

**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.)	

**AMEREN MISSOURI’S RESPONSE TO CONSUMERS’¹
MOTION FOR RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”) and for its response to the above-referenced motion states as follows:

1. On May 14, 2014, the Commission denied Complainants’ belated² request to set a test year and true-up period. The Commission’s denial followed filings by its Staff that pointed out that given the extremely abbreviated procedural schedule adopted for this case the Staff believed the Commission has determined to conduct a “limited investigation, aimed at determining whether or not Ameren’s present rates are excessive.”³ Staff has since indicated that such a limited investigation is all that is possible given the compressed procedural schedule in this case.⁴

2. In its May 2 filing, the Staff pointed out that a test year is “not required for an investigation of this sort because it is not intended to result in a *pro forma* year and the

¹ Consumers Council of Missouri, Office of the Public Counsel, AARP and Missouri Retailers Association.
² Complainants waited nearly three months after they filed the Complaint (during the middle of the time when other parties were preparing rebuttal cases) to advocate for the setting of a test year and true-up period.
³ Staff’s May 2, 2014 Response to Complainants’ Motion to Set Test Year and True-up, at 4.
⁴ Staff’s June 5, 2014 Response to Motion for Reconsideration, ¶ 4 (“If Staff cannot conduct either an audit and cost-of-service study or a class-cost-of-service study in the available interval, what else can this case be but a *limited investigation?*”).

development of new, prospective rates.”⁵ The Staff also pointed out that while a complaint regarding a utility’s earnings is a “rate case,” it is fundamentally different than the more common file-and-suspend rate case the Commission typically processes.⁶ By its very nature, the latter type of case must be initiated with the filing of extensive minimum filing requirements and a comprehensive cost of service study, which was not done here.

3. In denying Complainants’ motion, the Commission cited the Staff’s response, and described the process it normally follows in a “general rate proceeding” when it establishes a test year, and explained why it does so: “Their complaint, and the direct testimony they filed along with that complaint, identified the issues and timeframes [12-months ending September, 2013] presented. The established procedural schedule does not allow for the presentation of additional direct testimony, so no new issues can be raised.”⁷; *see also* 4 CSR 240-2.130(7)(A), which requires direct testimony to include “all testimony and exhibits explaining the party’s entire case-in-chief.”

4. Consumers pounce on the Commission’s statement that “this is not a general rate proceeding” in an effort to totally recast the Commission’s May 14 Order. While it may be true that a properly instituted complaint about earnings can be, or can become, a general rate proceeding, it is clear that this case at this stage (where it reflects the kind of limited investigation the Staff described in its filing, referenced above) is not a general rate proceeding within the meaning of how that phrase is used in the rules cited by Consumers, as the Commission recognized. If it were a general rate proceeding then a schedule would have to be adopted that provided for the proper filing of a comprehensive cost of service study based upon a

⁵ *Id.*

⁶ *Id.* at 2.

⁷ May 14 *Order*, at 1-2.

proper test year⁸ with the utility then being afforded the opportunity to file its own study, followed by rebuttal and then surrebuttal/cross-surrebuttal, just as is done in a file-and-suspend rate case. There is no reason the same process would not have to be followed in an earnings complaint that is properly initiated or becomes a general rate proceeding. But that is not what we have here, as the Commission recognized in its May 14 Order. Moreover, the Commission – in obvious recognition of the fact that Complainants had failed to file a comprehensive cost of service study based upon a proper test year – specifically recognized that a test year was inappropriate here because to establish one would in effect allow Complainants to do what the Commission ruled it cannot do: present additional direct testimony and raise new issues *that should have been part of Complainants’ direct case-in-chief*.

5. For the foregoing reasons, Consumers motion for reconsideration should be denied.⁹

6. With respect to Consumers’ motion for clarification, it too should be denied. Complainants chose the manner in which they would file the Complaint, and advocated for an abbreviated process (as did Consumers) that did not allow the development of a proper, comprehensive cost of service study that would be necessary in order for the Commission to change the Company’s rates. Consumers, who have already expressed their full support for

⁸ Complainants could have initiated this case by asking the Commission to direct its Staff to perform a comprehensive cost of service study, or could have filed its complaint and then conducted discovery so that it could prepare its own cost of service study, or both. Once such studies were done they would then have been filed as Complainants’ direct case, with the remainder of the procedure to match what is done in a file-and-suspend rate case. Complainants instead attempted to short-cut the process, leading to the extremely abbreviated procedural schedule we have in this case and the limited investigation that is currently underway. A “general rate proceeding” initiated by complaint of the type mentioned in the rules cited by Consumers simply cannot properly be processed in the manner and within the time afforded by the procedural schedule adopted in this case, which was advocated for by Complainants, and Consumers.

⁹ It should also be denied for an additional reason. It was filed just 9 days before rebuttal testimony is due and will not even be ruled upon by the Commission until *after* rebuttal testimony has been filed. It was fundamentally unfair, if not a violation of Due Process, for the Commission to change the rules by which this case is to be processed by changing the issues approximately seven weeks after the parties’ began working on their rebuttal cases, at a point in time where those rebuttal cases are complete.

Complainants' Complaint, should not be allowed to somehow supplement Complainants' case-in-chief under the guise of rebuttal testimony.

WHEREFORE, the Company prays that the Commission issue its order denying Consumers' motion for reconsideration and/or clarification.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a Ameren Missouri

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Dated: June 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on counsel for all parties of record in File Nos. EC-2014-0223 via electronic mail this 5th day of June, 2014

/s/ James B. Lowery