

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

Noranda Aluminum, Inc., et al.,)	
)	
Complainants,)	
)	
vs.)	<u>Case No. EC-2014-0223</u>
)	
Union Electric Company doing business)	
As Ameren Missouri,)	
)	
Respondent.)	

STAFF’S RESPONSE TO MOTION FOR RECONSIDERATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Chief Staff Counsel, and for its *Response to A Motion for Reconsideration and/or Clarification*, filed by four of the parties herein, states as follows:

1. On May 27, 2014, the Consumers Council of Missouri, the Office of the Public Counsel, AARP, and the Missouri Retailers Association (collectively “Movants”) moved for “reconsideration and/or clarification” of the Commission’s *Order Regarding Test Year and True-up*, issued on May 14, 2014. Therein, the Movants suggest that the Commission made certain “misstatements of law” concerning the fundamental nature of this case. The Movants go on to suggest that the Commission “may have been confused” by a statement in Staff’s *Response* of May 2, 2014, with which they do not agree.¹

2. At the outset, Staff notes that it agrees with the Movants that this case is a general rate proceeding. However, rate cases are by no means all the same. As the Movants themselves point out, for example, there is no operation-of-law date in a rate

¹ *Motion for Reconsideration and/or Clarification*, p. 3.

case, such as this one, initiated by complaint.² Another significant difference is that the Complainants, and not the Company, must carry the burden of proof.³ This includes the burden of production and the risk of non-persuasion.

3. Another way that rate cases differ is in the interval within which they must be completed. In the present case, which is a general rate case initiated by complaint, there is no operation-of-law date and no eleven-month deadline. However, there *is* a deadline in this case, set by the Commission and, at Complainants' request and over the Company's objection, it is very much shorter than eleven months.⁴ The very compressed procedural schedule that the Complainants insisted on must necessarily define the nature of the Commission's investigation of this matter.⁵ The Staff, which is the Commission's investigatory arm, has made it plain from the beginning of this case that it cannot do those things that it normally does in a general rate case in the interval allotted for this case.⁶ It is for that reason that Staff, in the passage which the Movants fear was confusing, drew a distinction between a *limited investigation* and a *full investigation*. If Staff cannot conduct either an audit and cost-of-service study or a

² *Id.*, p. 2.

³ **AG Processing, Inc. v. KCP&L Greater Missouri Operations Co.**, 385 S.W.3d 511, Mo. App., W.D. 2012); **State ex rel. GS Technologies Operating Co. v. Public Service Commission**, 116 S.W.3d 680, 693 (Mo. App., W.D. 2003) (quoting **Margulis v. Union Elec. Co.**, 30 Mo.P.S.C. (N.S.) 517, 523 (1991)) (complainant has the burden of proof); § 393.150.2, RSMo. ("**At any hearing involving a rate sought to be increased**, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation or sewer corporation . . .").

⁴ *Order Establishing Procedural Schedule*, issued April 16, 2014, discussion pp. 2-3, esp. p. 3: "After considering the arguments of the parties, the Commission concludes that the Complainants should be allowed to present their complaint in the time of their choosing. They have the burden of proof and if they believe they can prove their complaint in a short amount of time, the Commission will allow them to proceed."

⁵ The Commission's duty in the case of a properly-perfected rate complaint is to conduct an investigation, § 393.260.1, RSMo.

⁶ *Order Establishing Procedural Schedule*, p. 3.

class-cost-of-service study in the available interval, what else can this case be but a *limited investigation*?

4. Staff further notes that just and reasonable prospective rates *cannot* be set based on the results of a *limited investigation* because, without an audit and a cost-of-service study and a class-cost-of-service study, the mandatory consideration of “all relevant factors” cannot be undertaken.⁷ It is for that reason that Staff advised that a test year is unnecessary, because – as Staff stated on May 2 -- a *limited investigation* cannot lead to new rates.

5. For the reasons set out above, Staff continues to hold the opinion that a test year is unnecessary in this case. Should the Commission nonetheless decide to set a test year, Staff recommends the twelve months ended December 31, 2013.

WHEREFORE, Staff prays that the Commission will accept this *Response* and DENY reconsideration and/or clarification.

Respectfully submitted,

/s/ Kevin A. Thompson
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⁷ *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) (In order to set rates, an “honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential.”).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **5th day of June, 2014**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Kevin A. Thompson