BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

JOINT RESPONSE OF COMPLAINANTS, OFFICE OF PUBLIC COUNSEL, MISSOURI RETAILERS ASSOCIATION, MISSOURI INDUSTRIAL ENERGY CONSUMERS AND CONSUMERS COUNCIL OF MISSOURI TO ORDER INVITING RESPONSES TO AGENDA DISCUSSION

COME NOW Complainants, Office of Public Counsel (OPC), Missouri Retailers Association (MRA), Missouri Industrial Energy Consumers (MIEC) and Consumers' Council of Missouri (CCM), and pursuant to the Commission's Order Inviting Responses to Agenda Discussion, provide their response.

This Complaint alleges, and the direct testimony supports, the claim that unless Noranda obtains rate relief by August, its New Madrid Smelter is subject to imminent closure, resulting in irreparable harm to its employees, the State of Missouri, and all Ameren ratepayers. In response, Ameren has proposed delay at every turn. As in Case No. EC-2014-0223, justice delayed is justice denied, for if the Commission waits long enough to act, the New Madrid Smelter will be closed.

As this Commission recognized at its recent agenda meeting, this case is unique. This case seeks a lower rate for one ratepayer, Noranda Aluminum, and correspondingly higher rates for other ratepayers in order for Noranda to avoid closure and thus remain on Ameren's system. **This case has no revenue impact on Ameren, the only party opposing the Jointly Proposed Schedule in this case.** The Complaint seeks to keep Ameren's largest customer on Ameren's system and prevent rates to other customers from increasing by more than they would

increase if the relief requested herein is granted. If the relief is denied, then Ameren would be forced to sell almost ten percent of its power on the open market, rather than to the New Madrid smelter, at a lower rate than Complainants seek in this case. The requested relief is in the public interest because it would benefit Noranda, its employees, the State's and Southeastern Missouri's economies, but also Ameren's other ratepayers.

A. The parties impacted by the Complaint either support or do not oppose the Jointly Proposed Schedule.

The OPC, Commission Staff and each intervening party either supports or does not oppose the jointly proposed schedule. The OPC, MRA, MIEC and CCM all represent the consumer parties who will be affected by the outcome of this Complaint. They proposed this schedule because it is in their interest and the public interest. **Only Ameren opposes this schedule, and Ameren is not affected by the Complaint.**

The Complaint and supporting testimony show that the Jointly Proposed Schedule is in the public interest because time is of the essence to avoid the irreparable harm that could result if relief is not granted pursuant to this schedule. It is the non-Ameren parties who would experience this irreparable harm. Ameren would be completely unaffected by the relief sought in this case. This case seeks changes in rates which are revenue-neutral to Ameren. Nevertheless, Ameren, a corporation that no one would consider a consumer advocate, has taken it upon itself to vigorously fight the Complaint and the Jointly Proposed Schedule.

B. This is not an interim rate case nor is it a proper case for interim rates.

The signatories to this Response appreciate the Commission's and the Judge's efforts to conduct the complaint cases efficiently. They also appreciate the Commission's and Judge's consideration of the need for timely relief in the complaint cases. However, for the reasons that follow, combining them with a rate case yet to be filed would be improper.

In *State ex rel. Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561, 565 (Mo. App. 1976), the court described an interim rate proceeding:

> In its very nature, an interim rate request is merely ancillary to a permanent rate request, and in overwhelming probability the permanent rate request will have been granted before any denial of an interim increase can work its way to the point of decision by an appellate court.

The court had earlier (*Id.* at 563) stated "this application [Laclede's general rate case filing] and the proceedings thereon is referred to as the 'permanent' rate case." This case is not now, nor will it ever be, "ancillary" to a possible future Ameren general rate case.

This Complaint is brought pursuant to explicit statutory authority, particularly Section 386.390.1 and Section 393.260.1, RSMo. It is not derivative or ancillary in any respect to some future rate case. The Commission's decision based upon the evidence presented in this case (including all of the contra-evidence that Ameren will be allowed to present under the near-consensus proposed procedural schedule) should not be "interim." To treat the Complaint as subsidiary to another case not yet filed would undermine and could even eliminate the Complainant's statutory right seek relief on the merits of the Complaint.

C. The Jointly Proposed Schedule is fair and reasonable to all parties and is in the public interest.

The Jointly Proposed Schedule is fair and reasonable to all parties, including Ameren. Ameren has already propounded 127 requests on Noranda. Noranda has timely responded to the first wave of those requests, which put Noranda's finances and business under a microscope, and Noranda has opened its books and records to Ameren and to all parties in this case. Additionally, Noranda provided all of the workpapers supporting its testimony within two days after its February 12 filing in this case. Ameren, with its vast resources and the assistance of the numerous experts it has retained in this case, can meet the terms of the Jointly Proposed

Schedule. Ameren's numerous experts, including experts in the aluminum industry, have been on board for more than a month. (See Certificates of Compliance filed by Ameren in this case during March, 2014). Ameren's entire focus is to delay the Complaint as long as possible, but Ameren has no reasonable basis to seek delay. At the same time, Ameren fails to address the irreparable harm that could result from delay.

The burden of persuasion in this case is upon the Complainants, and never shifts. The burden of proof is not on the Staff nor is it on Ameren. If the Complainants establish by a preponderance of the evidence the facts necessary to support their claim, they will prevail; if not, they will not prevail. The Complainants entirely bear the burden of proof, and merely seek to have their case addressed on the merits before it is too late for the relief to prevent closure of the New Madrid Smelter with all of the harm that will result to its employees, Ameren ratepayers and the State of Missouri.

D. The Complaint should not be joined with a future rate case to be filed by Ameren nor should it be joined with a case to be opened by the Commission for consideration of a future rate case to be filed by Ameren.

The General Assembly has provided explicit statutory authority that a customer may file a complaint pursuant to Section 386.390.1 and Section 393.260.1, RSMo. The statutes clearly provide a mechanism for to address the relief sought by Complainants. Nothing in the statutes contemplates a procedure whereby the Commission waits to address the merits of a consumer complaint until such time as its Staff conducts a study or investigation. Nothing in statutes contemplates making the relief granted in a Complaint case to depend on the outcome of a case a future utility rate case or other case not yet filed. If the Commission does not act promptly within the time required by the public interest on a properly-filed complaint, the statute has no effect.

The Commission's should base its decision on the evidence and counter-evidence that will be adduced on the allegations in the Complaint. Based upon its discussion at the Agenda meeting, it appears that the Commission is considering either: 1) delaying a decision upon the properly-filed Complaint until its Staff (which is not a Complainant and which has no role in the statutory complaint process) has spent several months compiling extra-Complaint evidence or 2) delaying making a decision on the merits of the Complaint to join this case with a future case yet to be filed. Neither reason for delay is grounded in proper public policy, ratemaking theory, case law, or statutory provisions. The Commission is and always has been a quasi-judicial body. There is no more core judicial role than the resolution of a complaint properly put before the body.

The Commission should allow the Complainants to present their statutorily-sanctioned Complaint, allow Ameren adequate time to respond, and then decide the case. The Commission's role always is to balance the interests of customers and the interests of the utility by allowing both sides a fair and timely opportunity to present their evidence and then making a decision as expeditiously as possible. Respondents herein have proposed a schedule to accomplish that objective.

It is axiomatic in such circumstances that the utility/respondent present in rebuttal testimony any controverting evidence it deems necessary, with Complainants given the opportunity to provide additional detail in surrebuttal. It is not lawful to join this case with a rate case that does not yet exist, or a separate case to be opened by the Commission to consider future rate increases that may be proposed by Ameren. Such joinder would preempt or thwart the statutory provision by delaying a final determination on the merits of the Complaint. The Commission should not combine this case with a proceeding involving a potential future rate case, and should adopt the Jointly Proposed Procedural Schedule to avoid irreparable harm to the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the above pleading have been e-mailed this 10th day of April, 2014, to the following parties of record:

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