

**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.)	

**Staff’s Response to Complainants’
Motion to Set Test Year and True-up**

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Chief Staff Counsel, and for its *Response to Complainants’ Motion to Set Test Year and True-up*, states as follows:

1. On May 1, 2014, Complainants filed their *Request to Set Test Year and True-up*, requesting the Commission to (1) establish the twelve months ended September 30, 2013, as the test year for this case and (2) a true-up as of March 31, 2014. As explained in detail herein, Staff opposes the test year request and does not oppose the true-up request.
2. Noranda Aluminum Company and thirty-seven other electric customers (“Complainants”) of Ameren Missouri (“Ameren”) filed their *Complaint* on February 12, 2014, alleging that Ameren’s rates are no longer just and reasonable because Ameren is earning in excess of its Commission-approved Return on Equity (“ROE”).
3. With their *Complaint*, Complainants filed supporting direct testimony. That testimony is based on Ameren’s financial information as of September 30, 2013.

4. On April 16, 2014, the Commission established a procedural schedule in this case, which it thereafter modified on April 23, 2014. Currently, the procedural schedule calls for rebuttal testimony on June 6, 2014; surrebuttal and cross-surrebuttal testimony on June 27, 2014; and an evidentiary hearing starting on July 28, 2014, and concluding on August 1, 2014.

5. Throughout the direct testimony that Complainants filed in support of their *Complaint*, they acknowledge that Ameren's current rates had been in effect only for nine months as of September 30, 2013.

6. It is Staff's expert opinion that an analysis of Ameren's current rates for the purpose of determining whether those rates are excessive or not should be based on a full year of data concerning those rates. For that reason, Staff is preparing its rebuttal testimony based on the twelve months ended December 31, 2014. Staff believes this information will be of greatest use to the Commission in determining this case.

7. Staff further responds that this overearnings complaint case, while it is a rate case, is none the less fundamentally different from the more common "file-and-suspend" rate case in which the issue is whether rates should be increased and, if so, by how much. In this case, a group of customers have asserted that Ameren's existing rates are not just and reasonable because they are excessive. The rates set by the Commission in Ameren's last rate case are presumed to be just and reasonable. Section 386.270, RSMo.; ***State ex rel. Public Counsel v. Public Service Commission***, 210 S.W.3d 344, 360 (Mo. App., W.D. 2006). The Commission is obligated under the law to investigate the cause of the complaint filed by Complainants.

Section 393.260.1, RSMo. The complaining customers bear the burden of proof in this case, both the burden of going forward and the risk of loss if the evidence is insufficient, § 386.430, RSMo.; while in a rate increase case, it is the utility that bears the burden of proof. Section 393.150.2, RSMo. The scope of the Commission's investigation is within the Commission's discretion:

When such complaint is made, the commission may, by its agents, examiners and inspectors, inspect the works, system, plant, devices, appliances and methods used by such person or corporation in manufacturing, transmitting and supplying such gas, electricity or water or furnishing said sewer service, and may examine or cause to be examined the books and papers of such person or corporation pertaining to the manufacture, sale, transmitting and supplying of such gas, electricity or water or furnishing of such sewer service.

Section 393.260.2, RSMo.

After a hearing and **after such investigation as shall have been made by the commission or its officers**

Section 393.270.2, RSMo. (emphasis added).

The Commission may either conduct a limited investigation, with the aim of determining whether or not the allegations of the *Complaint* are true, or the Commission may conduct a full investigation in order to determine just and reasonable prospective rates for the service in question. In the latter case, the Commission must consider all relevant factors:

In determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

Section 393.270.4, RSMo.

Based on the procedural schedule set in this case, Staff believes that the Commission has determined to conduct a limited investigation, aimed at determining whether or not Ameren's present rates are excessive. If it is determined that Ameren's present rates are excessive, a full investigation would then be necessary in order to set new, prospective rates, § 393.270.4, RSMo. There cannot be any refund of past over-earnings:

The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established. Past expenses are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses, but under the prospective language of the statutes, they cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses.

State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 59 (Mo. banc 1979) (internal citations omitted).

A test year is not required for an investigation of this sort because it is not intended to result in a *pro forma* year and the development of new, prospective rates.

8. Staff has no objection to a true-up period ending March 31, 2014. However, as part of their analysis all parties should have the right to address significant changes past March 31, 2014, if applicable.

WHEREFORE, Staff prays that the Commission will deny the Complainants' request to set the test year herein; and such other and further relief as is 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 **2nd day of May, 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