

exposure to increases in Ameren Missouri's ("Ameren") Fuel Adjustment Clause ("FAC") should be limited to \$2 per MWh. The effect of this decision is to shift at least \$26 million in cost responsibility to other customers of Ameren, including MEDA, and perhaps significantly more depending on any increases that may occur in Ameren's FAC over the next three years. These are all costs that would have otherwise been allocated to, and paid by, Noranda if its rates had been based on the actual costs of serving Noranda. In fact, as the Commission acknowledged in its Order, *every* cost of service study entered into evidence in this proceeding found that Noranda's rates were already below the cost of serving it. *Order*, pp. 71-72. Accordingly, it is undisputed on the record that the cost shift and additional rate reduction mandated by the Commission results in a pure and direct subsidy of Noranda's electricity costs by other customers.

3. The Commission's decision to effectuate this subsidy at the expense of other customers of Ameren is unjust, unreasonable, unlawful, arbitrary and capricious for the reasons discussed below.

4. The Commission's Order is unlawful and unreasonable because the Commission has exceeded the scope of its statutory powers by mandating a rate shift that is premised almost entirely on speculations regarding a particular customer's present and future financial condition. Such considerations, whether speculative or not, do not provide a reasonable or lawful basis for determining how rates should be allocated among a utility's customers and that such a subsidy therefore constitutes the kind of undue preference in setting rates that is prohibited by law. §393.130.3 RSMo (Cum. Supp. 2013), *State ex rel. The Laundry, Inc. et al. v. Pub. Serv. Comm'n*, 34 S.W.2d 37, 44-45 (Mo. 1931), citing *Civic League of St. Louis et al v. City of St. Louis*, 4 Mo. P.S.C. 412.1.

5. Because MEDA anticipates that other applicants for rehearing will address this issue in greater detail, MEDA will attempt to be brief in why it believes the Commission erred in approving this subsidy. In its Order, the Commission states that the purpose of the subsidy is to safeguard other customers from having to pay more for electricity should Noranda close its doors and cease taking service from Ameren, rather than to provide a large financial incentive to one specific business so that it will continue to operate and provide a certain level of jobs.² Notably, the Commission itself only a little over 8 months ago recognized that providing a subsidy for this latter purpose is a policy determination that should be made by the Missouri General Assembly, and not the Commission.³ MEDA respectfully submits that the rationale given by the Commission to support the subsidy cannot be reconciled with the evidentiary record in this case or with its recent holdings in Case No. EC-2014-0224.

6. First, in terms of whether the subsidy for Noranda is reasonably designed to protect other customers from the financial consequences of losing Noranda's load, MEDA believes it is helpful to view the subsidy as a ratepayer-funded insurance policy against the financial losses resulting from such an occurrence. Viewed that way, other customers are paying an insurance premium of approximately \$26 million per year⁴ (and perhaps more if fuel costs rise) and are receiving only \$18 to \$32 million in financial protection, in excess of the premium

² The Commission's finding that without the special rate Noranda is in imminent danger or closing is contrary to the record evidence in a number of respects. Despite the fact that Noranda's electric rate is the second highest among all domestic aluminum smelters, there is uncontroverted evidence that its total costs - both under Ameren's current rates as well as under the full increase Ameren sought in its rate case - are the lowest of all domestic smelters. Since total costs, and not just energy costs, are what determine whether an enterprise will be profitable, the evidence does not support the finding of imminent closure.

³ See, the Commission's Report and Order, File No. EC-2014-0224, p. 28, in which the Commission stated with regard to a similar proposal to provide a significant subsidy to Noranda: "Finally, and importantly, a request for an economic development subsidy of this magnitude is more properly directed to the Missouri General Assembly."

⁴ Noranda's total rate, including the FAC, is \$42.35/MWh. Order p. 119. Subtract from this \$36/MWh which is the base rate ordered for the new IAS rate class. Order p. 134. The annual impact is a function of the difference (\$6.35/MWh) multiplied by \$4.2 million which the Commission determined to be the change in pre-tax cash flow to Noranda for every change in the MWh rate. Order p. 119.

amount, should Noranda cease making a contribution to Ameren's fixed costs according to the Commission's own calculations.⁵ Order, p. 132. Few would purchase an insurance policy where the premium is so large relative to the level of financial protection being provided from potential losses.⁶

7. Second, the Order does not impose the kind of symmetrical terms and conditions that one would expect to see if the primary purpose of the subsidy was to protect other customers from the loss of fixed cost contributions.⁷ For example, Noranda's exposure to rising fuel costs is capped at \$2 per MWh, presumably to ensure that the overall rate charged to Noranda permits it to remain competitive. Even though this exposes other customers to Noranda's share of any fuel costs that escalate above the cap, there is no corresponding provision to offset the subsidy paid by customers in the event fuel costs decline below the \$2, even though such reduced charges would then be lower than what the Commission determined was necessary to make Noranda competitive.

⁵There is a significant amount of evidence on the record regarding whether the risk being insured against – namely a possible closure by Noranda – is a real one. MEDA believes that one of the most probative pieces of evidence on this score is that the party which would suffer the most significant and direct financial harm from such an event – namely Ameren – does not believe the risk is great enough to warrant the subsidy/insurance being mandated by the Commission.

⁶Assuming that it would take approximately a year for rates to be reset to reflect the loss of Noranda's load, the Commission's Order would effectively require other customers to pay more than \$78 million over the next three years for load loss protection that would have a cumulative value to them of no more than \$36 million (using Staff's wholesale price estimate) to \$64 million (using Noranda's wholesale price estimate). Moreover, the amounts paid by customers would, as previously noted, be even greater if Ameren's fuel costs escalate above current levels. Notably, the Commission fails to include any findings of fact in its Order sufficient to explain exactly how it factored in the actual risk of loss in calculating the amount that other customers should pay in subsidies to prevent that loss.

⁷By imposing conditions on Noranda that seek to regulate critical elements of its business operations such as how many jobs it must provide, what level of capital investments it must make, and what dividends it can pay to shareholders, the Commission has already strayed in its Order well beyond the limits of its statutory authority to regulate *public utilities*. Assuming, *arguendo*, however, that the act of granting and then threat of withdrawing a subsidy confers such powers on the Commission, then the Commission surely has a commensurate responsibility to exercise it in a way that fully and comprehensively protects the interests of those who are providing the subsidy. As discussed herein, the Commission's Order fails in that regard.

8. The same thing is true of the Commission's failure to impose any conditions that would offset the subsidy should there be a material change in any of the other assumptions made by the Commission in devising Noranda's rate. As a consequence, should Noranda's liquidity, the aluminum markets, or Noranda's competitive position in those markets, turn out to be more favorable than what was assumed by the Commission in calculating the subsidy, it is Noranda rather than other customers that will reap the benefit. Also absent are any safeguards requiring Noranda to return the subsidy to other customers for any period that it failed to comply with the conditions.

9. Another reason why the \$26 million subsidy is unreasonable is that it is not likely to protect customers from load loss, but instead to protect Apollo from business loss. If, as the Commission recites in the Order, Noranda's problems were caused or significantly exacerbated by Apollo's act of saddling Noranda with debt in order to pay itself a special dividend, then Noranda may ultimately fail. Order, p. 132. However, a relatively stable business that is made unstable by artificial debt is a classic candidate for a reorganization in bankruptcy. In such a proceeding, debt may be reorganized, or Noranda may be sold to new owners who see greater opportunities arising from better stewardship. In such event, Noranda will not close, nor will load be lost, nor will jobs be lost. The only party leaving the scene may be the same party who put themselves first and put Noranda and its employees last. Viewed from this business perspective, a \$26 million annual subsidy that benefits only the current owners and rewards their financially reckless behavior is clearly unreasonable.

10. Finally, if the primary purpose of the subsidy is to protect other customers rather than effectuate a legislative-like jobs incentive program, then there would seem to be no reason for the Order to explicitly condition Noranda's access to the subsidy on it continuing to employ

at least 850 full-time equivalent employees at its New Madrid plant. *See*, Condition #11, Order, pp. 11-12. Certainly, such a condition is not required to protect other customers from a potential loss of Noranda's load. In fact, it may even be counter-productive to that goal in that it burdens Noranda's operations with a specific level of payroll expense that may actually compromise, rather than promote, its ability to stay in business and thereby continue to contribute to Ameren's fixed costs.

11. MEDA understands the Commission's desire to preserve jobs and does not dispute that encouraging job creation is an appropriate governmental function. However, as the Commission itself has previously recognized it is a function that should be undertaken by the General Assembly, and not the ratepayers of a single utility, where direct subsidies of this magnitude are necessary to achieve that goal.⁸

CONCLUSION

For the reasons stated herein, the Missouri Energy Development Association respectfully requests that the Commission grant rehearing and upon rehearing issue an order that reverses the unlawful and unreasonable subsidy granted Noranda in this case.

⁸The Commission emphasizes in its Order how important Noranda is to the economic health and vibrancy of the State of Missouri and the Southeast Region of Missouri. (See Order page 119). Assuming this is true, it only underscores why the provision of subsidies, special credits or other forms of financial assistance to Noranda should be done through measures passed by the General Assembly rather than through rates established by the Commission. Ameren's ratepayers, the vast majority of whom are located in other regions of the state, are being forced to take on a disproportionate burden for sustaining Noranda in the State just because the utility they take service from also happens to be one of Noranda's suppliers. There is simply no principle of economics or equity that justifies such a result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 11th day of May, 2015, to all parties of record in Case No. ER-2014-0258.

/s/ Paul A. Boudreau