

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

In the Matter of Union Electric Company            )  
d/b/a Ameren Missouri’s Tariffs to Increase        )        Case No. ER-2014-0258  
its Annual Revenues for Electric Service.         )

**INITIAL BRIEF OF MISSOURI RETAILERS ASSOCIATION**

**I. Introduction**

On March 10, 2015, after extensive negotiations, the Office of the Public Counsel (OPC), the Missouri Industrial Energy Consumers (MIEC), the Consumers Council of Missouri and the Missouri Retailers Association (“Signatories”) filed a Nonunanimous Stipulation and Agreement (“Agreement”) to resolve a number of issues related to economic development, class cost of service, revenue allocation and rate design. On March 10, 2015, the Division of Energy filed a statement supporting the Nonunanimous Stipulation and Agreement.

The Signatories represent consumers in all of the major customer classes. The Consumers Council of Missouri represents customers in the Residential class. The Missouri Retailers Association represents customers in the SGS and LGS customer classes. The MIEC represents customers mainly in the LPS and LTS customer classes. And, the OPC represents all customer classes. Objections were filed by the Midwest Energy Consumers Group, Wal-Mart Stores East, LP (& Sam’s East, Inc.), and United for Missouri.

While the Commission Rules require that the Commission cannot approve the Agreement as a Nonunanimous Stipulation and Agreement,<sup>1</sup> the Agreement is a compromise which remains the Joint Position of the Signatories. The Commission may consider the Joint Position of the parties reflected in the Agreement, and may accept it as a just and reasonable resolution of the contested rate design issues in this case.<sup>2</sup>

The Agreement is well within the range of reasonable outcomes supported by the evidence in this case. The Commission should approve the Agreement as representing a reasonable compromise of complex issues among representatives from all customer classes, whose clients will actually bear the cost of any rate increase ordered in this case.

## **II. The Agreement**

The Agreement is the final product of many hours of discussion with respect to the issues addressed therein. MRA believes, and the evidence shows, that Noranda is experiencing a liquidity crisis such that, without some type of rate relief, it is likely to cease operations at its New Madrid Smelter.<sup>3</sup> MRA also believes, and the evidence shows, that closure of the New Madrid smelter would represent a significant detriment to the economy of Southeast Missouri.<sup>4</sup>

The Agreement strikes a balance between granting Noranda some of the relief it had originally requested, while ensuring the protection of Ameren's other ratepayers.

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<sup>1</sup> Commission Rule 4 CSR 240-2.115(2).

<sup>2</sup> Commission Rule 4 CSR 240-2.115(2).

<sup>3</sup> The evidence shows that since 1980, twenty-four smelters in the United States have closed primarily due to high power costs. Tr. 2629:7-23.

<sup>4</sup> See Exhibits 600 & 612.

The Agreement sets an effective base rate of \$34.00/MWh for a new IAS class (above what was originally requested by Noranda, \$32.50/MWh<sup>5</sup>). This is well above the rate at which it becomes better for customers to have Noranda on the system.<sup>6</sup> In addition, the Agreement provides that Noranda will be exposed to a base rate adjustment of 50% of the system average increase during the Term (Noranda had originally proposed a 1 % annual escalator<sup>7</sup>). The average increase over the last five rate cases is 7.476.<sup>8</sup> Assuming this trend continues, this means one could expect an average increase of 3.738 percent for Noranda under the Agreement during each rate case (approximately every eighteen months). Under the Agreement, Noranda would continue to make a positive contribution to Ameren's fixed costs and their presence on Ameren's system as a retail customer is beneficial to Ameren's other ratepayers.<sup>9</sup>

The Agreement provides for a number of consumer protections. The Agreement would require Noranda to maintain certain levels of employment and make certain capital investments. Other states have approved structures for special rates that included similar protections.<sup>10</sup>

The Agreement also prohibits Noranda from declaring special dividends. Moreover, the Agreement provides a structured process by which the Signatories can

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<sup>5</sup> See Exhibit No. 503, 39:8-19.

<sup>6</sup> Tr. 2792:16-25.

<sup>7</sup> See Exhibit Nos. 503, 39:8-19.

<sup>8</sup> Exhibit 9, 20:1.

<sup>9</sup> Tr. 2799:5-10; Tr. 2800:13-22; Tr. 2583:24-2584:9

<sup>10</sup> See Tr. 2610-2612.

work together or come before the Commission to adjust both Noranda's base rate and/or the escalator if circumstances change. These protections (or "conditions") were specifically negotiated to protect ratepayers.<sup>11</sup>

The Agreement also provides some certainty for the Signatories by providing for a ten year term.<sup>12</sup> Both Noranda and the ratepayers benefit with more certainty in the regulatory landscape in Missouri. And while one Commission cannot bind a future Commission, it shows the Signatories' intent to enter into a longer term arrangement to provide more stability for all those involved. It shows that there is support for a longer-term rate if the current conditions continue to persist.<sup>13</sup>

Noranda is unique in the Missouri regulatory landscape. No other customer – electric, natural gas or water – spends as much on regulated utility service as does Noranda. No other Missouri utility provides six percent of the revenues of the regulated utility. Because of the size and shape of its electric load, Noranda's continued presence on Ameren's system is relevant to Ameren's other customers. In addition, the record demonstrates the disproportionate impact that Noranda's business activities have on the economy of its region and the state.<sup>14</sup>

Ameren's other customers, such as those represented by the Missouri Retailers Association, are better served by ensuring that Noranda remains a customer of Ameren

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<sup>11</sup> Tr. 2685:16-18.

<sup>12</sup> In other states, special rates have been granted for similar terms. Tr. 2606:4-11.

<sup>13</sup> See Tr. 2817:5-20.

<sup>14</sup> See Exhibit 606.

for the foreseeable future. These customers are at risk for the loss of Noranda's contribution to Ameren's fixed costs of service. The evidence also demonstrated substantial non-rate considerations establishing the public interest in Noranda's continuing as a customer of Ameren.

### **III. The Agreement is Supported By the Evidence**

The most compelling evidence supporting the conclusion that the Agreement is in the public interest is the broad range of interests that entered into it. The parties include representatives of the spectrum of Ameren customers, from the small residential customers to the largest industrial customers. As the Commission has previously recognized, such a diversity of interests to be able to reach a comprehensive resolution is an important consideration in concluding that an agreement is in the public interest. The Agreement reflects the collective judgment of these parties that their position reflected in the agreement is a just and reasonable resolution for the issues addressed therein in this case under this set of circumstances.

At the hearing, after the Agreement was filed, witnesses took the stand to testify that the Agreement is supported by the evidence and would be a reasonable exercise of the Commission's authority to set reasonable rates. Mr. Boyles confirmed that there is a point (below cost of service) in which it is more beneficial for other ratepayers for Noranda to be on the system as opposed to off the system.<sup>15</sup> This was echoed by Mr.

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<sup>15</sup> Tr. 2604:15-22.

Reed and Ms. Kliethermes.<sup>16</sup> Maurice Brubaker also testified that there is a rate (below cost) at which Ameren Missouri's other ratepayers are better off with Noranda on the system.<sup>17</sup> Mr. Brubaker testified that the rate of \$32.50 was better for other ratepayers than if Noranda shut down, and the benefit for other ratepayers would be even larger at a rate of \$34.00.<sup>18</sup> Mr. Brubaker also testified that it was his expert opinion that the rate contained in the Agreement is just and reasonable.<sup>19</sup> Ms. Mantle testified it was her opinion that the rate and terms in the Agreement are in the public interest.<sup>20</sup>

#### **IV. The Harm to Ratepayers of Moving Noranda to Wholesale Service**<sup>21</sup>

The first harm is that any wholesale service deal between Ameren and Noranda will not contain any of the consumer protections that are present in the Agreement, as described herein.

Second, such a deal would be unjust to ratepayers because although the burdens from any such arrangement would fall on them, they would not be parties to any negotiation of such rate. To the extent Ameren was to offer Noranda a special rate through a wholesale contract, any difference would be "picked up" by Ameren's other

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<sup>16</sup> Tr. 2220:7-12. Ms. Kliethermes testified that the incremental cost to serve Noranda is 31.50, and that any rate above that (index to market or subject to FAC) would be better for Ameren's customers. Tr. 3003:14 – Tr. 3004:5.

<sup>17</sup> Tr. 2654: 13-24.

<sup>18</sup> Tr. 2682:23- 2683:19.

<sup>19</sup> Tr. 2683:24-2684:8.

<sup>20</sup> Tr. 3041:19-24.

<sup>21</sup> Commissioner Hall requested that this specific question be addressed in the parties' briefing. Tr. 3080:23-25.

ratepayers.<sup>22</sup> Any rate as part of a wholesale deal would be negotiated exclusively between Noranda and Ameren,<sup>23</sup> without the participation of any of the other ratepayers or the oversight of the Commission.

However, if Noranda remains a viable retail customer of Ameren, the Commission has the continuing authority and the duty to re-examine any rate structure and to adjust rates if necessary to meet changing future conditions. Despite the ten year “term” of the Agreement, the Commission will have continuing authority to review and adjust rates as future circumstances warrant, with input from all ratepayers. The triggers in the last half of the term in the Agreement allow for the consumers to approach the Commission to adjust the rate or the escalator. With a wholesale arrangement, if conditions change or the relationship between Noranda and Ameren sours, ratepayers could be negatively impacted and have no forum in which to be heard. It is far more prudent for the Commission to adopt the structure as set forth in the Agreement, then monitor conditions in the future to insure that the proper balance has been struck and remains appropriate.

Finally, the loss to the other ratepayers of Noranda’s advocacy on key issues is significant. The Commission should bear in mind while deciding this case the impact of the loss of Noranda on Ameren’s other ratepayers, its community and on the state. While not controlling, it is the type of consideration that the Commission can consider when exercising its discretion in setting rates. *State ex rel. Associated Natural Gas Co. v.*

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<sup>22</sup> Tr. 2797:12-2798:2798:5; Tr. 2826:4-9; Exhibit 753, 2:18-22.

<sup>23</sup> Tr. 2934: 8-12.

*Public Service Commission*, 706 S.W.2d 870, 879 (Mo. App. W.D. 1985). The Commission should not unnecessarily jeopardize Noranda's advocacy on energy issues for all consumers before it and before the General Assembly. Noranda's efforts are major, non-rate benefit for consumer interests.

The Missouri Retailers can think of no way in which the General Assembly could mitigate or eliminate these harms. Only the Commission can address electrical rates in the context of the needs of all Ameren ratepayers.

### **V. Return on Equity**

Missouri Retailers adopt and join in the position of the Office of Public Counsel on this issue.

### **VI. Conclusion**

The evidence in the case establishes that the long-term interest of all Ameren ratepayers is for Noranda to remain a customer of Ameren Missouri, to continue to contribute to Ameren's fixed costs of services, and to continue to represent its own interests and those of all other Ameren consumers before the Commission and the General Assembly. The Missouri Retailers Association respectfully requests that the Commission approve the Joint Position reflected in the Agreement as resulting in a just and reasonable resolution of the issues therein. MRA hopes that the Commission will favorably consider the ability of the Signatories to arrive at this Joint Position as important evidence supporting the justness and reasonableness of the Agreement itself.



Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: /s/ Stephanie S. Bell

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent by email this 31<sup>st</sup> day of March, 2015, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Stephanie S. Bell