

**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

**NORANDA ALUMINUM, INC'S. REPLY
TO RESPONSE TO OPPOSITION TO INTERVENTION**

I. SUMMARY.

After two attempts, the proposed intervenor Missouri Joint Electric Utility Commission (MJMEUC) has still not complied with Commission rules governing intervention, or shown an interest that could be affected by any final order in this case. MJMEUC has revealed that its interest is in creating leverage to force some unrelated concession from AmerenUE by holding Noranda hostage. The intervention should now be denied.

II. ARGUMENT.

A. **Regardless Of Its Claimed Status, MJMEUC Still Has Not Listed Its Members.**

Commission Rules should have some meaning. MJMEUC's only response to its failure to comply with 4 CSR 240-2.075(3) requiring that an association seeking intervention "shall list all of its members" is an *ad personam* argument against Noranda.

We have examined MJMEUC's claimed enabling statute. We find therein no directive from the General Assembly to the Commission permitting MJMEUC to intervene as it chooses in any Commission case that it chooses without regard to Commission rules governing intervention, nor do we find in Commission Rules any exception for a "body politic" even as MJMEUC claims to be, exempting such from compliance. Demonstrating an interest in a proceeding before the Commission involves more than intoning that one is a "body politic."

Those statutes do make one thing clear: MJMEUC has no standing or status as a customer of AmerenUE ***in its own right***. Its existence results only from an as yet unsubmitted joint contract of its claimed "members." And that, of course, is the essential element of an "association." We suspect that the Commission intended its rule to be read broadly, hence its use of the lower case "a" in "association." It follows that any interest that MJMEUC is that of its claimed members whom it still refuses to list as required by Commission rules. That failure alone disqualifies MJMEUC.

B. MJMEUC Still Fails to Specify Any Interest In This Case.

MJMEUC still has failed after two attempts to state the nature of its interest that may be adversely affected by a final order arising from the case.^{1/} It has failed to state how any of its still unidentified members would be in any manner affected by expanding AmerenUE's service territory to enable service to Noranda as proposed. It has failed to state how any of its still unidentified members would be in any manner affected by the proposed *retail* tariff to serve Noranda for which none of them -- according to MJMEUC's own statements -- could qualify.

C. The Interest That MJMEUC Appears To State Has Nothing To Do With This Case.

While failing to conform its application to Commission rules governing intervention, MJMEUC does now state clearly that its interest is in matters that have nothing to do with either item of relief sought in this case. MJMEUC states that it has transmission issues with AmerenUE. It may have. But transmission issues as recited by MJMEUC are not involved in this case. What ***is*** involved is a proposed expansion of AmerenUE's service territory and a proposed new retail tariff to serve Noranda. Neither proposal seeks any relief from this Commission regarding transmission difficulties that MJMEUC may have with AmerenUE.^{2/}

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

^{2/} It is not even clear at all that this Commission even has jurisdiction to address MM's perceived complaints against AmerenUE or MISO, whatever they may be.

MJMEUC's filings now make clear that -- as suggested by Noranda in its original opposition -- MJMEUC seeks to interfere in this proceeding (in which it has no interest) solely to gain "leverage" to put pressure on AmerenUE to settle some other issue or issues that it may have with AmerenUE. Moreover, as AmerenUE's January 18, 2005 opposition to MJMEUC's intervention makes clear, MJMEUC's argument may not even be with AmerenUE, but rather with the Midwest Independent System Operator (MISO).

D. MJMEUC's Intervention Is Not In the Public Interest.

Noranda has no particular "axe to grind" with MJMEUC. But Noranda is deeply concerned that interventions by entities that have no real interest in this case but seek to use it to accomplish other objectives will cause delay, disruption or obstruction of the two components of the needed relief being sought in this application. Noranda has no interest in simply providing a forum for an interloper who has shown no interest in either of those transactions and seeks to use the proceeding to delay or impede relief critical to Noranda so as to gain some advantage somewhere else. MJMEUC may wish to use Noranda's circumstances to lever some concession out of AmerenUE or MISO, but Noranda is unwilling to be used as MJMEUC's fulcrum, nor have its continued operations in Missouri held hostage to MJMEUC's unspecified difficulties. Noranda does not appreciate MJMEUC's attempts to use it as such.

MJMEUC's off-center intervention in this proceeding is not in the public interest as the Commission rules alternatively require.^{3/} The Commission has already decided that the General Assembly has determined the public interest in these matters, but an order from the Commission authorizing the service territory expansion is still required as is a Commission order approving the form of tariff to serve Noranda. MJMEUC's involvement here, now revealed as intended to pry some concession from AmerenUE or MISO, is simply not part of this case. It is not in the public interest for the Commission to permit its processes to be perverted to that purpose.

III. CONCLUSION.

MJMEUC has now twice failed to state its interest in this proceeding. MJMEUC has succeeded in showing that its purpose in seeking intervention has nothing whatever to do with either component of the relief being sought in this case. Rather, its purpose is now exposed as attempting to gain some concession from AmerenUE by positioning itself to block or delay the critical relief that Noranda needs. Having now revealed that MJMEUC has no interest in this case and that its real interest is to effect some entirely different purpose, MJMEUC's application to intervene in this case should be denied.

WHEREFORE the MJMEUC Application to Intervene should be denied.

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

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

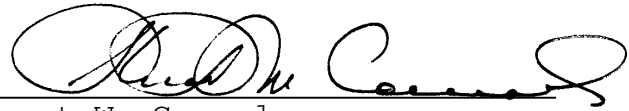


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ATTORNEYS FOR NORANDA ALUMINUM,
INC.

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 24, 2005