

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) Case No. EC-2014-0224
Missouri's Large Transmission Service)
Tariff to Decrease its Rate for Electric)
Service)

**COMPLAINANTS' RESPONSE TO AMEREN MISSOURI'S REPLY
TO MOTION TO MODIFY PROCEDURAL SCHEDULE**

COME NOW Complainants, and for their *Response to Ameren Missouri's Reply to Complainants' Response to Motion to Modify Procedural Schedule*, state as follows:

1. On May 12, 2014, Ameren Missouri filed its *Reply to Complainants' Response to Modify Procedural Schedule* ("Reply"). Ameren's Reply objects to Complainants' *Motion to Modify Procedural Schedule* ("Motion"), and now asserts for the first time that that the "entire week of June 9 does not work for Ameren Missouri". This assertion is contrary to Ameren Missouri's prior pleadings in this case, including its May 7, 2014 *Response to Complainants' Motion to Modify Procedural Schedule*¹ which stated that its counsel is unavailable June 9 and one of its witness is unavailable June 9, 10 and 12, and its April 18, 2014 *Request to Amend Procedural Schedule*, which sought delay due to counsel's vacation², and proposed that the hearings could be moved to June 10 and 12-13, 2014³.

2. Complainants recognize that the Commission must establish the procedural schedule that it finds appropriate given the schedules of the Commissioners,

¹ See *Ameren Missouri Response to Complainants' Motion to Modify Procedural Schedule* at ¶3.

² See *Ameren Request to Amend Procedural Schedule* ¶3

³ See *Ameren Request to Amend Procedural Schedule* ¶8

the workload of the Commission and the competing interest of the parties in this case and many other pending cases. No party other than Ameren Missouri has objected to Noranda's motion. Complainants respectfully submit that if the Commission finds no undue burden to the Commission or parties would result from granting their motion, the Commission should then balance the equities by weighing the merits of Complainants' Motion against the merits of Ameren's objections.

3. First, the equities weigh in favor of granting Complainants' Motion because their Motion is caused by the legally required appearance of Complainants' longstanding counsel at a previously scheduled arbitration trial. Complainants' counsel has represented Complainant Noranda Aluminum before the Commission for over five years in every case where Noranda has provided testimony. While counsel can be substituted if necessary, there is no question that substitution of counsel would materially damage the legal representation of Complainants in this case. Complainants respectfully submit that counsel's legal duty to appear in a trial scheduled two months prior to the *Order Establishing Procedural Schedule* in this case, which cannot be changed without material prejudice to his clients and which is described with specificity in Complainants' Motion⁴, should be given greater weight than Ameren Missouri's counsel's vacation, which is voluntary and can be changed albeit at significant personal cost, and the conflict of its unspecified witness, which Ameren Missouri has not described or explained.

4. Second, the equities weigh against Ameren Missouri's objections because Ameren Missouri decided not to participate in the scheduling discussions at the Prehearing Conference held by the Commission on March 28, 2014. The Commission

⁴ See *Complainants' Motion to Modify Procedural Schedule* dated May 5, 2014 at ¶2.

scheduled the Prehearing Hearing conference for the specific purpose of convening the parties to discuss the proceedings in this case, including the proposed procedural schedule.⁵ Ameren Missouri appeared on the record at the Prehearing Conference and argued for the Commission to delay any action on the procedural schedule until the Commission ruled on its Motion to Dismiss. The Presiding Officer ruled orally on the record at the Prehearing Conference that the pendency of Ameren Missouri's Motion to Dismiss **would not preclude further action by the Commission to establish a procedural schedule or any other action in these cases.**⁶ Despite this ruling, Ameren Missouri left the Prehearing Conference shortly after the Presiding Officer ruled to go off the record, stating that the parties were far apart and it did not want to waste the parties' time. All of the other parties present remained at the Prehearing Conference and worked together through a lengthy discussion to develop a jointly proposed schedule, and as a result this schedule was either supported or unopposed by all parties except Ameren Missouri⁷.

5. An important goal of the Commission in ordering early prehearing conferences is to avoid the waste of the Commission's and the parties' time and resources that results from failure to engage in basic cooperation regarding scheduling conflicts. This is especially necessary in Commission proceedings, due to the large number of parties and the caseload of the Commission. Counsel and witnesses appear at the Prehearing Conference at considerable time and/expense to their clients, to avoid the very

⁵ *Order Scheduling a Conference* dated March 20, 2014 and *Notice of Rulings Made at Conference* dated March 28, 2014..

⁶ *Notice of Rulings Made at Conference* at ¶2.

⁷ *See Jointly Proposed Procedural Schedule* filed April 1, 2014..

problems Ameren Missouri has created in this case by abandoning the Prehearing Conference discussion of the schedule. Counsel and witnesses worked together at the Prehearing Conference precisely for the purpose of identifying and accommodating personal conflicts such as vacations as well as required appearances in legal proceedings. Because Ameren Missouri decided to leave the Prehearing Conference without discussing the schedule, the Commission's time has been wasted in this case by the need for rulings on numerous contentious pleadings regarding every aspect of the schedule, and the parties are also forced to waste considerable time and money arguing about the schedule to the Commission regarding vacations, competing trials and witness availability.

6. Ironically, Ameren Missouri complained in its *Request to Amend Procedural Schedule* (filed two days after the Commission's *Order Establishing Procedural Schedule* in this case) that "no party was afforded any opportunity to raise legitimate conflicts that would only affect the Commission's preferred schedule in a minor way"⁸. Yet it was Ameren Missouri's own disregard of the Commission's procedure that foreclosed the opportunity of the Commission and the parties to properly and efficiently resolve personal and business scheduling conflicts. Ameren Missouri's failure to participate in the Prehearing Conference is an additional reason that it would be inequitable for the Commission to give greater weight to Ameren Missouri's vacation and unspecified witness conflicts than to the documented and unavoidable trial conflict of Complainants' counsel.

7. Finally, the equities favor granting Complainants' Motion because if Complainants' allegations are true, the harm to Complainants and the State of Missouri is

⁸ *Ameren Missouri's Reply* ¶4, Footnote 1.

great if resolution of this case is delayed, but there no harm to Ameren Missouri if their Motion is granted. Complainants' complaint and direct testimony filed on February 12, 2014 and the *Affidavit of Layle K. (Kip) Smith* filed on April 3, 2014 demonstrate that without the requested relief in this matter, Noranda will be forced to lay off 150-200 employees and will suffer the substantial likelihood of imminent close of the New Madrid Smelter. The complaint requests that Ameren Missouri be held harmless, meaning that any resulting rate change would be revenue-neutral for Ameren Missouri. Since the filing of the complaint, the urgency of Noranda's rate request has increased, as shown by the *Affidavit of Layle K. (Kip) Smith*. The Commission has found that Complainants case is legally sufficient⁹. There is great potential harm to Complainants from delay and no potential harm to Ameren Missouri that could result from granting Complainants' request.

8. Even though the Commission has determined that Noranda's case is legally sufficient and should proceed on a timely basis, Ameren Missouri stubbornly argues (as it has in prior pleadings) that no material harm would result from delaying the schedule in this case. In its *Reply*, it argues that "Complainants should not be heard to object to moving the hearings back approximately one week" because having the case resolved seven days later is an "immaterial change in the timeline for processing this case"¹⁰. This argument is unreasonable on its face, because pursuant the complaint, a one-week delay in the resolution of this case would deprive Complainants of over \$900,000 in rate relief which they claim is essential to the New Madrid Smelter. The complaint,

⁹ See *Order Regarding Ameren Missouri's Motion to Dismiss* dated April 16, 2014.

¹⁰ See *Ameren Missouri Reply to Complainants Response to Motion to Modify Procedural Schedule* at ¶4 Footnote 1.

direct testimony and *Affidavit of Layle K. (Kip) Smith* demonstrate that (a) Noranda's financial outlook is deteriorating, thus increasing the urgency of its rate request (b) without timely relief Complainants will suffer irreparable harm, including the lay-off of 150-200 employees and the substantial likelihood of the New Madrid Smelter's closure. Contrary to Ameren Missouri's *Reply*, material harm would indeed result from a one-week delay in the resolution of this case.

WHEREFORE, Complainants respectfully request that the Commission grant their Motion to Modify Procedural Schedule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 13th day of May, 2014 to all counsel of record.

/s/ Diana Vuylsteke _____