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MISSOURI PUBLIC SERVICE COMMISSION

File No. EC-2014-0224

REBUTTAL TESTIMONY

OF

WILLIAM R. DAVIS

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
May 9, 2014**

UE Exhibit No. 100
Date 6-16-14 Reporter KF
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1 **REBUTTAL TESTIMONY**

2 **OF**

3 **WILLIAM R. DAVIS**

4 **FILE NO. EC-2014-0224**

5 **I. INTRODUCTION AND SUMMARY**

6 **Q. Please state your name and business address.**

7 A. My name is William R. Davis. My business address is One Ameren Plaza,
8 1901 Chouteau Avenue, St. Louis, Missouri 63103.

9 **Q. By whom and in what capacity are you employed?**

10 A. I am an Economic Analysis and Pricing Manager for Union Electric Company
11 d/b/a Ameren Missouri ("Ameren Missouri" or "Company").

12 **Q. Please describe your educational background and employment history.**

13 A. I received a Bachelor of Science in Economics from Illinois State University in
14 2002. I subsequently received a Master of Science in Economics with an emphasis in regulatory
15 economics from Illinois State University in 2003. I completed several internships during my
16 college career, including an internship with Illinois Power Company. Upon completion of my
17 master's degree, I began working full-time for Caterpillar, Inc., at its corporate headquarters in
18 Peoria, Illinois, as an Advanced Quantitative Analyst in the Business Intelligence Group, with
19 the primary duties of performing economic and sales analyses.

20 In May 2005, I joined Ameren Services Company as a Load Research and Forecasting
21 Specialist in the Corporate Planning Department. My duties included electricity and natural gas
22 sales forecasting, load research, weather normalization, and various other sales analyses. In
23 September 2007, I became a Senior Load Research Specialist and then moved to the Resource

1 Planning Group in March 2009. In October 2011, I became a Senior Corporate Planning
2 Analyst. In that position, I was responsible for Ameren Missouri's 2011 Integrated Resource
3 Plan and the 2012 Missouri Energy Efficiency Investment Act filing, and was subsequently
4 promoted to my current position in March 2013.

5 **Q. What is the purpose of your rebuttal testimony?**

6 A. The purpose of my rebuttal testimony is to respond to the testimony of
7 Complainants' witnesses Maurice Brubaker, Kip Smith, and Dr. Joseph Haslag, and explain how
8 the proposed rate subsidy for Noranda Aluminum, Inc.'s ("Noranda") New Madrid smelter
9 disproportionality affects Ameren Missouri's other 1.2 million customers.

10 **Q. Please summarize your conclusions.**

11 A. I recommend the Commission reject the Complainants' rate proposal for the
12 reasons outlined below.

13 - There is no cost justification for the proposed rate subsidy to Noranda; indeed,
14 setting rates at the requested subsidized level would reflect rates far below Noranda's cost of
15 service. As explained in detail in Company witness Matt Michels' rebuttal testimony, contrary to
16 the Complainants' claims, Ameren Missouri's other customers would be better off without
17 Noranda on the system than they would be if they are required to provide the proposed rate
18 subsidy. In addition, Ameren Missouri witness Robert Mudge's rebuttal testimony indicates that
19 Noranda is more competitive than is suggested by its witnesses, even without a reduction in
20 electricity prices for the New Madrid smelter.

21 - It would be fundamentally unfair to require Ameren Missouri's other customers,
22 who are heavily concentrated in the St. Louis area, to provide the subsidies Noranda claims are
23 necessary to enable the smelter to continue operations.

1 - Because a majority of the economic benefits of Noranda's operations accrue to the
2 State of Missouri as a whole, it is my opinion that if subsidization of Noranda's operations is
3 necessary to preserve those benefits then the nature and extent of that subsidy should be
4 discussed and decided by the state legislature and not the Commission; and, at a minimum, the
5 burden of any subsidy prescribed by the legislature should be borne by all Missouri citizens
6 instead of only Ameren Missouri customers.

7 **II. HOW NORANDA'S RATES UNDER COMPLAINANTS' PROPOSAL**
8 **COMPARE TO THE COST AMEREN MISSOURI INCURS TO SERVE NORANDA**

9 **Q. Please explain Ameren Missouri's current rate classes.**

10 A. The Company currently provides service to its customers in a number of service
11 classifications that are designated for residential, non-residential, and street and outdoor area
12 lighting service. In addition, the non-residential customer group is further differentiated by
13 customer size and the voltage level at which the Company provides service. The current
14 customer classes are Residential, Small General Service, and Large General Service (service
15 delivered at a "secondary" voltage level); Small Primary Service, and Large Primary Service
16 (service delivered at a high voltage level); Large Transmission Service ("LTS")(service
17 delivered at a "transmission" voltage level); and Lighting Service (both area and street lighting).
18 Each of these classes have multiple customers with the exception of LTS. Noranda is the sole
19 customer that takes electric service under the Company's LTS tariff. The LTS rate is currently
20 the lowest rate, or one of the lowest, paid by any customer class in the state.

21 **Q. In Ameren Missouri's last rate case (File No. ER-2012-0166), how did the**
22 **Commission determine what amount of the Company's total revenue requirement should**
23 **be recovered from each rate class?**

1 A. Ameren Missouri, along with several other parties in the case – including the
2 Missouri Industrial Energy Consumers (“MIEC”), which included Noranda as a member – each
3 submitted a Class Cost of Service (“CCOS”) study in the Company's last rate case. This was
4 done (and typically is done) because the various classes of customers the Company serves have
5 different service and usage characteristics and, thus, different costs of service. The Commission
6 has long recognized that an equitable, non-discriminatory rate structure must recognize these
7 differences. CCOS studies are designed to capture and quantify those differences so that the
8 Commission can assign the Company's overall revenue requirement to each rate class in an
9 equitable manner.

10 After those CCOS studies were submitted, several of the parties submitted a Non-
11 Unanimous Stipulation and Agreement (“Agreement”), which set forth those parties' agreement
12 regarding how any revenue increase authorized by the Commission should be applied to the rates
13 of the Company's customer classes. The MIEC was a signatory to that Agreement. And
14 although Ameren Missouri was not a signatory, it did not object to the Agreement.

15 The Commission approved the Agreement and new rates were ultimately developed
16 using the methodology set forth in the Agreement. Similarly, in previous recent Ameren
17 Missouri rate cases, the MIEC and other parties also filed non-unanimous settlement agreements
18 on the rate design issue. Each of those agreements were approved and used by the Commission
19 in setting rates¹.

20 **Q. As a result of those settlement agreements, is it true that Noranda received**
21 **lower than average rate increases in Ameren Missouri’s last several rate filings?**

¹ An exception was in Case No. ER-2010-0036 where there was an objection to the filed agreement. In that case, the Commission ultimately modified the agreement by rejecting the agreed-upon rate reduction for Noranda and instead approved a small increase in rates for Noranda.

1 A. Yes. The table below shows that Noranda has received lower than average rate
2 increases in each of Ameren Missouri's last five rate cases. The pattern of below average rate
3 increases for Noranda is abundantly apparent, but there are also two cases (File Nos. ER-2007-
4 0002 and ER-2010-0036) where Noranda received rate increases substantially below the average.

5 **Table 1 – Recent Ameren Missouri Rate Increases**

Rate Case	Overall Increase	Noranda's Increase
ER-2007-0002	2.07%	-5.40%
ER-2008-0318	7.75%	6.10%
ER-2010-0036	10.40%	0.10%
ER-2011-0028	7.11%	5.20%
ER-2012-0166	10.05%	6.60%

6 **Q. How do Noranda's current rates compare to its cost of service based on the**
7 **CCOS studies filed in Ameren Missouri's most recent rate case?**

8 A. Using Ameren Missouri's CCOS study and the base rate revenue requirement
9 resulting from Ameren Missouri's most recent rate case, Noranda's current rate is less than 2%
10 higher than its cost of service. That means that Noranda pays less than \$3 million per year more
11 than it costs to provide service to the New Madrid smelter. The cost-of-service-based rate
12 indicated by Ameren Missouri's study for Noranda was \$37.30 per megawatt-hour ("MWh"), or
13 as of July 2012, \$7.30 per MWh more than the subsidized rate Noranda is proposing in this case.
14 Including the current Fuel Adjustment Clause ("FAC") charge would increase Noranda's cost-of-
15 service-based rate to \$40.80 per MWh, which would be \$10.80 per MWh more than the proposed
16 subsidized rate. Noranda's proposal in this case thus would create an immediate and undue
17 disparity between the rates the New Madrid smelter would be charged and Ameren Missouri's
18 costs to provide that service.

1 **Q. Did the MIEC's witness Maurice Brubaker sponsor a CCOS study in**
2 **Ameren Missouri's last rate case that calculated the cost to serve Noranda?**

3 A. Yes. Mr. Brubaker sponsored a CCOS study on behalf of the MIEC in that case.

4 **Q. Did Mr. Brubaker's CCOS study produce results similar to Ameren**
5 **Missouri's?**

6 A. Yes, Mr. Brubaker included schedules in his direct testimony in Ameren
7 Missouri's most recent rate case indicating a difference between Ameren Missouri's and the
8 MIEC's cost of service estimates (at then current rates) for the LTS class of about \$4.5 million²
9 or about 3%. So without debating which model does a better job of allocating the Company's
10 retail electric jurisdictional cost of service, it is clear that even Mr. Brubaker's CCOS study
11 shows that Noranda's current rate is within a reasonable range of its cost of service.

12 **Q. Please summarize the level of subsidy Noranda is seeking versus the actual**
13 **cost of service for the New Madrid smelter.**

14 A. Comparing Mr. Brubaker's calculation of the proposed revenue shift in this case
15 (\$33 million annually, excluding FAC charges) to Noranda's cost of service from Ameren
16 Missouri's last rate case demonstrates that Noranda's proposed rate represents a significant
17 departure from Ameren Missouri's cost of providing service to the smelter. More specifically,
18 Noranda's proposed rate is about 20% below Ameren Missouri's cost of providing service to the
19 New Madrid smelter. The proposed rate subsidy is more than 26% below the cost of service
20 when including the current FAC charges, which reflect Ameren Missouri's actual fuel costs.

21 **Q. Do you have concerns about implementing rates based on such a large**
22 **deviation from the cost of service?**

² Exh. 504, Brubaker Direct, File No. ER-2012-0166, Schedule MEB-COS-5 and Schedule MEB-COS-6.

1 A. Yes. My first concern is about the sheer magnitude of the difference between
2 Noranda's proposed rate and the costs Ameren Missouri actually incurs to provide electric
3 service to the smelter. A rate that is significantly less than the cost of service is a major – and
4 likely unprecedented – departure from the Commission's traditional ratemaking policies and
5 practices, and is not justified by any difference in the character of the service Ameren Missouri
6 provides to Noranda.

7 Another concern I have is about how, or if, Noranda would ever return to a cost of
8 service-based rate. Typically, the Commission uses cost of service as the primary basis for the
9 rate design aspect of utility ratemaking. As a result, when rates are no longer linked to the cost
10 of service, I am concerned that there will be nothing to guide the Commission regarding how the
11 rate subsidy Noranda proposes can be unwound in future periods. For instance, Noranda
12 proposes to set a price at \$30 per MWh with an escalator of no more than 2% in each future rate
13 case. I believe it is very likely that some or all of those future rate cases will show that the cost
14 of serving Noranda has increased by more than 2%. If that occurs, then the deviation between
15 Noranda's rate and its cost of service will expand in each subsequent rate case.

16 **Q. Have you quantified how far below its cost of service Noranda's rate could be**
17 **after ten years of service under its proposed rate subsidy?**

18 A. Yes. To quantify this concern I evaluated how Noranda's rate, assuming a 2%
19 increase every other year, would compare to its cost of service after ten years. For purposes of
20 my evaluation, I also assumed the cost of service increases by more than 2% every other year. If
21 there is a 6% increase in the cost of service every other year, at the end of 10 years Noranda's
22 rate would be nearly 34% below its cost of service³, (which is more than a 50% increase in the

³ Excluding the current FAC charges.

1 subsidy). Even after allowing for a 2% increase that could be authorized under Noranda's
2 proposal, because costs are rising faster than the proposed rate cap, the gap between Noranda's
3 allowed rate and its actual cost of service expands with each succeeding case. As this gap
4 increases, it will become impossible, as a practical matter, to eliminate that subsidy after ten
5 years because moving from a subsidized rate to a cost of service-based rate overnight will
6 produce a significant rate shock for Noranda. Consequently, I am concerned that eliminating the
7 subsidy at the end of the 10-year proposed effective period and moving to a cost-based rate will
8 not be accomplished in a single rate change but will, instead, require a lengthy phase-in to avoid
9 severe rate shock. That suggests Ameren Missouri's other customers will be on the hook to
10 subsidize rates for Noranda well beyond the proposed ten-year period.

11 This concern is heightened by language in the Exemplar Tariff attached to the testimony
12 of Maurice Brubaker. In Section 4, labeled **Contract Term**, there is language requiring the
13 agreement to be extended in one year increments unless written notice of termination is given by
14 Noranda (and only Noranda) two years prior to the date of termination. This language appears to
15 be in conflict with the current contract between Noranda and Ameren Missouri, which may
16 present yet another set of legal problems for Noranda's request. I will leave that argument to the
17 attorneys in this case. Regardless, the language clearly demonstrates that it is incorrect to
18 assume that Noranda will return to cost of service-based rates at the end of a ten-year term.

19 **Q. Is there any cost basis to support the requested rate for Noranda?**

20 A. None at all. The rate proposed by Noranda is substantially below all cost of
21 service studies presented in Ameren Missouri's most recent rate case, including the one
22 presented by the MIEC (on behalf of Noranda and other large energy consumers). Noranda's
23 direct testimony does not argue otherwise, and its response to Ameren Missouri DR 6.2 confirms

1 that no cost of service study was performed to support the proposed \$30 per MWh rate for the
2 New Madrid smelter. I have attached that data request response as Schedule WRD-1. In
3 addition, it is likely that over the proposed ten-year effective period, Noranda's rate will only
4 further diverge from its actual cost of service, making removal of the subsidy even more
5 difficult, as I previously explained.

6 **III. UNFAIRNESS OF LIMITING A NORANDA SUBSIDY TO AMEREN**
7 **MISSOURI CUSTOMERS**

8 **Q. You mentioned the fact that only Ameren Missouri's other customers would**
9 **pay the proposed subsidy. Please elaborate on your concerns about that aspect of the**
10 **proposal.**

11 A. The New Madrid smelter is in the "Bootheel" region⁴ of Missouri, while Ameren
12 Missouri has customers spread out over a large part of the state, with 72% of those customers
13 located in the greater St. Louis metropolitan area (St. Louis City, St. Louis County, Jefferson
14 County, and St. Charles County). To demonstrate this point visually, I have included a map that
15 shows Ameren Missouri's customer density by zip code as Schedule WRD-2. In addition, if it is
16 true, as Dr. Haslag's testimony suggests, that closure of the smelter would impact the state's
17 economy as a whole, then the appropriate subsidy, if one is appropriate, should burden all of
18 Missouri's citizens and not just Ameren Missouri's other customers.

19 **Q. How many customers does Ameren Missouri have in the Bootheel region?**

20 A. Ameren Missouri has approximately 1.2 million electric customers, but only
21 about 39,000 customers are in the Bootheel region (just about 3% of its total customer base).
22 That means Noranda's proposal would require 97% of Ameren Missouri's customers to subsidize
23 a company that primarily benefits the remaining 3%.

⁴ The Bootheel region includes Scott, Stoddard, New Madrid, Mississippi, Dunklin, and Pemiscot counties.

1 **Q. Would your conclusions materially change if you were to expand your**
2 **analysis to encompass a larger geographic area?**

3 A. No, and to prove this I expanded my analysis to look at the entire Southeast
4 Missouri region⁵. Even with a greatly expanded geographic scope, Southeast Missouri would
5 only represent 7.6% of Ameren Missouri's customers as compared to 3% for the Bootheel alone.

6 **Q. What percentage of households in the Bootheel region are Ameren Missouri**
7 **customers?**

8 A. About 53% of households in the Bootheel region are Ameren Missouri
9 customers⁶. Looking at the most recently available census data for the Bootheel counties, I
10 determined that there are a total of nearly 60,000 households in that region and that Ameren
11 Missouri serves about 31,500 residential customers (one residential customer roughly equates to
12 a household).

13 **Q. Does this mean that 47% of households in the Bootheel will not be impacted**
14 **by Noranda's rate shift request?**

15 A. Yes, the remaining households are served by local electric municipals or
16 cooperatives. But because Noranda's proposal only involves increases to Ameren Missouri's
17 electric rates, the rates charged to customers of the electric cooperatives and municipal utilities
18 will not be affected. For example, the City of New Madrid, which is where Noranda's aluminum
19 smelter is located, is served by a municipal utility. Consequently, none of the residents of New
20 Madrid – who clearly benefit from the smelter continuing its operation – will pay one penny of
21 the subsidies Noranda is asking the Commission to approve in this case. In contrast, Ameren

⁵ Southeast Missouri includes the same six counties as the Bootheel plus the counties of Bollinger, Cape Girardeau, Perry, Ste. Genevieve, St. Francois, Iron, Wayne, Carter, Shannon, and Reynolds.

⁶ The results are nearly identical if I expand the analysis to include the entire Southeast Missouri region.

1 Missouri's customers in Excelsior Springs – in the northwestern portion of Missouri – will pay
2 subsidies under Noranda's proposal, as will all of Ameren Missouri's other customers in the
3 St. Louis region, in north-central and central Missouri, and at the Lake of the Ozarks.

4 **IV. ECONOMIC IMPACTS OF NORANDA'S SMELTER IN NEW MADRID**

5 **Q. How would you describe the rationale behind Noranda's proposed rate**
6 **subsidy?**

7 A. It appears that Noranda CEO Kip Smith believes Noranda is "too big to fail." The
8 concept behind "too big to fail" is that an institution is so important and interconnected with
9 society that the government⁷ should support it during times of hardship as opposed to allowing
10 the business to succeed or fail on its own. Because there is no cost justification for Noranda's
11 rate request, and also because Mr. Michels has disproved Noranda's claim that customers are
12 better off with the smelter at a subsidized rate instead of with it off the system altogether, the
13 only potential justification for Noranda's proposal is related to the negative impact closure of the
14 smelter would have to the state's economy.

15 **Q. Can you provide the Commission with some perspective about the numbers**
16 **in Dr. Haslag's testimony regarding the impact closure of the New Madrid smelter would**
17 **have to the State of Missouri?**

18 A. Yes. Even if one were to accept Dr. Haslag's testimony, the specific impacts
19 quantified in his study regarding the possible economic effects of the smelter's closure are not
20 sufficient to justify requiring Ameren Missouri's customers, alone, to provide an economic
21 bailout to Noranda. For example, Dr. Haslag's testimony discusses the impact of Noranda on the
22 state's Gross Domestic Product ("GDP"), taxes and unemployment insurance. While the

⁷Here, the government from who Noranda seeks a subsidy is this Commission, through the higher rates Noranda asks this Commission to impose on Ameren Missouri's other customers.

1 conclusions Dr. Haslag reaches about the impact the smelter's closure would have on these three
2 measures are not unimportant, Noranda's potential impact on these statistics is not large from a
3 statewide perspective.

4 According to Dr. Haslag, Missouri's GDP in 2012 was about \$221 billion. He estimates
5 Noranda's contribution to the state's 2013 GDP to be \$626 million, which translates to about
6 0.3% of the state's total GDP.

7 Dr. Haslag also testifies that if the New Madrid smelter shuts down, the State of Missouri
8 would lose about \$24 million per year in tax revenue. However, the total operating budget for
9 the state of Missouri is about \$25 billion with about \$8 billion coming from general revenues
10 alone. Therefore, Noranda's contribution is only 0.1% of the total operating budget and only
11 0.3% of the general revenue bucket.

12 Dr. Haslag also estimated the potential impact closing the New Madrid smelter would
13 have to unemployment insurance at between \$4.5 million and \$10.2 million. The total annual
14 unemployment insurance budget for the state is about \$480 million, which means that taken in
15 context, closing Noranda's New Madrid Smelter would have a *one-time* impact to the state's
16 unemployment insurance fund of 1-2%. But the impact of Noranda's proposal on Ameren
17 Missouri's other customers will not be a one-time occurrence. Instead, it will last ten years or
18 longer. And even if the subsidy sought in this case is approved, there is no guarantee Noranda
19 won't layoff some or all of its employees, which would also trigger the unemployment fund
20 impact discussed by Dr. Haslag.

21 **Q. Do you agree with Dr. Haslag's economic analysis?**

22 A. No, not entirely. While I generally agree with Dr. Haslag's conceptual
23 framework, he missed a few important economic considerations. For instance, requiring other

1 Ameren Missouri customers to spend more money on utility bills to subsidize Noranda's
2 operations will reduce the level of economic activity associated with how those customers
3 otherwise would spend those monies. Considering the minimum end of the range of potential
4 costs of the proposed rate shift, Ameren Missouri's customers will be spending (at a minimum
5 and ignoring avoided FAC charges) \$331 million less over 10 years on other items (e.g. eating
6 out, shopping, buying energy efficient light bulbs, etc.) because those monies now go toward
7 paying higher electric bills. In short, if the rate subsidy is approved, one result would be to
8 reduce Ameren Missouri's customers' consumption of a wide range of goods and services
9 because those funds would be diverted through rates to keep Noranda's smelter operating.
10 Dr. Halsag did not consider whether it is more efficient, and more important to the state's
11 economy, to use hundreds of millions of dollars to fund Noranda or to instead fund the other
12 businesses by allowing Ameren Missouri's other customers to purchase those businesses' goods
13 and services.

14 In addition, as Ameren Missouri's customers spend less money on goods and services,
15 local sales tax revenues also decline. Lower sales for local businesses also potentially reduce the
16 income taxes those businesses pay. These shifts in spending, and their associated tax
17 consequences, will have an offsetting effect in Dr. Haslag's model, yet none of these effects is
18 quantified. This implies that Dr. Haslag's conclusions are overstated regarding the net effect on
19 the state's economy of closing the New Madrid smelter.

20 Furthermore, Mr. Michels has demonstrated that there is significant risk about what the
21 amount of the subsidy imposed upon Ameren Missouri customers will ultimately be, and he has
22 testified that it could exceed \$600 million over the ten-year term of Noranda's proposal. In

1 general, the greater the cost of the subsidies Noranda has proposed, the greater they will impact
2 the factors I described above.

3 **V. MISSOURI'S GENERAL ASSEMBLY IS THE APPROPRIATE FORUM FOR**
4 **NORANDA TO SEEK RELIEF**

5 **Q. Does the potential economic impact of closing the New Madrid smelter**
6 **warrant the public subsidies Noranda is seeking in this case?**

7 A. I believe that is a question for the state legislature to answer. At this point, the
8 only potential justification to approve such a public subsidy for Noranda is the desire to avoid the
9 negative impacts to the state's Gross Domestic Product and tax revenues that would result from a
10 closure of the New Madrid smelter. That is not a ratemaking issue, so it is not an issue this
11 Commission can or should address. Instead, it is an issue that can only be addressed and decided
12 by Missouri's General Assembly.

13 **Q. Why do you believe the issue of whether to grant Noranda economic relief is**
14 **better suited for the state legislature to decide?**

15 A. If Dr. Haslag's testimony is true, the continued viability of the New Madrid
16 smelter is an issue of statewide importance. It is not an Ameren Missouri issue or a utility
17 ratemaking issue. And it most certainly is not an issue that Ameren Missouri's other customers
18 should be forced to resolve by themselves. Because of the magnitude of the financial assistance
19 Noranda is requesting and also because a majority of economic impacts are, according to Dr.
20 Haslag, felt at the state level, it makes much more sense for the state legislature, composed of
21 elected representatives, to decide whether and how to provide economic relief. It is simply not
22 fair to push these costs and risks solely on the backs of Ameren Missouri customers.

23 **Q. Has the Missouri legislature taken action in the past to provide assistance to**
24 **Noranda?**

1 A. Yes, but only to the extent that Noranda was able to obtain electric service for the
2 New Madrid smelter from any service provider it chose. The Missouri legislature has never
3 sanctioned a rate subsidy from other utility customers, let alone from only the customers of
4 Ameren Missouri. I address the Missouri legislature's prior legislation relating to Noranda
5 further below.

6 **Q. Do you think the MIEC would agree with you that the legislature is the most**
7 **appropriate forum for this type of rate subsidy?**

8 A. I certainly would have thought so prior to the filing of Noranda's rate subsidy
9 proposal in this case and the MIEC's filing in support of that proposal. In 2012, the Commission
10 opened a working docket (File No. EW-2013-0045) to explore affordability options for low
11 income customers. The MIEC provided comments that said, in part, “[the affordability of utility
12 rates] is an income problem that all Missourians must address and solve, but it cannot be solved
13 by changing the price of particular goods or services (whether groceries, rent or utility service).”⁸
14 The MIEC's comments further stated: “The Legislature is best equipped to address the issue of
15 low-income assistance and to develop solutions for low-income Missourians. The MIEC
16 believes that it is unwise and even counterproductive to use the utility ratemaking process to
17 establish or implement social welfare goals.”⁹

18 In fact, although I am not a lawyer, I would also point out that the MIEC argued in File
19 No. EW-2013-0045 that it is unlawful for the Commission to approve rates that are not based
20 upon a difference in the character of the service being provided. The subsidy Noranda seeks
21 here has nothing to do with any differences in how the New Madrid smelter is served by Ameren
22 Missouri (the cost differences associated with Noranda's service versus services provided to

⁸ MIEC's comments filed in EW-2013-0045, page 2

⁹ *Id.*

1 other customer classes have already been accounted for in the above-discussed cost of service
2 studies and in the rates the Commission set in Ameren Missouri's last rate case). The MIEC's
3 comments in File No. EW-2013-0045 are attached to my testimony as Schedule WRD-3.

4 **Q. You mentioned earlier that the Missouri legislature had previously enacted**
5 **legislation dealing with electric service for Noranda. Please explain.**

6 A. In 2003, the legislature passed and the governor signed a law¹⁰ that was
7 specifically tailored to aluminum smelting facilities (i.e., Noranda). The law allows Noranda
8 expanded rights to purchase and contract for power that no other customer in Missouri has –
9 effectively a "retail choice" statute for Noranda.

10 **Q. What was the context for the law's passage?**

11 A. For many years (decades, as I understand it) Noranda had taken service from
12 Associated Electric Cooperative, Inc. ("AECI") under a cost-based contract. A few years before
13 the legislation was passed, the AECI contract ended and Noranda could not secure continued
14 cost-based service from AECI. Thereafter for a few years, Noranda acquired its power under a
15 market-based contract with a power marketing company. Noranda then approached the General
16 Assembly looking for more options and flexibility in securing electric service, resulting in the
17 statute I mentioned above.

18 **Q. Did Noranda take advantage of the statute?**

19 A. No. Instead, Noranda sought to become Ameren Missouri's customer and agreed
20 to do so under a cost-based rate¹¹ to be regulated and set by this Commission. In advocating for
21 an extension of Ameren Missouri's service territory to include Noranda's property so that it could
22 obtain this cost-based service, Noranda stated as follows:

¹⁰ Section 91.026, RSMo.

¹¹ Noranda's rate was initially set at \$32.50 per MWh.

1 Noranda on the system than they would be if they are required to provide the proposed rate
2 subsidy. In addition, Ameren Missouri witness Robert Mudge's rebuttal testimony indicates that
3 Noranda is more competitive than is suggested by its witnesses, even without a reduction in
4 electricity prices for the New Madrid smelter.

5 - It would be fundamentally unfair to require Ameren Missouri's other customers,
6 who are heavily concentrated in the St. Louis area, to provide the subsidies Noranda claims are
7 necessary to enable the smelter to continue operations.

8 - Because a majority of the economic benefits of Noranda's operations accrue to the
9 State of Missouri as a whole, it is my opinion that if subsidization of Noranda's operations is
10 necessary to preserve those benefits then the nature and extent of that subsidy should be
11 discussed and decided by the state legislature and not the Commission; and, at a minimum, the
12 burden of any subsidy prescribed by the legislature should be borne by all Missouri citizens
13 instead of only Ameren Missouri customers.

14 **Q. Does this conclude your rebuttal testimony?**

15 **A. Yes, it does.**

**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) **File No. EC-2014-0224**
Ameren Missouri's Large Transmission Service)
Tariff to Decrease its Rate for Electric Service.)

AFFIDAVIT OF WILLIAM R. DAVIS

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

William Davis, being first duly sworn on his oath, states:

1. My name is William R. Davis. I am employed by Ameren Missouri as Economic Analysis and Pricing Manager in the Missouri Regulatory Services Department.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Union Electric Company, d/b/a Ameren Missouri, consisting of 18 pages and Schedule(s) WRD-1, WRD-2 & WRD-3, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

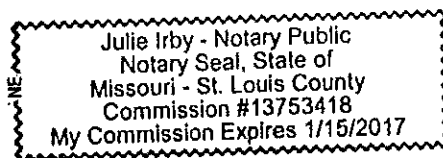
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

William R. Davis
William R. Davis

Subscribed and sworn to before me this 10th day of May, 2014.

Julie Irby
Notary Public

My commission expires: 1/15/2017



Missouri Public Service Commission
Case No. EC-2014-0224
Response of Noranda to
Data Request No. Ameren 6
Date Received: April 3, 2014
Date Due: April 23, 2014

DATA REQUEST NO: Ameren DR 6.2

6.2 Please provide all class cost of service analyses which support the \$30/MWh rate discussed on page 3 of Mr. Smith's Direct Testimony.

RESPONSE:

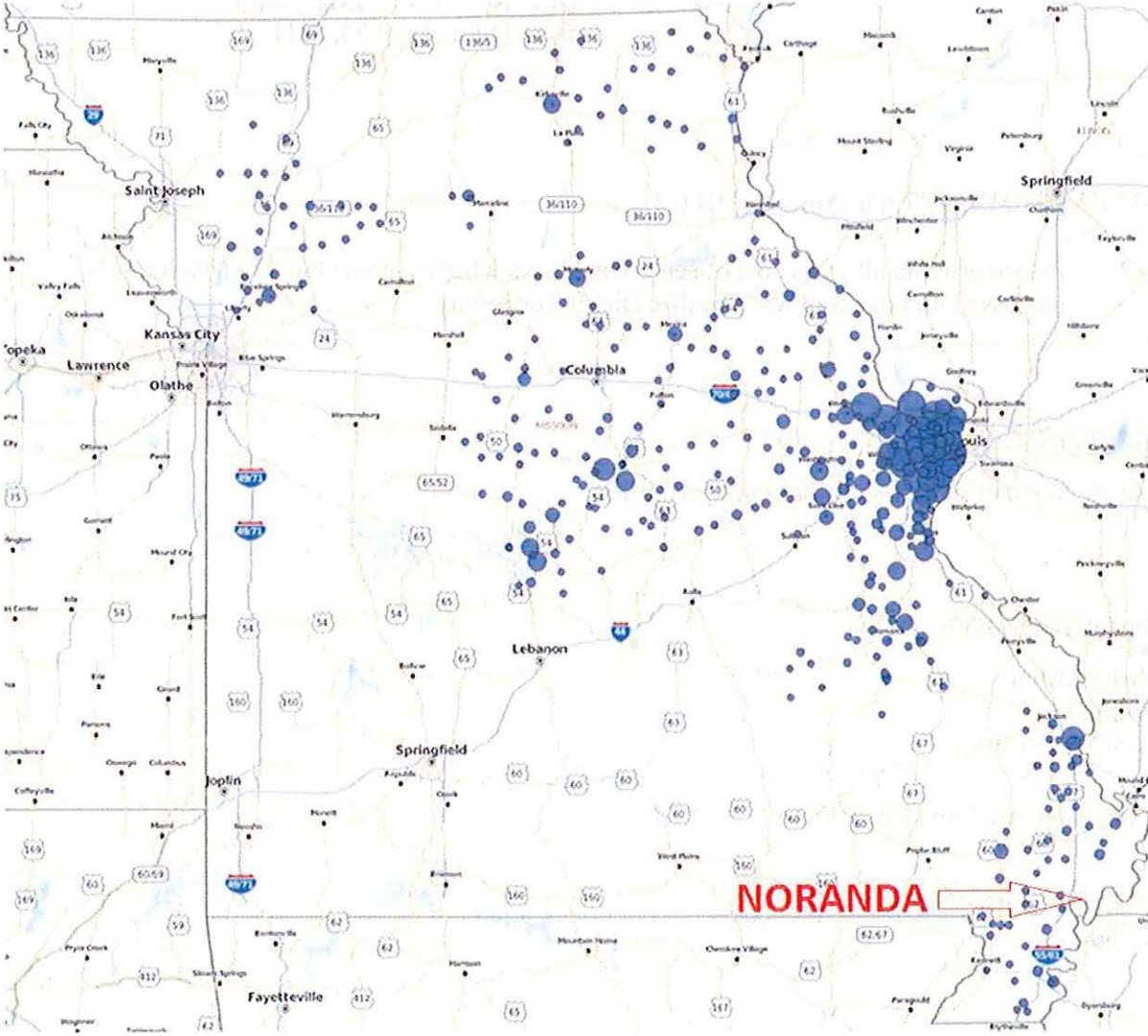
No class cost of service study has been performed.

PROVIDED BY:

Stacy Miller
Noranda
615-771-5779

Date Response Provided: 4/17/14

Figure 1 – Ameren Missouri Customer Density Map by Zip Code



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Working Case to Consider the)	
Establishment of a Low-Income Customer)	
Class or Other Means to Help Make Electric)	File No. EW-2013-0045
Utility Services Affordable)	

COMMENTS OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

Pursuant to the Commission’s Order dates August 8, 2012, the Missouri Industrial Energy Consumers (“MIEC”) provides the following comments regarding the establishment of a low-income customer class or other approaches to the affordability of residential customer electric service.

Assisting low-income utility customers and other Missouri citizens in need is an important and worthy goal. The MIEC member companies regularly commit resources to help Missourians in need, and the MIEC recently supported and helped fund a low-income assistance pilot program for Ameren customers. There are many ways the Commission, the utilities and their customers can assist low-income Missourians. However, as explained below, the MIEC does not believe the Commission has the legal authority or a sound policy basis to establish a low-income customer class.

The Commission’s Order requested comments regarding the following issues:

1. The practicality of establishing such a class, including the effect on revenues and costs,
2. Proposed guidelines for inclusion in such a class,
3. Proposed verification procedures for participants,
4. The effect on the company’s bad debt expense,
5. Similar low-income rate-classes established in other states,

6. The legality of establishing a low-income rate-class, and
7. The appropriate rate or rate-formula for a low-income rate-class.

Following is the MIEC's position and response to the specific issues set forth in the Commission's Order.

1. **The Practicality of Establishing Such a Class, Including The Effect on Revenues and Costs**
2. **Proposed Guidelines for Inclusion in Such a Class**
3. **Proposed Verification Procedures for Participants**

The MIEC believes it would be impractical to establish a low-income customer class, even if it were legally permissible to do so. Establishing a low-income class would require the utility to obtain and track a large amount of personal income information with respect to each of its customers thought to be eligible. The utility would need to establish monitoring procedures, as well as enforcement procedures, to ensure that customers who do not qualify do not participate. Utilities are not suited or equipped to conduct these activities, and it would be improper for utilities to engage in such activities.

The severe economic downturn has greatly increased the need for assistance to low-income Missourians. This is an income problem that all Missourians must address and solve, but it cannot be solved by changing the price of particular goods or service (whether groceries, rent or utility service). Creating lower rates for customers who are identified as low-income, and subsidizing those lower rates with higher rates on other customers or lower returns for utilities, does not address the income side of the policy equation. The Legislature is best equipped to address the issue of low-income assistance and to develop solutions for low-income Missourians.

The MIEC believes that it is unwise and even counterproductive to use the utility ratemaking process to establish or implement social welfare goals. The subsidy to the customer

blurs the price signal and reduces the incentive for energy efficiency. Better price signals are achieved if assistance is provided that can be used to provide for general needs.

The effect of establishing a low-income customer class on utility revenues, without any separate mechanism to fund such a program, would be a reduction in revenues. Utilities would be correct to argue that failure to provide a funding mechanism would be confiscatory and therefore unlawful for that reason alone.

4. **The Effect on the Company's Bad Debt Expense**

The effect of establishing a low-income customer class on the utilities' bad debt expense is not clear. While it may seem that funding for low-income customers would reduce bad debt expense, it is also possible that such funding could simply be used to continue, or even increase, current consumption levels. Moreover, the significant administrative costs to manage such a program could eliminate any potential decrease in bad debt.

5. **Similar Low-Income Rate-Classes Established In Other States**

Some states that have adopted such subsidies have approached the issue by establishing a maximum surcharge that can be recovered from any given customer's bill to fund the subsidies. For example, the state of Utah caps the maximum amount of surcharge that can be collected on any customer's monthly bill at \$50; Illinois caps the surcharge at \$4.80 per monthly bill for a customer smaller than 10,000 kW, and at \$360 per month for a customer larger than 10,000 kW. Wisconsin caps the surcharges at \$148 per month per account, with an umbrella maximum of \$750 per month for the sum of all accounts of any particular customer. And, in Pennsylvania funding for the Low Income Usage Reduction Program ("LIURP") is provided entirely by residential customers, while the Customer Assistance Programs ("CAP") are funded 75% by residential customers, 20% by commercial customers, 2% by industrial customers and 3% by all

other customers. The concept behind these caps is to the impact of subsidies that would be counterproductive to the preservation and creation of jobs needed to propel economic development.

6. **The Legality of Establishing a Low-Income Rate-Class**

Section 393.130 provides:

2. No ... electrical corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions

3. No ... electrical corporation ... shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The questions then are: (1) whether the Commission is proposing a “special rate” for persons of one class even though the service is provided to those persons under “the same or substantially similar circumstances or conditions” as those not in the favored class; and (2) whether any proposal to subsidize one class of customers by overcharging another class, or other classes, of customers is providing an “undue or unreasonable” preference to the subsidized class or an “undue or unreasonable” prejudice or disadvantage to the subsidizing class or classes. Because the proposal is clearly designed to provide a “special rate” or “preference” for persons of one class at the “prejudice” or “disadvantage” of persons of another class or classes receiving like service, subsections 393.130.2 and .3 appear to prohibit the “special rate.”

The Missouri Supreme Court long ago concluded that differences in rates must be based upon differences in service. In *State ex Rel. The Laundry, Inc. and Overland laundry Company*

v. Public Service Commission, 34 S.W.2d 37 (Mo. 1931), the Supreme Court addressed the appropriate standard under what is now subsections 393.130.2 and 3. There, a large commercial laundry operation that used over 500,000 gallons of water a month sought to be included under a rate class for manufacturers who consumed over 500,000 gallons of water each month. The evidence showed that the manufacturers' rate was below the water company's cost of service and that the water company adopted the special rate for the purpose of luring manufacturers to the water company's service territory in order to serve the manufacturer's employees that would presumably locate there as well. The court cited section 393.130's predecessor statute, and a Public Service Commission decision, in concluding that the discrimination against the laundry company compared to other large users of water and employers was illegal because it was not "bottomed upon any dissimilarity or difference in service or operative conditions[.]" *Id.* at 45. In so concluding, it cited with approval the Missouri Public Service Commission in *Civic League of St. Louis et al. v. City of St. Louis*, 4 Mo. P.S.C. 412:

In the Missouri act (Public Service Commission Law) supervision and regulation seek to require all public utilities operating in the State, whether owned by private persons, corporations or municipalities, not only to serve the public at reasonable rates or charges, but to require them also to serve the public efficiently and without unjust discrimination. The consensus of opinion everywhere is that such requirements are imperatively demanded by modern industrial conditions. Of course, as observed by the Supreme Court of the United States in a leading case, such equality of rights does not prevent differences in the modes and kinds of service and different charges based thereon. [[Western Union Tel. Co. v. Call Pub. Co.](#), 181 U.S. 92, 100.] In brief, in charges for service or in rate-making, reasonable classification may be adopted... . However, laws designed to enforce equality of service and charges and prevent unjust discrimination, as the Missouri act, **require the same charge for doing a like and contemporaneous service (e.g., supplying water) under the same or substantially similar circumstances or conditions.** To impart this idea more completely or to amplify, our law in express terms forbids granting undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subjecting any person, corporation, or locality, or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [P.S.C. Law, art. IV, sec. 68.] In brief,

rates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential. Our statute demands reasonable and non-discriminatory rates... . **Accordingly, even at common law, it is not admissible for a public service company to demand a different rate, charge or hire from various persons for an identical kind of service under identical conditions.** Such partiality cannot square with the obligations of public employment. The public duty must be discharged for the equal benefit of all, and obviously to permit discrimination or inequality in the service or charges is to ignore the public obligation. [[Messenger v. Pacific Railroad Co.](#), 36 N.J.L. 407, 37 N.J.L. 531.] The common right of all involves the obligation to **give equal rights to all for the same service.** [[Fitzgerald & Co. v. Grand Trunk Railroad Co.](#), 63 Vt. 169, 22 Atl. 76.] The services must be open to all on equal terms. Discrimination is opposed to sound public policy. [[Schofield v. Railway Co.](#), 43 Ohio St. 571, 3 N.E. 907.] **The common law today forbids all discrimination between two applicants who ask the same service.** [2 Wyman, Public Service Corporations, sec. 1290.] ... Thus the principle of equality designed to be enforced by legislation and judicial decision **forbids any difference in charge which is not based upon difference of service and even when based upon difference of service must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination.** [[Western Union Telegraph Co. v. Call Pub. Co.](#), 181 U.S. 92, 100, 103.] ... While the principles of the common law are operative, except so far as they have been modified by constitution or legislation (R.S. 1909, sec. 8047; [Duke v. Harper](#), 66 Mo. 51; [Reaume v. Chambers](#), 22 Mo. 36; [Lindell v. McNair](#), 4 Mo. 380), whatever may have been the common law rule relating to unjust discrimination, our legislation now controls and is to be construed and applied according to its spirit in the light of the unsatisfactory conditions prevailing with respect to the service and rates of public utilities ... prior to its enactment... . **The Commission has had occasion to consider carefully the policy of the law relating to discrimination in rates on the part of the public service companies of various kinds, and has held invariably that any inequality of service or charges and unjust discriminations in whatever form practiced fall within the condemnation of the Public Service Commission Act; that all unjust discriminations respecting rates or charges are in violation of public duty, contrary to the common law, and against sound public policy; and that statutes forbidding unjust discriminations of whatever character are merely declaratory of the common-law rule which is founded on public policy and requires one engaged in a public calling to charge a reasonable and uniform price or rate to all persons for the same service rendered under the same or substantially similar circumstances or conditions... . Our conclusion, therefore, is that the schedule of rates providing a less charge for water for purely manufacturing purposes than for general use, is plainly unjust discrimination under the well settled rule of the common law, as well as under the Public Service Commission Act, which is merely declaratory of the common law rule, because it distinctly appears that the classification therein is unreasonable and unjust.**

Id. at 44-45. (Emphasis added).

The Missouri Supreme Court also cited a decision of the United States Supreme Court:

Speaking to the subject of unjust discrimination by public utility corporations in respect to rates and service, the United States Supreme Court, through Mr. Justice BREWER, thus announced in [Western Union Telegraph Co. v. Call Pub. Co., 181 U.S. 92, 100](#): "All individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast-iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. **But that principle of equality does forbid any difference in charge which is not based upon difference in service, and even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination.**"

Id. at 45. (Emphasis added).

In conclusion, subsections 393.130.2 and .3 prohibit any preference or prejudice in rates unless the difference is based upon a difference of service. The proposal contemplated herein would subject customers with identical service requirements to different rates and, as such, would violate subsections 393.130.2 and .3.

7. The Appropriate Rate or Rate-Formula for a Low-Income Rate-Class

As noted above, it is MIEC's position that the goal of low-income assistance is a worthy and important goal that all Missourians should work to achieve. However, establishment of a low-income customer class is not good policy and is not a lawful means to achieve this goals. In the event the Commission rejects the MIEC's legal and policy arguments outlined above, any low-income customer class or program should be funded within the residential class.

Respectfully submitted,

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