

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

Noranda Aluminum, Inc. et al.,	)	
	)	
Complainants,	)	
v.	)	File No. EC-2014-0224
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri	)	
Respondent.	)	

**STATEMENT OF POSITION**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the "Company") and for its Statement of Position, states as follows:

**1. Is Noranda experiencing a liquidity crisis such that it is likely to cease operations at its New Madrid smelter if it cannot obtain relief of the sort sought here?**

The evidence in this case will show that Noranda is not experiencing a liquidity crisis such that it is likely to cease operations at its New Madrid smelter any time soon. Noranda itself has not even alleged as much, arguing only that its smelter would be "subject to closure" at a specified future date if the relief it seeks is not granted. While Noranda has recently discussed its claimed need for what it would characterize as a “competitive” power rate in materials released to investors and in statements it has made to investors, it has not sounded the kind of alarm portrayed in Noranda’s testimony in this case to those investors. In fact, its statements to investors are almost universally positive, touting its “solid liquidity position,” among other things. Its Board of Directors materials and management reports similarly make no mention of a closure of the smelter. And its communications with – and financial information given to – credit rating agencies come to a completely different conclusion about Noranda’s liquidity position.

Moreover, the evidence will show that considering all of its costs (not just electric costs) Noranda's smelter's overall costs are quite competitive with other smelters operating in the U.S without obtaining any subsidy of its current cost-based electric rates. Indeed, Noranda’s overall costs are the

fourth lowest (out of nine) of all U.S. smelters at its current electric rates. Granting the relief Noranda is asking for in this case would make them *the* lowest cost smelter in the U.S. While undoubtedly that would be good for Noranda's shareholders, there is no evidence that Noranda must be the lowest cost producer to continue its operations. Noranda's allegations about its liquidity crisis provide no basis for it to extract a subsidy from all of Ameren Missouri's other customers.

The evidence in this case will also show that to the extent Noranda's current liquidity position is less positive than it would like, that circumstance could easily have been avoided had its majority owner, Apollo Global Management LLC (Apollo) not significantly over-leveraged the company by burdening its cost structure with high cost debt. Apollo did this in at least two ways. First just 25 days after Apollo made its initial \$214 million investment to acquire a controlling interest in Noranda, it caused Noranda to borrow money to repay itself for that entire initial investment (leaving Apollo's net investment at zero – Apollo has no capital at stake whatsoever). Second, in the years following Apollo caused Noranda to pay hundreds of millions of dollars of additional dividends to Apollo. There is also nothing stopping Apollo from providing capital to Noranda (which would actually put at least some Apollo skin in the game), which could also completely solve any liquidity issues Noranda claims it has. Apollo's irresponsible actions should not be rewarded with subsidies from Ameren Missouri's other customers, many of whom are struggling to pay bills or stay in business through no fault of their own.

**a. If so, would the closure of the New Madrid smelter represent a significant detriment to the economy of Southeast Missouri, to local tax revenues, and to state tax revenues?**

Ameren Missouri does not dispute that if the New Madrid smelter closed it would represent a significant detriment to the local economy, local tax revenues and state tax revenues, as is the case when any major employer ceases operations. However, Noranda has not made a credible case that the smelter is going to close. While as noted Apollo has no investment in Noranda, it does still own about one-third of its stock (which is a controlling share, under Noranda's bylaws). Closing the smelter could be expected to hurt, not help, the value of Apollo's investment.

**b. If so, can the Commission lawfully grant the requested relief?**

The Commission cannot lawfully grant the relief that Noranda is requesting because it would constitute undue discrimination in violation of Section 393.130 RSMo (2000) in that the rate charged to Noranda would be based on Noranda's allegations about its ability to pay rather than on any difference whatsoever in the nature or character of the service Ameren Missouri provides to Noranda vis-à-vis other customers. In addition, re-setting Ameren Missouri's rates in this proceeding is unlawful because rates can only be changed based upon a consideration of all relevant factors. Only one factor is at issue here: Noranda's claimed, private need based on its own claimed business circumstances.

**c. If so, should the Commission grant the requested relief?**

The Commission should not grant the requested relief. Aside from the other considerations enumerated above, granting the relief requested by Noranda would be a terrible policy decision. The Commission has consistently set utility rates at or near the cost of providing service to customers. In this case, Noranda is requesting a rate based on its alleged financial condition. If the Commission were to grant relief in this case, it would open the floodgates to other business and residential customers making the same claims. In this case, Continental Cement has already asked for similar relief if Noranda's complaint is granted. Numerous other businesses and residential customers could also make similar claims—in fact, their claims may well be more compelling because they may be blameless for their financial condition, unlike Noranda, whose owner irresponsibly over-leveraged the Company. Even if it were appropriate for the Commission to start down this path of considering the financial condition of every customer when it sets rates, the Commission is not equipped to judge whether individual customers' claimed needs are real or manufactured. The financial condition of businesses with multiple layers of ownership are difficult to decipher, as are the reasons behind those financial conditions. Even the financial condition of residential customers is difficult to judge, and in both instances, the financial fortunes of

customers can change in the blink of an eye, with the recovery of a depressed commodity market or a new job for a residential customer.

Moreover, requiring Ameren Missouri's other customers to subsidize Noranda's operations is completely unfair. Many of the people who would benefit most from the continued operation of the smelter – people who live and work in Southeast Missouri – are customers of electric cooperatives and municipal electric systems in Southeast Missouri (or even in neighboring states) who would not have to bear the burden of Noranda's requested subsidy. Many of those who would have to pay the subsidy are located more than 100 miles from Noranda, in St. Louis or even Excelsior Springs in the Northwest portion of the state. It would be exceedingly unfair to burden these customers, and these customers alone, with paying a subsidy to Noranda, even if a subsidy were warranted.

Noranda's complaint really seeks an economic development subsidy, which is the proper province of elected officials in the General Assembly. If those elected officials determine that a subsidy for Noranda is warranted, they can and should allocate the cost of that subsidy to all taxpayers in the state.

**2. Would rates for Ameren Missouri's ratepayers other than Noranda be lower if Noranda remains on Ameren Missouri's system at the reduced rate?**

No. Ameren Missouri estimates that rates to its other customers would be \$500 million or more higher if Noranda remains on the system at the reduced rate.

**3. Would it be more beneficial to Ameren Missouri's ratepayers other than Noranda for Noranda to remain on Ameren Missouri's system at the requested reduced rate than for Noranda to leave the system entirely?**

It would be much more beneficial for Ameren Missouri's other customers if Noranda left the system rather than remaining on the system at the requested reduced rate. The reduced rate provides an immediate subsidy to Noranda at the cost of every other customer. More significantly, by locking in the rate for 10 years Noranda is proposing to shift huge risks of additional cost increases to Ameren

Missouri's other customers. There is no upside benefit to other customers. If aluminum prices improve or Noranda's business situation improves, all of the benefit will be retained by Noranda, and its controlling shareholder, Apollo, will reap even more windfall profits on its initial, \$214 million investment which, as noted, it has already extracted from Noranda. The 340% internal rate of return that Apollo has already received will grow even more. Also, there are no assurances that Noranda will not close the smelter even if it receives the rate it is requesting. In short, Noranda's proposal is far more detrimental to other customers than if it left the system entirely.

**4. Is it appropriate to redesign Ameren Missouri's tariffs and rates on the basis of Noranda's proposal as described in its Direct Testimony and updated in its Surrebuttal Testimony?**

No. For the reasons stated above, such a result would be unlawful and an unwise policy decision.

**a. If so, should Noranda be exempted from the FAC?**

No. Exempting Noranda from the FAC would unfairly and unlawfully shift the substantial risk of cost increases to fuel used to provide power to Noranda to other customers, many of whom may be experiencing serious financial challenges through no fault of their own.

**b. If so, should Noaranda's rate increases be capped in any manner?**

No. Capping Noranda's rate increases would unfairly and unlawfully shift the substantial risk of non-fuel cost increases incurred to serve Noranda to other customers, many of whom may be experiencing serious financial challenges through no fault of their own.

**c. If so, can the Commission change the terms of Noranda's service obligation to Ameren Missouri and of Ameren Missouri's service obligation to Noranda?**

No. The Commission cannot lawfully abrogate the terms of the contract between Noranda and Ameren Missouri. While the Commission has the authority to change rates and terms and conditions of service for Noranda, in consideration of Ameren Missouri's agreement to come to the Commission and obtain a certificate of public convenience and necessity to serve Noranda, Noranda agreed that it must take service for a minimum of

15 years. That private contractual agreement, which does not impact rates or terms of service, cannot be abrogated by the Commission.

- d. If so, should the resulting revenue deficiency be made up by other rate payers in whole or in part?**

Any revenue deficiency that the Commission creates by providing a subsidy to Noranda must be paid by other customers.

- e. If so, how should the resulting revenue deficiency be calculated?**

Any subsidy to Noranda can only lawfully be provided in the context of a rate case, in which all relevant factors are considered. The revenue deficiency will be allocated to other customers through the normal process of calculating rates in a rate case.

- f. If so, can the resulting revenue deficiency lawfully be allocated between ratepayers and Ameren Missouri shareholders?**

No. Allocating a revenue deficiency created by a subsidy to Noranda to Ameren Missouri's shareholders would clearly be unlawful confiscation. It would also clearly constitute unlawful single-issue ratemaking.

- i. How should the revenue deficiency allocated to other ratepayers be allocated on an interclass basis?**

Any such allocation should be accomplished in a rate case, where a cost of service study and a class cost of service study can be used.

- ii. How should the revenue deficiency allocated to other ratepayers be allocated on an intra-class basis?**

Any such allocation should be accomplished in a rate case, where a cost of service study and a class cost of service study can be used.

- g. If so, what, if any, conditions or commitments should the Commission require of Noranda?**

No conditions or commitments that the Commission could require of Noranda would justify the Commission's adoption of the poorly conceived, unlawful and unfair-to-other-customers proposal Noranda has put forth. However, if a subsidy were to be adopted, it should be conditioned on:

- i. Restoration from Apollo of a significant amount the capital that Apollo has taken out of Noranda since its acquisition. At a minimum, Apollo should be required to restore its initial investment, which would immediately provide Noranda with a significant source of liquidity, while also substantially reducing its leverage. This in turn would reduce its interest costs, improve its credit rating and improve its access to capital. Specified financial parameters would have to be developed and made a part of any such condition to ensure that Apollo did not simply restore the capital, obtain the subsidy, and then again cause Noranda to dividend those sums back to Apollo or its affiliates or owners;
- ii. An enforceable guarantee that limits for any period when a subsidy is in place the dividends of other payments that Noranda can make to shareholders, including Apollo during the 10-year term of the subsidy.;
- iii. An enforceable guarantee that the smelter will continue to operate and no employees will be laid off during the 10-year term of the subsidy, with a binding obligation on Noranda, backed by an enforceable corporate guaranty from Apollo, that provides that if the conditions are not satisfied for the entire period, the full difference between the rates Noranda would have paid without the subsidy and the rates it did pay with the subsidy must be repaid (to be credited on Ameren Missouri's other customers' bills) within 60 days of the date the condition is not satisfied;
- iv. An enforceable guarantee by Noranda that a specified level of capital investment will be made at the smelter over the 10-year term of the subsidy, with a binding obligation on Noranda, backed by an enforceable corporate guaranty from Apollo, that provides

that if the condition is not satisfied for the entire period, the full difference between the rates Noranda would have paid without the subsidy and the rates it did pay with the subsidy must be repaid (to be credited on Ameren Missouri's other customers' bills) within 60 days of the date the condition is not satisfied;

- v. An enforceable guarantee by Noranda, backed by a corporate guaranty from Apollo, that ensures that a specified level of funds are to be repaid (to be credited on Ameren Missouri's other customers' bills) if aluminum prices exceed a specified threshold during the 10-year term of the subsidy; and
- vi. A provision that the terms of the subsidy will be re-opened if the market price for electricity exceeds a specified level for a specified period of time since. The higher market electric prices go, the greater the subsidy from other customers to Noranda.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a Ameren Missouri

By Thomas M. Byrne  
Thomas M. Byrne, #33340  
Director & Assistant General Counsel  
Wendy K. Tatro, #60261  
Corporate Counsel  
Ameren Missouri  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149  
(314) 554-2514  
(314) 554-4014 (FAX)  
AmerenMOService@ameren.com

SMITH LEWIS, LLP

/s/ James B. Lowery  
**James B. Lowery**, #40503  
Suite 200, City Centre Building



111 South Ninth Street  
P.O. Box 918  
Columbia, MO 65205-0918  
Phone (573) 443-3141  
Facsimile (573) 442-6686  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 6th day of June, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

*Thomas M. Byrne*

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