranded investment.<sup>43</sup>
43. In the electric industry, rates are typically described as the price one would pay for some amount of usage.<sup>44</sup>
44. Cardwell's desire not to be responsible for maintaining electric lines and poles is a legitimate business decision.<sup>45</sup>

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<sup>37</sup> Transcript, page 36, lines 7-14.

<sup>38</sup> Transcript, page 126, lines 14-16.

<sup>39</sup> Transcript, page 131, lines 6-8.

<sup>40</sup> Transcript, page 142, line 10- p. 143, line 16.

<sup>41</sup> Transcript, page 160, lines 14-17.

<sup>42</sup> Ameren's Annual Report.

<sup>43</sup> Transcript, page 196, lines 1-4.

<sup>44</sup> Transcript, page 213, lines 13-16.

<sup>45</sup> Transcript, page 217, lines 3-10.

## Conclusions of Law

1. Section 393.106.2 RSMo states that the “public service commission, upon application made by an affected party, may order a change of supplier on the basis that it is in the public interest for a reason other than a rate differential.” Cardwell has filed such an application over which the Commission has jurisdiction. Also, as the party asserting this cause of action, the burden of proof lies with Cardwell.<sup>46</sup>
2. The first question the Commission must ask is whether the requested change is in the public interest. In post-hearing briefs, the parties have set out 10 factors that the Commission has used in past cases to determine whether a change of supplier is in the public interest. To entertain the parties, the Commission will discuss these factors. However, the Commission points out that its decisions have no precedential value and the Commission is not bound by *stare decisis*.<sup>47</sup> It follows that each Commission case is decided on a case-by case basis.

## Decision

### Public Interest

The First Factor: Whether Cardwell’s needs cannot adequately be met by Ameren with respect to either the amount or quality of power. Cardwell has not demonstrated that Ameren is unable to provide Cardwell enough power. Although there was discussion of outages, those outages appear to have been cause by Cardwell’s equipment, rather than Ameren’s.

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<sup>46</sup> *Stofer v. Dunham*, 208 S.W. 641 (Mo. App. 1919).

<sup>47</sup> *State ex rel. AG Processing, Inc. v. Public Service Comm’n*, 120 S.W.3d 732, 736 (Mo. Banc 2003).

Second: Health or safety issues with regard to the amount or quality of power.

There was some discussion concerning downed lines in Cardwell's yard during an ice storm. Those lines were Cardwell's responsibility. Ameren stated that it could not help during that time because it had to immediately tend to its own system. However, it is relevant that Cardwell does not want to be responsible for downed lines and that over the years Ameren has not adequately responded to Cardwell's concerns in this regard.

One single fact does stand out as to safety in the context of the public interest. That is, in order for Ameren to serve Cardwell, a single line must cross from Ameren's system on one side of Highway 50 to Cardwell's facility on the other. Because Three Rivers' lines are on the same side of the Highway as Cardwell's facilities, this would be unnecessary if Cardwell was served by Three Rivers.

Third: Alternatives the customer has considered, including alternatives with the present supplier. Cardwell realizes that its system must come down because of the condition it is in, and after repair/replacement, Cardwell does not desire to remain a primary customer responsible for maintaining an electric system. To do this, Cardwell has approached, and desires to work with, Three Rivers. It may be true that Ameren has recently presented Cardwell with alternatives. Cardwell, however, has expressed dissatisfaction with Ameren's timeliness and effectively forcing Cardwell to file the application for change of supplier. Cardwell has not therefore had a meaningful opportunity to consider Ameren's alternatives.

Fourth: Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply. Although there was discussion concerning "trips" with Cardwell's boiler, the company has not shown that Ameren was at fault. In fact,

it appears more likely than not that Cardwell's system was the cause. Nevertheless, there was no evidence that equipment has been damaged or destroyed. Though Cardwell made this assertion in its application filed in 2008, the facts do not support a finding as such.

Fifth: The effect the loss of the customer would have on the present supplier. It is clear, not only in dollar amounts but through statements made by Ameren, that the loss of this single customer would not be significant.

Sixth: Whether a change of supplier would result in duplicative services or facilities, especially in comparison with alternatives available from the present supplier, which would include (a) the distance involved and the cost of any new extension, including the burden on others and (b) the burden on the customer relating to the cost of time involved, including the cost of the electricity itself. Cardwell has stated that if it is not granted a change of supplier, it would close up. If that happens, the factor becomes irrelevant. On the other hand, there are indications that Cardwell intends to expand its business. In this case, if the Commission does not approve this change of supplier, then the structures currently on Cardwell's facilities will continue to be served by Ameren. If Cardwell adds new structures, it intends to have those structures served by Three Rivers. There would then be a duplication of services.

Seventh: The overall burden on the customer caused by the inadequate service, including any economic burden not related to the cost of electricity itself. Cardwell began its relationship with Ameren without knowing what its full responsibilities were. For instance, Cardwell, even on the day of the hearing, did not know who the metering pole belongs to. The company's confusion is well-founded. The fuses, on top of the pole,

belong to Cardwell. The transformers, on the sides of the pole, belong to Ameren as well as the meter which sits lower on the pole.

Since 2004, when Cardwell moved onto the premises, it has spent about \$13,000 for maintenance and repair of the system. There are no employees at the company qualified to work on high voltage lines and Cardwell does not desire to be responsible for its system, which consists of 15 poles and 18 transformers. Since 2004, Cardwell has tried to work with Ameren to no satisfaction. Cardwell's dissatisfaction is evident by having once unsuccessfully filed for an application for a change of supplier, only to again do so two years later. Cardwell has clearly been under a burden while a customer of Ameren.

Eighth: Efforts made by the present supplier to solve or mitigate the problems. Cardwell has made it clear that its relationship with Ameren is strained and has been for some time. This is largely due to Ameren's unwillingness or inability to address Cardwell's concerns over the past years to Cardwell's satisfaction. Only until recently, after the filing of this case, did Ameren give Cardwell a bid on building new electric facilities. Cardwell even states that if Ameren had given Cardwell this information some time ago, this hearing would not have been necessary. In fact, Cardwell's frustration with Ameren is such that if the Commission does not grant the change of supplier, Cardwell will close its business at St. Martins; which leads to the ninth factor.

Ninth: The impact the Commission's decision may have on economic development, on an individual or cumulative basis. As stated above, if the Commission does not approve the change of supplier, Cardwell has indicated that it will close its business. On the other hand, if the Commission approves the transfer, Cardwell intends to expand.

Tenth: The effect the granting of authority might have on any territorial agreements or on the negotiation of territorial agreements between the two suppliers. The parties all agree that this factor is not at issue.

Both Staff and Ameren refer to Commission cases, finding that customer preference alone is an insufficient basis to order a change of supplier. However, if thought out, a customer's preference is what drives an application for a change of supplier. The customer "prefers" another supplier over its current supplier. Most certainly, some of the factors discussed above play a part in a customer's preference for an alternate supplier.

Notably, a customer's preference is guided by whether its needs can be met by the current supplier, health and safety issues, available alternatives, damage to equipment, whether there will be duplicative services, overall burden on the customer, efforts made by the current supplier to solve or mitigate problems and, particularly in this case, the impact the decision may have on economic development. That leaves only two factors that do not impact customer preference; effect on territorial agreements and the effect the loss of the customer will have on the present supplier.

Nevertheless, if the Commission does not grant a change of supplier, the line running across Highway 50 will remain and pose a possible safety issue. Further, Cardwell will either shut its doors or, if Cardwell develops the property, it will choose to employ Three Rivers as the supplier for any new structures. This will result in duplicative services. If the Commission grants the change of supplier, Cardwell will remain open and may even expand its operations. It will not be responsible for maintaining equipment it neither has the expertise nor desire to maintain. Cardwell's preference runs much deeper than a mere whim. The company has had a bad relationship with Ameren and has had better

experiences with cooperatives at its other locations. The Commission concludes that the public interest will be served by granting Cardwell's application.

### **Reason Other Than A Rate Differential**

The second prong of the relevant statute is that Cardwell's reason for the change be for something other than a rate differential. Cardwell's reasons are set out, and none of those reasons have to do with a rate differential. Ameren's rates are described in its tariff at page 27. None of these rates have anything to do with the cost associated with Cardwell choosing to rebuild the system with Three Rivers as opposed to Ameren. Cardwell states that this case is not about rates, while Staff states that typically, when we discuss rates, we are talking about the price one would pay for some amount of usage. The Commission concludes that Cardwell's reason for a change of supplier is for reasons other than a rate differential.

The Commission has concluded that Cardwell's request to change suppliers is for a reason other than a rate differential and that such a change is in the public interest. The Commission will therefore grant Cardwell's request to change its supplier from Ameren to Three Rivers.

### **THE COMMISSION ORDERS THAT:**

1. Cardwell Lumber, Inc.'s application requesting a change of electric supplier from Union Electric Company d/b/a Ameren Missouri to Three Rivers Electric Cooperative is granted.



2. This order shall become effective on January 15, 2011.
3. This case shall be closed on January 16, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett,  
Gunn, and Kenney, CC., concur  
and certify compliance with the  
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 5<sup>th</sup> day of January, 2011.