

M7M ceased taking electric service from Ameren Missouri.² Between when M7M purchased of the former Noranda assets and March 2018, when M7M ceased taking service from Ameren Missouri, Ameren Missouri supplied a small quantify of electricity to M7M for its on-site offices and other ancillary facilities. Starting in March 2018, M7M began taking electric service from Associated Electric Cooperative, Inc. (“AECT”), which continues to supply M7M, including for its restarted aluminum smelting operations.

2. In addition to ceasing to take service from Ameren Missouri, M7M has indicated, in the Affidavit signed by its President and included with the Company’s Application, that it has no objection to cancellation of the CCN and related tariff. Moreover, the Staff, in compliance with the Commission’s order requiring that it do so, has examined the Application and has submitted a verified Recommendation that recommends the Commission cancel the CCN and the associated tariff, as requested by the Company’s Application.³

3. As also outlined in the Company’s Application, the Company’s system is not electrically connected to the M7M property (the Company’s nearest transmission substation is approximately 30 miles away), the M7M load is not included in the Company’s Integrated Resource Planning, and permission from the Midcontinent Independent System Operator, Inc. (“MISO”) to include M7M’s load in Ameren Missouri’s Network Integration Transmission Service (“NITS”) agreement no longer exists.

4. While there is no indication whatsoever that Consumers in any way dispute any of the foregoing facts (or any facts contained in the Company’s verified Application), Consumers

² Although M7M’s property is now and was then located within Ameren Missouri’s certificated service territory (under the CCN for which cancellation is sought in this docket), M7M had the right to cease taking service from Ameren Missouri under Section 91.026, RSMo. (2016). (All statutory references herein are to the Revised Statutes of Missouri, 2016, unless otherwise noted).

³ EFIS Item No. 10.

claim that because of their simple act of requesting a hearing the Commission is required to provide a hearing as a matter of law. Under the applicable law, however, the Consumer's claim is simply incorrect.

5. The law is well-settled that a hearing is required before an administrative agency in Missouri only if the matter before the agency is a "contested case," as that phrase is defined in Section 536.010. As the statute indicates, in order to constitute a contested case a hearing on the matter before the agency must be "required by law." There is no such law that requires a hearing here.⁴

6. Aside from the issue of whether a hearing is required by law for a CCN cancellation request, Consumers argue that because a hearing is required when the Commission acts to *grant* a new CCN under its authority in Section 393.170, the Commission "should" hold a hearing before *canceling* a CCN. Consumers' Motion, ¶ 3. It is understandable that Consumers have chosen their words carefully ("should", not "must") since the Commission's authority to cancel a CCN is not found in Section 393.170. Instead, the Commission's authority to cancel a CCN is found in its general powers over water, sewer, gas, and electrical corporations in Chapters 386 and 393. *See, e.g., In Re: Southwest Village Water Company*, Order Cancelling Certificate and Tariff, File No. WD-2007-0300 (Where the Commission agreed with the Staff's analysis that concluded that the "power to cancel a certificate is necessarily implied by the powers granted in Chapters 393 and 386, RSMo"), and *In re: Woodland Heights Utilities, Inc.*, Order Cancelling Certificate and Tariffs, File No. WD-2006-0393 (Reaching the same conclusion). That Section 393.170's hearing requirement for granting a CCN does not apply to a CCN cancellation is also effectively admitted

⁴ Consumers claim otherwise and cite Section 386.430 in support of their claim but as discussed in detail later in this Response, Consumers' claim is wrong as a matter of law.

by Consumers, not only by their careful choice of words but by their reliance on Section 386.430 for the *claimed* legal requirement that a hearing be held. Consumers' Motion, ¶1.

7. Consequently, this is a noncontested case and as such, a hearing is not required. Not only is that conclusion made clear by a simple review of Chapter 536, but that legal conclusion has been specifically and repeatedly reached by the Court of Appeals with respect to Commission proceedings. For example, in *State ex rel. Coffman v. Pub. Serv. Comm'n*, 210 S.W.3d 344 (Mo. App. W.D. 2006), the Court of Appeals affirmed the Commission's decision to deny a hearing request made by OPC in a proceeding before the Commission to set new rates for the utility's intrastate customers. In that case, similar to Consumers' claims here, OPC claimed that utility methodologies underlying the tariff filing, and Staff analyses⁵ thereof (neither of which had been accepted into "evidence" via a hearing process – Staff's analyses were part of Staff's verified recommendation as the Staff is required to file in the present case) were insufficient to support the Commission's order approving the rates. 210 S.W.3d at 538-39. In affirming the Commission's decision to deny OPC's hearing request, the Court stated that "In a noncontested case ..., the administrative body acts on discretion or on evidence not formally adduced or preserved." *Id.* at 353, quoting *Phipps v. School Dist. of Kansas City*, 645 S.W.2d 91, 94-95 (Mo. App. W.D. 1982); *Accord State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 259 S.W.3d 23 (Mo. App. W.D. 2008) (Affirming its prior conclusion that a hearing is not required even where the utilities file tariffs to implement new rate surcharges (i.e., rate tariffs) and that the Commission (a) need not base its decision on substantial and competent evidence, and (b) need not make findings of fact).

8. This brings us to the only claimed *legal* requirement for a hearing, that is, Consumers' claim that a request to cancel a CCN amounts to action by the applicant that is

⁵ Reflected in a Staff Recommendation, as is the case here.

“adverse to ... [the] commission” or that seeks to “set aside any ... order of ... [the] commission” and that as such the applicant must show by “clear and satisfactory evidence that the ... order ... complained of if unreasonable or unlawful.” Section 386.430 (which is relied upon by Consumers in ¶¶ 14-5 of Consumers’ Motion).

9. On its face, Consumers’ argument clearly fails. The Company did not – and does not – claim that the Commission’s 2005 order approving a stipulation and agreement (to which two of the three Consumers were parties) and granting the area certificate was unlawful or unreasonable.⁶ The Commission had the statutory authority to approve the stipulation and the CCN (and thus the CCN order was lawful), and it was inherently reasonable for it to do so given the record before it, including the unanimous stipulation that urged it to do so. By Consumers’ logic, the Commission was prohibited by Section 386.430 from approving the utilities’ rate changes in the two cases cited above (210 S.W.3d 344 and 259 S.W.3d 23) since obviously the Commission had previously determined that the prior rates that were being changed in those cases were lawful and reasonable but were being asked, in the dockets at issue, to approve a change to those rates. But the Court of Appeals made crystal clear that a hearing was not required in those later rate change cases. Just as a rate change request does not attack the prior rate order as having been unreasonable or unlawful, a CCN cancellation request does not attack the original order approving the CCN as having been unreasonable or unlawful. Put another way, Section 386.430 simply does not apply unless the party is first *adverse to the Commission* (that is, is claiming that the Commission erred) *and* is seeking to obtain an order from the judiciary to force the Commission – against its will – to rescind or change the complained of order on the grounds that the order *was unreasonable or unlawful when entered*. That Section 386.430 only applies judicial

⁶ File No. EA-2005-0180, EFIS Item No. 83.

review proceedings involving Commission orders is made clear by the significant caselaw construing the statute (not to mention by its express terms) such that it applies only in that context.

10. This conclusion is further buttressed by two other provisions in Chapter 386, Section 386.490.3 and Section 386.550. Under Section 386.490.3, the Commission retains the authority to change or abrogate its orders after they become effective. That is exactly what the Commission does when it cancels a CCN, to take just one example. When it changes or abrogates an earlier order the Commission is not necessarily doing so because it has determined that its original order was wrong or erroneous when entered (i.e., was unreasonable or unlawful). Instead, the Commission usually changes or abrogates an earlier order because something has changed. This case is a perfect example. Noranda is no longer in business. There is no longer a transmission service agreement between the property owner (now M7M) and the transmission owner (AECI) over which Ameren Missouri power could be wheeled to M7M. The property is no longer covered by Ameren Missouri's NITS reservation with MISO. And finally, unlike the situation in 2005 when Noranda was asking Ameren Missouri to provide regulated service to it for at least 15 years, M7M has no objection to the CCN cancellation now.

Section 386.550 also supports the fact that Section 386.430 only applies to judicial review of original Commission orders. The reason is because Section 386.550 prohibits collateral attacks on Commission orders; that is, once an order has become effective a claim that it must be set aside because it is unlawful or unreasonable simply cannot be maintained unless the challenger timely sought rehearing before it became effective (Section 386.500) and if rehearing was denied, timely sought judicial review (Section 386.510). But Consumers' theory is that the Company has a burden under Section 386.430 – now in this separate case filed 14 years later – to establish that the 2005 order approving the CCN is unreasonable or unlawful yet clearly if that is true then Ameren

Missouri's Application is an attack on that order, yet such an attack cannot be maintained under Section 386.550. The only way to avoid that problem (and to avoid an absurd result)⁷ is to recognize that Section 386.430 has no application to the case before the Commission now because its only applies to judicial review of Commission orders.⁸

11. Finally – and putting aside the fact that Consumers' position that a hearing is required as a matter of law is clearly in error – there is simply no *reason* to have, or *need* to have, a hearing in this case. Consumers do not claim the facts are in dispute.⁹ To repeat: the property owner does not object to the cancellation of the CCN; the situation respecting the property covered by the CCN is unique for a variety of reasons, including the fact that the Company's system is not electrically connected to the property in any way and the Company has no facilities of any kind in the area (see attached data request response submitted to the Staff in this case); and the Staff recommends cancellation of the CCN. *Could* a hearing be held? Yes it could, and the Company is not claiming the Commission lacks the power to hold a hearing in cases pending before it, but, respectfully, it would be a waste of Commission resources, not to mention the resources of all of the parties, to do so in this case. There is no lack of matters at the Commission and holding a hearing just because a party asks for one should not be the test. One last point bears noting. Consumers claim that the "standard" the Commission has historically followed in CCN

⁷ See, e.g., *State v. Liberty*, 370 S.W.3d 537, 553 (Mo. banc 2012) (Citing the well-established rule of interpretation that holds that words contained in a statute should be interpreted to avoid absurd results).

⁸ Carried to its logical extreme, if Consumers' position were sound – that the party requesting the cancel a CCN must carry a burden under Section 386.430 to establish that the original CCN order is unreasonable or unlawful – then no utility could ever eliminate any part of its service territory once it was established because it would have to collaterally attack the prior order to do so, and this would be true regardless of whether the Commission determined that the public interest supported the cancellation. That makes no sense.

⁹ Even if Consumers disputed some fact the Commission is completely free to disregard those claims as the above-cited caselaw makes clear since this is a noncontested case.

cancellation cases creates the need for a hearing. If the Commission can change utility rates without a hearing in the face of a statute that requires that rates be just and reasonable (which undoubtedly involves some judgments by the Commission involving balancing utility and customer interests) then it most certainly can exercise its discretion to cancel a CCN, whether it does so with reference to the “balancing test” cited by Consumers or based on other considerations it deems pertinent, without holding a hearing.

12. For the foregoing reasons, Consumers’ claim that the “Commission’s ability to consider the factors included in its balancing test may only be undertaken by conducting an evidentiary hearing . . .” is demonstrably incorrect. Consumers’ Motion, ¶ 3. Consumers’ Motion should be denied.

WHEREFORE, Ameren Missouri respectfully requests the Commission issue its order denying Consumers’ Motion for Hearing.

Respectfully submitted,

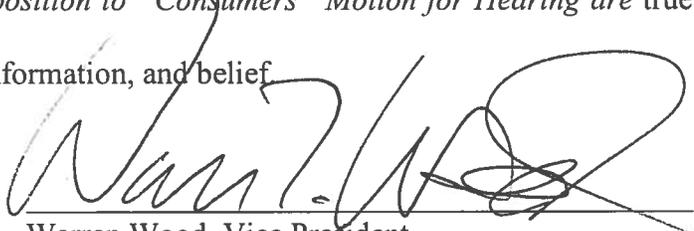
/s/ James B. Lowery

James B. Lowery, #40503
SMITH LEWIS, LLP
PO Box 918
Columbia, MO 65205-0918
(573) 443-3141 (phone)
(573) 442-6686 (fax)
lowery@smithlewis.com

Wendy K. Tatro, #60261
Director & Assistant General Counsel
Ameren Services Company
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenMOService@ameren.com

VERIFICATION

The undersigned, being first duly sworn and upon his oath, hereby states that the facts outlined in the foregoing *Response in Opposition to "Consumers" Motion for Hearing* are true and correct to the best of his knowledge, information, and belief.



Warren Wood, Vice President,
Legislative & Regulatory Affairs
Union Electric Company d/b/a Ameren Missouri

Subscribed and sworn before me this 17 day of June, 2019.

KELLEY PAULA NICHOLS
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires 8/14/2022
Commission # 18590970



Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the Staff of the Commission and the Office of the Public Counsel via electronic mail (e-mail) on this 17th day of June, 2019.

/s/ James B. Lowery

James B. Lowery

Ameren Missouri's
Response to MPSC Data Request - MPSC
ED-2019-0309

In the Matter of the Cancellation of the Certificate of Convenience and Necessity Originally
Approved in File No. EA-2005-0180 and the LTS Rate Schedule.

No.: MPSC 0001

1. Please fully describe any and all assets Ameren Missouri currently owns in connection to service to the former Noranda premises, for example, meters, transformers, switching equipment, or other facilities within the area of the CCN, and meters, transformers, switching equipment, or other facilities associated with the northern interconnection of the AECI transmission line. 1a. For each item indicated in response to question 1, please identify the account in which the item is recorded. 1b. For each item or account identified in response to question 1, please provide the book value and reserve value, including any capitalized labor or other expenses. 1c. For each item or account identified in response to question 1, please identify the property tax billed for the year 2018, and the prior five years. 1d. For each item or account identified in response to question 1, please identify the date each was placed in service. 1e. For each item or account identified in response to question 1, please identify the intended disposal of the property, such as sale to another entity such as AECI or M7M, retirement, return to inventory, holding for future use, or any other disposition. Please identify the anticipated sale price of any assets to be sold, and the expected date of the anticipated transaction. 2. Please fully describe the timing and circumstances of the disposal of any and all assets involved in the provision of service to the former Noranda premises disposed of by Ameren Missouri after the termination of electric service to M7M by Ameren Missouri, its gross and net book values at the time of disposal, the level of proceeds and/or cost of removal associated with its disposal, and the level of property tax associated with such plant for the five years preceding its disposal. 2a. For all assets identified in response to question 2, please identify whether the asset was retired, placed into inventory, held for future use, or any other disposition of the asset. 2b. For all assets identified in response to question 2, please identify the date each was placed in service and when the asset was taken out of service. 3. For all assets and transactions identified in response to questions 1 or 2, please provide all journal entries associated with all changes in the status of the assets identified above. Data Request submitted by Sarah Lange (sarah.lange@psc.mo.gov).

RESPONSE

Prepared By: Gary Brownfield
Title: Manager, Transmission Planning
Date: May 22, 2019

1. Ameren Missouri did not own any such assets during the period when it served Noranda or during the period when it served M7M, and owns no such assets now.

1a – 1e. N/A – See response to Item 1.

2. N/A – see response to Item 1.

3. N/A – see response to Item 1.