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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Volume 1

TRANSCRIPT OF PROCEEDINGS
Procedural Conference
March 28, 2014
Jefferson City, Missouri

Noranda Aluminum, Inc., et al.,)
)
Complainants,)
)
v.) File No.
) EC-2014-0223
Union Electric Company, d/b/a)
Ameren Missouri,)
)
Respondent.)
)
Noranda Aluminum, Inc., et al.,)
)
Complainants,)
)
v.) File No.
) EC-2014-0224
Union Electric Company, d/b/a)
Ameren Missouri,)
)
Respondent.)

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MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

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1 P R O C E E D I N G S

2 (WHEREUPON, the procedural conference
3 began at 10:00 a.m.)

4 JUDGE WOODRUFF: Welcome everyone to
5 the procedural conference in EC-2014-0223 and
6 EC-2014-0224. We'll start today by taking entries
7 of appearance, beginning with Ameren Missouri.

8 MR. LOWERY: Good morning, your
9 Honor. Jim Lowery, Smith Lewis, LLP, P.O. Box 918,
10 Columbia, Missouri 65205, appearing on behalf of
11 Ameren Missouri.

12 JUDGE WOODRUFF: And for the Staff?

13 MR. BYRNE: Your Honor, I'm also Tom
14 Byrne, 1901 Chouteau Avenue, St. Louis, Missouri
15 63103.

16 JUDGE WOODRUFF: Thank you.

17 MR. MITTEN: Your Honor, also Russ
18 Mitten, Brydon, Swearngen & England, 312 East
19 Capital Avenue, Jefferson City, Missouri, also
20 appearing on behalf of Ameren Missouri.

21 MR. THOMPSON: Are you guys all done?

22 MR. MITTEN: We're done.

23 JUDGE WOODRUFF: And for Staff?

24 MR. THOMPSON: Kevin A. Thompson for
25 the Staff of the Missouri Public Service

1 Commission, Post Office Box 360, Jefferson City,
2 Missouri 65102.

3 JUDGE WOODRUFF: Thank you. Public
4 Counsel?

5 MR. MILLS: On behalf of the Office
6 of the Public Counsel and the public, my name is
7 Lewis Mills. My address is Post Office Box 2230,
8 Jefferson City, Missouri 65102.

9 JUDGE WOODRUFF: Thank you. For
10 Noranda and the other complainants?

11 MR. DOWNEY: Edward Downey and Diana
12 Vuylsteke, 221 Bolivar Street, Suite 101,
13 Jefferson City, Missouri 65101.

14 JUDGE WOODRUFF: And for the
15 Consumers Council? I don't see anybody here.

16 MR. COFFMAN: This is John. I'm on
17 the phone. Yes. Appearing on behalf of Consumers
18 Council and AARP, John Coffman, 871 Tuxedo
19 Boulevard, St. Louis, Missouri 6310. Consumers
20 Council has also intervened in the 224 case.

21 JUDGE WOODRUFF: Right. I'm taking
22 entries for both. And AARP is only in 223; is that
23 right?

24 MR. COFFMAN: That's correct.

25 JUDGE WOODRUFF: For the cities of

1 O'Fallon and Ballwin? Anybody here from them? I
2 don't remember who that was.

3 MR. LOWERY: It was Mr. Lumley,
4 et cetera, I believe.

5 JUDGE WOODRUFF: For Wal-Mart?

6 MR. CHAMBERLAIN: Good morning.
7 Rick D. Chamberlain and Marcos A. Barbosa for
8 Wal-Mart Stores East, LP and Sam's East, Inc.

9 JUDGE WOODRUFF: Thank you. For
10 MIEC?

11 MR. DOWNEY: Edward Downey and Diana
12 Vuylsteke, same address as earlier.

13 JUDGE WOODRUFF: For River Cement?

14 MS. LANGENECKERT: Lisa C.
15 Langeneckert appearing on behalf of River Cement,
16 P.O. Box 411793, St. Louis, Missouri 63141.

17 JUDGE WOODRUFF: And for the Missouri
18 Retailers?

19 MR. SCHWARZ: Tim Schwarz and
20 Stephanie Bell, Blitz, Bardgett & Deutsch, 308 East
21 High Street, Suite 301, Jefferson City, Missouri.

22 JUDGE WOODRUFF: And for Continental
23 Cement?

24 MR. COMLEY. Appearing for
25 Continental Cement Company, LLC, is Mark W. Comley,

1 Newman, Comley & Ruth. Our business address is
2 601 Monroe, Suite 301, Jefferson City, Missouri.

3 JUDGE WOODRUFF: Okay. And I believe
4 that's all 12 parties, so we'll get started here.

5 MR. LINTON: Your Honor, this is
6 David Linton.

7 JUDGE WOODRUFF: Yes, David.

8 MR. LINTON: I am appearing on behalf
9 of United for Missouri. My address is 314 Romaine
10 Spring View, Romaine, R-o-m-a-i-n-e, Spring View,
11 Fenton, Missouri 63026. Again, I'm here on behalf
12 of United for Missouri.

13 JUDGE WOODRUFF: All right. And at
14 this point United for Missouri has not intervened
15 or applied to intervene?

16 MR. LINTON: That is correct.

17 JUDGE WOODRUFF: We had a discussion
18 about this a couple days ago, I believe, and you
19 indicated that United Missouri is considering --
20 United for Missouri is considering intervening at
21 some point; is that true?

22 MR. LINTON: Yes, sir.

23 JUDGE WOODRUFF: And I indicated that
24 it would be all right for Mr. Linton to appear
25 today, although he's not actually representing a

1 party in the case or he's not technically
2 appearing, I guess would be the way to put it,
3 although he can participate in the meeting if he
4 wishes.

5 MR. LOWERY: Just to clarify, your
6 Honor, I guess Mr. Linton is listening in, so to
7 speak?

8 JUDGE WOODRUFF: Exactly.

9 MR. LOWERY: Thank you.

10 JUDGE WOODRUFF: That's a good way to
11 put it. All right. The first thing I wanted to
12 bring up was a -- Continental Cement filed a motion
13 to intervene out of time in 223. That was filed on
14 March 18th, which means that it would be -- today
15 would be the last day to file any objections to it.
16 Does anyone have any objections to Continental
17 Cement intervening in 223?

18 MR. DOWNEY: Judge?

19 JUDGE WOODRUFF: Yes, sir.

20 MR. DOWNEY: Ed Downey on behalf of
21 the complainants. We have until midnight tonight
22 to decide; is that correct?

23 JUDGE WOODRUFF: That is correct.

24 MR. DOWNEY: I'd prefer not to have
25 it reflect that we consent at this point. I don't

1 know if we'll oppose, but I won't be making that
2 decision.

3 JUDGE WOODRUFF: Very well.
4 Continental Cement is already a party in the other
5 case in 224. So we'll deal with it after midnight
6 tonight.

7 Okay. Well, the reason I brought you
8 all together today was to try and get you all in
9 one room and see if you can work anything out as
10 far as a procedural schedule. I believe there was
11 some suggestions that it would be appropriate to
12 submit a proposed procedural schedule by April 1st,
13 which will be next Tuesday. I think that sounds
14 reasonable to me, so I'm going to make that a
15 requirement after your discussions today.

16 If you can reach an agreed-upon
17 schedule on these two cases, that's wonderful. If
18 you can't, you can submit competing schedules and
19 the Commission will make the ultimate decision.

20 I also want to bring up the
21 possibility of creating a single procedural
22 schedule for these two cases as well as the --
23 Ameren's proposed rate case which they filed a
24 60-day notice on a few days ago, which was File
25 No. ER-2014-0258. If there's any way to combine

1 the three cases into one procedural schedule, I'd
2 like you to consider that possibility.

3 Mr. Mills, you wanted to comment?

4 MR. MILLS: Yeah, Judge. The 60-day
5 notice does not in any way obligate the company to
6 file a rate case by any particular date. I think
7 at this point it would be difficult for me to agree
8 to delaying a result in the overearnings complaint
9 at least until some, at a minimum, 13 months from
10 now, which is when a rate case that's filed as
11 quickly as the 60-day notice allows would be
12 concluded.

13 JUDGE WOODRUFF: I certainly
14 understand that. Ameren may be open to the idea of
15 expediting their filing or they may not. I'm
16 throwing it out as a possibility.

17 MR. MILLS: We can certainly talk
18 about that. I just wanted to go on the record as
19 saying that that's an unlikely thing we'll be able
20 to work out.

21 MR. SCHWARZ: If I might, the joint
22 procedural schedule I think for 223 and 224 causes
23 me some pause. I believe the cases are separate
24 and distinct. They deal with separate issues. In
25 my view, for instance, of the EIA dual cases last

1 year that went on a joint procedural schedule, I
2 don't think that that was -- I don't think it
3 turned out as well as we thought it might
4 originally.

5 So with that caveat, I will consult
6 with others, but I initially have some concerns.

7 JUDGE WOODRUFF: Mr. Lowery?

8 MR. LOWERY: Your Honor, a couple
9 things on the procedural schedule issue. It's our
10 position, your Honor, that it's inappropriate to be
11 discussing a procedural schedule in either of these
12 pending cases unless and until the Commission as a
13 whole has ruled and, in fact, overrules our motions
14 to dismiss in both cases. Obviously if they grant
15 them, then there wouldn't be a need for a
16 procedural schedule.

17 The only discussion of a schedule
18 that we think is appropriate at this point is a
19 schedule for the company, which bears the burden of
20 proof on those motions to dismiss, to reply to the
21 filings that have been made in the last 24 to 48
22 hours, and then we also would ask that we have oral
23 argument on those motions to dismiss.

24 We didn't file those motions to
25 dismiss as some procedural -- routine procedural

1 matter, which you sometimes see in civil cases. We
2 filed them because we believe they have merit. We
3 believe that the Commission, both as a matter of
4 law and as a matter of the Commission's discretion,
5 has the authority and should dismiss those cases.

6 And we believe that we should be
7 allowed to be heard further on them and have oral
8 argument, and that's the only schedule we think is
9 appropriate to be discussed at this point.

10 In terms of this issue of whether or
11 not the cases, if there were to be a procedural
12 schedule, would be handled together, I have to
13 respectfully disagree with Mr. Schwarz, and I also
14 have to disagree with some of the analysis that I
15 have only very quickly seen, given the timing and
16 my -- the obligations I have to prepare for the
17 Labadie hearings that your Honor, of course, is
18 very familiar with. I think the cases would need
19 to be consolidated and handled together.

20 I disagree with the notion that you
21 can change rates in a rate design case with the
22 idea that, well, you may not be changing the
23 company's revenue requirement, but -- so,
24 therefore, you can go ahead and change rates. We
25 disagree with that notion, and we'll be addressing

1 that in due course.

2 But I believe that the cases, in
3 fact, would need to be consolidated. But the
4 larger point is --

5 JUDGE WOODRUFF: When you're talking
6 about consolidating cases, are you talking about
7 the two complaints filed?

8 MR. LOWERY: Well, the two complaints
9 filed, and I also think, notwithstanding the
10 fact -- Mr. Mills is literally correct. It doesn't
11 obligate us to file a rate case, but I can tell
12 you, having been involved in six of them in the
13 last eight years, the company's going to be filing
14 a rate case, and we're going to be filing a rate
15 case in July. That's going to happen. And it
16 really wouldn't make a lot of sense to not deal
17 with all these together.

18 But the larger point is, a discussion
19 of a procedural schedule is at this point, in my
20 opinion, premature, and that's going to be the
21 company's position. And if the Bench's ruling is
22 that some kind of procedural schedule has to be
23 filed by April 1, which I'm going to ask you to
24 reconsider, in fact, I think we're going to be
25 asking the Commission to reconsider such a ruling

1 because we think it's inappropriate at this
2 particular stage.

3 We have thought about a schedule to
4 rather expeditiously go ahead and get these motions
5 to dismiss ruled on by the full Commission. I'd be
6 happy to address that to the Commission, but I
7 don't think it's appropriate to be talking about a
8 procedural schedule in either of these cases, given
9 the pending motions to dismiss.

10 JUDGE WOODRUFF: Okay. Well, I'm not
11 going to reconsider my order to file a proposed
12 procedural schedule by April 1st. If Ameren wants
13 to take the position that no other procedural
14 schedule other than ruling on the motions to
15 dismiss is appropriate, that can be your proposal.
16 Everybody else can file whatever sort of schedule
17 they believe is appropriate.

18 As I say, the Commission will
19 ultimately make the decision, and it will not be a
20 ruling from the Bench here. It will be a ruling of
21 the Commission.

22 MR. LOWERY: Can I at least ask you
23 to reconsider the date by which you've set that?
24 As you know, I mean, I'm lead counsel on both of
25 these cases, and I'm also lead counsel on the

1 Labadie hearings, which start Monday morning and go
2 three days. And my intention when I get done here
3 today is to spend the rest of the day and weekend
4 preparing for the Labadie hearings.

5 So you're essentially putting me in a
6 position that I can't really work my client to even
7 meet the April 1 deadline, which is only Tuesday.

8 JUDGE WOODRUFF: What do you propose
9 as an alternative?

10 MR. LOWERY: Well, I -- and again, I
11 understand that the Bench is entitled to make its
12 ruling. No sooner than Friday, and I guess I would
13 ask for the following Monday would be more
14 appropriate to give us a reasonable amount of time
15 at least for me to consult with my client about
16 these matters and give them my advice about them.

17 MR. DOWNEY: Judge?

18 JUDGE WOODRUFF: Yes, sir.

19 MR. DOWNEY: I think you should stick
20 to the April 1 deadline. What Mr. Lowery has said
21 is that his client is not going to work on a
22 scheduling order. They don't believe it's
23 appropriate until after the Court rules on their
24 motion to dismiss. So I don't see any point to
25 delaying the submission of scheduling. I think you

1 should stick with the April 1.

2 MR. LOWERY: Your Honor, if we're
3 under order to file some kind of procedural
4 schedule, we will, of course, comply with the
5 order. So it's not true that -- the schedule is
6 probably not going to be the same as the other
7 parties may be suggesting, but if we're under order
8 to file one, we, of course, are not going to
9 disregard the Commission's order.

10 MR. DOWNEY: We've represented
11 exigent circumstances in both of these cases.
12 Delay by itself is prejudicial to our clients.

13 JUDGE WOODRUFF: All right. I'll
14 stick with my ruling of April 1st.

15 Okay. Well, is there any other
16 matters anyone wants to bring up while we're still
17 on the record?

18 MR. LOWERY: Well, your Honor, in
19 terms of the -- in terms of the motions to dismiss
20 that are pending, I've only had a brief time to
21 overview them, particularly the ones that were
22 filed by Noranda last night.

23 JUDGE WOODRUFF: You mean the
24 responses?

25 MR. LOWERY: I'm sorry. The

1 responses to our motions to dismiss. We do, based
2 on that overview, believe that replies are
3 warranted, and normally our reply would be due on
4 April 11th. Because of the circumstances that I
5 have with the case coming up and so on, my request
6 would be that we be given 'til -- four additional
7 days from the normal time, April 11, so I guess
8 April 15th to file replies.

9 And then we would request that oral
10 argument be scheduled on both of them, separate
11 oral arguments, because they really involve
12 different standards and facts and so on.

13 But the oral arguments should be
14 obviously, I think, scheduled the same day and back
15 to back so that we don't have any inconvenience of
16 having two different days or any delay.

17 So I would make that request, that we
18 be given to the 15th to file replies, and that the
19 Commission set an oral argument at its earliest
20 possible convenience thereafter for us to be heard
21 on those motions to dismiss.

22 MR. DOWNEY: Judge?

23 JUDGE WOODRUFF: Yes, sir.

24 MR. DOWNEY: We would oppose that.

25 Normally I would never oppose anyone's request for

1 additional time to do anything. But, by my count,
2 there are, one, two, three, four -- at least five
3 attorneys here who represent Ameren. Mr. Lowery's
4 pointed out his schedule may be a problem for him.
5 We need to keep this case moving as quickly as we
6 possibly can. I would prefer to see the schedule
7 shortened for responses, not lengthened.

8 MR. LOWERY: Your Honor, given that
9 you've required us to file procedural schedules, I
10 don't see how giving us additional time, four
11 additional days, given the circumstances, to file
12 reply and have oral argument has any effect on
13 whatever schedule Mr. Downey may be proposing.

14 JUDGE WOODRUFF: I'm not going to
15 rule on the request for oral argument. If you want
16 to make a written motion to that effect, I'll
17 present that to the Commission in agenda at some
18 point, and they can decide whether they want to
19 have oral argument or not.

20 As far as the additional time, I
21 don't see that as a problem, and I see that -- say
22 that because the motions to dismiss are not
23 controlling on the Commission as far as procedure
24 and otherwise on the case. You can go ahead and
25 submit your procedural schedule. The Commission

1 will consider the proposed procedural schedules,
2 and we'll proceed as it sees fit.

3 The motions to dismiss are existing
4 apart from that, and we can rule on them at some
5 point, but that doesn't necessarily delay the rest
6 of the proceedings. So I will grant your request
7 until, I believe you said it was the 15th to
8 respond.

9 MR. LOWERY: Yes. Thank you, your
10 Honor.

11 JUDGE WOODRUFF: Okay. Anything else
12 anyone wants to bring up while we're on the record?
13 Anyone else?

14 Okay. At this point, then, the
15 on-the-record proceeding portion of the proceeding
16 is adjourned, and I'll leave you to your
17 discussions and leave the people on the phone.
18 Thank you all very much.

19 (WHEREUPON, the recorded portion of
20 the procedural schedule concluded at 10:16 a.m.)

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