

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day of
April, 2014.

Noranda Aluminum, Inc., et al.,)	
)	
Complainants,)	
)	
v.)	<u>File No. EC-2014-0223</u>
)	
Union Electric Company, d/b/a)	
Ameren Missouri)	
)	
Respondent.)	

ORDER REGARDING AMEREN MISSOURI'S MOTION TO DISMISS

Issue Date: April 16, 2014

Effective Date: April 16, 2014

On February 12, 2014, Noranda Aluminum, Inc. and 37 other individual customers filed a complaint against Union Electric Company, d/b/a Ameren Missouri, alleging that the company is earning money at an excessive rate. The complaint asks the Commission to review Ameren Missouri's rates and to revise those rates to just and reasonable levels. In response to that complaint, the Commission directed Ameren Missouri to file its answer by March 17. Ameren Missouri filed its answer on March 17, and on the same date filed a motion asking the Commission to dismiss this complaint. The Complainants, Staff, and Public Counsel responded in opposition to Ameren Missouri's motion to dismiss on March 26 and 27. Ameren Missouri replied on April 15.

Ameren Missouri asserts three reasons why the complaint should be dismissed. First, it argues that the complaint fails to state a claim upon which relief can be granted

because it fails to allege that Ameren Missouri's current and future rates are unjust or unreasonable. In support of that contention, Ameren Missouri argues that the allegations contained in the complaint and the supporting testimony do not sufficiently support the relief requested. A review of the complaint reveals that paragraph 11 of that complaint asserts that the rates Ameren Missouri currently charges its customers are "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." Clearly, the complaint does allege that Ameren Missouri's current rates are unjust and unreasonable.

In its reply, Ameren Missouri clarifies its argument to assert that the Complainants have failed to allege sufficient facts to establish that Ameren Missouri's rates will be excessive in the future. That clarification does not change anything because what Ameren Missouri is really arguing is that the facts alleged by the Complainants do not support the rate reduction requested in the complaint. But at this stage of the proceeding, the Commission has no basis to judge the accuracy of the facts alleged by the complainants. On the contrary, when considering a motion to dismiss for failure to state a claim, the Commission can only consider the legal sufficiency of the complaint. The facts alleged must be accepted as true and the complainant must be given the benefit of all reasonable inferences from those facts.¹ The complainants have alleged sufficient facts to provide a legal basis for their complaint. Whether those facts are true and whether they support a Commission decision to reduce Ameren Missouri's rates cannot be determined at this stage

¹ *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. 1993).

of the proceeding and do not need to be determined to deny Ameren Missouri's motion to dismiss.

Ameren Missouri next argues that the complaint is an unlawful collateral attack on the Commission's report and order in Ameren Missouri's most recent rate case, ER-2012-0166. Ameren Missouri supports that argument by asserting that the facts alleged in the complaint fail to support any change in circumstances since the 2012 rate case was decided. Again, Ameren Missouri is really challenging the truth and relevance of the facts alleged in the complaint. But, as previously indicated, this motion to dismiss is not the proper method to challenge those facts. Assuming that the facts alleged in the complaint are true and giving the complainants the benefit of all reasonable inferences from those facts, the complainants have pleaded a significant change of circumstances since the report and order in ER-2012-0166 was decided. Therefore, the complaint is not an unlawful collateral attack on that report and order.

Finally, Ameren Missouri argues that the Commission should exercise its discretion to dismiss the complaint for good cause shown. The good cause Ameren Missouri asserts is that the facts alleged by the complaint do not support a rate reduction. Essentially, Ameren Missouri is asking the Commission to summarily weigh the facts alleged in the complaint and to find them insufficient. The Commission cannot do that when considering a motion to dismiss for failure to state a claim.

Ameren Missouri's Motion to Dismiss Complaint is not well founded and will be denied.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's Motion to Dismiss Complaint is denied.

2. Ameren Missouri's request for oral argument is denied.
3. This order shall become effective upon issuance.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Woodruff, Chief Regulatory
Law Judge