

**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.)	
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 RESPONSE TO
ORDER INVITING RESPONSES TO AGENDA DISCUSSION**

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Chief Staff Counsel, and for its *Response to Order Inviting Responses to Agenda Discussion*, states as follows:

On April 8, 2014, the Commission took up and discussed these two pending complaint cases at its regularly-scheduled Agenda meeting, as well as Ameren Missouri's notice that it will initiate a rate case by filing tariffs on or about July 15, 2014. The focus of the Commission's discussion was the establishment of procedural schedules for these complaint cases and whether they should be consolidated into Ameren Missouri's yet-to-be filed rate case. The Commission has elicited input from the

parties on these questions.

The Staff favors the alternative proposed by Chairman Robert Kenney, in which these complaints would be kept separate and distinct from the rate case that Ameren Missouri may – or may not – file in July. Under that option, truncated procedural schedules would be established for the two complaint cases, as the Complainants have requested, and the Complainants would have the burden of establishing their right to a reduced rate, either because Ameren Missouri is over-earning or because a revenue-neutral redesign of rates is undertaken. When and if Ameren Missouri files tariffs to commence a general rate case, all of the normal general rate case activities will occur over an eleven-month timeline, resulting in new rates in 2015.

Staff points out that there is *already* a rate case pending, namely, Case No. EC-2014-0223, because the Complainants' over-earnings complaint has itself invoked the Commission's ratemaking authority:

Upon the complaint in writing . . . by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers of such . . . electricity . . . [service], as to the . . . price of electricity sold and delivered . . . the commission shall investigate as to the cause of such complaint.¹

The Missouri Supreme Court has explained the several ways in which a rate case may be initiated, one of which is by complaint:

Pursuant to § 393.150, a utility may file a schedule stating a new rate or charge, rule or regulation, which shall become valid unless suspended by the commission, See ***State ex rel. Jackson County v. Public Service Comm'n***, 532 S.W.2d 20, 28-29 (Mo. banc 1975), cert. denied, 429 U.S. 822, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976), on its own motion or upon complaint of interested parties as authorized by the statute. If suspended, the commission must within a specified period hold

¹ § 393.260.1, RSMo. The Commission has discretion as to how it will investigate the complaint; Staff proposes that it does so by receiving and considering the evidence adduced by the Complainants and by Respondent Ameren Missouri.

a hearing concerning the propriety of the new rate, charge, rule or regulation. Section 393.150. A hearing may also be had without the filing of a new rate, if a complaint is filed, or on motion of the commission, §§ 393.260, 386.390. The commission may investigate any matter as to which a complaint may be filed, or in order to enable it to ascertain facts requisite to the exercise of any powers conferred upon it. Section 393.270(1). At the conclusion of any hearing and investigation, the commission shall set the maximum price to be charged for the electricity, §§ 392.270(2), 393.270(3). An interim rate increase may be requested where an emergency need exists, ***State ex rel. Laclede Gas Co. v. Public Service Comm'n***, 535 S.W.2d 561, 568 (Mo.App.1976); § 393.150.²

Because Case No. EC-2014-0223 is a general rate case, just as Case No. ER-2014-0258 will be a general rate case if Ameren Missouri ever actually files tariffs, Case No. EC-2014-0223 will ultimately lead to *permanent* rates, although interim rates may be established in the course of the proceedings as a temporary measure. Interim rates are an emergency, stop-gap measure that occurs within the context of a general rate case.³ Such rates are termed *interim* because they are temporary, pending the establishment of permanent rates based upon an analysis of all relevant factors:

Even under the file and suspend method, by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended. However, a preference exists for the rate case method, at which those opposed to as well as those in sympathy with a proposed rate can present their views.⁴

Interim rates are based on only *one* factor, that is, the emergency or other circumstance they are designed to meet.

² ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 48 (Mo. banc 1979) ("**UCCM**").

³ ***In the Matter of AmerenUE***, 19 Mo.P.S.C.3d 169, 177 (Jan. 13, 2010).

⁴ **UCCM**, at p. 49.

Staff favors the alternative proposed by Chairman Kenney because the Complainants hope to achieve rate relief quickly. Whether or not that will be possible cannot yet be known, but it is certain that the activities normally undertaken by the Staff in a general rate case will necessarily result in four or five months of delay.⁵ Presumably, the Complainants filed their over-earnings complaint with the understanding that the burden of proof is theirs to carry and with a strategy for quickly acquiring, marshalling and presenting the compelling evidence they will need to achieve their goal. If they are depending on the Staff, the Complainants' desire for prompt rate relief is rendered unattainable from the outset. For this reason, Staff prefers the proposal that these complaint cases be kept separate from the general rate case that Ameren Missouri has announced that it will initiate in July, in which Staff expects to perform all of the myriad activities characteristic of its role in such rate cases.

WHEREFORE, Staff prays that the Commission will set appropriate procedural schedules in each of these complaint cases as requested by the Complainants, keeping them separate and distinct from Case No. ER-2014-0258; and grant such other and further relief as is just in the circumstances.

⁵ Staff's involvement in Case EC-2014-0223 would also be hampered by the absence of all of those items that a utility company must file with its tariffs when initiating a general rate case, Rules 4 CSR 240-2.065, 4 CSR 240-3.025, 4 CSR 240-3.030, 4 CSR 240-3.145, and 4 CSR 240-3.160, as well as no indication of what test year to use.

Respectfully submitted,

/s/ Kevin A. Thompson

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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 10th day of April, 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