

**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 COMPLAINANTS’
MOTION TO MODIFY PROCEDURAL SCHEDULE
TO EXTEND DUE DATE OF SURREBUTTAL TESTIMONY, AND REPLY TO
CONSUMERS’¹ SUGGESTIONS IN SUPPORT AND STAFF’S RESPONSE IN
SUPPORT**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”) and for its response to the above-referenced motion and its reply to Consumers’ suggestions in support and Staff’s response in support states as follows:

1. On April 23, 2014, the Commission set the current procedural schedule in this case. It provides for the filing of rebuttal testimony on June 6, 2014 (tomorrow), and the filing of surrebuttal testimony 21 days later on June 27, 2014. No party sought reconsideration of the Commission’s order setting that schedule. Consequently, Complainants’ motion is untimely and for that reason alone it should be denied. *See* 4 CSR 240-2.160(2), which only allows motions to reconsider a procedural order (certainly an order setting a procedural schedule qualifies as such) within 10 days of the issuance of the order; moreover, the rule requires that the movant, even if a timely motion were filed, specifically set forth the grounds on which the movant claims the order is unlawful, unjust or unreasonable – there are no such allegations here.

¹ Office of the Public Counsel, the Missouri Retailer’s Ass’n, Consumers Council of Missouri and AARP.

2. Complainants' may argue that their motion to modify is not a motion for reconsideration or should not be treated as one, and the Company might agree if there were some intervening event that had occurred after April 23 (when the Commission entered its order) and May 29 (when Complainants filed the present motion) that would justify a request to modify the procedural schedule now. However, to Ameren Missouri's knowledge, there has been no intervening event of any kind, and Complainants' motion certainly contains no such allegation. Instead, Complainants speculate that they "anticipate the rebuttal testimony that will be filed by Ameren Missouri in this case will be extensive and highly detailed." Complainants' Motion, at 1. On that basis alone they have filed their bare, unsupported motion to nearly double the time they would have to get the last word on surrebuttal. In addition to being untimely and completely unsupported, there are several other reasons Complainants' present motion should be denied.

3. First, Complainants are merely speculating about what rebuttal testimony will be filed, by Ameren Missouri or anyone else. It is odd, to say the least, for a party to claim a need to modify a procedural schedule that has been in place for five weeks without having made any demonstration at all that there is actually a need to do so. There are no allegations (beyond speculation) of any cause whatsoever to modify the schedule, let alone allegations that might suffice as the barest minimum needed to constitute good cause.

4. Second, any claimed need of Complainants for more time to file surrebuttal testimony is dubious in any event, even had they alleged some kind of cause. Ameren Missouri is routinely confronted with "extensive and highly detailed" rebuttal testimony in its rate cases. In the Company's last four rate cases, it has been confronted with rebuttal testimony from an average of 17 different rebuttal witnesses. In each of those four cases, it was afforded 23, 21, 22

and 22 days, respectively, to prepare and file its surrebuttal testimony. It managed to do so. The Commission has afforded Complainants 21 days in this case. Complainants are represented by able counsel from one of the state's (if not the country's) largest law firms, and by a team of experienced regulatory consultants. There is no reason to believe that they won't be able to manage to do what they've known for five weeks the Commission expected them to do – prepare surrebuttal testimony in 21 days, as is typical in rate increase cases.

5. Complainants chose how they filed their case. They chose to do so without filing a comprehensive cost of service study. They chose to do so without asking the Commission to ask its Staff to audit the Company and to prepare a comprehensive cost of service study. They chose to wait more than two months after they filed their Complaint to ask the Company their first data request. They chose to urge the Commission to adopt an extremely aggressive procedural schedule. They now seek to either gain an unfair advantage, by getting nearly twice as much time as a utility typically gets to prepare and file surrebuttal testimony, or to disadvantage the Company by filing surrebuttal testimony as close to the evidentiary hearings as possible, thus impairing the Company's ability to conduct discovery regarding that surrebuttal testimony and otherwise prepare for hearing.

6. In summary, Complainants' motion is untimely, unsupported, and whether intended to or not, if granted would operate to prejudice the Company and unfairly advantage Complainants.

7. With respect to Consumer's suggestions in support of Complainants' motion, all they say is that "an additional seventeen (17) days is warranted for review of the rebuttal testimony, work papers and records supporting any new issues." They also contend that the additional time sought "will not require any other adjustments to the current procedural

schedule.” With respect to their first contention, they provide no justification for why giving parties in this case 15 to 17 days more time to prepare surrebuttal testimony than is typically afforded in general rate increase cases is “warranted” – it is not. If surrebuttal testimony can be prepared 21 to 23 days in a rate case it certainly can be prepared in that time frame here. With respect to their second contention, we completely disagree. While we cannot know what surrebuttal testimony will be filed, there is certainly a good possibility that it will be extensive and that it may reflect a far different approach or evidentiary basis than that reflected in the direct case filed in February.² If that is so, and if the Company has just two weeks to review the testimony and work papers and to, importantly, conduct discovery occasioned by the surrebuttal testimony, indeed the existing schedule would have to be changed or else the Company would be deprived of its Due Process right to defend itself on this Complaint.

8. Finally, the Staff states that there is “no administrative convenience nor public interest that is served by requiring surrebuttal testimony to be filed a month prior to the start of the hearing.”³ We respectfully disagree, in part for the reasons already addressed above. If the surrebuttal testimony is moved, it may well be impossible for the Company, consistent with its Due Process rights, to review, analyze, react to and conduct proper discovery about the surrebuttal testimony that we expect may be filed, while also properly preparing for the evidentiary hearings. If that is the case, then the Commission will be in the position of being asked to move back the evidentiary hearings that the many parties to this case have consistently urged not be moved at all. The likelihood of that happening if surrebuttal testimony is filed on June 27, as the Commission has already ordered, is less than if it is moved 17 days closer to the

² Such testimony should be stricken as improper surrebuttal, but the Company will still have to prepare a response to it.

³ Staff’s June 5, 2014 Response relating to the motion at issue here.

evidentiary hearing dates, as Complainants have requested. As earlier noted, there is no justification for doing so. The Commission's order setting the procedural schedule should stand.

WHEREFORE, Ameren Missouri prays that Complainants' motion to modify the procedural schedule be denied.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a Ameren Missouri

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**ATTORNEYS FOR UNION ELECTRIC
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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