

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

In the Matter of Noranda Aluminum, Inc.'s Request)
For Revisions to Union Electric Company d/b/a) File No. EC-2014-0224
Ameren Missouri's Large Transmission Service)
Tariff to Decrease its Rate for Electric Service.)

**AMEREN MISSOURI'S RESPONSE IN OPPOSITION TO
CONSUMER REPRESENTATIVES' STATEMENT**

COMES NOW Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or the "Company") and pursuant to 4 CSR 240-2.080(13) hereby files this Response to the Joint Statement of Consumer Representatives¹ in Support of Expedited Procedural Schedule. For its response, Ameren Missouri states as follows:

1. On February 19, 2014, the Consumer Representatives filed the above-referenced Joint Statement indicating that they "wish to state their support"² for an expedited decision and procedural schedule in this case.

2. They stated their "belief" that this was in the public interest, claiming that without an expedited decision "Noranda will begin the process of winding down its smelter operations for imminent closure."³ They also took at face value Noranda witness Maurice Brubaker's claim that

¹ As the subject Statement concedes, only the Office of the Public Counsel (OPC) is a party to this case. Given that fact, it is the Company's position that the other entities who joined in the Statement had no authority to file it and that the Statement as it applies to them is premature. We also believe that OPC's statement is premature. Under the Commission's rules (4 CSR 240-2.070(8)) and under the Commission's February 13, 2014 *Notice of Complaint, Order Establishing Time to Respond and Order Establishing Time to Apply to Intervene*, the Company is not required to respond to the Complaint at all until March 17, 2014. By filing this response, which the Consumer Representatives might claim is required by the time limit to respond to pleadings provided for by 4 CSR 240-2.080(13), the Company does not waive any defense it might or could have to the Complaint, nor does the Company waive any objection or defense it might or could have to whether the Complaint is properly before the Commission. The Company also does not waive its right to make further response to Noranda's expedited treatment request in its answer or other pleading.

² Consumers Representatives' Statement, ¶ 4.

³ *Id.* ¶ 5.

a closure of the smelter would cause rates to increase for other Ameren Missouri customers by an amount greater than would occur if Noranda were to obtain the relief it requests in this case.⁴

3. It is surprising to say the least that those who represent certain consumers have so quickly and easily taken at face value Noranda's claimed justifications for shifting approximately \$48 million per year of costs from itself to Ameren Missouri's other customers. That's approximately one-half *billion* dollars or more over the 10 year "term" Noranda seeks.⁵ Indeed, the Consumer Representatives' Statement doesn't even accurately characterize Noranda's claimed justifications.

4. Nowhere in Noranda's Complaint or supporting testimony does Noranda say that in fact it will close the smelter if it does not receive the relief it seeks. Nor does Noranda state that the closure is "imminent," as the Consumer Representatives claim. All Noranda did – and keep in mind that these are at this point just Noranda's untested allegations – is to very carefully state that the smelter would be "subject to closure"⁶ at a future point in time that is well-beyond the incredibly aggressive timeline Noranda proposes for this case in its Complaint.⁷ Every business is "subject to closure" by its owner at any time.

5. The issues the allegations in the Complaint and Noranda's testimony raise are complex. Unless one is willing to simply take everything Noranda claims as being undeniably true, no party (including the Commission) knows if its claims are true. We don't know if Noranda's claimed financial distress is driven by the smelter, by its bauxite mining operations in

⁴ *Id.*

⁵ The one-half billion dollars that would be shifted to other customers probably understates the true figure given that Noranda proposes to cap any future rate increase it would receive during the 10-year period at two percent, meaning that other customers would likely see even larger rate increases under Noranda's proposal than they would see in the absence of it. It also understates it because under Noranda's proposal other customers would have to bear Noranda's share of fuel adjustment clause charges, not just in the future, but also charges for fuel already paid for and used in providing service to Noranda in the past which have not yet been recovered.

⁶ Direct Testimony of Kip Smith, p. 6, line 9.

⁷ Noranda has designated this date as "highly confidential", as we discuss in our Motion to Reclassify Confidential Information or, in the Alternative, for a Waiver of 4 CSR 240-2.135(1)(B).

Jamaica, by its alumina refinery in Louisiana, or by its downstream product operations in Tennessee. We don't know if Noranda's claimed investment needs are accurate, or exactly how those investment needs may pertain to the smelter versus other operations. We don't know if savings Noranda wants from the subsidy it seeks from the Company's other customers will go into the smelter, to the bauxite mine, to the alumina refinery, or to its downstream business,⁸ or into the pockets of Noranda's shareholders, including its largest shareholder by far, Apollo Global Management, which is a large, international "alternative" investment manager (i.e., a global hedge fund). We do know that Noranda substantially improved its cash position in 2013, all while paying the electric rates it claims must be reduced by 28%, and that it generated profits in 2013 of \$93 million,⁹ and we also know that none of these facts were mentioned or acknowledged in the Complaint or in Noranda's supporting testimony. Noranda witness Brubaker claims customers are better off if Noranda remains an Ameren Missouri customer over the long 10-year subsidized term of the "deal" Noranda seeks, but his claim is based upon an analysis that picks a power price for one historical 12-month period but which makes no attempt to actually analyze if his contention will be true in the future – over that future 10-year period – when approximately 1.2 million other customers would have to bear hundreds of millions of dollars of shifted costs. In short, Mr. Brubaker's claim is totally untested at this point.

6. Noranda has apparently been planning for this and its companion complaint filed in Case No. EC-2014-0223 for many months – at least as far back as October of last year. Rather than the rush to judgment sought by Noranda and the Consumer Representatives, due process and the Commission's duty as an impartial regulator demand that Noranda's claims be tested through

⁸ The last three of which are located in other states or countries.

⁹ Transcript, Noranda's Earnings Conference Call, held just one week after it filed the Complaint on February 19, 2014.

the adversary process. To do so will take time – certainly far more time than Noranda’s proposed schedule would allow.

7. Analysis of the limited information Noranda has thus far provided, which as our reclassification motion explains we have thus far been unable to share with our internal experts, will have to be completed by outside experts we intend to engage to assist us in evaluating the validity of Noranda’s claims in this case. We have had just over two weeks to attempt to locate the expertise we need and arrange for discussions with candidate experts. The Company is an electric utility, not an aluminum business, and thus unlike experts in public utility regulation with which the Company has familiarity, for this case the Company has had to engage in more research and other efforts to attempt to locate the expertise it needs for this case. The Company has not had months to prepare for this complaint and its companion complaint in Case No. EC-2014-0223; indeed the Company only had two-days’ notice that complaints were being filed.¹⁰ The Company has diligently worked to locate and engage expert assistance and believes it will be able to engage experts this week, but the work will only just then begin.

8. Not only will those experts need to evaluate the limited information Noranda has provided, but they will also have to evaluate other publicly available information and, we expect, considerable information which we will have to obtain through discovery. We will need to have our experts’ assistance in determining what that discovery will need to be, and in then developing the requests. We don’t expect this to be a “one-time” process where we send a few data requests and are done. To the contrary, we would expect that there will initial and then follow-up discovery as needed, consisting of data requests and at the appropriate time, depositions.

¹⁰ The Company does not claim Noranda had any legal obligation to give it any prior notice at all, but the point is that given the magnitude and complexity of the Complaint and its companion complaint, it is unreasonable to impose an expedited schedule on the Company in this case.

9. Not only will considerable discovery, work, and analysis be required before we can develop proper testimony, but we would expect to request that local public hearings be held at an appropriate point in the progress of this case so that the other approximately 1.2 million customers who Noranda proposes to shift costs to have an appropriate opportunity to comment and testify.¹¹ Noranda has presented its perspective, and those of several witnesses who state Noranda's importance to Southeast Missouri (we do not dispute that Noranda provides significant economic benefits to the region surrounding it), but the impact of Noranda's proposal would be felt throughout the Company's service territory, including in such places as St. Louis, St. Charles, Jefferson City, the Lake of the Ozarks, Kirksville, and Excelsior Springs.

10. There are also procedural problems with Noranda's expedited request. Noranda's request made little or no attempt to comply with the requirements of 4 CSR 240-2.080(14). There is no statement of the harm that would be avoided if Noranda does not get the relief it wants by July of this year. There is no statement of the negative effect on other customers or that there would be no negative effect if the Commission does not act by Noranda's desired date. Noranda's own testimony and workpapers – even if they were to be believed – indicate that Noranda is not in imminent financial straits that require action by July. As earlier noted, Noranda's publicly available financial information demonstrates that Noranda's liquidity position improved in 2013, and improved in the fourth quarter of 2013 more than it had earlier in the year, and that Noranda made nearly \$100 million in profit last year, all while Noranda was paying the electric rates from which it now claims it needs relief. Publicly available financial information

¹¹ We have already heard (unsolicited) from some of our customers. One customer submitted the following to Ameren.com: "In regards to Noranda's request for a rate decrease. They are threatening economic implications by way of layoffs if we don't agree to the decrease. I use we because we all know their savings is going to become small businesses and households extra burden. Something should be written into the agreement to increase rates should they have layoffs."

demonstrates that Noranda has no debt issuances coming due until 2019.¹² While as noted it will be a complex and time-consuming endeavor to fully and accurately test Noranda's contentions, the information that is available now strongly suggests that Noranda's suggestion that it needs relief by July of this year is highly suspect.

11. The Commission has properly taken no action on Noranda's request for expedited treatment, nor should it so early in this complex case, except to deny the request pending the parties' ability to engage in discovery and otherwise determine just how this case can and should practically proceed.¹³ The period to request intervention is not yet closed.¹⁴ The Company has not yet answered or otherwise pled. Discovery hasn't started. And, as noted, Noranda hasn't justified such a schedule in any event.

12. In summary, the Consumer Representatives' "Statement in Support" notwithstanding, Noranda's unsupported and unreasonable request for expedited treatment does not have the support of the Company, and should be denied at this point as premature and unsupported. The Company and any other party who desires to evaluate Noranda's claims and engage in necessary analysis and discovery, should be afforded the opportunity to do so. Threshold questions regarding the Commission's authority of proceeding with the Complaint, or whether it should do so even if it has authority, both of which we intend to address in our

¹² Transcript, Noranda's Earnings Conference Call, February 19, 2014.

¹³ We believe there are serious questions regarding whether the Commission can grant the relief Noranda seeks, and certainly there are serious questions about whether the Commission should pick winners and losers among the Company's approximately 1.2 million customers as Noranda requests, as opposed to the General Assembly making decisions about whether some Missouri citizens should subsidize the operations of one private business located in one part of the state. Indeed, if the state were to decide that one business is to obtain relief, why should only Ameren Missouri's other customers be asked to pay for it? One can easily see why there are serious questions about whether those kinds of issues should be addressed by this Commission rather than those we elect to the General Assembly.

¹⁴ Other persons or entities who may become parties to this case also have a right to address Noranda's expedited treatment request, which they cannot do until after rulings on intervention requests are made and until they have had an appropriate time to respond in accordance with the Commission's rules.

responses to the Complaint, should be properly considered by the Commission and ruled upon before a discussion of a schedule for this case occurs at all.

WHEREFORE, for the reasons outlined herein and as we may more fully address in our answer or other pleading filed in response to the Complaint, Noranda et al.'s request for expedited treatment should be denied.

Respectfully submitted,

SMITH LEWIS, LLP

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**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of March, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

James B. Lowery

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