

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Union Electric Com-)
pany for a Certificate of Public)
Convenience and Necessity authoriz-)
ing it to construct, install, own,)
operate, control, manage and main-)
tain electric plant, as defined in)
§ 386.020(14), RSMo. to provide)
electric service in a portion of)
New Madrid, County, Missouri, as an)
extension of its existing certifi-)
cated area)

Case No. EA-2005-0180

OPPOSITION OF NORANDA ALUMINUM, INC.
TO APPLICATION TO INTERVENE

Comes now Intervenor NORANDA ALUMINUM, INC.

("Noranda"), and responds in opposition to the Application to Intervene filed herein by the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") on January 6, 2005 as follows:

1. The purpose of an Application to Intervene is to indicate the nature of the interest that the proposed intervenor (or intervenor group) has in the proceeding in which they seek to intervene. This permits the Commission to evaluate whether the proposed intervenor has an interest that differs from that of the general public **and** is deserving of protection. Regrettably, the MJMEUC Application, as filed, does not provide this information.

2. This case was initiated on December 20, 2004 by AmerenUE's filing of an Application. That Application seeks two things:

- (A) A Commission order extending AmerenUE's existing certificated service territory so as to provide service to Noranda; and
- (B) approval of a form of LTS tariff that would be applicable to Noranda and others similarly situated under which Noranda would receive service.

Those are the two basic issues, matters, and items of requested relief that are involved in this case. AmerenUE's Application does not seek transfer or reassignment of any AmerenUE generation or transmission assets. The Application expressly states (and documents) that AmerenUE will not require any modifications to its transmission system and that AmerenUE will provide delivery of all the power and energy to be used and consumed by Noranda. The AmerenUE Application did not initiate a general rate case for AmerenUE.

3. MJMEUC states that it claims to represent wholesale customers of AmerenUE. Even if MJMEUC members were retail customers, AmerenUE is presently, and for some time will be, bound by a settlement-imposed rate moratorium. Under that arrangement, AmerenUE cannot change the rates for any existing retail customer. The LTS Tariff that AmerenUE proposes for Noranda is the same rate applicable to other large AmerenUE customers save for addressing the unique load and loss handling required for Noranda's large load and the lack of an AmerenUE-

supplied secondary distribution system to provide Noranda with service. Nothing in MJMEUC's intervention filing even hints that MJMEUC has any interest in these matters.

4. The Commission's rules require that an "association filing an application to intervene shall list all of its members."^{1/} MJMEUC's application does not provide such a list. Were it to do so, it doubtless would indicate that its members are not retail customers of AmerenUE receiving service at rates established by this Commission. It might well reveal that many MJMEUC members are not even wholesale electric customers of AmerenUE.^{2/}

5. In addressing the question of intervention in a proceeding, the Commission's Rules provide:

(2) An application to intervene shall state the proposed intervenor's interest **in the case** and reasons for seeking intervention
. . . .^{3/}

Under this provision, Applications to Intervene are required to state: (A) the proposed intervenor's interest in the case; and (B) the reasons it seeks intervention. These two requirements are conjunctive -- both must be stated. Nor, given the directive "shall," are they optional. Again, MJMEUC's Application to Intervene, as filed, does not comply with this requirement.

^{1/} 4 CSR 240-2.075(3).

^{2/} MJMEUC members may include municipal natural gas, municipal water, and municipal sewer utilities. Identifying the interest of natural gas, water and sewer utilities in this proceeding would be challenging.

^{3/} 4 CSR 240-2.075(2) (emphasis added).

a. MJMEUC's Application states that "[V]arious municipal utility members . . . are wholesale energy customers of Union Electric Company, d/b/a/ AmerenUE" ^{4/} MJMEUC's Application continues by asserting that "[they] are dependent on transmission service provided over facilities owned by [AmerenUE] and may be affected by a final order in this matter." ^{5/} Neither of these conclusory statements even begins to explain MJMEUC's claimed interest in AmerenUE's proposed service territory expansion or in the proposed tariff for service to Noranda. There is, for example: (A) no assertion that the proposed service territory to be added is presently served by a MJMEUC member; (B) no MJMEUC member (whomever they may be) is asserted to be located in the proposed expanded service area; (C) MJMEUC does not assert that any of its unidentified members could qualify for service under the proposed LTS tariff, or that, even if they could, a rate moratorium protecting such retail interests would be evaded; (D) that some proposed change in AmerenUE's transmission system is proposed in connection with the AmerenUE Application (it is not); or (E) that any change to transmission service or rates is affected by the proposed change to service territory or the proposed Noranda tariff. Absent a factual showing that any interest that MJMEUC's unidentified members may have that would be affected by the two items of relief sought ***in this case***

^{4/} MJMEUC Application to Intervene, paragraph 1.

^{5/} *Id.*

MJMEUC's Application does not meet the Commission's requirements for intervention petitions.

b. The MJMEUC Application also fails to address the requirement that the proposed intervenor state the reasons for seeking intervention. The Commission's requirement that an interest and reasons for intervention must be shown certainly suggests that a Commission proceeding, filed by a utility, is not intended to offer entities an unfettered forum to argue about matters that are not involved and cannot be affected by the relief that is sought.

c. It is essentially unfair to parties with real interests in matters to bear the annoyance and the costs resulting from the involvement of others who have no interest in the matter actually being litigated or the relief that is actually being sought. For example, in a given year there may be many lawsuits filed involving AmerenUE. Regardless, courts do not permit entities that have no interest in these suits to interfere in them. For the same reason, interlopers lacking a real interest in the matter that is actually before the Commission should not be permitted to intervene in that proceeding and cause delay or disruption so that they may extract some concession from the utility to advance what is essentially a private interest having nothing to do with the relief that is being sought. A requirement that real interests and reasons for a proposed intervention be shown is salutary and undercuts MJMEUC's Application.

6. The Commission's intervention rule additionally requires applicants to state:

. . . . whether the proposed intervenor supports or opposes **the relief sought** or that the proposed intervenor is unsure of the position it will take.^{6/}

A proposed intervenor must, therefore, state whether it "supports or opposes" the relief that is sought in the case or state that it is unsure. Again, the statement is confined to **the relief sought**. The relief sought in this case is the expansion of AmerenUE's service territory to include Noranda and the approval of a form of tariff under which that service may be provided. MJMEUC's Application again fails to comply with this requirement.

a. MJMEUC states that it "is uncertain of the position it will take on **the various issues** that may arise in the instant proceeding."^{7/} Though appearing to comply, this statement misses the mark. For that is not the test. The test, under the Commission's rules concern a proposed intervenor's position - not regarding "various issues," -- but **with respect to the relief sought**. MJMEUC's Application seems to confirm that it has not even identified that it has any interest in this case. At a minimum, MJMEUC should be required to identify the nature of its interest concerning the **relief sought**, i.e., the proposed expansion of AmerenUE's service territory and the proposed Noranda service tariff. Approval of those items is the "relief sought" in the AmerenUE Application. Given the competence and experience

^{6/} 4 CSR 240-2.075(2) (emphasis added).

^{7/} MJMEUC Application to Intervene, p. 2 (emphasis added).

of MJMEUC's representation, MJMEUC should be able to indicate a position on AmerenUE's request to expand its service territory to include Noranda and on its proposal to add a tariff under which Noranda would receive retail electric service.

b. As regards the proposed Noranda service tariff, MJMEUC should well be able to state a position, for the rate proposed is the same as that presently in AmerenUE's tariffs and nothing **in this case** can have any effect whatsoever on MJMEUC's wholesale rates, terms, and conditions of service nor would anything in this case result in any deviation from the existing AmerenUE retail rate moratorium. MJMEUC has not articulated any interest in the proposed LTS tariff under which Noranda would be served.

c. MJMEUC's statements are not even technically compliant in stating that it lacks sufficient data to arrive at a position **on the relief sought**. This is not a rate increase case where the relief sought -- a rate increase -- might well depend upon consideration of a multiplicity of "all relevant factors." The two items of relief that are sought in this proceeding are narrow as a laser beam and are uniquely specific to Noranda. As to them, MJMEUC has failed to articulate any interest.

7. The Commission's intervention rule also requires, as an alternative, that it may permit intervention "on a showing that --"

(A) The proposed intervenor has an interest which is different from that of the general public **and which may be adversely affected** by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.^{8/}

On both these points the MJMEUC Application also falls short.

a. Although MJMEUC seeks to position itself (or its presently unidentified members) as having interests that differ from the general public, it fails to show any adverse effect that would or could arise from any final order in "the case" that authorizes the proposed expansion of AmerenUE's service territory or any adverse effect that would or could arise from any final order in "the case" approving the proposed Noranda tariff. Those are, of course, the only two items of relief that are being requested in "the case."^{9/}

^{8/} 4 CSR 240-2.075(2) (emphasis added).

^{9/} In *In the Matter of the Application of CenturyTel Solutions, LLC, for Certificate of Service Authority to Provide Basic Local Exchange, Interexchange and Local Exchange Telecommunications Services in the State of Missouri and for Competitive Classification*, Case No. LA-2004-0105, 2003 Mo. PSC LEXIS 1618, the Commission denied an application to intervene where there had been no showing of "an interest different from that of the general public, and allowing MITG to intervene would not serve the public interest." In denying this application, the Commission also made clear that the role of the Public Counsel was intended to take care of the concerns voiced by the intervenor. "To the extent that MITG fears CTS might engage in fraud or self-dealing, Staff and the Office of the Public Counsel are able to protect MITG's interests, if any." *Id.* See, also, *In the Matter of the Application of The Pager Company for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, Case No. CO-2003-00942003 Mo. PSC LEXIS 95; *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, 2001 Mo. PSC LEXIS 1252.

8. This part of the requirement is conjunctive. While MJMEUC suggests that its involvement in this case may benefit the public interest, it is simply unclear from what it has thus far stated how the development of a record on the two items of relief requested and as to which its unidentified members have no articulated interest would somehow serve the public interest.^{10/}

a. MJMEUC asserts that it took an "active interest" in the enactment of Section 91.026.^{11/} So did many others. MJMEUC's argument is a *non sequitur*. It does not follow that MJMEUC has thereby established an interest in either Noranda's affairs nor those of AmerenUE for all time and for all purposes. As will be shown in other pleadings, the two items of relief sought **in this case** concern establishing a long-term, reliable, firm, and **regulated retail service**, not service under

^{10/} In other cases the Commission has enforced this requirement strictly and has not been persuaded by conclusory assertions of record development when no real interest in the relief sought has been demonstrated. Indeed, in one recent case, AmerenUE's Application to Intervene was rejected.

AmerenUE does not allege that it has an interest which may be adversely affected by the outcome of this proceeding, nor does AmerenUE allege that granting the proposed intervention would serve the public interest. Because AmerenUE's application fails to comply with the Commission's rule governing intervention, the Commission will deny AmerenUE's request for intervention.

In the Matter of the Application of Aquila, Inc., for an Accounting Authority Order Concerning Fuel Purchases, Case No. EU-2005-0041, 2004 Mo. PSC LEXIS 1461.

^{11/} MJMEUC Application to Intervene, p. 2.

Section 91.026. Thus MJMEUC's "active interest" is again misplaced in this proceeding.

b. The applicability of MJMEUC's claims that the "public interest would be served" may be tested by considering whether a Kansas industrial customer, served by another utility, would be permitted to intervene on such a conclusory statement. We think that would not be permitted, nor should it.

9. Our comments are intentionally directed at the statements made, and the deficiencies of MJMEUC's Application to Intervene. MJMEUC's Application fails to directly address either of the requests for relief that are before the Commission in **this** proceeding and fails to state the interest that MJMEUC's unidentified members may have in that relief. Plainly put, this proceeding involves Noranda's survival in Missouri. MJMEUC may well have issues with AmerenUE -- perhaps many and perhaps legitimate; Noranda does not have "a dog in that fight." But that does not entitle MJMEUC to become an intervenor **in this case** without some modicum of a factual showing of an interest **in the relief that is sought in this case**. Perhaps MJMEUC can supplement its Application to Intervene to articulate the interest that it has in this case and how an addition to AmerenUE's service territory and the proposed Noranda service tariff would affect its presently unidentified members. But MJMEUC has not yet shown such an interest nor complied with Commission rules pertaining to interventions. And absent such showing, MJMEUC has no interest

in **this** proceeding and its Application to Intervene should be denied.

WHEREFORE Noranda Aluminum, Inc. respectfully requests that its objection to the proposed interventions be considered and, that unless supplemented by additional filings by the proposed intervenor showing facts demonstrating an actual interest in this case and in the relief sought in this case, MJMEUC's Application to Intervene should be denied.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", is written over a horizontal line.

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ATTORNEYS FOR NORANDA ALUMINUM,
INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic means or by U.S. mail, postage prepaid addressed to all parties and pending Applicants for Intervention by their attorneys of record as disclosed by the pleadings and orders herein.



Stuart W. Conrad

Dated: January 15, 2005