

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

Noranda Aluminium, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
vs.	)	<b>Case No. EC-2014-0224</b>
	)	
Union Electric Company d/b/a	)	
Ameren Missouri,	)	
	)	
Respondent.	)	

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**POST-HEARING REPLY BRIEF OF COMPLAINANTS**

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**NP**

# TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
I. The \$30/MWh Rate Requested by Noranda is Just and Reasonable, and Granting Complainants’ Request Will Not Result in Unlawful, Undue Discrimination or Single-Issue Ratemaking. ....	4
A. Ameren Missouri’s Arguments Ignore the Impact of the Smelter’s Closure on Electric Rates. ....	4
B. The Commission Should Consider Factors Other Than the Cost to Serve Noranda in Determining Whether the \$30/MWh Rate is Just and Reasonable. ....	6
C. A Decision Granting Noranda’s Rate Request Would Not Constitute Single-Issue Ratemaking. ....	9
II. The Commission is Authorized by Law to Grant Noranda’s Requested Rate Relief and Granting the Relief is Consistent with Good Public and Regulatory Policy. ....	111
III. Noranda Has A Real and Immediate Need to Contain Its Costs of Production, Especially The Cost of Electricity. ....	14
A. Noranda’s Financial Needs Are Real and Immediate.....	15
B. Noranda’s Enterprise Model Properly Relies on the LME Forward Curve.....	16
C. The Enterprise Model Properly Accounts for Noranda’s Future Capital Needs, Including Both “Sustaining Capital” and “Growth Capital.” ....	19
D. Any Consideration of Apollo and Its Past Relationship to Noranda is Irrelevant. ....	22
IV. Noranda Agrees to Certain Commitments If Its Request Is Granted By This Commission, Which Is the Proper Forum to Consider Noranda’s Request. ....	23
V. Ameren Missouri’s Other Ratepayers Are Better Off With Noranda Remaining a Customer at a \$30/MWh Rate Than If Noranda Closes Its Smelter.....	24
A. Smelter Closure Will Significantly Impact State GDP, State General Revenue, Local Tax Revenues, and Consequently Ameren Missouri’s Ratepayers.....	24
B. Ameren Missouri Ratepayers are Better Off With Noranda Paying the Requested \$30/MWh Rate, Than They Would Be If the Smelter Closed. ....	25
i. Staff’s Analysis is Faulty.....	27

ii.	Staff’s Improper and Imprecise Terminology Leads to Confusion. ....	29
iii.	Staff’s Arbitrary Adder to the Incremental Cost Should be Rejected .....	30
iv.	Staff Misstates the Impact of the FAC on the Rate Request.....	31
C.	Noranda’s Proposed Rate Does Not Void Terms in Noranda’s Contract with Ameren Missouri. ....	32
D.	The MIEC Position on the Low-Income Customer Class is a Red Herring. ....	33
E.	Dauphinais’ Calculation of the Incremental Cost is the Most Credible. ....	34

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**POST-HEARING REPLY BRIEF OF COMPLAINANTS**

Come now, Complainants, and for their post-hearing reply brief state as follows:

**Introduction**

As explained in detail below, the substantial credible evidence in the record supports Complainants’ request for Noranda’s rate relief. Moreover, the Missouri Retailers Association (“MRA”) and the Missouri Industrial Energy Consumers (“MIEC”), by signing the non-unanimous stipulation, affirmatively support Complainants’ request herein. Wal-Mart Stores East, LP, and Sam’s East, Inc. (“Walmart”) do not oppose the requested rate for Noranda.<sup>1</sup> Consumers Council of Missouri (“CCM”) takes no position on the requested rate for Noranda.<sup>2</sup> The Office of

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<sup>1</sup> Walmart Br. 3 (“Given the specific and extraordinary circumstances surrounding Noranda’s request, Walmart does not oppose Noranda’s request for a rate of \$0.03/KWh[.]”).

<sup>2</sup> CCM Br. 1.

Public Counsel (“OPC”) takes no position on whether Complainants met their burden, but opined that the Commission had authority to grant the requested relief as to Noranda.<sup>3</sup> Staff supports a load retention rate below Noranda’s current rate, but above the requested \$30/MWh rate, because it disagrees with Complainants’ calculation of the incremental cost of power to serve Noranda.<sup>4</sup>

On the other hand, Continental Cement opposes any rate relief to Noranda on legal grounds and factually because it believes that a rate decrease for Noranda will cause its rates to increase, but it does not consider whether its rates will be higher still if the New Madrid smelter closes.<sup>5</sup> And, Ameren Missouri opposes the rate relief on legal and factual grounds. Legally, it claims that the Commission has no authority to provide the requested load retention rate.<sup>6</sup> Factually, it claims that a load retention rate in this case is bad public policy<sup>7</sup> and is unsupported by evidence.<sup>8</sup>

Clearly, Ameren Missouri has taken the strongest position of any party in opposition to the rate relief. It filed the longest opening brief (64 pages) and raised the most arguments in opposition, even moving to dismiss the complaint. It appears that Ameren Missouri would like this Commission, and the public, to think that it is the champion of ratepayers; however, history and the present record show this is obviously

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<sup>3</sup> OPC Br. 6.

<sup>4</sup> Staff Br. 4.

<sup>5</sup> Continental Br. 1-8.

<sup>6</sup> Ameren Br. 4-9.

<sup>7</sup> *Id.* 9-18.

<sup>8</sup> *Id.* 18-44, 46-52.

not the case. As far as Complainant's proposed rate is concerned, Ameren Missouri was to be held harmless, yet it has incurred well over \$200,000 in consulting fees<sup>9</sup> and probably a like amount in attorneys' fees, all of which are likely to be paid by ratepayers since Ameren Missouri "is in this game playing [on] customers' money."<sup>10</sup> When asked if it would consent to the requested relief before this complaint was filed, Ameren Missouri responded that it would support the complaint only if Noranda would discontinue its consumer protection efforts by no longer participating in Ameren Missouri's rate cases, in the legislature, or as a member of FERAF.<sup>11</sup> And when asked whether – in the event that the rate relief herein is denied and the smelter closes – Ameren Missouri would make ratepayers whole from rate increases even higher than the requested relief would produce, Ameren Missouri of course said no.<sup>12</sup>

As it deliberates Noranda's fate, the Commission should seriously consider the motive of Complainants' biggest critic, Ameren Missouri, in opposing the rate relief. Noranda, as the largest electric consumer in the state, has vigorously advocated against excessive rate increases, as shown by its earnings complaint in ER-2014-0223, its steadfast participation in Commission cases, and its sustained efforts to moderate or defeat legislation which would weaken the Commission's legal authority over the ratemaking process. Nothing could be better for Ameren Missouri than to rid itself of its

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<sup>9</sup> Tr. 884, l. 21 – 885, l. 3.

<sup>10</sup> Tr. 105, l. 13- 106, l. 15.

<sup>11</sup> Tr. 488, l. 15 – 489, l. 3.

<sup>12</sup> Tr. 1022, ll. 17-22.

largest single opposing customer, particularly when Ameren Missouri's other customers - not Ameren Missouri -- will bear the cost of losing Noranda's load.

For the reasons stated in detail below, this Commission should grant the requested relief.

**I. The \$30/MWh Rate Requested by Noranda is Just and Reasonable, and Granting Complainants' Request Will Not Result in Unlawful, Undue Discrimination or Single-Issue Ratemaking.**

**A. Ameren Missouri's Arguments Ignore the Impact of the Smelter's Closure on Electric Rates.**

Noranda has requested a \$30/MWh electric rate to control its costs of production, so that it can continue to operate its New Madrid smelter. Ameren Missouri incorrectly characterizes Noranda's request as being "solely based on Noranda's claims about the particular characteristics of Noranda's private business."<sup>13</sup> In making this assertion, and throughout its brief, Ameren Missouri disregards the fact that the closure of the New Madrid smelter would have a significant adverse impact on Ameren Missouri's other customers. Continental Cement Company and United for Missouri likewise fail to consider this impact.<sup>14</sup>

Staff correctly notes that if the \$30/MWh rate proposed by Noranda defrays all of the variable cost of serving Noranda and contributes to Ameren Missouri's fixed costs, then other customers will be better off with Noranda on the system at \$30/MWh than

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<sup>13</sup> Ameren Br. 5.

<sup>14</sup> Continental Br. 4-8; UFM Br. 6-11.

they will be if Noranda ceases to be an Ameren Missouri customer.<sup>15</sup> The Commission should find that the detailed analysis presented by Complainants is credible and accurate, and demonstrates that the \$30/MWh rate will indeed cover all of the variable (as well as the incremental) costs to serve Noranda and will offset some of Ameren Missouri's fixed costs. This determination is key to evaluating whether the rate requested by Noranda is just and reasonable, and not unduly discriminatory. The calculations presented by Ameren Missouri's and Staff's witnesses on this issue are based on unreasonable assumptions, and should not be relied on by the Commission in making this determination.<sup>16</sup>

Continuing the status quo – in which Noranda would pay over \$170 million per year<sup>17</sup> for the power it purchases from Ameren Missouri (including the FAC) – is simply not an option. The testimony of Kip Smith makes this clear. Without the reduced rate of \$30/MWh, *all* of Noranda's contributions to Ameren Missouri's fixed costs will be *permanently* lost. The estimated impact to other customers from this outcome is approximately \$54 million per year.<sup>18</sup> In comparison, reducing Noranda's electric rate to \$30/MWh will have an estimated impact on other customer classes of \$47.7 million per

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<sup>15</sup> Staff Br. 3.

<sup>16</sup> See Section V of this brief.

<sup>17</sup> See Brubaker Direct, Ex. 16, p. 6, fn 4  $((\$0.03794 + \$0.0035) (4,168,922,201) = \$172,760,136.01)$ .

<sup>18</sup> See Brubaker Direct, Ex. 16, p. 6, fn 4 and Brubaker Surrebuttal, Ex. 17, p. 4, l. 7  $((\$0.03794 + \$0.0035 - \$0.02849)(4,168,922,201) = \$53,986,542.50)$ .



year.<sup>19</sup> With the requested rate, Noranda would continue to pay all of the variable and incremental costs incurred to serve the smelter, along with a portion of Ameren Missouri's fixed costs, and other customers would be better off by \$6.3 million per year. While Noranda will indeed receive a direct benefit from this rate reduction, other ratepayers will be better off as well because granting Noranda's request will allow Noranda to remain an Ameren Missouri customer. This direct benefit to other ratepayers should not be ignored in evaluating whether the rate requested by Noranda is "just and reasonable."

**B. The Commission Should Consider Factors Other Than the Cost to Serve Noranda in Determining Whether the \$30/MWh Rate is Just and Reasonable.**

In support of its claim that Noranda's proposed rate will result in "undue discrimination," Ameren Missouri asserts that the applicable law is set out in the Missouri Supreme Court's 1931 decision in *State ex rel. The Laundry, Inc. v. Public Service Commission*.<sup>20</sup> As explained in Complainants' opening brief, that case involved two businesses who contended they were similarly situated to other businesses that received a discounted rate for water. In the instant case, however, there is no evidence that the rate Noranda requests will be denied to other similarly situated customers. Indeed, as noted in MRA's brief, there are no other customers of Ameren Missouri who

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<sup>19</sup> See Brubaker Direct, Ex. 16, p. 6, fn 4 and Brubaker Surrebuttal, Ex. 17, p. 4, l. 7 (( $\$0.03794 + \$0.0035 - \$0.03$ )(4,168,922,201) = \$47,692,469.98).

<sup>20</sup> 34 S.W.2d 37 (Mo. 1931).

are similarly situated; Noranda stands alone in its class due to the massive amounts of electricity it consumes to manufacture aluminum.<sup>21</sup>

The general pronouncements concerning what constitutes “undue discrimination” quoted by Ameren Missouri from the Court’s 1931 decision should not constrain the Commission’s analysis in this case. Ameren Missouri contends<sup>22</sup> that a difference in the cost of service is the *only* factor which this Commission may consider in evaluating whether a difference in rates constitutes unjust discrimination.<sup>23</sup> More recent cases decided by the United States Courts of Appeals demonstrate that this view is too narrow. These cases interpret § 205(b) of the Federal Power Act (“FPA”), a federal statute that parallels § 393.130, RSMo., in that it prohibits utilities from making or granting “any undue preference or advantage,” from subjecting any person to “undue prejudice or disadvantage,” and from maintaining “any unreasonable differences in rates.”<sup>24</sup> In evaluating a claim of “undue discrimination” under the FPA, the Court explained that

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<sup>21</sup> MRA Br. 1 (“Noranda is sui generis 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 Missouri’s system is relevant to Ameren Missouri’s other customers.”).

<sup>22</sup> Continental Cement and United for Missouri make similar arguments. *See* Continental Br. 4; UFM Br. 8-9.

<sup>23</sup> Ameren Br. 4, *quoting State ex rel. The Laundry, Inc.*, 34 S.W.2d 37, 44-45 (Mo. 1931) (“judicial decision forbids any difference in charge which is not based upon difference of service and even when based upon difference of service [the difference] must have some reasonable relation to the amount of the difference, and cannot be so great as to produce unjust discrimination.”).

<sup>24</sup> 16 U.S.C. § 824d(b).

“[i]t is well settled . . . that differences in rates are justified where they are predicated upon factual differences between customers and that these differences may arise from differing costs of service *or otherwise*.”<sup>25</sup> That is, factors beyond differences in costs of service may also justify differences in rates. In another case, the Court summarized the applicable law by stating that “differential treatment does not necessarily amount to *undue* preference where the difference in treatment can be explained by some factor deemed acceptable by the regulators (and the courts).”<sup>26</sup> This is a reasonable, common sense interpretation of the terms “undue preference” and “unreasonable differences in rates” and should be followed by the Commission in this case.

In this case, the Commission should reject the constrained analysis that Ameren Missouri, Continental Cement Company and United for Missouri advocate, and instead recognize that Noranda’s requested rate will not lead to *undue* discrimination, or provide an *undue or unreasonable* preference, based on the following: (1) without the \$30/MWh rate, Noranda’s aluminum smelter will be subject to imminent closure; (2) the closure of the smelter will have a greater adverse impact on the electric rates of other customers than the \$30/MWh rate; (3) the closure of the smelter will mean the permanent loss of

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<sup>25</sup> *Cities of Newark, New Castle and Seaford, Delaware v. FERC*, 763 F.2d 533, 546 (3d Cir. 1985)(emphasis added).

<sup>26</sup> *Town of Norwood, Massachusetts v. FERC*, 202 F.3d 392, 402 (1<sup>st</sup> Cir. 2000); *see also City of Frankfort, Indiana v. FERC*, 678 F.2d 699, 706 (7<sup>th</sup> Cir. 1982) (distinguishing *Western Union Telegraph Co. v. Call*, 181 U.S. 92 (1901) and explaining that “in considering whether factual differences justified the rate disparity” at issue in the case before it, the FERC “was not limited to cost of service related factors.”).

888 jobs in Southeast Missouri, which includes the three poorest counties in the state;<sup>27</sup> and (4) the closure of the smelter will have a significant negative impact on tax revenues and the GDP of the state, and will thus be felt statewide.<sup>28</sup>

**C. A Decision Granting Noranda’s Rate Request Would Not Constitute Single-Issue Ratemaking.**

Both Ameren Missouri and Staff assert that any decision by this Commission granting a change in electric rates must be founded on “all relevant factors,” as required by § 393.270.4 RSMo.<sup>29</sup> Staff concedes that the evidence presented in this case is nonetheless sufficient to allow the Commission to change Noranda’s electric rates on an interim basis.<sup>30</sup> But neither Ameren Missouri nor Staff explain exactly what additional evidence must be adduced by the parties to meet the “all relevant factors” standard.

Section 393.270.4 provides:

4. In determining the price to be charged for gas, electricity, or water **the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question** although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

(emphasis added). In their request for relief, Complainants have not asserted that Ameren Missouri’s revenue requirement, as established in the last rate case, is

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<sup>27</sup> Smith Direct, Ex. 1, p. 6, ll. 7 -23. Libla Direct, Ex. 19, p. 4, ll. 4-7.

<sup>28</sup> Haslag Direct, Ex 11, p. 4, l. 4 – p. 6, l. 8.

<sup>29</sup> Ameren Br. 7-8; Staff Br. 17.

<sup>30</sup> Staff Br. 18-19.

unreasonable or excessive.<sup>31</sup> The sole issue before the Commission is whether the rate design now in place should be changed. Specifically, Noranda has asserted that because its current electric rate is unjust and unreasonable, it should be reduced to \$30/MWh and that any reduction in revenues from this discount should be shifted to other rate classes. As explained above, Complainants have produced evidence to show that this rate reduction is a reasonable and just solution for all ratepayers who will be affected by the Commission's ruling.

Because Complainants have not challenged Ameren Missouri's revenue requirement, it is not necessary to present evidence in this case concerning Ameren Missouri's operating expenses, its depreciation on plant in rate base, its taxes, or the reasonable rate of return for the company. These factors have no "bearing upon a proper determination of the question"<sup>32</sup> before the Commission in this case. This case does not involve all of the issues considered in a case requesting a general rate increase, and therefore "all relevant factors" differ from those that come into play in a typical rate case filed by the utility.

Complainants have presented evidence establishing "all relevant factors" necessary for the Commission to grant the rate relief needed by Noranda. Complainants recognize that any rate set by the Commission may be subject to further review and

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<sup>31</sup> This issue is the subject of a separate case now pending before the Commission, Case No. EC-2014-0223.

<sup>32</sup> § 393.270.4, RSMo.

challenge in the future.<sup>33</sup> But based on the record in this case, Noranda's rate request should be granted.

**II. The Commission is Authorized by Law to Grant Noranda's Requested Rate Relief and Granting the Relief is Consistent with Good Public and Regulatory Policy.**

In a typical case, electric rates are set based on cost of service, as described in Ameren Missouri's brief.<sup>34</sup> Complainants do not disagree with this general assertion by Ameren Missouri, and echoed by Continental Cement and United for Missouri.<sup>35</sup> What the evidence in this case makes clear, and what these parties refuse to acknowledge, however, is that this is *not* a typical case. Setting Noranda's rate in this case *solely* on the basis of its cost of service is not in the best interest of Noranda or other ratepayers. Moreover, the rates proposed by Complainants do *not* ignore cost-of-service considerations. As Complainants have repeatedly shown, the rate they are requesting for Noranda will cover the variable and incremental costs to serve the smelter, and will contribute to Ameren Missouri's fixed costs. By contributing to Ameren Missouri's revenue requirement in an amount that exceeds the incremental cost to serve it, Noranda will be providing a benefit to other ratepayers.

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<sup>33</sup> Noranda disagrees with Staff's assertion that it qualifies only for "interim" rate relief. See Staff Br. 16 -18.

<sup>34</sup> Ameren Br. 9.

<sup>35</sup> Ameren Br. 9; Continental Br. 4; UFM Br. 8-9.

In his treatise on Public Utility Rates, James C. Bonbright, cited by Ameren Missouri witness Terry Jarrett,<sup>36</sup> notes that in some instances “value of service differentials” may actually “result in lower rates even for those consumers who are discriminated against.”<sup>37</sup> Bonbright observes that this can occur where “low rates are granted for types or quantities of service which could not otherwise be attracted, but which will make some contribution to total revenue requirements over and above mere incremental costs.”<sup>38</sup> Far from condemning this practice, or asserting that it is unlawful or bad public policy, Bonbright acknowledges that this approach may serve the public interest.<sup>39</sup> The rate relief requested by Noranda is thus consistent with the principles set out in this treatise.<sup>40</sup>

Staff’s brief sets out in full the statutory provisions that authorize and empower the Commission to decide this case and, based on the evidence presented, enter an order granting the relief sought by Complainants.<sup>41</sup> Contrary to Ameren Missouri’s assertions, additional legislative authority is unnecessary.<sup>42</sup> Moreover, this Commission is fully

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<sup>36</sup> Jarrett Rebuttal, Ex. 103, p. 17, l. 12 – p. 18, l. 3.

<sup>37</sup> Bonbright, Danielsens & Kamerschen, *Principles of Public Utility Rates* (2d ed. 1988), p. 531.

<sup>38</sup> *Id.* at 532.

<sup>39</sup> *Id.*

<sup>40</sup> *Cf.*; Ameren Br. 10.

<sup>41</sup> Staff Br. 21-24 (“The Commission has ample authority to require changes in Ameren Missouri’s rates and tariffs based upon the evidence received at the hearing on this matter.”). OPC agrees that the Missouri statutes empower the Commission to decide this case. OPC Br. 3-4.

<sup>42</sup> Ameren Br. 12-14.

equipped to consider the evidence and apply the law in the case before it. Although Ameren Missouri contends that the Commission and its Staff lack the expertise to understand the evidence in this case,<sup>43</sup> this Commission routinely deals with complex and technical issues in all of its cases. The Commission, and not the General Assembly, is in the best position to consider the testimony and exhibits presented in this case and determine if Noranda has met its burden of proving that it is entitled to the relief sought.

Ameren Missouri also raises the specter of an “administrative nightmare” that will occur if Noranda is granted a lower rate, resulting in a flood of requests from other ratepayers seeking lower rates.<sup>44</sup> Ameren Missouri contends that granting rate relief to Noranda “will open the door for any of Ameren Missouri’s other customers to also request special rates. . . .”<sup>45</sup> But Noranda is not typical of other ratepayers and thus the relief provided to Noranda need not be afforded to any other customer who requests it. That is, no other ratepayers are similarly situated to Noranda, and thus no other ratepayers can claim they must be afforded the same rate treatment as Noranda. More importantly, other ratepayers *already* have the ability to ask for lower rates, as evidenced by the fact that the Commission has granted many requests for special reduced utility rates in the past.<sup>46</sup> Contrary to Ameren Missouri’s assertions, if the Commission grants a reduced rate to Noranda it will *not* be the first time the Commission has approved a utility

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<sup>43</sup> Ameren Br. 17.

<sup>44</sup> Ameren Br. 18.

<sup>45</sup> Ameren Br. 18.

<sup>46</sup> See Complainants Br. 3-6.



rate that reflects less than the full cost to serve a consumer. Several of these cases are cited in the opening briefs filed by Complainants and OPC.<sup>47</sup>

Finally, if this case is to be decided based on policy concerns, it is difficult to imagine how allowing the closure of Noranda's New Madrid smelter, the loss of 888 well-paying jobs, and the attendant economic catastrophe could be considered *better* public policy than granting the relief sought by Complainants. The Missouri Public Service Laws do not dictate that every case adhere to the narrow approach to ratemaking advocated by Ameren Missouri. These statutes provide adequate flexibility for the Commission to take action in pressing situations like Noranda's. Forcing the closure of the smelter would indeed be bad public policy. This Commission can and should prevent that result by granting the \$30/MWh rate requested by Noranda.

**III. Noranda Has A Real and Immediate Need to Contain Its Costs of Production, Especially the Cost of Electricity.**

Unable to refute the economic distress that closure of the New Madrid smelter would produce for the 888 individuals employed by the smelter and their families, for the southeast Missouri region, and the state of Missouri as a whole,<sup>48</sup> Ameren Missouri instead adopts a diversionary strategy. In particular, it tries to distract the Commission with a "hindsight is 20/20" review of Noranda's past dividends to Apollo Global Management, L.P. ("Apollo") and its other shareholders, suggesting that these dividends

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<sup>47</sup> *Id.*; OPC Br. 11-13.

<sup>48</sup> *See* Complainants Br. 1.

caused Noranda's current financial problem,<sup>49</sup> and hopes that the Commission will simply forget or choose to ignore the stark reality that "\*\*\* \_\_\_\_\_  
\_\_\_\_\_.\*\*",<sup>50</sup> Dwelling on the past – especially events that took place when Noranda had a different ownership and governance structure – does not and cannot change the fact that Noranda is now in a significant liquidity crisis. If not properly and promptly addressed, that crisis threatens imminent closure of Noranda's New Madrid smelter, which will in turn trigger financial devastation for the smelter's employees and their families, and for a region that is not equipped to sustain the blow.

The arguments leveled by Ameren Missouri and other parties are unpersuasive and unsuccessful in challenging Noranda's need for immediate rate relief or its use of its Enterprise Model in demonstrating that need.

**A. Noranda's Financial Needs Are Real and Immediate.**

Complainants' opening brief anticipated and addresses Ameren Missouri's challenge to the authenticity of Noranda's financial plight and the lack of workable solutions as alternatives to rate relief.<sup>51</sup> It is worth reiterating that although Ameren Missouri's expert, Robert Mudge – who has never worked in the aluminum industry or in any management role at any manufacturer<sup>52</sup> – maintained that Noranda could simply go to the market and raise more capital or borrow more money, he provided nothing to back up that his assertion. He did not, for example, conduct any survey of the marketplace to

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<sup>49</sup> Ameren Br. 45-46.

<sup>50</sup> Tr. 187, ll. 16-22.

<sup>51</sup> Complainants' Br. 15-21.

<sup>52</sup> Tr. 886, l. 17 – 887, l. 2.

identify banks or other equity sources willing to provide capital or loans to Noranda.<sup>53</sup> Nor did Mudge conduct any due diligence on potential sources or terms of additional capital or lending.<sup>54</sup>

Mudge postulates that a “white knight” might appear in the form of a new lender or capital source, but he was unable to posit one ready, willing, and able to do so. Indeed, at trial Mudge acknowledged that he did not have enough information himself to make a personal investment in Noranda after having studied its finances and operations for months at a cost in excess of \$200,000.<sup>55</sup>

**B. Noranda’s Enterprise Model Properly Relies on the LME Forward Curve.**

Ameren Missouri questions the assumptions underlying Noranda’s Enterprise Model and argues that Noranda’s “sounding of the alarm” is inappropriate.<sup>56</sup> However, the real financial problems Noranda faces today cannot be eliminated simply by changing those assumptions, substituting a rosy CRU forecast that does not reflect actual market data for the future price of aluminum in an effort to make long-term cash flow appear better. The price of electricity is simply too high for Noranda to remain competitive and keep the smelter open.

Mudge is critical of the Enterprise Model’s use of the LME forward curve data, claiming that CRUs forecasted prices should be used instead. Ameren Missouri even

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<sup>53</sup> Tr. 920, l. 22 – 921, l. 1.

<sup>54</sup> Tr. 917, ll. 7-19.

<sup>55</sup> Tr. 884-885 ll. 16-25; Tr. 921, ll. 13-17.

<sup>56</sup> Ameren Br. 20. *See* Complainants Br. 15, 17-18 for a discussion of the Enterprise Model and its use of LME forward curve data.

rhetorically asks “why shouldn’t the Commission rest its evaluation” on the CRU price forecast.<sup>57</sup> Mudge’s criticisms are unsound. First, despite his current advocacy for the CRU forecasted data, Mudge has never previously used either that data or the LME forward curve at any time in all his years as a consultant.<sup>58</sup> Second, his and Ameren Missouri’s preference for the CRU forecasted data is motivated by the fact that the CRU forecast is higher than the LME forward curve. Yet, as Mudge acknowledged, neither Noranda nor any other competitor in the market place can buy or sell aluminum at the rates found in the CRU forecast. For this reason, the usefulness of the CRU forecast is extremely limited. As Smith described it, the CRU forecast is at best a “sensitivity forecast,” and does not reflect Noranda’s view of the future or serve as the basis for Noranda’s long-term business decisions.<sup>59</sup>

As Complainants anticipated,<sup>60</sup> Ameren Missouri criticizes Noranda for providing the CRU forecast to Moody’s when Moody’s was reviewing Noranda for possible downgrade.<sup>61</sup> But Ameren Missouri has not adduced any evidence to refute Noranda’s testimony explaining why it provided the CRU forecast to Moody’s. In particular, Noranda provided a presentation to Moody’s that included data from the CRU forecast as “supplemental” information because Moody’s already had the LME forward curve data

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<sup>57</sup> Ameren Br. 22.

<sup>58</sup> Tr. 901, l. 22-902, l. 2.

<sup>59</sup> Smith Surrebuttal Testimony, Ex. 4, p. 7, l. 6 – p. 8, l. 14.

<sup>60</sup> Complainants Br. 17-18.

<sup>61</sup> Ameren Br. 22.

and its own proprietary forecast of future aluminum prices.<sup>62</sup> Again, as Complainants pointed out in their opening brief, even though Noranda provided the CRU data – with its higher forecast for aluminum prices – Moody still downgraded Noranda.<sup>63</sup> In other words, although Ameren Missouri believes that using the CRU forecast means that Noranda has “plenty of liquidity”<sup>64</sup> and is not experiencing and will not experience a liquidity crisis, Moody’s determined that Noranda’s financial plight was genuine and downgraded it.

In addition, Moody’s ignored both the LME data and the CRU forecast, and issued its own aluminum industry outlook.<sup>65</sup> In Moody’s Investor Service Industry Outlook, Moody’s forecasted that prices for aluminum would be substantially lower than the CRU data embraced by Ameren Missouri and even lower than those used by Noranda in its Enterprise Model.<sup>66</sup> Simply put, Moody’s Outlook supports Noranda’s use of the LME forward curve data in the Enterprise Model.

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<sup>62</sup> Smith Surrebuttal, Ex. 4, p. 6, l. 15 – p. 7, l. 16.

<sup>63</sup> Smith Surrebuttal, Ex. 4, p. 7, ll. 5-16. Nevertheless, Ameren Missouri still maintains that Noranda’s aluminum prices are “lower than just about any other prices” in this case. Ameren Br. 33.

<sup>64</sup> Ameren Br. 23

<sup>65</sup> Ex. 401.

<sup>66</sup> Tr. 469, l. 18 – 471, l. 10.

**C. The Enterprise Model Properly Accounts for Noranda’s Future Capital Needs, Including Both “Sustaining Capital” and “Growth Capital.”**

Complainants explained in their initial brief that Noranda’s Enterprise Model takes into account Noranda’s future capital needs, both sustaining capital and growth capital.<sup>67</sup>

Ameren Missouri criticizes what it perceives as a lack of documentation as to Noranda’s plans for future capital expenditures.<sup>68</sup> \*\*But \_\_\_\_\_

\_\_\_\_\_ \*\*.<sup>69</sup> The record reflects that Noranda’s capital needs are real and well established.

Nevertheless, Ameren Missouri still complains that “there is not a shred of evidence” that supports the conclusion that Noranda must and will invest \$100 million in capital growth projects.<sup>70</sup> As Smith testified, “Noranda is responding to market demand that we haven’t seen historically that requires more capital to maintain market share.”<sup>71</sup> Ignoring Noranda’s specific future commitments to capital projects, Ameren Missouri second-guesses Noranda’s needs and plays the dangerous “If” game. *If* Noranda does not invest in capital projects, then Ameren Missouri believes that Noranda will have sufficient liquidity. *If* Noranda can get better prices for its aluminum products, then Ameren Missouri believes that Noranda’s liquidity should be significantly better. *If* the

<sup>67</sup> Complainants’ Br. 18-19.

<sup>68</sup> Ameren Br. 24, 36.

<sup>69</sup> Smith Surrebuttal, Ex. 3, Ex. B.

<sup>70</sup> Ameren Br. 21.

<sup>71</sup> Smith Surrebuttal, Ex. 4, p. 11, ll. 11-16.

CRU price forecasts are right, then Ameren Missouri believes that Noranda's liquidity should be above the level that Mr. Smith projected.<sup>72</sup> Noranda does not have the luxury of playing such a tenuous game with its 888 workers and their families in New Madrid hanging in the balance. Even Ameren Missouri is forced to admit that the prices in the LME data may be too high, and the price for aluminum could be lower.<sup>73</sup>

The reality is that Noranda needs to spend significant dollars on capital projects put on hold during the great recession, and those projects must be undertaken now and over the next ten years in order for Noranda to maintain its competitive position in the market place. For example, the rod mill must be completed in order for Noranda to maintain a key customer, and it must purchase four rectifiers that convert alternating current to direct current without which the smelter is at risk to lose power.<sup>74</sup> While Ameren Missouri may not like the fact that Noranda did not keep detailed lists of future capital projects and suggests, with no supporting evidence, that there must be non-essential projects in the list Noranda submitted, the undisputed testimony is that Noranda historically did not prepare formal lists of future capital projects but instead identified capital projects on an ad hoc basis and evaluated them as necessary or as funding became available.<sup>75</sup>

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<sup>72</sup> Ameren Br. 21.

<sup>73</sup> Ameren Br. 34.

<sup>74</sup> Smith Surrebuttal, Ex. 4, p. 11, l. 11 – p. 12, l. 20.

<sup>75</sup> Smith Surrebuttal, Ex. 4, p. 14, ll. 1-16.

Ameren Missouri also points to Noranda's historic levels of capital spending as an indictment of its current needs.<sup>76</sup> But Ameren Missouri chooses to ignore the fact that Noranda has delayed projects since the great recession. Moreover, Ameren Missouri failed to undertake its own economic analysis of the condition of Noranda's existing equipment and other assets in order to directly contest Noranda's evidence that the identified capital projects are real and necessary.<sup>77</sup> As a result, Ameren Missouri's criticisms are without merit.

Finally, Ameren Missouri argues that it "makes no sense" that Noranda's model shows that even if Noranda obtains the capital investment needed, Noranda's EBITDA will not increase and cash flow will not be impacted.<sup>78</sup> Ameren Missouri seems unable to grasp that Noranda's capital needs are not simply for growth and do not necessarily produce additional profit or cash. Instead, as Smith explained, these capital projects are necessary in order to keep the Noranda facilities operational and to retain existing customers and business relations.<sup>79</sup> Simply put, if these capital projects are not undertaken, Noranda will lose customers, its EBITDA and cash flows will decline, and its liquidity crisis will grow even worse. Clearly, Mudge's inexperience with the aluminum market place and Noranda's actual customer relationships discredit these criticisms. Contrary to Ameren Missouri's bald assertion that Noranda is asking the Commission to

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<sup>76</sup> Ameren Br. 23-24.

<sup>77</sup> Tr. 912, ll. 19-25.

<sup>78</sup> Ameren Br. 26-27.

<sup>79</sup> Smith Surrebuttal, Ex. 4, p. 15, ll. 11-20.



“bet on the come,”<sup>80</sup> Noranda has provided evidence of its specific capital project needs and its commitment that these projects will be funded and undertaken if the Commission approves Noranda’s request.

**D. Any Consideration of Apollo and Its Past Relationship to Noranda Is Irrelevant.**

As Complainants explained in detail in their opening brief, Apollo’s ownership interest in Noranda has dropped from 100 percent in 2007 to 34 percent today.<sup>81</sup> Apollo currently has only four seats on Noranda’s 12-member board of directors,<sup>82</sup> and thus no longer controls Noranda.<sup>83</sup> Yet Ameren Missouri still bemoans the fact that Noranda paid out \$265 million in dividends to Apollo and other shareholders from 2008 through 2012.<sup>84</sup> Despite criticizing Noranda for its past relationship with Apollo, Ameren Missouri then speaks out of the other side of its mouth, suggesting that Noranda should look to Apollo as a source for additional liquidity, in terms of either additional debt or equity. Ameren Missouri cannot have it both ways.

In any event, neither Apollo nor any other shareholder is legally required to make any additional capital investments in or loans to Noranda. In light of Moody’s downgrade and Noranda’s current liquidity crisis, there is no investor available to make those investments. Moreover, taking on more debt or selling more stock is not a

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<sup>80</sup> Ameren Br. 26

<sup>81</sup> Tr. 326, ll. 8-11.

<sup>82</sup> Tr. 223, ll. 13-19.

<sup>83</sup> Tr. 483, ll. 6-17.

<sup>84</sup> Ameren Br. 58.

sustainable solution to Noranda's problems. Without a structural reduction in the cost of electricity, the substantial likelihood of the smelter's imminent closure will remain.<sup>85</sup>

Obviously displeased with past dividends properly paid by Noranda to its shareholders, Ameren Missouri tries to convince the Commission that Noranda's dividend history is a sufficient basis to deny its current request for emergency relief.<sup>86</sup> Notably, Ameren Missouri does not present any evidence that the payment of these dividends was improper or that Noranda's board did not properly exercise its business judgment in approving them. Instead, Ameren Missouri merely identifies the amounts of these dividends and divines that Noranda should not have paid them but instead directed that money to present or future capital improvements, or perhaps saved it to pay future rate increases to Ameren Missouri.<sup>87</sup> Noranda cannot rewrite history or claw back whatever dividends were paid in the past. If this Commission were to reject the pending emergency rate request because of these past dividends, it would essentially be supplanting the business judgment of Noranda's board in approving those dividends with Ameren Missouri's unsubstantiated view that the dividends were improper.

**IV. Noranda Agrees to Certain Commitments If Its Request Is Granted By This Commission, Which Is the Proper Forum to Consider Noranda's Request.**

Noranda is willing to commit to ensuring the smelter stays a viable entity in Southeast Missouri if Noranda receives the requested relief. To that end, if the

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<sup>85</sup> *Id.*

<sup>86</sup> Ameren Br. 41.

<sup>87</sup> Ameren Br. 25.

Commission orders the rate relief as requested, Noranda committed to maintain 888 jobs at the New Madrid facility so long as the rate is in effect. Moreover, Noranda committed to capital expenditures totaling \$350 million at the New Madrid smelter over the ten-year period of the rate relief, in addition to its capital expenditures elsewhere in its manufacturing business.<sup>88</sup>

**V. Ameren Missouri's Other Ratepayers Are Better Off With Noranda Remaining a Customer at a \$30/MWh Rate Than If Noranda Closes Its Smelter.**

**A. Smelter Closure Will Significantly Impact State GDP, State General Revenue, Local Tax Revenues, and Consequently Ameren Missouri's Ratepayers.**

As indicated in Complainants' opening brief, all parties – including Ameren Missouri – that have weighed in on the issue agree that the closure of the New Madrid Smelter would be a tremendous blow to the economy of Southeast Missouri and to state and local tax revenues.<sup>89</sup> The transcripts of the public hearings clearly evidence the substantial impact that closure would have on employees, their families, and the local economy. In addition, Dr. Joseph Haslag, a professor and economist, calculated and testified about the significant reduction in state GDP (almost \$9 billion over 25 years), state general revenue, and local tax revenues. Dr. Haslag observed that the resulting

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<sup>88</sup> Tr. 629, l. 17 – 630, l. 21.

<sup>89</sup> See Statements of position of Ameren Missouri (p. 2), OPC (p. 1), MRA (p. 1), MIEC (p. 1), CCM (p. 1), WMT (p. 1) and Complainants (p. 2) and Staff opening statement at p. 79.

harm from those reductions will be borne in material part by Ameren Missouri ratepayers, who comprise 42 percent of the state's population.<sup>90</sup>

Even though it acknowledged the extensive economic damage closure would cause, Ameren Missouri now expresses skepticism of Dr. Haslag's calculations because (a) he relied on model inputs provided by Noranda, and (b) he used a different model input here than in case No. ER-2010-0036.<sup>91</sup> Ameren Missouri's skepticism is unfounded. First, despite Ameren Missouri's scorched earth approach to this case, it offered no evidence of its own on this issue, and points to no evidence that the model inputs provided by Noranda were inaccurate. The model input that Dr. Haslag used – the market value of Noranda's product – is easily verifiable, yet Ameren Missouri made no effort to disprove it. Second, Dr. Haslag clearly explained that the market-value input was preferable to the input – physical capital – used in case No. ER-2010-0036; so while the results differed (although the impacts were enormous in both cases), the more reliable result was the one calculated in this case.<sup>92</sup>

**B. Ameren Missouri Ratepayers are Better Off With Noranda Paying the Requested \$30/MWh Rate Than They Would Be If the Smelter Closed.**

As Complainants explained in their opening brief, the vast majority of the record evidence shows that Ameren Missouri's other ratepayers will be better off keeping Noranda as an Ameren Missouri customer, even at a reduced rate, than they would be if the smelter closed. If the smelter closed and Noranda ceased buying over ten percent of

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<sup>90</sup> Haslag Direct, Ex. 10, p. 4, l. 11 – p. 6, l. 8; Haslag Surrebuttal, Ex. 12, p. 3, ll. 1-13.

<sup>91</sup> Ameren Br. 15-16.

<sup>92</sup> Tr. 576, l. 1 – 577, l. 20.

Ameren’s Missouri’s product, the cost of selling to Noranda that Ameren Missouri would avoid – between \$27.91 and \$28.49/MWh<sup>93</sup> – is less than Noranda’s proposed \$30/MWh rate. That fact is established by expert witness Dauphinais’ surrebuttal testimony, where he analyzed three years of historical energy prices, the same period analyzed in Ameren Missouri’s last five rate cases.<sup>94</sup> Based on that data, Dauphinais determined the “incremental cost avoided by not serving the Noranda load”<sup>95</sup> or, stated differently, the incremental cost incurred to serve the Noranda load. As explained in Complainants’ opening brief, Dauphinais made certain adjustments suggested by the other witnesses, primarily Ameren Missouri witness Matt Michels. Moreover, as explained in that brief, Michels’ other criticisms were not justified. For instance, although Michels complained that Dauphinais did not account for changes to certain MISO costs, those costs were either zero or amounted to less than a few dollars over a multi-year period.

Only Staff and Ameren Missouri address this issue in their briefs. Staff’s testimony offered a historical based incremental rate of \$31.49/MWh, while Ameren Missouri’s testimony offered a historical based rate of \$33.99/MWh, each well below Noranda’s current rate of \$41.44/MWh.<sup>96</sup> As discussed in more detail below, Dauphinais’ calculated incremental cost of \$27.91 to \$28.49/MWh is the most compelling.

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<sup>93</sup> Dauphinais Surrebuttal, Ex. 14, p. 2, l. 8 – p. 3, l. 12.

<sup>94</sup> Tr. 683, ll. 4-17, 704, ll. 19-24; Dauphinais Surrebuttal, Ex. 14, p. 10, l. 16 – p. 12, l. 8.

<sup>95</sup> See Ex. 403.

<sup>96</sup> See Exhibit 403; Tr. 811, ll. 21-23.

**i. Staff's Analysis Is Faulty.**

In discussing rate impacts, Staff states that the difference between what other customers would pay if Noranda left the Ameren Missouri system and what other customers would pay if Noranda receives service at \$30/MWh amounts to approximately \$27,760,000 annually.<sup>97</sup> That figure misstates the impact under Kliethermes' calculated incremental cost of \$31.49/MWh. Additionally, as Complainants have explained, Kliethermes' calculated incremental cost, while still far below Noranda's current rate, is incorrect in any event. Although Staff includes the relevant numbers from Staff witness Kliethermes' testimony, its brief incorrectly combines those individual numbers and arrives at an erroneous conclusion.<sup>98</sup>

Even assuming *arguendo* that Kliethermes' calculated incremental cost of \$31.49/MWh is correct, the difference between what other customers would pay if Noranda left Ameren Missouri's system and what they would pay if Noranda receives service at \$30/MWh is not \$27,760,000, as Staff asserts, but \$6.2 million. The \$6.2 million difference is readily apparent from pages 5 and 6 of Ms. Kliethermes' surrebuttal testimony, Ex. 203HC, (as well as from Revised Schedule SLK-5). Using her four-year average estimate of Ameren Missouri's wholesale cost of serving Noranda, Kliethermes calculated the increase in cost to other customers if Noranda leaves the system to be \$21.6 million.<sup>99</sup> Assuming her incremental cost of \$31.49/MWh, Kliethermes calculated

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<sup>97</sup> Staff Br. 20.

<sup>98</sup> *Id.* at 20.

<sup>99</sup> Kliethermes Surrebuttal, Ex. 204, p. 5, l. 15.

the increased cost in the alternative scenario – if Noranda were served at a rate of \$30/MWh – to be \$27.76 million.<sup>100</sup> The two numbers that must be compared to determine the difference in impact between the two scenarios using Kliethermes' overstated incremental cost are \$27.76 million and \$21.6 million. The difference is \$6.2 million, and not \$27.76 million. By incorrectly combining numbers on pages 20 and 34-5 of its opening brief, Staff grossly overstates the impact of the \$30/MWh rate compared to its calculated incremental cost.

A more straightforward way to derive this difference was illustrated in the cross of Kliethermes.<sup>101</sup> Taking the difference between what Staff calculates to be the incremental cost to serve Noranda, \$31.49/MWh, and Noranda's requested \$30/MWh rate, and multiplying that difference, \$1.49/MWh, by Noranda's 4.169 million MWh consumption per year, produces the same \$6.2 million difference.

As Dauphinais made clear, he disagrees with Kliethermes' calculation of the incremental cost to serve Noranda. He accurately calculated the incremental cost to serve Noranda that is appropriate in the context of this proceeding to be between \$27.91 and \$28.49/MWh.<sup>102</sup> When applied to Noranda's consumption, the difference between Dauphinais' correctly calculated incremental cost and the incremental cost Kliethermes calculated based upon improper assumptions, is at least \$12.5 million ( $(\$31.49/\text{MWh} - \$28.49/\text{MWh}) \times 4.169 \text{ million MWh} = \$12.5 \text{ million}$ ). Because Dauphinais calculated

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<sup>100</sup> *Id.* pp. 5-6.

<sup>101</sup> Tr. 784, ll. 10-25.

<sup>102</sup> Dauphinais Surrebuttal, Ex. 15, p. 47, l. 1 – p. 49, l. 25.

the incremental cost to be lower than the requested \$30/MWh rate, serving Noranda at \$30/MWh produces a net benefit, rather than a net detriment, when compared to Noranda's leaving the system. The end result is that serving Noranda at \$30/MWh provides a benefit of at least \$6.3 million to the other customers when compared to Noranda not being served at all. That benefit can be calculated as follows:  $(\$30/\text{MWh} - \$28.49/\text{MWh}) \times 4.169 \text{ million MWh} = \$6.3 \text{ million}$ .

**ii. Staff's Improper and Imprecise Terminology Leads to Confusion.**

Kliethermes has conflated average variable cost (and average cost) with incremental or avoidable cost. Staff correctly points out at page 32 of its opening brief that Noranda witness Brubaker calculated the average variable cost to serve Noranda to be approximately \$22.10/MWh. Staff also properly notes that this figure is net of the revenues from off-system sales ("OSS") margins. Staff appears to think that the \$22.10/MWh figure is incorrect for some reason, arguing that OSS margins are produced by generating facilities, the cost of which is not included in the average variable cost calculation.<sup>103</sup> But Staff is wrong. The average variable cost calculated by Brubaker includes all of the costs of all fuel and related items to generate megawatt hours of energy, both for native load sales and for OSS. Thus, since the average variable cost includes all of the fuel costs, it is essential to reduce that figure by the revenues from OSS so as not to double-charge retail customers for fuel and related costs. Even if Staff were referring only to the margins from OSS, the Commission previously has ruled that the

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<sup>103</sup> Notably, Staff does not make any adjustment for its claimed proper treatment of OSS or OSS margins.



margins should be allocated to customers on the basis of their energy purchases, and not, as Ms. Kliethermes seems to prefer, on the basis of demand.<sup>104</sup> In addition, Staff witness Scheperle confirmed under cross-examination that in performing embedded cost-of-service studies, the OSS margins are allocated on energy, not on some demand-related or plant-related factor, as Kliethermes would seem to favor.<sup>105</sup>

Thus, \$22.10/MWh is the correct calculation of average variable cost to serve Noranda. At a \$30/MWh rate, Noranda therefore would be contributing \$7.90/MWh to fixed costs.<sup>106</sup> Beginning at the bottom of page 2 of its Initial Brief, Staff only compounds the confusion by moving from a discussion of average variable cost and OSS margins into the incremental cost calculation performed by Dauphinais. Staff's point is unclear, but the record demonstrates that Dauphinais' calculation of incremental or avoidable cost in no way involved a subtraction of OSS revenues, or OSS margin revenues. Thus, the OSS issue raised by Staff is a red herring.

**iii. Staff's Arbitrary Adder to the Incremental Cost Should Be Rejected.**

Staff refers repeatedly to **\*\*\_\_\_\_\_\*\*** as the minimum rate that Noranda should be charged.<sup>107</sup> This amount represents Staff's calculation of incremental cost to serve Noranda (**\*\*\_\_\_\_\_\*\***) plus an arbitrary adder of \$2.95/MWh. The \$2.95/MWh derives from Mr. Brubaker's direct testimony; he calculated that at the

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<sup>104</sup> See Report and Order in Case No. ER-2010-0036, issued May 28, 2010 at pages 86-87.

<sup>105</sup> Tr. 821, ll. 9-18.

<sup>106</sup> Tr. 769, ll. 1-5.

<sup>107</sup> Staff Br. 4, 19, 21, 24, 35.

proposed \$30/MWh rate, Noranda would be contributing \$2.95/MWh to fixed cost above the incremental cost (\$30.00/MWh minus incremental cost of \$27.05/MWh in Dauphinais' Direct testimony). Brubaker was not proposing \$2.95/MWh as a component of a rate to charge Noranda; the figure simply represented the difference between Noranda's requested rate and the calculated incremental cost in Dauphinais' direct testimony. It has no meaning or role in calculating the incremental cost to serve Noranda or in developing an appropriate rate. As such, the Commission should give no weight to this arbitrary adjustment proposed by Staff.

**iv. Staff Misstates the Impact of the FAC on the Rate Request.**

Staff also argues that Noranda should not be exempted from the Fuel Adjustment Clause ("FAC") because the FAC is a component of Ameren Missouri's variable cost to serve Noranda.<sup>108</sup> Staff again errs by conflating average variable cost with incremental cost. The FAC is related only to the average cost, and has no nexus to the incremental cost concept used to determine the load retention tariff for Ameren Missouri. Brubaker may have explained it the best:

"The FAC just measures the difference in average variable cost for the components that are in the Fuel Adjustment Clause from a rate case to some other point in time. The incremental cost calculation looks strictly at the market and the incremental cost. It has nothing to do with the change in fuel cost from the rate case to a future point in time."<sup>109</sup>

The FAC has no relationship to the incremental cost, and it should not be imposed on Noranda's incremental cost rate. For example, if Ameren's coal cost goes up, its

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<sup>108</sup> Staff Br. 24-25.

<sup>109</sup> Tr. 769, l. 14 – 770, l. 2.

average variable cost would increase, but its incremental cost would not change proportionately, because the incremental cost is a market-derived cost. Similarly, if Ameren's margin revenues from OSS increased, its average variable cost would decrease but its incremental cost would not change. The incremental cost and the FAC are not related and do not move in parallel, and the FAC should not be imposed on an incremental cost-based load retention rate.

**C. Noranda's Proposed Rate Does Not Void Terms in Noranda's Contract with Ameren Missouri.**

Ameren Missouri claims that acceptance of Noranda's proposal would be tantamount to changing terms of Noranda's contract.<sup>110</sup> That claim suggests that Ameren Missouri has not carefully read Noranda's proposed tariff.<sup>111</sup> Ameren Missouri further asserts that the existing arrangement requires Noranda to take service from it through May 31, 2020. Noranda in no way proposes to change this term.

Rather, Noranda proposes that it be allowed to take service under newly-defined Service Classification 10(M), which appears as Schedule MEB-1 in Ex. 16. Section 4, "Contract Term," requires the customer to accept an initial contract term of 10 years. That 10-year period would run from the time that the new tariff becomes effective and Noranda takes service under it. A new contract taking effect in 2014 would extend into 2024, well past the 2020 expiration of the existing contract. Thus, Noranda's obligation to take service from Ameren Missouri would extend through the term of the existing contract and for four years thereafter.

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<sup>110</sup> Ameren Br. 53-55.

<sup>111</sup> See Brubaker Direct, Ex. 16, Schedule MEB-1.

Furthermore, since Noranda would not be allowed under the tariff and new contract to terminate prior to 2024, Noranda's proposal to allow a change of service provider with a two-year notice after 2024 does not violate the notice provision of the existing contract, which would have terminated before then.

Ameren Missouri also complains that the proposal allows Noranda, but not Ameren Missouri, to terminate the contract. Since this cannot happen until 2024, well beyond the termination date of the existing contract, Ameren Missouri's objection is not well taken. Moreover, Noranda is now within Ameren Missouri's certificated service area; Ameren Missouri does not have the right to decide that it does not want to supply service to Noranda. Rather, Ameren Missouri is obligated to serve Noranda, just as it is obligated to serve any other customer.

**D. The MIEC Position on the Low-Income Customer Class is a Red Herring.**

Ameren Missouri makes much of the MIEC's previously-filed comments in opposition to establishing a low-income customer class.<sup>112</sup> But that opposition is irrelevant to the issue at hand: whether to adopt a load retention tariff for Ameren Missouri's largest customer. A rate for low-income consumers simply transfers revenue burden from one group of customers to another, without creating or maintaining any economic benefit to the general body of ratepayers or to the state. A load retention rate, on the other hand, is clearly distinguishable. Although this Commission has declined to adopt low-income rates on anything other than an experimental basis, it has approved

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<sup>112</sup> Ameren Br. 6-7.

economic development rates, including those designed for load retention. The reason is obvious. Load retention rates retain the economic benefits of the customers' load, leaving the general body of ratepayers and the state better off than if the load were lost.

**E. Dauphinais' Calculation of the Incremental Cost is the Most Credible.**

Ameren Missouri criticizes several aspects of Noranda witness Dauphinais' calculation that the incremental cost of serving Noranda is between \$27.91 and \$28.49/MWh.<sup>113</sup> Ameren Missouri's criticisms are largely directed toward Mr. Dauphinais' direct testimony, not to his surrebuttal testimony in which he responded to, and acknowledged many of, the points made in Ameren's rebuttal testimony. For the most part, then, Ameren Missouri is shooting at the wrong target.

Ironically, one of Ameren Missouri's biggest complaints is that Dauphinais used historical, rather than forward market, energy prices to determine the incremental cost. Ameren Missouri criticizes Complainants and Dauphinais for: (1) using a short historical time period for energy prices; (2) using out-of-date data by not including the historical energy prices during the winter months; and (3) not using the most current capacity prices for energy.<sup>114</sup> But Dauphinais addressed each of these points in his surrebuttal testimony, and the incremental cost offered to this Commission at trial already reflects those corrections.<sup>115</sup>

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<sup>113</sup> Dauphinais Surrebuttal, Ex. 15, p. 47, l. 1 – p. 49, l. 25.

<sup>114</sup> Ameren Br. 48-49.

<sup>115</sup> *Id.*; p. 4, l. 16 – p. 5, l. 23.

Moreover, Dauphinais provided additional detail to his analysis by addressing changes in MISO settlement charges, MISO administration charges, and MISO Schedule 26 charges (for regional transmission project costs) that would result from a Noranda shutdown.<sup>116</sup> He explained in that testimony that he used three years of historical data, but excluded an anomaly – the effects of a once-in-twenty-year Polar Vortex-induced winter – as Ameren Missouri has likewise done in the last five rate cases.<sup>117</sup> Indeed, in Ameren Missouri’s recent rate case filing, made after the trial in this matter, its witness Jaime Haro offered testimony supporting its FAC base for average net energy costs (“ANEC”). Haro used an historical 36-month period for averaging hourly energy prices (“The energy prices for the 36-month period are weighted average market energy prices actually received at Ameren Missouri's generating units (i.e., the day-ahead locational marginal prices ("LMPs") in the MISO energy market actually received by Ameren Missouri”).<sup>118</sup> In addition, Haro, like Dauphinais here, made an explicit adjustment to remove the impacts of the Polar Vortex anomaly that occurred during the period January through March 2014 (“Market prices for the period of January 1, 2014 — March 31, 2014, have been replaced with the average prices for the applicable peak period by month, from January, 2012 — March, 2012. This adjustment is being made to account for the severe weather anomaly which has been commonly referred to as the ‘Polar

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<sup>116</sup> *Id.* All of the adjustments are summarized on Exhibit 14, Sch. JRD-Surrebuttal-1.

<sup>117</sup> Tr. 683, ll. 4-17, 704, ll. 19-24; Dauphinais Surrebuttal, Ex. 14, p. 10, l. 16 – p. 12, ll. 8.

<sup>118</sup> The Commission should take official notice of this testimony, filed on July 3, 2014, as a part of Ameren Missouri’s rate case filing in ER-2014-0258. *See* Haro Direct, p. 7, ll. 11-16.

Vortex.’ Adjusting the normalized market prices for such weather anomalies is consistent with past practice.”).<sup>119</sup>

As noted on pages 33-34 of Complainants’ opening brief, should this Commission agree with Complainants, the calculations of all parties would produce an incremental cost below the requested rate of \$30/MWh. This is consistent with the methodology Ameren Missouri itself has used in what is now its last six rate cases – that a three-year historical average of net energy prices, excluding the effects of severe market anomalies such as the Polar Vortex, should be used to calculate the energy component of incremental costs. That is true even without consideration of Dauphinais’ other adjustments (such as the drop in energy prices from the loss of the Noranda load) that lower the incremental cost even further. Exhibit 403 (reprinted on page 29 of Complainant’s opening brief) reflects this fact by subtracting the first two reconciliation adjustments to Staff’s and Ameren’s Missouri’s calculation of incremental cost.

In Ameren Missouri’s recent rate case filing in ER-2014-0258, Ameren Missouri’s President and CEO Michael Moehn stated that a “significant factor[] driving the need for a rate increase” was the need to rebase Ameren Missouri’s FAC<sup>120</sup> because of “decreases in off-system sales revenues due to lower power prices[.]” That sworn statement from Ameren Missouri’s CEO appears to contradict the position Ameren Missouri is taking on forward energy prices in this case. It also supports the conclusion Dauphinais reached, as

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<sup>119</sup> *Id.*; Haro Direct, p. 8, ll. 4-8.

<sup>120</sup> *Id.*; Moehn Direct, p. 5, ll. 10-12.

illustrated in his Figure JRD-2 (included on page 35 of Complainants’ opening brief), that historical annual average electricity prices were trending lower due to hydraulic fracking.

It is also worth noting that Ameren Missouri witness Michels had errors in his rebuttal testimony criticisms of Dauphinais, which errors Ameren Missouri effectively admitted in data request responses.<sup>121</sup> In particular, Michels criticized Dauphinais for not considering certain costs in Dauphinais’ calculation of incremental cost to serve Noranda.<sup>122</sup> In Exhibit 33 (response (a) to Noranda DR 6-1), Ameren Missouri admits that:

“[c]harges paid under [NL 1402] would not be affected by changes in Noranda’s load[;]”

“the calculation of the \$/MWh of Schedules 1, 2, 41 and 42-A included amounts for this reservation which would not have been reduced should Noranda’s load change, and which upon further review should not be included in the determination of the net market opportunity cost to serve the smelter[;]”

“[t]he calculation of the \$/MWh of Schedules 33 and 35 included amounts for this reservation which would not have been reduced should Noranda’s load change, and which upon further review should not be

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<sup>121</sup> See Ex. 33 and Ex. 34.

<sup>122</sup> Michels Rebuttal, Ex. 104, p. 16, ll. 7-11, p. 18, ll. 13-17; Michels Surrebuttal, Ex. 105, pp. 4-9 (testimony had no line numbers).



included in the determination of the net market opportunity cost to serve the smelter[;]”

“[t]he removal of the amounts associated with these schedules from Mr. Michels’ calculated value of \$0.4824/MWh would lower this amount to \$0.4811/MWh.”

Moreover, in that DR response, Ameren Missouri admitted that despite Michels’ claims that Dauphinais erred in excluding charges for schedules 33, 37, 38, and 45, those charges were in fact zero (responses to subparts d, e, i, f and k). Further, in response to Noranda DR 6-4, Ameren Missouri admitted that scheduled rates for schedules 33, 41, 42-A and 45 were zero. Also, in response to Noranda DR 7-1, Ameren Missouri admitted that the total impact of Dauphinais’ failure to consider the impacts to MISO schedules 1, 2, 33, 37, 38, 41, 42-A, 45, and RT Demand Response Allocation Uplift Charges, was less than one penny per MWh. Finally, in response to Noranda DR 6-2, Ameren Missouri admitted that the RT Demand Response Allocation Uplift Charge incurred over almost 2.5 years totaled less than \$2.

In spite of Ameren Missouri’s admissions, Michels failed to make any corrections to his rebuttal testimony when he took the stand.<sup>123</sup> Rather than perform a comprehensive analysis like Dauphinais did in his Surrebuttal, it is obvious that Michels simply grabbed a bunch of categories of costs, without bothering to determine whether they were applicable, and if applicable, whether they were significant. This is not surprising since

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<sup>123</sup> Tr. 1020, ll. 7-18.

Michels admitted that he (unlike Dauphinais) was not “an expert on what each of these individual charges are.”

Ameren Missouri devotes a significant portion of its brief to criticizing Noranda’s request that its proposed rate apply for ten years with only minor increases. Ameren Missouri continues to ignore that the Commission has the authority to review Noranda’s rate if it believes the rate has become too low due to changes in the marketplace. Ameren Missouri’s fixation on the ten-year requested duration of the proposed rate is thus off the mark. The evidence in this case demonstrates that Noranda’s rate request is just and reasonable, and in the public interest. The economies of the state and Southeast Missouri, Noranda’s workforce, and significantly, Ameren Missouri’s other ratepayers are all better off if Noranda’s rate request is granted than if the smelter closes.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 16<sup>th</sup> day of July, 2014, to all counsel of record.

*/s/ Diana Vuylsteke*