

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

Noranda Aluminum, Inc., et al.,)	
)	
Complainants,)	
)	
vs.)	<u>Case No. EC-2014-0224</u>
)	
Union Electric Company doing business)	
As Ameren Missouri,)	
)	
Respondent.)	

STAFF’S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply Brief*, states as follows:

Introduction

This case concerns the complaint of Noranda Aluminum, Inc. (“Noranda”), and several other customers that the rates paid by Noranda for electric service from Ameren Missouri are no longer just and reasonable. The reason that the rates are no longer just and reasonable, Complainants assert, is that continued depressed aluminum prices have left Noranda unable to pay them and remain viable. Because Noranda is a major employer in a poverty-stricken region of Southeast Missouri, the Complainants argue that the public interest favors rate relief for Noranda that will keep it operating.

As the examples marshalled by several of the parties in their briefs reveal, the Commission has approved rate relief for industrial customers in the form of Load Retention Rates in the past. However, in each of those cases, the utility was a willing partner in the attempt to save the industrial customer. Here, Ameren Missouri opposes Noranda’s request for rate relief.

Staff here addresses the two main questions raised in this case: (1) Can the Commission grant rate relief to Noranda, and (2) what should that relief look like? Staff takes no position as to whether the Commission should grant rate relief to Noranda, but offers discussion for the Commission's consideration. Staff does not support Noranda's rate relief proposal.

Argument

1. *The Commission is authorized to grant rate relief in a proper case:*

Staff's position throughout this case has been that the Commission can grant the requested relief if, upon consideration of all relevant factors, the Commission determines that the requested relief is in the public interest and is neither unduly preferential nor unduly discriminatory. In its *Initial Brief*, Staff stated, "None of the evidence adduced in this case shows either that Ameren Missouri is overearning or that the existing rate design unfairly allocates too much of the revenue requirement to Noranda. In the absence of such evidence, the Commission cannot grant Noranda the specific rate it has requested as a permanent rate."¹

Staff went on to advise the Commission that it *could*, however, grant rate relief to Noranda on an interim, emergency basis.² Such ratemaking is necessarily based on consideration of only a single factor, namely, the emergency that the relief is tailored to address. Likewise, an interim, emergency rate need not be "just and reasonable."³ A request for interim relief is addressed to the Commission's "sound discretion."

¹ ***Noranda Aluminum, Inc., et al. v. Union Electric Co. d/b/a Ameren Missouri***, Case No. EC-2014-0224 (***Staff's Initial Brief***, filed July 8, 2014) pp. 15-16.

² *Id.*, pp. 16-19; ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 48 (Mo. banc 1979); ***State ex rel. Laclede Gas Co. v. Public Service Commission***, 535 S.W.2d 561, 568 (Mo. App. 1976).

³ ***Laclede***, *supra*, at 569.

In the environment of normal ratemaking, rates by law must be “just and reasonable.”⁴ A “just and reasonable” rate is one that is fair to both the utility and its customers;⁵ it is no more than is sufficient to “keep public utility plants in proper repair for effective public service, [and] . . . to insure to the investors a reasonable return upon funds invested.”⁶ Fairness is thus the central principle upon which public utility regulation is founded:

It is axiomatic that a just and reasonable utility rate is a bilateral proposition. Like a coin, it has two sides. On the one side it must be just and reasonable from the standpoint of the utility. On the other side it must be just and reasonable from the standpoint of the utility's customers. This bilateral aspect of utility rate making, although susceptible of easy expression in theory, is considerably more difficult to achieve. For these very reasons, the court in ***State ex rel. Missouri Water Company v. Public Service Commission***, [308 S.W.2d 704 (Mo. 1957)], recognized, if not explicitly, certainly implicitly, that rate making bodies, within the ambit of their statutory authority, are vested with considerable discretion to make such pragmatic adjustments in the rate making process as may be indicated by the particular circumstances in order to arrive at a just and reasonable rate. Consistent therewith this court believes that subsection 5 of Section 393.270, *supra*, evidences a legislative intent to imbue the Commission with authority to properly weigh all relevant factors in the sewer utility rate making process in order to achieve the ultimate goal of bilateral fairness.⁷

One aspect of fairness is that similarly-situated customers are treated the same. Preferences and discrimination are specifically prohibited by statute.⁸ However, the

⁴ Section 393.130, RSMo.

⁵ ***St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n***, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

⁶ ***St. ex rel. Washington University et al. v. Pub. Serv. Comm'n***, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (banc 1925).

⁷ ***Valley Sewage Co.***, *supra*, 515 S.W.2d at 850.

⁸ Section 393.130.3, RSMo.; ***State ex rel. City of Joplin v. Public Service Com'n of State of Mo.***, 186 S.W.3d 290, 296 (Mo. App., W.D. 2005). The question of whether discriminatory rates are unlawful and unjust is usually a question of fact, ***State ex rel. Mo. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n***, 782 S.W.2d 822, 825 (Mo. App., W.D. 1990).

reality is that customers are not all the same.⁹ Some use more of the utility's service than do others; some are more expensive to serve than are others by reason of the infrastructure required. It follows that another aspect of fairness is that each customer's rates should reflect that customer's cost of service, and *only* that customer's cost of service.¹⁰ The process of rate design involves sorting customers into classes based upon their cost-of-service characteristics and designing rates that will recover that cost of service from each class. The process is guided by an analytical tool known as a "Class Cost of Service Study" ("CCOSS").¹¹

While fairness is the foundational principle of ratemaking, it is tempered with practicality. "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances."¹² Part of the power to make "pragmatic adjustments" is the power to respond to changing circumstances, including making emergency rates for emergency situations.

The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state. It is a fact-finding body, exclusively entrusted and charged by the Legislature to deal with and determine the specialized problems arising out of the operation of public utilities. It has a staff of technical and professional experts to aid it in the accomplishment of its statutory powers. Its supervision of the public utilities of this state is a continuing one and its

⁹ Lowell E. Alt, Jr., *Energy Utility Rate Setting*, 61: "[T]he cost of providing utility service can vary appreciably for different types of customers."

¹⁰ This is referred to as the "matching principle"; in rate design, the goal is to match costs to cost causers.

¹¹ Alt, *op. cit.*, pp. 63-74.

¹² *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 714 (Mo. 1957), quoting *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586, 62 S.Ct. 736, 743, 86 L.Ed. 1037, ___ (1942).

orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission in its discretion, may deem to be in the public interest.¹³

Whatever decision the Commission makes in this case will surely be appealed. In that regard, Missouri courts have consistently held that the Commission must examine all relevant factors when setting rates.¹⁴ The parties opposed to Noranda in this case, such as Ameren Missouri, have argued strenuously that all of the relevant factors have not been brought to the Commission's attention in this case and that the Commission would engage in prohibited single-issue ratemaking if it grants Noranda's request.¹⁵ This problem is entirely avoided if the Commission grants interim, emergency rate relief to Noranda.

In summary, Staff advises the Commission that it has the authority to address changing circumstances in order to protect the public interest by granting interim, emergency rate relief. Should the Commission find that the public interest favors Noranda's request for relief, then it is Staff's recommendation that the relief granted be emergency, interim relief.

2. If the Commission does grant rate relief in this case, a rate of at least
**** _____ ** per MWh is necessary to provide the benefits to Ameren Missouri's**
other customers described by Noranda's expert witness:

¹³ *State ex rel. Chicago, R.I. & P.R. Co. v. Public Service Commission*, 312 S.W.2d 791, 796 (Mo. banc 1958); and see *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 29-30 (Mo. banc 1975).

¹⁴ *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979); *Missouri Water Co.*, *supra*, 308 S.W.2d at 718-19.

¹⁵ *Noranda Aluminum, Inc., et al. v. Union Electric Co. d/b/a Ameren Missouri*, Case No. EC-2014-0224 (*Initial Post-Hearing Brief of Ameren Missouri*, filed July 8, 2014) pp. 7-9.

Staff has presented expert analysis in this case that it would be more beneficial to Ameren Missouri's ratepayers other than Noranda for Noranda to remain on Ameren Missouri's system rather than for Noranda to leave Ameren Missouri's system entirely at a rate of ** _____ ** per MWh or more, and that a rate of ** _____ _ ** per MWh is the minimum rate that will provide the benefit to other customers described by Noranda, subject to the Fuel Adjustment Clause ("FAC") and not capped as to increases.¹⁶ The rate proposed by Noranda, ** _____ ** per MWh, is less than Ameren Missouri's variable cost of serving Noranda.¹⁷ Contrary to the position taken by the Public Counsel, Staff is of the opinion that the resulting revenue deficiency must be made up by Ameren Missouri's other customers.¹⁸ Staff recommends that the revenue deficiency be allocated as a revenue-neutral adjustment to each customer class (except the Large Transmission Service ("LTS") Class) on their retail revenue requirement percentage basis to the total retail revenue requirement less the LTS class.¹⁹ This includes the Lighting Classes and the Metropolitan St. Louis Sewer District ("MSD") Class.²⁰

Conclusion

The law authorizes the Commission to grant emergency, interim rate relief to Noranda; however, Staff is of the opinion that the present record does not support a permanent rate for Noranda that is below the fully-embedded cost of service. Should

¹⁶ **Staff's Initial Brief**, p. 21; Ex. 203 HC, p. 8.

¹⁷ *Id.*, at p. 20; Ex. 203 HC, p. 2.

¹⁸ *Id.*, at pp. 25-7. For Public Counsel's position, see **Noranda Aluminum, Inc., et al. v. Union Electric Co. d/b/a Ameren Missouri**, Case No. EC-2014-0224 (**Post-Hearing Brief of the Office of the Public Counsel**, filed July 8, 2014) pp. 2-11.

¹⁹ **Staff's Initial Brief**, pp. 27-30; Ex. 200, pp. 16-17.

²⁰ *Id.*

the Commission grant rate relief to Noranda, the rate should be ** _____ ** per MWh or more. A rate of ** _____ ** per MWh is the minimum rate that will provide the benefit to other customers described by Noranda. Any interim rate should be subject to the FAC and not capped as to future rate increases.

WHEREFORE, Staff prays that the Commission will resolve each contested issue as recommended herein by Staff; and grant such other and further relief as may be just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson
Missouri Bar Number 36288
Chief Staff Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-6514 (Voice)
573-526-6969 (Fax)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

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 **16th day of July, 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