BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

NORANDA ALUMINUM'S RESPONSE TO AMEREN MISSOURI'S OBJECTION TO NON-UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW Noranda Aluminum, Inc. ("Noranda"), and in response to the objection of Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") to the non-unanimous stipulation and agreement filed by Noranda, the Office of Public Counsel ("OPC"), Missouri Industrial Energy Consumers ("MIEC"), Consumers Council of Missouri ("CCM"), and the Missouri Retailers Association ("MRA"), (collectively, the "Signatories") state as follows:

1. On July 29, 2014, OPC, Noranda, CCM, and MIEC filed a non-unanimous stipulation and agreement ("Stipulation") pursuant to 4 CSR 240-2.115. The Stipulation was amended to include all the current Signatories on August 1, 2014. It stipulates to the current effective rate of $41.03 for Large Transmission Service customers. The Signatories further stipulated that the record supports establishing a rate of $34.44/MWh, which should be set for a new ratepayer class to be created for Industrial Aluminum Smelters, of which Noranda would be the only member.

2. Ameren Missouri, on August 1, 2014, objected to the Stipulation as originally filed on July 29, 2014, under the baseless characterization that the Stipulation was a post-hearing brief equivalent to a new complaint. Reacting to the amended

Stipulation filed on August 1, 2014, on August 5, 2014 Ameren Missouri filed an objection that included the arguments it previously made.

3. The procedures and practice of the Public Service Commission ("Commission") are prescribed by rule. Those rules state "[t]he parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case." 4 CSR 240-2.115(1)(A) (emphasis added). The plain language of the rule speaks for itself; the Signatories may "at any time" file a stipulation and agreement. While Ameren Missouri seeks to characterize the Stipulation as an "unauthorized post hearing brief," see Ameren Missouri's Objection ¶ 3, the Stipulation is quite clearly contemplated, and expressly permitted, under the Commission's rules of practice.

4. When, as here, a stipulation and agreement is signed by fewer than all of the parties, it is deemed a non-unanimous stipulation and agreement. 4 CSR 240-2.115(2)(A). When non-unanimous, a stipulation is considered to be the joint position of the signatories. In the Matter of The Empire District Electric Company's Tariff Sheets, 2001 Mo. PSC LEXIS 201, Case No. ER-2001-299 (May 24, 2001) ("Empire I"). While the Commission does not "approve" or "disapprove" of a non-unanimous stipulation, it will view the position articulated in the non-unanimous stipulation as a change of position by the signatories. In the Matter of the Application of The Empire District Electric Company, 1999 Mo. PSC LEXIS 173, Case No. EA-99-172 (Dec. 7, 1999) ("Empire II"). Further, the Commission can, and does, consider that position as it decides the issues in a given case. See, e.g., In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs, ER-2010-0036, Report and Order, p. 81 (May 28, 2010) ("[T]he compromise described in the stipulation and agreement and addendum remains the

position of the signatory parties and the Commission can consider that position as it decides this issue.").

5. As a result, the Commission may adopt the position of the Stipulation so long as the statutory requirements for making such a decision are met. See Empire II. There must be, as always, an adequate factual record to support the Commission's decision. See Empire I. The record here is robust and adequately supports the relief sought and supports the relief agreed to in the amended stipulation.

6. Ameren Missouri complains that the stipulated relief does not duplicate the relief Noranda and its co-complainants originally sought. See Ameren Missouri's Objection, ¶ 3. Such a claim defies logic. First, the rules governing the Commission's practice and procedure clearly allow for the filing of stipulations and agreements. 4 CSR 240-2.115. If those agreements could only reflect the original positions of parties, how could agreements in a contested case even arise? Further, the rules contemplate non-unanimous stipulations and agreements. When, as here, a stipulation is non-unanimous, the Commission views it as "merely a change of position." Empire II. In viewing it as a change in position, the Commission has clearly indicated that such a change is permitted.

7. Not only is a change in position permitted, but the specific change contemplated in the Stipulation provides a reasonable solution. Key customer groups such as MIEC, CCM, and MRA, who will be most affected by the outcome in this case, are signatories to the Stipulation. Also, significantly, Public Counsel, the attorney who represents all customers in this matter, is a signatory to the Stipulation. That these groups and Public Counsel are signatories indicates the ultimate reasonableness of the Stipulation's proposed rate.

8. Moreover, Ameren Missouri's allegation that the Stipulation creates a new complaint seeking new relief is disingenuous. See Ameren Missouri's Objection ¶ 3. That allegation implies that the settlement figure of any issue in a case must be predated by an exact prescription in the record, in no uncertain terms, of the agreed upon settlement figure. Ameren Missouri's position just days ago in an Evidentiary Hearing for EC-2014-0223 followed no such faulty logic. There, Ameren Missouri's attorney pressed witness Greg Meyer as to how settlement figures in a "black box" settlement represent the settlement of many issues, and open to interpretation. Transcript of Evidentiary Hearing Vol. II, Case No. EC-2014-0223, p. 187-90 (July 28, 2014). Specifically, Ameren Missouri questioned Mr. Meyer as to the tradeoff inherent in a settlement of multiple issues in a "black box" settlement:

> **Q. Well, isn't the Order that's relevant the Order that approved of the black box settlement?**
> A. Well, Mr. Byrne, I mean, I have an accounting schedule that gets within probably thousands of dollars of the Commission Order that was put together by the Staff. So I believe it reflects the Staff's position of that Order.
> **Q. Okay. Maybe that's the better way to say it, the Staff's position on what the Order says.**
> A. That's just what I told you before. You can interpret it differently, too, on your black box.

Id. As the questioning suggests, Ameren Missouri, days ago, saw a settlement resolving multiple issues as so flexible that the parties could have differing interpretations of the resolution of the individual issues. That appears inconsistent with Ameren Missouri's current claim that the resolution of each issue must be spelled out in advance of the resolution or stipulation.

9. Ameren Missouri also misrepresents the conditions of the Stipulation. It alleges that the Stipulation's conditions require only an average annual investment of $35

million and that Noranda would avoid its responsibilities under the Stipulation by under-investing in years 2-4 under the pretense of raising that average in year 5. See Ameren Missouri's Objection, ¶¶ 7-8. No such gaming of the conditions is possible under the language of the Stipulation. In fact the language of the Stipulation contemplates the exact opposite scenario. Specifically it states:

> Order that the Customer may elect to invest an amount greater than $35 million in capital per year…with a corresponding reduction in its capital spending obligation in the later years of this period, but in no event shall the customer's capital investment spending credited at the end of each year…be less than the compounded inflation-adjusted expenditure requirement for that same period.

Amended Non-Unanimous Stipulation and Agreement, p. 10 sub-¶ (n) (emphasis added). In other words, Noranda would be allowed to use investment in excess of the $35 million in early years to balance a reduction later so long as the spending credited in a given year remains at or above the inflation-adjusted $35 million. The imaginary scenario suggested by Ameren Missouri is just that, imaginary. The incentives of the Stipulation are not to under-invest and then renege. Quite the opposite, the Stipulation incentivizes Noranda to over-invest.

WHEREFORE, for all the reasons stated above, the Commission should issue its order adopting all of the specific terms and conditions of the Stipulation.

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 by electronic mail this 6th day of August, 2014, to the parties on the Commission's service list in this case.

/s/ Diana Vuylsteke