

**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	)	
Electrical Suppliers at its 5927 Highway 50 West,	)	
Jefferson City, Missouri Location from Union	)	<b><u>Case No. EO-2011-0052</u></b>
Electric Company to Three Rivers Electric	)	
Cooperative.	)	

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for the reasons stated herein recommends that the Missouri Public Service Commission (“the Commission”) deny the request of Cardwell Lumber Inc. (“Cardwell” or “the Applicant”) to change its electric service provider from Union Electric Company d/b/a AmerenUE (“AmerenUE”) to Three Rivers Electric Cooperative (“Three Rivers”). In support of this recommendation, Staff states as follows:

**PROCEDURAL BACKGROUND**

1. On August 25, 2010, Cardwell, by and through counsel, filed an Application with the Commission, seeking authority to change its electric supplier from AmerenUE to Three Rivers. Cardwell’s Application was accompanied by a motion requesting expedited treatment.
2. On August 31, 2010, the Commission issued an Order Directing Notice and Order Directing Filing, ordering Staff to file its recommendation no later than September 30, 2010.
3. On September 24, 2010, AmerenUE filed its Response of AmerenUE, generally opposing the Applicant’s request for a change of electrical supplier.
4. On September 29, 2010, Cardwell filed its reply to AmerenUE’s September 24, 2010 filing. Due to the timing of this filing, any information or arguments contained therein and

not present in Cardwell's original Application or discovered in the course of Staff's investigation, are not discussed in the Staff Memorandum, attached hereto as Appendix A and incorporated by reference herein.

#### **STAFF'S INVESTIGATION**

5. As indicated in the attached Staff Memorandum, Staff has conducted an investigation of the request contained in Cardwell's Application. Most notably, Staff conducted an on-site examination of the electrical facilities present on Cardwell's property, speaking with representatives from Cardwell and AmerenUE.

6. As indicated in Appendix A, Cardwell currently takes three-phase electric service from AmerenUE under AmerenUE's small primary service (SPS) rate. Under this SPS classification, Cardwell is currently responsible for the maintenance of the electrical facilities on its property. Based upon Cardwell's Application, Cardwell desires to move to an arrangement under which this is not the case and has contacted both AmerenUE and Three Rivers about this possibility.

7. Based upon its investigation, Staff understands that Three Rivers may have offered to provide Cardwell with three-phase electric service at a cost to Cardwell that is less than that quoted by AmerenUE to install a new service point necessary to provide single-phase service under a small general services (SGS) rate.

#### **APPLICABLE LAW**

8. Section 393.106.1(2), RSMo (2000)<sup>1</sup> provides the statutory basis for what AmerenUE generally describes as "Missouri's anti-flip-flop laws":

Once an electrical corporation...lawfully commences supplying retail electric energy to a structure through permanent service

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<sup>1</sup> Unless otherwise noted, all references to statute refer to the Missouri Revised Statutes (2000) as currently supplemented.

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, RSMo, and section 394.080, RSMo, or pursuant to a territorial agreement approved under section 394.312, RSMo.

9. As indicated in Appendix A, there are no territorial agreements between AmerenUE and Three Rivers that are relevant to this matter.

10. Section 393.106.1(2) also provides that statutory requirements for a change of supplier, stating that the Commission shall review all such requests in order to determine if they are in the public interest:

**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 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...

Emphasis added.

#### **STAFF CONCLUSION AND RECOMMENDATION**

11. As indicated in Appendix A, while it is possible that the arrangement allegedly offered by Three Rivers “would be in the best economic interest of Cardwell, this single economic consideration, in and of itself, does not satisfy the required public interest standard.”

To the contrary, as indicated in Appendix A:

The charges required of Cardwell in order to obtain a new service point and facilitate a move from AmerenUE’s SPS to its SGS rate classification are contained in AmerenUE’s Commission-approved tariffs. An argument based upon the detriment of this estimated cost of this reclassification versus the cost to obtain single-phase or three-phase service from Three Rivers is an argument based upon a rate differential, which [by statute] is to be excluded from the public interest analysis.

12. Notwithstanding these economic concerns, based upon Staff's investigation, Staff believes that Cardwell's outages have primarily been caused by problems occurring on customer-owned equipment. "In Staff's opinion, AmerenUE has provided electric service to Cardwell according to the tariffs approved by the Commission and has generally provided assistance when approached."

**WHEREFORE**, for the reasons indicated in this pleading and the attached Staff Memorandum, Staff recommends that the Commission issue an order denying Cardwell's request to change its electric service provider from the AmerenUE to Three Rivers.

Respectfully submitted,

**/s/ ERIC DEARMONT**

Eric Dearmont

Assistant General Counsel

Missouri Bar No. 60892

Attorney for the Staff of the  
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-5472 (Telephone)

(573) 751-9285 (Fax)

[eric.dearmont@psc.mo.gov](mailto:eric.dearmont@psc.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30<sup>th</sup> day of September, 2010.

**/s/ ERIC DEARMONT**

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File - Case No.  
EO-2011-0052, Application of Cardwell Lumber Inc. Requesting  
Authorization to Change Electric Service Providers

FROM: Alan J. Bax, Energy Department – Engineering Analysis

/s/ Daniel I. Beck 09/30/10      /s/ Eric Dearmont 09/30/10  
Energy Department / Date      Staff Counsel's Office / Date

SUBJECT: Staff Recommendation to Deny Cardwell Lumber Inc.'s Request to  
Change Electric Service Provider from AmerenUE to Three Rivers  
Electric Cooperative.

DATE: September 30, 2010

### **SUMMARY OF RECOMMENDATION**

Staff recommends that the Missouri Public Service Commission (Commission) deny the request of Cardwell Lumber Inc. (Cardwell or Applicant) to change its electric service provider from Union Electric Company d/b/a AmerenUE (AmerenUE or Company) to Three Rivers Electric Cooperative (Three Rivers). For the reasons described herein, Staff believes that Cardwell cannot demonstrate that such a request is in the public interest for any reason other than a rate differential.

### **PROCEDURAL BACKGROUND**

On August 25, 2010, Cardwell filed an Application with the Commission seeking approval to change its electric service provider at 5927 Business Highway 50 West, Jefferson City, Missouri, 65109, from AmerenUE to Three Rivers. On August 31, 2010, the Commission joined AmerenUE and Three Rivers as parties and directed each to respond to the Applicant's request. In addition, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to file a recommendation regarding the

Application. On September 20, 2010, Three Rivers responded to the Commission's Order, stating that it has no position on the merits of Cardwell's request. On September 24, 2010, AmerenUE responded to the Commission's order, presenting numerous arguments in opposition to the requested change of supplier.

Cardwell filed a similar request in December 2008 (EO-2009-0246); however, the Commission dismissed that application because Cardwell was not represented by counsel.

### **OVERVIEW OF REQUEST**

Cardwell purchased a nearly twenty-six (26) acre complex in November 2004 and conducts business at the location as Cardwell Hardwoods. Cardwell owns and operates electric facilities that provide three-phase power for equipment utilized in treating lumber. Cardwell currently takes electric service from AmerenUE under AmerenUE's small primary service (SPS) rate. As a small primary service customer, AmerenUE provides to Cardwell 3-phase, 12 kV service and Cardwell owns and operates the electrical facilities on its property needed to power its equipment. Cardwell is responsible for maintaining, repairing and keeping up these electrical facilities. Cardwell no longer desires to maintain its electrical facilities, stating that they are in "desperate" need of repair.

The electrical facilities present on Cardwell's premises consists of at least ten (10) poles and twelve (12) transformers, most of which were initially designed and installed over thirty years ago. Cardwell states these facilities present a safety concern and, therefore, Cardwell prefers to seek an arrangement under which the utility would own and/or maintain these electric facilities. Staff understands Cardwell's position to be that

while either AmerenUE or Three Rivers are capable of providing the three-phase service desired, Three Rivers would accomplish this preferred arrangement at a price approximately equal to that quoted by AmerenUE for single-phase service. Cardwell also mentions its personal preference for electric cooperatives and cites its longstanding relationship with an electric cooperative at another of its manufacturing locations. For these reasons, Cardwell requests that it be allowed to change its electric service provider from AmerenUE to Three Rivers.

#### **STATUS OF PARTIES**

Three Rivers is an electric cooperative organized under Chapter 394, RSMo (2000). It provides electric service to its members in seven Missouri counties, including Cole County. Cardwell's premises is located in Cole County. The Commission has jurisdiction regarding requests to change electrical suppliers to and from electric cooperatives.

AmerenUE is an electrical corporation subject to the jurisdiction of the Commission. AmerenUE and Three Rivers have no territorial agreements relevant to Cardwell's request.

Three Rivers is not required to file annual reports with the Commission or to pay assessment fees. Staff is unaware if Three Rivers has any pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of this filing. AmerenUE is current on its required annual report filings with the Commission and on the payment of its Commission-imposed assessment fees. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

**STAFF INVESTIGATION**

Staff met with Mark Cardwell, vice-president of Cardwell, and Craig Johnson, counsel for Cardwell, at 5927 Business Highway 50 West, Jefferson City, Missouri, on September 10, 2010. Mark Cardwell indicated that his strained relationship with AmerenUE began in 2004 when AmerenUE required Cardwell to pay a deposit in order to establish an account despite providing evidence of Cardwell's good credit. Staff has verified that the deposit required was within the guidelines of the applicable tariff (governing SPS customers) and that AmerenUE returned the amount, plus interest, in a timely manner as specified in AmerenUE's tariff.

Mark Cardwell also expressed displeasure with its outage history at the property and in particular, with the response of AmerenUE in the aftermath of the ice storm in December 2007. According to Mr. Cardwell, the ice storm damaged electrical facilities on the property, and he therefore contacted AmerenUE and reported the damage. According to Mr. Cardwell, linemen dispatched to the property in response advised him that it would be necessary to contact a contractor to repair the damage. Staff requested and received outage reports from AmerenUE, which indicate that the B-phase of AmerenUE's system was unavailable for over forty-five (45) hours. Given the challenges Mr. Cardwell reported in obtaining a contractor to repair the damage to Cardwell's electric facilities, Cardwell's three-phase operations on the property were out for an even longer period.

Mr. Cardwell stated that following the 2007 ice storm, the property experienced low voltage, a condition that caused his boiler to malfunction. As a result, Mr. Cardwell contacted AmerenUE, which installed monitoring devices in January of 2008.



AmerenUE did record several boiler “trips”; however, AmerenUE’s tests indicated that the incoming voltage supplied by AmerenUE to the property was within acceptable limits. According to the Company, AmerenUE offered several suggestions in an effort to eliminate or lessen the frequency of the boiler “trips”.

AmerenUE records indicate no extended outages at the Cardwell property during calendar year 2008. AmerenUE’s records show two (2) outages in 2009, both as of a result of a 12 kV fuse on Cardwell’s property. According to AmerenUE, Cardwell reportedly requested that AmerenUE repair the fuse on both occasions and AmerenUE honored those requests.

Mark Cardwell informed Staff that Cardwell Hardware curtailed its lumber treating operations in early 2010, and used electric service only at an office building. AmerenUE continues to bill Cardwell according to the SPS tariff rate schedule, which includes a higher service charge and a minimum demand charge that are not present in a secondary tariff rate schedule, such as the small general service (SGS) rate. In an effort to lower his costs, Mark Cardwell reportedly contacted AmerenUE, attempting to obtain a more favorable rate. According to AmerenUE, Mr. Cardwell indicated that he no longer planned to operate equipment requiring three-phase electrical service. Hence, AmerenUE offered to place Cardwell on AmerenUE’s SGS tariff, which carries a considerably lower customer charge than the SPS rate and contains no minimum demand component. However, movement from the SPS rate classification to the SGS rate classification requires the installation of a new service point, the cost of which would have to be paid by Cardwell in advance of construction. Specifically, this pre-payment

requirement is contained in AmerenUE's tariffs on the Schedule No. 5, Third Revised Sheet No. 159, which states as follows:

\* M. Modification or Enlargement of Distribution System Modifications or enlargements of Company's distribution system associated with additional electrical load of existing customers shall be performed at no cost to customer provided the estimated additional annual net revenue to be received equals or exceeds the estimated cost of the distribution system modifications or enlargements. Where the estimated additional annual revenue to be received is less than Company's estimated modification or enlargement costs, or such revenue cannot be accurately projected, or customer credit standing acceptable to Company cannot be established, customer or responsible party will be required to enter into a guarantee agreement, as provided in Section III.P prior to the commencement of construction by Company. Additional annual net revenue, referred to herein, excludes customer's existing net revenue during the twelve months immediately preceding the extension modification from the guarantee agreement calculations. Where modifications or enlargements of Company's distribution system are performed at the request of any existing customer and no additional revenue is anticipated therefrom, customer shall pay, in advance, the total estimated costs associated with such changes.

Following these discussions with AmerenUE, Mr. Cardwell mentioned contacting Three Rivers about the possibility of providing service to this property. According to Mr. Cardwell, the communications with Three Rivers included the possibility of providing three-phase electric service, an option that would give Cardwell some additional latitude in future decisions involving manufacturing processes. Mr. Cardwell contended that the cost contemplated by Three Rivers to provide three-phase service was favorable when compared to AmerenUE's single-phase estimate.

#### **STAFF RECOMMENDATION**

Staff recommends that the Commission deny Cardwell's request to change its electric service provider from AmerenUE to Three Rivers. As required by the applicable statutes and Commission rules, in order to attain Commission approval for a change of

electric supplier, an applicant must demonstrate that the request is in the public interest. This public interest determination must be based upon factors other than rate differentials, i.e. factors including, but not limited to safety and reliability.

While it is possible, and perhaps even probable, that obtaining single-phase or three-phase electric service from Three Rivers would be in the best economic interest of Cardwell, this single economic consideration, in and of itself, does not satisfy the required public interest standard. The charges required of Cardwell in order to obtain a new service point and facilitate a move from AmerenUE's SPS to its SGS rate classification are contained in AmerenUE's Commission-approved tariffs. An argument based upon the detriment of this estimated cost of this reclassification versus the cost to obtain single-phase or three-phase service from Three Rivers is an argument based upon a rate differential, which is to be excluded from the public interest analysis.

Notwithstanding these economic/rate differential concerns, Cardwell has cited several service quality concerns that it has experienced since acquiring the property in November 2004. Based upon Staff's investigation, Staff believes that Cardwell's outages have primarily been caused by problems occurring on customer-owned equipment. In Staff's opinion, AmerenUE has provided electric service to Cardwell according to the tariffs approved by the Commission and has generally provided assistance when approached.

Staff would concur that the electric facilities on the premises are in need of repair. However, despite the safety concern highlighted by Cardwell, it is not the responsibility of AmerenUE to acquire and/or repair/replace these facilities under the tariffs currently approved by the Commission.

For these reasons, Staff recommends that the Commission issue an order denying Cardwell's request to change its electric service provider from AmerenUE to Three Rivers.

**CARLA K. SCHNIEDERS**  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: August 25, 2012  
Commission Number: 08533187