July 16, 2014

Hon. Robert S. Kenney
Hon. Stephen M. Stoll
Hon. William P. Kenney
Hon. Daniel Y. Hall
Hon. Scott T. Rupp

Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102-0360

Re: Case No. EC-2014-0224

Gentlemen:

I am writing on behalf of United for Missouri ("UFM"). I write you for several reasons. First, UFM would like to commend the Staff for its excellent work in Case No. EC-2014-0224. This has not been an easy case to navigate. The primary complainant Noranda is in a difficult situation. Because of their difficult situation, Noranda has made a unique request of this Commission, a request that the Commission has never had to confront before. Noranda wants an electric rate they can afford. The Staff has confronted the complaint case, for the most part, in an even handed and well-reasoned manner. It has done an excellent job.

Second, UFM would like to thank the Commission for the opportunity to address the Commission in Case No. EC-2014-0224 through its *Amicus Curiae* Brief it filed on July 8. In that Brief, UFM requested that the Commission deny the Complaint because the Commission does not have the legal authority to grant the relief requested in the Complaint. The Commission is an agency of the state empowered to administer the regulatory compact between the state of Missouri and the electric utility industry. The authority granted by the legislature to the Commission, in keeping with the regulatory compact, does not include wielding that power for the benefit of one customer at the expense of the rest of the ratepayers of Ameren Missouri or its shareholders.

Third, there are two points raised in the initial briefs of the parties, one raised by Staff and the other raised by Complainant, that UFM believes must be challenged. The first of these is the reciprocity argument of Staff, maintaining that because the Commission can grant a utility company an interim rate, it can do the same for Noranda. The second is the economic development argument raised by the Complainants, maintaining that the Commission's approval

of economic development riders in the past justifies its ability to grant the relief requested in the Complaint.

Regarding Staff's reciprocity argument, Staff argues in its Initial Brief,

> Interim rate relief has consistently taken the form of a temporary rate *increase* intended to succor a utility while a permanent rate increase request is pending. However, given the reciprocal nature of the relationship of a public utility with its customers and the Commission's role of adjusting the balance of that relationship to meet ever-changing circumstances in the light of the public interest, there is no reason that interim rate relief cannot be available to ratepayers on the same basis that it is available to utility companies. Since a utility company facing an imminent threat of ruinous financial disarray can obtain the temporary relief of a rate increase on an expedited basis, it necessarily follows that a ratepayer in similar circumstances can obtain the temporary relief of a rate *decrease* on an expedited basis. That is the very case presented here. [Emphasis in original] See Staff's Initial Brief, p. 19.

Reciprocity is a hallmark of electric utility regulation. Typically stated, reciprocity is the principle that seeks to balance the regulatory risks between ratepayers and shareholders. It is the concept that risk and reward may not be skewed inappropriately in favor of either ratepayers or shareholders. It is part of the pragmatic balancing of interests required in the Commission's reasoned analysis necessary in its decisions in rate cases, as discussed in UFM's *Amicus Curiae* Brief.

However, due to the unique character of this case, Staff has summarily passed over a critical question in its analysis. Staff addresses the question of reciprocity without putting the question within the proper context of the regulatory compact. The critical question is, what is the scope of the reciprocity required in the regulatory compact?

As UFM pointed out in its *Amicus Curiae* Brief, the regulatory compact is a covenant between the utility industry and the state for the benefit of the public. It is the utility companies and the state that are subject to and constrained by the regulatory compact. Individual customers of a utility are not individually subject to the regulatory compact. Certainly, individual customers benefit to the extent the public interest is served by the Commission's administration of just and reasonable rates for all of a utility's ratepayers. However, those individual customers conducting their business in the free market, outside of the electric utility industry, have not the same rights

or obligations under the compact as the state does in serving the public interest or the utility does in demanding that the state not appropriate its property without just compensation.

As the Staff argues, "Interim rate relief has consistently taken the form of a temporary rate *increase* intended to succor a utility while a permanent rate increase request is pending." Staff further argues that the temporary rate increase for the utility company is justified by "an imminent threat of ruinous financial disarray." The reciprocity in such a case is an imminent threat of unjustified profits on behalf of the shareholders and not the imminent threat of ruinous financial disarray of one particular customer. The remedy for the reciprocal situation is a complaint regarding rates, i.e. an over earnings complaint, by the Staff or Public Counsel on behalf of the public, a complaint by a governmental entity on behalf of its citizens, or a complaint by a significant number of similarly situated customer (25). For example, the Commission could find in Case No. EC-2014-0223 that there is an imminent threat of unjustified profits by Ameren Missouri, and, therefore, the public as a whole deserves a reduction in all rates to ameliorate unjust and unreasonable rates imposed by Ameren Missouri. But one customer cannot wield the regulatory compact for its own individual benefit. Such an approach would be at odds with the Commission's primary role, as UFM pointed out in its *Amicus Curiae* Brief.

The second issue UFM would like to confront is the characterization that the Commission's approval of economic development riders in the past justifies granting the relief sought in the Complaint. The conclusion is not apt. While UFM will not address the question whether an economic development rider is within the authority of the Commission to approve, it does dispute that just because the Commission has approved economic development riders in the past, the Commission may grant the requested relief in this case. The regulatory compact does not justify such an extension of the Commission's authority.

The Initial Post-Hearing Brief of Complainants cites several cases which they propose support the Commission's authority to grant the relief requested in the Complaint. A review of those cases shows that in all the cases, the economic development riders or special contracts were approved in the context of a general rate case and/or were the subject of a special contract proposed by the utility. The regulatory compact does not justify an extension the Commission's approval authority exercised in the cited cases to the relief requested in this case. In a general rate case, the Commission has the ability to fully engage its obligation to balance the interests of the utility's ratepayers and the interests of the shareholders. In a special contract, the utility company is a party to the contract itself. It agrees to the terms and bears the risk of the profitability of the contract. Presumably, the officers and managers of the utility company are in the best position to adjudge whether the interests of the shareholders are protected. In this

Complaint case, the Commission has not yet confronted the full or even a partial rendition of the interests of the entirety of Ameren Missouri's other ratepayers or the interests of its shareholders. Until it does so, it has no basis on which to balance those interests against the interests of Noranda and make a reasoned decision on just and reasonable rates.

The Missouri Public Service Commission is an administrative agency of the state of Missouri. It is an agency of limited powers and authority granted by statute. It exists to administer the regulatory compact between the state of Missouri and the utility industries it regulates. While the economic situation in our state and nation is difficult, the Commission cannot take unto itself the responsibility to provide utility rates to customers based on a judgment of what each customer needs and can afford. Not all risks in a free economy can be prevented.

Sincerely,

David C. Linton, Esq.

David C. Linton

From: David C. Linton <jdlinton@reagan.com>
Sent: Wednesday, July 16, 2014 2:00 PM
To: 'robert.kenney@psc.mo.gov'; 'steve.stoll@psc.mo.gov'; 'bill.kenney@psc.mo.gov'; 'daniel.hall@psc.mo.gov'; 'scott.rupp@psc.mo.gov'; 'joshua.harden@psc.mo.gov'
Subject: Case No. EC-2014-0224
Attachments: UFM Letter to commissioners 7 16 14 ec 2014 0224.pdf

Gentlemen,

Attached hereto is a letter from United for Missouri regarding the above referenced case. United for Missouri is not a party to this case but is aware that this communication constitutes and extra-record communication pursuant to Commission Rule 4 CSR 240-4.020. As a result, I will file this letter on EFIS and serve a copy on all parties of record pursuant to 4 CSR 240-4.020(4). The letter speaks for itself, but allow me to highlight the very first point discussed therein. United for Missouri wishes to commend your staff for its excellent work on this case. Thank you and thank them.

David C. Linton

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