

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

Noranda Aluminum, Inc., et al,	)	
	)	
Complainants,	)	
	)	
v.	)	<b>Case No. EC-2014-0223</b>
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri	)	
	)	
Respondent.	)	

**BRIEF OF AARP AND THE CONSUMERS COUNCIL OF MISSOURI**

AARP and the Consumers Council of Missouri (“Consumers Council” or “CCM”) hereby jointly offer the following brief in support of a rate reduction to Ameren Missouri’s jurisdictional electric rates, in order to correct the significant over-earnings situation evidenced by the substantial and competent evidentiary record of this Complaint case.

In 2005, the Missouri Legislature granting the Missouri Public Service Commission (“Commission”) the discretion to award electric utilities a Fuel Adjustment Clause (“FAC”).<sup>1</sup> This law has since been used to allow Ameren Missouri to impose an FAC, transferring 95% of its risk of fuel and purchased power expense volatility onto its customers. This piecemeal approach to a major cost driver for Ameren Missouri has been a “game changer”, significantly increasing the likelihood that the utility may over-earn—that is, collect an actual return on equity (“ROE”) in excess of its authorized ROE.<sup>2</sup>

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<sup>1</sup> Section 393.266 RSMo.  
<sup>2</sup> Tr. 45.

Pursuant to that law, the Commission promulgated rules governing the approval and monitoring process for any FAC.<sup>3</sup> Wisely, the Commission recognized the increased possibility of over-earnings due to the use of an FAC, and thus included surveillance monitoring reporting requirements within these rules.<sup>4</sup> The purpose of surveillance monitoring reporting was to assist other parties in determining whether a utility's earnings are exceeding its authorized ROE. Potentially, surveillance monitoring reports have provided the basis for a general rate case complaint case that would allow the Commission to return rates to "just and reasonable" levels, through a rate reduction based upon "all relevant factors". However, for some unexplained reason, these FAC rules require the surveillance monitoring reports to be submitted in a format that is "treated" as confidential to anyone that was not an attorney or prior witness signing a non-disclosure agreement. Such representatives of consumer parties have been prohibited from even communicating with their clients about the existence of past and current over-earnings, due to the shroud of secrecy that continues to hang over the surveillance monitoring reports when they are submitted.<sup>5</sup>

Although the confidentiality of such reports creates a frustrating barrier for consumer parties wishing to seek a correction of over-earning situations by complaint, this confidentiality can be waived upon a showing of good cause<sup>6</sup>, and recent certain reports have indeed been declassified in the process of this complaint case.<sup>7</sup>

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<sup>3</sup> Commission Rule 4 CSR 240-20.090.

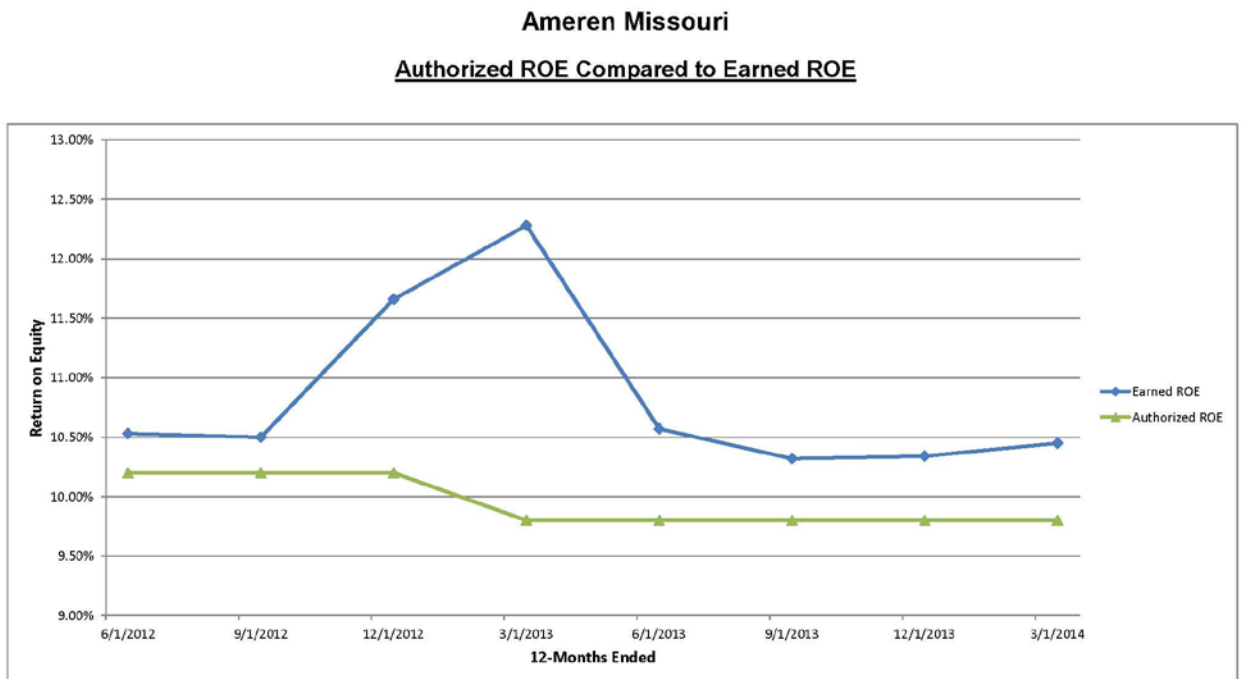
<sup>4</sup> Commission Rules 4 CSR 240-3.161(6) and 4 CSR 240-20.090(10).

<sup>5</sup> AARP and Consumers Council disagree with the secrecy provisions of the FAC Rule, believing that (with very few exceptions); the earnings of regulated utilities should be accessible to the general ratepaying public.

<sup>6</sup> Commission Rules 4 CSR 240-3.161(16) and 4 CSR 240-20.090(15).

<sup>7</sup> Complainants' Exhibit 17 is now public, revealing the over-earnings that Ameren Missouri has enjoyed based on reports showing the 12 months ending June 30, 2012 and each quarterly report through the report showing the over-earnings ending March 31, 2014.

Complainants' Exhibit 17 has now been made public, revealing the over-earnings that Ameren Missouri has enjoyed based on surveillance monitoring reports covering the 12 months ending June 30, 2012, and this exhibit further contains each quarterly report from that period up through the report showing the utility's over-earnings for the 12 month period ending March 31, 2014 (\$37.16 million). Exhibit 19 shows these significant and persistent historical over-earnings on a line graph chart:



The Complaint which initiated this case last February contends that Ameren Missouri's current electric rates are no longer just and reasonable and, along with the Complainants' supporting testimony,<sup>8</sup> corroborates and confirms that the utility's over-earnings shown on this chart are significant and currently ongoing and that new rates should be adopted. This supporting testimony encompasses "all relevant factors"<sup>9</sup> for setting a new lower revenue requirement. This testimony includes the accounting

<sup>8</sup> Exhibits 1-4, 16-23.

<sup>9</sup> State Ex Rel. Util. Consumers Council v. Missouri PSC, 585 S.W.2d 41 (Mo. 1979).

recommendations of Mr. Greg Meyer, which adjusts, annualizes, and normalizes the data contained in the utility's more recent surveillance reports to properly develop a new revenue requirement, and it includes a contemporaneous cost of capital analysis performed by Mr. Michael Gorman (recommending that, going forward, Ameren Missouri's authorized ROE should be reduced from 9.8% to 9.4% ROE).<sup>10</sup>

The Complainant testimonies support a finding that Ameren Missouri's currently approved electric rates are causing it to over-earn at a total level of **\$49.5 million per year** (above the recommended authorized ROE of 9.4%). If the Commission were to ignore Mr. Gorman's contemporaneous ROE adjustment, the evidence would still show that Ameren Missouri is still over-earning by **\$26.35 million annually** over its currently authorized 9.8% ROE.<sup>11</sup>

There is no evidence in the record of this case to persuasively contest that consumers are currently paying rates that include excessive over-earnings to the utility. The real question before the Commission is precisely: Exactly *how much* is Ameren Missouri over-earning right now? Even the testimony of the Commission's Staff ("Staff"), which chose to not actually recommend a rate reduction, actually supports a finding that the utility is currently over-earning by \$39.1 million. The Staff adjusts this number by subtracting solar rebates paid through March 31, 2014 (\$13.8 million), and thus arrives at an over-earning number of **\$25.3 million**.<sup>12</sup>

Due to time and resource limitations, the Staff did not perform an audit in this complaint case as thorough as it has normally performed in "file and suspend" rate cases initiated by utilities. However, it did perform a tiered review that properly

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<sup>10</sup> Exhibits 1-2 and 3-4, respectively.

<sup>11</sup> Id.

prioritized the largest and most important items of the cost of service, in order to determine that Ameren Missouri was over-earning by \$25.3 million.<sup>13</sup> Furthermore, Staff acknowledged that the issues and accounts not reviewed (because they were of smaller monetary significance and of a lower priority) would have been just as likely to increase the determination of over-earnings as they would have been likely to decrease that number.<sup>14</sup> This Staff testimony by itself supports an “all relevant factors” determination of substantial and ongoing over-earnings by Ameren Missouri, even under this utility’s currently authorized ROE.<sup>15</sup>

Consumers deserve to have a timely reduction in rates implemented based upon the record in this case. The record contains all relevant factors necessary to establish new rates pursuant to the pertinent provisions of Chapter 386 and Chapter 393 of the Revised Statutes of Missouri. Missouri law contains no requirement for a Staff audit in order to change rates, nor does the law set any minimum number of issues or accounts that the Staff of the Commission must review and or offer into the record, in order for the “all relevant factors” test to be met. Parties to this complaint case, including the Respondent Ameren Missouri itself, have been granted a full opportunity to raise any relevant issue in this case and to file testimony on any such issues, furthering establishing that “all relevant factors” are present in the record to support a new lower revenue requirement. The Commission can and should make a finding of over-earnings based upon the evidence offered by the Complainants and by the Staff, and further that

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<sup>12</sup> Exhibit 13 (Reclassified Surrebuttal Testimony of John P. Cassidy), p. 7.

<sup>13</sup> Tr. at 330-331.

<sup>14</sup> Tr. at 331.

<sup>15</sup> Even though, as previously discussed, Ameren Missouri’s currently-authorized ROE is itself too high, based upon the current market conditions and comparable earnings contained in Mr. Gorman’s cost of capital analysis and thus should be reduced from 9.8% to 9.4%, further reducing rates. It should be noted

the utility's authorized ROE needs to be adjusted to align with Mr. Gorman's recommended ROE. The Commission can and should proceed to order a reduction in electric rates, applying to future service rendered, at the conclusion of this case.

Despite a full and fair opportunity, the Respondent utility has failed to offer cost of service testimony regarding its current state of (over)earnings. The testimony of Company witness Ms. Lynn Barnes argues that Ameren Missouri intends to add substantial plant improvements in the future, and therefore, it anticipates higher expenditures as a result of those future improvements.<sup>16</sup> However, these potential capital improvements have not yet been completed, and the expenditures have yet been proven to occur. To include future capital additions into the rate base in Missouri, those additions need to meet the dual standards of "used and useful" and "known and measurable," and these purported additions do not meet those standards at the present time.

In response to this testimony, Complainant witness Meyer testifies that *even if* the Commission were to include the utility's *contemplated* investments through December 31, 2014, Ameren Missouri would still continue to over-earn.<sup>17</sup> But the potential future investments are not yet known and measurable. Ameren Missouri's apparent strategy in this case has not been to avoid discussion of the evidence of its current over-earnings; rather, the utility is asking the Commission to look far down the road to the conclusion of the rate increase it has just recently filed (Case No. ER-2015-0258), as if to suggest that, at that future date, it will not be over-earning. However, the

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that if Staff had offered into the record its own ROE recommendation, it would have very likely recommended an authorized ROE lower than 9.4%.

<sup>16</sup> Exhibit 6, pp. 3-6.

<sup>17</sup> Exhibit 2, p. 19.



## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing has been mailed, emailed or hand-delivered to the parties listed on the Missouri Public Service Commission's official service list of this proceeding on this 15<sup>th</sup> day of August 2014.

/s/ John B. Coffman

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