

**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 OPC’S MOTION IN LIMINE

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its response to Office of the Public Counsel’s (“OPC”) Motion in Limine, states as follows:

1. OPC seeks an order in limine prohibiting any mention of the undisputed fact that on July 3, 2014 the Company filed tariffs and supporting testimony and minimum filing requirements seeking to increase its electric service rates by approximately \$264 million annually. OPC claims such facts are irrelevant and would not constitute competent and substantial evidence. OPC also claims that such evidence is “prejudicial.”

2. OPC admits that the issue in this case is whether rates – that would apply *subsequent* to the conclusion of this case (i.e., in the future) – should be changed. In other words, would the continued application of the revenue requirement inherent in the Company’s current rates into the future, after this case is over, be unjust and unreasonable? And if the Company’s revenue requirement during that future period is as high or higher than the revenue requirement determined in the Company’s last rate case (upon which the Company’s current

rates are based), then the answer to that question is “no.” The existence of a current, comprehensive cost of service study showing that current rates are in fact too low rather than too high is indeed relevant to the issue in this case because it tends to prove (it does not have to “prove” it, it must only tend to prove it) a material fact in this case: that the Company’s rates are not too high. *See, e.g., State v. Rehberg*, 919 S.W.2d 543, 548 (Mo. App. 1995) (Evidence is logically relevant when it tends to prove a material fact). Not only is such evidence logically relevant, but it is also legally relevant because it is certainly more probative than it is prejudicial.¹ *Id.* at 549 (Evidence is legally relevant when it is more probative than prejudicial).

3. OPC implies that this is not so because of the timing of the Company’s filing of the case and because the Company, OPC claims, might later dismiss the case. OPC ignores the fact that the Company has filed five prior rate cases in the past approximately eight years, has proven that a rate increase was warranted in every single one of them (as evidenced by the Commission granting rate increases in every single one of them) and has not dismissed a single one of them. And OPC also ignores the fact that the Company publicly announced that it would file this rate case by July of this year *before* this Complaint was even filed.

4. The bottom line is that OPC’s complaint about the existence of such evidence goes only to the *weight* the Commission may choose to give it. OPC is free to cross-examine witnesses about any evidence that may be adduced, and to argue that the fact that the rate increase sought in File No. ER-2014-0258 has not yet been proven or litigated. OPC is free to argue that in theory the case could be dismissed, and is free to claim and argue that the timing of its filing somehow suggests that the revenue requirement filed by the Company in that case is

¹ This is not a case tried before a lay jury unfamiliar with the law or the process of the case in which it sits where the trial judge needs to “protect” the jury from being unduly influenced by evidence that is inflammatory and could be misconstrued by the jury. This Commission sits as an expert body in matters of utility regulation and ratemaking. It surely knows that others are likely to dispute the magnitude of the rate increase the Company seeks in File No. ER-2014-0258.

less persuasive than it otherwise might have been. And the Commission is free to take such arguments into account. But OPC's attack on the weight that should be given to the fact the case has been filed and what the revenue requirement filed in that case shows does not render such evidence inadmissible.²

5. OPC also misstates the law when it claims that such evidence could not be competent and substantial. The law tells us that competent evidence is evidence that is relevant and admissible. *State ex rel. Office of the Public Counsel v. Public Serv. Comm'n*, 293 S.W.3d 63, 72 (Mo. App. S.D. 2009) (quoting *State ex rel. Union Elec. Co. v. Public Serv. Comm'n*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)). We have already established why such evidence is relevant and admissible. And substantial evidence is evidence that is probative of the issues it is offered to prove. *Id.* We have similarly demonstrated why a comprehensive cost of service study showing that Ameren Missouri's rates are in fact too low is highly probative of *the* issue in this case.

6. Certainly the existence of the revenue requirement produced by the comprehensive cost of service study on file in File No. ER-2014-0258 is an inconvenient fact for OPC, which wants the Commission to lower Ameren Missouri's future rates as a result of this case. But that inconvenience does not make it irrelevant or otherwise inadmissible. The Commission is well-equipped to give it the weight the Commission believes it deserves. OPC's motion should be denied.

² Perhaps OPC believes that the Company intended to ask the Commission to take official notice of its entire rate case filing. To the contrary, the Company (and the Staff) have included some basic facts about that filing in pre-filed testimony in this case, but the Company did not (and does not) intend to ask the Commission to take notice of the entire filing..

Respectfully submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR UNION ELECTRIC
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Dated: July 27, 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 27th day of July, 2014

/s/ James B. Lowery