

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

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| In the Matter of Noranda Aluminum, Inc.’s |) | |
| Request for Revision to Union Electric Company |) | |
| d/b/a Ameren Missouri’s Large Transmission |) | Case No. EC-2014-0224 |
| Service, Tariff To Decrease its Rate for Electric |) | |
| Service |) | |

**COMPLAINANTS’ REPLY TO AMEREN’S RESPONSE TO APPLICATIONS
FOR REHEARING**

COME NOW Complainants Noranda Aluminum, Inc. (“Noranda”) and the 37 individual customers of Ameren Missouri (collectively, “Complainants”) and in reply to Ameren Missouri’s Response to Applications for Rehearing state as follows:

1. Ameren Missouri (“Ameren”) asserts that “[t]he *Report and Order* is proper and will be upheld on appeal if it is (a) lawful and (b) reasonable and supported by ‘competent and substantial evidence upon the whole record.’”¹ Ameren then argues various reasons why the Commission’s decision would not be overturned on appeal. These arguments miss the point. Complainants are not appealing the Commission’s decision, but are merely requesting the Commission reconsider its position that no relief be granted. Specifically, Complainants are asking that the Commission consider and adopt the position of the parties set out in the Nonunanimous Stipulation and Agreement filed on August, 1, 2014 (the “Stipulation”).

2. Ameren asserts that “a rate that covers incremental cost is not ‘reasonably related to cost of service.’”² It then mischaracterizes the Commission’s findings by implying that the Commission has already decided that the \$34.44/MWh rate is not reasonably related to the cost

¹ Ameren Missouri’s Response to Applications for Rehearing (“Ameren’s Response”), p. 2.

² Ameren’s Response, p. 8.

of service.³ However, a careful reading of the Commission’s *Report and Order* reveals that the Commission did consider cost of service, and quoted Staff’s testimony thusly: “Staff’s witness, Sarah Kliethermes ... calculated that Ameren Missouri’s cost to serve Noranda at the time she prepared her testimony is roughly \$31.50.... To give other ratepayers the \$12 million annual benefit of contributions to common costs previously described would require a rate to be set at no less than \$34.45 per MWh.”⁴ While Complainants recognize that the Commission went on to find that the \$34.45 rate did not cover Ameren Missouri’s fully embedded cost to serve Noranda, it is obviously no mere coincidence that the Stipulation requests a rate of \$34.44/MWh. This rate is based on the testimony cited in the Commission’s findings regarding the cost of service, and Ameren’s argument that it is not related rings false.

3. Ameren’s brief presupposes that the Commission has considered and rejected, or is legally precluded from considering, any alternative relief such as the relief set out in the Stipulation. Again, its arguments do not bear up under a closer reading of the Commission’s *Report and Order*. Complainants recognize that the Commission’s *Report and Order* specifically addresses the possibility that the Commission might grant partial relief *sua sponte*, and declines that option.⁵ However, Complainants also recognize that the Commission chose to specifically define that option, stating that it would not grant “some other relief *that the Commission might craft on their behalf*” (emphasis added).⁶ Ameren cites cases discussing the

³ Ameren’s Response, p. 8 (“If it does not cover cost of service, then, as the Commission recognized, Noranda has failed to meet its burden to prove that the rate it wants is ‘reasonably related to cost of service.... The Commission already considered all of these arguments.’”).

⁴ Report and Order, File EC-2014-0224, dated August 20, 2014, p. 17. Although the Commission’s order cites a rate of \$34.45/MWh, the rate actually included in Ms. Kliethermes’ testimony was \$34.44/MWh. See Kliethermes Surrebuttal, Ex. 203, p. 2, l. 13.

⁵ Report and Order, p. 27.

⁶ Report and Order, p. 27.

discretion of trial courts in determining relief, while citing no statute or Commission decision for the bald statement that, “[t]here is no reason to believe that the Commission is any freer than a court is to decide a case that the complainant did not bring.”⁷ There are, in fact, several reasons to believe that the Commission is so empowered. One, which was asserted in the Office of Public Counsel’s Application for Rehearing, is that the Commission is empowered to “*determine and prescribe* just and reasonable rates.”⁸ Even if the statute is not read broadly, Ameren’s argument is unsupportable. State trial courts and the Public Service Commission are not interchangeable. “The Public Service Commission is not a court.... It has been described as an ‘administrative arm’ of the Legislature. In approving or fixing rates of public utilities which come under its supervision, it exercises a legislative power.”⁹ “The authority of the [P]ublic Service Commission is referable to the police power of the State.”¹⁰ Given the Commission’s statutory power and the courts’ interpretation thereof, there is no reason to believe the Commission is foreclosed from providing partial relief. In recognition of this power, Complainants and the Office of Public Counsel crafted a Stipulation that if adopted, would provide some relief to Noranda while also protecting the interest of other Ameren rate-payers.

4. Ameren’s response is a lengthy dissertation of reasons it believes preclude Noranda from receiving any relief, partial or otherwise. However, absent from Ameren’s lengthy response is any meaningful discussion of one critical issue, namely, whether the Commission considered and was either unable or unwilling to grant partial relief for Noranda. While Complainants recognize that the Commission may well have considered alternative relief,

⁷ Ameren Response, p. 17.

⁸ Office of Public Counsel Application for Rehearing, p. 7, paragraph 20, *quoting* § 393.140(5), RSMo. (emphasis added).

⁹ *State ex rel. Kansas City v. Public Service Com.*, 228 S.W.2d 738, 741 (Mo. 1950).

¹⁰ *State ex rel. Public Service Com. v. Blair*, 347 Mo. 220 (1941).

a careful reading of its *Report and Order* shows that the Commission did not expressly foreclose this possibility, nor state that the considerations supporting the stipulated rate were unjust or unreasonable. Ameren's Response tries to gloss over these facts by insisting the Commission has foreclosed all routes of relief for Noranda.

WHEREFORE, as demonstrated by the foregoing, Ameren has misstated both Complainants' position and the Commission's findings, and for the reasons stated in the Application for Rehearing, the Commission should reconsider its Report and Order to consider the Stipulation as the position of the signatory consumer parties and adopt the positions set forth in the Stipulation based on the record as a just and reasonable resolution of the disputed issues presented for determination in this case.

Respectfully submitted,

BRYAN CAVE LLP

By: /s/ Diana Vuylsteke

Diana Vuylsteke #42419

BRYAN CAVE LLP

211 North Broadway

Suite 3600

St. Louis, Missouri 63102

(314) 259-2543

Facsimile: (314) 259-2020

E-mail: dmvuylsteke@bryancave.com

Attorney for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 30th day of September, 2014, to the parties on the Commission's service list in this case.

/s/ Diana Vuylsteke _____