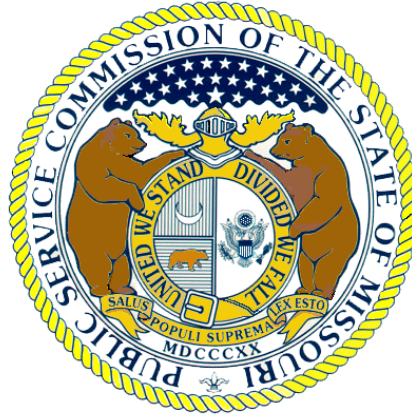


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Noranda Aluminum, Inc., et al.,)
)
Complainants,)
)
v.)
)
Union Electric Company, d/b/a)
Ameren Missouri)
)
Respondent.)

File No. EC-2014-0223

REPORT AND ORDER

Issue Date: October 1, 2014

Effective Date: October 31, 2014

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OF THE STATE OF MISSOURI**

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v.)	<u>File No. EC-2014-0223</u>
)	
Union Electric Company, d/b/a)	
Ameren Missouri)	
)	
Respondent.)	

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CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

The Commission finds and concludes that the Complainants have failed to meet their burden of proving that Ameren Missouri’s current rates are no longer just and reasonable. The Commission, therefore, denies and dismisses the complaint.

Procedural History

On February 12, 2014,¹ Noranda Aluminum, Inc., joined by 37 individual customers of Union Electric Company, d/b/a Ameren Missouri, filed an excess earnings complaint and request for expedited review. The complaint asked the Commission to revise the rate Ameren

¹ Date references are to 2014 unless otherwise indicated.

Missouri is allowed to charge its customers by resetting those rates to a level that is just and reasonable.

As required by Commission rule 4 CSR 240-2.070, the Commission notified Ameren Missouri of the filing of the complaint and directed the utility to file its answer no later than March 17. Ameren Missouri filed its answer on March 17, along with a motion to dismiss the complaint. The Commission denied that motion on April 16.

The Commission allowed the following parties to intervene: Consumers Council of Missouri; AARP; Continental Cement Company; the City of O'Fallon and the City of Ballwin; Wal-Mart Stores East, L.P. and Sam's East; the Missouri Industrial Energy Consumers; River Cement Company; and the Missouri Retailers Association. In compliance with an expedited procedural schedule, the parties prefiled multiple rounds of testimony. In addition, the Commission held three local public hearings to collect testimony from interested members of the public.

The Complainants and various intervening parties proposed an expedited procedural schedule that would have led to an evidentiary hearing beginning on June 16. Ameren Missouri proposed to fold the complaint into a general rate case that it planned to file in July. Ultimately, an evidentiary hearing was held on July 28 and 29. The parties filed initial post-hearing briefs on August 15, with reply briefs filed on August 29.²

Findings of Fact

1. Union Electric Company is an investor-owned electric utility, subject to the jurisdiction of this Commission and is the largest electric utility in Missouri.³

2. Ameren Missouri's current electric rates were established by the Commission and made effective on January 1, 2013, in the company's last general rate case, which is

² United for Missouri filed an *amicus curiae* brief on August 15.

³ Rate Design Complaint, Paragraph 3, admitted in Ameren Missouri's Answer.

contained in Commission File Number ER-2012-0166.

3. In preparing to file a request for a rate increase, as it did in its last rate case, Ameren Missouri undertakes a comprehensive cost of service study. In his rebuttal testimony, Ameren Missouri's Director of Regulatory Accounting, Gary S. Weiss, described, in great detail, the extensive process Ameren Missouri uses to create a comprehensive cost of service study.⁴

4. In a general rate increase case, the comprehensive cost of service study presented by the utility is only the start of the ratemaking process. The Commission's Staff also performs its own comprehensive cost of service study. A team of approximately five or six auditors representing the Commission's Staff establishes an office at the utility's office for approximately four months. Those Staff auditors perform a very detailed audit of the utility's expenses and make adjustments to those expenses to arrive at what they believe is the utility's cost to serve its customers.⁵

5. Staff's witness in this case, auditor John P. Cassidy, described the amount of effort Staff dedicated to its comprehensive cost of service study in Ameren Missouri's last rate case:

In that rate case, 29 Staff witnesses sponsored testimony, seven of which were auditors. At least an additional 11 Staff members provided support and administrative assistance with the processing of that rate case. Staff members dedicated approximately 9,094 hours to that rate case during the five and one-half month time span between the Company's direct testimony filing on February 3, 2012, through Staff's rate design direct testimony filing on July 19, 2012. In total, Staff reported approximately 16,305 hours of time in order to process the Ameren Missouri ER-2012-0166 rate case over the 11-month statutory rate case process duration, including the evidentiary hearings, submission of briefs and implementation of the Commission ordered tariffs. In addition, during that rate case Staff performed 665 adjustments to revenues, expenses, plant in service and depreciation reserve in addition to calculating an appropriate rate of return and capital structure,

⁴ Weiss Rebuttal, Ex. 5, Pages 5-16.

⁵ Weiss Rebuttal, Ex. 5, Page 16, Lines 11-23.

examining the Company's depreciation rates, analyzing its tariffs, and developing an appropriate rate design.⁶

6. In the last rate case, after considering the comprehensive cost of service studies presented by Ameren Missouri and by Staff, and after examining the evidence and arguments presented by Ameren Missouri, Staff, the Office of the Public Counsel, and the numerous intervening parties, the Commission considered all relevant factors and set just and reasonable rates designed to allow Ameren to recover its costs, while allowing it an opportunity to recover a reasonable return on its investment. No one has alleged that Ameren Missouri has charged its customers anything other than the rates the Commission authorized it to charge in that last rate case.

7. Rather than allege that Ameren Missouri is overcharging its customers, the Complainants allege that the rates the Commission established for Ameren Missouri in ER-2012-0166 are no longer just and reasonable because they have allowed the utility to earn more than was intended when those rates were set. The Complainants claim that this overearning is demonstrated by quarterly surveillance⁷ reports filed by Ameren Missouri.⁷

8. Each quarter Ameren Missouri is required to provide a surveillance report to the Commission's Staff regarding its income and expenses. The surveillance report is also provided to Public Counsel and other parties that have intervened in the utility's past rate cases. The reports are filed as highly confidential and cannot be viewed by the public.⁸

9. The surveillance reports are filed approximately two months after the end of the quarter. That means the September 30, 2013 surveillance report was the most recent report

⁶ Cassidy Rebuttal, Ex. 12, Page 15, Lines 6-18.

⁷ Excess Earnings Complaint and Request for Expedited Review and Relief, Paragraph 12.

⁸ Commission Rule 4 CSR 20.090(10) requires the filing of the surveillance reports; 4 CSR 3.161(6) describes what must be contained in the surveillance reports and makes them highly confidential.

available when the Complainants filed their complaint in February 2014.⁹

10. The September 30, 2013 surveillance report shows that Ameren Missouri earned an actual return on equity of 10.32 percent for the twelve months ending September 30, 2013. Ameren Missouri's authorized return on equity, established in its last rate case, was 9.8 percent. Those numbers would indicate that Ameren Missouri earned approximately \$29.2 million more than its authorized rate of return during that period.¹⁰

11. Earlier surveillance reports also show that Ameren Missouri earned more than its authorized rate of return in those periods, as shown in this chart:

Period Reported	Actual Rate of Return
12 months ending September 30, 2013	10.32%
12 months ending June 30, 2013	10.57%
12 months ending March 30, 2013	12.28%
12 months ending December 31, 2012	11.66%
12 months ending September 30, 2012	10.50%
12 months ending June 30, 2012	10.53%

12. Although those more recent periods show strong earnings by Ameren Missouri, the same information for earlier periods show that Ameren Missouri was earning substantially less than its authorized return on equity for most months between June 2007 and November 2011, as shown in this chart:

⁹ Meyer Direct, Ex. 1, Page 3, Lines 3-9.

¹⁰ Meyer Direct, Ex. 1, Page 4, Lines 1-5.

Month	Return on Equity		Month	Return on Equity		Month	Return on Equity
June 2007	8.85%		December	7.45%		June	8.32%
July	9.07%		January 2009	7.40%		July	9.74%
August	9.74%		February	6.64%		August	10.49%
September	10.46%		March	6.55%		September	11.02%
October	9.90%		April	5.99%		October	10.84%
November	9.58%		May	6.14%		November	9.27%
December	9.82%		June	6.47%		December	8.89%
January 2008	10.07%		July	6.08%		January 2011	8.22%
February	9.70%		August	6.43%		February	8.10%
March	10.14%		September	6.72%		March	8.56%
April	11.32%		October	7.50%		April	8.44%
May	10.79%		November	7.77%		May	8.58%
June	10.46%		December	7.27%		June	8.11%
July	10.35%		January 2010	8.55%		July	8.56%
August	9.63%		February	8.96%		August	7.18%
September	8.71%		March	8.61%		September	8.21%
October	7.60%		April	7.82%		October	8.20%
November	6.67%		May	7.29%		November	8.18%

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13. However, it is important to understand that the earnings levels reported in the surveillance reports are actual per book earnings of the utility and cannot be compared directly to an authorized return on equity to determine whether a utility is overearning. Actual per book earnings are often computed differently than earnings used for the purpose of establishing rates. When setting rates, the Commission looks at “normal” levels of ongoing revenues and expenses, while book earnings can be affected by abnormal, non-recurring and extraordinary events. A good example of this is the weather.¹²

14. The Commission sets a utility’s rates on the assumption that weather will be normal. But, of course, we all know that Missouri weather is seldom normal. If the summer is

¹¹ The information in the table is drawn from a chart showing those historic actual rates of return on equity found in Gary Weiss’ Direct Testimony in the last rate case, which was Exhibit 5 in File No. ER-2012-0166. The Commission took administrative notice of that testimony at page 267, Lines 13-15 of the transcript in this case.

¹² Oligschlaeger Rebuttal, Ex. 11, Page 13, Lines 10-19.

very hot and people use their air conditioners more than average, Ameren Missouri will sell more than the usual amount of electricity and its revenues will be higher than expected. That means its actual per book earnings will be higher than anticipated when rates were set. However, the next summer temperatures may be cooler than normal, meaning air conditioners are not turned on and Ameren Missouri's actual per book earnings will fall below expectations. As a result, a single year of data needs to be normalized to remove the effect of abnormal weather before it can be used to set rates. Weather is only one of many items that must be adjusted or normalized when setting rates.¹³

15. The Complainants do not dispute that the surveillance reports alone cannot be used to set rates for Ameren Missouri, and agree that "a further review of Ameren Missouri's operations must be conducted to determine if the [surveillance report] results are reflective of ongoing operations."¹⁴ In its direct case, the Complainants presented the testimony of Greg R. Meyer, who made fourteen adjustments to Ameren Missouri's earnings as reported on the September 30, 2013 surveillance report, and concluded that for that year, Ameren Missouri had overearned by \$67,130,000.¹⁵

16. Meyer's proposed adjustments to the September 30, 2013 surveillance report were sharply criticized in the rebuttal testimony offered by the witnesses for Ameren Missouri and Staff.¹⁶ In his surrebuttal testimony, Meyer made thirteen adjustments to the income reported by Ameren Missouri in its December 31, 2013 surveillance report (many of them different from the adjustments proposed in his direct testimony), and concluded that for that

¹³ Cassidy Rebuttal, Ex. 12, Page 36, Lines 1-9.

¹⁴ Meyer Direct, Ex. 1, Page 4, Lines 13-14.

¹⁵ Meyer Direct, Ex. 1, Page 5, Table 1.

¹⁶ Weiss Rebuttal, Ex. 5, and Cassidy Rebuttal, Ex. 12

year, Ameren Missouri had overearned by \$49,442,000.¹⁷

17. At the hearing, Meyer conceded that his direct testimony was “not as accurate as it should be” and asked the Commission to instead concentrate on the adjustments and analysis presented in his surrebuttal testimony.¹⁸

18. Aside from the adjustments proposed by Meyer, the Complainants also proposed to adjust the return on equity that the Commission established for Ameren Missouri in its last rate case. In Ameren Missouri’s most recent rate case, decided in December 2012, the Commission found that Ameren Missouri should be authorized to earn a return on equity of 9.8 percent.¹⁹

19. The Complainants’ witness, Michael Gorman, recommended that the Commission set Ameren Missouri’s authorized return on equity at 9.40 percent.²⁰ His recommended return is roughly the mid-point of a range of 8.90 percent to 9.85 percent, derived from his DCF (Discounted Cash Flow), Risk Premium, and CAPM (Capital Asset Pricing Model) model analysis.²¹ In Ameren Missouri’s last rate case, Gorman recommended a return on equity of 9.3 percent, as the mid-point of a range of 9.2 to 9.4 percent.²² Ameren Missouri’s currently authorized return on equity of 9.8 percent is within Gorman’s range of reasonable rates of return.²³

20. Ameren Missouri’s witness, Robert B. Hevert, recommended that Ameren Missouri’s authorized return on equity be set at 10.4 percent, which is the mid-point of his

¹⁷ Meyer Surrebuttal, Ex. 2, Page 4, Table 1.

¹⁸ Transcript, Pages 158-159, Lines 15-25, 1-4.

¹⁹ Oligschlaeger Rebuttal, Ex. 11, Page 11, Lines 6-7.

²⁰ Gorman Direct, Ex. 3, Page 2, Lines 5-7.

²¹ Gorman Direct, Ex. 3, Page 30, Table 2.

²² Transcript, Pages 297-298, Lines 13-25, 1-6.

²³ Transcript, Page 301, Lines 4-24.

range of 10.2 percent to 10.6 percent.²⁴

21. The average awarded return on equity for vertically integrated electric utilities in the United States for the period of January 2013 through March 2014 was 9.92 percent.²⁵

22. Staff also undertook a limited review of the income reported in Ameren Missouri's December 31, 2013 surveillance report. In his surrebuttal testimony, Staff witness John Cassidy offered eleven adjustments to Ameren Missouri's reported income and found that Ameren Missouri's adjusted book earnings for that year exceeded its authorized return by \$39,135,000.²⁶ However, Staff stressed that it did not believe that figure should be used to reset Ameren Missouri's rates.²⁷

23. Staff does not offer its "overearning" figure as the basis for resetting Ameren Missouri's rates largely because that figure is not derived from a comprehensive cost of service study. Both Staff's cursory review and the review presented by the Complainants examine only a few of what the witnesses thought were the most significant factors affecting Ameren Missouri's earnings. If Staff had been allowed enough time to conduct a comprehensive cost of service study in this case, it would also have examined:

- A fuel model to determine an appropriate level of fuel expense, purchased power, and off-system sales revenue;
- The impact of customer growth;
- Annualization of revenues from large customers;
- Annualization of revenues from Lake of the Ozarks shoreline management;
- Existing depreciation rates;

²⁴ Hevert Rebuttal, Ex. 7, Page 61, Lines 8-13.

²⁵ Hevert Rebuttal, Ex. 7, Schedule RBH-1.

²⁶ Cassidy Surrebuttal, Ex. 13, Pages 6-7, Lines 14-23, 1-4.

²⁷ Cassidy Surrebuttal, Ex. 13, Page 7, Lines 12-13.

- Appropriate levels of plant in service and other rate base items;
- Cost of new electrostatic precipitators at the Labadie plant;
- Cash working capital;
- Decline in power plant maintenance expense;
- Assessment of capacity and bilateral sales and swaps;
- Appropriate levels of MISO revenues and expenses;
- Payroll levels affected by changes in employment levels and overtime;
- Changes in amortizations currently in place;
- Pension costs;
- Rate case expense;
- Advertising;
- Dues and Donations;
- Lobbying expense;
- Insurance expense;
- Rents and leases expense;
- Changes in property taxes;
- Net write-offs;
- Various trackers;
- Environmental costs;
- Legal costs;
- The PSC assessment;
- Corporate franchise taxes;
- Low-income weatherization programs;
- Keeping Current program costs; and

- Income taxes.²⁸

Any estimation of the company's revenue requirement that is not based on a comprehensive cost of service study will necessarily carry a much lower degree of certainty with regard to its accuracy.²⁹ Determining an appropriate cost of service is an extremely complex and interactive exercise. Until the work is done, no one knows what the answer will be.³⁰

24. Even if the overearnings figure presented by the Complainant's limited study was accepted as an accurate description of what Ameren Missouri earned in 2013, the figure still would not be a reasonable basis for establishing going-forward rates for the company. The Complainant's analysis ends with its adjustments to the December 31, 2013 surveillance report, other than a mention of the raw, unanalyzed March 31, 2014 surveillance report.³¹ Ameren Missouri expects to place in service over \$1 billion in capital projects before the end of 2014, which it will seek to recover in future rates.³² In addition, Ameren Missouri's payment of solar rebates in 2014 will likely increase the company's revenue requirement by approximately \$33.7 million.³³

25. The Complainants' witness acknowledged that at some point Ameren Missouri's large investments of capital would likely mean that the company was no longer in an overearning position.³⁴

26. It is important to understand that the analysis that Meyer presented in his direct testimony and substantially revised in his surrebuttal testimony is, by his own admission, not a

²⁸ Transcript, Pages 368-376.

²⁹ Transcript, Page 386, Lines 16-23.

³⁰ Transcript, Page 326, Lines 2-18.

³¹ Transcript, Page 201, Lines 7-9.

³² Barnes Rebuttal, Ex. 6, Page 5, Lines 1-11.

³³ Weiss Rebuttal, Ex. 5, Pages 26-27, Lines 22-23, 1-4.

³⁴ Meyer Surrebuttal, Ex. 2, Page 19, Lines 1-6.

comprehensive cost of service study of the type normally done in a general rate case.³⁵ Furthermore, Meyer agreed that a comprehensive cost of service study should be required when a utility is seeking to raise its rates.³⁶ Thus, the Complainants are explicitly asking the Commission to apply a lower evidentiary standard when considering a complaint to lower a utility's rates.³⁷

27. Ameren Missouri has filed its own rate case seeking a rate increase. That request is pending in File No. ER-2014-0258, and must be resolved no later than May 2015.

Conclusions of Law

A. Union Electric Company, d/b/a Ameren Missouri is an electrical corporation as that term is defined at Section 386.020(15), RSMo (Supp. 2013). As an electrical corporation, Ameren Missouri is subject to regulation by this Commission as described in Chapters 386 and 393, RSMo.

B. Section 386.390.1, RSMo 2000 establishes the standards for bringing complaints before this Commission. The relevant part of section states:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation of any provision of law, or of any rule or order or decision of the commission;

The section goes on to state:

Provided that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be

³⁵ Transcript, Pages 191-192, Lines 23-25, 1-7.

³⁶ Transcript, Page 199, Lines 3-5.

³⁷ Meyer Surrebuttal, Ex. 2, Page 19, Lines 18-22; Transcript, Page 244, Lines 8-25; and Initial Post-Hearing Brief of Complainants, Page 15.

signed by the public counsel or the mayor or president or chairman of the board of alderman or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

Similarly, Section 393.260, RSMo 2000, permits the filing of complaints as to the quality and price of electricity to be brought by not less than twenty-five consumers or purchasers of that electricity.

This complaint alleges the rate Ameren Missouri charges to Noranda for electricity is unreasonable, and, as required by the second part of the statutory section, the complaint is signed by not less than twenty-five customers. Therefore, the complaint complies with the statutory requirements.

D. This action is a complaint against Ameren Missouri. So, the Complainants, as the party asserting the affirmative of an issue, bear the burden of proving the allegations made in their complaint.³⁸

E. Commission rule 4 CSR 240-20.090(10) requires each electric utility with a fuel adjustment clause (a rate adjustment mechanism or RAM within the words of the regulation) to submit a quarterly Surveillance Monitoring Report. The required contents of the quarterly report are described by Commission rule 4 CSR 240-3.161(6). That regulation also requires that such reports be treated as highly confidential.

F. Since the Commission is a creature of statute, its powers are limited to those conferred by statute, either expressly, or by clear implication. “Neither convenience, expediency or necessity are proper matters for consideration in the determination of’ whether

³⁸ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n*, 116 S.W.3d 680 (Mo. App. W.D. 2003). See also, *AG Processing, Inc. v. KCP&L Greater Missouri Operations Company*, 385 S.W.3d 511 (Mo. App. W.D. 2012).

or not an act of the commission is authorized by the statute.”³⁹

G. Section 393.270, RSMo 2000, establishes the procedures and standards by which the Commission is to establish the price a utility may charge to provide electricity to its customers.

H. Subsection 393.270.1, RSMo 2000, gives the Commission authority to investigate “any matter of which complaint may be made as provided in sections 393.110 to 393.285, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it.” That would include complaints about the price of electricity authorized by Section 393.260, RSMo 2000.

I. Subsection 393.270.2, RSMo 2000, gives the Commission authority to establish the price of electricity, stating:

After hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of ... electricity ... to be charged by such corporation or person, for the service to be furnished ... as will in its judgment be adequate, just and reasonable.

J. Subsection 393.270.4, RSMo 2000, describes the facts the Commission can examine when setting the price of electricity:

In determining the price to be charged for ... electricity ... 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.

K. In a 1957 decision regarding the appeal of a Missouri Water Company rate case, the Missouri Supreme Court interpreted Section 393.270 RSMo. The Supreme Court concluded that the statutory phrase “‘among other things’ clearly denotes that ‘proper

³⁹ *State ex rel. Util. Consumers Council v. Pub. Serv. Comm’n*, 585 S.W. 2d 41, 49 (Mo banc 1979), quoting, *State ex rel. Kansas City v. Pub. Serv. Comm’n*, 257 S.W. 462 (Mo. Banc 1923).

determination' of such charges is to be based upon *all* relevant factors.”⁴⁰

L. Failing to consider all relevant factors when adjusting a utility's rates is condemned as single-issue rate making and is generally prohibited in Missouri.⁴¹

M. In the Missouri Water Company case, the Commission had applied an original cost less depreciation standard to determine the amount of the utility's rate base, and refused to consider the company's evidence that post-World War II inflation had affected the value of that rate base. In clinging to an original cost valuation of rate base, the Commission stated that it was “motivated primarily by practical considerations”, concluding that any attempt to inflate the company's rate base would be difficult and uncertain.⁴² In rejecting that argument, the Supreme Court said:

But however difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse or expediency can be substituted for the requirement that such rates be 'authorized by law' and 'supported by competent and substantial evidence upon the whole record.'⁴³

N. Rate making is designed to be forward looking. The goal is to choose a representative test year to estimate what costs will be when rates are in effect, not to make adjustments for past earning levels.⁴⁴ The practice of setting future rates to adjust for past earning levels is condemned as retroactive ratemaking that would deprive either the utility or its customers of their property without due process.⁴⁵

⁴⁰ *State ex rel Missouri Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 719 (Mo. 1957) (emphasis in original).

⁴¹ *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).

⁴² *Missouri Water Co.* at 713.

⁴³ *Missouri Water Co.* at 720. Citing Article V, §22 (now §18), Constitution of Missouri. (That is the section establishing standards for judicial review of administrative decisions).

⁴⁴ *State ex rel. Southwestern Bell Tele. Co. v. Pub. Serv. Comm'n*, 645 S.W.2d 44, 48 (Mo. App. W.D. 1982).

⁴⁵ *State ex rel. Util. Consumers Council of Mo, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 58 (Mo. banc 1979).

O. The Commission only sets the rates that Ameren Missouri, or any other utility, may charge its customers. It does not determine a maximum or minimum return the utility may earn from those rates. Sometimes, the established rate will allow the utility to earn more than was anticipated when the rate was established. Sometimes, the utility will earn less than anticipated. But the rate remains in effect until it is changed by the Commission and so long as the utility has charged the authorized rate, it cannot be made to refund any “overearnings”, nor can it be allowed to collect any “underearnings” from its customers.⁴⁶

Decision

No Allegation of Misconduct

The Complainants have brought this overearnings complaint before the Commission in an attempt to show that Ameren Missouri’s electric rates should be reduced because that company is earning a return on equity greater than contemplated when its rates were set in its most recent rate case. In evaluating the complaint, the first thing that must be understood is that no one has shown, and indeed, no one has alleged, that Ameren Missouri has done anything wrong. Ameren Missouri has simply charged its customers the electric rates the Commission authorized it to charge in its last rate case. Although the parties, and this order, speak of overearnings, doing so is just a shorthand way of describing a situation where the utility is earning more from its rates than was anticipated when those rates were established. If a company is overearning, or underearning, the Commission may need to adjust future rates to correct the imbalance. But the Commission cannot order Ameren Missouri to “pay the money back” by refunding past overearnings, nor can it allow the utility to collect past underearnings from its customers.

The Complainants’ Burden of Proof

⁴⁶ *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666 (Mo. 1950).

To meet their burden of proving their complaint, the Complainants point first to the surveillance reports filed by Ameren Missouri that show the utility has been earning a rate of return on equity greater than the return contemplated when rates were set. But those raw, unadjusted, surveillance reports alone do not provide a complete or accurate picture of Ameren Missouri's earnings sufficient to reset the utility's rates.

Missouri law requires the Commission to examine all relevant factors when setting rates. When a utility files tariffs seeking to increase its rates, the Commission requires the utility to file a comprehensive cost of service study as part of its direct testimony. That study must examine all relevant factors that could affect the amount the utility will be allowed to recover in its rates. The Commission's Staff then audits the company to verify the numbers and prepares its own cost of service study. Public Counsel and intervening parties may also review the utility's costs and offer testimony about any relevant factors that they choose to address. In such a case, the Commission usually requires eleven months, which is the maximum amount of time allowed by statute, to complete the review, hold a hearing, issue a decision, and approve new rate tariffs filed by the utility.

In contrast to the typical file and suspend rate case process followed when a utility seeks to raise rates, the Complainants merely took the September 2013 surveillance report data, looked at what they believed to be the most significant factors, and proposed fourteen adjustments. Then in the Complainant's surrebuttal testimony, their witness abandoned the test year and adjustments proposed in his direct testimony and proposed thirteen, mostly different adjustments to the December 2013 surveillance data.⁴⁷ The exhaustive cost of

⁴⁷ One of the adjustments proposed by the Complainants was to lower Ameren Missouri's authorized return on equity from 9.8 percent to 9.4 percent. The evidence presented did not demonstrate that Ameren Missouri's cost of capital, including its reasonable return on equity, has significantly changed since the Commission examined that cost in Ameren Missouri's last rate case. Indeed, the Complainants' expert witness recommended return on equity in this case is higher than the return he recommended in the last rate case. As a result, the Complainants are seeking an opportunity to re-

service study usually performed by Staff in a general rate case, while desirable, is not established as the legal standard for adjusting a utility's rates. Rather, the law requires the Commission to consider all *relevant* factors; not all *possible* factors.⁴⁸ A complainant could adequately support a rate adjustment with a cost of service study less extensive than the audit undertaken by Staff if that adjustment can be shown to take into account all relevant factors. But the cost of service study offered by the Complainants in this case did not meet that standard.

Importantly, the cost of service study presented by the Complainants essentially stops at the end of 2013 and does not take into account the additional costs Ameren Missouri has already incurred in 2014 for ongoing capital projects and payment of solar rebates. Rate making is supposed to be forward-looking, with a goal of setting rates that will allow the utility to recover its costs and earn a reasonable return on its investment while those rates are in effect. That system assumes a utility's revenues, expenses and profits will fluctuate from month to month, and year to year, but will even out over time. Complainants concede that at some point Ameren Missouri's large investment of capital will likely end what they believe is an overearnings position. Limiting a cost of service study to certain past earnings figures in the hope of capturing a momentary overearning, while overlooking a more significant period for an earnings trend is not appropriate regulatory policy.

Ameren Missouri's current forward-looking rates went into effect at the start of 2013. The Complainants want to reset those rates based on earnings information that ends with the end of 2013. The Commission concludes that adjusting rates in this case without taking into account known ongoing and future costs would be contrary to sound ratemaking principles.

litigate the Commission's return on equity decision from the last case. The Commission will reevaluate an appropriate return on equity for Ameren Missouri in the on-going general rate case, but there is no reason to do so here.

⁴⁸ Only one ratemaking standard is established by Missouri's statutes as interpreted by Missouri's courts. That standard is the same whether the Commission is deciding to increase or decrease rates.

The Commission must consider all relevant factors when setting rates. The Complainants have not met their burden to prove that Ameren Missouri's current rates are no longer just and reasonable. Therefore, the Commission will deny and dismiss the complaint.

THE COMMISSION ORDERS THAT:

1. The complaint brought by Noranda Aluminum, Inc. and the other complainants is denied and dismissed.
2. This report and order shall become effective on October 31, 2014.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney, and Hall, and Rupp, CC., concur;
and certify compliance with the provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 1st day of October, 2014.