

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Noranda Aluminum, Inc.'s)
Request for Revisions to Union Electric)
Company d/b/a Ameren Missouri's Large) Case No. EC-2014-0224
Transmission Service Tariff to Decrease)
its Rate for Electric Service)

REPLY BRIEF OF MISSOURI RETAILERS ASSOCIATION

Introduction

Noranda Aluminum, Inc. and a number of other customers ("Noranda" or "Complainants") of Union Electric Company, d/b/a Ameren Missouri ("Ameren") brought this Complaint pursuant to Sections 393.130.1, 386.390 and 393.260, RSMo.

Complainants brought the Complaint to apprise the Commission that Ameren's LT customer class, comprised solely of Noranda Aluminum, Inc., might cease operations, and asked for an adjustment to Ameren's class rates to avoid that eventuality.

In support of its requested relief, Complainants have provided evidence that showed that other Ameren customer classes are better served by a rate of \$30/MWh for the LT class. At that rate the LT class will continue to contribute to Ameren's fixed costs; if Noranda were no longer a customer of Ameren, the remaining customers will be responsible for a substantial additional portion of Ameren's fixed costs. The evidence also demonstrated substantial non-rate considerations establishing the public interest in Noranda's continuing as a customer of Ameren because beneficial to its community, and to the state at large.

The issue for decision concerns is the relationship of Ameren's customer classes to one another; it does not concern Ameren's relation with its customers; and it only tangentially concerns Noranda's relation to the aluminum market.

Noranda is in a customer class with one member before this complaint, and will be in a customer class of one after this case. No other customer has service characteristics similar to those of Noranda. Take Continental Cement, as an example. Noranda comprises six percent of Ameren's revenue (\$158,000,000 per year); River cement comprises .2 percent of Ameren's revenue (\$6,000,000 per year). Noranda energy load is virtually constant; Continental Cement's is not. (Tr. 816-817) If any other customer had service characteristics at all similar to Noranda's, it would take service under the same tariff. It is the LT customer class, and not the sole member of that class, that is relevant to this proceeding.

I. Can the Public Service Commission Grant the Requested Relief

There is ample statutory authority for the Commission to decide this Complaint. The General Assembly to exercise both the police power and the taxation power. The General Assembly is not required to address regulatory issues by exercise of the taxation and budget powers; it can address issues by exercise of the police power, as it has done in Chapters 386 and 393 RSMo. The General Assembly has authorized the PSC to set rates, an exercise of the police power. There is no Constitutional requirement that the General Assembly address specific ratemaking issues by statute, although it can do so, and has done so, on occasion. Some examples are the specific rate treatment for renewable energy §393.1000, et seq., fuel adjustment clause §386.266, and pensions and OPEBs. §386.315 The general authority for the Commission to treat different customer classes differently is long established. There is no basis in this case for the Commission to refuse to exercise the authority granted by statute, and relegate Complainants to the legislative arena.

The terms of service sought by the LT class are the rates needed to maintain the existence of the LT class while continuing to provide a contribution to the fixed costs Ameren incurs to provide service to all of its customers. This is cost based rate making.

The rates in this case will be experimental. *State ex rel McKittrick v. Public Service Commission*, 175 S.W.2d 857, 866 (Mo. banc 1943) Noranda has conceded that the Commission will have continuing authority to review and adjust these rates as future circumstances warrant. (Tr. 183:13-16) Other parties have noted that the Commission has in the past approved “load retention” or “economic development” rates in particular cases. (See numerous examples in Complainant’s Brief, pp. 4-7) They also noted that such rates are typically ordered by the Commission as part of a stipulated agreement among the parties to the case. However, the Commission’s authority to promulgate such rates is independent of an agreement among the parties; that is, the parties cannot by agreement confer on the Commission authority not granted by statute. Neither convenience nor expediency take the place of statutory authority. *Utility Consumers Counsel of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979) In this case, the Complainants ask the Commission to exercise that authority on the record evidence.

II. Should the Public Service Commission Grant the Requested Relief

MRA urges the Commission to grant the relief the Complainants seek. MRA will not rehash the technical arguments made by Complainants, Staff and Ameren, but will suggest a couple of non-technical reasons for the Commission to adjust rates as sought by Complainants.

First, MRA notes that both Ameren and Staff abandoned positions on normalization for weather anomalies long held by both. As noted by Mr. Dauphinais, Staff and Ameren have normalized abnormal weather conditions by eliminating the abnormal conditions, and substituting average data for a similar, normal period. (Dauphinais Surrebuttal, Ex. 14HC, 10-12) In this case, the aberrant adjustments served to increase the market price of energy, to the detriment of Complainants' position. Such a practice should cause the Commission considerable pause in accepting any of the arguments of Ameren and Staff.

Second, Ameren has no real stake at issue. It will not hold customers harmless should Noranda's load be lost, leaving customers at risk for all of the fixed costs now paid by the LT class. Staff of course, cannot make any such warranty. MRA does not believe that Ameren's customers should wager when Ameren will not put its money where its mouth is.

Third, the evidence is undisputed that the number of aluminum smelters has dropped dramatically. Should the Noranda smelter shutter, prospects for a revival seem remote from the evidence in the record. All parties concede that a proper rate for the LT class turns on facts will change over time. It is far more prudent to grant the requested relief, then monitor conditions in future to insure that the proper balance has been struck and remains appropriate. To err on the other side as proposed by Ameren and Staff may well preclude having any conditions to monitor.

The final consideration the Commission should bear in mind while deciding this case is the impact of the loss of Noranda on Ameren's other ratepayers, its community and on the state. While not controlling, it is the type of consideration that the Commission can consider when exercising its discretion in setting rates. *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 879 (Mo. App. W.D. 1985) The Commission should not

unnecessarily jeopardize Noranda's advocacy on energy issues for all consumers before it and before the General Assembly. Noranda's efforts are a major, non-rate benefit for consumer interests. Likewise, the Commission should bear in mind the continued benefits to community and state that may be lost by precipitous and unnecessary action here. The prudent and conservative course is to grant the relief sought, and monitor the results in the future and modify as warranted.

III. Conclusion

At issue is whether the other customer classes better off with Noranda, the LT class, remaining on the system and contributing to fixed costs, or are customers better off risking tens of millions of dollars in the energy markets. Ameren is unwilling to take that bet; MRA urges the Commission not to make Ameren's customers, including MRA members, take a bet that Ameren refuses.

The Public Service Commission should grant the relief the Complainants seek on an experimental basis to preserve the options of all Ameren customers, and the Commission, for review and adjustment as future circumstances dictate.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the above Reply Brief of Missouri Retailers Association have been emailed to counsel for the parties in this proceeding on this 16th day of July, 2014.

/s/ Thomas R. Schwarz, Jr.

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