

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

Noranda Aluminum, Inc., <i>et al.</i> ,	)	
	)	
Complainants,	)	
	)	
v.	)	EC-2014-0224
	)	
Union Electric Co., d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

**OFFICE OF THE PUBLIC COUNSEL’S REPLY TO AMEREN’S RESPONSE TO  
APPLICATIONS FOR REHEARING**

COMES NOW the Missouri Office of the Public Counsel (“Public Counsel” or “OPC”) and in reply to Ameren Missouri’s Response to Applications for Rehearing states as follows:

1. Upon the receipt of a properly-executed complaint alleging the application by a utility of an unjust or unreasonable rate, the Public Service Commission has the authority and the obligation to determine whether the rate applied by the utility actually is unjust or unreasonable.<sup>1</sup> If the Commission so determines, the Commission then must “determine and prescribe just and reasonable rates.”<sup>2</sup>
  
2. Ameren Missouri’s Response to Applications for Rehearing utterly fails to address the key issue presented in the Consumer Parties’ applications for rehearing: that the Commission should exercise its clear legal authority to consider and approve the Consumer Stipulation as a just, reasonable and comprehensive resolution of the issues in this case.<sup>3</sup>

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<sup>1</sup> Mo. Rev. Stat. §§ 386.390.1; 393.130.1 (2000 & Cum. Supp. 2013).

<sup>2</sup> Mo. Rev. Stat. § 393.140(5).

<sup>3</sup> The Office of Public Counsel believes the Stipulation and Agreement entered into by the consumer parties protects ratepayers from rate increases in that it ensures Noranda’s continued

3. Moreover, in making its argument, Ameren Missouri’s Response seemingly conflates the authority afforded the Commission to provide relief to a complainant with the authority of a circuit court to provide relief to a petitioner.<sup>4</sup> Perhaps needless to say, but the constitutional and statutory authorities empowering an Article V court to afford a petitioner relief and the statutory grant of authority empowering the Public Service Commission are vastly different in nature and scope. “The Public Service Commission is not a court...”<sup>5</sup> Accordingly, the Commission’s authority to grant relief in this instance is referable only to the statutory authorities empowering the Commission; what relief a circuit court could or could not order is simply not relevant here.

4. And the Commission possesses ample statutory authority, indeed an obligation, to set new just and reasonable rates, supported by the record, where the Commission concludes the current rate is unjust or unreasonable.<sup>6</sup>

5. While this case is procedurally distinct from a general rate proceeding brought by a utility, the breadth and depth of the Commission’s authority to set a just and reasonable rate is no different. When a utility brings a rate case – whether water, sewer, electric or gas – the Commission exercises its considerable discretion to determine and prescribe just and reasonable

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operation of the New Madrid smelter and the use of the substantial amount of electricity necessary to run the smelter. Under this compromise agreement, Public Counsel believes Ameren Missouri ratepayers are better off and will pay lower rates than if Noranda were to cease operations, and are better off and will pay lower rates than if Noranda had received the relief it originally requested.

<sup>4</sup>Doc. No. 349, p. 17.

<sup>5</sup> Doc. No. 360, p.3 (citing *State ex rel. Kansas City v. Pub. Serv. Comm’n*, 228 S.W.2d 738, 741 (Mo. 1950)).

<sup>6</sup> Mo. Rev. Stat. § 393.140(5).

rates.<sup>7</sup> If the Commission believes the record before it does not support a utility's request for a rate increase in the full and exact amount requested, the Commission need not, and does not, wholly reject the request. Instead, the Commission independently evaluates the record before it and exercises its considered judgment to set new rates.

6. The process in the instant matter should be no different. If the Commission determines in its judgment the full amount of the rate relief prayed for in the complaint is not supported by the record, but the Commission nonetheless believes the current rate is unjust or unreasonable, then the Commission must reset rates to the level the record indicates is just and reasonable. This is so because "All charges...rendered shall be just and reasonable....Every unjust or unreasonable charge....is prohibited."<sup>8</sup>

7. And, as the consumer parties note in their respective motions for rehearing, ample evidence exists in the record to support an order consistent with the Stipulation and Agreement.<sup>9</sup>

8. Further, nothing about the timing of the Consumer Parties' Stipulation and Agreement in this matter can or should impact that analysis. The law encourages settlements.<sup>10</sup> Indeed, the Commission's own rules authorize the Commission to approve a stipulation, whether unanimous or nonunanimous, at any time.<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Mo. Rev. Stat. § 393.130.1.

<sup>9</sup>Doc. Nos. 337-339, 343, 345.

<sup>10</sup> Lowe v. Norfolk W.R. Co., 752 S.W.2d 891; 894-895 (Mo. 1986); Bogus v. Birenbaum, 375 S.W.2d 156, 159, 375 S.W.2d 156, 159 (Mo. 1964).

<sup>11</sup> Commission Rule 4 CSR 240-2.115 (stating a stipulation may be approved "at any time"); In the Matter of the Joint Application of GTE Midwest, 2002 Mo. PSC Lexis 268 (stating "the

**Conclusion**

WHEREFORE, for the reasons stated above and those articulated in the Office of Public Counsel's Application for Rehearing, the Commission should reconsider and rehear its Report and Order in the above-referenced case.

Respectfully submitted,

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**OFFICE OF THE PUBLIC COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed on this 30<sup>th</sup> day of September, 2014 to all parties on the Commission's service list in this case.

      /s/ Dustin Allison      

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Commission has removed the deadline for a stipulation and agreement as the Commission encourages settlement and would entertain a stipulation by the parties at any time”).