

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

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

**AMEREN MISSOURI’S RESPONSE IN OPPOSITION TO MOTION TO ADOPT
JOINTLY PROPOSED PROCEDURAL SCHEDULE AND
MOTION TO EXPEDITE CONSIDERATION**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), by and through counsel, and for its *Response in Opposition to Motion to Adopt Jointly Proposed Procedural Schedule and Motion to Expedite Consideration*, states as follows:

1. As the Staff recounts in the first few paragraphs of its October 16, 2014 response opposing adoption of a procedural schedule filed by Noranda’s allies on October 15, 2014, Noranda and its allies¹ (the “Allies”) previously had a full and fair opportunity, essentially on a schedule of their choosing (that resulted in the litigation of and a decision in the case in only approximately six months), to prove that it was appropriate for the Commission to grant the relief Noranda sought in File No. EC-2014-0224. The Commission unanimously determined that Noranda and its Allies did not carry Noranda’s burden of proof in that case. There has been no material change in circumstances since that case was decided that would warrant giving them a second and even more expedited opportunity (calling for a decision in barely two months) to re-try a case that was just concluded. To do so would derogate the rights of the Company, the Staff and other parties who have significant and legitimate concerns about the relief Noranda and the Allies seek for all of the reasons previously given. While different in some respects from

¹ Office of the Public Counsel, Missouri Retailers Association, Missouri Industrial Energy Consumers and Consumers Council of Missouri. While these groups may represent some “consumers,” and may like to refer to themselves as the “Consumer Parties,” their views by no means reflect the views of all or nearly all of Ameren Missouri’s other 1.2 million customers.

Noranda's original proposal in File No. EC-2014-0224, the relief they seek now would still grant Noranda hundreds of millions of dollars of subsidies from other customers over the next five years and would do so regardless of prices realized by Noranda for its products or other financial metrics relevant to Noranda's need, and without any effective means of enforcing the "commitments" Noranda indicates it would be willing to make, save a prospective elimination of the heavily subsidized rate treatment through a secretive process of the Allies choosing, designed to make it difficult to end the subsidies at a later time.² The significant legal concerns with such a subsidy that we previously outlined and that the Commission itself recognized also remain, as the Staff pointed out in its October 16 response. Staff Response, at 2, ¶ 6.

2. We noted above that there has been no material change in circumstances that would support the requested relief, but in fact there have been at least some changes that suggests that Noranda has even less need for a subsidized rate than it did before.³ Aluminum prices for the past several months (and currently) have been significantly higher than the prices Noranda claimed justified the relief it sought in File No. EC-2014-0224. In addition, Noranda's financial results, as announced in its second quarter 2014 earnings release, were also more favorable than had been projected. One would expect that with the stronger aluminum prices of the past several months that Noranda's third quarter earnings release (set to occur on November 3) should similarly reflect improved results, certainly as compared to the dire predictions

² No parties, other than the Staff and one of Noranda's Allies, OPC, could access Noranda's information, and there would be insufficient time to test the validity of the information that is provided. Moreover, as we outlined in our briefs in File No. EC-2012-0224, how exactly can the Commission enforce commitments against Noranda since the Commission has no jurisdiction over it? Presumably the Commission can change Noranda's rate prospectively, but that does nothing to address the tens or hundreds of millions of dollars that Noranda and its shareholders, including its largest shareholder, hedge fund Apollo, may pocket even if commitments are not met. And as noted, the subsidy is still very substantial, particularly when one considers that Ameren Missouri's cost to serve Noranda has increased in the past two years.

³ As the evidence in File No. EC-2014-0224 demonstrated, there are also significant questions about whether Noranda should receive a heavily subsidized rate, and about whether it deserves one given it and its primary shareholder's management of Noranda, apart from whether there is currently a need.

Noranda gave to this Commission in File No. EC-2014-0224. Those who follow Noranda's business have noticed its improving business conditions, as evidenced by a detailed Goldman Sachs report on Noranda issued on September 12, 2014, wherein Goldman Sachs upgraded Noranda's stock to a "buy." These favorable financial developments for Noranda call into significant question the timing of Noranda's announcement that it planned to lay off employees, and indeed the justification for laying off employees at all. We would note that Noranda's layoff announcement came just a few days before it sought rehearing of the Commission's decision in File No. EC-2014-0224, and that its decision to proceed with layoffs ignores improved aluminum market fundamentals and improved finances at Noranda. And consistent with its past approach, Noranda appears to be accelerating its layoffs (at least the Allies' recent filings would indicate as much) at the same time that its Allies are again sounding the alarm by filing the most recent stipulation and asking for incredibly expedited implementation of a heavily-subsidized rate for Noranda. These tactics are not new. Noranda threatened the Commission with layoffs of a similar magnitude when it filed File No. EC-2014-0224 in February of this year in an attempt to convince the Commission to approve its original proposal.⁴ The Commission properly decided that case based on the facts adduced in that case and the law, despite the threat that layoffs might occur if the Commission did not give Noranda the relief it sought.

3. The evidence in File No. EC-2014-0224, at a hearing held just a few months ago, demonstrated that even under Noranda's claimed dire scenarios, the smelter would not be "subject to closure" until well after this rate case will be over. Those scenarios assumed aluminum prices that were significantly lower than prices that have actually materialized. Moreover, the assumptions Noranda gave the Commission (again in contrast to those Noranda

⁴ Noranda had similarly threatened dire consequences in earlier rate cases, but then declared tens of millions of dollars of special dividends, as the record in File No. EC-2014-0224 showed.

used with Moody's) reflected capital investment levels that Noranda could not prove it had to make. Moreover, historically, Noranda certainly had not made investments at anywhere near those levels. Noranda clearly has flexibility in choosing the capital investments it makes, and is surely realizing significantly more revenues for its products than its complaint assumed. As noted, aluminum prices have improved significantly. As of now, the Midwest Transaction Price (the sum of the London Metal Exchange ("LME") price for aluminum and the Midwest Premium) is more than \$1.10 per pound. When Noranda filed File No. EC-2014-0224, the Midwest Transaction Price was about 95 cents per pound, or almost 14 percent lower. These higher prices have existed for several months now, and aluminum futures suggest these prices will continue well into 2015, which is also consistent with CRU's⁵ view, which Noranda used in its Moody's presentation in evidence in the complaint case.

4. These facts, which only scratch the surface of the relevant information the Commission would need to consider to evaluate Noranda's needs and the justification (or lack thereof) for subsidized rates, raise significant questions that would have to be answered before the Commission could grant any material subsidy to Noranda, even if it were lawful to do so. Due Process demands a process and a timeline that allows a full and fair vetting of these issues and the relief Noranda and its Allies now seek, including appropriate discovery so that the Commission can be presented with a balanced and complete picture of Noranda's needs and of the true impact of the requested relief upon Ameren Missouri's other 1.2 million customers. It was barely possible to conduct such discovery and properly prepare for hearings in the four months afforded to do so in File No. EC-2014-0224. It is truly impossible to do so in the one month afforded by the proposed procedural schedule here.

⁵ CRU is a global mining and metals consultant which provides aluminum price forecasts and other information for Noranda and other aluminum smelters.

5. The Allies also ignore the fact that they are fully entitled to seek the rate design they believe to be appropriate in this rate case and that this rate case will be entirely concluded just about seven months from now.

6. As the Staff indicated in its response to the proposed procedural schedule, the Commission has already adopted a procedural schedule in this case, including one that will address rate design. Noranda (and the Allies) agreed to that schedule, and the Commission ordered it. That schedule allows all relevant factors to be discovered, analyzed, presented and considered. The Allies' proposed schedule neither allows the development of a proper record nor affords the parties Due Process, and it impedes (if not prevents outright) the discussions that the Commission encouraged when it issued its order in File No. EC-2014-0224, and that of necessity must occur, if they are to have the potential for success.⁶

7. As the Staff aptly put it, the Allies are again proposing to "litigate a general rate case on an inadequate, break-neck schedule."⁷ We agree that doing so would be detrimental to the interest of all parties, and the public interest in general, and we agree that the Company's 1.2 million other customers deserve better, "particularly since it is their money Noranda seeks to subsidize its operations." *Id.*

8. Finally, we disagree that the Allies have either complied with the Commission's rule for seeking expedited treatment of their motion or that they have otherwise proven that expedited treatment is appropriate. One of the requirements of 4 CSR 240-2.080(14) is that the request must have been filed "as soon as it could have been." A Stipulation that was materially

⁶ Adopting, or not adopting the Allies' proposed schedule is not a question of "convenience," as they imply. Allies' motion to adopt proposed schedule, at 3. To the contrary, it is a question of affording the parties and the Commission the *necessary* time to conduct discovery, to develop a record, to hold hearings and to brief the issues consistent with the Commission's duty to afford Due Process to all parties and to render decisions based upon a proper record.

⁷ Staff Response, at 3.

the same as the Stipulation filed in this case was agreed upon by the Allies on August 2, 2014. The Commission ruled against Noranda in the complaint case in mid-August, referring to the earlier and quite similar stipulation as “intriguing” and encouraging the parties to engage in discussions that might lead to a resolution of the rate design issues in this case. This rate case was filed on July 3, 2014. There was nothing stopping the Allies – months ago – from proposing some kind of process for putting the rate design phase of this case on a schedule different than the normal schedule followed in a rate case.

9. What Noranda and its Allies have done is sit on their collective hands for months, having agreed upon a procedural schedule in this case, only to now claim a crisis on their part that they then presume justifies creating a crisis on the part of all of the other parties to this case and that also apparently justifies (in their minds) trampling on the other parties’ Due Process rights in having a fair opportunity to conduct discovery and otherwise prepare testimony and prepare for hearings. And it is not as if the other parties have no pre-existing obligations in this case. Other parties are required to file direct revenue requirement and rate design testimony in early to mid-December, and are engaging in discovery at this time. The Company is engaged in responding to the hundreds (thousands, once sub-questions are considered) of data requests served on it by the other parties. Once testimony is filed in early December, the Company must engage in the very substantial effort of analyzing it, conducting its own discovery and otherwise handling the further litigation of this case. Other parties similarly have significant work to do in this case, not to mention the fact that the Company has to run its business and handle other cases, and that other parties, including the Staff, have significant other duties as well. Noranda and its Allies act as though their desire to relitigate the same or a very similar case at break-neck speed

takes precedence over all else. It doesn't, and the extremely expedited procedural schedule request most certainly was not filed as soon as it could have been.

10. We would also note that by waiting to file the stipulation and a request for an extremely expedited procedural schedule, Noranda and its Allies have gained for themselves the benefit of having had months to develop the testimony they might want to file in support of the relief they seek, which under their proposed schedule they would file three days from now, while expecting all of the other parties to put on a rebuttal case barely two weeks after their direct testimony is filed (which would in effect not allow for discovery).⁸ Noranda and its Allies will have the further opportunity to file surrebuttal testimony and to thereby “get the last word” on November 19, while then expecting all of the other parties (still, effectively, without the benefit of adequate discovery) to properly be prepared to present a cogent case to the Commission five days (only three business days) later. In summary, the Allies simply have failed to justify expedited treatment of their motion, have failed to comply with the Commission's rules, and have not justified the extremely expedited schedule they request at all.

11. Noranda should not be afraid of allowing the parties and the Commission to have a full and fair opportunity to conduct discovery, and analyze, present and consider evidence bearing on Noranda's claims, and on the appropriate rate design for Noranda's rate class in this case. And it should take the Company up on its expressed willingness to engage in discussions with Noranda. Finally, it should use the significantly increased revenues that more favorable aluminum prices are providing and cease laying off employees, providing the time necessary for the process to properly determine the design of the Company's rates in this case.

⁸ Either nothing has changed, in which case there still isn't sufficient evidence to meet the Allies' burden of proof, or things have changed and Ameren Missouri has a right to investigate Noranda's claims.

WHEREFORE, the Company prays that the Commission enter its order denying the Allies' proposed procedural schedule and their motion for expedited treatment.

Respectfully submitted,

Wendy K. Tatro, #60261
Director & Assistant General Counsel
Ameren Missouri
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
(314) 554-3484
(314) 554-4014
AmerenMissouriService@ameren.com

SMITH LEWIS, LLP

/s/ James B. Lowery
James B. Lowery, #40503
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
lowery@smithlewis.com

Attorneys for Ameren Missouri

Dated: October 21, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of October, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

James B. Lowery

James B. Lowery