

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

In the Matter of Union Electric Company, d/b/a
AmerenUE's Tariffs to Increase Its Annual
Revenues for Electric Service

)
)
)

Case No. ER-2008-0318

**CONCURRENCE OF COMMISSIONER JEFF DAVIS IN THE
COMMISSION'S ORDER DENYING APPLICATIONS FOR REHEARING
FILED BY NORANDA, PUBLIC COUNSEL, AND AARP AND DENYING
NORANDA'S MOTION FOR STAY**

I respectfully concur fully with my colleagues in the reasoning and decision to deny the motions for rehearing filed by Noranda, the Office of Public Counsel and AARP as well as the motion to stay filed by Noranda. With regard to the points raised by these parties and the minority writing in this case I wish to provide greater detail regarding the majority's decision in regard to the following specific issues:

OVERVIEW OF THE CASE:

The final true-up reconciliation filed by the Missouri Public Service Commission staff states unequivocally that, at a minimum, AmerenUE is entitled to recover approximately \$66 million.

The cornerstone of the PSC Staff's case is Stephen Hill's return on equity recommendation of 9.5%. The record demonstrates that, if adopted, Mr. Hill's would be the lowest commission-authorized return on equity in the country for any "vertically-integrated" utility. Hill's testimony is suspect for a myriad of reasons and there is certainly no evidence in the record to support the contention that AmerenUE merits the lowest return on equity of any utility in its class.

There is a plausible explanation for the PSC Staff's position in this case. The PSC staff had the advantage of reviewing AmerenUE's case and testimony before filing its testimony in this case. Dr. Roger Morin, Ameren UE's expert witness for cost of capital, proffered testimony of a 10.9% return on equity for AmerenUE. If you average Mr. Hill's recommended return on equity with that of Dr. Roger Morin, the result is 10.2%. It is my impression, based on the evidence in this case as well as knowledge and experience, that the PSC Staff never intended for this Commission to adopt Mr. Hill's original position. Rather, they took that position to afford themselves maximum negotiating room with AmerenUE in attempting to settle the rate case.

The Office of Public Counsel (OPC), Missouri Industrial Energy Consumers (MIEC) and the Missouri Energy Group (MEG) all supported AmerenUE receiving the same return on equity awarded by this Commission in the previous AmerenUE ratecase - 10.2%. If the PSC Staff's position is adjusted to that same 10.2% recommendation, the result would increase AmerenUE's rates by another \$33.4 million pursuant to the true-up reconciliation filed in this case by the PSC Staff on January 5, 2009. This one adjustment pushes staff's overall position to approximately \$100 million.

Once the return on equity difference is addressed, OPC differs from the PSC Staff on only one other issue if we assume that OPC concurred with all of the staff issues on which OPC did not file testimony. That issue, depreciation on the Callaway nuclear power plant, is worth approximately \$7.2 million. Thus, if the Commission adopted the 10.2% return on equity position referenced earlier in this order and found for OPC on every other issue they supported in this case, AmerenUE would still be entitled to approximately \$92 million in new revenue from the ratepayers in this case.

Now, consider that AmerenUE originally requested approximately \$251 million in new revenues when it filed this case on April 4, 2008. The company has settled several issues and since reduced that request to approximately \$188 million as reflected in the PSC Staff's true-up reconciliation. Thus, the true difference between AmerenUE and the PSC Staff's position in this case is approximately \$88 million. The difference between AmerenUE and the OPC appears to be approximately \$95.2 million due to OPC's position on depreciation.

The decision to award AmerenUE slightly more than two-thirds of the disputed \$88 - \$95 million is a significant one in that every additional \$20 million of revenue will cost the average consumer another one percent on their bill at a time when customers and businesses can least afford it.

How can the Commission do this to consumers? The Commission is required to do so for two reasons: (1) the law requires us to set just and reasonable rates that afford the utility the opportunity to earn a return on its investment comparable to that of other similar endeavors; and (2) this is the decision that the facts in the case compelled a majority of the Commission to write. These points are interwoven in the following issues:

Return on Equity & Fuel Adjustment:

AmerenUE is a vertically-integrated utility. This means that it owns and operates electricity-generating plants, transmission lines as well as a distribution system. The national average for return on equity in 2008 was reported as being 10.61%. It should

be further noted the Illinois Commerce Concurrence awarded AmerenUE's Illinois affiliates a 10.65% return on equity.

Our decisions on the issue of return on equity should not unthinkingly mirror those numbers, but a decision in that range is a lot more grounded in reality than the one recommended by some of the parties and the minority in this case. The minority would have us adopt a recommendation approximately 40 basis points below the national average and 45 basis points below that awarded by the Illinois Commerce Commission. Further, they would deny AmerenUE millions of dollars in fuel costs, which would effectively deny AmerenUE the opportunity to even earn its allowed return on equity.

What does this mean for Missouri? A difference of 40 or 45 basis points from the national average could amount to millions of dollars and be a serious disincentive to utility capital investment in Missouri. This statement should not be construed to mean that AmerenUE would fail to provide "safe and adequate" service. It means the minority of the Commission could unwittingly be incenting AmerenUE's parent corporation to invest discretionary capital in Illinois and elsewhere because of the low return on equity they would award AmerenUE.

The evidence in this case demonstrates that AmerenUE's expert, Dr. Morin, is a preeminent expert in the field and very credible. That being said, he did appear to be "massaging" his numbers to stick to his 10.9% recommendation in this case. Dr. Morin's two most compelling points of his testimony were: (1) any DCF calculation should be based on quarterly dividends and (2) when comparing proxy groups, two grades or notches is a significant difference requiring an adder. The Commission needs

to study Morin's argument on "flotation costs" either in the context of a special docket to look at return on equity or in the context of a rate case where a utility has actually issued stock during the historic test year.

Mike Gorman is also a solid, reliable expert for return on equity testimony. His strength is his ability to distill his testimony down to points that commissioners can easily understand. Like Dr. Morin, Gorman also gave the impression that he was trying to "massage" the numbers toward his 10.2% recommendation.

Dr. Morin and Mike Gorman were the most credible experts on the issue in this case. The Commission's return on equity decision rightly fell between their two recommendations. In the end, the analysis of the facts tilted more towards Dr. Morin's end of the spectrum. Gorman's failure to use a quarterly DCF analysis coupled with the strained reasoning of his risk-premium analysis lead this commission to a much higher result. In conclusion, the majority's risk-premium discussion says everything that needs to be said on that issue with regard to the Commission's specific finding of a 10.76% return on equity.

Although not part of this case, two subsequent events work to underscore the rightness of the majority's decision in this case and undermine the minority's position that AmerenUE is seemingly without much risk. The first is the ice storm of January 26, 2009, and the second is the widely-reported news story that AmerenUE has slashed its dividend by approximately 39% or approximately \$1.00 per share.

Excluding storm recovery costs that could cost an untold amount of money, AmerenUE estimated the January 26, 2009, storm could cost the company \$70 million due to the loss of electric sales to Noranda. Ameren subsequently cut dividends by

approximately \$1.00 per share. One can only speculate what the dividend cut would have been had the commission minority had one more vote and reduced AmerenUE's proposed rate increase by at least another \$25 million and denied half of their prudently incurred fuel costs, but one thing ought to be clear – if AmerenUE was rolling in money like the minority and some of the parties claim, they wouldn't have cut their dividends by \$1.00 per share.

The minority's decision to support a 10.2% return on equity with marginal or no recovery of fuel expenses approaches the point where they would impair the company's ability to attract capital on a going forward basis. A low return on equity is not fatal to Ameren's ability to attract capital in the market, but the inability to earn that low return on equity might be in this context. By coupling a low return on equity with no fuel adjustment clause or a marginal fuel adjustment clause, the minority is effectively denying AmerenUE even the basic opportunity to earn their allowed return on equity. Why would any halfway intelligent person buy Ameren equity for the opportunity to earn 10.2% when a historical review of their recent inability to earn that amount and AmerenCILCO, AmerenUE's Illinois affiliate, recently issued senior secured notes at 8.875%?

In conclusion, the State of Missouri is not an island. The minority's overall recommendation in this case is confiscatory at best and "stealing by design" at its worst. Regulation of this nature, if allowed to go unchecked, could work to unwittingly deny AmerenUE's attempt to build a new nuclear plant even before it gets off the ground.

CAPITAL STRUCTURE ARGUMENTS:

The majority's decision on this issue is correct. Mr. O'Bryan's testimony on the issue was credible and Mr. Hill's testimony was not. O'Bryan's testimony is further supported by the fact that Mike Gorman submitted direct testimony on the issue of capital structure. Despite the fact that he submitted rebuttal, surrebuttal and live testimony in this case, one would think that Mr. Gorman, if he disagreed with Mr. O'Bryan's testimony, would have stated as much since the issue was valued at approximately \$7 million. Gorman is an accomplished witness in many of these areas and his silence on a \$7 million issue that was necessary to compute the company's overall rate of return can certainly be construed as his acceptance of Mr. O'Bryan's position.

NORANDA'S FINANCIAL SITUATION:

Obviously, Noranda and many other industrial consumers are struggling for their very survival. Noranda, to its credit, offered its own class cost-of-service study in this case, but then signed a stipulation settling the rate design issue that was agreed to by all of the parties to this case, except for the PSC Staff.

In seeking to shift a greater portion of costs to the other classes of ratepayers served by AmerenUE, it would have been helpful to this Commissioner and possibly other Commissioners, if Noranda had presented information, including but not limited to the following issues:

- (1) whether or not the operation of an aluminum smelting operation in Missouri could help attract other manufacturing jobs to Missouri and whether the absence

- of such facility could be detrimental to retaining and attracting jobs to Missouri and the area;
- (2) whether maintaining the operation of aluminum smelters is important to the nation's manufacturing independence;
 - (3) the rates charged to other aluminum smelters in the United States as well as globally in comparison to those charged by AmerenUE to Noranda; and
 - (4) whether Noranda ships aluminum to any other Missouri manufacturers, particularly automobile manufacturers or any other industry thought to be struggling, who will in turn have to charge higher prices for the commodities they sell.

In summary, Noranda's facts concerning job loss and the global price of aluminum are both compelling and concerning; however, I just did not feel Noranda made a compelling enough case here to justify any further rate freeze or reduction when the Commission has decided the revenue requirement should be increased. Like AmerenUE's motion for rehearing, Noranda's motion for a stay flies in the face of a stipulation and agreement signed by counsel on behalf of Noranda that certainly gives the appearance of acknowledging a rate increase between \$80 million and \$160 million is in order.

Union Job Training Issue:

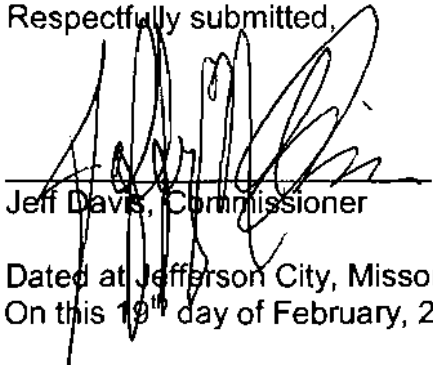
Although not raised in the motions for rehearing, it is worth noting that the majority discussed certain union complaints beginning on page 109 of the Commission's order. In response to questions from this Commissioner, AmerenUE responded with Exhibit #78 as noted in footnote 343 of the opinion. The Commission based its decision to award \$1.77 million to AmerenUE on the information provided by the company in that footnote and this

Commissioner expects AmerenUE to honor its pleading as well as the intent of the Commission majority by using the money as outlined in Exhibit #78 and amended by the Commission. If AmerenUE does not proceed to comply with the report and order in the prescribed manner for this issue, AmerenUE or the affected unions should notify this Commission immediately so that further action may be taken.

Conclusion:

These are tough issues and tough times. The lack of trust demonstrated by the parties is certainly understandable given the history and the circumstances. This Commissioner appreciates how the parties were able to put aside some of their philosophical differences and come together to settle many of the disputed issues. Such cooperation, combined with a certain degree of imagination, may be necessary if we're going to successfully navigate through the current economic climate and achieve long-term results that benefit all Missourians.

Respectfully submitted,



Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 19th day of February, 2009.