

**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.	)	
Noranda Aluminum, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0224
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
	)	
Respondent.	)	

**AMEREN MISSOURI'S RESPONSE TO  
ORDER INVITING RESPONSES TO AGENDA DISCUSSION**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”) and for its response to the Presiding Officer’s April 8, 2014 *Order Inviting Responses to Agenda Discussion* (“Order”) states as follows:

**INTRODUCTION**

1. As outlined in the Order, the Commission is considering opening a rate case on its own motion to “fully consider Ameren Missouri’s rates going forward.” Order, p. 2. The Commission’s focus on the need to consider a forward-looking revenue requirement that would support just and reasonable rates to be in effect after the time when these cases and the Company’s upcoming rate case are completed is appropriate given that the Commission sets

rates that apply in the future. *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957) (In order to set rates, an “honest and intelligent *forecast of probable future values*, made upon a view of *all the relevant circumstances*, is essential.” (quoting *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission et al.*, 262 U.S. 276, 288 (1922)). The issue the Commission is discussing, and that prompted the Order, is how best can the Commission go about determining appropriate rates for the future for Ameren Missouri in the face of the Complainants'<sup>1</sup> two complaints and the Company's upcoming rate case, all of which call for an examination of the Company's rates. With respect to that rate case, the Company reiterates its commitment to filing that case on *or before* – i.e, no later than – July 15, 2014.

2. As the Commission's Agenda discussions suggest, establishment of a workable procedural schedule for the two complaints and the upcoming rate case is somewhat complicated. The complexities arise from the fact that the Commission has not been provided full cost of service and class cost of service studies (indeed, it has no real cost of service study before it at all), and has received no input from its Staff on cost of service or class cost of service issues. The case is further complicated by Noranda's unique and untested assertions about its claimed need for a much lower rate than it pays now, a special rate that is in fact much lower than the cost it actually takes to serve Noranda, as determined by the class cost of service study submitted by its own witness in the Company's last rate case. Further complexity is introduced by the legal and other issues implicated by an attempt to shift costs to other customers by raising the other customers' rates based upon Noranda's claimed private business need, and to otherwise reduce a major utility's rates, in both cases in time frames that are by historic standards

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<sup>1</sup> Complainants are Noranda Aluminum and 37 other individuals. For brevity's sake we will refer to them collectively as “Noranda”.

extremely compressed. We say that the time frames are extremely compressed because Noranda expects the parties to complete discovery, file testimony, and participate in hearings addressing the rate shift, and for the Commission to decide on the rate shift in just three and one-half months from now, and to do the same for the other complaint case in just about four months from now.<sup>2</sup> These complexities suggest that in deciding the procedures to apply to these cases the Commission needs to carefully consider the positions of the parties, the policy implications of those positions, the relevant legal standards and how they apply to the unique circumstances presented by these cases, and practical considerations.

3. We say that these cases present unique circumstances because based upon our review of roughly 40 years of history at the Commission, it is not an overstatement to say that Noranda – in both complaint cases – is asking the Commission to do something it has never done before: change rates very quickly, change rates without the benefit of the substantive input of the Commission’s Staff and change rates without the cost of service and class cost of service studies it virtually always has (and always should) examine before changing a utility’s rates. That it should have such studies and the substantive input of its Staff is particularly true when the Commission sets rates for a major utility whose finances and operations are complex, and which serves seven different rate classes.

4. While we will not belabor the point, our primary position remains that it is premature for the Commission to establish procedural schedules until the full Commission has ruled upon the pending Motions to Dismiss. Ameren Missouri will file replies to other parties’ responses to those motions just five days from now, and the Commission could promptly hold

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<sup>2</sup> Noranda is asking that two separate complaint cases involving rates be completely decided in approximately six months from their filing or less, which is far less time than the 11 months it virtually always takes for new rates to be implemented in a rate increase case. And rate increase cases, unlike these complaint cases, must be given priority over all other Commission matters as a matter of law. Section 393.150.2, RSMo. (2000).

oral arguments on the motions and in all likelihood decide the motions within the next couple of weeks or so. Dismissal of one or both of them, or granting the alternative relief sought by the Company – an order for the Commission’s Staff to commence investigations of the Company’s cost of service, class cost of service and of Noranda’s assertions about its needs – could moot one or both of the complaints. At a minimum, dismissal of one or both of the complaints would have a material impact on what the process (and the schedule for that process) should look like on a going-forward basis. And if the Commission decides it should adopt a procedural schedule right now, Ameren Missouri's primary position is that it should adopt the rate case-like schedule for consolidated proceedings set forth in the Company's April 1<sup>st</sup> filing.

#### **PERSPECTIVE AND RECOMMENDATION ON OPTIONS**

5. Nonetheless, given the Order and the Commission’s Agenda discussions, Ameren Missouri provides the following perspective and recommendation on the options and issues discussed. To begin, Ameren Missouri generally supports the approach advocated by the Presiding Officer, which would consolidate the complaint cases with the rate case file (File No. ER-2014-0258), and then address Noranda’s complaints on a faster schedule as part of an interim rate proceeding ancillary to the rate case. As the Order indicates, this approach is very similar to the treatment of interim rate relief requests by utilities in past cases.

6. With regard to the concern expressed by Chairman Kenney about burden of proof issues, while in theory a consolidated proceeding could create additional complexity, any such complexity is manageable. Indeed, any such complexity has been managed in the past under somewhat similar circumstances. It has been the Commission's practice, when there is both a pending over-earnings complaint and a pending rate increase case, to consolidate the two cases,

and the Commission has been able to do so without difficulty.<sup>3</sup> The Commission has also rolled rate design cases into rate cases, which has also been done without difficulty.<sup>4</sup> As in those cases, the complainant (here Noranda) would continue to bear the burden of proof to show that during the period when the new rates it seeks would be in effect the Company's revenue requirement (and thus rates) should be lower by some amount. And the Company would continue to bear the burden to prove that during such future period its revenue requirement should be higher by some amount. The Commission has recognized that the fact that the burden of proving different contentions falls on different parties in a consolidated general rate increase case and an over-earnings complaint case is no different than the circumstances that regularly confront courts in civil cases. In its *Order Concerning Motion to Dismiss Complaint*, issued November 20, 2003 in Case No. WR-2003-0500 (at p. 13 (citations omitted)), the Commission rejected the idea that consolidating such cases presented problems relating to a conflicting burden of proof, stating as follows:

Courts resolve cases every day in which parties have asserted claims with irreconcilable burdens of proof. Consider a simple traffic accident. Drivers A and B collide in an intersection; one of them has run a red light. Driver A files suit against Driver B, alleging damage due to negligence. Driver B counterclaims against Driver A, also alleging damage due to negligence. Each of them has the burden of proof on the claim he or she asserts, yet the court will try both claims together in a single proceeding.

In the present case, Missouri-American has the burden of showing that the increased rates suggested in its tariff filing are just and reasonable.<sup>5</sup> Staff has the

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<sup>3</sup> See, e.g., Case No. ER-2007-0002 (where the Staff filed an over-earnings complaint against the Company as part of the Company's pending general rate increase case) and where the case was tried with the Staff's and other parties' positions being that a rate reduction should be ordered, and the Company's position being that a rate increase should be ordered (which was the result of the case); Case Nos. WR-2003-0500 and WC-2004-0168 (where a water company general rate case and an over-earnings complaint case were consolidated); Case Nos. ER-2001-672 and EC-2002-265 (where an electric company general rate case and an over-earnings complaint case were consolidated); and Case Nos. ER-98-344 and EC-98-126 (same).

<sup>4</sup> See, e.g., Case Nos. ER-94-174 and EO-91-74 (Where the rate design developed in the rate design case (EO-91-74) was implemented in the rate increase case (ER-94-174)).

<sup>5</sup> Section 393.150.2.

burden of showing that Missouri-American's revenues are excessive under the current rates. The Commission's duty is to consider all relevant factors and set just and reasonable prospective rates.

7. Consolidation of the three cases is the cleanest and most efficient way to “fully consider Ameren Missouri’s rates going forward,” which the Order indicates is the Commission’s object in all of these cases. If the cases are litigated separately, and if the Commission were to order a rate change of any kind due to the complaint cases while the suspended tariffs in the rate case are pending, it would arguably moot the suspended tariffs, creating procedural problems and issues in the rate case. In a consolidated proceeding such as that suggested by the Presiding Officer, it would be possible for the Commission to order an interim change in rates without impacting the progress of the rate case. Consolidation also obviates the single-issue ratemaking problem discussed in the Company’s prior filings that is presented by Noranda’s rate shift complaint case, which seeks to unlawfully change rates based upon consideration of essentially one factor – Noranda’s claimed business needs.<sup>6</sup>

8. There are several important principles that the Commission should adhere to if it pursues this option. First, any party advocating a change in rates (lower rates overall, higher rates overall, or lower rates for Noranda and higher rates for others) bears the burden of proof to support such a change. As noted, this is Noranda’s burden to sustain in order to obtain a Commission order to lower Ameren Missouri’s rates or shift costs to other customers, and it is Ameren Missouri’s burden to sustain in order to obtain a Commission order allowing an increase in rates. Second, since utilities are routinely held to an “emergency standard” when utilities seek to raise rates before completion of a full cost of service study by the Commission’s Staff (and before there has been the full development of pre-filed and live evidentiary hearing testimony

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<sup>6</sup> There are other legal problems with Complainants' rate shift complaint and over-earnings complaint, but those problems are being addressed via consideration of the Company’s Motions to Dismiss, and we will not repeat them here.

and evidence that bears on cost of service), Noranda should be held to that same emergency standard before they can achieve a rate change in the absence of such a study and in the absence of the full development of evidence based thereon. The Commission cannot truly determine what Ameren Missouri's revenue requirement on a going-forward basis is without the full development of evidence based on such a study. Nor can the Commission truly determine the magnitude of the rate shift Noranda seeks without the full development of evidence based on a proper class cost of service study. So before the Commission lets Noranda utilize interim rates in the face of those realities, they should have to meet the same burden utilities have had to meet.

9. Any interim rate implemented as a result of the complaints should be implemented through a bill credit that can be recouped in whole or in part via a later bill surcharge, depending on the outcome of the Commission's full review of the Company's rates as part of the rate case, including its full review of cost of service issues and its full review of rate design issues, including those presented by Noranda's rate shift complaint. With respect to the former issue, consider the fact that before 2014 is over Ameren Missouri will be placing into service two very large rate base additions, one directly caused by mandated federal environmental laws and one required as a matter of nuclear safety. These investments alone, which Ameren Missouri is paying for with rate revenues it is receiving now,<sup>7</sup> will total over \$300 million, and these facilities will be in-service and benefitting customers during all or virtually all of the future period when any rates set as a result of any of the three cases at issue here would be in effect. These facts have a significant bearing on whether any rate change is justified – i.e., on whether Noranda's claim that the Company's rates are not now just and reasonable is a valid claim.

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<sup>7</sup> Ameren Missouri invests substantially more than the level of depreciation expense it receives through rates, meaning Ameren Missouri must finance such improvements at least in part with funds not covered by its recovery of depreciation expense.

10. To aid the Commission in its consideration of the complaints, the Commission should also order its Staff to investigate the Company's probable future revenue requirement and Noranda's asserted need for rate relief in its rate shift complaint cases. Staff should be ordered to commence preparation of a cost of service study that would properly account for conditions likely to be in effect in the future when new rates would be in effect, to determine Staff's view of Ameren Missouri's class cost of service so that the extent of Noranda's rate shift request case can be known, and should also be ordered to investigate Noranda's claimed need for the extraordinary rate shift that it seeks. Staff can certainly use the results of the extensive discovery the Company has thus far undertaken on those issues, once Noranda provides responses.

11. As noted, these are unique cases involving important policy considerations – Staff ought to be taking an active role in them and should do so within a reasonable time. Indeed, Staff has always or virtually always taken on such a role whenever the continued justness and reasonableness of a utility's rates has been called into question. There is no reason for Staff to not perform that role here. The idea that the Staff should sit on the sidelines as a mere spectator when the Commission is attempting to “fully consider Ameren Missouri's rates going forward” makes no sense.

12. If the Commission were to pursue the option suggested by the Presiding Officer and that Ameren Missouri has discussed herein, Ameren Missouri would expect, given the tasks that must be completed, the history of the timeframes needed to complete those tasks while giving due consideration to Staff's other responsibilities, that Staff could complete the required cost of service and class cost of service studies in approximately four months (by approximately mid-August).<sup>8</sup> Ameren Missouri expects it to take a similar time frame to complete the

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<sup>8</sup> This would be slightly less time than the Staff typically takes in a general rate increase case, but the Company suggests such a time frame to balance the other demands on the Staff's time against Noranda's



investigation of Noranda's claims of need (both by Ameren Missouri, Staff or other interested parties, which as noted can be informed by the discovery Ameren Missouri has already undertaken). These timeframes suggest that rebuttal<sup>9</sup> testimony could be filed in the complaint cases by approximately mid-September, followed by surrebuttal testimony filed by approximately early October, with interim rate hearings in late October. A decision on the interim rate issues could then be made by late-November or perhaps early December, which would get Noranda its day in court and a decision and in just approximately nine to ten months as opposed to the approximately 11 months every rate increase case takes.<sup>10</sup> Moreover, it would allow the opportunity for Noranda et al. to receive rate relief a full six to seven months in advance of the effective date of rates in Ameren Missouri's rate case. If the Commission opts to pursue this approach Ameren Missouri would expect that the parties could likely work out the specific dates necessary to implement such schedule.

WHEREFORE, for the reasons stated herein, Ameren Missouri prays that the Commission defer setting a full procedural schedule until after the Commission decides the motions to dismiss pending in File Nos. EC-2014-0223 and EC-2014-0224, or adopt the procedural schedule contained in Ameren Missouri's April 1 filing. If, however, the Commission determines that a faster procedural schedule should be established to address Noranda's complaints, the Company requests and recommends that the Commission order (a) a consolidation of the two complaint cases with File No. ER-2014-0258, (b) its Staff to promptly

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desire (if the complaints are not dismissed) to "have its day in court" faster than would be normal when a review of a utility's rates is undertaken.

<sup>9</sup> The results of the Staff's investigations can be included in the Staff's rebuttal testimony.

<sup>10</sup> Again, it is important to note that unlike a rate increase case, no party had any prior notice (save a phone call two days ahead of time) that Noranda's complaints would be filed, the Company had a right to examine the complaints and respond thirty days later, and there is no statutory priority that must be given to such complaints. Handling and disposing of them in just nine months would be an extraordinary action by the Commission given the unprecedented nature of the complaints.

commence an investigation into Ameren Missouri's cost of service and class cost of service and into Noranda's claims regarding its business needs for the rate shift requested in File No. EC-2014-0224 to be completed by August 31, 2014, (c) the parties to attempt to agree upon a procedural schedule that would provide for the filing of testimony, an evidentiary hearing and briefing to be concluded by November 2014, and (d) such other and further relief as is reasonable and necessary under the unique circumstances of these cases.

Respectfully submitted,

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d/b/a Ameren Missouri

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**ATTORNEYS FOR UNION ELECTRIC  
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**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 and EC-2014-0224 via electronic mail this 10th day of April, 2014

/s/ James B. Lowery