

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a
Ameren Missouri's Tariff to Increase Its Annual
Revenues for Electric Service

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File No. ER-2012-0166

Tariff No. YE-2012-0370

ORDER RESOLVING ISSUES PRESENTED AT DISCOVERY CONFERENCE

Issue Date: August 31, 2012

Effective Date: August 31, 2012

The Commission conducted a discovery conference with the parties on August 30, 2012. At the conference, Ameren Missouri asked the Commission to direct the Missouri Industrial Energy Consumers (MIEC) and in particular, Noranda Aluminum, to respond to several data requests to which MIEC had objected. MIEC also appeared at the discovery conference and presented argument in response to Ameren Missouri. During the course of the conference, Ameren Missouri and MIEC were able to resolve several of their disagreements. However, they were unable to agree on two data requests that now must be resolved by the Commission.

DR 015

In DR 015, Ameren Missouri asks MIEC to:

Please provide copies of all annual and multi-year budgets and financial projections that Noranda has prepared for the New Madrid Smelter that encompasses any or all of the years 2012 through 2015. Please identify all assumptions regarding Ameren Missouri's electric rates that were made and included in each such budget or financial projection.

MIEC objects in particular to the second sentence of the DR, which would require it to identify all assumptions that Noranda has made about Ameren Missouri's electric rates for

those years. MIEC claims that portion of the DR would intrude on attorney work product and most importantly would not be relevant to any issue in the case.

Ameren Missouri claims that Noranda made its budgets and financial projections relevant when its witness, Kip Smith, stated in his direct testimony that “Ameren’s proposed rate increase threatens the viability of the New Madrid Smelter.” Ameren Missouri contends it needs to be able to evaluate Noranda’s budgets and financial projections to evaluate the truth of Kip Smith’s assertion.

The purpose of discovery in civil litigation, as well as before the Commission, is to “eliminate concealment and surprise, to assist litigants in determining facts prior to trial, and to provide litigants with access to proper information through which to develop their contentions and to present their sides of the issues as framed by the pleadings.”¹ Civil Rule 56.01(b) provides that parties may obtain discovery regarding any matter that is not privileged that is relevant in the particular proceeding. The information sought through discovery does not need to be admissible at trial but must be reasonably calculated to lead to the discovery of admissible evidence.

This is, of course, a proceeding to establish just and reasonable rates for Ameren Missouri, not for Noranda. Under most circumstances, the financial position of one of Ameren Missouri’s customers would have no particular relevance in this case. However, Noranda is by far Ameren Missouri’s largest customer, currently paying over \$148 million in base rates for electricity each year. According to Noranda’s witness, the company’s New Madrid smelter has an enormous impact on the economy of Missouri. When Noranda’s witness asserts that the rate increase sought by Ameren Missouri may threaten

¹ *State ex rel. Humane Society of Missouri v. Beetem*, 317 S.W.3d 669, 372 (Mo. App. W.D. 2010), quoting *State ex rel. Woytus v. Ryan*, 776 S.W.2d 389, 391 (Mo. banc 1989).

the viability of that smelter, Noranda's financial standing becomes a relevant issue in the case.

While Noranda's financial standing is relevant in this proceeding, in determining the appropriate scope of discovery to be allowed, the Commission must also "balance the need of the interrogator to obtain the information against the responding party's burden in furnishing it."² Ameren Missouri has an interest in assessing the on-going financial health of the New Madrid smelter in light of Noranda's claim that the future viability of that plant is threatened by Ameren Missouri's proposed rate increase. But Ameren Missouri's interest in determining Noranda's assumptions about the electric rates that will result from this and future rate cases is outweighed by Noranda's interest in protecting from disclosure its strategies and positions in those cases.

Therefore, the Commission will direct Noranda to provide copies of all annual and multi-year budgets and financial projections that Noranda has prepared for the New Madrid smelter that encompass any or all of the years 2012 through 2015. The Commission will not require Noranda to make any other disclosures regarding assumptions regarding Ameren Missouri's electric rates that were made and included in each such budget or financial projection.

DR 020

In DR 020, Ameren Missouri asks Noranda whether it has performed any studies or analysis regarding the possibility of self-generating the electricity needed at the New Madrid smelter or of obtaining that electricity from a source other than Ameren Missouri. If Noranda's answer to that question is yes, Ameren Missouri requests a copy of such studies

² *State ex rel. LaBarge v. Clifford*, 979 S.W.2d 206, 208 (Mo. App. E.D. 1998).

and supporting documents. Noranda objects that the information Ameren Missouri seeks is not relevant in this case. The Commission agrees.

The question of whether Noranda may choose to pursue a different source for its electric needs after its current contract with Ameren Missouri expires is only marginally relevant to the question of whether the New Madrid smelter will remain financially viable. However, the disclosure of any such plans could put Noranda at a disadvantage in future contract negotiations with Ameren Missouri. Again, the weighing of interests leads the Commission to deny Ameren Missouri's request to enforce this data request.

Ameren Missouri points out that in Ameren Missouri's last rate case, ER-2011-0028, the Commission compelled Noranda to disclose all analysis undertaken by Noranda regarding the option of self-generating electricity to supply the New Madrid smelter. However, that earlier case differs from this case because Noranda had made the self-generating option relevant in that case by presenting detailed testimony comparing its costs of production with other aluminum smelters that obtain their electricity by self-generation. Noranda did not present such evidence in this case and its simple assertion about continued viability of the smelter if rates are raised, does not make the self-generation option relevant in this case.

THE COMMISSION ORDERS THAT:

1. Noranda shall comply with DR 015 by providing copies of all annual and multi-year budgets and financial projections that Noranda has prepared for the New Madrid smelter that encompass any or all of the years 2012 through 2015. Noranda is not required to make any other disclosures regarding assumptions regarding Ameren Missouri's electric rates that were made and included in each such budget or financial projection.

2. Noranda is not compelled to comply with DR 020.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 31st day of August, 2012.