

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Liberty Utilities (Midstates )  
Natural Gas) Corp. d/b/a Liberty Utilities' )  
Tariff Revisions Designed to Implement a ) Case No. GR-2014-0152  
General Rate Increase for Natural Gas )  
Service in the Missouri Service Areas of )  
The Company. )

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**REPLY BRIEF OF NORANDA ALUMINUM, INC.**

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ATTORNEYS FOR NORANDA

**October 31, 2014**

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COMES NOW Noranda Aluminum, Inc., and for its Reply Brief, states as follows:

**I. Introduction**

As indicated in Noranda's Initial Brief, the issue of most importance to Noranda is the rate Liberty is to charge it. This Reply Brief primarily responds to the Initial Brief of Staff, although Noranda will also address the briefs of OPC and Liberty.

None of the briefs challenge the competent and substantial evidence in the record that the cost to serve Noranda is well below the current and future contract rate. Staff and OPC neither challenge nor address that evidence; Liberty cites some of that testimony in support of the Noranda contract rate. Yet Staff refers to Noranda's contract rate as a "discounted" rate.<sup>1</sup> Its basis for making that assertion is not that any cost-of-service study shows that the cost to serve Noranda is above the contract rate. Rather, Staff asserts that because the approved contract rate was not set forth in a particular tariff, and because the contract rate is less than the rate in one of two tariffs that Staff would wrongly apply to Noranda, the contract rate must be a "discounted" rate providing "an undue or unreasonable preference."<sup>2</sup> In making this claim, Staff effectively ignores the clear and undisputed analysis performed by Maurice Brubaker in this case. There

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<sup>1</sup> Staff Initial Brief, p. 29.

<sup>2</sup> *Id.*, p. 27-28, citing section 393.130.3.

was no agreement in the Stipulation from the last rate case, nor indication in the Commission order approving it, that Noranda was to take service under the tariffs that the Staff proposes to apply to Noranda. Therefore, neither the Commission nor any party to that Stipulation (including Staff) intended that either of the two tariffs Staff now cites applies to Noranda. The Staff's position in this regard is truly "astounding."<sup>3</sup>

While it is true that the rate "to be charged" Noranda is for this Commission to determine in this case, utterly no evidence in the record supports an increase in Noranda's rate at all, much less an increase of between 800 and 1,000 percent of what Noranda now pays. Indeed, the only evidence in the record on the fully allocated embedded cost to serve Noranda shows that the cost is well below, **NOT ABOVE**, the current and future contract rate. Thus, that contract rate is not a "discounted rate" nor is it any preference at all, much less an "undue or unreasonable preference."

Because the contract rate for Noranda is above its fully allocated embedded cost of service, neither Liberty nor Noranda should be required to jump through hoops to justify it as a "discounted" rate as the tariffs proposed by some of the parties would require.<sup>4</sup> Rather, the appropriate course is simply to adopt a tariff applicable only to Noranda (such as this Commission did for Ameren Missouri) or to approve the contract rate as a just and reasonable rate, as has been done in the previous rate cases. When a full class cost-of-service study is completed and submitted in the next rate case, the Commission will see once again that Noranda's contract rate is above its fully embedded cost of service when it redetermines all rates.

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<sup>3</sup> Observation by Commissioner Hall, Tr. 398, l. 23.

<sup>4</sup> Those proposed special discount tariffs could be appropriate for other customers who truly would receive a discounted rate, but they are certainly not appropriate for Noranda.

## II. The Noranda Contract Rate is Not a “Discounted Rate”

Cost-based rates are the norm for ratemaking. This Commission recently addressed that point in a matter also involving Noranda in *Noranda Aluminum, Inc. v. Union Electric Company d/b/a Ameren Missouri*.<sup>5</sup> There, this Commission noted the general principle that “those causing the costs should be responsible for paying rates sufficient to recover those costs.”<sup>6</sup> As Noranda demonstrated in its Initial Brief, the only evidence of the cost to serve Noranda was provided by Noranda. That evidence consists primarily of the testimony of Maurice Brubaker, but also includes the testimony of Don Johnstone in the last consolidated rate case. Mr. Brubaker determined that Liberty’s cost to serve Noranda, as an interruptible customer, was \$0.03/Mcf. However, Mr. Brubaker noted that if this Commission were to ignore the interruptible nature of the service Liberty provides to Noranda,<sup>7</sup> and attribute a proportionate share of the transmission system revenue requirement to Noranda, in addition to the full revenue requirement of the tap and Noranda’s share of Administrative and General costs, the cost to serve Noranda would still be only \$0.11/Mcf.<sup>8</sup> These cost calculations primarily relied on Staff’s own accounting schedules for the calculation inputs.<sup>9</sup> Obviously Staff ignored these accounting schedules when arguing for the tariff rate the Staff would now assign to Noranda. The higher of the calculated costs (this would be if Noranda was a firm, rather than interruptible, customer), \$0.11/Mcf, is substantially below the contract rate. As explained below, the record in this case also includes testimony from the last rate case, testimony that allowed this Commission to determine about four years ago that the current contract rate was a just and reasonable rate at that time. Now,

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<sup>5</sup> EC-2014-0224 (August 20, 2014), pages 21-24.

<sup>6</sup> *Id.*, p. 22.

<sup>7</sup> Since Staff makes much of the fact that service to Noranda is seldom interrupted.

<sup>8</sup> Brubaker Rebuttal, Ex. 46, p. 2, ll. 7-26, p. 10, ll. 1-5; Tr. p. 468, l. 10 – p. 470, l. 19.

<sup>9</sup> Brubaker Rebuttal, Ex. 46, p. 8, ll. 7-10; Brubaker workpaper, Ex. 61.

four years later, Staff believes that the just and reasonable rate for Noranda is 800 to 1000 percent of that rate.

Liberty, in its Initial Brief, cited the “competent and substantial” Brubaker testimony to support the Noranda contract rate.<sup>10</sup> The OPC brief is largely silent on this issue.<sup>11</sup> Staff provided no evidence on this factual point at hearing. It provided no evidence that Noranda’s rate should be at least 800 percent of its current rate. It provided no evidence that the contract rate was other than just and reasonable as the Commission found four years ago. What Staff argues in its brief, like its testimony in the case, is that Liberty did not prove to Staff’s satisfaction, with Liberty’s own evidence, that the Noranda rate is a just and reasonable rate.<sup>12</sup> Staff’s Brief fails to even acknowledge, much less address, Brubaker’s current, and Johnstone’s prior, cost-of-service calculations.<sup>13</sup> Those testimonies reached the same conclusion regarding Noranda’s contract rate, namely that it is substantially more than the fully allocated embedded cost to serve Noranda. Simply because these experts’ testimonies refute Staff’s “astounding” position in this case is no ground for practically ignoring those testimonies.

In the Staff testimony asserting Liberty’s lack of support for Noranda’s rate, Staff offered a Liberty DR response to Staff’s request for such support. In that DR response, among other things, Liberty indicated that “[v]arious studies have concluded that the cost to provide interruptible service to Noranda is significantly less than the contracted price.”<sup>14</sup> That DR

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<sup>10</sup> Liberty Initial Brief, page 43.

<sup>11</sup> OPC devotes one paragraph on page 6 of its initial brief to the contract customer issue. Therein, it argues that there should be a tariff for discounted rates, but does not address at all whether Noranda’s rate is in fact discounted.

<sup>12</sup> Staff Initial Brief, pages 32-33.

<sup>13</sup> Indeed, a search for the words “Brubaker” or “Johnstone” in Staff’s 55 page brief shows that those names do not appear.

<sup>14</sup> Cox Surrebuttal, Ex. 23, Schedule KC-2-2.

response referred Staff to the testimony of George Swogger and Don Johnstone in Case No. GR-2006-0387 and Johnstone again in Case No. GR-2010-0192.<sup>15</sup> Staff witness Cox admitted that she read Mr. Swogger's testimony,<sup>16</sup> including his statement that "[a]s Mr. Johnstone will explain, the cost study prepared for Noranda in the last case identified an average cost of approximately \$0.06 per MCF." But Ms. Cox did not bother to read Mr. Johnstone's testimony and his calculation of the cost to serve Noranda.<sup>17</sup> In Mr. Johnstone's Rebuttal he stated that "[t]he large volume rate is unjust and unreasonable for application to the Smelter because it is so extraordinarily above any reasonably determined cost of service provided."<sup>18</sup> Mr. Johnstone calculated a cost to serve Noranda at that time that was substantially less than the then contract rate and well below the new contract rate.<sup>19</sup> Those testimonies were at least part of what this Commission considered in determining that the Noranda contract rate was a just and reasonable rate. And all of this support provided by Liberty to Staff is in addition to the current cost calculation performed by Mr. Brubaker, where he determined that the current cost to serve Noranda is either \$0.03/MCF or \$0.11/MCF, in either case well below the proposed rate in this case.<sup>20</sup> Mr. Brubaker, also gave another data point for reference. He noted that if Noranda had taken firm interstate service over the Texas Eastern Transmission line, the cost would be \$0.14/Mcf, which again is less than the contract price charged Noranda for interruptible service.

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<sup>15</sup> Noranda offered the Johnstone and Swogger testimonies as Exs. 57-59.

<sup>16</sup> Mr. Swogger's Direct testimony in that case is Exhibit 57 and Mr. Johnstone's Direct and Rebuttal testimonies in that case are Exhibits 58 and 59. In Mr. Johnstone's Rebuttal, p. 2, l. 20 – p. 3, l. 1, he states that "The large volume rate is unjust and unreasonable for application to the Smelter because it is so extraordinarily above any reasonably determined cost of service provided."

<sup>17</sup> Tr. 308, ll. 1-6.

<sup>18</sup> Johnstone Rebuttal, Ex. 59, p. 2, l. 20 – p. 3, l. 1, Schedule 1 (cost of service of \$0.075/Mcf).

<sup>19</sup> Tr. 407, l. 13 – 408, l. 2.

<sup>20</sup> Brubaker Rebuttal, Ex. 46, p. 2, ll. 7-26; Tr. p. 468, l. 10 – p. 470, l. 19.

While Ms. Cox admitted reading Mr. Brubaker's testimony, she did not bother to mention it in her prefiled testimonies where she claimed that Liberty provided "no support" for Noranda's rate.

While Staff may claim that Mr. Johnstone's testimony offered in this case, but used also in the prior rate case, is somewhat "stale," the Commission should reject that argument. First, that testimony buttresses Mr. Brubaker's testimony in this case regarding the \$0.11/Mcf rate if Noranda were not an interruptible customer. Second, the tariff that the Staff seeks to assign to Noranda in this case is not supported by evidence in this case. The Staff's Initial Brief, like its pre-filed testimonies, continues to ignore the testimony of Brubaker and Johnstone. They reached the same conclusion regarding Noranda's contract rate, namely that it is substantially more than the fully allocated embedded cost to serve Noranda. Simply because these experts' testimonies refute Staff's "astounding" position in this case is no ground for ignoring those testimonies.

Ms. Cox provided the bulk of Staff's criticism of the Noranda contract, but Mr. Imhoff also briefly addressed this issue and Mr. Brubaker's testimony. While Mr. Imhoff filed three pre-filed testimonies, he only briefly addressed Mr. Brubaker's testimony in his Surrebuttal, on page 2. There, he offered two somewhat vague criticisms that addressed only Mr. Brubaker's calculation of the cost of the tap, which when added to other general costs, yielded a cost of service of \$0.03/Mcf.<sup>21</sup> The particular criticisms were: (1) that the lower of Mr. Brubaker's calculated costs (\$0.03/Mcf) was too low given the volume of gas Liberty provides to Noranda, and; (2) the cost of the tap used to calculate the \$0.03/Mcf cost was stale as it came from Don Johnstone's testimony in the 2005 Atmos rate case. The first criticism is unfounded since the contract rate is many multiples higher than \$0.03/Mcf rate and, in any event, as clearly explained

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<sup>21</sup> Imhoff Surrebuttal, Ex. 30, p. 2, ll. 10-14.



in both Mr. Brubaker's testimonies and in this and Noranda's Initial Brief, Mr. Brubaker also prepared an alternative cost calculation. There, he figured the cost as if Noranda were a firm customer, by also including Noranda's fair share of the cost of the transmission system. That fully allocated imbedded cost of service is the \$0.11/Mcf cost, which is also well below the contract rate. As to Mr. Imhoff's criticism that the tap cost was stale, Mr. Brubaker explained that the figure he used was conservative as it did not reflect years of depreciation that would lower his calculated cost of service.<sup>22</sup> And Mr. Brubaker relied on the Staff's own accounting schedules for his other calculation inputs to determine the cost of service (\$0.11/Mcf) had Noranda been a firm customer.<sup>23</sup>

Mr. Imhoff also testified live at trial. He admitted that Noranda took service directly from the transmission system via the tap<sup>24</sup> and that there is in fact value to having a large interruptible customer like Noranda.<sup>25</sup> Although his testimony at trial was oftentimes unclear,<sup>26</sup> he did state that he would like to have seen a class cost of service study, which neither Staff nor Liberty performed since Atmos did not provide the necessary data to conduct such a study.<sup>27</sup> Here, however, a class cost of service study is not needed to approve Noranda's contract rate as neither Liberty nor Noranda are proposing to shift costs from one class to another. Here, the customer specific cost of service calculation should be sufficient to sustain Noranda's contract rate since that calculation shows that the contract rate is above the cost to serve Noranda.

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<sup>22</sup> Brubaker Rebuttal, Ex. 46, p. 8, ll. 7-10.

<sup>23</sup> Ex. 61.

<sup>24</sup> Tr. 445, ll. 2-6.

<sup>25</sup> Tr. 441, ll. 8-13.

<sup>26</sup> For instance, Mr. Imhoff is unclear in his understanding of whether Liberty uses its distribution and/or transmission system to serve Noranda, Tr. 439, ll. 7-11, but later admits that Noranda does not take distribution service since it takes service directly from the transmission system via a tap, Tr. 445, ll. 2-6.

<sup>27</sup> Tr. 443-444.

The criticisms of Mr. Imhoff should be rejected in favor of Mr. Brubaker's calculation of the cost to serve Noranda. Neither Mr. Imhoff, nor any other witness in this case, offered an alternative calculation of the cost to serve Noranda. Offering no alternative cost calculation, and barely addressing Mr. Brubaker's cost calculation with somewhat vague criticisms, Staff now seeks to foist a tariff rate on Noranda that would cause 800 to 1000 percent rate shock on Noranda merely four years after this Commission determined that Noranda's current (and now proposed) rate was just and reasonable. This Commission should resist Staff's invitation to impose such an unjust, unreasonable, and "astounding" result.

Staff cites<sup>28</sup> *In the Matter of United Cities Gas Company's Tariff Revisions Designed to Increase Rates for Gas Service to the Customers in the Missouri Service Area of the Company*,<sup>29</sup> but that decision actually supports Noranda, not the Staff. There, the Commission disallowed a contract rate, not because it was below a tariff rate but because the utility failed to show that the contract rate was a "full, cost-based transportation rate:"

United Cities has denied that [a special contract rate failed to reimburse for cost of service] but has done so with generalities, not specifics, as to the cost to serve Pet, Inc. and how those costs are apportioned and accounted for within the agreed-upon transportation rate.

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The failure of United Cities in this case was a failure, not necessarily in making the Pet, Inc. contract, but in maintaining its burden of persuading the Commission of the prudence of the Pet, Inc. contract.

The Commission explained that a below cost-of-service rate had to be justified by both showing that without the rate the customer would leave the system, and that the discounted rate had to recover the "appropriate amount of fixed and variable costs." Here, unlike in *United Cities*, the record contains the evidence that the rate is not a below cost-of-service rate, even if that evidence was presented by Noranda, rather than Liberty.

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<sup>28</sup> Staff Initial Brief, page 32.

<sup>29</sup> 4 Mo. P.S.C.3d 121,127-128 (1995).

In the ROE section of its Initial Brief,<sup>30</sup> Staff cites *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*,<sup>31</sup> for the unremarkable proposition that “[u]nder the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling.” Yet the evidence shows that Staff seeks to exalt form over substance in order to reach a clearly unreasonable result for Noranda, namely a rate that would be unjust and unreasonable. Mr. Brubaker clearly explained why it is inappropriate to lump Noranda under the “Large Firm General Service” tariff or the “Interruptible Large Volume Gas Service” tariff as Staff proposes:

**Q: PUTTING ASIDE FOR THE MOMENT THE CONTRACTUAL ISSUES, DOES LIBERTY HAVE A STANDARD TARIFF RATE SUITABLE FOR SERVICE TO NORANDA?**

A No. Liberty does not have a rate that specifically recognizes the fact of a customer taking service directly from Liberty’s transmission system, rather than from the distribution system. The “Large Firm General Service” rate does not recognize this distinction nor does the “Interruptible large Volume Gas Service” rate. They are generally available to customers at all points on the system. And, since no other retail customer is served directly from the transmission system, these two rates necessarily reflect the cost to serve customers from the distribution system. Since Noranda takes service directly from the transmission system and does not utilize any part of the distribution system, these rates obviously are not suitable for pricing service to Noranda.<sup>32</sup>

If Noranda were charged the rate Staff seeks, \$1.44/Mcf now (or higher with a rate increase), the annual charge to Noranda would be \$1.9 million.<sup>33</sup> As Mr. Brubaker explained, the annual revenue requirement of the entire SEMO transmission plant is roughly \$1 million and the annual revenue requirement of the distribution plant is around \$12-13 million.<sup>34</sup> The annual revenue

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<sup>30</sup> Staff Initial Brief, page 2.

<sup>31</sup> 706 S.W.2d 870, 873 (Mo. App. W.D. 1985).

<sup>32</sup> Brubaker Surrebuttal, Ex. 47, p. 2, ll. 5-17.

<sup>33</sup> Tr. 471, ll. 18-22.

<sup>34</sup> Tr. p. 470, l. 20 – p. 471, l. 20.

requirement of the tap from SEMO's transmission system to Noranda is only \$33,000.<sup>35</sup> In short, if Noranda were to pay \$1.9 million per year, that amount would cover the entire annual cost of the tap, and the entire annual cost of the transmission plant, only a part of which Liberty uses to serve Noranda. That would leave almost \$800,000 to contribute to the cost of the distribution plant that Liberty does not use at all to serve Noranda. This demonstrates, much as Don Johnstone said, that "[t]he large volume rate is unjust and unreasonable for application to the Smelter because it is so extraordinarily above any reasonably determined cost of service provided."<sup>36</sup>

### **III. The Commission May Approve a Tariff to Set Noranda's Contract Rate Or It May Do So By Approving the Contract Between Liberty and Noranda**

Mr. Brubaker opined that a tariff for Noranda is not the only way to approve its contract rate. He believes that each separate agreement with a customer "should stand on its own" as:

trying to fit all agreements into an inflexible mold, when in fact service characteristics and other considerations ... are unique to individual customers, constrains the ability of the utility and its customers to enter into arrangements that are mutually beneficial to the contract customer, to the utility, and to the other customers on the utility system.<sup>37</sup>

The most important aspect of this case to Noranda is that the Commission approve the correct rate. However, Noranda does not believe that the Commission is constrained to do so only by tariff. Section 393.140(11) is more flexible on this point than Staff admits. It provides that the Commission shall:

Have power to require every ... electrical corporation ... to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used ... . Unless the commission otherwise

<sup>35</sup> Tr. p. 471, ll. 15-17.

<sup>36</sup> Johnstone Rebuttal, Ex. 59, p. 2, l. 20 – p. 3, l. 1, Schedule 1 (cost of service of \$0.075/Mcf).

<sup>37</sup> Brubaker Rebuttal, Ex. 46, p. 11, ll. 1-11.

**orders**, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation ... . No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances ... .<sup>38</sup>

This statute provides that the Commission shall “have [the] power to require” certain actions, including setting rates in tariffs. Contrary to Staff’s wishful thinking,<sup>39</sup> it does not compel the Commission to do so. To the contrary, the statute expressly addresses “all forms of contract or agreement ... relating to rates, charges or service used or to be used[.]” If a contract approved by the Commission applies to the service provided Noranda, which clearly has been the case for over ten years, then a tariff setting different rates would obviously not be for “such services as specified in its [tariff] schedule[.]” Moreover, the statute expressly allows the Commission to “otherwise order” a rate that differs from the contract or tariff rate. In short, the above statute does not compel this Commission to approve rates only by tariff. But regardless whether this Commission believes that it acted properly in expressly approving a contract rate for Noranda for over ten years, rather than requiring a separate tariff setting forth the contract rate, the rate that it should set in this case is the contract rate because that is a just and reasonable rate for Noranda. The Commission can set that rate by either approving the current contract, as it has done in the past with Staff approval, or by instructing Liberty to file a tariff setting the contract rate that would apply to a class with characteristics similar to those of Noranda.

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<sup>38</sup> Emphasis added.

<sup>39</sup> Staff Initial Brief, pages 24-25.

**IV. Conclusion**

The Commission should approve the Noranda contract rate as a just and reasonable rate. It should approve the contract, as it has done in the past, or it should order Liberty to provide a separate tariff for a class with Noranda's characteristics and set the contract rate in that tariff for that class.

Respectfully submitted,

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**ATTORNEYS FOR NORANDA**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 31st day of October, 2014, to all counsel of record.

/s/ Edward F. Downey