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 COMPLAINANTS' REQUEST TO SET TEST YEAR AND TRUE-UP, AND REPLY TO STAFF'S RESPONSE THERETO

COMES NOW Union Electric Company, d/b/a Ameren Missouri (the "Company" or "Ameren Missouri"), and for its response and reply to the above-referenced pleadings, filed in accordance with the Commission's May 5, 2014 *Order Establishing Time to Respond to Request for Test Year and True-Up,* states as follows:

1. Complainants filed the complaint that gave rise to this case on February 12, 2014. Complainants did not file a comprehensive cost of service study that actually examined the Company's current or even reasonably current expenses, revenues or rate base. Instead, Complainants simply took a per-book quarterly surveillance report figure for the 12-month period ending September 30, 2013 and then made a handful of adjustments, several of which consisted of adjustments that had been *proposed* by the Staff in late 2011 or in 2012, as part of the Company's last rate case (File No. ER-2012-0166).[1] Complainants then coupled the foregoing with a proposed reduction in the Company's authorized return on equity, and arrived at a claimed level of "over-earnings" for the period ending September 30, 2013. Based solely on these claimed "over-

[1] These adjustments were not necessarily adopted by the Commission, but were simply proposed by the Staff. That Staff proposed adjustments to the Company's requested revenue requirement in that case does not make the Staff's adjustments valid. Moreover, the data used in that case was from a period that today is between 21 and 41 months old.

earnings," Complainants allege that the Company's current rates are now unjust and unreasonable.[2] While Complainants' "analysis" is not a proper analysis of a test year, the period examined was the 12 months ending September, 2013. Complainants neither used nor suggested the establishment of a test year or true-up period when they filed their case.

2. Complainants now propose that a test year be established, with a true-up of their choosing. It is obvious that Complainants seek – now some nearly three months after they filed their case and right in the middle of the other parties' development of their rebuttal testimony – to restrict the evidence the Commission should consider in evaluating the continued justness and reasonableness of the Company's rates. The Staff properly opposes the Complainants' test year proposal. As the Staff points out in its Response,[3] before new rates could be set (even assuming, *arguendo,* that the Company's presumptively just and reasonable rates were determined to be otherwise after the currently scheduled evidentiary hearings and briefing is completed), a further *full* investigation would then be needed to "determine just and reasonable prospective rates . . .."[4] Staff properly recognizes that at this stage of this case a test year isn't needed or even appropriate.

3. And while the Staff didn't object to Complainants' true-up proposal, the Staff also properly recognized that information post-March 31, 2014 is relevant to the determination the Commission is being asked to make in this case, stating that "all parties should have the right to address significant changes past March 31, 2014, if applicable."[5]

4. The Staff's Response also does not draw the conclusion Complainants draw from the very limited information Complainants have presented, that is, that Ameren Missouri's current rates

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[2] "Over-earnings" is a misnomer. The return on equity used to set rates creates neither a floor nor a cap on what a utility may lawfully earn. Earnings are expected to be either above or below the Commission-authorized return during any historic time period which is examined. *See, e.g., Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 671 (1950) (The return a utility earns "will necessarily vary from time to time" and that "[n]o maximum or minimum return was determined when the rate was established.").
[3] Staff's Response to Complainants' Motion to Set Test Year and True-up, filed May 2, 2014.
[4] *Id.*, p. 3.
[5] *Id.*, p. 4.

are in fact now unjust and unreasonable. Indeed, the Staff notes that the limited nature of the investigation allowed in the timeframe afforded by the procedural schedule in this case would be "aimed at determining *whether or not* Ameren's present rates are excessive."[6] It is, as the Staff points out, a separate question as what prospective rates should be, that is assuming that the Commission determines in this case that a change should be made at all.

5. We would note that a full investigation geared to determining new prospective rates of the kind alluded to by the Staff, if it were determined to be warranted at all, would require that the Commission have the benefit of a comprehensive cost of service study from the Staff. After all, it is only through its Staff that the Commission can investigate the Company's rates. As the Staff points out, the Commission is required to conduct such a full investigation before it resets rates and to consider all relevant factors when it does so.[7] A test year would be needed for such a study, but a test year is not needed now because, as the Staff puts it, the investigation being undertaken at this point "is not intended to result in a *pro forma* year and the development of new, prospective rates."[8] And in the end, before rates can ever be changed (up or down) the Commission has to have a comprehensive cost of service study, because the point of such a study is to develop a revenue requirement that will reflect an honest and intelligent forecast of the Company's revenue requirement in the future after new rates are set and for a reasonable time thereafter. *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957) (*quoting State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission et al.,* 262 U.S. 276, 288 (1922)).

6. Staff clearly recognizes what the Company has been contending throughout the pendency of this case, that is, that what Complainants have presented to this Commission provides

[6] *Id.*, p. 4 (emphasis added).
[7] Sections 393.260.2 and 393.270.2, RSMo. (2000).
[8] Staff Response, p. 4.

an insufficient basis for any rate change. This is because rates are not set based upon a utility's per-book revenues, expenses and rate base. Indeed, this is why in a rate increase case it typically takes the Staff nearly five months to audit the Company's books and prepare a cost of service study for the purpose of developing the Staff's view of a revenue requirement that would be a reasonable proxy for future period when any new rates would be in effect. And it takes the Staff nearly five months to do so even though: (a) the Staff has had at least 60 days' notice that a rate increase filing will be made and (b) the Staff is provided by the utility (at the inception of the case) with a full cost of service study, underlying workpapers for, among other things, production cost modeling, development of all of the hundreds of elements of cost of service, and the development of the rates, extensive minimum filing requirements required by Commission rule, and numerous pieces of direct testimony from a myriad of utility witnesses. Noranda's slap-dash "analysis" provided neither this advance notice nor anything even remotely close to this kind of information.

7. Moreover, when a utility files a rate increase case it files its case based upon a set test year and, usually, with pro forma adjustments as of a set true-up date. While the figures used for the pro-forma adjustments through the true-up date are of course not final (hence the reference to "pro forma"), they do provide substantial information about what the Company expects revenues, expenses and rate base to be at a point in time that is fairly close to when new rates would take effect and they provide a basis, from day one of the rate case, for a proper evaluation of the Company's cost of service in the future. The filing of such information at the inception of the case reflects the Company's full case-in-chief, with the only material changes that occur later being to replace estimated figures with the actual ones. Based upon five such extensive filings over the past approximately eight years, the Staff has conducted five full cost of service studies during that period of time, in each case using the test year and true-up period proposed by the Company at the

inception of each of those cases.[9] In each of those cases, save one, the Staff has agreed that the Company's rates should be increased.[10] The Commission has approved rate increases in each of those cases. Not once has any party in those cases, including Noranda, claimed that the Commission could practically reset the Company's rates in anywhere near the time frame established for this case, and that was where the case was initiated with a comprehensive cost of service study and all of the other information outlined above.

8. Complainants' direct case comes nowhere close to a case that is sufficient to form the basis for new rates. What Complainants appear to be attempting to do by asking the Commission to establish a test year – in addition to improperly shoring up their inadequate case by attempting to move the goal posts three months after the case was filed – is to handcuff the parties, including Staff and Ameren Missouri (and indeed the Commission) by preventing the filing of information that would show what the Company's revenues, expenses and rate base are likely to be during the future time when any new rates would be in effect.

9. Indeed, Complainants' proposal to in effect preclude consideration of any data post-March 31 of this year would ignore numerous significant items, including but not limited to the revenue requirement associated with (a) a mandated electrostatic precipitator ("ESP") whose estimated cost is approximately $90 million that will be in service next month on Unit 2 at the Company's Labadie Energy Center; (b) a new accounting and general ledger system reflecting an investment of approximately $41 million that will be in-service in July; (c) a new reactor head at the Callaway Energy Center (a critical project for obvious reasons) that will be in service this year and that will reflect an investment of approximately $140 million; (d) another mandated ESP costing approximately $79 million on Unit 1 at Labadie, which will also be in service this year; (e) a major

[9] As noted, the Company has always proposed a test year and true-up period from the inception of the case and there has essentially been no significant controversy about the test year and true-up in any of those cases.

[10] The Staff asserted that a rate decrease was warranted in the first of those cases, Case No. ER-2007-0002, but the Commission disagreed and awarded the Company a rate increase.

new substation located in the St. Louis metropolitan area which will cost approximately $40 million that will also be in service this year; (f) significant upgrades to Ameren Missouri's transmission facilities to comply with North American Electric Reliability Council ("NERC") reliability requirements, which will cost tens of millions of dollars, that will also be in service this year; and (g) wage increases to employee groups taking effect April 1, 2014 and July 1, 2014 . These items, not to mention other significant investments in plant-in-service, many of which not surprisingly go into service during the spring, summer and fall construction season, will all be in service in many instances before the Commission will issue a decision in this case, and in all cases before the end of 2014.

10. Complainants' proposal would ignore them all. It appears clear that the Staff recognizes this problem as well. Staff's lack of objection to the "true-up" does not mean that it supports, as Complainants' apparently do, preventing the Commission from having evidence before it of what conditions likely will be when new rates would actually take effect, if (and that is a big "if") the Commission were to determine that further investigation is needed. As noted, the Staff makes this clear when it states that "all parties should have the right to address significant changes past March 31, 2014, if applicable."[11] This of course makes sense because even if rates were to eventually be changed as a result of this case, that change would of necessity be many months away and any new rates would not take effect for some time. But those new rates must reflect a just and reasonable revenue requirement later – when they are in effect – not in the past, when revenues, expenses and rate base may have been very different. We've cited above just a few items that make those significant differences a virtual certainty. The posture of this case and its schedule doesn't allow a proceeding that could validly result in a rate change without the kind of full investigation discussed earlier.

[11] Staff's Response, p. 4.

11. Complainants chose *when* and *how* to file this case. They filed it in early February. They chose to use only per-book numbers from last year a handful of proposed adjustments to try to support their complaint. They chose not to ask the Commission to require its Staff to undertake a full and proper investigation of the Company's rates, including the development of a comprehensive cost of service study, as they could have. They chose to push hard for an accelerated procedural schedule that precludes the kind of full investigation that would permit the development of a proper and comprehensive cost of service study that is a necessary basis for an actual rate change.[12] They seem to assume that just because their stale and limited data shows (they claim) "over-earnings" in the past this entitles them to dictate to the Commission the data appropriate to decide whether (a) rates are or are not just and reasonable today and (b) depending on the outcome of (a), what new rates should be. Complainants are not entitled to force the Commission and the parties into shortcuts that (they apparently hope) would get them lower rates sooner than even a utility can obtain higher rates. Keep in mind, the General Assembly has determined that rate increase cases must be given priority over all other cases pending at the Commission, and even then they take 11 months.[13] The General Assembly has afforded no such priority to a case like this one.

12. Complainants should not be allowed to restrict the parties and the Commission from considering information relevant to current conditions, and those likely to be in effect in the future, particularly where they filed a case without a proper cost of service study and without a proper request for a test year and true-up based on such a study, where they chose not to ask the Commission to require its Staff to investigate by developing a proper cost of service study, and

[12] Had they not pushed for such an accelerated schedule, we suppose they could have undertaken discovery in order to perform such a study themselves, but they also chose not to do so. They didn't even start discovery until two to three weeks ago, serving at the time a large set of data requests (comprising more than 100 questions) most of which they could have asked at any time.
[13] Section 393.150.2, RSMo (2000).

where such a full investigation is precluded because of their decision to request an extremely compressed schedule.

13. Ameren Missouri is in the middle of working on its rebuttal case and testimony. Ameren Missouri intends to address Complainants' "analysis" and to provide the Commission with relevant information on the costs it has already incurred and the costs it expects to incur in the near future which will show that the Complaint is completely meritless and no rate reduction is warranted. Complainants' request for the establishment of their test year and true-up appears designed to deprive the Commission of such information, and it should be rejected. If after the limited investigation that is currently underway the Commission determines that current rates are now unjust and unreasonable, then a full analysis can be launched, including conducting a proper cost of service study with a test year and true-up cutoff date so that rates can be calculated that would apply to future service.

WHEREFORE, Ameren Missouri prays that the Commission enter an order denying Complainants' request to establish a test year and true-up.

Respectfully submitted:

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d/b/a Ameren Missouri

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

Dated: May 9, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of May, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to counsel for all parties of record.

James B. Lowery

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