

Exhibit No.:
Issues: *Noranda AAO*
Lost Revenue Deferral
Witness: *John P. Cassidy*
Sponsoring Party: *MoPSC Staff*
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Case No.: *ER-2014-0258*
Date Testimony Prepared: *January 16, 2015*

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

UTILITY SERVICES - AUDITING

REBUTTAL TESTIMONY

OF

JOHN P. CASSIDY

**UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri**

CASE NO. ER-2014-0258

Jefferson City, Missouri
January 16, 2015

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**UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI**

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1 **REBUTTAL TESTIMONY**

2 **OF**

3 **JOHN P. CASSIDY**

4 **UNION ELECTRIC COMPANY,**
5 **d/b/a AMEREN MISSOURI**

6 **CASE NO. ER-2014-0258**

7 Q. Please state your name and business address.

8 A. John P. Cassidy, 111 North 7th Street, Suite 105, St. Louis, MO 63101.

9 Q. By whom are you employed and in what capacity?

10 A. I am employed by the Missouri Public Service Commission (“Commission”)
11 as a Utility Regulatory Auditor V.

12 Q. Are you the same John P. Cassidy who filed direct testimony and also
13 sponsored the Staff’s Revenue Requirement Cost of Service Report that was filed on
14 December 5, 2014 as part of this rate proceeding?

15 A. Yes.

16 **EXECUTIVE SUMMARY**

17 Q. Please provide a brief summary of your rebuttal testimony in this proceeding.

18 A. My rebuttal testimony will address the Noranda Aluminum Inc. (“Noranda”)¹
19 Accounting Authority Order (AAO) lost revenue deferral that was addressed by Ameren
20 Missouri witness Laura M. Moore in her direct testimony filing. I will also explain why the
21 Commission should reject Ameren Missouri’s proposed recovery of the lost revenue deferral
22 that was authorized as part of Ameren Missouri Case No. EU-2012-0027.

¹ Noranda, a Southeast Missouri aluminum smelter and Ameren Missouri’s largest customer.

1 **NORANDA AAO LOST REVENUE DEFERRAL**

2 Q. What is the Staff's position with regard to Ameren Missouri's proposed
3 recovery of the deferred \$35.6 million of lost revenue through a five-year amortization?

4 A. Staff opposes Ameren Missouri's attempt to recover the deferred lost revenue
5 that occurred during 2009 and 2010 when Noranda's production capability was harmed by an
6 electric power outage that resulted from a severe ice storm. Staff recommends that the
7 Commission deny Ameren Missouri's request to recover the Noranda lost revenue deferral in
8 rates in this rate case or any future case. Furthermore, Staff Counsel has advised me that
9 Ameren Missouri's attempt to now recover the financial impact of an event that first occurred
10 almost six years ago from today represents a request for unlawful retroactive ratemaking.

11 Q. Please provide a narrative summary of the events that occurred with regard
12 to the issue through the time that Ameren Missouri sought approval for an AAO, in Case
13 No. EU-2012-0027, to defer what Staff refers to as "lost revenues" associated with the
14 Noranda outage.

15 A. On January 27, 2009, the Commission issued a Report and Order in Ameren
16 Missouri rate case, Case No. ER-2008-0318, approving a general rate increase and also
17 authorizing Ameren Missouri's request to implement a fuel adjustment clause (FAC). On or
18 about the same date, January 27 - 28, 2009, a severe ice storm struck southeast Missouri that
19 resulted in damage to the electric transmission lines owned by Associated Electric
20 Cooperation, Inc., that serve Noranda. As a result, the molten aluminum solidified in
21 Noranda's smelter equipment. Noranda quickly restored one of the three production lines, but
22 could not restore the second and third production lines. Two-thirds of Noranda's production
23 capacity was lost for a period of over one year and, as a result, Ameren Missouri suffered a

1 loss of expected revenues from Noranda due to the reduced amount of electricity that Noranda
2 needed to operate at one-third of its normal production capacity. Under the new FAC that the
3 Commission had just approved, revenue from off-system sales used to offset Ameren
4 Missouri's fuel and purchased power expenses are subject to a 95/5 sharing mechanism.
5 Under the FAC, Ameren Missouri is allowed to pass 95 percent of the net change
6 (fuel expense plus purchased power expense less off-system sales) on to ratepayers. Since the
7 95/5 FAC sharing mechanism also applied to off-system sales, this meant 95 percent of
8 increases in off-system sales would benefit ratepayers by off-setting fuel costs in the newly
9 approved Ameren Missouri FAC. It is important to note at this point that the revenue that
10 Ameren Missouri received from Noranda is not subject to the sharing mechanism of the FAC.

11 Ameren Missouri first attempted to remedy this circumstance by seeking a rehearing
12 from the Commission in Case No ER-2008-0318 in an attempt to modify the recently
13 approved FAC to exclude all off-system sales that would be transacted in an effort to offset
14 the lost sales to Noranda. The Commission denied Ameren Missouri's application for
15 rehearing on February 19, 2009, because such action would require reopening the record
16 in that case in order to take additional evidence by the March 1, 2009, operation-of-law date
17 in that case. The Commission concluded that such action was not possible within the time
18 that remained.

19 On February 27, 2009, eight days after the Commission issued its Order
20 Denying Ameren Missouri's Application For Rehearing, Ameren Missouri entered into
21 what it characterized as "long term partial requirements contracts" with American Electric
22 Power Operating Companies ("AEP"). Approximately two months later, on April 28, 2009,
23 Ameren Missouri entered into an electric service agreement with Wabash Valley Power

1 Association, Inc. (“Wabash”). In subsequent FAC prudence review cases, the Commission
2 determined that the revenues that Ameren Missouri received from these contracts were not
3 eligible for exclusion from the sharing mechanism embedded in the FAC, based upon the
4 Ameren Missouri FAC tariff. The Commission issued its decisions as part of Ameren
5 Missouri’s First and Second FAC Prudence review cases, Case Nos. EO-2010-0255 and
6 EO-2012-0074, respectively. In both of those cases, the Commission directed Ameren
7 Missouri to flow through to customers 95% of the benefits of the off-system sales to AEP and
8 Wabash, with interest, as part of the FAC sharing mechanism.

9 When Ameren Missouri’s FAC was examined again in their next rate case, Case No.
10 ER-2010-0036, the parties to the case stipulated that the tariff’s definition of off-system sales
11 would be changed to specifically exclude long-term full and partial requirement sales to
12 Missouri municipalities. As a result, under the revised tariff, revenue from both the Wabash
13 and AEP contracts would be treated as off-system sales and would be flowed through the
14 FAC at the effective date of rates in that case, on June 21, 2010. Also, if for some reason,
15 the load at Noranda drops significantly again, Ameren Missouri would no longer be facing
16 the same situation that it did after the January 2009 ice storm. Also as part of Case No
17 ER-2010-0036, the Commission approved a *First Nonunanimous Stipulation and Agreement*
18 that included an “N” factor that was added to Ameren Missouri’s tariff sheets. This factor
19 allows for an adjustment triggered by a reduction in Noranda’s 12(M) service classification
20 billing determinants if Noranda’s monthly load falls by 40 million kWh or more below the
21 monthly billing determinants that were establish in the most recent prior rate case.

22 Q. Please summarize the Commissions’ rulings in Ameren Missouri’s First and
23 Second FAC Prudence Reviews that you referred to earlier.

1 A. In the First Ameren Missouri FAC Prudence review case, No. EO-2012-0255,
2 the Commission stated on page 2 of its Report and Order that:

3 This Order determines that Union Electric Company d/b/a
4 Ameren Missouri acted imprudently, improperly and unlawfully
5 when it excluded revenues derived from power sales
6 agreements with AEP and Wabash from off-system sales
7 revenue when calculating the rates charged under its fuel
8 adjustment clause.

9 On page 22 of that same Report and Order, the Commission further ordered that:

10 Union Electric Company, d/b/a Ameren Missouri shall refund
11 \$17,169,838 to its ratepayers by an adjustment to its FAC
12 charge to correct an over collection of revenues for the period of
13 March 1, 2009 to September 30, 2009.

14 This amount represented 95% of the margins from the AEP and Wabash contracts during
15 that time period, plus interest at Ameren Missouri's short term borrowing rate after
16 September 30, 2009.

17 Similarly in the Staff's second prudence review of Ameren Missouri's Second FAC,
18 as part of Case No. EO-2012-0074, the Commission stated on page 2 of its Report and
19 Order that:

20 This order determines that Union Electric Company d/b/a
21 Ameren Missouri acted imprudently, improperly and unlawfully
22 when it excluded revenues derived from power sales agreement
23 with AEP and Wabash from off-system sales revenue ("OSSR")
24 when calculating the rates charged under its fuel adjustment
25 clause.

26 Later in the same order the Commission stated:

27 Union Electric Company d/b/a Ameren Missouri shall refund
28 \$26,342,791 plus interest accrued at Ameren Missouri's short
29 term borrowing rate from May 31, 2011 until the amount is
30 refunded to its ratepayers by an adjustment to its FAC charge to
31 correct an over collection of revenues for the period of
32 October 1, 2009, to June 20, 2010.

1 Q. Please explain the Ameren Missouri's current proposed recovery of deferred
2 lost revenue associated with the Noranda shutdown during 2009 and 2010.

3 A. Ameren Missouri offers very limited direct testimony with regard to
4 its proposal for recovery in this case. Company Witness, Laura M. Moore states on page 26,
5 lines 6 through 9 of direct testimony, that:

6 Per the Report and Order in File No. EU-2012-0027, Ameren
7 Missouri deferred the lost fixed costs of \$35,561,503 related to
8 the 2009 ice storm that caused Noranda Aluminum to reduce its
9 production capacity. The amortization expense is increased by
10 \$7,112,000 to include the five-year amortization of this
11 regulatory asset in Adjustment 16.

12 Q. Is the quantification of the deferred loss at issue in this case?

13 A. No. As part of the Commission's aforementioned Report and Order, in Case
14 No. EU-2012-0027, on page 4, the Commission stated the following:

15 Ameren has shown that its loss of \$35,561,503, which
16 constitutes 8.5% of its net income, is extraordinary and
17 material. Extraordinary items are deferred by recording them in
18 Uniform System of Accounts ("USOA") Accounts 182.3 and
19 254, regulatory assets and liabilities, respectively.

20
21 Recording in these accounts is in the public interest because it
22 preserves an item for consideration when setting just and
23 reasonable rates. But deferred recording does not guarantee
24 recovery in any later rate action; recovery may be granted in
25 whole, partially, or not at all.

26 Q. Staff refers to the deferral that Ameren Missouri now seeks recovery for as
27 "lost revenues," whereas Ameren Missouri witness Moore refers to the deferral as "lost fixed
28 costs." What is the distinction between the Staff and Ameren Missouri with regard to the
29 differing terminology that is used?

30 A. The distinction between "lost fixed costs" and "lost revenues" (and therefore
31 lost profit) was addressed at length in the rebuttal testimony of Staff witness Mark L.

1 Oligschlaeger in Case No. EU-2012-0027. In that proceeding, Staff witness Oligschlaeger
2 explained in his rebuttal on page 12, lines 18 through 23 and page 13, lines 1-3 that:

3 'Lost fixed costs' is the way UE² refers to the reduction in
4 revenues it received from Noranda in the aftermath of the ice
5 storm. Instead of clearly addressing the fact that the Company
6 is seeking to defer the financial impact of failure to receive the
7 normal level of revenues from Noranda during the period after
8 the ice storm occurred, UE's chosen terminology focuses on its
9 characterization of the costs that it argues were intended to be
10 reimbursed by the foregone revenues. The Commission should
11 not be confused by UE's chosen terminology. The Company is
12 seeking authorization here to defer a quantification of revenues
13 it never received from Noranda, not a deferral of capital related
14 expenses or operating expenses, as is normally the basis of
15 almost all AAO applications in this jurisdiction.

16 Mr. Oligschlaeger went on to explain in his rebuttal on page 14, lines 6 through 11 that:

17 The Company is asserting that while the amount of fixed costs
18 it incurred to provide service to Noranda did not change due to
19 the ice storm, the amount of revenues it received from Noranda
20 did decrease. The Company's implicit assumption is that each
21 dollar of revenue it receives from customers is intended in part
22 to allow it to recover a portion of its fixed costs. Under UE's
23 argument, any reduction in revenues received from a customer
24 must result in a failure to recover all of its fixed costs to serve
25 that customer.

26 Q. What was Mr. Oligschlaeger's conclusion with regard to whether Ameren
27 Missouri actually recovered what it characterizes as its lost fixed costs?

28 A. Mr. Oligschlaeger thoroughly demonstrated in his rebuttal on page 14, line 12
29 through page 20, line 7 that Ameren Missouri, in fact, recovered all of its fixed costs in rates
30 following the ice storm by virtue of having earned a positive return on equity (ROE) and rate
31 of return (ROR). Ameren Missouri earned both a positive ROE and ROR during the
32 January 27, 2009, through April 8, 2010, timeframe when Noranda was incapable of operating

² UE and Ameren Missouri are one in the same entity. Union Electric Company is currently doing business as Ameren Missouri.

1 at full production capacity. By earning a positive ROR, Ameren Missouri fully recovered all
2 of its expenses, both fixed and variable in nature. By earning a positive ROE, Ameren
3 Missouri fully recovered all of its expenses as well as its required interest payments to debt
4 holders. Ameren Missouri is instead seeking to defer and recover lost revenues through an
5 AAO to allow for an opportunity to earn higher profits in the future in order to address lower
6 levels of revenues collected from Noranda, and as a result lower Ameren Missouri profit
7 levels that occurred in the distant past.

8 Q. Has Staff's opinion with regard to this conclusion changed in the current
9 Ameren Missouri rate case?

10 A. No.

11 Q. Why does Staff believe that Ameren Missouri is now, long after the fact,
12 seeking recovery of these deferred lost revenues in this case?

13 A. The Staff maintains that the \$35.6 million deferred amount proposed for
14 recovery by Ameren Missouri in this case represents lost revenues, which also necessarily
15 translates to lost profits. Ameren Missouri failed to realize these revenues and profits because
16 of the Commission's Report and Order in the first and second prudence reviews of
17 Ameren Missouri's FAC as part of Case Nos. EO-2010-0255 and EO-2012-0074, with respect
18 to Ameren Missouri's off-system sales of power to AEP and Wabash. This approach is
19 intended to boost future earnings for Ameren Missouri in order to compensate for ungenerated
20 revenues or lost profits that it experienced during 2009 and 2010.

21 Q. Does that fact that Ameren Missouri did not earn its full authorized return on
22 equity during the time period that Noranda operated at less than full production capacity a
23 consideration in this issue?

1 A. No. Ameren Missouri is allowed a reasonable opportunity to earn a fair rate of
2 return. It is important to realize the distinction that the Commission's authorization of a given
3 ROE for any utility represents an opportunity, not a guarantee, to earn the authorized ROE.

4 Secondly, revenues from a particular customer or group of customers should not be
5 guaranteed in whole or in part to any utility. A customer's usage of utility service may
6 fluctuate, change significantly, or even end permanently, for several reasons including natural
7 disaster, economic downturn, and technological changes within a particular industry.
8 Changes in customer usages, whether industrial, commercial or residential, should not be
9 permitted for deferral and recovery. Furthermore, Ameren Missouri has not indicated that the
10 lost revenues that resulted from the Noranda outage harmed Ameren Missouri in such a
11 manner that it created dire financial consequences. Ameren Missouri remained financially
12 viable, in that it earned a profit, throughout the entire timeframe of the Noranda outage.

13 Q. Is there any previous case precedent where a utility has attempted to defer and
14 recover lost revenues?

15 A. Yes. In Case No. GU-2011-0392, Southern Union Company, the previous
16 owner of Missouri Gas Energy (MGE) sought permission from the Commission to defer lost
17 revenues that were caused by a catastrophic tornado that struck Joplin, Missouri. MGE's
18 request indicated that it had experienced a reduction in sales from customers that were unable
19 to take gas service from MGE due to the widespread damage that was caused by the tornado.
20 The Commission in that case denied MGE's request to even defer the lost revenue. On
21 page 25 of the Commission's Report and Order the Commission stated the following:

22 The Company's claim is different. Ungenerated revenue never
23 has existed, never does exist, and never will exist. Revenue not
24 generated, from service not provided, represents no exchange of
25 value. There is neither revenue nor cost to record, in the current

1 period nor in any other. The Company showed no instance
2 when service not provided resulted in recording any revenue or
3 cost, lost or generated, on a deferred or current basis. That is
4 because the Company cannot have an item of profit or loss
5 when it provides no service, whether the cause of no service is
6 ordinary or extraordinary. Services not provided and revenues
7 not generated are mere expectancies, are things that simply did
8 not happen, and are not items as all.

9
10 An AAO only determines the period for recording an item but
11 the Company seeks an AAO to create the item itself by layering
12 fiction upon fiction. To issue an AAO for ungenerated revenue
13 would create a phantom loss, and unearned windfall, for the
14 Company. Therefore, the Commission will deny the AAO as to
15 ungenerated revenue.

16 The Commission continued on page 26 with the following as part of its Order:

17 The application is denied as to ungenerated revenue as
18 described in the body of this order.

19 Q. Please summarize the Staff's position in this proceeding concerning Ameren
20 Missouri's request to recover deferred lost revenues allegedly associated with the January
21 2009 ice storm.

22 A. The deferred amounts that Ameren Missouri now seeks recovery for clearly
23 represents ungenerated revenues. To allow the Company to recover through an amortization
24 in this rate case for these ungenerated revenues in the past would allow the Company to create
25 a phantom loss and an unearned windfall. Furthermore, Staff believes this request is intended
26 to offset the financial impact that Company experienced as a result of the Commission's
27 Report and Orders issued in Case Nos. EO-2010-0255 and EO-2012-0074. Ameren Missouri
28 is merely attempting to inflate their profit margins in the future through recoveries of these
29 deferred lost revenues / lost profits from a much earlier time period. Finally, I have been
30 advised by Staff Counsel that Ameren Missouri's proposal to now recover and inflate profit
31 margins in the future would represent unlawful ratemaking treatment if granted. As a result,

Rebuttal Testimony of
John P. Cassidy

1 the Staff recommends that the Commission deny authorization to Ameren Missouri to include
2 in the development of rates charged to ratepayers, in this rate case or in any future case, any
3 of the approximate \$35.6 million amount that Ameren Missouri deferred as part of the AAO
4 that was granted in Case No. EU-2012-0027.

5 Q. Does this conclude your rebuttal testimony?

6 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Tariff to Increase Its)
Revenues for Electric Service)

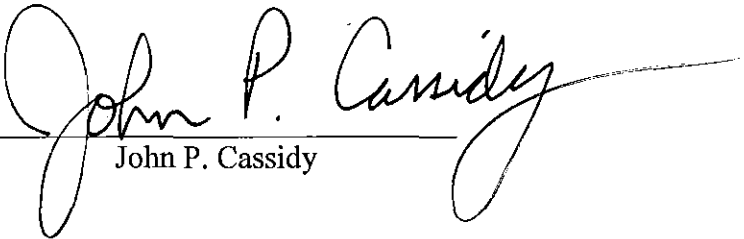
Case No. ER-2014-0258

AFFIDAVIT OF JOHN P. CASSIDY

STATE OF MISSOURI)
)
COUNTY OF COLE)

ss.

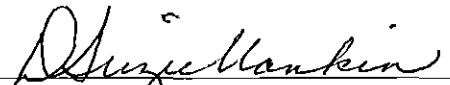
John P. Cassidy, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 11 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



John P. Cassidy

Subscribed and sworn to before me this 16th day of January, 2015.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2016
Commission Number: 12412070



Notary Public