

Exhibit No.:  
Issue: Noranda Impact  
Witness: George Swogger  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Noranda  
Case Number: GR-2006-0387  
Date Testimony Prepared: Sep. 26, 2006

FILED<sup>3</sup>

SEP 26 2006

Atmos Energy Corporation

Case No. GR-2006-0387

Missouri Public  
Service Commission

Prepared Direct Testimony of

George Swogger

On behalf of

Noranda Aluminum, Inc.

September 2006

Noranda Exhibit No. 57  
Date 9-09-14 Reporter xf  
File No. GR-2014-0152



Before the  
Missouri Public Service Commission

Atmos Energy Corporation

Case No. GR-2006-0387

**Prepared Direct Testimony of George Swogger**

1 **INTRODUCTION**

2 **Q PLEASE STATE YOUR NAME AND ADDRESS.**

3 **A** George Swogger. My address is 110 Holmes Drive, Sikeston, Missouri 63801.

4 **Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 **A** I am employed by Noranda Aluminum, Inc. as Manager - Energy Procurement  
6 for the aluminum smelter located in the St. Jude Industrial Park near the city  
7 of New Madrid, Missouri. I will refer to this facility as the "Smelter."

1 Q PLEASE SUMMARIZE YOUR EDUCATION AND EXPERIENCE.

2 A In 1974 I received a Bachelor of Science degree in Industrial engineering from  
3 West Virginia University. I worked as an industrial engineer for other aluminum  
4 companies from 1974 through 1980.

5 In 1980 I began my employment with Noranda as the Chief Industrial  
6 Engineer. In 1984 I was promoted to the position of Administrative Manager.  
7 My responsibilities included cost accounting, payroll, and management of the  
8 St. Jude Industrial Park. I also assisted corporate staff in the administration of  
9 Noranda's power contracts. In 1990 my title remained the same, but my  
10 responsibilities changed. My previous responsibilities were replaced with  
11 responsibilities including all purchasing, warehousing, and traffic. I also  
12 assumed responsibility for administration of Noranda's power contracts and  
13 natural gas contracts. From 1980 thru 2002 I was also responsible for industrial  
14 engineering for the plant. In 2002 my responsibilities changed to Manager of  
15 the Rod Mill and Manager of Energy Procurement. From late 2003 through the  
16 present my entire responsibility has been energy procurement. In that role my  
17 title is Manager - Energy Procurement.

1 Q WHAT ARE THE PURPOSES OF YOUR TESTIMONY?

2 A There are four

3 First, I want to provide an overview of the operations of Noranda  
4 in southeast Missouri (the "Smelter") and the importance of  
5 the Smelter to Missouri and southeastern Missouri.

6 Second, I want to explain how -at this time - service from Atmos  
7 Energy Corporation ("Atmos") under the existing Gas  
8 Transportation Agreement ("Agreement") meets the local  
9 transportation requirements of the Smelter. While I am  
10 not an attorney and do not intend to offer a legal opinion, I  
11 want to explain from my own perspective some of the rate  
12 problems and court proceedings that Noranda faced  
13 subsequent to the last case, all of which contributed to my  
14 pursuit of the Agreement.

15 Third, I see that Staff, for reasons explained in its testimony, has  
16 imputed revenue to Atmos. The imputed revenue is equal  
17 to the difference between purely hypothetical revenue for  
18 Noranda under an unsatisfactory tariff rate as compared to  
19 the rates charged to Noranda under the Agreement. I am  
20 against any such action that might undermine the  
21 Agreement.

22 Fourth, I want to suggest that the Commission establish the  
23 Agreement as the Commission approved rate applicable to  
24 Noranda. Based on information being submitted  
25 concurrently by the Noranda expert, Mr. Johnstone, a cost-  
26 based rate would be much less than Noranda pays under  
27 the Agreement. However, we believe adoption of the  
28 Agreement as the rate applicable to Noranda would greatly  
29 simplify matters for the Commission, the Commission Staff,  
30 Atmos, and, of course, Noranda in future cases. Mr.  
31 Johnstone will be providing testimony on behalf of Noranda  
32 with more specific explanations in this regard.

1 THE SMELTER AND THE ALUMINUM INDUSTRY

2 Q PLEASE DESCRIBE THE PRODUCT PRODUCED AT THE NORANDA SMELTER AND  
3 THE MARKET INTO WHICH THE PRODUCT IS SOLD.

4 A The plant produces four products: billet, rod, foundry products and primary  
5 ingots. The products are sold into a market that in most respects is a world  
6 market. Of course, the Smelter tries to exploit both its abilities to serve niches  
7 and its mid-continent location to sell to regional customers within the market.  
8 With respect to the State of Missouri, the Smelter is an export industry. This  
9 means that revenue from products sold mostly outside of Missouri flows into  
10 the State.

11 The Smelter's ability to remain viable depends on maintaining our ability  
12 to deliver a competitively priced product. Electricity, as the largest single  
13 expense item, has a large part to play in that. However every cost is important  
14 including the cost of the transport services Noranda purchased from Atmos. Of  
15 course, the prevailing market prices we receive for the products we produce  
16 are also an important consideration. Although the Smelter is large, we are not  
17 a market maker so we must accept the market prices. Therefore, it is critical  
18 that all costs remain economical and under control to the extent possible.

19 Q PLEASE DESCRIBE THE PROCESS USED TO SMELT ALUMINUM.

20 A The plant receives alumina via barge over the Mississippi river. The alumina is  
21 offloaded from the barges and moved to the Smelter by conveyer. There it is

1 processed in one of the three production lines (pot lines) where electricity is  
2 used to break the bond between aluminum and oxygen in the alumina.  
3 Generally the finished products are shipped via truck and some by rail.

4 **Q OVER THE PERIOD OF A YEAR WHAT WILL BE THE APPROXIMATE QUANTITY**  
5 **OF ALUMINUM PRODUCED?**

6 **A** On an annual basis the plant will produce approximately 250,000 metric tons of  
7 aluminum, consume approximately 4 million MWh of electricity, and consume  
8 approximately 1.3 million MCF of natural gas.

9 **Q PLEASE DESCRIBE SOME OF THE IMPORTANT CHARACTERISTICS OF THE**  
10 **NATURAL GAS REQUIREMENTS OF THE SMELTER**

11 **A** Natural gas is consumed primarily to bake the anodes used in the smelting pots  
12 and in the finishing process. Both are fundamentally important to the  
13 operations of the facility. The gas is needed on a firm basis and we achieve a  
14 firm supply with the purchase of natural gas delivered over the interruptible  
15 transport service provide by Atmos and propane as a backup fuel source.  
16 Natural gas is the preferred fuel as long as it is available.

17 For many years now Noranda has acquired natural gas in the natural gas  
18 market and purchased transportation service from Atmos and its predecessors  
19 for the delivery of Noranda's gas to the Smelter. Last year we transported  
20 1,226,296 MCF under the mutually agreed terms and conditions of our contract  
21 with Atmos.

1 Q DO YOU HAVE A CHOICE OF SUPPLIER?

2 A The choices are to purchase the service from Atmos or to build a bypass  
3 pipeline to provide our own transportation service. To me it is logical to make  
4 use of the facilities of Atmos. However, Noranda needs a fair rate.

5 Q DO YOU EXPECT TO BE A LONG TERM CUSTOMER OF ATMOS?

6 A Noranda has made a commitment to continue its service from Atmos under the  
7 terms of the Agreement. Staff has referred to the Agreement as a special  
8 contract. Noranda will honor the Agreement as long as it remains intact.  
9 Following that, I would hope that an appropriate cost based rate would be in  
10 place for the service Noranda needs. That would in all likelihood ensure a  
11 customer/supplier relationship between Noranda and Atmos that would  
12 continue for years to come.

13 Q PLEASE TELL THE COMMISSION A LITTLE MORE ABOUT THE ALUMINUM  
14 INDUSTRY AND SOME OF YOUR CUSTOMERS.

15 A First, we make the primary aluminum; our Customers make and shape  
16 aluminum into things that people use. We are well positioned as an aluminum  
17 smelter. If you look at the smelters that are still left in the U.S.A., aluminum  
18 production has declined in recent years because there are fewer smelters  
19 operating. But we are the southernmost smelter in the country and we find  
20 that to be a benefit. We sell the base commodity on the London Metals  
21 Exchange based on the world price. Then, we have a whole host of customers



1 that buy value-added products, mainly extrusion billet, aluminum rod, and  
2 foundry alloy products. The products are used in a variety of applications in  
3 the housing, transportation and construction industries. We ship our products  
4 on time according to when the customer wants it so they can plan their  
5 production accordingly. To encourage good performance we give a "carrier of  
6 the year" year award for flat bed and covered carriers who do the best job of  
7 delivering our products on time to our customers when they need it, so they  
8 can plan their production. About 1,000 trucks are used each month, using  
9 mainly regional carriers. We also use rail, but mainly for shipments to the  
10 West Coast.

11 Our number one state for shipping products, surprisingly enough, I think  
12 it is because we're southern, is Texas. Then, it is Tennessee because we have a  
13 sister aluminum foil plant that makes heavy-gauge foil in Huntington,  
14 Tennessee, which is only about two hours from New Madrid. We supply them  
15 and they employ about 450 people. We also supply a lot to Customers right  
16 across the river in Western Kentucky and in Illinois. Two that come to mind are  
17 Penn Aluminum in Murphysboro in Illinois and General Cables in Duquoin,  
18 Illinois. We also supply a rod customer in Haiti, Missouri. All told, we are  
19 definitely an aluminum smelter that serves a region that is more than Missouri.

1 **Q SO YOU'RE SHIPPING PRODUCT OUT OF THE STATE OF MISSOURI AND**  
2 **THEY SEND MONEY BACK TO THE STATE OF MISSOURI, WHICH GETS**  
3 **SPENT ON EMPLOYEES, SUPPLIES, AND ETCETERA?**

4 A Absolutely. Missouri is probably sixth or seventh in rank of the number of  
5 customers that we have. These other states -- Texas, Tennessee, Illinois,  
6 Indiana and Georgia are where we are selling and shipping our products, but  
7 the money is coming back to Missouri. We are located on Interstate 55 halfway  
8 between Memphis and St. Louis. If you draw lines eight hours in any direction,  
9 we are in a great location for distribution. We're selling to these people and  
10 that money is getting paid back to Missouri in the form of payroll to employees  
11 and money paid to suppliers who employ people in the region. The State of  
12 Missouri is obviously getting the benefit.

13 **Q DO YOU CONSIDER THE NORANDA SMELTER TO BE AN EXPORT**  
14 **INDUSTRY FOR THE STATE OF MISSOURI?**

15 A Yes. And that is a very good thing for the State.

16 **Q CAN YOU TALK SOME ABOUT ONE OF YOUR SPECIAL ALLOY FOUNDRY**  
17 **PRODUCTS AS AN EXAMPLE?**

18 A Yes. For example there is a special alloy that goes primarily to the automotive  
19 industry. A Kentucky based Customer comes to mind called Gibbs Dye Casting.  
20 Even though there are two aluminum smelters in Kentucky, they buy from us

1           because it's a special patented alloy product called Silafont that we make. We  
2           have very good relations with Gibbs.

3   **Q   DO YOU HAVE OTHER SPECIALIZED PRODUCTS?**

4   A   We are continually working on some of the new special alloys in our efforts to  
5           attract new Customers and to develop new and innovative applications. We  
6           have regional sales managers and a Vice President of Sales/Marketing who are  
7           continually providing excellent service to our Customer base. Noranda is  
8           known for excellent Customer service and on time delivery. When we're  
9           producing 1.5 million pounds of aluminum a day, employing over 1100, selling  
10          546 million pounds a year, and shipping 1,000 truck loads a month, we are  
11          making a positive impact on our region and certainly our state. We are an  
12          exporter of very good quality, primary aluminum products and an importer of  
13          money for our effort.

14   **Q   IS THERE A DECLINE IN THE NUMBER OF SMELTERS IN THE UNITED**  
15          **STATES?**

16   A   Yes. As a nation we have become more dependent on foreign sources and we  
17          will continue with that trend if we don't maintain what we have.

18   **Q   WHAT IS YOUR UNDERSTANDING OF THE PROBLEM?**

19   A   What happened in the U.S. Northwest is that all the smelters went out of  
20          business due to high energy costs. That was the reason. They did not go out of

1 business because they did not have customers. They went out of business  
2 because of high energy costs and they could not sustain operations.

3 However, we plan to out-perform foreign competitors with timely  
4 delivery and the kind of quality Customers need. For example, if you are  
5 sitting over in Monett, Missouri and you are trying to plan your extrusion press  
6 production so you can schedule your crews and get them in there and run them  
7 through the dye presses and the extrusion presses, and you're waiting on it to  
8 arrive from China, you're in trouble. When it comes from Noranda, you know  
9 it's going to be there on time and in conformance with Customer expectations.  
10 That is the real difference -- not only on time, but on time delivery with high  
11 quality at the right price.

12 **Q ARE THERE BUSINESS CYCLES IN ALUMINUM INDUSTRY?**

13 **A** There have been cycles up and down. And no doubt there will continue to be  
14 business cycles.

15 **Q ALL THINGS CONSIDERED, DOES NORANDA EXPECT TO PERSEVERE**  
16 **FOR THE LONG TERM IN THE STATE OF MISSOURI?**

17 **A** That is the plan. We have 30 years plus in the Smelter and a good customer  
18 base. We plan ahead and expect to remain viable and even vibrant for  
19 Southeast Missouri and this whole region.

1 IMPORTANCE OF THE SMELTER TO MISSOURI

2 Q MR. SWOGGER, AS A BUSINESS PERSON, DO YOU BELIEVE THERE ARE ANY  
3 PUBLIC INTEREST CONSIDERATIONS THAT YOU CAN BRING TO THE  
4 ATTENTION OF THE COMMISSION?

5 A Yes. Of course, the Smelter resides in Missouri and is a part of the public in the  
6 State. I believe there is a positive public interest in the service Atmos supplies  
7 to Noranda simply because of this fact.

8 On another level, the Smelter makes many contributions to the public  
9 interest in both economic and social terms. Those contributions include jobs,  
10 payroll, purchases from local suppliers, taxes, and leadership contributions to  
11 the communities surrounding the Smelter. I can speak to these many  
12 considerations, but others have also spoken on behalf of Noranda. Yesterday,  
13 September 25, 2006, Mr. Harvey Cooper, Executive Director of Community  
14 Sheltered Workshop, Incorporated spoke before the Commission in the public  
15 hearing in this matter in Sikeston. Mr. Cooper provided the Commission with a  
16 copy of his prepared testimony that is a part of the record in the commission's  
17 Docket EA-2005-0180.

18 Others have also spoken on behalf of Noranda. For the convenience of  
19 the Commission I am attaching as appendices to this testimony a number of  
20 testimonies that were submitted on behalf of Noranda in December, 2004 and  
21 are also a part of the record in the Commission's Docket EA-2005-0180.  
22 Noranda has contacted these witnesses and all have expressed a desire for the

1 Commission to remain aware of the many important considerations raised in  
2 their respective testimonies. Attached (in alphabetical order) are the  
3 testimonies of New Madrid County Commissioner Mark Baker, Missouri State  
4 Representative Lanie Black and Missouri State Representative Terry Swinger. I  
5 note that Commissioner Baker was Mayor of New Madrid, Missouri and New  
6 Madrid County Commissioner elect when the attached testimony was prepared.

7 All of these testimonies illustrate some of the broad public interest in  
8 the continuing viability of the Smelter. Suffice to say, I believe Noranda is of  
9 great economic and social importance in Missouri.

10 **Q MR. SWIGGER, CAN YOU GIVE THE COMMISSION AN IDEA OF THE ECONOMIC**  
11 **IMPACT OF THE SMELTER IN THE SOUTHEASTERN REGION OF MISSOURI?**

12 **A** Yes. I define the southeastern region of Missouri as the ten-county area that  
13 goes from Cape Girardeau County on the north, Butler County on the west, New  
14 Madrid County and Mississippi County on the east and all the way down to the  
15 Missouri/Arkansas state line.

16 The Smelter employs 1,120 people; 881 are represented by the United  
17 Steelworkers Local 7686, and the rest are the support personnel that come in  
18 the form of supervisors, human resources, administrative support, sales,  
19 accounting and so forth. Most of these jobs are in southeast Missouri, with  
20 roughly 20 employees coming to work from Tennessee, Kentucky, Illinois and  
21 Arkansas.

1           Noranda, we say, is the premier manufacturer of southeast Missouri,  
2 because there are so many good jobs that Noranda has provided over the years.  
3 There are a lot of factors that come into play, but Noranda supplies a great  
4 number of people with jobs in an area that includes some of the poorest  
5 counties in the State when you look at the economic statistics of counties like  
6 Dunklin, Mississippi, New Madrid, Pemiscot, Scott, and Stoddard.

7           The Noranda annual payroll is \$58 million to workers that reside almost  
8 entirely in the ten-county region. It is \$17 million in payroll in New Madrid  
9 County, \$10 million in payroll in Scott County, and you have up to \$4 to \$5  
10 million in each of the other counties of the surrounding six-county area. Some  
11 employees also commute from other neighboring areas. For example we even  
12 have 50 employees that live in Cape Girardeau County who drive back and  
13 forth.

14           In addition to the \$58 million payroll, you add to that \$22 million in  
15 procurement services. The \$22 million is goods and services that we purchase  
16 in the region not including electricity, which by itself accounts for over \$130  
17 million per year.

18           On a local basis when you add the \$58 million in payroll and the \$22  
19 million in procurements there is an \$80 million impact on that part of the  
20 state. This is huge economically to all the businesses, the schools, and the  
21 community as a whole. For example, Noranda pays a full one-third of the cost  
22 of operating New Madrid County Schools, about \$3.2 million per year. In

1 addition there are taxes paid by Noranda, its suppliers, and its employees that  
2 all have a positive impact.

3 Noranda has been and is a good corporate citizen. We have our second  
4 consecutive five-year labor contract in effect with United Steelworkers and  
5 there hasn't been a work stoppage since 1989. We've tried very hard to  
6 maintain and improve our relations with the Steelworkers and we believe the  
7 outcome of that is the second consecutive five-year agreement. The current  
8 one goes to 2007. So we feel like Noranda's impact on that region is very  
9 positive and the impact on the region, the jobs, and the people, and the  
10 communities is very important.

11 **Q YOU MENTIONED THAT THIS WAS A POOR AREA OF THE STATE. WHAT IS THE**  
12 **BASIS FOR THIS?**

13 **A** Well, if you look at the southeastern region, it was predominantly agricultural  
14 until the late 1960s. Then, when agricultural equipment went to large  
15 mechanized equipment and they could do a lot more, it left a lot of people  
16 behind. There have been 3 or 4 generations in that region that have had a hard  
17 time finding good, steady employment -- especially good paying jobs.

18 And so if you look at Scott County and Cape County; Cape County has  
19 grown some, Scott County has held its own. In the other counties the  
20 population over the last 30 years has slowly declined because people have a  
21 hard time finding the jobs at a livable wage. In contrast, Noranda pays very  
22 well. It pays better than anyone in that area for the jobs that are performed.



1 Q WHEN YOU SAY NORANDA PAYS WELL; COULD YOU GIVE ME A BALLPARK  
2 IDEA OF THE SCALE?

3 A Yes. An entry-level production worker is going to make over \$15.88 an hour  
4 coming in. And that goes up to a skilled maintenance person who is going to  
5 make around \$19.61 an hour. There are also the benefits including health  
6 insurance and a retirement plan. In addition, variable compensation incentives  
7 come into play. In contrast, the average wage in that part of Missouri these  
8 days is more like between \$8.00 and \$10.00 an hour. A lot of times you don't  
9 get benefits with that. You don't get the other things that come with that so  
10 we get a lot of applications from people hoping they can land a job at Noranda  
11 so they can stay in the area. It's important to them and to the area.

12 Q PLEASE TELL A LITTLE BIT ABOUT HEALTHCARE. IS IT AN IMPORTANT  
13 FACTOR FOR NORANDA EMPLOYEES?

14 A Yes. What the employees have to pay for themselves and their families is  
15 really a bargain these days. (The healthcare benefits are in the contract with  
16 the steelworkers.) As you may know, the health costs have been going up on  
17 an average of about 18 percent a year for the past 3 - 5 years. The workers  
18 have a couple of options including a family plan where they're not paying more  
19 than \$65.00 a month out-of-pocket and they're getting some excellent  
20 coverage.

1 Q CAN YOU PLEASE TELL US A LITTLE ABOUT NORANDA RETIREMENT  
2 BENEFITS?

3 A The retirement benefits include a 401k plan and a defined benefit pension.  
4 These are two examples of the kinds of things that we're providing in the  
5 benefits area. That's one thing other employers need to do; to keep people  
6 with you, you must offer the benefits as well as a livable wage. Noranda  
7 exceeds that and always has. And that is another reason why people like to  
8 keep their jobs at Noranda.

9 Q PLEASE DESCRIBE SOME WORKFORCE CONSIDERATIONS?

10 A Of the 1,120 employees at the beginning of 2004, 9 percent are minority. A lot  
11 of emphasis is placed on training people. We have scholarship programs with  
12 Southeast Missouri State University and Three Rivers Community College.

13 There is a shortage of electricians and mechanics because there are a lot  
14 of people that do not want their kids necessarily to go to a trade school and  
15 pick up a special skill like that, but those kinds of jobs pay well and can be  
16 very rewarding. We are constantly developing training programs to entice  
17 people either to get what they need so they are qualified to work for us. After  
18 they come to work for us we continue to provide regular and frequent training,  
19 to make sure that our employees are the best they can be at their jobs.

1 **Q ANOTHER THING YOU MENTIONED IS THE IDEA OF BEING A GOOD**  
2 **CORPORATE CITIZEN BY BEING INVOLVED IN MANY ASPECTS OF THE**  
3 **COMMUNITY.**

4 **A Yes.**

5 **Q PLEASE DISCUSS FURTHER NORANDA'S ROLE IN THAT AREA.**

6 **A Our United Steelworkers have been the lead donor for many years for the**  
7 **Kenny Rogers Children's Center in Sikeston. The center serves over 300 kids in**  
8 **a ten-county region of Southeast Missouri with therapy services at no out-of-**  
9 **pocket costs to the parents. Noranda and the Steelworkers have a program**  
10 **where they match dollar-for-dollar and give to the Kenny Rogers Center.**  
11 **Together we are by far the largest donors in that whole region.**

12 **Another thing we're very proud of is the United Way Campaign. On an**  
13 **average over the past few years, the employees and the company have donated**  
14 **more than \$30,000 a year to that cause. The goal for the entire United Way is**  
15 **usually in the \$75,000 to \$80,000 range. So Noranda employees are good about**  
16 **giving.**

17 **To facilitate the giving we offer payroll deductions for both of those**  
18 **charities. And then we also have a separate donations committee that gives to**  
19 **civic groups, schools, and not-for-profit type entities in the region. Noranda is**  
20 **known very well for being a giving-type company and their employees are**  
21 **known for that and we're very glad that they are.**

1 Q NOW, ANOTHER THING THAT YOU MENTIONED WAS THAT NORANDA  
2 PAID ABOUT A THIRD OF THE SCHOOL TAXES IN NEW MADRID COUNTY.

3 A Yes, that is correct.

4 Q AS FAR AS YOU KNOW, HOW DO THE SCHOOLS IN THE COUNTY STACK  
5 UP IN THE STATE?

6 A The New Madrid County school system is very highly rated and they have a good  
7 report card from the Missouri Board of Education. They're putting a lot of  
8 emphasis on school performance in the New Madrid County Schools. We  
9 support the entire countywide school system through the tax assessment  
10 process, and that ends up being about one third of their total operating costs.  
11 Also, as you might imagine, you can't go to any school building location in New  
12 Madrid County without finding children whose dad, mom, or uncle and aunt  
13 don't work at Noranda.

14 Q IN THE VARIOUS COUNTIES WHERE NORANDA EMPLOYEES LIVE, HAVE  
15 YOU EVER DONE ANY ESTIMATES FOR NORANDA OR DO YOU HAVE ANY  
16 SENSE OF THE ECONOMIC ACTIVITY AS A RESULT OF NORANDA AND  
17 ITS PAYROLL?

18 A It is hard to define exactly in dollars and cents but I can give you an  
19 approximate breakdown. Let's take the largest community in the area, Cape  
20 Girardeau. We actually have in Cape County about 50 employees there and  
21 when you go south the significance increases. Sikeston, for example, has 220

1 people that live in Sikeston and work at Noranda. New Madrid has 130.  
2 Portageville has 140. Then you go to the west to a community like Dexter.  
3 There are over 60 in the community of Dexter. And then if you really pare it  
4 down, you look at Kennett, Caruthersville, Haiti; all those towns have  
5 anywhere from 30 to 70 employees. East Prairie has 80. Malden has 80.  
6 Malden is 5,000 people. East Prairie has 3,000 people. And then when you  
7 really break it down, look at a little community of 434 on the map called Risco.  
8 There are actually 30 people that live in Risco that work at Noranda. From  
9 Parma, population 995, 40 people work at Noranda. Now, if you take that into  
10 the local grocery stores and into the gas stations, into the local retailers and  
11 you start talking to them, they can tell when Noranda's had a good year and  
12 we've issued out profit sharing because the employees spend that money at the  
13 local level. But there's no doubt that if you were to take 140 people out of  
14 New Madrid, population 3,350; 140 people out of Portageville, population 3401;  
15 if you were to start taking those employees out of those communities, you just  
16 can't replace that. It would take a monumental effort and many, many years  
17 to even come close to replacing those good paying jobs. Noranda is by far the  
18 largest, most productive plant in the region and it just means a lot to  
19 everyone.

1 Q NOW NORANDA ALSO HAS A PROCUREMENT FUNCTION. WHAT ARE  
2 SOME OF THE COMPANIES THAT YOU HAVE IDENTIFIED THAT HAVE  
3 SOME BUSINESS WITH NORANDA AND WHICH YOU'D LIKE TO BRING TO  
4 THE COMMISSION'S ATTENTION?

5 A As examples, consider three area businesses. One is in New Madrid County,  
6 one is in Scott County and then the other is a workshop in Sikeston that serves  
7 the region. Steward Steel is located in Sikeston. They have two divisions: a  
8 structural steel division and a door and frame division. The structural steel  
9 division supplies us with the stubs that go on the anode rods that go into the  
10 pots, where you turn on the electricity to make the molten aluminum. The  
11 Smelter is Steward Steel's largest customer.

12 Q HOW MANY EMPLOYEES DOES STEWART STEEL HAVE?

13 A About 100.

14 Q WHAT IS YOUR SECOND EXAMPLE?

15 A Now let's go to Santie Oil located in New Madrid County. Santie Oil is a large  
16 Amoco wholesale distributor and of course we have 300 pieces of maintenance  
17 equipment that we run in our plant. Santie Oil supplies us with oil for the  
18 mobile equipment and other applications. The mobile equipment includes  
19 front-end loaders, bobcats, you name the piece of mobile equipment and we  
20 have it. But then, that takes a lot of oil, hydraulics in general and also

1 special kinds of lubricants. Noranda is Santie Oil's largest customer. They have  
2 employed over 60 people in Sikeston and in New Madrid County.

3 **Q ARE THERE MORE EXAMPLES?**

4 **A** Yes. There are too many to list individually. The list of suppliers is long when  
5 it comes to Noranda purchasing goods and services. It includes goods ranging  
6 from office supplies to lawn mowers to industrial equipment. The services we  
7 buy are also diverse. All told, we buy lots of parts, supplies, and services from  
8 people in New Madrid, Sikeston down to Caruthersville, and just the whole  
9 region.

10 **Q IS THERE ONE MORE SUPPLIER YOU WOULD LIKE TO TELL US ABOUT?**

11 **A** There is one particular supplier that has a compelling story. The Community  
12 Sheltered Workshop serves the needs of mentally and physically challenged  
13 people in Scott, New Madrid, Stoddard and Mississippi Counties. Mr. Harvey  
14 Cooper, appeared at the public hearing. The workshop employs 140 physically  
15 and mentally impaired people from our region. They go pick them up; they  
16 bring them to work; they help them work; they feed them lunch; they take  
17 them home; they pay them. Noranda is their largest customer because we  
18 contracted with them many years ago to help fill our need and an area need.  
19 These folks make the pallets that we use that go inside the trucks to hold and  
20 brace our value-added aluminum products, which in this case is aluminum rod.  
21 It comes in 5,000-pound coils. And when you're shipping that by truck or by

1 rail, there's a special way that you have to fit that in the truck so it's safe and  
2 so it'll ride. So we buy all our pallets from them. The people at the  
3 Community Sheltered Workshop provide a great product that we need. I would  
4 hate to think what their lives would be like without Noranda.

5 **Q ARE THERE ANY NORANDA EMPLOYEES ON THEIR BOARD?**

6 **A** Yes, and that's one thing that you'll find at Noranda, whether it be the United  
7 Way or the Kenny Rogers Center or the Shelter Workshop Board, we have a lot  
8 of people that serve on boards and help in that way too. This is a regular  
9 practice for Noranda because we measure everything according to our  
10 responsibilities -- to our customers, to our community, which includes being a  
11 good community citizen, to the environment, how well we maintain the  
12 environmental controls, and to our employees who are vital to our success. We  
13 measure these things on a regular basis to make sure that we are being a good  
14 corporate citizen. When you look at Noranda's involvement, there is a long-  
15 standing record of an approach that encourages community participation.

16 **BRIEF HISTORY OF RATE ACTIONS SINCE 1997**

17 **Q WHAT IS THE CHRONOLOGY OF RATE EVENTS?**

18 **A** During 1997 a rate case was processed for the predecessor of Atmos, Associated  
19 Natural Gas Company ("ANG"), Case No. GR-97-272<sup>1</sup>. Generally speaking, in

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<sup>1</sup> The case was styled "In the matter of Associated Natural Gas Company's Tariff Revised Designed to Increase Rates for Gas Service to Customers in the Missouri Service Area of the Company."



George Swogger  
Direct Testimony

1 Noranda's opinion, we sought relief from high rates and sought reasonable terms and  
2 conditions for transportation service. The result was not good for Noranda.

3 Noranda sought rehearing from the Commission which was denied.

4 Next, Noranda appealed to the Cole County circuit court<sup>2</sup>. ANG also appealed  
5 and the two appeals were considered together. The decision of Judge Brown is  
6 attached. To my reading and understanding as a non-lawyer, the decision produced  
7 some optimism that the concerns raised by Noranda would get resolved favorably. The  
8 judge discussed: class cost-of-service /allocation of the rate increase; the LVS<sup>3</sup> customer  
9 charge; the unauthorized usage charge and balancing requirements; ANG's objection to  
10 staff's proposed changes to the transportation tariffs; and the elimination of ANG  
11 providing sales service to transportation customers. I was pleased with the result.

12 Unfortunately the case was then taken to the appellate level. There, the court did  
13 not seem to me to address the real issues, but instead remanded the case to the  
14 Commission. As I understand it, the problem identified by the appellate court was in the  
15 way the order of the Commission's Final Order had been prepared. However, from my  
16 perspective, the favorable decision of Judge Brown on the various rate issues was out  
17 the window. This was the end of the line because the case was not heard by the  
18 Missouri Supreme Court.

19 The bottom line in Noranda's opinion was an unreasonable rate with  
20 unreasonable terms and conditions for balancing.

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<sup>2</sup> The action was Case No. CV198-122CC in the Circuit Court of Cole County, Missouri.

<sup>3</sup> Rate LVS is the Large Volume Service rate of Atmos. It was the basis for charges to Noranda such as the \$12,500 per month customer charge that also carried over to transportation service rate for Noranda.

1 Q WHAT DID YOU DO NEXT?

2 A Having exhausted the legal process and my patience, it seemed that a bypass was the  
3 only path to the service Noranda needed under reasonable rates, terms and conditions.  
4 I retained a consultant to assist in the consideration of the bypass. In the alternative, all  
5 that remained was the possibility of a contract rate with ANG/Atmos.

6 Q AS A BUSINESSMAN, DOES A BYPASS MAKE SENSE?

7 A Yes and No. No because it should be cheaper to use a system that has been around for  
8 many years than to construct a new bypass. The mere existence of the possibility of a  
9 bypass in my thinking is evidence of how severely out of line the rates were.

10 No also because it would seem a shame to construct a new more or less  
11 duplicate facility when the existing facilities had the capability to provide adequate  
12 service if only the rates, terms, and conditions could be set at a reasonable level.

13 But on the other hand, bypass makes perfect sense as a way to obtain relief from  
14 rates, terms and conditions that, taken together, are unpalatable. Also, a bypass would  
15 eliminate the continuing uncertainty of rate cases before this Commission.

16 Q WAS THE CURRENT AGREEMENT BETWEEN NORANDA AND ATMOS THE  
17 CONCLUSION OF THE SEVERAL YEARS OF LITIGATION AND FRUSTRATION?

18 A Yes. But now the contract seems to be called into question by the Staff of the  
19 Commission. It seems the Staff would undercut the contract by imputing revenues that  
20 would supposedly have been provided under the tariff rate. However the tariff rate is  
21 unacceptable and unreasonable for service to Noranda.

22 If there is a deficiency in the Atmos case regarding Noranda revenues, as  
23 alleged by Staff, I am hopeful that it can be resolved. However, it seems to me that the

1 root cause is the lack of an appropriate rate schedule for service to Noranda. Somehow,  
2 the Noranda/Atmos Agreement is being treated as a "Special Contract" with the effect  
3 being that Noranda and Atmos, after good faith negotiations to resolve an untenable rate  
4 and service provisions, now are vulnerable to another attack from Staff and perhaps  
5 other parties. Although I have received explanations of the process from my attorney  
6 and my current consultant, I am deeply concerned with the possibility of another  
7 protracted case. I was hopeful that the Agreement had resolved the problem and I  
8 would not be back before the Commission during the 10 year term of the Agreement

9 **RATE RECOMMENDATION**

10 Q DO YOU HAVE A SUGGESTION FOR THE COMMISSION?

11 A Yes. I suggest that a rate schedule with reasonable terms and conditions and  
12 reasonable rate levels would be a big help.

13 Q WHAT IS A REASONABLE RATE LEVEL?

14 A As Mr. Johnstone will explain, the cost study prepared for Noranda in the last  
15 case identified an average cost of approximately \$0.06 per MCF. Although the  
16 rates under the Agreement are substantially higher, I am prepared to stand by  
17 the Agreement. The ten year Agreement sets rates for the entire term and I  
18 believe those rates, although above cost, should be considered reasonable for  
19 the purposes of this case and for the remaining six years of the Agreement.

20 As explained more fully by Mr. Johnstone, Noranda believes the current  
21 Gas Transportation Agreement between Noranda and Atmos should be approved  
22 as the tariffed rate schedule for the service Atmos provides to Noranda. That

1 would seem to me to bring equity and predictability for Noranda, Atmos, and  
2 the remaining customers as well. Since the charges under the Agreement are  
3 above the cost of service described by Mr. Johnstone, I believe there will be a  
4 continuing benefit to all customers.

5 In my opinion Noranda has paid for the facilities used in service to it  
6 many times over the years. I do not expect to get that back. But for the  
7 foreseeable future I believe the continuation and approval of the Agreement  
8 would at least provide much more equity and minimize the possibility of a  
9 bypass.

10 Q ARE THERE ANY OTHER ALTERNATIVES.

11 A As Mr. Johnstone explains, additional cost studies can be prepared. Based on  
12 the studies a new rate applicable for Noranda could be prepared. To my  
13 thinking there is no doubt that the result of a proper study that reflects only  
14 those facilities used in service to Noranda would be rates lower than those in  
15 the Agreement. Since any new rate, absent termination of the Agreement  
16 would not be available to Noranda I do not see any great value in this approach  
17 for Noranda. I am not seeking termination of the Agreement. Instead, I would  
18 like to take all reasonable steps to ensure that the Agreement is honored.

19 Q DOES THIS COMPLETE YOUR TESTIMONY?

20 A Yes it does.

**Attachment One To The Testimony Of George Swogger**

**Copy of Testimony of**

**New Madrid County Commissioner Mark Baker**

**MPSC Docket No. EA-2005-0180**

Exhibit No.:  
Issue: Noranda Impact  
Witness: Mark Baker  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Noranda  
Case Number: EA-2005-0180  
Date Testimony Prepared: Dec. 21, 2004

AmerenUE

Case No. EA-2005-0180

Prepared Direct Testimony of

**Mark Baker**

On behalf of

Noranda Aluminum, Inc.

December 2004

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Application of Union Electric Company )  
for a Certificate of Public Convenience and ) *EA-2005-0180*  
Necessity authorizing it to construct, install, ) *Case No. CP-2005-\_\_\_\_\_*  
own, operate, control, manage and maintain )  
electric plant to provide electric )  
service in New Madrid, County, Missouri, as an )  
extension of its existing certificated area )

Affidavit of Mark Baker

State of Missouri )  
County of New Madrid ) SS

Mark Baker, of lawful age, on his oath states: that he has reviewed the attached written testimony in question and answer form, all to be presented in the above case, that the interest in the attached written testimony were given by him; that he has knowledge of the matters set forth in such answers; that such matters are true to the best of his knowledge, information and belief.

*Mark Baker*  
\_\_\_\_\_  
Mark Baker

Subscribed and sworn before me this 16th day of December, 2004

*Mary Cynthia Hunter*  
\_\_\_\_\_  
Notary Public

[SEAL]

My Commission expires: 6/3/07

Mary Cynthia Hunter  
Notary Public - Notary Seal  
County of New Madrid  
State of Missouri  
My Commission Expires:  
June 3, 2007

Before the  
Missouri Public Service Commission

AmerenUE  
Case No. EA-2005-0180

**Prepared Direct Testimony of Mark Baker**

1 Q PLEASE STATE YOUR NAME AND YOUR POSITION.

2 A My name is Mark Baker and I am currently the Mayor of New Madrid. This is my  
3 ninth year in office and I will be resigning at the end of the year because I am  
4 the New Madrid County Commissioner elect. On January 1, 2005 or right after I  
5 will be sworn in as a County Commissioner for New Madrid County.

6 Q IN NEW MADRID COUNTY DO THEY HAVE JUST A SINGLE COMMISSIONER OR IS  
7 IT SEVERAL PERSONS ON A BOARD?

8 A There are three commissioners. There is one from the south end of the  
9 County, District 2, and there is one from the north end of the County, District  
10 1, which is what I will be, and then we have a commissioner that is over the  
11 whole County -- that is elected by the whole county. Three all together.



1 Q I AM AN OLD MISSOURIAN. IS THIS WHAT WE USED TO CALL THE COUNTY  
2 COURT?

3 A Yes. County Court, County Judges, yes, those were the names for them.

4 Q MAYOR BAKER, WHAT DO YOU DO FOR A LIVING BESIDES BEING MAYOR?

5 A I am basically a farmer as my main line of work and I have worked part time for  
6 the New Madrid County Health Department. I will be leaving that job as well.

7 Q MAYOR BAKER, YOU ARE OBVIOUSLY FAMILIAR WITH NORANDA ALUMINUM?

8 A Yes, I am.

9 Q WHAT DO YOU THINK ABOUT THE PLANT AND ABOUT HOW THE PEOPLE  
10 THERE OPERATE IT AND SO ON?

11 A I think the plant is vital to not only New Madrid, but to New Madrid County and  
12 southeast Missouri as a whole. I think there's about 1,100 people that work up  
13 there, I am not sure of exactly the number, but there's a lot of them. And I  
14 know some of those people live right here in New Madrid City, New Madrid  
15 County, but also every County in the Boot Heel and I am sure there are a few  
16 out of state as well. Noranda is a vital employer for southeast Missouri.

17 Q HOW WOULD YOU DESCRIBE NORANDA AS A CORPORATE CITIZEN IN THE  
18 LARGER COMMUNITY?

19 A I think Noranda is a good corporate citizen. I know that every cause -- worthy  
20 causes or whatever you might call it -- approaches Noranda about funding or

1           donations. I don't know what the policy is, but I know they fund lots of  
2           activities not only in New Madrid but also Sikeston and other communities in  
3           the Boot Heel.

4   **Q    FROM ALL OF THAT I TAKE IT THAT YOU BELIEVE IT WOULD BE IMPORTANT**  
5           **TO YOU AS A PUBLIC REPRESENTATIVE, A PUBLIC OFFICIAL, THAT NORANDA**  
6           **CONTINUE ITS OPERATIONS THERE IN THE SOUTHEASTERN PART OF THE**  
7           **STATE?**

8   **A    Yes. It is absolutely vital that Noranda be there as an employer in this part of**  
9           the state. I couldn't even begin to imagine the effect that not having Noranda  
10          or losing Noranda would have on the economy for several communities in our  
11          area.

12 **Q    YOU'RE SHORTLY TO BE MOVING FROM BEING A MAYOR TO A LARGER AND**  
13          **BROADER RESPONSIBILITY. DOES THAT GIVE YOU A DIFFERENT PERSPECTIVE**  
14          **ABOUT NORANDA THAN JUST BEING MAYOR OF NEW MADRID?**

15 **A    Well, I would say it does because one of the biggest concerns as a commissioner**  
16          is the budget that we have to operate our County government off of. That is  
17          derived from several sources but mostly sales tax and property tax. I would  
18          hate to think about losing Noranda and the revenue that is generated due to  
19          Noranda being in this area. Especially the County and the County government -  
20          not to mention the payrolls that are taken home by all those employees and  
21          the number of dollars that money represents as far as how many times those

1           dollars turn over in our economy in the Boot Heel.

2   **Q    MAYOR BAKER, IN THIS PROCEEDING AMERENUE HAS FILED AN APPLICATION**  
3   **AT THE PUBLIC SERVICE COMMISSION TO ADD A LITTLE BIT TO THEIR**  
4   **EXISTING SERVICE TERRITORY AND BE ABLE TO PROVIDE SERVICE TO**  
5   **NORANDA. IS IT A FAIR STATEMENT OF YOUR POSITION THAT YOU WOULD**  
6   **FAVOR THIS APPLICATION?**

7   **A**Yes, I would. I am in favor of doing whatever that I can do to help Noranda  
8           make it where it is possible to keep their doors open and keep going and keep  
9           the business going. We just can't afford to have Noranda shut its doors and  
10          leave here. And to me that means whatever it takes to help Noranda, to make  
11          sure that Noranda is able to operate as efficiently as possible. I am in favor of  
12          it.

13   **Q    DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME, MAYOR BAKER?**

14   **A**Yes it does.

**Attachment Two To The Testimony Of George Swogger**

Copy of Testimony of

**Missouri State Representative Lanie Black**

MPSC Docket No. EA-2005-0180

Exhibit No.:  
Issue: Noranda Impact  
Witness: Lanie Black  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Noranda  
Case Number: EA-2005-0180  
Date Testimony Prepared: Dec. 21, 2004

AmerenUE

Case No. EA-2005-0180

Prepared Direct Testimony of

**Lanie Black**

On behalf of

Noranda Aluminum, Inc.

December 2004

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Application of Union Electric Company )  
for a Certificate of Public Convenience and ) *EA-2005-0180*  
Necessity authorizing it to construct, install, ) Case No. ~~GP-2005-~~  
own, operate, control, manage and maintain )  
electric plant to provide electric )  
service in New Madrid, County, Missouri, as an )  
extension of its existing certificated area )

Affidavit of Lanie Black

State of Missouri )  
County of *New Madrid* ) SS

Lanie Black, of lawful age, on his oath states: that he has reviewed the attached written testimony in question and answer form, all to be presented in the above case, that the interest in the attached written testimony were given by him; that he has knowledge of the matters set forth in such answers; that such matters are true to the best of his knowledge, information and belief.

*Lanie Black*  
Lanie Black

Subscribed and sworn before me this 16th day of December, 2004

*Jane Ann Bennett*  
Notary Public



JANE ANN BENNETT  
New Madrid County  
My Commission Expires  
April 27, 2008

[SEAL]

My Commission expires: 4-27-08

Before the  
Missouri Public Service Commission

AmerenUE

Case No. EA-2005-0180

**Prepared Direct Testimony of Lanie Black**

1 Q PLEASE STATE YOUR NAME AND YOUR POSITION.

2 A My name is Lanie Black and I am currently the State Representative for District  
3 161. My district address is 671 N 407<sup>th</sup> Road, Charleston, MO 63834.

4 Q REPRESENTATIVE BLACK, ARE YOU FAMILIAR WITH NORANDA ALUMINUM?

5 A Yes, I am.

6 Q WHAT COMMENTS DO YOU HAVE REGARDING NORANDA AND ITS PURCHASE  
7 OF ELECTRICITY FROM AMERENUE?

8 A My comments regarding Noranda's purchase of electricity relate to primarily  
9 three points.

10 Q WHAT IS YOUR FIRST POINT?

11 A I would like to make a point that is summarized well in a statement shared with  
12 me by one of the owners of Steward Steel in Sikeston, MO. His comment was,

1 "Noranda, in and of itself, is the only industry in the Bootheel that has the  
2 power to influence the entire economy of the Bootheel, either positively or  
3 negatively, depending upon it's profitability." I completely agree with the  
4 comment.

5 **Q WHAT IS YOUR SECOND POINT?**

6 **A** The second thing that I would point out about Noranda relates to the tax base  
7 of New Madrid County. Noranda alone pays 25% of all taxes in New Madrid  
8 County, as well as 33% of the taxes for the New Madrid County Central R1  
9 School District.

10 Yes. It is absolutely vital that Noranda be there as an employer in this  
11 part of the state. I couldn't even begin to imagine the effect that either not  
12 having Noranda or losing Noranda would have on the economy for several  
13 communities in our area.

14 **Q WHAT IS YOUR THIRD POINT?**

15 **A** Noranda needs an economical supply of power to remain as an important part  
16 of the southeast Missouri economy.

17 **Q CAN YOU SUMMARIZE FOR US THE IMPACT OF NORANDA ON THE ECONOMY  
18 OF THE BOOTHEEL OF MISSOURI?**

19 **A** The continued operation of the Noranda Aluminum Smelter is vital to a healthy  
20 economy for the entire Bootheel region of Missouri. The plant employs workers



1 from a 5 state region. Successful passage of Senate Bill 555 was crucial to the  
2 continued existence of Noranda Aluminum in New Madrid County. Yes, I am in  
3 favor of doing whatever I can do to help Noranda make it. I want to make it  
4 possible to keep their doors open and make it possible to keep the business  
5 going. We just can't afford to have Noranda shut its doors and leave here.

6 And to me this means whatever it takes to help Noranda and to ensure  
7 that Noranda is able to operate as efficiently as possible. I am in favor of it.

8 **Q DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME, REPRESENTATIVE**  
9 **BLACK?**

10 **A Yes it does.**

**Attachment Three To The Testimony Of George Swogger**

**Copy of Testimony of**

**Missouri State Representative Terry Swinger**

**MPSC Docket No. EA-2005-0180**

Exhibit No.:  
Issue: Noranda Impact  
Witness: Terry Swinger  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Noranda  
Case Number: EA-2005-0180  
Date Testimony Prepared: Dec. 21, 2004

AmerenUE

Case No. EA-2005-0180

Prepared Direct Testimony of

**Terry Swinger**

On behalf of

Noranda Aluminum, Inc.

December 2004

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Application of Union Electric Company )  
for a Certificate of Public Convenience and )  
Necessity authorizing it to construct, install, )  
own, operate, control, manage and maintain )  
electric plant to provide electric )  
service in New Madrid, County, Missouri, as an )  
extension of its existing certificated area )

EA-2005-0180  
Case No. GP-2005-

Affidavit of Terry Swinger

State of Missouri )  
County of Pemiscot ) ss

Terry Swinger, of lawful age, on his oath states: that he has reviewed the attached written testimony in question and answer form, all to be presented in the above case, that the interest in the attached written testimony were given by him; that he has knowledge of the matters set forth in such answers; that such matters are true to the best of his knowledge, information and belief.

Terry Swinger  
Terry Swinger

Subscribed and sworn before me this 17th day of December, 2004

Janice H. Eaton  
Notary Public

[SEAL]

My Commission expires: 8-23-07

Before the  
Missouri Public Service Commission

AmerenUE

Case No. EA-2005-0180

**Prepared Direct Testimony of Terry Swinger**

1 Q PLEASE STATE YOUR NAME AND YOUR POSITION.

2 A My name is Terry Swinger and I am currently the State Representative for  
3 District 162. My district address is P.O. Box 1137, Caruthersville, MO 63830.

4 Q REPRESENTATIVE SWINGER THANK YOU FOR TAKING THE TIME TO TALK  
5 WITH US. PLEASE TELL US A LITTLE BIT ABOUT YOUR BACKGROUND, WHAT  
6 YOU DO AND YOUR RESPONSIBILITIES AS A STATE REPRESENTATIVE.

7 A I have had the privilege of living in this area all my life. I left to go to college  
8 and that is the only time I was ever away from here. My permanent residence  
9 has always been in Southeast Missouri. I grew up in Stoddard County and I now  
10 live in Pemiscot County. I have optometric practices in Pemiscot County, New  
11 Madrid County where Noranda is actually located and also in Dunklin County.

1 But there are employees in all three of those counties. And ever since Noranda  
2 has been there it has impacted my practice personally with the entire area. My  
3 late wife ran for state representative, both in '86 and '88, unsuccessfully. I ran  
4 in a special election a year ago and got elected to fill an unexpired term and  
5 then I got re-elected this November to fill a full term.

6 **Q WHAT COMMENTS DO YOU HAVE REGARDING NORANDA'S ECONOMIC IMPACT**  
7 **ON YOUR DISTRICT?**

8 **A** Noranda is probably the premier industry in my district and in Southeast  
9 Missouri, and specifically in extreme Southeast Missouri for the folks I  
10 represent. For instance, Portageville is one of the towns where I practice,  
11 which is located very close to Noranda, probably not more than ten miles, and  
12 140 of the residents of Portageville work at Noranda. Also, I live in  
13 Caruthersville, which is another 20 miles south of Portageville and we have 40  
14 people from Noranda that live in Caruthersville.

15 Noranda has 1,100 employees and, of course, some of those employees  
16 live as far north, I think, as Cape Girardeau, Missouri, and there are several  
17 that live in Sikeston, Missouri. So the entire area is significantly impacted. My  
18 understanding is that there is a \$57 million dollar payroll annually from  
19 Noranda. There are a lot of things that are bought locally and it just has an  
20 unbelievable economic impact on us. If Noranda did not exist, this entire area  
21 would suffer an economic blow that I just do not know how we could recover  
22 from.

1 Q WELL, I UNDERSTAND. WE ARE TAKING THIS TESTIMONY TO SUBMIT TO THE  
2 PUBLIC SERVICE COMMISSION, SO THEY WILL HAVE INFORMATION TO  
3 EVALUATE THE PUBLIC INTEREST OF UNION ELECTRIC BEING PERMITTED TO  
4 PROVIDE SERVICE TO NORANDA, WHICH IS SOMETHING THAT NORANDA AND  
5 UNION ELECTRIC HAVE NEGOTIATED. I TAKE IT THAT YOU WOULD  
6 ENCOURAGE THE PUBLIC SERVICE COMMISSION TO APPROVE THAT  
7 APPLICATION?

8 A Absolutely. I had the privilege of being at Noranda when the official ceremony  
9 took place announcing the agreement between Noranda and Union Electric.  
10 And in the legislature, as I told you, I was elected in a special election in  
11 November of '03 and then served in '04. But the legislative session that  
12 occurred between January and May of '03 is when legislation was passed that  
13 had the effect of allowing Noranda to seek and contract for their power on the  
14 open market. Now they have this agreement with Union Electric and it is  
15 specific where they can now project and plan for many years in advance. That  
16 is a good thing. However, if they did not have the agreement and instead had a  
17 fluctuating rate they could not make effective judgments of how to run their  
18 business. So it's extremely important that Noranda be able to finalize this  
19 contract with Union Electric.

1 Q WHEN YOU SPEAK IN REGARD TO NORANDA, ARE YOU SPEAKING BOTH AS A  
2 BUSINESSPERSON IN THAT AREA WHO WOULD BE IMPACTED BY THE  
3 PRESENCE OR THE ABSENCE OF NORANDA, AND ALSO AS AN ELECTED  
4 REPRESENTATIVE TO THE PEOPLE IN THAT AREA?

5 A Absolutely! Both! And then, as I said, it impacts me specifically and the rest of  
6 the business community in general all the way around here. And as an elected  
7 official, if there is anything that I can do, and I know the other officials in this  
8 area are in lock step on this too, we would certainly do it. Anything  
9 legislatively that would help Noranda in any way.

10 Q THANK YOU REPRESENTATIVE SWINGER. DOES THIS CONCLUDE YOUR  
11 TESTIMONY?

12 A Yes it does.



**Attachment Four To The Testimony Of George Swogger**

**Copy of**

**AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT**

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

**Case No. CV198-122C**

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

State of Missouri, )  
ex rel, NORANDA ALUMINUM, INC. )  
 )  
Relator. )  
 )  
vs. ) Case No. CV198-122CC  
 )  
Public Service Commission of )  
the State of Missouri. )  
 )  
Respondent. )

AMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

This cause comes on before the Court on Noranda Aluminum, Inc.'s and Associated Natural Company's Petitions for Writ of Review. By a previous order of this Court the cases were consolidated into one case, the instant cause number being the first filed Application for Writ of Review.

This matter has been briefed and argued to the Court, and taken under submission.

After careful consideration the Court finds, concludes and orders as follows:

1. On January 14, 1997 Associated Natural Gas ("ANG") filed tariff sheets with the Public Service Commission for State of Missouri ("Commission") designed to produce a Missouri jurisdictional annual revenue increase in the amount of \$3,758,936.
2. ANG requested that the proposed tariffs take effect on February 13, 1997.
3. On January 28, 1997, Commission issued an Order suspending the effective date of the proposed tariff to December 13, 1997.
4. Thereafter, Noranda Aluminum Company, Inc., (hereinafter "Noranda") and Westar

Gas Marketing, Inc. (hereinafter "Westar") filed timely applications to intervene which were granted.

5. Thereafter, various parties, including ANG, the Staff of Commission, ("Staff")the Office of Public Counsel ("OPC"), Noranda and Westar filed prepared testimonies and schedules at times established by the Commission.

6. On August 26, 1997, the parties filed a hearing memorandum as directed by the Commission and the parties filed a unanimous stipulation agreement resolving some of the contested issues on September 5, 1997. Therein, the parties agreed to a total revenue increase of \$1.5 million for ANG with \$1.2 million of the increase allocated to Southeast Missouri District in which Noranda's class is located.

7. The Commission held a hearing for the remaining contested issues, including, but not limited to distribution of rate increases among all the customer classes within each district, the customer charge, balancing requirements and unauthorized usage requirements. The hearing was held September 14, 1997 through September 17, 1997. Thereafter, initial and reply briefs were filed by all but one of the parties (Westar).

8. On December 3, 1997 the Commission issued its report and order and made the report and order effective on December 13, 1997.

9. On December 11, 1997 and on December 12, 1997, Noranda and ANG respectively, each filed Motions for Rehearing and/or Reconsideration by the Commission. The Commission denied those motions on December 31, 1997. That order was made effective on the date it was issued.

10. Thereafter both Noranda and ANG timely filed Applications for Writ of Review in this Court, which Court issued the requested Writs of Review.

11. ANG is a registered fictitious name through Arkansas Western Gas Company, an Arkansas corporation duly authorized to do business in Missouri. Arkansas Western Gas Company is a public utility which provides natural gas utility services to customers in Arkansas and Missouri. Its Missouri operation is subject to the jurisdiction of the Commission.

12. The Commission is a state agency established to regulate public utilities operating in the State of Missouri pursuant to Section 386.010 Ed. Sec. RSMo. Its principal office is located at 301 West High Street, Jefferson City, Missouri. A hearing was held pursuant to the orders of the Commission at the Commission's office in Jefferson City, Cole County, Missouri on September 16, 17 and 18, 1997. Venue is accordingly proper in this Court.

13. The Court finds and concludes that the Commission's December 3, 1997 Report and Order is unlawful and unreasonable and in excess of Commission's statutory authority and/or jurisdiction and is unsupported by competent and substantial evidence upon the whole record and thereby as a matter of law is arbitrary, capricious and unreasonable in the following respects:

A. Class cost of service/allocation of rate increase.

The Court finds that the Commission did not make any determination as to the cost of service in determining how to spread the stipulated rate increase of \$1.5 million among the various classes of service. The Court finds that absent the Commission adopting a cost of service study, that the allocation of rate increases is unlawful, in that there is not competent and substantial evidence upon the whole record to justify the manner by which the rate increase is divided among the classes. Thus, the Commission's decision is unlawful, unjust and unreasonable and an abuse of discretion.

The Court notes that the Commission adopted the OPC's proposal for the spread of the rate increase based upon its belief that it would be "poor public policy" to force residential rate payers to

fund more of the revenue requirement than was recommended by the OPC. The Court specifically finds that the Commission is not a public policy setting body but rather must set rates in a fair and reasonable manner balancing the interests of the rate payers and the utility. Inasmuch as there has been an agreement concerning the amount of the rate increase which has been approved, the Commission must balance the interests of the ratepayers, and not determine public policy, but rather must allocate the rate increase among the classes in accordance with the cost of serving those classes. To do otherwise would be discriminatory.

The Court, for the foregoing reasons, orders that the Commission's decision on this cost of service issue and on the allocation of rate increase among the customer classes be reversed.

The Court notes that Noranda has raised several subissues on this primary issue concerning whether or not the Commission should have adopted Noranda's cost of service study. The Court finds that the points made therein are of merit. Accordingly, the Court finds that:

1. The Commission's Order has no factual basis on the record upon which to allocate any distribution costs to Noranda inasmuch as Noranda is not connected to any distribution system but rather is connected to the transmission system. ✓

2. The Commission's order has no factual basis upon which to allocate any regulator meter and installation allocations costs to Noranda's class other than those actually used to serve Noranda for the reason that Noranda is not causing any such cost to be incurred. ✓

3. The Commission's failure to use the peak day allocator of zero to all interruptible customers is error for the reason that the only competent and substantial evidence adduced was that on the historic peak day, which was the actual demand of the coldest day of the recent past, all interruptible customers were curtailed and therefore, their allocation should be zero. ✓

B. LVS Customer Charge. In the Commission's Order the Commission sets, for the LVS class, a monthly customer charge of \$12,500.00 per month. The Court finds that said amount was set by the Commission, without any factual or evidentiary basis whatsoever. The evidence at trial reveal that all parties filed costs of service studies indicating a LVS monthly customer charge ranging as follows:

1. ANG - \$1,788.00 per month
2. Public Counsel - \$200.11 per month to \$2,612.67 per month
3. OPC - \$320.00 per month
4. Noranda - \$506.37 per month (however, if using ANG's method, as adjusted to reflect changes to the main charges costs, the costs would be \$1,440.00 per month.

The Commission justified its order of \$12,500.00 per month customer charge on the basis that it was "reasonable". Further, that retaining the current customer charge will provide a means of protection for ANG to recover revenue from the LVS class and that by retaining the current charge provide long term stability for recovering the costs of capital investments for the system by discouraging short-term shifts to alternative fuel systems. The Court finds that those "justifications" to be, as a matter of law, insufficient. Such justifications are not based upon evidence. It appears from the record that the LVS charge is instead based upon a previously negotiated rate which the parties in that proceeding had agreed could not be used in any other proceeding. Also, there is absolutely no evidence in the record as to the cost of capital investments for the service of the LVS class. The Court, also, finds instructive the fact that no other similarly situated customer of any other gas utility in the State of Missouri pays a monthly customer charge even 1/15 as much as the LVS customer charge in this case. In fact, the LVS customer charge herein is over 1500% higher than

the next highest customer charge for similar service in the State of Missouri. The monthly customer charge is more than 6 times higher than the highest cost of service study filed in this case for customer charges.

Accordingly, the Court finds that this Commission's Order in this regard is discriminatory, unlawful, unjust and unreasonable and in excess of the Commission's authority and is not supported by competent and substantial evidence upon the whole record. The Court will, therefore, reverse the Commission's decision on the LVS monthly customer charge.

C. An unauthorized usage charge and balancing requirements

The Commission, in its Order, implemented a new unauthorized usage charge for the use of gas by interruptible customers when the gas is taken during a period of curtailment, and when a transportation customer takes gas in excess of what that customer had delivered to the citygate receipt point. The Court find that this is a zero tolerance unauthorized usage charge and does not take into consideration meter inaccuracies. The Court also finds it to be unduly vague in that it does not indicate when the charges come into being or when there is an over balance, whether by the second, minute, hour, day, week, month or year.

The Commission justified the adoption of the unauthorized usage charge and balancing requirements by asserting that because such provisions would assist in maintaining the reliability of ANG's distribution system and that the charge would also prevent the transportation customers from paying for interruptible gas but the obtaining benefits of firm service without any appreciable penalties.

The Court finds that such justifications are without support by competent and substantial evidence upon the whole record. Rather, a review of all the testimony by the Staff witness Hubb,

being the sole supporting witness on this matter, reveals it is based solely upon conjecture and supposition. At no time did Hubbs, or any other witness testify or present evidence that the previous procedure in place prior to this Commission's order had caused any impairments to the ANG's system or placed the reliability of ANG's system in jeopardy. Rather, Hubbs based his testimony on what should be prevented, what could possibly occur and something that happened to another utility, although what that something is, is not in the record. The Court finds that such evidence is insufficient as a matter of law to support Commission's decision.

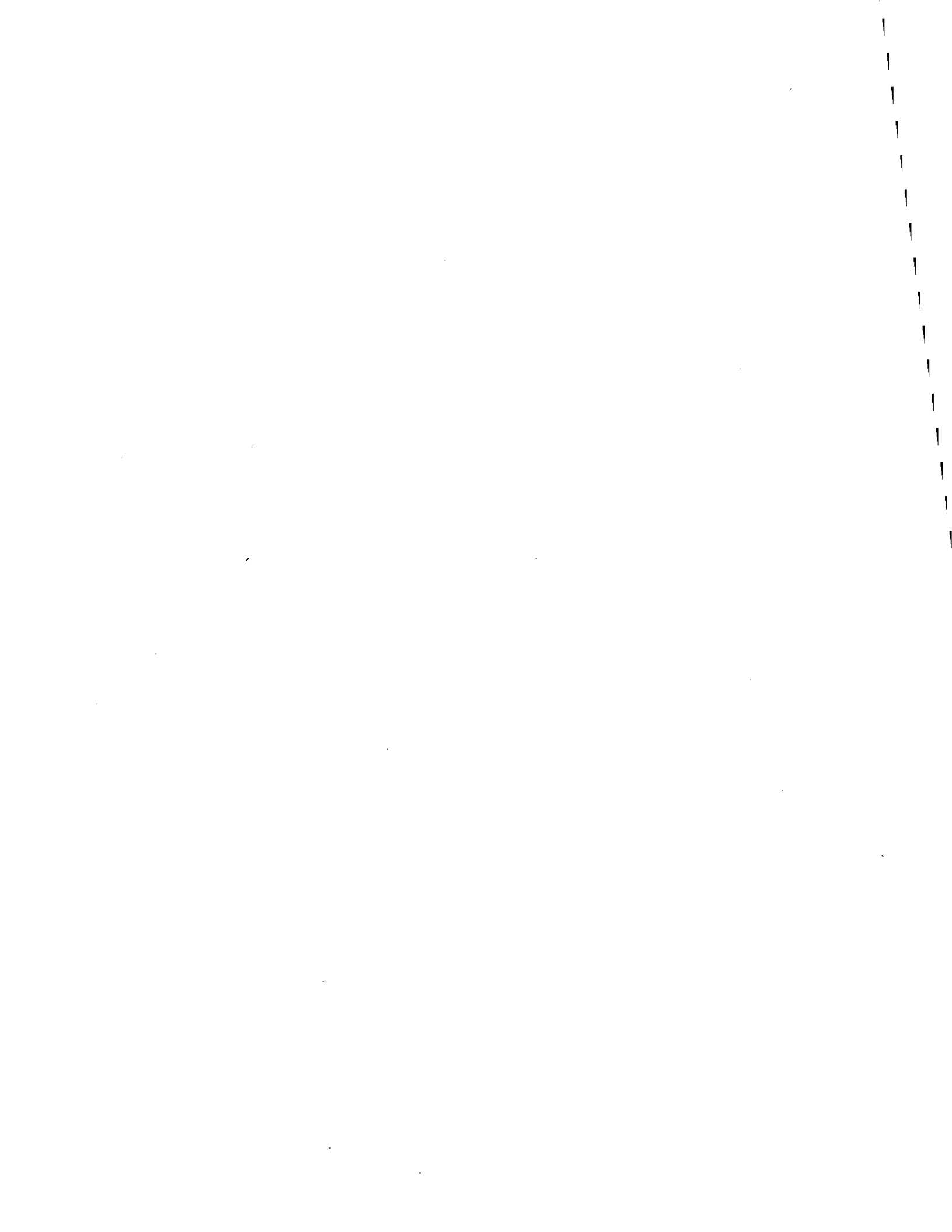
Accordingly, it is hereby ordered that the Commission's Orders on unauthorized usage charges and balancing requirements are reversed.

**D. ANG's Objection to staff's Proposed Changes to Transportation Tariffs**

In this case, the Staff had proposed numerous changes to the transportation tariff including proposed elimination of ANG providing sales service to transportation customers; proposed elimination of ANG providing backup sales to transportation customers; proposed requirement transportation customers have electronic meters with telecommunications capability; change in balancing; unauthorized usage charge to transportation customers; affiliated transaction rules; new transportation contract; and a proposal requiring refunding of monies collected through balancing provisions.

The Court finds that all of these proposed changes were made by the Staff after the time for intervention had expired. ANG objected to the Commission considering the proposed changes on the following basis: Lack of effective notice to affect the customers; Staff was usurping the tariff filing rule of the utility; and, the Staff's proposals to change tariff provisions was essentially complaints that do not follow statutory procedure. Noranda joined in these objections.





The Court finds that the Staff's proposed changes to the transportation tariff will have severe detrimental and financial impacts upon all transportation customers including Noranda. The Court further finds that no transportation customers could have known that there could be these types of changes imposed at the time that notice was provided of this proceeding before the Commission. At that time, all the transportation customers and interruptible customers could have known was that ANG was attempting to obtain a rate increase. This is all that the customers were notified of. The customers were not notified that there could be substantial changes made to the transportation tariff and that those changes could have a substantial financial impact upon their cost of doing business. Accordingly, the Court finds that there was a lack of sufficient notice to the affected customers and that they have suffered thereby. The Court notes the transportation customers have no institutionalized participant in rate case proceedings to look out for their interest, such as residential customers have with the OPC.

The Court also finds that the Staff, by making these proposals is usurping the tariff filing role of the utility that is required by Section 393.140 (11) RSMo. There is no statutory provision which provides that the Staff can file new or suggested tariff provisions with the Commission. The Commission is a creature of the statutes and has no more jurisdiction than that granted to it by the legislature. It cannot act in excess of its authority. The Court notes that with regards to the issue as set out above, ANG had not requested a change in the interruptible or transportation tariffs other than as to rates both as to transmission, and, the gathering and transmission charges. ANG did not request changes to the transportation contract or the tariffs other than as to rates. The Court concludes that only the utility can request changes to the tariff and not the Commission Staff absent a complaint proceeding.

Finally, the Court finds that the Staff's proposals are actually complaints which do not follow statutory procedure for complaints, and that the Staff must prove by clear and satisfactory evidence that the previous determinations of the Commission i.e. previous approval of the tariffs is unreasonable. Accordingly, the Staff must prove by clear and satisfactory evidence that a change is necessary because the status quo is unreasonable. The Commission, in its Order found that a heightened burden of proof does not apply to the Staff's proposals. That was a misdeclaration of law. Accordingly, the Court hereby reverses the Commission's Order wherein it adopts Staff's proposed changes to the transportation tariffs, specifically being the following.

VIII(B): Proposed elimination of ANG providing sales service to transportation customers (pp. 22-23)

VIII(C): Proposed elimination of ANG backup transportation to backup customers (pp. 23-25)

VIII(D) Proposed elimination that all transportation customers have electronic meters with telecommunications equipment capability (pp. 25-26)

VIII(E): Proposed changes in balancing (pp. 26-27)

VIII(F): Proposed unauthorized usage charge for transportation customers, (pp. 28-29)

VIII(I): Proposal to require a refunding of monies collected through balancing provision; (PP. 31-32)

1. VIII(B): Elimination of ANG providing sales service to transportation customers.

The Court upon a thorough review of the evidence, finds that there is no competent or substantial evidence upon the whole record to support the elimination of ANG providing sales service to transportation customers. There is no evidence of any harm; rather there is only evidence that a

witness believed that there is the possibility that ANG could charge non-tariffed rates, assign less capacity costs to transportation customers and avoid local taxes on the service. That witness did not testify as to the basis of his belief of possibility. That is conjecture and is not substantial and competent evidence. It clearly does not constitute clear and convincing proof.

2. **VIII(C): Proposed elimination of ANG providing backup sales to transportation customers.**

Again, the Court has reviewed the record in this matter and finds no competent and substantial evidence upon the whole record to support the elimination of backup sales. Rather, it is once again based upon the suppositions and speculations of a witness that ANG is selling the gas at an inappropriately low rate. There was no evidence of any harm to the gas sales customers of ANG. Rather it appears that this provision is directed to the potential of harm. Again, this is insufficient evidence as a matter of law. It clearly does not constitute clear and convincing proof.

3. **VIII(D): Proposed requirement that transportation customers have EGM meters with telecommunications capability.**

The Commission ordered that ANG provide all transportation customers with EGM meters and ordering a \$25.00 per month charge for such meters. The Court finds that the charge ordered by the Commission is without any factual basis. All parties admitted that they had no idea as to the actual cost of the meters nor the actual cost of reading those meters. Accordingly, the \$25.00 per month charge is not supported by competent and substantial evidence and is, therefore, as a matter of law, is arbitrary, capricious and unreasonable.

4. **VIII(E): Proposed change in balancing.**

The Court has found on this issue that this proposed charge was without competent and

substantial evidence upon the whole record. Therefore the Commission's adoption of this proposal is, as a matter of law arbitrary, capricious and unreasonable and is reversed.

5. VIII(G): Crediting of unauthorized usage penalties owing to some customers of ANG.

The Commission on this issue ordered that any and all unauthorized usage charge collected was not to be retained by ANG, but rather all penalties generated should be refunded to gas sales customers only. The Court finds that this is unduly discriminatory against the customers who may pay the penalties and excludes transportation customers entirely. Only those customers who will not pay any penalties at all will receive any benefit. That is discriminating against the transportation and interruptible customers to the benefit of the gas customers. Providing an adjustment through the ACA of the PGA for gas sales customers only, discriminates against the transportation customers without any evidentiary basis. That is not permitted under the law and cannot stand. Accordingly, the Commission is reversed in this point.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Commissions Report and Order dated December 3, 1997 is hereby REVERSED AND SET ASIDE and the case is remanded to the Commission.

  
Judge