

**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 JOINTLY PROPOSED
PROCEDURAL SCHEDULE AND PROCEDURES**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the "Company") and for its response in opposition to the above-referenced jointly proposed procedural schedule states as follows:

1. The Commission, in its March 28, 2014 prehearing conference and *Notice of Rulings Made at Conference*, ordered the parties to file proposed procedural schedules for this case on or before April 1, 2014.

2. In response to that order, Ameren Missouri submitted a filing asking the Commission to defer consideration of a procedural schedule for this case until its Motion to Dismiss is ruled upon by the full Commission. It is premature for the Commission to consider a procedural schedule until it has ruled on Ameren Missouri's Motion to Dismiss, which it should not do until it has received and considered Ameren Missouri's reply to the various responses to its Motion to Dismiss (due April 15), and we believe, until the Commission has heard oral argument, which the Company recommends be scheduled as soon after April 15 as the Commission's schedule allows. The Company's Motion to Dismiss raises important questions about the sufficiency of the Complaint, and about whether, even if the Complaint met some

minimal standard for sufficiency, the Commission should exercise its discretion to dismiss it or alternatively order its Staff to investigate given the entirely inadequate allegations regarding the Company's current and expected revenue requirement reflected in the Complaint. If the Commission is unwilling to defer consideration of a procedural schedule, Ameren Missouri recommended that this case be consolidated with Noranda's other complaint case (File No. EC-2014-0224) and Ameren Missouri's upcoming rate case, for which it has filed a 60-day notice in accordance with 4 CSR-240-4.020(2) and which it has committed to file by July 15, 2014 (File No. ER-2014-0258). Ameren Missouri proposed a schedule that would allow all three cases involving proposed changes to its electric rates to be considered together, generally along the timeline that a rate case would be considered, and under which the Staff would commence its investigation of the complaints and audit of the Company's books immediately if the Commission did deny Ameren Missouri's Motion to Dismiss.

3. Also in response to the Commission's order, the Complainants, Consumers Council of Missouri, the Missouri Industrial Energy Consumers, the Missouri Retailers Association, the Office of the Public Counsel and the Cities of O'Fallon and Ballwin, Missouri (Joint Parties) jointly submitted a proposed schedule. Under that proposed schedule, the entire case except post-hearing briefing would be concluded just two and one-half months from now.¹

4. The Commission Staff filed a concurrence to the Joint Parties' "very abbreviated schedules" in this case and File No. EC-2014-0224, but the Staff made it crystal clear that its concurrence was premised on the fact that the Commission has so far asked it to do absolutely nothing in these cases. Staff stated: "In particular, Staff does not now intend to conduct any

¹ The Joint Parties also proposed an even more aggressive proposed schedule in Noranda's companion complaint case, File No. EC-2014-0224, which calls for the entire development of the record in the case to be complete in just about seven weeks from now, with much of the work to run simultaneously to the work that would have to be done in this Complaint case, and with all of those activities taking place simultaneously with the time period when the Company would have to prepare its early July rate case for filing.

audit, cost-of-service study, class cost-of-service study, or other extended or exhaustive analyses in either of these cases." (Staff's Concurrence in Procedural Schedules, p.2). Staff pointed out that an audit sufficient to establish the cost of service for a utility generally takes a team of Staff auditors many months of work, and that the Staff intends to conduct a full audit and cost of service study when Ameren Missouri files its rate case in July.

5. Under the circumstances of this case, the procedural schedule proposed by the Joint Parties is completely inadequate for the parties to develop proper evidence on Ameren Missouri's cost of service, and for the Commission to make a reasoned determination as to what Ameren Missouri's cost of service is, and whether its current rates are too high, too low, or just right. As Ameren Missouri has pointed out numerous times in previous pleadings, the "cost of service" information that the Complainants submitted with their Complaint is so deficient that it provides the Commission with no information at all that would help determine what Ameren Missouri's rates should be on a going forward basis. That this is what a cost of service must do is required as a matter of law, as our Supreme Court has recognized. *See, e.g., State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957) ("In *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission et al.*, 262 U.S. 276, 43 S. Ct. 544, 546, 67 L. Ed. 981, 984, 985, 31 A.L.R. 807, it is said: 'It is impossible to ascertain what will amount to a fair return upon properties devoted to public service, without giving consideration to the cost of labor, supplies, etc., *at the time the investigation is made*. An honest and intelligent *forecast of probable future values*, made upon a view of *all the relevant circumstances*, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of to-day.'" (emphasis ours in *italics*; court's emphasis underlined)). What the Supreme Court

said in *Missouri Water* is that you cannot do what Noranda has done, because not only is it not a consideration of all costs and revenues now, when the investigation is taking place, but it is not a forecast of probable values during the future period when new rates would be in effect.

6. To the contrary, Noranda's allegations about Ameren Missouri's cost of service consist of simply taking Ameren Missouri's book earnings from one historical period starting 18 months ago and ending more than 6 months ago, and making a handful of adjustments to those book figures, in many cases simply cut-and-pasted Staff adjustments using the same dollar amounts from Ameren Missouri's previous rate case. Some of the data used in the adjustments are many years old, and numerous other adjustments, like weather normalization and current levels of rate base investment, have been completely ignored. It is not an overstatement to say that the information presented by Complainants is completely meaningless in determining what Ameren Missouri's rates for future service should be. If any utility submitted such information in support of a rate increase, the Commission would quite properly summarily dismiss the rate case, and that's what the Commission should do here.

7. Complainants have argued that their inability to submit a "real" cost of service study based on complete and contemporaneous data that would really show if Ameren Missouri is over-earning or under-earning should not be held against them. After all, they point out, Ameren Missouri has better access to its own data. Unfortunately for the Complainants, this Commission is not empowered to set utility rates based on slipshod analyses using incomplete and dated information that fails to reflect an honest and intelligent forecast of the Company's probable future revenue requirement. *Missouri Water Co.*, 308 S.W.2d at 719. The Commission

can only set rates after considering *all relevant factors* as reflected in comprehensive and current cost-of-service studies and class cost of service studies that would reflect such a forecast.²

8. Missouri cases are clear on this point. In *State ex rel. Utility Consumers' Council of Missouri v. Public Service Commission*, 585 S.W.2d 41 (Mo. 1979) ("*UCCM*") the Missouri Supreme Court endorsed the "all relevant factors" requirement for setting electric rates. The decision specifically stated that language in one of the statutes applicable to rate complaints (Section 393.270(4) RSMo.³) "clearly denotes that 'proper determination' of such charges is based on all relevant factors." The court stated that:

however difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse nor expediency can be substituted for the requirement that such rates be authorized by law and supported by competent and substantial evidence on the whole record.

UCCM (citing *Missouri Water Co.*, 308 S.W.2d at 719).

9. If the Commission is going to adjust any of Ameren Missouri's rates up or down it is clear that it can do so only based on comprehensive cost of service and class cost of service studies that encompass all relevant factors and consider contemporaneous costs, revenues and rate base. The cost of service study must reflect an honest and intelligent forecast of what those items will be in the future, post the time when rates would take effect. Neither impulse nor expediency can be substituted for that thorough examination. And under the "very abbreviated" schedule proposed by the Joint Parties there is absolutely no way that this could be properly done. Consider that Missouri statutes require that rate increases be prioritized over all other

² The Complainants' alleged inability to access data which would show whether Ameren Missouri's rates are too high or too low could be remedied if the Commission opened an investigatory docket. In the context of such a docket, Complainants and other parties could conduct discovery and perform a complete cost of service study. If such a study showed the Company's rates are too high, it would then be appropriate for the parties to pursue a complaint to reduce them. However, absent such evidence of excessive rates, there is no basis for a complaint.

³ All statutory references are to the Revised Statutes of Missouri (2000), unless otherwise noted.

matters at the Commission. Section 393.150.2 RSMo. states in relevant part: "At any hearing involving a rate sought to be increased,...the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." Notwithstanding this provision, major rate increase cases, including Ameren Missouri's recent rate cases, have taken a full 11 months to process, the maximum period allowed by statute. These cases take time because rate setting is complicated; discovery and consideration of all factors relevant to the determination of rates for a large utility necessarily takes time. These cases must be based upon an appropriate test year and, particularly for a utility that has already placed in service hundreds of millions of dollars of plant not reflected in rates but which is serving customers, and will soon put two very large projects into service that will serve customers in only about 7-8 months from now, must include an appropriate update or true-up period so that the cost of service used to set rates indeed will reflect an honest and intelligent forecast of probable future circumstances.

10. This case is no different than any other case in which a major utility's cost of service is at issue and rates must be determined. As a consequence, the procedural schedule proposed by the Joint Parties and the test period upon which it is based are completely inadequate and must be rejected in favor of procedures that will permit the development of an appropriate, updated test year and discovery and consideration of all relevant factors necessary to set Ameren Missouri's rates for the future.

11. Virtually all of the information relied upon by Noranda was in its possession since November, 2013.⁴ Noranda chose to wait until February to file this case. We submit that this was no coincidence, and that a fair reading of the facts here is that Noranda filed this Complaint

⁴ Mr. Gorman used somewhat more up-to-date information, but capital market conditions changed very little from late-2013 to early this year.

case as a means to draw attention away from the rate shift Complaint filed the same day. Noranda should not be permitted to shove this Complaint down the Commission's and the Company's throats in a time period that is far less than even a rate increase case, which must be given statutory priority by the Commission, is normally processed, particularly based upon the wholly inadequate "cost of service" Noranda tries to support it with. If a procedural schedule is to be adopted, the Commission should consolidate this case and Noranda's other complaint case with the Company's upcoming rate case filing so that a proper investigation of all of the issues in those cases – and indeed all relevant factors that have a bearing on the rates all three cases seek to set – can be considered, using the procedural schedule proposed by the Company on April 1.

WHEREFORE, Ameren Missouri respectfully requests that the Commission reject the procedural schedule proposed by the Joint Parties and either defer establishment of a procedural schedule until after Ameren Missouri's Motion to Dismiss is ruled upon, or adopt the procedural schedule Ameren Missouri has proposed for a consolidated proceeding, which will permit Staff auditors to do thorough cost of service and class cost of service studies necessary to support any change to Ameren Missouri's rates.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a Ameren Missouri

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**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of April, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

James B. Lowery
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