

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of Union Electric            )  
Company d/b/a AmerenUE for Authori-        )  
ty to File Tariffs Increasing Rates         )     ER-2008-0318  
for Electric Service Provided to            )  
Customers in the Company's Missouri        )  
Service Area.                                 )

POST-HEARING BRIEF  
OF NORANDA ALUMINUM, INC.

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ATTORNEYS FOR NORANDA ALUMINUM,  
INC.

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I. The "View from the Front" -- An Overview From New Madrid County.

Noranda Aluminum's New Madrid Smelter is a highly important component of the New Madrid and Southeast Missouri economy. At the beginning of this case, it employed roughly 1,100 workers at average pay of \$56,000, making it the premier employer in the region. The Smelter represents roughly 1/3 of the assessed tax value for New Madrid County and, through taxes, makes a major contribution to New Madrid County schools as well as scholarships and other areas of community support. Noranda is well respected in the region as a good corporate citizen. Noranda's contributions to the regional economy are significant. Its loss would be highly detrimental to a region that is historically economically distressed.

These are not ordinary times. The current economic situation causes Noranda great distress. Primary aluminum is a global market in which prices have dropped precipitously over the past several months from roughly \$1.50/lb to \$0.65/lb. The

situation does not appear to be getting better. Since June, the U.S. has lost 4 additional smelters bringing the total to 10. Noranda needs cooperation from all players.

The original filings in this case show that, even at UE's present rates, Noranda is paying more than its costs by roughly 6%. Despite the UE study showing a Noranda revenue-neutral decrease of 6% was appropriate, Noranda supported the Non-Unanimous Stipulation and Agreement. This was a major concession by Noranda to step away from the revenue shifts shown by the UE study. Noranda's support of a rate greater than that in the UE study presents significant challenges but was accepted as part of an effort to work with the Commission and the other parties to achieve resolution of a difficult issue. Unfortunately, although the Non-Unanimous Stipulation and Agreement was supported by all ratepayers, it was not supported by Staff.

We believe UE needs to react more effectively to the rapidly declining economic conditions and recognize that modest rate increases are only part of creating a sustainable business platform. Our purpose is not to place blame, but rather to note rapidly shifting reality. Even since this case was submitted, more US aluminum smelters have announced shutdowns. The incoming administration is speaking of economic "stimulus" packages in excess of a **trillion** dollars and describing our nation's economics as comparable to the depression of the 30's.

Since this rate case has begun, the rate of deterioration of the global economy and the depth of the finan-

cial crisis is unprecedented. Although we understand the difficulty in reacting to the speed of change we would ask that UE act like its ratepaying customers. This includes

- Reducing expectations on return on equity
- Major headcount reductions
- Deferral of growth capital spending
- Addressing employee benefits
- Reevaluating incentive compensation
- Minimizing wage increases
- Aggressively managing its supplier base

As a critical supplier to ratepayers in Missouri and to Noranda, this is certainly not a complete list of steps that could be taken to address the current economic crisis, but these are among the steps that Noranda believes it would see from a company that was facing that crisis.

Working together we must contain the magnitude of this rate case to the smallest possible amount.

## **II. Preliminary Procedural and General Matters.**

This case was initiated by an April 4, 2008 filing from Union Electric, d/b/a AmerenUE (UE or AmerenUE), proposing new tariffs to implement a \$251 million general rate increase for electric service effective May 4, 2008.

In due course following the filing, the Commission suspended the proposed tariffs until March 1, 2009. Numerous parties intervened in the proceeding, including Noranda Aluminum, Inc. (Noranda).

**A. Noranda Is A Large and Unique Customer for AmerenUE.**

Noranda's service from UE is unique. First, Noranda is the only customer on Rate Schedule LTS (Large Transmission Service) and takes power from UE at 345kV.<sup>1/</sup> Second, Noranda operates an aluminum smelter ("Smelter") of three reduction "pot lines" and presents an essentially constant demand of 480mW, and a load factor of roughly 99%. When UE was authorized by the Commission to add the territory that included Noranda, this level of consistency of power consumption was, and remains, unique on the UE system. Noranda is understood to be UE's largest retail electric customer.<sup>2/</sup>

**B. Reliability of Economical Service Is Critical For Noranda.**

Smelting aluminum from alumina makes reliability of power critical to Noranda because its processes cannot tolerate unexpected interruption without jeopardizing the continued operation of the smelter. No less important are the rates charged. They must be such as permit Noranda to maintain a sustainable platform for aluminum production in the Bootheel of Missouri.

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<sup>1/</sup> Vol. 13, p. 229; Vol. 23, p. 2064.

<sup>2/</sup> Vol. 13, p. 229.

**C. Noranda's General Position on the Revenue Issues in This Case.**

Along with many other Missouri industries, Noranda has been severely impacted by the current national economic turmoil. Aluminum prices, set on a world market, have declined precipitously from \$1.49/lb to \$0.65/lb.

On many of the issues in the case, Noranda took no initial position, preferring to review the evidence as it came in and the various positions of the parties as they developed during the hearing. This Post-Hearing Brief will address the issues that Noranda believes are most critical to its sustainability in Missouri. This is not to suggest that other issues are unimportant. Indeed, the comprehensive revenue requirements review as led by Staff and as buttressed by the important work several other parties takes on extraordinary import. Accordingly, although this Brief will attempt to follow the general statements of the issues as contained in the statements of issues, it may not necessarily follow the sequence of these issues in that listing. Some of the issues critical to Noranda have been settled and those settlements approved, or are the subject of settlements that are still before the Commission as a part of the case. We will address these issues *infra*.



### **III. Noranda's Economic Position in Missouri and the Region.**

Noranda is a critical economic component in its community. Noranda offered testimony of several prominent local and statewide leaders to show Noranda's economic significance in that community.

#### **A. Harvey Cooper, Executive Director of the Community Sheltered Workshop.**

Mr. Harvey Cooper is the Director of the Community Sheltered Workshop. This workshop provides employment for 140 mentally challenged persons along with 22 Staff members.<sup>3/</sup> Noranda is the workshop's largest customer, purchasing shipping pallets for its output from the workshop.<sup>4/</sup> Mr. Cooper characterized the impact on the workshop if Noranda were not there in the community as a problem that could result in 30% of the workshop's workers losing their employment. This is important employment for these Missouri citizens with special needs. "We'd cut back just like anyone else would."<sup>5/</sup>

#### **B. County Commissioner Mark Baker's Perspective Supports Noranda.**

Mr. Baker is one of three New Madrid County Commissioners. Mr. Baker testified that Noranda's plant is vital to

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<sup>3/</sup> Ex. 751, p. 1.

<sup>4/</sup> *Id.*, p. 2.

<sup>5/</sup> *Ex.*, p. 3.

New Madrid County and to Missouri. "Noranda is a vital employer for southeast Missouri."<sup>6/</sup>

Mr. Baker characterized Noranda as "a good corporate citizen. . . . I know they fund lots of activities not only in New Madrid but also Sikeston and other communities in the Boot Heel."<sup>7/</sup>

Commissioner Baker added that it was

[A]bsolutely vital that Noranda be there as an employer in this part of the state. I couldn't even begin to imagine the effect that not having Noranda or losing Noranda would have on the economy for several communities in our area.<sup>8/</sup>

He also noted that in 2007 Noranda represented roughly 21% of the assessed value of the County and pays a tax bill of \$3.285 million.<sup>9/</sup>

**C. 161st District Representative Steve Hodges Also Believes Noranda is Critical for His Constituents.**

Representative Steve Hodges has the responsibility of representing the citizens of the 161st District including New Madrid, Scott, Stoddard and Mississippi counties and a small portion of Cape Girardeau County.<sup>10/</sup> Representative Hodges, a

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<sup>6/</sup> Ex. 750, p. 2.

<sup>7/</sup> *Id.*, p. 3.

<sup>8/</sup> *Id.*, p. 3.

<sup>9/</sup> *Id.*, p. 4.

<sup>10/</sup> Ex. 752.

long-time resident, observed that Noranda is "the largest single employer in southeast Missouri." He stressed his local business experience, stating that he couldn't "imagine southeast Missouri without a Noranda Aluminum there."<sup>11/</sup>

Representative Hodges also highlighted what Noranda does for "New Madrid County Schools, New Madrid County Central, an excellent school system. The school district has benefited quite a bit from the tax base that Noranda Aluminum has provided."<sup>12/</sup>

He added that he has "always had great respect for Noranda for that because I think that, that, you know, they've conducted themselves not only are they so large and such a contributor to the economy in southeast Missouri and for our state, but they've always had a great relationship with their employees and also with the communities that they affect."<sup>13/</sup>

Representative Hodges noted Noranda's scholarships and Noranda's support for the local school system and its support for a recent bond issue to support those schools.<sup>14/</sup> He also commented favorably on the quality of the employment, pay and benefits provided by Noranda, indicating his full support for Noranda as a job provider in Southeast Missouri.<sup>15/</sup> Representa-

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<sup>11/</sup> Ex. 752, p. 203.

<sup>12/</sup> Ex. 752, p. 203.

<sup>13/</sup> Ex. 752, p. 203.

<sup>14/</sup> *Id.*, p. 4.

<sup>15/</sup> *Id.*, pp. 5, 6.

tive Hodges completed his statement with a salute to "the people at Noranda Aluminum":

Well, again I just tell you the people at Noranda Aluminum are just good people up and down the line, from Keith Gregston, you know, to some of these people who work maintenance. . . . I have a neighbor right down the road who's been at Noranda 20-something years and, boy I tell you what, he was driving the tractor, you know, for about \$5.00 an hour and now his, his life has improved so much he has benefits and he's had some health issues over the years, but anyway it has provided a terrific quality of life for most of the workers down there and, and some who would never have had the opportunity if Noranda Aluminum wasn't here. So anything I can do to support Noranda Aluminum, I will.<sup>16/</sup>

**D. A Key State Senator, Sen. Robert Mayer, Agrees Regarding the Need for Focus on Economic Development, Jobs and Preserving Noranda's Contribution to the State.**

Senator Robert Mayer also provided supporting testimony for Noranda's economic impact in the Boot Heel including his perspective as a State Senator representing the 36th Senatorial District of Missouri:

Well, in the Bootheel, Noranda with its 1,100 high quality jobs has a major impact on our economy. These Noranda employees are spread out through Southeast Missouri and actually four other states. Each of the counties that I represent have several Noranda employees who reside there in those counties and these employees are some of our top citizens and certainly enjoy a high rate of pay and benefits because of their good employer, Noranda.

Noranda also generates almost 25 percent of the total taxes that are paid in New Madrid

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<sup>16/</sup> Id., p. 6.

County and about one-third of the taxes paid for the New Madrid County Center R1 School District so not only do they provide 1,100 excellent paying jobs but also pay a good deal of taxes there in New Madrid County and for the local school system there in New Madrid. Here in Southeast Missouri, and particularly in the Bootheel, we have had challenges over the years in creating job opportunities for our citizens. Noranda is the crown jewel of our manufacturing community in the Bootheel and it is very important that they continue to operate here in Southeast Missouri and remain profitable for years to come.<sup>17/</sup>

Senator Mayer, representing his constituents, is one of Missouri's leaders on the issues of economic development in Missouri. He provided his perspective:

Well I always have a keen interest in economic development for our region and from time-to-time I get called by economic developers and local and county leaders to assist them in helping some of our area businesses and industries. I know that job creation and economic development play a big part in creating a good quality of life here in the Bootheel of Missouri so any time that I can lend assistance to one of our existing businesses or industries or can play a part in working with the Department of Economic Development and other state agencies to assist our local businesses and employers, I do get involved and want to be involved.<sup>18/</sup>

He added comment on the significance of the manufacturing jobs such as those that Noranda provides:

I believe that our manufacturing jobs are generally better paying jobs with more benefits and they create other jobs that supply

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<sup>17/</sup> Ex. 757, pp. 2-3.

<sup>18/</sup> *Id.*, pp. 3-4.

products and services to the manufacturers. Furthermore, we've seen over the last 20 years it has become more difficult to attract and keep manufacturers in our area, like other areas of the country have experienced. The difficulty is we are now in a worldwide economy, and the competition for these jobs is vicious and oftentimes the playing field is not level. Additionally, with the advancement in technology and more efficient manufacturing processes, there are fewer of these type jobs. With the 1,100 good paying manufacturing jobs you can understand why Noranda is so important to our economy and why we want to keep them here in Southeast Missouri.<sup>19/</sup>

Senator Mayer is very supportive of Noranda as he approaches the responsibilities of his position as a legislative leader made more critical because of the current economic circumstances:

The Bootheel of Missouri has a lot of challenges and certainly job creation has been one that is at the top of the list. To create and maintain job opportunities for the citizens of the Bootheel is an ongoing challenge. When reviewing our manufacturing community, I can again say that Noranda is the crown jewel of our manufacturing community. They provide 1,100 good paying jobs with health benefits, including retirement plans and they pump millions of dollars into the regional economy. It is imperative that Noranda continue to operate here in this area and that they remain profitable for years to come.<sup>20/</sup>

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<sup>19/</sup> *Id.*, p. 4.

<sup>20/</sup> *Id.*, pp. 5-6.

**E. Mr. McPheeters Confirmed Noranda's Circumstances.**

Steve McPheeters, Noranda's Superintendent of Communications, Training and Development, provided testimony for the Commission.<sup>21/</sup> Mr. McPheeters sought to inform the Commission regarding the economic and security impacts that Noranda's Smelter has on the Southeastern Missouri region, the state and nation. He emphasized the need for cooperation to ensure that Noranda has electricity rates that contribute to a globally competitive and sustainable operation in New Madrid.<sup>22/</sup> Mr. McPheeters summarized his testimony as follows:

- The Smelter makes an important economic contribution to the Southeastern region and the State of Missouri.
- The Smelter employs 1,120 people, 98% who reside in the State of Missouri, and is the premier employer in Southeastern Missouri.
- The Smelter has a Missouri payroll of \$65 million,<sup>23/</sup> buys \$185 million of goods and services in Missouri and pays \$9 million of Missouri State taxes for a total economic impact of over \$250 million.
- The contributions of Noranda and its employees to the region go far beyond the direct economic impact to include community involvement, charitable work, charitable contributions, education, and economic development.
- Rewarding work along with above-average wages and benefits are part of what contributes to

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<sup>21/</sup> Ex. 758.

<sup>22/</sup> *Id.*, p. 3.

<sup>23/</sup> This number does not reflect the correction to Mr. McPheeters' prefiled testimony as a result of the 228 position layoffs announced on December 4, 2008. Vol. 23, p. 1955.

far more job applications at Noranda than there are jobs to be filled.

- To ensure a supply of workers with needed skills, the Smelter established full scholarship programs with educational institutions.
- Continuing education is important and the Smelter works to ensure that it is available and utilized to maintain its skilled workforce.
- Primary aluminum is a highly functional metal due to its metallurgical properties and environmentally friendly attributes such as its light weight and its recyclability.
- Primary aluminum is a global commodity; its price is set on the London Metal Exchange.
- United States Smelters have closed due in large part to high energy costs. Of 33 Smelters that existed 30 years ago, 14 survive today.
- A bedrock objective of the Smelter is to achieve a sustainable operation and Noranda is working very hard in every aspect of its business to achieve this objective. Its strategic location is a plus.
- A reliable, economical, and stable electrical supply from AmerenUE is critical to the continued success of the Smelter.

Southeast Missouri is one of the most economically challenged regions in Missouri.<sup>24/</sup> As a manufacturer, Noranda estimates that it supports at least another 2,500 jobs in Missouri outside its direct employees.<sup>25/</sup> This creates a major impact on Missouri's economy in the range of \$250 million.<sup>26/</sup>

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<sup>24/</sup> *Id.*, pp. 5, 7.

<sup>25/</sup> Ex. 758, p. 6.

<sup>26/</sup> Ex. 758, p. 6.



Noranda's pay scale is above average for Missouri and the nation, starting at \$18.63 per hour for entry level employees. An average full-time employee at Noranda is making \$56,000 annually.<sup>27/</sup>

Mr. McPheeters described Noranda's numerous examples of corporate citizenship and its participation in many of the charitable activities in the area of the Smelter including the United Way Campaign and the YMCA to note but two.<sup>28/</sup> Noranda pays roughly 1/3 of the school taxes in New Madrid County, permitting that district to be one of the better-funded districts in Missouri.<sup>29/</sup>

Perhaps more pointedly, Mr. McPheeters described the market challenges that Noranda faces. Aluminum is priced on the London [England] Metal Exchange.<sup>30/</sup> The number of US aluminum smelters has now declined to only 10.<sup>31/</sup> primarily due to the increasing costs of electrical power, that being roughly 1/3 of the production cost of molten aluminum.<sup>32/</sup> New smelters are being built in regions of the world where there is low cost or subsi-

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<sup>27/</sup> Ex. 758, p. 8.

<sup>28/</sup> Ex. 758, p. 10.

<sup>29/</sup> Ex. 758, pp. 11-12.

<sup>30/</sup> Ex. 758, p. 16.

<sup>31/</sup> At the time of the hearing, Noranda counsel indicated that the number was 14. Subsequent to the hearing, four US smelters have announced closings or terminal layoffs, bringing the survivors to 10.

<sup>32/</sup> Ex. 758, p. 16.

dized electricity including Canada, Russia, the Middle East and Iceland.<sup>33/</sup> Noranda is dedicated to a sustainable platform in New Madrid, but the key variable is energy costs.<sup>34/</sup> As a result, Noranda is critically interested in paying no more than the costs it causes UE and is concerned that UE has strong incentives in place to control its costs.

**F. During the Months After the Case Was Filed, Economic Circumstances Have Further Deteriorated.**

In Noranda counsel's opening statement, he noted for the Commission that less than two decades ago there had been 34 aluminum smelters in the United States. At the time of that statement, there were only 14.

The situation has continued to change. Subsequent to the hearing, and at the time this brief is prepared, four additional smelters have announced shutdown or terminal layoffs,<sup>35/</sup> so the current count is now 10, of which only one, Noranda, is in Missouri. These are indeed difficult times and certainly call for all stakeholders to cooperate and contribute.

Noranda faces challenges in achieving its business objective of creating a sustainable platform for its operations in Missouri. Part of that concern is necessarily the cost of

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<sup>33/</sup> Ex. 758, pp. 18-19.

<sup>34/</sup> Ex. 758, pp. 20-21.

<sup>35/</sup> ALCOA, one of the surviving 14, during the first week of January 2009 announced a workforce reduction of 10%, or roughly 13,000 employees.

electricity which constitutes 1/3 of Noranda's operating expenses.<sup>36/</sup> The present economic situation makes this even more critical.<sup>37/</sup> At the time this case was filed, Noranda had roughly 1,120 employees. During the closing days of the hearing, Mr. McPheeters took the stand to correct his testimony regarding that day's announcement from Noranda to reduce its employee compliment at the New Madrid Smelter by a total of 228.<sup>38/</sup> This is a very unpleasant task for Noranda and cuts deep into its corporate conscience. Many of these employees have long been part of the Noranda family and their departure is made no less painful for Noranda by the necessity to take these steps.<sup>39/</sup> These steps will clearly have an impact on the local and regional

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<sup>36/</sup> Vol. 23, p. 1949.

<sup>37/</sup> Vol. 23, p. 1950-51.

<sup>38/</sup> Vol. 23, p. 1955:

19           A.           Typically the 1,100 employee mark is where  
20 we've been for the last several years, but effective  
21 today, that change will have to be reduced by another 228  
22 fewer persons by the end of first quarter 2009. Through  
23 today I believe that number is 187 that have been reduced  
24 so far, in response to the changing market conditions.

<sup>39/</sup> Ex. 758, p. 5.

economy.<sup>40/</sup> because these jobs are the best paying jobs in the area of Southeast Missouri.<sup>41/</sup>

Regardless, Noranda intends to maintain its operations in Missouri. Doing so will take more than Noranda's efforts alone; it will take cooperation from all players.

**IV. The Non-Unanimous Stipulation and Agreement on Cost of Service Should Be Approved.**

**A. UE's Class Cost of Service Study Shows Noranda is Already Paying More Than Its Share.**

In its initial filings, UE provided a class cost of service study (CCOSS) that demonstrated that at the present rates, Noranda was being charged roughly 6% more than its cost of service. This result was later corroborated by an independent filing from Mr. Brubaker and Mr. Stowe on behalf of the MIEC intervention group.

Mr. Johnstone was engaged to support Noranda's concerns about cost of service as the appropriate basis for Noranda's rates under the LTS rate schedule.<sup>42/</sup> Of the several studies

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<sup>40/</sup> Vol 23, p. 1962:

4 A. Well, the hourly workers represented by  
5 United Steel Workers, they have a range that starts  
6 somewhere in the \$19 an hour range for that worker. On  
7 the salaried side, of course, it depends on the expertise  
8 and experience and things like that, but salary and  
9 benefits even at a \$50,000 average per year has a major  
10 impact when you have to reduce that work force along with  
11 the hourly work force.

<sup>41/</sup> Vol. 23, 1962; Ex. 758, p. 5.

<sup>42/</sup> Ex. 754, p. 1; Ex. 755, p. 1.

submitted by MIEC, all showed a cost of service for Noranda lower than the UE study. By these studies a reduction of at least 16% is appropriate for Noranda. The study most favorable to Noranda supports a 28% reduction from current rates.<sup>43/</sup>

**B. UE's Increase Proposal Was Inconsistent With Its Own Cost of Service Study Results.**

Exacerbating Noranda's concerns, although UE's study only supported a 5.8% increase for Noranda (which would be roughly half of the 12.1% overall increase sought by the utility), UE did not recommend a corresponding rate adjustment. Instead, UE recommended that any increase be spread on an equal percentage basis that would increase Noranda's rate well above its cost of service, essentially more than double the level of increase called for even assuming that the entire proposed increase was justified.<sup>44/</sup>

At a more significant level, the differences in cost for Noranda are due to several factors including, without limitation: Its extraordinarily high load factor, roughly 98-99%, the 345kV voltage level at which Noranda takes power,<sup>45/</sup> and Noranda's non-use of UE's distribution system.<sup>46/</sup> These cost differences clearly exist and can be quantified.

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<sup>43/</sup> Ex. 607.

<sup>44/</sup> Ex. 754, pp. 4, 5, 6.

<sup>45/</sup> Vol. 23, p. 2064; Vol. 13, p. 229.

<sup>46/</sup> *Id.*

**C. The Compromise -- The Terms of the Contested Class Cost of Service Settlement.**

After considerable work on the part of all participants, a compromise was reached that provided three "tiers" or "bands" to address the handling of any increase awarded. The initial tier, up to \$80 million of additional revenue, would be spread on an equal percentage basis. The second tier, applicable to any increment between \$80 and \$150 million, would be spread in a manner that resulted in a small increase over equal percentage to several classes and small reductions to the LTS and commercial classes. The third tier, any increment of increase above \$150 million would be again spread on an equal percentage basis.

All ratepayer parties either joined in supporting this compromise or indicated non-opposition. Only Commission Staff, whose sole witness Mr. Watkins, chose to oppose the package.

**D. The Class Cost of Service Settlement Was Supported by Competent and Substantial Evidence from All Customer Groups and Representatives.**

As a result of Staff's announced opposition, a hearing on the issues was necessary and, as stated by the Regulatory Law Judge, under the *Fischer* case, the settlement needs the support of competent and substantial evidence for its approval.

The class cost of service and rate design compromise took form as the settlement stipulation now on file. This stipulation more than received the necessary support. One by one the acknowledged experts who participated in its development indicated that they believed the compromise to be reasonable and

that it would produce just and reasonable rates. Mr. Brubaker for MIEC supported the settlement.<sup>47/</sup> Mr. Johnstone testified that the "settlement represents a reasonable resolution of the issues, will result in just and reasonable rates."<sup>48/</sup> Mr. Baudino, for the intervening Commercial Group, supported the settlement.<sup>49/</sup> Indeed, the Commercial Group's support took into account the possible impact on residential customers of the utility given that they also have concerns about their clients' customers.<sup>50/</sup> Mr. Baudino also noted that all the numbers in the settlement could be supported.<sup>51/</sup>

Public Counsel witnesses Meisenheimer<sup>52/</sup> and Kind<sup>53/</sup> also supported the settlement and testified in support of it.

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<sup>47/</sup> Vol. 23, pp. 1915-16, 1929, 1936.

<sup>48/</sup> Vol. 23, pp. 1952-53.

<sup>49/</sup> "I think it's very much a reasonable compromise, results in just and reasonable rates the Commission can rely on."

Vol. 23, p. 1965.

<sup>50/</sup> Vol. 23, p. 1967.

<sup>51/</sup> Vol. 23, p. 1968.

<sup>52/</sup> Vol. 23, p. 1974.

<sup>53/</sup> Vol. 23, p. 1976, 1979.

**E. Only Staff Witness Watkins Testified in Opposition to the Settlement.**

Witness Watkins alone opposed the settlement. While we do not doubt Mr. Watkins' good intentions, Mr. Watkins opposition to the settlement stipulation is misplaced and founded on incorrect reasoning that elevates form above substance. As will be explained below, it does not rise to level of advice that should be provided to the Commission. First, Mr. Watkins complained that the settlement fouled up a rate design scheme that he asserted Staff and Company had "worked on for many years."<sup>54/</sup> Mr. Watkins appeared, however, to be most concerned with direction rather than amount.<sup>55/</sup> He acknowledged that Staff's tolerance level was set at 5%.<sup>56/</sup> and then admitted that all the shifts contained in the settlement were well within that boundary.<sup>57/</sup> Indeed, he even agreed that the shifts in agreed in the

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<sup>54/</sup> Vol. 23, p. 2000, 2053-54:

2 Q. I hope I got this quote down right. That  
3 this change, quote, fouls up rate design that I've worked  
4 years and years to put together, close quote; is that  
5 right?  
6 A. I'm not sure that I used the pronoun I. It  
7 seems more reasonable I would have said we, but yes.  
8 Q. Who would we be that had worked years and  
9 years?  
10 A. Be primarily the Staff and company, with  
11 participation of other parties in rate cases.  
12 Q. You understand company isn't opposing this?  
13 A. The company isn't?  
14 Q. Opposing --  
15 A. Yeah.  
16 Q. -- is that correct?  
17 A. That's my understanding, yes.

<sup>55/</sup> Vol. 23, p. 2015.

<sup>56/</sup> Vol. 23, p. 2023-24.

<sup>57/</sup> Vol. 23, p. 2024.



settlement for Residential, Small General Service, Large General Service and SPS categories were consistent with Staff's study.<sup>58/</sup>

Mr. Watkins asserted that there was "no valid evidence" to support changes other than zero, but then backed away from this position as regards his own study.<sup>59/</sup> He asserted that his objectives could have been achieved, but he presented no proposal to do so.<sup>60/</sup>

One by one, Mr. Watkins acknowledged that the other experts were reputable and experienced in the field. Mr. Watkins, although unable to define which customers Public Counsel works to defend,<sup>61/</sup> disclaimed personal animosity toward either Mr. Kind or Ms. Meisenheimer,<sup>62/</sup> and agreed that he was not in a better position than Public Counsel to represent these customer classes.<sup>63/</sup> He acknowledged no personal animosity for Mr. Brubaker of MIEC<sup>64/</sup> and that MIEC did a competent job of representing their customers.<sup>65/</sup> He recognized no personal animosity toward Mr. Johnstone and admitted that he was not in a better

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<sup>58/</sup> Vol. 23, p. 1995-96.

<sup>59/</sup> Vol. 23, p. 1996.

<sup>60/</sup> Vol. 23, p. 2000.

<sup>61/</sup> Vol. 23, p. 2003.

<sup>62/</sup> Vol. 23, p. 2003.

<sup>63/</sup> Vol. 23, p. 2004.

<sup>64/</sup> Vol. 23, p. 2006.

<sup>65/</sup> Vol. 23, p. 2006.

position to represent the interests of Noranda.<sup>66/</sup> He dis-claimed any personal animosity toward Mr. Baudino of the Commercial Group,<sup>67/</sup> but stated that he did not know if they did a competent job of representation.<sup>68/</sup>

Mr. Watkins continued to cling to the settlement in the prior rate case (ER-2006-0002) as though it was a settlement "for all time" and that would be binding in this case. He seemed not to appreciate the meaning of the exculpatory clause in that earlier settlement limiting its scope to the case and issues that were then before the Commission.<sup>69/</sup> Finally, Mr. Watkins acknowledged he was claiming to represent "Staff" and as such, "Staff doesn't have any customer clients."<sup>70/</sup> Without the accountability of a constituency, Mr. Watkins appeared to be an academic who was more concerned about technical results than with real impacts on real people.<sup>71/</sup>

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<sup>66/</sup> Vol. 23, p. 2997.

<sup>67/</sup> Vol. 23, p. 2004.

<sup>68/</sup> Vol. 23, p. 2005.

<sup>69/</sup> Vol. 23, p. 2009-10

<sup>70/</sup> Vol. 23, p. 2012.

<sup>71/</sup> Vol. 23, p. 2045:

9 Q. Right. And so it's your opinion that the  
10 \$2 million shift in favor of Noranda is still against  
11 public policy even though it might be -- it might keep 40  
12 people employed at an average wage and salary of \$50,000 a  
13 year in a county where the average household makes less  
14 than 20? That's your position?  
15 A. No, sir. My position is the results of our  
16 study do not indicate that that's appropriate. However,  
17 from a public policy standpoint, the Staff has no position  
18 on that.

However, it appeared that the issue of Noranda has been a troublesome point for Mr. Watkins before. He testified that even an amount as small as \$10,000 as a shift would have been opposed "if it was to reduce LTS rates".<sup>72/</sup> at the same time acknowledging that his own study showed that the Commercial Group of customers was being overcharged, but he proposed to simply perpetuate that overcharge,<sup>73/</sup> and even while opining that the studies were not accurate enough to "pinpoint exactly how much a particular class costs to serve."<sup>74/</sup>

Though acknowledging that the other experts had considerable experience and that there were limits to the accuracy of the studies presented,<sup>75/</sup> Mr. Watkins maintained that his study alone was valid.<sup>76/</sup>

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<sup>72/</sup> Vol. 23, p. 2016.

<sup>73/</sup> Vol. 23, p. 2022.

<sup>74/</sup> Vol. 23, p. 2023:

14           A.       Because the -- the studies just aren't  
15 accurate enough to pinpoint exactly how much a particular  
16 class costs to serve.

<sup>75/</sup> Vol. 23, p. 2041:

13           Q.       Uh-huh. Well, Mr. Watkins, I guess what I  
14 hear you saying is that there is, to quote Commissioner  
15 Jarrett, some degree of subjectivity in this analysis; is  
16 that fair?

17           A.       Absolutely.

<sup>76/</sup> Vol. 23, p. 2025:

10           Q.       Let me just stop you. I understand that.  
11 I'm not asking you why one is more valid or nonvalid. I'm  
12 merely asking, which ones do you consider to be valid  
13 studies, just Staff's and OPC's or all of them?

14           A.       Mostly just Staff's. The OPC's is probably

(continued...)

15 Q. So -- but you're claiming that the only  
16 one, even though the other studies track Staff's, the only  
17 one that's valid is Staff's? Here, let me -- let me kind  
18 of get what I'm trying to get at. It seems to me that  
19 you're **advocating a religious adherence or a dogmatic**  
20 **adherence to Staff's cost of study and that any other --**  
21 **any other study that we have in front of us we shouldn't**  
22 **even -- we shouldn't consider.** That appears to be -- am I  
23 interpreting that correctly?  
24 A. I don't know about dogmatic, but I  
25 certainly support the Staff's study.

Vol. 23, p. 2027 (Emphasis added). Staff's study is "the only one I have full confidence in."<sup>77/</sup> At the same time, under questioning from Commissioner Gunn, Mr. Watkins conceded that the Staff's "method" was only a theory.<sup>78/</sup>

Mr. Watkins' display of apparent animus against rate LTS appears to go back to the original certificate case where the Commission rejected his opposition to the LTS tariff UE proposed for service to Noranda.<sup>79/</sup> He also recalled that he opposed the elimination of the Annual Contribution Factor (ACF) in the 2007

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<sup>76/</sup> (...continued)  
15 not too bad, but the others are.  
16 Q. Are bad?  
17 A. Are bad.

<sup>77/</sup> Vol. 23, p. 2027.

<sup>78/</sup> Vol. 23, p. 2040:

15 Q. And is that methodology that you employ,  
16 was that, you know, developed through rate cases or is it  
17 just, you know, based on your study and what you think is  
18 right? How do you -- how do you get there?  
19 A. The cost of service study itself has --  
20 let's call it the software, has been developed over a  
21 period of many years, also the theory that goes into it,  
22 the same kind of thing.  
23 Q. But a theory is just that, it's a theory,  
24 correct?  
25 A. Right. Right.

<sup>79/</sup> Vol. 23, 2055.

rate case.<sup>80/</sup> Although he cannot recall that the issue was decided against him,<sup>81/</sup> he did recognize that the ACF had disappeared and that could have only occurred if the Commission had approved it.<sup>82/</sup>

In summary, the only opposition to the stipulation, that of the "Staff" personified by the testimony of Mr. Watkins, does not rise to the level of unbiased advice the Commission should expect from its Staff. It is not even based on a complete

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<sup>80/</sup> The Annual Contribution Factor was a part of the original rate LTS pending a cost of service review that was first provided in the 2007 rate case.

<sup>81/</sup> Vol. 23, p. 2058.

<sup>82/</sup> Vol. 23, p. 2059, 2060:

2 Q. And when the Commission approved that  
3 settlement, the result of that settlement at the revenue  
4 level that was approved resulted in elimination of the  
5 ACF, did it not?  
6 A. That's not my recollection.  
7 Q. Yes, no, or you don't know?  
8 A. Would you repeat the question, please?  
9 Q. When the Commission approved the settlement  
10 that was proposed in that case, the result of that  
11 approval at the revenue level that was approved eliminated  
12 the ACF from Noranda's rate, did it not?  
13 A. I don't know.  
14 Q. Is there an annual contribution factor in  
15 the rate today?  
16 A. No, there is not. It was eliminated in the  
17 last rate case.  
. . . .  
4 Q. And even though you don't recall or won't  
5 acknowledge the result of the stipulation which you  
6 indicated you understood was a settled case, and which I  
7 think I showed you before that your counsel signed, you do  
8 acknowledge that the ACF is gone?  
9 A. Yes.  
10 Q. And it could only be removed, am I correct,  
11 Mr. Watkins, if the Commission so ordered?  
12 A. That's correct.

review of the relevant testimony as brought out by questions from Chair Davis.<sup>83/</sup>

**F. Challenged Vegetation Management Costs Are Not Allocable to Noranda.**

Another examples of cost differentials for Noranda versus other customers is provided by the controversial issue surrounding vegetation management costs. The controversy reveals a side of an issue that is separate from the major area of controversy. UE witnesses testified that the vegetation management program is intended to preserve the integrity of the distribution system.<sup>84/</sup> According to UE's witness Zdellar, UE has 32,000 miles of distribution system to maintain but only 2,900 miles of transmission lines.<sup>85/</sup> The monetary split was stated

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<sup>83/</sup> Vol. 23, pp. 2036-37. In amplification of an earlier point, Mr. Watkins seems to think that its "business as usual" for the Staff:

13 Q. And it's your position that you just want  
14 to spread that pain out equally, is that --

15 A. No. It's my position that based on the  
16 results of the study, really, **nothing has to be done**  
17 **urgently at this time.**

18 Q. Okay. Nothing -- I mean, there's a  
19 difference between saying that nothing has to be done and  
20 saying what ought or should be done, is it not?

21 A. Yes.

*Id.* (Emphasis added). Of course, that is one of the benefits of being the sole person imbued with the knowledge of the truth.

10 Q. Do you know what the truth is, sir?  
11 A. **I believe so.**

Vol. 23, p. 2061.

<sup>84/</sup> Vol. 18, p. 1247, l. 4.

<sup>85/</sup> Vol. 20, p. 1605.

to be roughly \$4 million on transmission; \$52 million on distribution.<sup>86/</sup>

Because Noranda does not make use of UE's distribution system, costs that are allocated to the distribution system such as distribution vegetation management should not find their way onto Noranda's bill.<sup>87/</sup>

**V. Fuel Adjustment - Should AmerenUE Be Permitted to Have a Fuel Adjustment Charge?**

**A. Noranda's Position Has Changed Because of Economic Conditions in the United States.**

At the outset of this case, Noranda believed that UE should not have a fuel adjustment clause because one was not needed at that time.<sup>88/</sup>

But during the development of this case, the economic conditions changed and Noranda took another look at the issue. Concerned about the potential of rising costs for electricity and accepting the utility's contentions that allowing a FAC would result in better access to credit and **lower** costs for borrowing and would pass-through the offsetting off-system sales revenues along with fuel costs. Noranda's conditional support for a FAC is appropriate in the current economic circumstances. One of the key beliefs is found in the testimonies in this proceeding of the

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<sup>86/</sup> Vol. 20, p. 1605.

<sup>87/</sup> Vol. 13, p. 228.

<sup>88/</sup> In the last rate case Noranda did not take a position for or against, but addressed a variety of important tariff issues of a technical nature.

various rate of return experts who generally identified that a 20-25 basis point reduction in ROE was appropriate to recognize the reduced risk for utility operations the purportedly resulted from the utility having a fuel adjustment clause in place.<sup>89/</sup> Moreover, improved credit ratings will also facilitate the availability of credit and a lower cost for credit.

**B. Noranda's Support for the FAC is Conditional.**

As noted earlier, however, there were significant conditions that Noranda feels are needed on any FAC that might be approved in this case. First, and perhaps most significantly, incentives to sufficient to reasonably align ratepayer and utility interests. This is the remaining condition to Noranda's support for the FAC.<sup>90/</sup> Preservation of incentives requires that a meaningful level of base rate treatment must be preserved. Mr. Johnstone stated that "[a] more substantial retention of base rate treatment would be needed to better ensure a meaningful alignment of the interests of customers and AmerenUE."<sup>91/</sup>

**C. UE Understands the Importance of Incentives and Uses Them for UE Employees and Contractors.**

UE does not agree that such incentives are necessary for its FAC. However, it became apparent through the course of the hearing in this matter that AmerenUE both understands the

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<sup>89/</sup> Ex. 756, pp. 1-2, 3, 7-8, 11-12.

<sup>90/</sup> Ex. 754, pp. 9-10.

<sup>91/</sup> *Id.*, p. 11.



importance of economic incentives and uses them when it can. Important examples are provided by numerous AmerenUE witnesses regarding incentive compensation. In another example, Mr. Kidwell explained the value of "skin in the game" regarding the AmerenUE contract with Lockheed-Martin for IRP evaluation.<sup>92/</sup>

The issue of incentive compensation pursued vigorously by UE is an obvious analog. UE witnesses acknowledged that they were motivated by their incentive compensation packages, ranging from 90% for high management personnel, to 3% for bargaining unit employees, with most managers at the 20% "at risk" level.<sup>93/</sup> Indeed, the UE human relations manager confirmed that "incentives work."<sup>94/</sup>

**D. Incentive Compensation Is Argued By UE To Be Prudent.**

Noranda became interested in the incentive compensation issue in this case, not because we wish to participate in the dispute regarding inclusion of a level of compensation, but, rather, because we observed the analog and comparison between UE's position on incentive compensation and its position on incentives to align its fuel purchasing practices with its ratepayers' interests in lower costs.<sup>95/</sup>

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<sup>92/</sup> Vol. 29HC, p. 2730; see Ex. 764.

<sup>93/</sup> Vol. 20, p. 1432.

<sup>94/</sup> Vol. 20, p, 1414.

<sup>95/</sup> Indeed, Noranda uses incentive compensation itself. Ex. 758, p. 8.

It is, correspondingly, interesting that UE places a high value on its incentive compensation program, yet places minimal value on an incentive that is designed to align UE's far more significant fuel purchasing activities with the interests of its ratepayers.

There are significant parallels. Although UE witnesses acknowledged that 100% of the pay could just be packaged to an employee,<sup>96/</sup> and that would then be what the employee would use to compare to other jobs,<sup>97/</sup> the use of incentive pay and the associated "key performance indicators" focuses the employee's attention on desired objectives.

8 Q. So if I'm understanding your testimony  
9 today, it -- it focuses their attention on the  
10 objective that you want?  
11 A. Yes.

Vol. 20, p. 1411.

Similarly, an appropriate FAC incentive mechanism will focus UE's attention on the desired objective, *i.e.*, obtaining lower net fuel costs. "Skin in the game" has value and incentives do work.<sup>98/</sup>

If it is reasonable (even "prudent") as UE contends to place significant portions of its employees' compensation "at

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<sup>96/</sup> Vol. 20, p. 1405.

<sup>97/</sup> Vol. 29, p. 1496-07.

<sup>98/</sup> Vol. 20, p. 1414:

7 Q. So your testimony, to kind of sum things  
8 up, is incentives do work?  
9 A. Yes.

risk" through an incentive program,<sup>99/</sup> it is no less reasonable or prudent that a meaningful portion of UE's fuel costs be placed under a similar incentive. UE is highly interested in having its employees well motivated to improve their performance and increase their efficiency.<sup>100/</sup> Similarly, ratepayers are interested in encouraging UE to purchase its fuel supplies at lowest cost and to use efficient procedures in its purchasing practices.

**E. UE Employs Incentives to Encourage Contractors.**

Also of significance is UE's approach to the measurement of DSM objectives. As shown in Ex. 764, when UE contracted with Lockheed-Martin as an evaluator and manager of some of its IRP-related programs, UE built into the arrangement an incentive (that Mr. Kidwell characterized as "skin in the game") for this contractor. This was also described to the Commission as "incentivized performance."<sup>101/</sup>

Thus, UE, when given the opportunity, employs incentives to encourage performance in specific areas so that its employees have some portion of their pay "at risk" or their

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<sup>99/</sup> Vol. 20, p. 1428:

14           A.       There's a couple of reasons we don't do  
15 that. One, I think it's a very -- it's more prudent  
16 and efficient to manage compensation with a component  
17 based on base and a component based on incentives  
18 because we're not automatically guaranteeing our  
19 employees the pay if they don't achieve certain  
20 goals.

<sup>100/</sup> *Id.*

<sup>101/</sup> Ex. 764, p. 21.

subcontractors have incentives to perform. It is no less reasonable for ratepayers to expect UE to have some meaningful "pay/revenue at risk" regarding UE's FAC. This will encourage UE's performance and align that performance with the interests of its ratepayers.@@

**F. The Level of Incentive Should Be Meaningful and Accomplish the Lowered Cost Objectives.**

What then is an meaningful incentive level? UE obviously proposes 95/5 but this is not judged by Noranda to be a meaningful sharing.<sup>102/</sup> Other parties have proposed 50/50.<sup>103/</sup> Given the considerable case mounted by Staff and others in opposition to the FAC, a 50/50 incentive merits Commission consideration but may not produce all of the intended benefits. Consequently Noranda suggests an incentive mechanism in the range of 75/25 to 90/10.

UE's rate of return witness, Dr. Morin, explained that in most cases rating agencies look to see whether the subject utility has or does not have a fuel adjustment.<sup>104/</sup> Dr. Morin

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<sup>102/</sup> Staff Witness Mantle also explained that, with differing circumstances considered, 95/5 cannot be deemed equivalent in effect when compared toto Aquila electric or Empire and that, unlike Aquila and Empire, AmerenUE's size provides cost control opportunities that were thought absent for the smaller utilities. Vol. 26, pp. 2611-12.

<sup>103/</sup> Vol. 28, p. 2736.

<sup>104/</sup> Vol. 15, 361:

7 Q. Would you agree with me that rating  
8 agencies such as those I mentioned are interested in  
9 whether an electric utility has a FAC or an FAC?  
10 A. Very much so. The principal reason cited

(continued...)

also confirmed that rating agencies largely have an "all or nothing" attitude with regard to a fuel adjustment clause.<sup>105/</sup>

When pressed by Chair Davis, Dr. Morin did express concern about a 50/50 sharing.<sup>106/</sup> Noranda's suggested range presents a meaningful incentive for the utility, yet avoids the point of concern expressed by Dr. Morin. The suggested range is reasonable.

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<sup>104/</sup> (...continued)

11 for the downgrade by Moody's for AmerenUE last May was the  
12 absence of such a clause.

Rating agencies don't get into the details but look at the existence of a fuel adjustment clause as a yes/no question.

20 Q. Dr. Morin, I'd like to return to the topic  
21 of rating agencies and fuel adjustment clauses. Is it  
22 your understanding that rating agencies essentially view  
23 fuel adjustment clauses as either present or not present?  
24 A. Yes.  
25 Q. They don't get into the details as a yes/no

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1 question?  
2 A. Typically not.

Vol. 15, p. 382-83.

<sup>105/</sup> Vol. 15, p. 363.

8 A. Bond rating agencies tend to think all or  
9 nothing basically.

Vol. 15, p. 437-38.

<sup>106/</sup> Vol. 15, p. 438:

16 A. You're quite right. You read through my  
17 mind. I don't think it would cut it with the rating  
18 agencies. They would be much more concerned 50/50 than  
19 they would be one on one. That would produce some  
20 volatility in the earnings stream, more risk and so forth.

**G. Noranda's Other Conditions Have Been Addressed in the FAC Stipulation and Agreement.**

Noranda's other conditions regarding the fuel adjustment clause concerned what might be termed "structural issues," such as the number of recovery periods, the length of recovery periods, the number of accumulation periods, and other more detailed aspects of the design of a particular FAC. These issues were acceptably addressed through another settlement that was presented to the Commission near the end of the hearing on the fuel adjustment clause issues. Noranda was a signatory on that settlement and supports it. It is our understanding that it has been accepted by the Commission, thereby, as Chair Davis indicated:

20 CHAIRMAN DAVIS: Judge, before we go off  
21 the record, can I just express my gratitude to the parties  
22 for doing everything they can to work out as many of  
23 these, I guess you could say, onerously detailed issues  
24 that are extremely complicated? And I do appreciate each  
25 and every one of you trying your best to help us and to

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1 help the Judge, because, you know, if not, that would be  
2 another 40 or 50 pages on the Order. So that does not go  
3 unnoticed, and we do appreciate your efforts.

Vol. 28, p. 2831-32.

**VI. Should the Cost of the Combined Operating License Application (COLA) Be Included in Rate Base.**

A final issue from our perspective is the inclusion in rate base of the roughly \$50 million cost of the combined operating license application (COLA) that UE has submitted to the Nuclear Regulatory Commission (NRC) in connection with the proposed construction of a second Callaway nuclear unit.

**A. Recovery On or Of COLA Costs Is Precluded By Section 393.135 RSMo.**

Section 393.135, or Proposition 1, was enacted by the people of the State of Missouri following the construction of the Callaway and Wolf Creek units for UE and Kansas City Power & Light, respectively. It is obviously the focus of major efforts by UE to change this law, but at present, it is law. Given that it was enacted by the overwhelming vote of the citizens, it deserves considerable respect. Its provisions are plain.

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

UE's argument, that the COLA funds were expended as a "placeholder" of sorts, so as to "keep options open" does not fall within any known exception to this prohibition. Indeed, the wording of the statute suggests that the Commission is without power to approve such a charge, include it in rate base, or allow any charge to be included in UE's rates that is based on the cost of construction in progress.

**B. Callaway 2 Unit is Not In Service and the COLA Generates No Electricity.**

UE witnesses testified that the proposed plant was not in service at this time and that the COLA generated no electrici-

ty.<sup>107/</sup> Under the wording of Proposition 1, these costs simply cannot lawfully be included. While we can certainly understand the motivation that UE may have to seek inclusion of these costs in rate base, it is puzzling why a question that is so clear would be pressed with such vigor such that any resulting decision of the Commission to include these costs in rate base could certainly result in judicial reversal of the decision.

**C. UE Witnesses Did Not Support Acquisition of the COLA as a Salable Item for UE.**

UE also argued that the COLA could have value in the future and might even be sold if Callaway 2 were not constructed. However, UE witnesses appeared to be not informed about this purpose.

14 Q. A salable asset, let's call it that.  
15 Did you intend to -- did AmerenUE intend to enter  
16 into that application in order to create an asset  
17 that it could sell to someone else?  
18 A. There again, I have not reviewed that.  
19 I did not make that decision, so I cannot answer that  
20 question.  
21 Q. So your answer is you don't know?  
22 A. That's correct. That's not my area of  
23 responsibility.

Vol. 18, p. 1295.

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<sup>107/</sup> Vol. 18. p. 1296:

9 Q. Is Callaway 2 operational at this point?  
10 A. No, it is not.  
11 Q. Does the COLA by itself generate any  
12 energy?  
13 A. No, it does not.



**D. The COLA Does Not Pass Muster As "Plant Held For Future Use".**

In addition, even if Proposition 1 were not on the books, which it is, UE's ability to include this COLA cost in rate base and earn a return on it is questionable. As "plant held for future use," no inclusion or return should be permitted at this time.

**VII. Conclusion and Prayer.**

Noranda believes that the Class Cost of Service Settlement, opposed only by Mr. Watkins, is sponsored by representatives of the paying customers, is supported by competent and substantial evidence in support and should be approved. In setting an ROE for AmerenUE and the revenue requirement, consideration should be given to the current economic conditions and the impact that a major rate increase will have on the public interest and captive customers. While Noranda has given conditional support to a FAC for UE, such a clause should provide a meaningful level of incentive so that UE interests are better aligned with those of its customers. The COLA should be disallowed from UE rate base under Proposition 1.

WHEREFORE, Noranda prays for the Commission's favorable consideration of its recommendations.

Respectfully submitted,

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ATTORNEYS FOR NORANDA ALUMINUM,  
INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic means or by U.S. mail, postage prepaid, addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: January 8, 2009