

HC

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Noranda Aluminum, Inc., et al., Complainants, v.)
Union Electric Company d/b/a Ameren Missouri,)
Respondent.)

Case No. EC-2014-_____

EXCESS EARNINGS COMPLAINT AND REQUEST FOR EXPEDITED REVIEW AND RELIEF

COME NOW NORANDA ALUMINUM, INC. (“Noranda”) and the 37 individual customers of Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) (“Individual Complainants”), and for their Complaint and request for expedited review and relief against Ameren Missouri under sections 393.130.1, 386.390, 393.260 and regulation 4 CSR 240-2.070(4) and (5), state as follows:

Parties

1. Noranda is a corporation duly authorized to conduct business in Missouri and has its corporate address at 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067. Noranda operates an aluminum smelter in Southeast Missouri located in St. Jude Industrial Park near New Madrid, Missouri. Noranda produces various aluminum products at the smelter. The smelting process consumes large amounts of electricity at all times, with the cost of such electricity comprising approximately one third of the smelter’s production costs. Noranda is by far Ameren Missouri’s largest customer of electric power, consuming over \$160 million a year in electricity from Ameren Missouri.

2. The Individual Complainants are current customers of Ameren Missouri and will benefit from the relief requested in this Complaint. Their names, mailing addresses, and the

addresses where Ameren Missouri rendered services to each complainant if different than the mailing address, are included on Exhibit A, attached hereto and incorporated herein. By their signatures in Exhibit A, they have represented that they authorize and consent to this Complaint. They can be contacted through the undersigned attorneys.

3. Ameren Missouri is an electrical corporation as defined in section 386.020(12) and a public utility under the jurisdiction of this Commission and is the largest electric utility in Missouri. Ameren Missouri produces and sells electricity, at rates set by the Commission, to all of its customers, including Noranda and Individual Complainants, in Missouri. Ameren Missouri's main office address is 1901 Chouteau, St. Louis, Missouri 63166.

Jurisdiction

4. The Commission has jurisdiction of this Complaint under sections 393.130.1, 386.390, 393.260 and regulation 4 CSR 240-2.070(4) and (5).

5. Section 393.130.1 provides:

Every ... electrical corporation ... shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such ... electrical corporation ... for ... electricity ... or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for ... electricity ... or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

6. Section 386.390.1 provides:

Complaint may be made by ... any corporation or person ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any ... public utility, including any ... charge heretofore established or fixed by or for any ... public utility ...; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any ... electrical ... corporation, unless the same be signed by ... not less than twenty-five consumers or

purchasers, or prospective consumers or purchasers, of such ... electricity ... service.

7. Section 393.260.1 provides:

Upon the complaint in writing ... by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers of such ... electricity ... as to ... price of electricity sold and delivered ... the commission shall investigate as to the cause of such complaint.

8. Regulation 4 CSR 240-2.070(4) and (5) provides:

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. The formal complaint shall contain the following information:

- (A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;
- (B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;
- (C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;
- (D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;
- (E) The relief requested;
- (F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;
- (G) The jurisdiction of the commission over the subject matter of the complaint; and
- (H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county, or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer, or telephone service as provided by law. Any public utility has the right to file a formal complaint

on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

9. As required by the above authorities, attached hereto is a list of 37 Ameren Missouri customers (25 are required) who join in this Complaint.

10. The Complainants' counsel and Complainant Noranda contacted Ameren Missouri about the requested relief in this Complaint.

Basis of Overearnings Complaint

11. This Complaint concerns the rates Ameren Missouri currently charges all of its ratepayers for the electricity and electrical service that Ameren Missouri sells to them. Under the circumstances set forth below and in the attached Direct testimonies, that rate is now unjust and unreasonable because, with normalized and annualized expenses and revenues, Ameren Missouri is currently overearning at a rate of ****\$44.6 million**** per year over its authorized rate of return on equity of 9.8 percent. *See* Direct Testimony of Greg R. Meyer, attached hereto. In this Complaint, complainants also challenge the authorized rate of return on equity. Compelling evidence shows that the authorized rate of return on equity should now in fact be 9.40 percent. *See* Direct Testimony of Michael P. Gorman, attached hereto. Considering what the authorized rate of return on equity should be, in total Ameren Missouri is currently overearning at a rate of ****\$67.1 million**** per year, or over ****\$5.6 million**** per month. *See* Direct Testimony of Greg Meyer. Rates such as the current rate that yield revenues over ****\$67.1 million**** higher annually than needed to achieve a just and reasonable return on equity are unjust and unreasonable.

Facts Relevant to This Complaint

12. Ameren Missouri has obtained approval of the Commission for a Fuel Adjustment Clause ("FAC"), a mechanism that allows Ameren Missouri to shift ninety-five percent of the

risk of fuel cost increases onto its customers. As one condition of that approval, the Commission required Ameren Missouri to submit to the Commission Staff and other parties, on a calendar quarter basis, a “Surveillance Monitoring Report.” The most recently filed report shows that, among other things, Ameren Missouri’s “Actual Earned Return on Equity” was **10.32** percent for the 12 month period ending September 30, 2013. **Similar reports for prior recent quarters showed even higher returns on equity.** That is in contrast to Ameren Missouri’s authorized rate of return on equity of 9.8 percent.

13. Ameren Missouri is also regulated by the Federal Energy Regulatory Commission (“FERC”). Because of that regulation, Ameren Missouri is required to file a FERC Form 1 report. Ameren Missouri’s FERC Form 1 report shows important financial information for the company, including revenues, expenses and investments.

14. Ameren Missouri also files Investor Relations Earnings reports. Those reports show important financial information for the company regarding current and expected earnings.

15. In Case No. ER-2012-0166 Ameren Missouri and the Commission Staff prepared and filed Accounting Schedules and supporting workpapers reflecting the stipulations and agreements of the parties to the case and the Commission’s Report and Order. The Accounting Schedules contain financial information supporting the calculation of the ordered revenue requirement in that case.

16. Relying on the reports and filings identified in paragraphs 12-15, and the financial data therein, the actual earned return on equity most recently reported by Ameren Missouri should be adjusted for the recommended rate of return on equity and for variances in revenues and expenses. Included in such adjustments are:

- a. Recommended just and reasonable ROE of 9.4%;

- b. Rate case revenue annualization;
- c. Elimination of rate refunds;
- d. Callaway refueling normalization;
- e. Elimination of long-term incentive and stock compensation expense;
- f. Elimination of miscellaneous expenses and advertising;
- g. Steam production maintenance expense normalization;
- h. Distribution maintenance expense normalization;
- i. Pension expense annualization;
- j. Depreciation expense annualization;
- k. Labor expense annualization;
- l. Healthcare and OPEB expense annualization;
- m. Annualization of amortization expense;
- n. Annualization of interest on customer deposits; and

17. The results of these adjustments, annulizations, and normalizations, show that Ameren Missouri ****was overearning (exceeding a just and reasonable return) by \$67.1 million**** for the twelve month period ending September 31, 2013, or over ****\$5.6 million**** per month.

18. Complainants believe that, without a reduction in the rates it charges, Ameren Missouri will likely have continued to overearn (have rates exceeding just and reasonable rates) into the remainder of 2013 and will overearn into 2014.

Request for Expedited Relief

19. Because Ameren Missouri's adjusted overearnings are so significant, and expected to continue to be so, expedited review of this complaint and expedited relief is in the public interest within the meaning of section 386.390 and 4 CSR 240-2.080(14). As recognized

in *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 48 (Mo. banc 1979), such an emergency need for rate relief is a basis for expedited review and relief. Complainants respectfully request that the Commission set an expedited procedural schedule.

WHEREFORE, Complainants respectfully request the Commission review this Complaint on an expedited basis, that the Secretary of the Commission serve by certified mail, postage prepaid, a copy of the instant complaint upon Ameren Missouri, which shall be accompanied by a notice that the matter complained of be satisfied, or that the complaint be answered by Ameren Missouri within thirty days of the date of the notice, and that the Commission issue an Order setting an intervention period and adopting an expedited procedural schedule, conduct whatever investigation or hearings it deems appropriate and required by law, and revise Ameren Missouri's electric rates to just and reasonable electric rates consistent with its cost of service and revenues.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Edward F. Downey

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Attorneys for Noranda and Individual
Complainants

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 12th day of February, 2014, to:

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/s/ Edward F. Downey

<u>First Name</u>	<u>Last Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Don	Aubuchon	1415 E. Kenton Rd.	Dexter	MO	63841
Mark C.	Beavin	1232 Brookshire	Cape Girardeau	MO	63701
Jim	Bracey	188 W. State Hwy T	Portageville	MO	63873
Ricky	Brandon	2002 Ward Ave	Caruthersville	MO	63830
Kathee	Brown	1241 State Hwy HH	Sikeston	MO	63801
Dennis	Carden	108 Moore Place	Charleston	MO	63834
C. Dean	Carroll	908 Forrest St.	Dexter	MO	63841
Amy	Chalk	203 W. Main St.	Portageville	MO	63873
William	Cook	17314 Pond Ln.	Dexter	MO	63841
Greg	Craft	1831 Cypress Dr.	Cape Girardeau	MO	63701
William D.	Evans	236 S. Forester Dr.	Cape Girardeau	MO	63701
James R.	Fisher	301 W. State Hwy. 162	Portageville	MO	63873
Chris	Graves	1314 Riley Ln.	Dexter	MO	63841
S. Darin	Halter	1767 State Hwy. E	Benton	MO	63736
Joey	Kellams	106 Clover Ln.	Portageville	MO	63873
Judith M.	McGuire	1552 Lexington Ave.	Cape Girardeau	MO	63701
Shelly	Mize	201 E. 8th St.	Caruthersville	MO	63830
Mandy	Moore-Owens	101 Lombardy Dr. Apt. 4	East Prairie	MO	63845
Emily	Morgan	P.O. Box 393	Holcomb	MO	63852
Art	Murphy	536 Columbine St.	Cape Girardeau	MO	63701
Joseph	Niedbalski	1387 Foxridge Dr.	Cape Girardeau	MO	63701
Barbara	Phillips	242 Bristle Rdg	Cape Girardeau	MO	63701
Neil	Priggel	1303 King Ave.	Portageville	MO	63873
Curtis	Royster	414 Brown Dr.	Portageville	MO	63873
John Todd	Spence	207 Margaret St.	Portageville	MO	63873
Ray	Staffey	515 W. 10th St.	Portageville	MO	63873
Rodney	Starnes	509 W. 9th St.	Portageville	MO	63873
Randy	Tanner	16341 Terrace Dr.	Dexter	MO	63841
Christy	Vaughn	11335 Satmoore Rd.	Dexter	MO	63841
Jerry	Wilson	329 Wilkinson St.	East Prairie	MO	63845
Ryan J.	Niehaus	2037 Pear Tree Ct. Apt. 12	Cape Girardeau	MO	63701
Alisa A.	McFerron	2013 Beth Dr.	Cape Girardeau	MO	63701
Kim	Kasten	141 Ashley Dr.	Cape Girardeau	MO	63701
Mike	Murphy	4536 State Hwy. Y	Jackson	MO	63755
Jason	Crowell	146 Lake Shire Ct.	Cape Girardeau	MO	63701
Terry	Crowell	2140 Sussex Dr.	Cape Girardeau	MO	63701
Jonah T.	Yates	2952 Perryville Rd.	Cape Girardeau	MO	63701

We, the below ratepayers of Ameren Missouri, do hereby join in and sign the foregoing complaint.

Don AuBuchon
1415 E. Kenton Rd.
Dexter, MO 63841:

Don AuBuchon

Mark C. Beavin
1232 Brookshire
Cape Girardeau, MO 63701:

Jim Bracey
188 W. State Hwy. T
Portageville, MO 63873:

Jim Bracey

Ricky Brandon
2002 Ward Ave.
Caruthersville, MO 63830:

Ricky Brandon

Kathee Brown
1241 State Hwy. HH
Sikeston, MO 63801:

Kathee Brown

Dennis Carden
108 Moore Place
Charleston, MO 63834:

Dennis Carden

C. Dean Carroll
908 Forrest St.
Dexter, MO 63841:

C. Dean Carroll

Amy Chalk
203 W. Main St.
Portageville, MO 63873:

Amy Chalk

William Cook
17314 Pond Lane
Dexter, MO 63841:

William Cook

Greg Craft
1831 Cypress Dr.
Cape Girardeau 63701:

Greg Craft

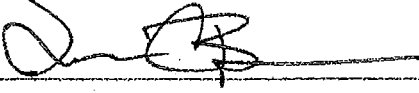
William D. Evans
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James R. Fisher
41 Brown Acres Drive
Portageville, MO 63873

Service at:
301 W. State Hwy. 162
Portageville, MO 63873:

James R. Fisher

Chris Graves
1314 Riley Lane
Dexter, MO 63841:

Chris Graves

S. Darin Halter
1767 State Hwy. E.
Benton, MO 63736:

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Joey Kellams
106 Clover Lane
Portageville, MO 63873:

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East Prairie, MO 63845:

Mandy Moore-Owens

Emily Morgan
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Holcomb, MO 63852

Service at:
301 Depot St.
Holcomb, MO 63852:

Emily Morgan

Art Murphy
536 Columbine St.
Cape Girardeau, MO 63701:

Art Murphy

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Cape Girardeau, MO 63701:

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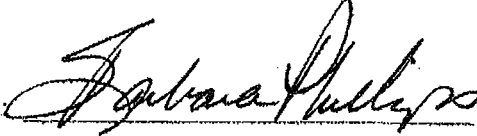
Christy Vaughn
11335 Satmoore Rd.
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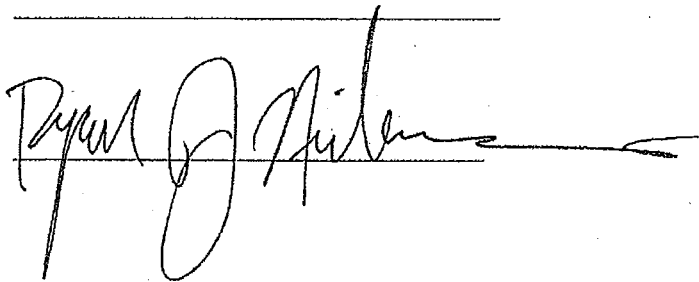
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Alisa A. McFerron
2013 Beth Drive
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Alisa A. McFerron

Kim Kasten
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Cape Girardeau, MO 63701:

Kim Kasten

Mike Murphy
4536 State Hwy. Y
Jackson, MO 63755:

Mike Murphy

Jason Crowell
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Cape Girardeau, MO 63701:

Jason Crowell

Terry Crowell
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Cape Girardeau, MO 63701:

Terry Crowell

Jonah T. Yates
2952 Perryville Rd.
Cape Girardeau, MO 63701:

Jonah T. Yates