BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminum, Inc., et al,	)	
	)	
Complainants,	)	
	)	
v.	)	**Case No. EC-2014-0223**
	)	
Union Electric Company, d/b/a Ameren Missouri	)	
	)	
	)	
Respondent.	)	

APPLICATION FOR REHEARING OR RECONSIDERATION OF AARP, THE CONSUMERS COUNCIL OF MISSOURI, THE MISSOURI RETAILERS ASSOCIATION, NORANDA ALUMINUM, THE MISSOURI INDUSTRIAL ENERGY CONSUMERS, AND THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW AARP, the Consumers Council of Missouri ("Consumers Council" or "CCM"), the Missouri Retailers Association ("MRA"), Complainant Noranda Aluminum, Inc. ("Noranda"), the Missouri Industrial Energy Consumers ("MIEC"), and the Office of the Public Counsel ("Public Counsel" or "OPC") [collectively, the "Consumer Parties"], pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, and respectfully apply for a rehearing and/or reconsideration of the Missouri Public Service Commission's ("Commission's") Report and Order, issued in the above-styled matter on October 1, 2014 ("Order"), and bearing an effective date of October 31, 2014.

By refusing to acknowledge the evidence of "all relevant factors" presented in this case which proves that Union Electric Company d/b/a Ameren Missouri ("Ameren

Missouri" or "Company") has been earning more than its authorized rate of return for an extended period, and continues to over-earn; and by failing to correct and reset electric rates to a correspondingly lower just and reasonable level, the Commission's Order has dealt an economically devastating blow to the customers of this utility, including hundreds of thousands of residential electric consumers.

The Commission's rationale in the Order consists of an erroneous application of Missouri law, creating an unlawful **double standard** with regard to rate *decrease* complaint cases[1], as compared to rate *increase* cases filed by regulated utilities.[2] No evidence offered by a party to this case named a single relevant factor omitted by the Complainants; the PSC did not do so in the Order. And yet, the Order does not establish a new revenue requirement for Ameren Missouri, choosing to subject consumers to rates that have been proven on this record to produce sustained excessive earnings.

For this reason, the Consumer Parties urge the Commission to consider the fairness and equity mandated by Missouri's statutory scheme and case law regarding utility ratemaking. The Commission should accordingly rehear and reconsider the above-referenced matter because the Order misapplied and misstated the law resulting in an unlawful, unreasonable, arbitrary and capricious decision against the weight of the evidence.

According to Missouri case law, Section 393.270 "evidences a legislative intent to imbue the Commission with authority to properly weigh all relevant factors . . . in order to achieve the ultimate goal of bilateral fairness" between a regulated utility and its

[1] Pursuant to Section 386.390 RSMo.
[2] Pursuant to Section 393.140(11) RSMo.

consumers.[3] To look only at whether a utility rate is high enough to be fair to the utility, without also looking at whether it is currently too high to be fair to consumers would be to "defile the basic concept of utility rate regulation. It is axiomatic that a just and reasonable utility rate is a bilateral proposition. Like a coin, it has two sides. On the one side it must be just and reasonable from the standpoint of the utility. On the other side it must be just and reasonable from the standpoint of the utility's customers."[4] The Order's failure to establish a new revenue requirement in this complaint case in the same manner that the Commission establishes a new revenue requirement in a "file and suspend" rate case, is unjust and unreasonable.

The Order acknowledges that the standard for deciding both ratemaking cases is the same, whether the Commission is deciding to increase or decrease rates.[5] However, the way in which the Order analyzes the "all relevant factors" evidence in this complaint case is different than the Commission has employed in "file and suspend" rate cases. The Commission suggests that it would like to have its Staff conduct a more thorough audit, as the Staff typically does in rate increase cases.[6] However, consumers cannot control whether or not the Commission's Staff conducts such audits, nor the thoroughness of Staff's efforts (which is outside the control of the Consumer Parties in this matter). It is not fair to bar relief to consumers, based upon Staff action or inaction, when there is still competent and substantial evidence of all of the factors relevant to make a revenue requirement determination contained in the record of this complaint case.

[3] State ex rel. Val. Sewage Co. v. Public Service Commission, 515 S.W.2d 845, 850 (Mo. App. 1974).
[4] Id.
[5] Order, p. 20 (Footnote 48).
[6] Order, p. 11-13, 19-20.

The Staff is an ex officio party to this complaint.[7] As such, Staff has no burden of proof for going forward with any evidence. Complainants have the burden of proof; while Respondent Ameren Missouri has the burden of going forward with evidence to refute the elements of Complainants' case. The Commission's Order unlawfully relieves Ameren Missouri of that obligation. Furthermore, Staff acknowledged that the issues and accounts not reviewed (because they were of smaller monetary significance and of a lower priority) would have been just as likely to increase the determination of over-earnings as they would have been likely to decrease that number.[8] This Staff testimony itself supports a finding that the Commission has "all relevant factors" needed to determine substantial and ongoing over-earnings by Ameren Missouri, even under this utility's currently authorized ROE.[9]

As a practical matter, consumer parties already face an uneven playing field, generally needing to file a case at the Commission in order to initiate the discovery process necessary to even attempt to secure information relevant to a utility's revenue requirement. This inherent unequal access to information is exacerbated by the fact that litigation at the Commission is expensive for consumer parties, while comparatively, virtually all of the litigation expense of the utility is typically calculated into the rates (that must be paid by the very parties that the utility opposes). Further tipping the scales against consumers, the Commission has generally continued to maintain the utility's quarterly earnings reports as "highly confidential", so that the default situation is one in

[7] See Commission Rule 4 CSR 240-2.040(1).
[8] Tr. at 331.
[9] Even though, as previously discussed, Ameren Missouri's currently-authorized ROE is itself too high, based upon the current market conditions and comparable earnings contained in Mr. Gorman's cost of capital analysis and thus should be reduced from 9.8% to 9.4%, further reducing rates. It should be noted that if Staff had offered into the record its own ROE recommendation, it would have very likely recommended an authorized ROE lower than 9.4%.

which the public is kept in the dark about whether the regulated monopoly utility is currently over-earning or under-earning, based upon currently approved rates. Such unbalanced treatment regarding ratemaking due process as applied to consumer parties is unjust and unreasonable.

The confidentiality of utility earnings reports creates a frustrating barrier for consumer parties wishing to seek a correction of over-earning situations going forward through a complaint case. Under the Commission's rule, this confidentiality can be waived upon a showing of good cause[10], and certain reports have indeed been declassified in the process of this complaint case.[11] Complainants' Exhibit 17 was made public, revealing the over-earnings that Ameren Missouri has enjoyed based on surveillance monitoring reports covering the 12 months ending June 30, 2012, and this exhibit further contains each quarterly report from that period up through the report showing the utility's over-earnings for the 12 month period ending March 31, 2014 ($37.16 million, per the most recent information actually revealed through this complaint case). Interestingly, the Exhibit 17 chart shows that Ameren Missouri was actually over-earning when the Commission awarded the utility with its last rate increase in December 2012.

The evidence developed in this complaint shows that Ameren Missouri's current electric rates are no longer just and reasonable.[12] It corroborates and confirms that Ameren Missouri's over-earnings proven here are significant, sustained, and currently ongoing, and thus new rates should be adopted based upon a new revenue

[10] Commission Rules 4 CSR 240-3.161(16) and 4 CSR 240-20.090(15).
[11] Complainants' Exhibit 17 is now public, revealing the over-earnings that Ameren Missouri has enjoyed based on reports showing the 12 months ending June 30, 2012 and each quarterly report through the report showing the over-earnings ending March 31, 2014.

requirement. Complainants' supporting testimony encompasses "all relevant factors" for setting a new lower revenue requirement.[13] This testimony includes the accounting recommendations of Mr. Greg Meyer, which adjusts, annualizes, and normalizes the data contained in the utility's more recent surveillance reports to properly develop a new revenue requirement, and it includes a contemporaneous cost of capital analysis performed by Mr. Michael Gorman (recommending that, going forward, Ameren Missouri's authorized ROE should be reduced from 9.8% to 9.4% ROE).[14]

The Order's failure to issue a new determination on the proper authorized ROE level in this case based on Mr. Gorman's testimony is also unjust, unreasonable, and treats consumers unfairly. Mr. Gorman's recommendation is not an "attack" on the previous rate case; this instant complaint case is a new rate case that requires a new ROE analysis as part of a new revenue requirement determination. The proper ROE level is a litigated matter that the Commission addresses in every general rate case (whether it is a "file and suspend" case or it is an over-earnings complaint case), and the Order's failure to set a new authorized ROE in this case, based on more contemporaneous evidence is a serious deficiency that confirms the double standard being applied by the Commission to over-earnings complaint cases, as compared to "file and suspend" cases.

Consumers deserve to have a timely reduction in rates implemented based upon the competent and substantial record in this case. The record contains all relevant factors necessary to establish new rates pursuant to the pertinent provisions of Chapter 386 and Chapter 393 of the Revised Statutes of Missouri. Missouri law contains no

[12] Exhibits 1-4, 16-23.
[13] State Ex Rel. Util. Consumers Council v. Missouri PSC, 585 S.W.2d 41 (Mo. 1979).

requirement for a Staff audit in order to change rates, nor does the law set any minimum number of issues or accounts that the Staff must review and or offer into the record, in order for the "all relevant factors" test to be met. All parties to this complaint case, including the Respondent Ameren Missouri itself, have been granted a full opportunity to address any relevant factor in this case and to file testimony on any such issues, furthering establishing that "all relevant factors" are present in the record to support a new lower revenue requirement. The Commission can and should make a finding of over-earnings based upon the evidence offered by the Complainants and by the Staff, and further that the utility's authorized ROE needs to be adjusted to align with Mr. Gorman's recommended ROE. The Commission can and should proceed to order a reduction in the revenue requirement for Ameren Missouri, and thus lower electric rates, applying to future service rendered.

The Commission's Order also suggests that because electric rates are set to be prospective, it would not be appropriate to lower those rates now based upon contemporaneous evidence, simply because "at some point" large investments in plant are likely to be made by Ameren Missouri in the future. However, Ameren conceded that these potential capital improvements have not yet been completed, and the related plant was not used and useful at the time of the hearing. As a practical matter, the Commission's Order is recognizing future capital additions (which is not yet "fully operational) into the rate base in Missouri, which is expressly forbidden by Section 393.135 RSMo.[15] This approach of denying relief because of anticipated (but as yet

[14] Exhibits 1-2 and 3-4, respectively.
[15] Adopted by state-wide initiative (Proposition No. 1) on November 2, 1976.

unproven) future events creates another illegal double standard, as it is being applied to consumers.

On page 18, the Order creates an irrelevant straw man argument, under the heading “No Allegation of Misconduct”, stating that “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.” This statement has absolutely nothing to do with the standard of review for an over-earnings complaint case. Is the Commission attempting to heighten the standard of review that must be proven to include an additional finding of utility misconduct or wrongdoing? If so, it is without any legal basis, as it relates to establishing a just and reasonable revenue requirement.

All that the Consumer Parties are seeking in this case is just and reasonable electric rates set at a lower level, based upon all relevant factors needed to create a new revenue requirement. It is the duty of the Commission in this case is to ensure that utility rates are just and reasonable on a going forward basis. No proof of wrongdoing by consumers must be proven by a utility before it is awarded a higher revenue requirement. The Consumer Parties are unaware of any legal authority that requires “wrongdoing” or “misconduct” be considered a necessary component of the standard of review that is applicable to both type of rate case.

Consumers are entitled to electric rates that are just and reasonable, based upon a transparent and fair earnings review process, and thus rates must be lowered prospectively when the currently approved rates are proven in a complaint case to be providing excessive earnings. This is the flip side of a regulated utility’s justified

expectation when it can prove that its currently rates are providing insufficient earnings, and thus should be reset at a higher level. What is good for the goose should also be good for the gander. Establishing a new revenue requirement should involve an equivalent exercise, whether the filing is asking the Commission to lower rates or to increase rates. It is the duty of the Commission to fairly address either type of rate case in a symmetrical fashion.

WHEREFORE, the Consumer Parties respectfully ask the Commission to grant a rehearing and/or reconsider its Order, issuing a new order that corrects and resets Ameren Missouri's electric rates at a lower level, evenhandedly treating this complaint case in the same manner that it would treat a regulated utility's "file and suspend" request to increase tariffed rates.

Respectfully submitted,

/s/ John B. Coffman

_____

John B. Coffman MBE #36591
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
(573) 424-6779
john@johncoffman.net
ATTORNEY FOR AARP
AND FOR THE CONSUMERS COUNCIL OF MISSOURI

/s/ Tim Schwarz

_____

Thomas Schwarz #29645
308 East High Street
Suite 301
Jefferson City MO 65101
(573) 634-2500
(573) 634-3358 FAX
tschwarz@blitzbardgett.com
ATTORNEY FOR THE MISSOURI RETAILERS ASSOCIATION

/s/ Diana Vuylsteke

_____

Diana Vuylsteke #42419
BRYAN CAVE LLP
211 North Broadway
Suite 3600
St. Louis MO 63102
(314) 259-2543
(314) 259-2020 FAX
dmvuylsteke@bryancave.com

Edward F. Downey #28866
221 Bolivar Street
Suite 101
Jefferson City MO 65109
(573) 556-6622
(573) 556-7442 FAX
efdowney@bryancave.com

ATTORNEYS FOR NORANDA ALUMINUM, INC.
AND FOR THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

/s/ Dustin Allison

_____

Dustin Allison #54013
PO Box 2230
Jefferson City MO 65102
(573) 751-4857
(573) 751-5562 FAX
dustin.allison@ded.mo.gov

OFFICE OF THE PUBLIC COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties currently listed on the official service list of the above-styled case on this 30th day of October, 2014.

/s/ John B. Coffman