

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

OBJECTION TO MOTION TO INTERVENE OUT OF TIME

COME NOW Complainants, and for their Objection to the Application to Intervene Out of Time of United for Missouri state as follows:

1. On February 13, 2014, the Commission issued its Order Establishing Time to Respond and Order Establishing Time to Apply to Intervene. This order established a deadline of March 7, 2014, for applications to intervene.

2. United for Missouri (“UFM”) states it consulted counsel regarding representation on the present matter on March 24, 2014. UFM provides no indication on when it became aware of this matter, only when it decided to consult with counsel.

3. On March 28, 2014, UFM’s counsel appeared by telephone at the prehearing conference. At that conference, UFM’s lawyer indicated UFM had not intervened or applied to intervene and acknowledged that UFM was considering intervening “at some point.”¹

4. On April 18, 2014, three weeks later, UFM filed its Application to Intervene Out of Time.

¹ See *Transcript of Proceedings, Procedural Conference March 28, 2014*, Case No. EC-2014-0223, p. 9.

5. Commission Rule 4 CSR 240-2.075(3) permits a motion to intervene to be granted if “(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.” UFM does not have an interest different than that of the general public or in fact any cognizable interest that will be affected at all in this case. Nor would UFM’s intervention serve the public interest.

6. The Missouri Supreme Court has interpreted the Public Service Commission Act in stating:

The reasonable construction seems to be that the interest necessary to authorize intervention should be the same as that required to become a complainant upon whose complaint a case is commenced. Any local partisan interest in the situation involved, such as a customer, representative of the public in the locality or territory affected...or as a competitor...is surely sufficient to show an interest...and, therefore, is likewise a sufficient basis for intervention.²

Clearly missing from the Court’s list of lawful parties are those espousing particular philosophical or policy views. And while an intervenor need not have a pecuniary interest,³ the requirement that it have an interest supporting a complaint in the first place surely precludes purely policy-based intervenors.

7. Appropriately, an intervenor needs a stake in the matter at issue. “The Commission’s chief concern in considering applications to intervene has always been that the intervention applicant have an articulable interest in the subject matter that is different in some way from that of the general public. The reason is that the general public’s

² *State ex rel. Consumers Public Service Co. v. Public Service Com’n*, 180 S.W.2d 40, 46 (Mo. App. 1944).

³ *Id.*

interest is represented by both the Commission’s Staff and by the Public Counsel.”⁴
UFM states no such stake.

8. UFM’s Application states that it is a nonprofit corporation focusing on “educating the public about and supporting economic policies in the state that will achieve growth, opportunity and prosperity.”⁵ Tacitly acknowledging that “education of the public” is not a cognizable interest for intervention in these proceedings, UFM instead claims that its interest is “on achieving a strong economic environment in the state of Missouri.”⁶ The public at large has an interest in “a strong economic environment,” and the Commission’s Staff and the Public Counsel will adequately represent that interest, as will other parties already participating in this case. That UFM must believe it has the “right way” to achieve a strong economic environment does not make that interest in any way different than that of the general public.

9. UFM fails to note any interested person for whom it advocates that would be affected by the outcome of this case. It identifies no specific class of consumers potentially affected, no particular type of consumers potentially affected, and no regulated body needing or deserving input. Instead, UFM seeks to intervene on behalf of its own notion of “the American free enterprise system.”⁷ While undefined in UFM’s Application, “the American free enterprise system” is presumably a set of economic principles held dear to UFM. As the principles themselves have no interest, UFM claims

⁴ *In the Matter of the Application of Union Electric Company for a Certificate of Public Convenience and Necessity*, Case No. EA-2005-0180, Order Granting Intervention, Jan. 25, 2005.

⁵ *See Application to Intervene Out of Time of United for Missouri*, page 1, ¶ 1.

⁶ *Application to Intervene Out of Time*, page 2, ¶ 2.

⁷ *Application to Intervene Out of Time*, page 2, ¶ 1.

to be seeking a strong economic environment in the state of Missouri. As it identifies no particular group or interest, UFM must be seeking such a state of economic harmony for the state as a whole, or in other words, the general public. The Commission has the ability and expertise to determine the public interest without individual policy groups advocating for their particular brands of economic theory.

10. Further, the public interest would not be served by permitting UFM to intervene. UFM has no relevant interest or expertise that would indicate that it will contribute to the evidentiary record in these proceedings, other than its interest in gaining a platform to state its social and economic policy views. In fact, UFM makes no indication whatsoever as to what it may contribute, only “that it will provide the Commission with an additional perspective.”⁸ Such a vague statement of interest is akin to saying that they will serve the public interest by having an opinion. The law governing intervention does not set the bar so low that applicants need only have an opinion to gain party status.

11. Commission Rule 4 CSR 240-2.075(10) allows the Commission to grant a motion to intervene after the deadline only if there is a showing of good cause.⁹ UFM’s Application fails to show good cause for its failure to intervene on time. UFM further fails to show good cause for the additional delay in applying to intervene beyond March 24, 2014, when it allegedly consulted with counsel about intervention. Instead, UFM did not file its Application until 42 days after the deadline set by the Commission and a full

⁸ *Application to Intervene Out of Time*, page 2, ¶ 2.

⁹ “Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause.” 4 CSR 240-2.075(10).

three weeks after its counsel participated by telephone in the prehearing conference for this proceeding.

12. Except in those cases where an application to intervene out of time is unopposed, the Commission has consistently found lack of good cause for late intervention where the applicant or its counsel is aware, or should be aware, of the Commission's procedures, actions and rules. Indeed, the Commission has denied late intervention to applicants who failed to show good cause for missing the deadline, even if good cause would have otherwise existed to grant intervention, especially if the applicant or its counsel is involved in Commission cases and should be aware of Commission procedure.¹⁰ The Commission has particularly emphasized in its recent orders the importance of compliance with its intervention deadlines for the reason that "consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission."¹¹

¹⁰ See *Joint Application of Southern Union Company d/b/a Missouri Gas Energy and Laclede Gas Company*, Case No. GM-2013-0254, Order Regarding Motion for Reconsideration Issued May 29, 2013 (late intervention denied where application was three months past the deadline and discovery and exploration of issues had advanced even though procedural schedule is not yet adopted; applicant "is a sophisticated party that is well aware of filings and proceedings at the Commission."). See also *Missouri Gas Energy*, Case No. GR-2006-0422, Order Denying Application to Intervene Issued August 28, 2006 ("Were the Commission to accept 'we just found out' as good cause for filing a request to intervene almost two months out of time, 'good cause' as used in the Commission's rule, would have no substance. This is particularly so when it is a proposed intervenor's business to know what is going on in its environment.") cited in *Kansas City Power & Light Company*, Case No. ER-2012-0135, Order Denying Application to Intervene (February 27, 2013) (Commission did not find good cause in applicant's assertion that it only recently became aware of proceedings' impact and additional time was needed for customer group to authorize intervention; "consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission."); see also *Kansas City Power & Light Company*, Case No. EU-2014-0077, Order Granting Application to Intervene Issued November 26, 2013 (applicant acknowledged overlooking order setting intervention deadline; the Commission found applicant's declaration "specious" because applicant was a sophisticated litigant cognizant of the Commission's regulations).

¹¹ See *Kansas City Power & Light Company*, Case No. ER-2012-0135, Order Denying Application to Intervene Issued February 27, 2013.

13. UFM had the ability to apply to intervene weeks ago, but failed to do so. Instead, UFM elected to have their counsel just ‘listen in’ while it put off action for three more weeks.¹² Even at that juncture an application to intervene would have been overdue, but such knowledge evidently offered no encouragement for UFM to move quickly. UFM claims that its failure to meet the deadline was “due to circumstances beyond its control and experience.”¹³ UFM notes its intervention was delayed in part by “seeking corporate approval to pursue intervention.”¹⁴ That UFM was evidently arguing with itself about intervention does not exclude its tardiness. If securing its own approval is outside its control, what would it possibly consider as inside of its control? Further, UFM has experienced counsel familiar with Commission rules and procedures. UFM’s counsel was in-house counsel for Ameren for many years and has represented Ameren and others before this Commission. Even though UFM had retained experienced counsel, it failed to comply with the Commission’s intervention deadline by an additional three weeks after its sought to participate in the prehearing conference. UFM’s counsel certainly has the expertise to know to move quickly if the date for applying to intervene has already passed. UFM’s conscious decision to delay compliance with the Commission’s intervention deadline demonstrates lack of good cause.

WHEREFORE, based on the foregoing, Complainants respectfully requests that the Commission issue an order denying UFM’s Application to Intervene Out of Time.

¹² See *Transcript of Proceedings, Procedural Conference March 28, 2014*, Case No. EC-2014-0223, p. 9.

¹³ *Application to Intervene Out of Time*, page 3, ¶ 5.

¹⁴ *Application to Intervene Out of Time*, page 3, ¶ 4.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 28th day of April, 2014, to all counsel of record.

/s/ Diana Vuylsteke