

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day of
April, 2014.

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

ORDER REGARDING AMEREN MISSOURI’S MOTION TO DISMISS

Issue Date: April 16, 2014

Effective Date: April 16, 2014

On February 12, 2014, Noranda Aluminum, Inc. and 37 other individual customers filed a complaint against Union Electric Company, d/b/a Ameren Missouri, alleging that the rate Noranda currently pays to Ameren Missouri for electricity is now unreasonable. The complaint alleges that because of low aluminum prices and other business conditions, Noranda must have a rate reduction for its aluminum smelter to remain financially viable. The complaint asks the Commission to reduce the rate Noranda pays to \$30.00/MWh and to increase the rate paid by Ameren Missouri’s other customers to make the adjustment revenue neutral for Ameren Missouri. In response to that complaint, the Commission directed Ameren Missouri to file its answer by March 17. Ameren Missouri filed its answer on March 17, and on the same date filed a motion asking the Commission to dismiss this

complaint. The Complainants, Staff, and Public Counsel responded in opposition to Ameren Missouri's motion to dismiss on March 26 and 27. Ameren Missouri replied on April 15.

Ameren Missouri asserts five reasons why the complaint should be dismissed. First, Ameren Missouri argues that the complaint is an unlawful collateral attack on the Commission's report and order in Ameren Missouri's most recent rate case, ER-2012-0166. Ameren Missouri supports that argument by asserting that the facts alleged in the complaint fail to support any change in circumstances since the 2012 rate case was decided. Ameren Missouri points out that much the same arguments about the financial viability of the aluminum smelter were asserted in that earlier rate case.

But at this stage of the proceeding, the Commission has no basis to judge the accuracy of the facts alleged by the complainants. On the contrary, when considering a motion to dismiss for failure to state a claim, the Commission can only consider the legal sufficiency of the complaint. The facts alleged must be accepted as true and the complainant must be given the benefit of all reasonable inferences from those facts.¹ The complaint does allege that there has been a change in circumstances that would justify a change in the rates paid by Noranda. Whether the facts alleged by Noranda to show such a change in circumstances are true and whether they support a Commission decision to reduce the rate Noranda pays cannot be determined at this stage of the proceeding. Ameren Missouri has not demonstrated that the complaint is an unlawful collateral attack, and the complaint cannot be dismissed on that basis.

¹ *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. 1993).

Second, Ameren Missouri argues that the complaint would require the Commission to engage in unlawful single-issue rate making. Single-issue ratemaking is a concept whereby the Commission would adjust rates based on a narrow examination of a single factor without considering all other relevant factors. Single-issue rate making is improper because consideration of only one factor could show that a company is underearning or overearning, resulting in a rate increase or decrease, while some other factor that is not examined would show that the costs associated with the single-factor were off-set by changes in costs associated with other, unexamined, factors. The result of such single-issue ratemaking could be an inaccurate assessment of the company's revenue requirement, resulting in unjust and unreasonable rates.

However, concerns about single-issue rate making do not apply to this complaint because this complaint is about rate design, not revenue requirement. In other words, the complainants are asking the Commission to change the balance by which the company's revenue requirement is collected from the various customer classes. The overall amount collected by the company, its revenue requirement, would not be changed. Therefore, single-issue ratemaking is not a concern.

Ameren Missouri's third argument is that the complaint is an improper attempt by Noranda to use the complaint before the Commission to reform its electric supply contract with Ameren Missouri. However, the complaint does not seek to change the terms of that contract. Rather, it seeks to change the rates Ameren Missouri charges its customers, rates established by Ameren Missouri's tariffs, which are subject to review by the Commission.

Fourth, Ameren Missouri argues that the complaint would require the Commission to illegally sanction an unduly discriminatory rate in that it would require other ratepayers to subsidize Noranda. Ameren Missouri's argument is not well founded at this time. Certainly the applicable law forbids rates that are either unduly preferential or discriminatory. Perhaps the evidence will eventually show that Noranda's proposal is indeed unduly preferential or discriminatory, but that is a question of fact and at this point, for the purposes of Ameren Missouri's motion to dismiss, there is no way to make that determination.

Finally, Ameren Missouri argues that the Commission should exercise its discretion to dismiss the complaint for good cause shown. The good cause Ameren Missouri asserts is that the policy decisions raised by the complaint should be addressed by the legislature. The Commission will certainly defer to any decision made by the legislature. But the possibility of action by the legislature does not relieve the Commission of the responsibility to consider a complaint brought before it.

Ameren Missouri's Motion to Dismiss Complaint is not well founded and will be denied.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's Motion to Dismiss Complaint is denied.
2. Ameren Missouri's Request for Oral Argument is denied.

3. This order shall become effective upon issuance.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Woodruff, Chief Regulatory
Law Judge