

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

In the Matter of Noranda Aluminum, Inc.'s)	
Possible Material Default in a Condition)	
Necessary to Remain on the IAS Rate)	
Schedule Established in Case No. ER-2014-)	Case No. EO-2016-0203
0258)	

**RESPONSE BY NORANDA ALUMINUM, INC. TO PETITION
OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**

Comes now Noranda Aluminum, Inc. ("Noranda"), and provides the following response to the Petition of the Staff of the Missouri Public Service Commission ("Staff").

Overview

1. In its Report & Order in Case No. ER-2014-0258 ("Report & Order"), this Commission granted badly needed rate relief to Noranda, subject to certain conditions. One such condition was that Noranda maintain a minimum employee headcount of 850 people at Noranda's New Madrid Smelter ("Smelter"). See Report & Order, pages 135-136, ¶ 11. In its Petition to the Commission, filed February 3, 2016, the Staff questioned whether the Smelter continued to meet that employee threshold. The Staff referenced a *Southeast Missourian* article on recent Smelter layoffs. It asked that this Commission open a docket to determine if, in light of this news, Noranda has failed materially to comply with any term or condition required to access the reduced rate structure. In response, on February 4, 2016, this Commission issued an order directing Noranda to reply to Staff's Petition no later than February 9, 2016.

2. Noranda now submits that it has been forced recently to temporarily reduce its Smelter workforce below the levels provided in the Report & Order. This is an unfortunate and challenging development. However, this reduction alone does not mean that Noranda has failed

to comply with the Report & Order. The employee-count requirement was subject to an exception for *force majeure* or other events considered by the Commission to be outside of Noranda's control. And, as this Response will show, Noranda has had to confront several such unforeseen, disruptive events in recent months.

3. Three critical events beyond Noranda's control have occurred since the Report & Order was issued. First, on January 7, 2016, an electrical supply circuit failure caused extensive damage to two of the three pot lines at the Smelter. It will be several months or more before the necessary repairs can be completed. In the interim, Noranda is left with only one operable pot line at the Smelter. Second, the London Metals Exchange ("LME") price for aluminum has fallen to levels beyond even the worst case scenarios envisioned in Case No. ER-2014-0258. The current LME price of aluminum, including the Midwest premium, is approximately \$ 0.76 per pound, a 25% price drop as compared to the date of the Report & Order. At the current price, Noranda loses money on each pound of primary aluminum it produces. Finally, on August 5, 2015, a molten metal explosion occurred at the cast house of the Smelter facility. Fortunately, the explosion caused no fatalities. However, the explosion did cause major structural and production equipment damage which has led to the suspension of production of one of Noranda's highest margin products. Noranda does not know when production can resume at the cast house, but production is unlikely to resume in the near or intermediate future.

4. In order to sustain the Smelter in the short and intermediate time frames, Noranda has reduced operations in two of its three aluminum pot lines and, as a result, has been forced to lay off its employees associated with that reduction. The resulting layoffs have caused the Smelter's employment level to drop below 850.

5. Most recently, on February 8, 2016, Noranda and its wholly-owned direct and indirect subsidiaries voluntarily filed to initiate a court-supervised restructuring process under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Missouri.¹ In February 8, 2016 press releases, Noranda has stated that its objective is to stabilize its upstream operations as it explores ways to make them economically viable. Noranda's downstream Flat-Rolled Products business is profitable, generates positive cash flow, and continues to serve customers in the ordinary course of business. Noranda remains committed to strong relationships with its customers and suppliers and continuing its longstanding dedication to operational safety and environmental stewardship in its communities. Noranda expects to continue operating the single remaining pot line at the New Madrid Smelter until March 2016. At that point, all remaining operations at New Madrid will be curtailed, although Noranda will maintain the flexibility to restart operations at New Madrid should conditions allow.

Notice of Force Majeure Events and Incidents Beyond Noranda's Control

6. In order to sustain its business at the Smelter, in Ameren Missouri's last rate case, Docket No. ER-2014-0258, this Commission granted Noranda a discounted electric rate for a period of three years. *See* Report & Order in ER-2014-0258, April 29, 2015, pages 133-139. This discounted rate, which is applicable to a new class of Ameren Missouri electric service ratepayer known as Industrial Aluminum Smelters ("IAS"), consists of an effective base rate of \$36 per MWh, plus up to \$2 per MWh pursuant to Ameren Missouri's Rider FAC.

7. In approving this discounted rate, the Commission noted that Noranda has a unique position as Ameren Missouri's largest customer. *See* Report & Order, pages 130. Based

¹ Bankruptcy Court filings and other information related to the court-supervised bankruptcy proceedings are available at the following website administered by Noranda's claims agent, Prime Clerk, at <https://cases.primeclerk.com/noranda/>.

on the substantial amount of electricity that Noranda purchases (approximately ten percent (10%) of Ameren Missouri's total load), the revenues collected pursuant to the IAS discounted rate would be greater than the incremental cost of power to serve Noranda's Smelter, and much greater than the overall rate impact of the Smelter reducing or ceasing operations. After considering these facts, the Commission determined that the IAS discounted rate would result in overall lower rates for customers. Specifically, the Commission stated as follows:

"[T]he incremental cost to provide power to Noranda, that is the price at which Ameren Missouri could sell that power on the off-system market, is approximately \$28 per MWh. If Noranda pays a rate of \$36 per MWh and buys 4 million MWhs per year, it would contribute roughly \$32 million per year towards Ameren's fixed costs. That is \$32 million per year that Ameren Missouri's other customers will have to pay if the smelter shuts down." Report & Order, p. 132.

Based on these unique circumstances, the Commission concluded that "it is in the interest of all ratepayers for the Commission to allow Noranda a lower rate to keep it as a customer of Ameren Missouri." Report & Order, p. 131.

8. The Commission imposed several requirements on Noranda to access this rate, including certain minimum employment levels at the Smelter:

11. As a condition to access the reduced rate structure available to the IAS class, the IAS customer shall provide the Commission's Staff and all parties to this rate case the following information regarding employment at the New Madrid smelter:

The IAS customer shall file a monthly certification of compliance and quarterly surveillance reports demonstrating that the customer has fulfilled the requirement that employment at the New Madrid smelter meets or exceeds a daily average of 850 full-time equivalent personnel, either direct employees or contract personnel, and specifically noting instances where the employee count goes below the required average because employees have voluntarily left the customer's employ and the IAS customer is actively seeking to fill those positions, or due to force majeure or other events considered by the Commission to be outside the IAS customer's control.

The information provided shall be classified as Highly Confidential.

[...]

19. The Commission Staff or any party to this case may file a petition asking the Commission to determine whether the IAS customer has failed materially to comply with any term or condition required to access the reduced rate structure. Upon the filing of such a petition, the Commission shall hold a hearing or make a determination based on verified pleading within 30 days of the filing of the petition.

20. At such a hearing, the IAS customer shall bear the burden to show that it has not failed to meet any term or condition required to access the IAS class rate structure; why its failure to meet any term or condition required to access the IAS class rate structure is immaterial; or why it should continue to access the IAS class rate structure despite a material failure to meet any term or condition required to access the IAS class rate structure.

21. In assessing whether a violation of any term or condition is material, the Commission shall weigh all relevant factors, including:

(a) Any evidence of *force majeure*;

(b) With regard to an alleged violation of an employment level condition, whether the violation is the *de minimis* result of the quarterly-average calculation and whether the IAS customer has actively sought, or is actively seeking, to fill those vacant positions.

Report & Order, pages 135-136, 138-139 (Emphasis added).

9. Pursuant to these conditions, Noranda is hereby providing notice that, due to the culmination of three events that qualify as *force majeure* and/or incidents outside of Noranda's control, Noranda has been forced to drop below the 850-employee threshold. First, the recent unexpected electric supply circuit shutdown on January 7, 2016, which led to the cessation of operations on both pot lines 1 and 2. Second, the LME price for aluminum has dramatically declined to levels below any prices contemplated in the stress testing aluminum price scenarios

that Noranda presented to the Commission in the 0258 docket. Third, Noranda experienced an explosion at the Smelter which has taken out one of its most profitable product lines. Each of these circumstances is described further below.

A. NORANDA HAS EXPERIENCED A *FORCE MAJEURE* EVENT RELATING TO AN ELECTRICAL CIRCUIT FAILURE AT THE SMELTER

10. On January 7, 2016, an electrical supply circuit failure shut down two of the three pot lines at the Smelter. While this sudden unforeseen failure did not result in any employee injury, it did interrupt power supply to two of the pot lines. Without the necessary electricity, the liquid metal hardened in the individual pots, thus rendering them temporarily useless. The lines will not be operational until this material is removed and the pots are repaired, a process that will take months. Fortunately, the Smelter's third pot line was not affected significantly by the power failure. It is now the Smelter's only operational production line. For the foreseeable future, the Smelter will only be able to operate at 23% of capacity, and its full-time workforce will need to be adjusted accordingly if the Smelter is to have any chance of remaining viable.

B. DUE TO UNFORESEEABLE MARKET CONDITIONS, THE PRICE OF ALUMINUM HAS DRAMATICALLY DECLINED

11. In the period since the Commission issued its Report & Order, there has been a significant and sustained decline in the price of aluminum. The price of aluminum is a critically important variable in Noranda's business model, as noted by the Commission in its Report & Order:

Noranda presented various scenarios based on the price of aluminum in which it would run out of liquidity (cash and available credit) in the next few years. Those scenarios were criticized as not the most likely to occur, and indeed, they are not intended to be forecasts of aluminum prices. Rather, they are scenarios of what would happen if aluminum prices, which are volatile, were to drop. They are worst case scenarios, but sometimes the worst happens.

Report & Order, pages 129-130 (Emphasis added).

12. At the time of the Commission's decision on April 29, 2015, the LME price of aluminum, including the Midwest premium, was \$1.00 per pound. During that proceeding, various forecasts of aluminum prices were presented for the Commission's consideration, with the "worst case" scenario modeling a price decline to \$0.91 per pound in the year 2018. *See* Boyles Direct, Exhibit A3, page 4, step 3.

13. Unfortunately, due to a number of unforeseeable global and macro-economic factors, market prices for aluminum have fallen far below even the worst case models in a very short period of time. The current LME price of aluminum, including the Midwest premium, is \$0.76 per pound. This is twenty-four percent (24%) lower than the LME price at the time of the Report & Order and sixteen percent (16%) lower than the worst case scenario modeled in testimony.

14. The sharp drop in aluminum prices is totally beyond Noranda's control and was obviously not anticipated by any party in Case No. ER-2014-0258. Indeed, Noranda's "worst case" volatility scenario did not show a nominal aluminum price (with Midwest premium) below \$ 0.91 per pound in any year for ten years starting in 2014. At the current price, Noranda loses money on each pound of primary aluminum produced.

15. The reasons for this decline are varied, but largely stem from a sharp increase in China's production in recent years, paired with a slowdown in China's aluminum consumption, government support for Chinese aluminum smelters, and a comparatively strong American Dollar that encourages export. These factors have led to a huge surplus of Chinese aluminum being dumped into the global market at exceptionally low prices. There have also been well-documented concerns that a large portion of aluminum being exported out of China has been

misclassified as a “semi-manufactured” product, thereby avoiding China’s fifteen percent (15%) export tax and instead qualifying for a rebate.²

16. Taken in concert, these factors have led to a unforeseeable and dramatic decrease in the LME price for aluminum. In recent reports, Harbor Aluminum Intelligence Unit LLC (“Harbor Aluminum”), a respected expert on aluminum markets, has downgraded its assessment of aluminum prices. In its December 10, 2015 report, Harbor notes that there is no evidence indicating that the market has bottomed out, and its current base scenario price for aluminum for 2016 is \$0.67 per pound and for 2017 is \$0.69 per pound. Its downside case is lower.

17. The impact of these lower prices is being felt by smelting facilities across the United States. In response to the current market conditions, Alcoa already shuttered one smelter in Washington State in January; it plans to indefinitely idle another smelting facility there starting in June.³ So far it has managed to keep its Massena, New York facility open, thanks in large part to a \$70 million assistance package provided by the State of New York. Similarly, Century Aluminum has started shuttering its two pot lines at its Mount Holly, South Carolina smelter. In December, Century announced that it has negotiated a deal with Santee Cooper, its power provider, that will allow it to continue operating at 50 percent capacity until a legislative solution can be developed later this year.⁴ Likewise, Century has credited its decision to delay

² See, e.g., Andy Home, *What Can Mend Aluminum Market's Bleeding Heart?*, Reuters, Jan. 21, 2016, available at <http://www.reuters.com/article/us-aluminum-market-ahome-idUSKCN0V002I>; Luc Cohen, *Aluminum Industry Body Asks U.S. Authorities to Probe China Exports*, Reuters, Sep. 17, 2015, available at <http://www.reuters.com/article/us-aluminum-china-exports-idUSKCN0RH2FG20150917>; Press Release, The Aluminum Association, *The Aluminum Association Concerned About CNIA Call for Removal of Export Tax on Primary Aluminum* (Sep. 9, 2015), available at <http://www.aluminum.org/news/aluminum-association-concerned-about-cnial-call-removal-export-tax-primary-aluminum..>

³ Tom Banse, *Aluminum Smelting's Questionable Future in the Northwest*, KUOW, Jan. 27, 2016, available at <http://kuow.org/post/wither-aluminum-smelting-future-northwest>.

⁴ David Wren, *Mount Holly Closure Notice Creates Tight Deadline for Power Talks*, The Post and Courier, Jan. 7, 2016, available at <http://www.postandcourier.com/article/20160107/PC05/160109526/1177/latest-mount-holly-closure-notice-creates-tight-deadline-for-power-negotiations>; David Wren, *New Deal Will Keep Mount Holly Smelter Operating While Lawmakers Address Power Issue*, The Post and Courier, Dec. 18, 2015, available at <http://www.postandcourier.com/article/20151218/PC05/151219335/1180/new-deal-will-keep-mount-holly-smelter->

shuttering a portion of its production at its Seebree, Kentucky smelter to access low-cost market power stemming from “cooperation among Kentucky state legislators and regulators, the local utility, and the Company.”⁵

C. NORANDA HAS EXPERIENCED A *FORCE MAJEURE* EVENT RELATING TO AN EXPLOSION AT THE SMELTER

18. On August 4, 2015, an explosion struck the cast house of the Smelter facility. Fortunately, the explosion caused no serious injuries. However, the explosion did cause significant property damage and forced Noranda to indefinitely suspend billet production at the cast house. This has a significant impact on Noranda’s business, as the cast house is the site where extrusion billet, cylindrical aluminum rod, is produced. Aluminum billet is one of Noranda’s most profitable products, and was a key component in Noranda’s plan to sustain the Smelter’s operation in the face of extraordinarily low aluminum pricing. Noranda does not know when production at the cast house can resume, but it will likely remain out of service for the near and intermediate future.

D. THE UNFORESEEABLE EVENTS DESCRIBED ABOVE HAVE REQUIRED NORANDA TO FALL BELOW 850 EMPLOYEES

19. In order to sustain the Smelter in the short to intermediate term, Noranda has been forced to reduce its operations until such time as it can resume operations economically. With current market prices having declined to such a degree that Noranda is losing money on each pound of aluminum produced, it is not possible to continue full production at all three lines.

20. As described above, the urgency and necessity of these actions has been significantly increased due to the explosion at the cast house and the subsequent forced cessation

operating-while-lawmakers-address-power-issue.]

⁵ Press Release, Century Aluminum, Century Announces Continued Operations of Its Seebree, KY Smelter (Dec. 17, 2015), available at <http://investor.shareholder.com/cenx/releasedetail.cfm?ReleaseID=947511>.

of operations there. With the cast house no longer operational, Noranda is not able to produce billet, one of its highest margin products. Without billet production, it is impossible for Noranda to sustain its current level of operations under the current economic conditions.

21. Also, the urgency and necessity of these actions has been increased by the recent electric supply circuit failure on January 7, 2016 and the resulting damage to two of the Smelter's pot lines. Without these lines, Noranda can only operate the facility at 23% capacity. This development by itself might have required Noranda to make workforce adjustments. The fact that it comes now in the wake of market turmoil and other facility failures makes Noranda's position practically untenable.

22. As a result of the confluence of these unforeseeable events, Noranda has been forced to decrease its employee levels below the 850 employee threshold identified by the Commission as a condition to participation in the IAS rate class. However, in the Report & Order, the Commission recognized that this condition may be waived for instances in which decreases in employee numbers are "due to *force majeure* or other events considered by the Commission to be outside the IAS customer's control."

23. Now more than ever, with the current economic and operational constraints placed upon Noranda, it is vital that Noranda continue utilizing the load retention rate that was approved by the Commission a mere seven months ago. Even with the IAS rate, the current environment has taken a significant toll in the Company, as most recently evidenced by Noranda being de-listed by the New York Stock Exchange and its bankruptcy filing on February 8, 2016.⁶

24. With unsustainable market prices, the suspension of production of one of its highest margin products, and decreased production from the pot lines, Noranda will not be able to continue operating the Smelter if it is now asked to also bear a significant increase in its

⁶ See Noranda Aluminum Holding Corp, 8-K, filed December 21, 2015.

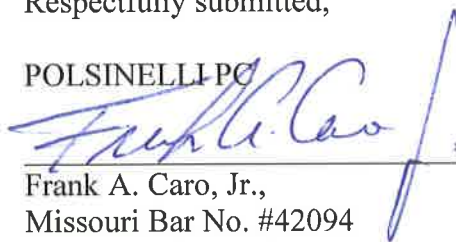
electricity rates. As the Commission noted in its Report & Order, such a development for Noranda, which is currently Ameren Missouri's largest customer by far, would only serve to increase the rate burden placed on the remainder of the utility's customers.

25. For all of the reasons described above, Noranda believes that the confluence of the electric supply circuit failure causing the shutdown of pot lines 1 and 2, the dramatic decline in aluminum prices and the explosion at the Smelter qualifies as *force majeure* and/or events outside of Noranda's control, such that Noranda may continue to participate as a customer in the IAS rate class.

WHEREFORE, Noranda respectfully submits this Response pursuant to the Order in Case No. EO-2016-0203 and requests the Commission issue an Order authorizing Noranda to utilize the current the IAS rate.

Respectfully submitted,

POLSINELLI PC



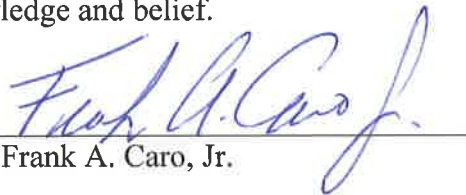
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VERIFICATION

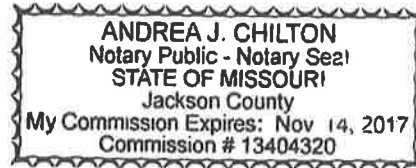
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

The undersigned, being first duly sworn upon his oath, states that the facts in this Notice are true and correct to the best of his knowledge and belief.

Signature: 
Frank A. Caro, Jr.

Subscribed and sworn to before me, this 9th day of February, 2016.


Notary Public



CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this February 9, 2016 to all parties of record on the service list maintained in Case Nos. EO-2016-0203 and ER-2014-0258.

/s/ Frank A. Caro, Jr.