

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

Noranda Aluminum, Inc., et al.,)	
)	
Complainants,)	
)	
v.)	File No. EC-2014-0223
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

INITIAL POST-HEARING BRIEF OF AMEREN MISSOURI

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COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company” or “Ameren Missouri”), and for its Initial Post-Hearing Brief states as follows:

I. INTRODUCTION/SUMMARY OF ARGUMENT

In this case, Noranda Aluminum Inc. and the other Complainants¹ are asking the Commission to do something that it has never done before—change rates for a Commission-regulated utility without the benefit of a cost of service study based on a test period which provides a reasonable proxy for what the utility’s cost of service will be in the future after new rates are set. Without such a study, there is no reliable information to accurately establish what costs Ameren Missouri is likely to incur in order to serve its customers in the future when any new rates would be in effect. Complainants argue that because Ameren Missouri's actual, per-book earnings (unadjusted to reflect proper regulatory accounting for costs and revenues) exceeded its Commission-authorized return in a past period, it is appropriate to reduce the present and prospective rates Ameren Missouri will charge customers for service. They assert this argument notwithstanding the fact there has been no showing that costs, revenues and rate base in this past period have anything whatsoever to do with what costs, revenues and rate base

¹ Complainants consist of Noranda and 37 residential customers. In this brief they will be referred to as "Complainants" or "Noranda."

will be in the future.

The Complainants bear the burden of proof in this case and the Commission has properly described it as a very heavy burden.² The evidence adduced in this case shows that Complainants have not come even remotely close to meeting that burden for several reasons.

First, as alluded to above, under Missouri law, ratemaking is a prospective exercise. Utilities are not allowed to recoup any past "under-earnings" that may exist in any historic period, nor are they required to return (via a refund or via some prospective adjustment in future rates) past "over-earnings."³ Of course, in any historic period, every utility's per-book earnings will be above or below the Commission-authorized return from the last rate case—they will never, or almost never, exactly match the last authorized return. Over the past decade, Ameren Missouri's actual per-book returns have been below its last authorized return much more often than they have been above the last authorized return. But again, actual historic earnings do not provide a basis for the Commission to adjust rates that will apply in the future, either up or down. The law requires that rates must be based on the utility's current cost of service, and costs that are expected to be incurred in the future when the new rates are in effect. As the cases put it, the Commission is obligated by law to make an "honest and intelligent forecast" of what rates should be in the future.

Second, Complainants' evidence on the Company's cost of service for the historic period they selected is woefully deficient. Complainants have simply taken Ameren Missouri's actual, per-book earnings for calendar year 2013 and made 12 adjustments to account for factors that the Complainants believed were most significant. This falls far short of a cost of service study

² *Order Denying Reconsideration and Offering Clarification*, pp. 2-3, June 11, 2014 [EFIS Item No. 126].

³ The Missouri Supreme Court has stated that unlawful retroactive ratemaking would occur if rates are set "which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established." *Utility Consumers' Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 59 (Mo. banc 1979).

necessary to set rates and it is far short of any analysis that the Commission has ever used for that purpose. As the evidence in this case shows, such a poor effort amounts to little more than a guess at what rates should be. Such an analysis does not consider "all relevant factors" as Missouri courts require, and it does not provide enough information for the Commission, or anyone else, to determine what Ameren Missouri's actual regulatory cost of service was in 2013. Moreover, a look at past per-book earnings with an incomplete adjustment to a few items is not a forecast at all, let alone an honest and intelligent one. Consequently, this analysis cannot be used to set rates.

Third, Complainants' analysis completely ignores the significant costs that Ameren Missouri has already incurred in 2014 and investment in additional plant already under construction, which will be placed in service by year's end. More specifically, in addition to the approximately \$700 million of new plant placed in service from August 2012 (the true-up cut-off date from the last rate case) to May 2014, Ameren Missouri has placed, or will place in service, an additional over \$1 billion in capital expenditures just this year. Also, as of June, Ameren Missouri had already paid over \$63 million in mandatory solar rebates incurred increases in wages for employees and is experiencing increases in property taxes and in other costs. These significant cost increases cannot be ignored when rates for the future are set. For this reason as well, Complainants' analysis is deficient and cannot be used to set rates.

Fourth, Complainants' argument to reduce Ameren Missouri's authorized return on equity ("ROE" or "cost of equity") from the existing level of 9.8% to 9.4% is completely without merit. No evidence has been provided that shows any material changes in the cost of capital since the Company's last rate case. In fact, the recently authorized ROEs for comparable electric utilities across the country are either about the same as they were when the Commission last set Ameren Missouri's authorized ROE or have increased since that time. Mr.

Gorman, the Complainants' ROE witness, is recommending an ROE *higher* than he recommended in the Company's last rate case. Even more significant is the fact that Mr. Gorman includes 9.8% in his range of reasonable returns and he admits that 9.8% is not an unreasonable return. Staff recommends retaining the existing 9.8% ROE, and Ameren Missouri's witness, Robert Hevert, opined that Ameren Missouri's cost of equity is higher at 10.4%. There is simply no basis in the record of this case to reduce Ameren Missouri's return on equity to 9.4%.

Finally, Complainants' proposed rate reduction is not material enough to warrant further investigation, much less to provide support for an order reducing rates. As previously stated, in any given period every utility's actual return will almost always be above or below its authorized return, and therefore, as the Staff has explained, any so-called "over-earnings" must be material and sustainable before one could conclude that a utility's current rates are unjust and unreasonable and need to be re-set. Excluding the proposed adjustment to the ROE, the Complainants recommend a rate reduction of less than 1%. This is not enough to justify a rate reduction, and in any event it would be more than fully offset if a more complete and updated analysis was done. In fact, Ameren Missouri has done a full cost of service study for its pending rate case (File No. ER-2014-0258), and this study shows that Ameren Missouri's rates should be increased by \$264 million, not decreased by \$49.5 million as Complainants propose.

For all these reasons, the Complainants have utterly failed to meet their burden of proof in this case and their complaint must be denied.

II. FACTS OF THE CASE

Long before this complaint was filed, in the third quarter of 2013, Noranda's attorneys

retained Brubaker and Associates to begin work on this case.⁴ The complaint was ultimately filed on February 12, 2014. Shortly after filing the case, Noranda and certain other parties that supported Noranda asked the Commission to set an extremely expedited schedule with hearings to occur barely four months later, in mid-June, 2014.⁵ In response to that request, the Commission adopted an expedited schedule for this case, although not quite as expedited as Noranda proposed, with hearings beginning at the end of July. As Noranda itself admits, this expedited schedule made it extremely difficult, if not impossible, to conduct a comprehensive cost of service study for this case.⁶ Indeed, the schedule that was adopted for this case was several months shorter than the normal rate case schedule, despite the fact that the Commission is required by law to give rate increase cases priority over its other cases.⁷

In support of the complaint, Noranda filed direct testimony that was completely deficient. Noranda witness Michael Gorman filed testimony recommending that Ameren Missouri's authorized return on equity be lowered from 9.8% approved in the last rate case to 9.4%, although the existing 9.8% ROE was within his recommended range. Noranda witness Greg Meyer simply took the per-book earnings shown in Ameren Missouri's surveillance report for the 12 months ended September 30, 2013, adjusted it to reduce the return on equity recommended by Mr. Gorman, made 13 other adjustments to the results, and recommended a \$67 million rate reduction. His analysis did not come remotely close to a full cost of service study because it did not address the dozens of additional items that must be reviewed and in many cases adjusted in a cost of service study used to set rates.

Moreover, Mr. Meyer's analysis relied on extremely outdated information; many of his

⁴ Tr. p. 191, l. 4-7.

⁵ *Jointly Proposed Procedural Schedule*, filed by Noranda, the Missouri Industrial Energy Consumers, the Missouri Retailers Association, River Cement, AARP, the Consumers Council of Missouri and the Office of the Public Counsel on April 1, 2014 [EFIS Item No. 45].

⁶ Tr. p. 197, l. 19 to p. 198, l. 3.

⁷ Section 393.150.2, RSMo. (2000).

adjustments were simply cut-and-pasted Staff's adjustments from Ameren Missouri's last rate case—File No. ER-2012-0166—based on data that in some cases dated as far back as October, 2010. For example, Mr. Meyer's adjustment for "Disallowance of Certain Miscellaneous and Advertising Expenses" was simply a cut-and-paste of the Staff's adjustment in the last rate case. Mr. Meyer did not look at any of the Company's advertising or miscellaneous expenses that were incurred in the 12-month period he was studying (the 12 months ended September 30, 2013)⁸—he simply adopted the Staff's adjustment to the Company's expenses from a different time period. He did not determine whether the amount of the adjustment was appropriate for the period he studied, or even if any adjustment at all was appropriate for that period. The same was true of his adjustments for "Long-Term Incentive and Stock Compensation Disallowance" and "Callaway Refueling Normalization," which ignored the most recent refueling and instead was based on the previous refueling addressed in the previous rate case. And of course Mr. Meyer's analysis considered no changes to Ameren Missouri's costs that occurred after September 30, 2013.

Moreover, as Ameren Missouri witness Gary Weiss testified, almost all of Mr. Meyer's adjustments were calculated incorrectly. Of the 13 adjustments other than the ROE adjustment, only two were properly calculated. Although some of the adjustments were incorrect because they used outdated information, others were incorrectly calculated for other reasons.⁹ Because of these pervasive errors, even accepting the limited nature of Mr. Meyer's analysis, his proposed rate reduction of \$67 million was not correct.

After the complaint was filed, Noranda did not ask Ameren Missouri any data requests that would have enabled Mr. Meyer to conduct a complete cost of service study. In fact, they

⁸ Tr. p. 187, l. 1 – 10.

⁹ Ex. 5. Weiss Rebuttal, pp. 19 to 24.

didn't ask any data requests at all until April 21, 2014, more than two months after the complaint was filed.¹⁰ When Mr. Meyer filed his surrebuttal testimony, he did not defend or correct the analysis in his direct testimony. Instead, he completely abandoned that analysis and substituted a new analysis addressing per-book earnings from a different period of time with completely different adjustments. This time, Mr. Meyer used the surveillance data for the 12 months ended December 31, 2013. But many of the same deficiencies remained.

The second analysis was still not even close to a full cost of service study that considers all factors relevant to the determination of the Company's rates and that would reflect an honest and intelligent forecast of the future period when any new rates would be in effect. As a consequence, as Ameren Missouri witness Weiss testified, it constitutes nothing more than a guess as to what the Company's revenue requirement and rates should be.¹¹ As Staff Auditor John Cassidy put it, an analysis that just takes past per-book results and makes a limited set of adjustments has a "very low degree of certainty."¹² Mr. Cassidy also agreed that such an analysis could be properly characterized as a guess.¹³ Noranda witness Meyer admitted that such an analysis should never be used to set rates in a situation where a utility is requesting a rate increase.¹⁴ It is clearly equally insufficient evidence to use to reduce rates.

In his surrebuttal testimony, Mr. Gorman continued to recommend the reduction of Ameren Missouri's authorized return on equity from 9.8% to 9.4%. But he still recommended a range for the ROE that included the existing 9.8%. Accordingly, this testimony does not provide a basis for lowering Ameren Missouri's currently authorized return on equity.

Mr. Meyer's analysis was still out-of-date in that it did not include costs Ameren

¹⁰ Tr. p. 194, l. 13 to p. 195, l. 4; Exh. 15.

¹¹ Tr. p. 498, l. 11-18.

¹² Tr. p. 337, l. 10-12.

¹³ Tr. p. 386, l. 16-23.

¹⁴ Tr. p. 198, l. 24 to p. 199, l. 5.

Missouri has incurred since December 31, 2013 and costs that it will incur over the next several months, including over \$1 billion of investment in facilities used to provide service to our customers, \$63 million¹⁵ in solar rebates paid as of June and approximately \$35 million more to be paid in the months subsequent to June, increases in wages that have already taken effect, property taxes, fuel cost increases and other miscellaneous cost increases.¹⁶

It is noteworthy that Mr. Meyer's proposed rate reduction is also immaterial. Excluding Mr. Gorman's meritless proposal to reduce the ROE, Mr. Meyer now proposes a rate reduction of less than 1%.¹⁷ This amount would quickly turn into a required rate increase if Mr. Meyer had taken into account all of the factors necessary for a full cost of service study, and if Mr. Meyer had updated his analysis to include the rate base investment, solar rebates, wage increases, property tax increases and fuel cost increases in 2014 that he should have taken into account. In fact, on July 3, Ameren Missouri filed a full cost of service study that supported a rate increase of \$264 million.

III. LEGAL STANDARD

There is no question that in this case Noranda bears the burden of proving that Ameren Missouri's rates should be reduced, and as the Commission has recognized, this is a "very heavy burden."¹⁸ It is not up to Ameren Missouri or any other party to make Noranda's case for them. It is also not up to Ameren Missouri to prove that its rates should not be reduced. Noranda has failed to meet its burden in this case not only because a rate decrease is not warranted, but also because it disabled itself from being able to provide a full cost of service study which would have allowed the Commission to determine whether Ameren Missouri's rates are too high, too

¹⁵ Adding the 10% carrying cost approved by the Commission, this equates to almost \$70 million that would have to be accounted for in any cost of service study.

¹⁶ Ex. 5, Weiss Rebuttal, p. 26, l. 22 to p. 27, l. 2; p.27, l. 5-15.

¹⁷ Tr. p. 211, l. 13-23.

¹⁸ Cite cases imposing burden on complainant, commission order that says it is heavy. *Order Denying Reconsideration and Offering Clarification*, pp. 2-3, June 11, 2014 [EFIS Item No. 126].

low or just right to recover its costs on a going-forward basis. Noranda disabled itself from being able to make the required showing by:

- Insisting on an extremely expedited procedural schedule which would have made the development of a full cost of service study extremely difficult or impossible;
- Not asking any data requests at all for more than two months after the complaint was filed and not ever asking any data requests that would have allowed it to develop a full cost of service study; and
- Not asking the Commission to open an investigatory proceeding and order its Staff to investigate whether Ameren Missouri's rates are appropriate.

Noranda chose the type of case it wanted to file, the information it wanted to provide to the Commission and the timeline it wanted to insist on. The fact that it has been incapable of marshaling evidence to meet its burden of proof is entirely its own fault.

A second legal principle relevant to this case is that ratemaking is a prospective exercise. “[U]tility ratemaking is forward looking, concerned with current and anticipated financial conditions. What the company has earned in the past does not necessarily tell us what it will be able to earn in this future.”¹⁹ The foregoing statements reflect the Commission’s recognition that rates must be set based on current costs, and costs likely to be incurred by the utility when the new rates are in effect. A corollary of that principle is that rates may not be set to make up for past under-earnings or over-earnings that may have occurred in an historical period.²⁰ Rather, the Commission is obligated by law to make an honest and intelligent forecast

¹⁹ *Report and Order*, Case No. ER-2012-0166, ¶ 14, p. 35 (Dec. 12, 2012).

²⁰ *State ex rel. Utility Consumers' Council v. Public Service Commission*, 585 S.W.2d 41, 59 (Mo. banc 1979).

of what rates should be in the future when it resets them.²¹ In this case, any such honest and intelligent forecast would show that rates should not be reduced.

A third legal principle relevant to this case is that when setting rates, the Commission must consider all relevant factors.²² In this case that means that Mr. Meyer's short-cut analysis, which doesn't even approach a complete cost of service study and which doesn't consider the many significant costs Ameren Missouri is incurring in 2014, is simply not legally sufficient for the Commission to use to set rates. The "all relevant factors" standard is not designed to create unnecessary barriers to utilities or customers who want to change rates. It simply recognizes the obvious fact that unless all relevant factors are considered, no one can know whether rates are too high, too low, or just right. Staff Attorney Thompson argued in his opening statement that all relevant factors are "whatever the Commission decides they are."²³ But the Commission's discretion is not so unlimited—it must consider all factors that affect the proper calculation of the rates. Mr. Meyer's short-cut analysis completely fails the all relevant factors test, and for that reason it cannot be used to set rates.

The Commission must follow the law. It cannot for the sake of convenience or expediency take actions that the law does not authorize. “[N]either convenience, expediency, or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute.”²⁴ That means that utilities cannot get rate increases as quickly as they would like, and parties who propose to reduce utility rates cannot get them reduced as quickly as they would like. Instead, the work needed to make the required

²¹ *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957) (quoting *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission et al.*, 262 U.S. 276, 288 (1922)).

²² *Utility Consumers Council*, 585 S.W.2d at 49 .

²³ Tr. p. 119, l. 16-18.

²⁴ *Utility Consumers Council*, 585 S.W.2d at 49 (citing *State ex rel. Kansas City v. PSC*, 257 S.W.2d (Mo. banc 1923)).

honest and intelligent forecast to determine if a rate change is warranted and, if so, how much of a rate change is warranted, must be done. The fact that it could not be done in the compressed timeframe Complainants originally asked for in this case, or in the somewhat longer but still expedited schedule that was adopted, is irrelevant.

Complainants argue that a lower evidentiary standard should be applied in cases where rates are proposed for reduction than when a rate increase is proposed.²⁵ But there is no basis in the law for such a distinction. Moreover, lowering the evidentiary standard for rate decreases would be illogical. There is no way for the Commission to tell what the rates should be without a full cost of service study that considers all factors relevant to setting the rates. Noranda argues that, as a practical matter, application of this evidentiary standard will prevent customers who do not have sufficient resources from pursuing rate complaints. But that is clearly not true. Any customers who can file a complaint can request that the Commission order its Staff to investigate whether a utility is over-earning and conduct a full cost of service study in the appropriate case. When the Commission deems such a request to be meritorious, it will require its Staff to perform such an investigation, and, where appropriate, conduct a full cost of service study. But that was impossible in this case. As Mr. Cassidy put it, “[t]hey insisted upon an extremely accelerated schedule, which essentially prevented the ability to account all relevant factors.”²⁶

IV. ARGUMENT

1. Noranda Has Failed to Prove that Ameren Missouri's Rates Should Be Reduced Based on a Consideration of All Relevant Factors.

There is no question that a full cost of service study, far beyond Mr. Meyer's limited analysis, is necessary to accurately re-set rates, whether in the context of a rate increase or a

²⁵ Tr. p. 199, l. 16-25.

²⁶ Tr. p. 392, l. 25 to p. 393, l. 3.

rate reduction case. In this case, the Commission was fortunate to have numerous expert witnesses with decades of regulatory experience who testified extensively about this point. For example, Ameren Missouri witness Gary Weiss testified that in over 35 years of developing revenue requirements he had never seen an analysis such as Mr. Meyer's used to set rates.²⁷ After detailing the numerous steps that must be taken to develop a proper cost of service study, Mr. Weiss further testified:

One cannot determine what new rates should be without conducting a comprehensive cost of service study, from which a proper revenue requirement can be developed. Conducting such a study is not a quick or simple exercise, as I have outlined above. Not only does it take the Company several months to conduct such a study, but it also takes the Staff 4 to 5 months to do so. In my experience, rate changes have never been made in the absence of such a study, and they certainly have never been made based upon the kind of short-cut analysis provided by Mr. Meyer in this case.²⁸

Mr. Weiss' position on this issue was supported by numerous other veteran experts. Staff witness John Cassidy, a rate case auditor with 24 years of experience, had this to say about Mr. Meyer's reliance on Ameren Missouri's per-book earnings as a basis for his recommendation to reduce rates:

Q. Do these reported earnings automatically mean that Ameren Missouri is overearning and that permanent rates should be reduced?

A. On the surface it may appear that way but reported book earnings only have limited relevance to ratemaking findings. These reported earnings require in-depth analysis and adjustment through the completion of a full cost-of-service calculation that takes into account all of the relevant factors for the time period being examined. Rates are not set in Missouri using booked or actual results. Rather, through detailed analysis, rates are established using actual historic information to complete normalization, annualization and disallowance adjustments to develop the expected cost of service....Increases and decreases in costs for payroll, fuel, insurance, property taxes, income taxes and many other expenses are considered in the revenue-requirement calculation along with rate base investment, inventory costs, depreciation, and amortization expense. The rate case review involves

²⁷ Ex. 5, Weiss Rebuttal, p. 5, l. 11-15.

²⁸ Ex. 5, Weiss Rebuttal, p. 29, l. 3-9.

significant analysis of the per-book amounts used as a starting point of a rate review before any recommendation can be made for the Commission's consideration.²⁹

When asked to assess Mr. Meyer's analysis, Mr. Cassidy stated: "Staff would not rely on this handful of adjustments, predominately based upon estimations, for purposes of making a recommendation to the Commission that they reset permanent rates....The Complainants' analysis primarily represents a preliminary assessment of Ameren Missouri's current rates that does not reflect current information and also requires additional analysis to determine if a complete cost-of-service analysis taking into account all of the relevant factors should be undertaken."³⁰

Staff witness Mark Oligschlaeger, who is an auditor with almost 33 years of experience appearing in rate cases and over-earnings cases, testified as follows:

Staff recommends that the Commission require that any proposal to reduce a utility's rates be supported by a detailed and thorough analysis of all relevant factors affecting the utility's cost of service. In practice, this means that an audit process identical or highly similar to that normally employed by Staff in reviewing utility applications to increase rates should also be employed in developing recommendations to reduce a utility's rates.³¹

When asked if Staff believes that Complainants have relied upon a thorough and detailed analysis of Ameren Missouri's cost of service, based upon all relevant factors, in making its recommendation to reduce Ameren Missouri's rates, Mr. Oligschlaeger simply replied "No" and referred to Mr. Cassidy's thorough discussion of this point.³²

Ameren Missouri witness John Reed, the Chief Executive Officer of Concentric Energy Advisors who has over 37 years of experience dealing with ratemaking issues as a consultant across the United States and Canada, was also very critical of Mr. Meyer's limited analysis. He

²⁹ Ex.12HC, Cassidy Rebuttal, p. 19, l. 5-19.

³⁰ Ex.12HC, p. 26, l. 1-3, 12-15.

³¹ Ex.11, Oligschlaeger Rebuttal, p. 6, l. 1-5.

³² Ex. 11, Oligschlaeger Rebuttal, p. 6, l. 6-10.

testified:

Mr. Meyer's proposal to reduce Ameren Missouri's rates...is not supported by consistent or reliable analyses; he has failed to offer a proper, comprehensive cost of service study, which is necessary to determine what rates should be, and has instead offered a flawed and incomplete analysis that provides no clear indication that the Company is going to over-earn or under-earn in the future;³³

Further, Mr. Reed testified that "Mr. Meyer's calculations do not even begin to enable a regulator to conclude whether Ameren Missouri's rates should be increased, decreased or left alone."³⁴ At the end of his rebuttal testimony, Mr. Reed attempted to summarize the many specific criticisms of Mr. Meyer's analysis detailed in his testimony:

Mr. Meyer's proposal to reduce Ameren Missouri's rates should be rejected for the following reasons: 1) the Surveillance Report data do not reflect normal test year cost or revenue levels; 2) resetting the authorized ROE outside of a full rate case borders on single issue ratemaking; 3) his adjustment proposal is backward-looking and narrowly focuses on a few cost of service elements, not the entire revenue requirement; 4) his cost of service adjustments are inconsistent with his historic cost data; 5) he has failed to present any evidence on current levels of rate base, sales levels, customer counts, capital expenditures or depreciation rates, all of which should form the basis of any process which establishes new rates.³⁵

The bottom line is that Mr. Meyer's analysis is woefully inadequate as a basis on which rates can be set as this battery of extremely experienced experts from the Staff, the Company and the consulting world have testified. The Commission simply cannot set rates without considering all of the factors that are relevant to that rate-setting task.

In response to questions from Chairman Kenney, Staff witness Cassidy laid out in exhaustive detail all of the revenue and cost items that are missing from Mr. Meyer's analysis.³⁶

Although his response is lengthy, it is included below in full, with each of the missing revenue or cost items highlighted for easier reference:

³³ Ex.8, Reed Rebuttal, p. 5, l. 13-18.

³⁴ *Id.*, p. 8, l. 15-17.

³⁵ *Id.*, p. 38, l. 5-14.

³⁶ Mr. Cassidy estimated that ¾ of these items were not considered in Mr. Meyer's analysis. Tr. p. 381, l. 3-9.

Q. And that's a good segue into my next question. What are the additional relevant factors that Staff would think would be necessary to make a full determination?

A. Okay. Well, in this case, no party has performed a fuel modeling in order to determine an appropriate level of fuel expense, purchased power and off-system sales revenues.

Q. Let me stop you there.

A. Okay.

Q. Fuel modeling to determine purchased power costs and off-system sales?

A. And fuel expense.

Q. Fuel expense. Doesn't that all flow through the FAC, though?

A. It does flow through the FAC, but right now we're looking at just booked earnings, and that needs to be recalculated using a model, and we can't do that without the model. And Ameren is still subject to 5 percent of the change in those costs.

Q. All right. I interrupted you. Go ahead.

A. And so as part of this fuel modeling process, the Staff has to go through an examination of all of the coal contracts, the coal transportation contracts. They have to examine market energy prices. They have to determine hourly net system input to put into the fuel model. They have to determine whether or not there's an appropriate -- what the appropriate level of outages for power plants would be to be represented in that model. So there's a whole host of numerous fuel inputs that need to be assessed in performing that determination for new net base fuel cost. And to date, no party has determined what the impact of customer growth that the company has experienced with regard to their revenues. Large customers were not annualized for revenues. In the last case, Staff made adjustments for Lake of the Ozarks shoreline management revenues that needed to be annualized. To date, no party has examined that level of revenues or any other miscellaneous revenues that have been experienced by the company. Noranda and company have performed this analysis, but Staff has not taken -- made a recommendation for rate of return or capital structure. I think that in doing that you have to have some assessment of all the relevant factors in forming that recommendation. No party in this case has completed a depreciation study of the company's existing depreciation rates. That was something that's required in Ameren's rate case filing which has been filed today or has been filed as of now.

You need to determine what the appropriate level of the current level of plant in service, reserve and other rate base item are through a common cutoff point, whether it's an update or true-up point.

The brevity of this schedule hasn't allowed any kind of updating as is done in the traditional an [sic] rate case. The assessment period is kind of the assessment period and whatever it is it is. And fortunately, at least Noranda and Staff have looked at the same time period.

And I am aware that the company has installed electrostatic precipitators at Labadie, and I think those may be in service at this time. No assessment of those costs have been taken into account.

There's a whole host of other rate base items, such as customer deposits, customer advances, fuel inventories, pensions and OPEB trackers, demand-side management programs, accumulated deferred income taxes, all of those other rate base items need to be evaluated to set an appropriate level for inclusion in rates. That hasn't been performed thus far.

Another key other rate base item is cash working capital. No party in this case has made any assessment of cash working capital. There's been no assessment of the Ameren Services Service Company allocations that have occurred during the period that's been examined in this case.

Ameren Services allocates a significant level of costs to Ameren Missouri and other affiliates. We haven't made any assessment with regard to whether or not those allocations are appropriate.

No party has examined the significant decline in power plant maintenance expense that has occurred. No party has adequately addressed the reduction in distribution and maintenance expense. No assessment of coal refinement projects was determined.

No assessment of capacity and bilateral sales and swaps was performed in this case. No determination of the appropriate levels of MISO revenues or expenses was performed.

The assessment of payroll taken into account by both Staff and the Complainants has not taken into account any changes in employee levels or whether or not overtime might require some form of normalization.

The Staff did not take into account any of the changes in various amortizations that are in place that deal with issues such as severance costs, storm costs, training costs, and there's a whole host of other amortizations that are like that that need to be reassessed.

The case does not take into account any changes in pensions or OPEBs costs that – or whether or not -- what the new resetting of the base would be for those trackers. Other benefits such as medical, dental and vision were not taken into account.

There's been no inclusion for a level of rate case expense that the company has incurred in defending itself in this case. No party has made a full assessment of typical disallowances, such as advertising, dues and donations, lobbying, Edison Electric dues.

There's been no assessment of any changes in insurance expense. No assessment of changes in rents and leases expense. There's been no look -- no one has looked at changes in property tax expense. Staff and Complainants have not

examined net **writeoffs** in order to determine if they need to be annualized or normalized based on what's occurred during the period ending December of '13. Staff has not examined or reset or determined **continued appropriateness of storm trackers, vegetation or infrastructure inspection trackers, the Sioux accounting construction tracker or the SO2 tracker.**

We have not assessed the appropriateness of the test year accruals for issues involving **injuries and damages, environmental costs and legal costs** and compared those accruals against actual expenditures. We've not annualized the PSC assessment. We have not annualized **corporate franchise taxes.**

We've not reviewed the company's books to determine whether or not there are **Taum Sauk costs** associated with the Taum Sauk failure that need to be removed from the cost of service.

We've not examined or **annualized non-solar-rebate-related renewable energy standard costs** and rebased that recovery mechanism. We've not addressed low-income weatherization program costs. We've not addressed **keeping current program costs.** We've not taken into account any changes in **income taxes.** We have not addressed any changes in **capitalized depreciation or O&M.** We've not made any assessment of the appropriateness of any aspects of **the current FAC.** And no party has seriously looked into **whether the company has been imprudent** in incurring costs in relation to any of its investments or expense levels.

Q. That's a comprehensive list. I appreciate that. So here's the question I think that flows from that list: Is it ever possible to bring and successfully prosecute an overearnings complaint in the absence of examining every single item that you just listed?

A. In Staff's estimation, no.³⁷

Mr. Cassidy also testified that these missing items are often material, and they can have a very significant effect on the overall recommendation a party would make about the Company's revenue requirement.³⁸ He agreed that until a proper, comprehensive analysis is done one cannot conclude what the revenue requirement is:

Q. I think Mr. Thompson said something along the lines when he was discussing all relevant factors, something along the lines of, well, the auditors, or maybe he said the accountants, they always think you should look at all of the numbers. Do you recall something along those lines?

³⁷ Tr. p. 368, l. 21 to p. 375, l. 17.

³⁸ Tr. p. 419, l. 18-20.

- A. Well, I think it's essential that you look at all the relevant factors when resetting rates.
- Q. And when you go through the exercise of looking at all the revenues, expenses, rate base, in a test year that you believe ought to be representative of that future period when rates will be in effect, you do that because if you don't, it may very well lead you to a false conclusion; isn't that true?**
- A. That's true.
- Q. You don't think you're wasting your time when you spend four or five months doing that, do you?**
- A. Certainly not.
- Q. And I've heard Mr. Weiss tell me on many occasions when we're preparing a rate case and we're trying to get the case together and we need the revenue requirement and we're saying, Gary, what's the number, what's the number? And Mr. Weiss often will say, I'm not done yet. I can't give you a number. Do you have that experience on the Staff sometimes?**
- A. Yes, frequently.
- Q. And the other thing that I've noticed that happens over the years is that when we browbeat him enough to give us a number two or three weeks again, well, okay, maybe it's about this. But when really he gets done with the study, that number sometimes moves quite a bit. Have you had that experience?**
- A. I have had that experience.
- Q. Is that because determining an appropriate cost of service is a fairly complex exercise?**
- A. It's an extremely complex and interactive exercise.
- Q. So until you've done the work, you don't really know what the answer is; isn't that true?**
- A. True.³⁹

In addition, in response to questions from Ameren Missouri's counsel, Mr. Cassidy

³⁹ Tr. p. 324, l. 22 to p. 326, l. 18.

acknowledged that the costs and revenues that go into calculating the Company's revenue requirement are only part of the equation that determines rates. Billing units, such as number of customers, number of kilowatt-hours of load, etc., must also be determined in order to know what the rates should be. But in this case, no one has even looked at the billing units.⁴⁰

Given the evidence in this case, it is clear that Mr. Meyer's short-cut analysis cannot be used to set rates. Mr. Cassidy and Mr. Weiss both testified that his analysis could be properly characterized as a "guess."⁴¹ The Commission cannot set rates based on guesses, and therefore it must reject Mr. Meyer's analysis.

2. **Mr. Meyer's Analysis Fails to Take Into Account Significant Costs Ameren Missouri Has Already Incurred in 2014 and That Will Be Incurred in the Next Few Months. These Costs Cannot Be Ignored.**

As previously mentioned, Mr. Meyer's analysis completely ignores everything that has happened since December 31, 2013, and everything that will happen over the next few months. And a lot has happened and will happen. For one thing, through June of this year, Ameren Missouri has already actually paid approximately \$63 million in solar rebates which, with the 10% carrying costs approved by the Commission, results in a total rebate-related cost of over \$69 million.⁴² Mr. Meyer's analysis included only \$30 million, which was the amount of cost incurred as of December 31, 2013. The additional \$39 million, amortized over 3 years, would increase Ameren Missouri's revenue requirement by \$13 million above the number Mr. Meyer relies upon, cutting his claimed "over-earnings" from the non-ROE-based part of his historic results in half.

Moreover, the evidence shows that Ameren Missouri is expecting to incur an additional

⁴⁰ Tr. p. 386, l. 24 to p. 388, l. 4.

⁴¹ Tr. p. 386, l. 16-23; p. 498, l. 11-18.

⁴² Ex. 14, Tr. p. 382, l. 3-24.

\$35 million in solar rebate costs (plus the 10%)⁴³ over the next few months with a revenue requirement impact of an additional approximately \$13 million, which completely wipes out the non-ROE-based portion of Mr. Meyer's historic results.

In addition, there are plenty of other cost increases the Company is incurring, as set forth in the testimony of Ameren Missouri witnesses Weiss and Lynn Barnes. Mr. Weiss testified as follows:

Q. Are there other material items of which you are currently aware?

A. Yes. There have been additional wage increases for management employees in January and April of 2014 and the contract wage increases are effective July 1, 2014. The property taxes paid by the Company in December, 2013 increased over the amount reflected in September 2013 and an additional increased amount will be paid in December 2014. In January 2014, the cost of coal and the related transportation cost increased and will increase again in January 2015...⁴⁴

Perhaps most significant is the increase in investment in rate base that the Company is experiencing. Ms. Barnes testified that between June 1, 2014 (just before the date of her rebuttal testimony) and the end of 2014, the Company was investing approximately \$1 billion on projects such as the MLK Substation in downtown St. Louis, mandated electro-static precipitators being installed on the Labadie Energy Center, a new accounting and general ledger system, the NERC-mandated transmission projects, the O'Fallon Solar Energy Center, and the necessary replacement of the reactor head at the Callaway Energy Center.⁴⁵ Ms. Barnes provided a list of major projects, their in-service dates, and the amount of money that the Company has already spent on them.⁴⁶ Ms. Barnes noted that as of May 31, the Company had already spent 54% of the \$1 billion for these projects. The major projects are all on schedule and because they are at an advanced state of completion, the Company has a high

⁴³ Ex. 5, Weiss Rebuttal, p. 26, l. 22 to p. 27, l. 4.

⁴⁴ Ex. 5, Weiss Rebuttal, p. 27, l. 5-11.

⁴⁵ Ex. 6, Barnes Rebuttal, p. 5, l. 2-8.

⁴⁶ Ex. 6, Barnes Rebuttal, Schedules LMB-1 and LMB-2.

degree of confidence that the total investment this year will be close to the forecasted amount.⁴⁷

Ignoring the solar rebates and other cost increases, if even a portion of this rate base investment was recognized, the return and depreciation would more than completely offset Mr. Meyer's proposed rate reduction. Mr. Meyer's failure to recognize the substantial costs Ameren Missouri has incurred and is incurring in 2014 is another reason that his analysis cannot be used to set rates, and another reason that Noranda has failed to carry its burden of proof in this case.

3. Mr. Gorman's Recommendation to Reduce the Company's Authorized Return on Equity is Without Merit.

Noranda witness Gorman recommends reducing Ameren Missouri's authorized return on equity from 9.8%, which was approved in Ameren Missouri's last rate case, to 9.4%. But the evidence in this case does not suggest that the cost of equity has decreased since Ameren Missouri's last rate case. Mr. Gorman's own recommendation is an *increase* over the 9.3% he recommended in the last case.⁴⁸ Moreover, his current recommended range for Ameren Missouri's return on equity includes 9.8%, and Mr. Gorman has testified that any number within his range "is a reasonable estimate of the current market cost of equity."⁴⁹ Mr. Gorman admitted that Ameren Missouri's currently authorized return on equity was not unreasonable.⁵⁰ As a consequence, even if no other evidence had been presented on this issue, Mr. Gorman's testimony by itself would suggest that the Company's authorized return on equity should remain at 9.8%.

But of course there was other evidence on this topic. Ameren Missouri witness Hevert provided a thorough analysis of the Company's cost of equity in his rebuttal testimony. Based

⁴⁷ *Id.*, p. 6, l. 4-10.

⁴⁸ Tr. p. 295, l. 8-18.

⁴⁹ Tr. p. 298, l. 7-15.

⁵⁰ Tr. p. 301, l. 15-23.

on application of Constant Growth and Multi-Stage Discounted Cash Flow (“DCF”), Capital Asset Pricing Model (“CAPM”) and Bond Yield Risk Premium analyses to a representative proxy group of utilities, as well as considerations specific to Ameren Missouri, Mr. Hevert concluded that the Company’s current cost of equity falls within the range of 10.2% to 10.6%. Mr. Hevert specifically opined that the Company’s current cost of equity is at the midpoint of his range—10.4%.⁵¹

Mr. Hevert also provided evidence of returns on equity authorized for vertically integrated electric utilities⁵² in other jurisdictions. The Commission has frequently relied on this information to assess the reasonableness of the recommendations of ROE experts in rate cases.⁵³ In this case, the ROEs authorized in other jurisdictions clearly suggest that Ameren Missouri’s existing authorized ROE of 9.8% should not be reduced, and perhaps should be increased. For example, the average ROE authorized for vertically-integrated electric utilities from January 2, 2013 (the date Ameren Missouri’s rates took effect from its last rate case) through the first quarter of 2014, was 9.92%.⁵⁴ Looking at 2014 data more closely, the average authorized return on equity for vertically integrated utilities in the first quarter was 9.86% (based on two observations) and for the second quarter was 10.1%.⁵⁵ All of this information shows that Ameren Missouri’s existing authorized return on equity of 9.8% is completely in line if not below the authorized returns of similar utilities across the country.

Finally, Staff supports using a 9.8% ROE in this case. In his rebuttal testimony, Staff witness Mark Oligschlaeger stated that Staff would consider using a more current required

⁵¹ Ex. 7, Hevert Rebuttal, p. 61, l. 10-13.

⁵² Integrated electric utilities are those that own generating facilities. These electric utilities face more risks than electric utilities that own only distribution assets, and so their ROEs are typically higher. *See Report and Order*, Case No. ER-3008-0318, p. 18.

⁵³ *Cf. Report and Order*, Case No. ER-2012-0166, p. 67; *Report and Order*, Case No. ER-2011-0028, p. 67.

⁵⁴ Ex. 7, Hevert Rebuttal, Schedule RBH-1.

⁵⁵ Tr. p. 518, l. 6-11; p. 511, l. 19-25.

ROE value “[i]f the factors affecting a utility’s required ROE at the point in time its earnings are being examined are believed to be substantially different from when its current authorized ROE was set...”⁵⁶ However, Mr. Oligschlaeger concluded that use of a lower ROE than the currently authorized 9.8% is “inappropriate at this time and in these particular circumstances, in Staff’s opinion.”⁵⁷ Mr. Oligshlaeger added:

In his direct testimony, Mr. Gorman does not appear to assert that the factors affecting calculation of an appropriate ROE for Ameren Missouri have materially changed since the time of Case No. ER-2012-0166 [Ameren Missouri’s last rate case]. Advocacy of a different ROE value at this time may be suggestive of a desire to “relitigate” the ROE issue in the context of an earnings investigation and complaint. Staff does not believe relitigation of issues should be a primary driver of an over-earnings investigation.⁵⁸

Given this evidence, Noranda has clearly failed to sustain its burden of proving that Ameren Missouri’s cost of equity has declined since its last rate case, and its proposal to reduce Ameren Missouri’s authorized return on equity to 9.4% should be rejected.

4. Even if Mr. Meyer's Analysis Were Accurate, Complete and Current (It Is Not) the Recommended Rate Reduction is Not Material Enough to Warrant Commission Action.

In this case, there was a lot of discussion of materiality. Staff testified that the level of adjusted historic earnings that it had calculated was not of sufficient magnitude to justify further investigation, much less an immediate reduction of Ameren Missouri’s rates. Staff witness John Cassidy explained that the Staff employs a materiality standard in part because without one, a situation where there appear to have been “over-earnings” in the past upon further investigation can easily flip and reveal an under-earnings situation once a full investigation is done.⁵⁹ Even Mr. Meyer concedes that the magnitude of any claimed over-earnings is a relevant consideration in determining if rates should be adjusted on a going-

⁵⁶ Ex. 11, Oligschlaeger Rebuttal, p. 11, l. 11-14.

⁵⁷ *Id.*, p. 12, l. 4-6.

⁵⁸ *Id.*, p. 12, l. 12-17.

⁵⁹ Tr. p. 333, l. 15 to p. 334, l. 6.

forward basis.⁶⁰

Even if Mr. Meyer's analysis were accurate, complete and current, his proposed rate adjustment is less than one percent of Ameren Missouri's current rates.⁶¹ This is just not enough to adjust rates, particularly when conducting a full cost of service study, or even simply updating for 2014 costs, would completely overwhelm Mr. Meyer's calculation of slight over-earnings.

The truth is that in any given period of time, any utility will almost always be earning above or below its authorized return. Absent special formulaic rate treatment provided for by law, the Commission simply cannot constantly adjust rates every time earnings are slightly higher or lower than the previously authorized return. The Missouri Supreme Court has recognized this reality. In *Straube v. Bowling Green Gas Company*, 227 S.W.2d 666, 671 (Mo. 1950) the court stated: "The ultimate return to respondent [Bowling Green Gas Company] as a result of the rate so fixed and subsequently charged and collected will necessarily vary from time to time. The law, of course, does not require that the rates at any time yield any particular return. No maximum or minimum return is determined when the rate was established."

Public utility treatises also recognize this reality. In *Principles of Public Utility Rates*, a well-recognized and often cited treatise on ratemaking, the authors point out that rate stability is an important attribute of a sound rate structure.⁶² Maintaining stable rates requires that rates not be changed every time earnings are slightly above or below the authorized ROE in a given period. In this case, the evidence shows that Ameren Missouri is not over-earning based on complete and current information. However, even if Mr. Meyer's analysis was correct, a rate adjustment would not be warranted for a drop in costs of less than 1%.

⁶⁰ Tr. p. 209, l. 10-16.

⁶¹ Tr. p. 211, l. 13-23.

⁶² *Principles of Public Utility Rates*, Bonbright, Daniels and Kamereschen, second edition (1988), pp. 382-384.

5. **Complainants' Argument that Consumers Will be Unable to File Rate Reduction Complaints If They Are Required To Prove Their Case is a Red Herring.**

There is no doubt that setting a utility's revenue requirement is a complex process and it is true that an average consumer would be unable to produce an analysis that could be used to determine a utility's revenue requirement. If that were not true, the Commission would not need to have a large Staff of experts to examine, among other things, utility revenue requirements. Setting aside the question of whether that is a problem for the average consumer, in this case Complainants clearly had the ability to conduct a full cost of service study. Brubaker and Associates, a large consulting firm with many experienced auditors in its employ, has the expertise to conduct such a study.⁶³ Noranda has the money to pay for it (certainly Anheuser-Busch, Monsanto, Boeing and other typical members of the Missouri Industrial Energy Consumers have the resources to do so as well). So that was not an issue in this case, although Noranda disabled itself from conducting such a study by seeking an unrealistic schedule and by failing to ask any data requests. But returning to the earlier question, even when other complainants do not have the resources to conduct a full cost of service study, they can ask the Commission to require its Staff to conduct one. In an appropriate case, the Commission will protect the public as it always has by requiring its Staff to perform a full cost of service study, which would provide a legitimate basis to re-set rates. This argument is a red herring.

V. **CONCLUSION**

Complainants have utterly failed to sustain their burden of proving that Ameren Missouri's rates should be reduced. Mr. Meyer's short-cut analysis is nowhere close to a cost of service study that could be used to set rates. It does not take into account many factors that

⁶³ Tr. p. 195, l. 24 to p. 196, l. 13.

have to be considered in setting rates, and it is based on a reduction in the authorized return on equity that is completely unsupported. In addition, it fails to take into account significant costs that Ameren Missouri has incurred and will incur in 2014. Mr. Meyer's analysis does not provide information sufficient for the Commission to make an honest and intelligent forecast of what Ameren Missouri's rates should be, and therefore the complaint must be denied.

Respectfully submitted:

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Dated: August 15, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 15th day of August, 2014.

/s/Thomas M. Byrne
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