

**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.)	

Noranda Aluminum, Inc., et al,)	
)	
Complainants,)	
)	
v.)	File No. EC-2014-0224
)	
Union Electric Company, d/b/a)	
Ameren Missouri)	
)	
Respondent.)	

**UNITED FOR MISSOURI’S REPLY TO
OBJECTION TO MOTION TO INTERVENE**

COMES NOW United For Missouri, Inc. (“UFM”), by and through its counsel, and for its Reply to the Complainants’ Objection to Motion to Intervene Out of Time (“Objection”), states as follows:

1. Noranda Aluminum, Inc. and 37 other individual customers of Ameren Missouri filed two complaints with the Missouri Public Service Commission (“Commission”) against Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”) on February 12, 2014.
2. On February 13, 2014, the Commission issued a Notice of Complaint, Order Establishing Time to Respond and Order Establishing Time to Apply to Intervene in each case. The Notices established a deadline of March 7, 2014 for motions to intervene. During such time,

UFM was unaware of the complaints or how it could participate. Upon suggestion by a number of its members, UFM consulted the undersigned counsel on March 24, 2014, for purposes of seeking representation on the complaints. Since that time, UFM has made a diligent attempt to determine its ability and usefulness in pursuing intervention in these cases as well as in seeking corporate approval to pursue intervention.

3. On March 20, 2014, the Commission issued an order scheduling a conference in these cases at 10:00 a.m. on March 28, 2014.

4. On March 28, 2014, the undersigned attorney, after seeking the permission of the Chief Regulatory Law Judge, made an entry of appearance via telephone on behalf of UFM at the conference.

5. On April 18, 2014, approximately four weeks after UFM's initial consultation with the undersigned attorney, UFM filed its Application to Intervene Out of Time ("UFM's Application").

6. On April 28, 2014, Complainants filed their Objection.

7. UFM's Application was fully compliant with the Commission Rule 4 CSR 240-2.075. UFM's Application explained its interest in the cases and the fact that its interest was different from the interest of the general public as well as why granting the intervention would be in the public interest. It also explained why there was good cause for granting UFM's Application after the intervention date.

8. Complainants make two arguments that UFM's Application should be denied. First, they claim that UFM unduly delayed UFM's Application to Intervene without good cause. Second, they claim that UFM failed to satisfy the Commission's standard of an adequate interest to justify intervention.

9. As to the argument that UFM's Application was not timely, Commission rules permit intervention after the intervention date "based upon a showing of good cause" and "a definitive statement whether or not the entity seeking intervention . . . accepts the record established in that case, including the requirement of any orders of the commission, as of the date the motion is filed." UFM made such an acceptance in its Application to Intervene.

10. Complainants' supporting cases in their Objection involve companies and entities that had prior history of involvement with Commission issues and procedures as well as an embedded expertise with the Commission. UFM has never intervened in a Commission proceeding before its Application to Intervene in these cases and had no embedded expertise prior to contacting the undersigned attorney. Complainants believe that weeks is inordinately long for an organization to undertake a new action. There is no requirement that the intervener justify the specific amount of time relative to the intervention date. That is a gloss put on the rule by the Complainants. As the Commission should know, it oftentimes takes organizations time to engage the issues of whether a new activity is within the scope of their mandate, whether their leadership desires the organization undertake the effort, whether they have the financial ability to undertake the effort, and whether they have the institutional will to see it through to the end.¹ Such a "count the cost" approach to a new endeavor shows wisdom. There should be no stigma with engaging a new learning curve.

11. UFM's request for intervention in these cases can be favorably compared to Southwest Power Pool, Inc.'s ("SPP") intervention is Case No. EO-2003-0566. In Case No. EO-2003-0566, Aquila, Inc. filed an Application to join the Midwest ISO on June 20, 2003. On July

¹ The undersigned attorney will not engage in a discussion of his role in UFM's legitimate business discussions. UFM is uncertain the point of the Complainants' reference to the undersigned attorney at page 13 of their Opposition. Whether an ad hominem against the undersigned attorney or a speculative critique of UFM's process of making decisions, it is irrelevant.

23, 2004, the Commission adopted a procedural schedule. On October 1, 2004, the Federal Energy Regulatory Commission granted SPP RTO status. And on February 25, 2005, SPP filed its Application to Intervene, which was granted on March 7, 2005. During the course of the proceeding, prior to its intervention, SPP participated in a Technical Conference and bi-weekly telephone conferences and assisted the Commission by providing information. Following SPP's initial hesitancy to intervene in Case No. EO-2003-0566, it subsequently participated in cases resulting in Kansas City Power & Light Company, Empire District Electric Company and KCP&L – Greater Missouri Operations obtaining approval to join SPP.

12. UFM's efforts as they relate to the Commission have been conducted in a good faith manner. The undersigned attorney did enter his appearance in a prehearing conference held in these cases to put the parties on notice that UFM was contemplating intervention and not as a mechanism for delay or to sandbag the parties. UFM made a careful analysis of its ability and usefulness in intervening in these cases and did so in as expeditious a manner as possible. Since the completion of its evaluation of whether to participate in Commission cases, it has also filed an Application to Intervene in Grain Belt Express Clean Line's Application for a Certificate of Public Convenience and Necessity, File No. EA-2014-0207, and it did so prior to the intervention deadline.

13. UFM has committed to accept the record of the cases as they exist, so Complainants should not be prejudiced in any way.

14. Complainants question whether UFM has an adequate "interest" in the cases to justify the Commission granting it intervention. They cite certain language in State ex rel. Consumers Public Service Co. v. Public Service Com'n, 180 S.W.2d 40 (Mo. App. 1944). *Consumers* stands for the proposition that an entity need not show an aggrieved status to be

granted intervention in a case before the Commission. The authority of the Commission in granting intervention is to be viewed expansively. In the words of the Court,

The question here is: To whom did the Legislature intend to make this method of review available? Since the public welfare is involved in every Commission case (and is the controlling factor in its decision), to a certain extent every citizen is interested in all its cases. But it is certainly not intended that every citizen may participate in any case. That would prevent the Commission from functioning efficiently.

It seems clearly intended that no direct pecuniary or property rights, or infringement of civil rights of a person, must be involved before he could be a party to a proceeding before the Commission. Section 5686 provides: "complaint may be made by ... any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility,..."

See Consumers Public Service Co. v. Public Service Com'n, 180 S.W.2d 40, 45 (Mo. App.

1944). In a later case, citing *Consumers* for support, the Missouri Court of Appeals, Kansas City District, declared, "The grant made by the Legislature to the Commission is broad with no qualifications other than the fact the Commission must make an order allowing intervention."

See State ex rel. Brink's Inc. v. Public Service Com'n, 535 S.W.2d 582, 584 (Mo. App. 1976)

15. UFM certainly meets the requirement of being a "civic, commercial, mercantile, traffic, agriculture or manufacturing association or organization." UFM is a non-profit association formed under chapter 355 of the Missouri Statutes. In UFM's Application to Intervene, UFM stated that it seeks to promote the American free enterprise system. "Free enterprise" is defined in the tenth edition of Merriam Webster's Collegiate Dictionary as, "freedom of private business to organize and operate for profit in a competitive system without interference by government beyond regulation necessary to protect public interest and keep the national economy in balance." Further, UFM's mission statement includes the following statement as one of its purposes: "Removing and preventing unnecessary barriers to

entrepreneurship and opportunity by sparking citizen involvement in the regulatory process early on in order to reduce red tape.”² With over 76,000 members, UFM has a substantial interest in representing its members and fulfilling its civic and commercial mission.

16. Neither the Commission itself nor the Office of Public Counsel can represent this interest. As Complainants well know, this Commission itself exists as an administrative branch of the state government. It exists to exercise the power of the state, in fulfillment of the regulatory compact, to regulate competition according to a statutory scheme. It is not to represent the interests of UFM as described above. Neither can the Office of Public Counsel represent the interests of UFM. Its statutory obligation is to represent the interest of the ratepayers of the state. It does not exist to represent the interests of UFM.

17. UFM has an interest not similar but comparable to many other stakeholders that regularly appear before the Commission and the 37 other Complainants in this case. Consider the Sierra Club, which claims to exist “for the purposes of preserving and protecting environmental values.” See Motion to Intervene of Sierra Club, File No. EA-2014-0207. America’s free enterprise system is certainly no less a legitimate interest than environmental values, and it is certainly no less in the public interest to have a voice for the American free enterprise system at the table than a voice for environmental values.

18. If, as the cases indicate, the standard for intervention is the interest of a complainant, UFM compares very favorably to the 37 other Complainants in this case. In Case No. EC-2014-0224 in particular, the 37 Complainants other than Noranda, are complaining about Noranda’s rate. They are not complaining about their own rate. As a matter of fact, they are willing to take a rate increase on behalf of themselves and every other Ameren Missouri

² See <http://www.unitedformissouri.org/about>.

customer in order for Noranda's rate to be lower. The prefiled direct testimony of the Complainants is a veritable cavalcade of public policy justification for why Noranda's rate must be lowered and Ameren Missouri's other ratepayers should subsidize Noranda's rates. Their interest is not their own pecuniary interest but their own particular view of economic development of southeast Missouri.

19. A question in this case is how the Commission will exercise its regulatory power in the public interest, whether it will exercise that power for the benefit of Noranda, *visa vie* Ameren Missouri's other ratepayers. UFM's interest is to represent its members in such a way as to remove and prevent unnecessary barriers to entrepreneurship and opportunity by sparking citizen involvement in the regulatory process early on in order to reduce red tape. This is an interest that is not similar but comparable to the interest of the 37 other Complainants.

20. Complainants want to reinsert an "aggrieved status" back into the "interest" requirement when they claim, "UFM fails to note any interested person for whom it advocates that would be affected by the outcome of this case." But this is not the standard. The standard is not whether the person is affected; the standard is whether the interest is affected. The Court's standard does not require that the intervenor be affected by the outcome of the case. The Commission's standard is whether the proposed intervenor has an "interest" which is different from that of the general public and which "interest" may be adversely affected by a final order in the case. It is sufficient if the organization has an "interest" in civic, commercial, mercantile, traffic, agriculture, manufacturing, or some other similar legitimate concern. UFM has an interest in the American free enterprise system.

21. If the Commission requires an indication of an "aggrieved status" of UFM, with more than 76,000 members, the vast majority of whom are Missouri residents, UFM's members

consist of residents, property owners, business owners and entrepreneurs, who may be aggrieved if the Commission rules on their rates in this proceeding. They have just as much of an interest in seeing that rates are just and reasonable and non-discriminatory across the board as the 37 other Complainants have in seeing Noranda's rates reduced. In this case, UFM's interest is not similar but comparable to that of the Missouri Retailers Association, which claims to have "several members who are served by Ameren Missouri and which rely on dependable electric service at reasonable rates in order to survive in the current economy; in order to employ their workforce; and to continue to provide their products and services at reasonable prices."

WHEREFORE, for the foregoing reasons, United for Missouri respectfully renews its request for the Commission to grant its Application to Intervene in these cases.

Respectfully submitted,

By: David C. Linton

David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdlington@reagan.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application to Intervene was sent to all parties of record in File Nos. EC-2014-0223 and EC-2014-0224 via electronic transmission this 6th day of May, 2014.

/s/ David C. Linton