

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

Noranda Aluminum, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
vs.	)	<b><u>Case No. EC-2014-0224</u></b>
	)	
Union Electric Company doing business	)	
As Ameren Missouri,	)	
	)	
Respondent.	)	

**STAFF’S INITIAL BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief*, states as follows:

**Introduction**

This case is a general rate case, initiated by customer complaint.<sup>1</sup> It is the first case of two rate complaints brought by Noranda.<sup>2</sup> This first case is about rate design.<sup>3</sup>

---

<sup>1</sup> Section 393.260.1, RSMo., “Upon the complaint in writing of the mayor or the president or chairman of the board of aldermen, or a majority of the council, commission or other legislative body of any city, town, village or county within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers of such gas, electricity, water or sewer, as to the illuminating power, purity, pressure or price of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered in such municipality, or the purity, pressure or price of water or the adequacy, sanitation or price of sewer service, the commission shall investigate as to the cause of such complaint.”

Section 393.270.2, RSMo., “After a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas, electricity, water or sewer service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished; and may order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, in the distribution or supply of water, in the collection, carriage, treatment and disposal of sewage, or in the methods employed by such persons or corporation as will in its judgment be adequate, just and reasonable.”

<sup>2</sup> While there are thirty-eight Complainants, it is apparent that Noranda Aluminum, Inc., is the driving force behind both of these cases. Therefore, all of the Complainants herein will be referred to collectively as “Noranda.”

In this case, the revenue requirement determined in Ameren Missouri's most recent rate case is taken for granted;<sup>4</sup> the focus is on re-allocating that revenue requirement among the several customer classes. Noranda, a unique customer in several respects, is Ameren Missouri's largest single customer and the only member of the Large Transmission Service ("LTS") customer class.

This rate complaint is unprecedented. Noranda does not contend that the existing allocation of revenue requirement among and between Ameren Missouri's several customer classes is unfair, improper or unlawful; rather, it makes an undisguised plea for special treatment based upon its precarious financial condition and its overwhelming importance to the economy of Southeast Missouri. Many attendees of the three local public hearings, as well as several "Bootheel"<sup>5</sup> elected representatives, officials, and other prominent citizens,<sup>6</sup> have testified to the Commission that, were Noranda to close its doors, the New Madrid area would suffer an economic disaster of historic proportions.

The special treatment that Noranda seeks is an electric rate of \$30.00 per MWh,<sup>7</sup> with rate increases over the next decade limited to 2% per rate case and immunity from

---

<sup>3</sup> The other case is EC-2014-0223, an over-earnings complaint.

<sup>4</sup> ***In the Matter of Union Electric Company, doing business as Ameren Missouri***, Case No. ER-2012-0166 (***Report & Order***, iss'd Dec. 12, 2012).

<sup>5</sup> The "Bootheel" is that portion of Missouri that juts south into Arkansas along the west bank of the Mississippi River, consisting of Dunklin, Pemiscot and New Madrid counties. The adjacent counties of Stoddard, Mississippi and Scott are often grouped with the Bootheel counties. The Noranda smelter is located at New Madrid in New Madrid County.

<sup>6</sup> Congressman Jason Smith; Missouri State Senators Doug Libla, Gary Romine and A. Wayne Wallingford; Missouri State Representatives Kent Hampton, Steve Hodges, Shelly Keeney, and Todd Richardson; Glenna Shy, Campaign Director of the Sikeston/Bootheel United Way; Michelle Fayette, Executive Director of the Kenny Rogers Children's Center; Emil Ramirez of the United Steelworkers Union; and Noranda Employee Neil Priggel all filed testimony supporting Noranda's *Complaint*.

<sup>7</sup> The requested rate is 72.393% of Noranda's current rate of \$41.44 per MWh and thus the proposed rate represents a discount of 27.607%. Ameren Missouri has a load retention tariff (for which Noranda does not qualify) that allows a discount of up to 15%.

the Fuel Adjustment Clause (“FAC”) paid by all of Ameren Missouri’s other customers.<sup>8</sup> Noranda contends that these other customers would be better off retaining Noranda as an Ameren customer even at this reduced rate than losing Noranda as a customer entirely.<sup>9</sup> This argument turns entirely on whether or not the proposed rate of \$30.00 per MWh is sufficient to entirely defray the variable cost of serving Noranda while making some contribution to fixed costs.<sup>10</sup> Staff’s calculations indicate that \$30.00 per MWh is *not* sufficient even to cover all of the variable costs of serving Noranda and so Staff opposes Noranda’s rate relief request.

On the macro level, the Commission must decide whether or not the relief sought can and should be granted given the facts adduced. Other benefits cited by Noranda are, first, averting economic disaster in the Bootheel and, second, retaining the broader economic benefits conferred by Noranda, such as the taxes that it and its employees pay. Staff has taken the position that the Commission *can* grant the requested relief, but *should not do so* on the facts of this case. Other parties – particularly Ameren Missouri – deny that the Commission is able to grant the requested relief at all. Whatever decision the Commission makes, an appeal is virtually certain.

Significant attention at the hearing was directed to the question of why Noranda has not sought relief from the General Assembly. Noranda’s answer, given by its president and CEO, Kip Smith, was that the root cause of its problem is its power

---

<sup>8</sup> Ex. 1, p. 3; Ex. 3, p. 3. With respect to the FAC, Noranda objects to its “volatility and unpredictable nature.” Tr. 5:230.

<sup>9</sup> According to Noranda, other customers would experience only a 2% increase in their bills. Tr. 5:226.  
\*\* \_\_\_\_\_\*\*  
Tr. 6:252-3 (HC).

<sup>10</sup> The benefit to Ameren Missouri’s other customers, according to Noranda, is that they would have to pick up **all** of the fixed costs if Noranda closes its doors.

supply, a matter best addressed at this Commission rather than at the legislature. Smith also testified that he expected opposition from Ameren would stymie any legislative relief.

While Staff does not support the specific relief package sought herein by Noranda, Staff's analysis shows that a Load Retention Rate of \*\* \_\_\_\_\_ \*\* per MWh,<sup>11</sup> subject to the FAC and not capped with respect to future increases, would cover all of the variable costs incurred by Ameren Missouri in serving Noranda and provide the contribution to fixed costs described by Noranda's expert witness Maurice Brubaker.<sup>12</sup> It is Staff's position that the Commission can grant rate relief to Noranda if, upon consideration of all relevant factors, the Commission determines that the relief is in the public interest and is neither unduly preferential nor unduly discriminatory. It is for the Commission to determine the public interest; the record could support a finding that the public interest supports averting the economic blow to the Bootheel that will occur if Noranda ceases operations at New Madrid, as well as retaining the other economic benefits that Noranda confers upon Missouri. The discriminatory aspects of a Load Retention Rate are mitigated by the contribution made to fixed costs, which the remaining ratepayers will have to pay if Noranda closes its doors. Additionally, the imposition of appropriate conditions upon the Load Retention Rate would further mitigate the issue of preferential treatment.<sup>13</sup>

---

<sup>11</sup> Ex. 203 HC, p. 8.

<sup>12</sup> At that price, Noranda would have the fifth highest (or fourth lowest) electricity cost, just as it would at the requested rate of \$30.00 per MWh. See Sch. HWF-1 (HC), attached to Ex. 7 HC, the Direct Testimony of Henry Fayne. That would still be true if \$3.20 were added to the rate to reflect the current FAC; see Davis Rebuttal, p. 5, for the amount of the FAC.

<sup>13</sup> The conditions Staff contemplates are those guarantees offered at the hearing by Mr. Smith: the maintenance of the 888 employee headcount and \$100,000 annual capital expenditures in Missouri.

The Commission's authority to grant emergency interim rate relief to a utility in order to enable it to survive financial difficulties necessarily extends to granting similar relief to a utility customer for the same reason. \*\* \_\_\_\_\_

---

\_\_\_\_\_ .<sup>14</sup> \*\* The Commission has authority to preserve Ameren Missouri's largest single customer on an emergency basis until the General Assembly is able to take up and address the issue. Staff recommends that if the Commission grants Noranda an emergency interim Load Retention Rate, that it be made subject to the FAC and to whatever rate increase the Commission may decide at Ameren Missouri's next general rate case.<sup>15</sup> The Commission should also encourage Noranda to seek a permanent solution at the General Assembly.<sup>16</sup>

### Argument

- 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?**

Staff took no position on this issue in its *Statement of Positions* because it had not independently investigated the matter. \*\* \_\_\_\_\_

---

---

<sup>14</sup> Tr. 8:653 (HC); 666-67 (HC).

<sup>15</sup> Ameren Missouri filed tariffs seeking a general rate increase on July 3, 2014, Case No. ER-2014-0258.

<sup>16</sup> Davis Direct, p. 3: "Because a majority of the economic benefits of Noranda's operations accrue to the State of Missouri as a whole, it is my opinion that if subsidization of Noranda's operations is necessary to preserve those benefits then the nature and extent of that subsidy should be discussed and decided by the state legislature and not the Commission; and, at a minimum, the burden of any subsidy prescribed by the legislature should be borne by all Missouri citizens instead of only Ameren Missouri customers."

---

\_\_\_\_.<sup>17</sup> \*\* In a larger sense, it appears that Noranda's position is precarious simply from the rapidly shrinking count of American aluminum smelters over the last few years.<sup>18</sup>

These closures were the result of uncompetitive electric rates.<sup>19</sup> Noranda witness Henry Fayne testified:

The New Madrid Smelter competes with all other smelters, regardless of location. If costs are high relative to other producers, its continued viability is at risk, particularly if the aluminum market suffers a downturn such as we are currently experiencing.<sup>20</sup>

Noranda's CEO, Kip Smith, testified that, without timely rate relief, "there is a substantial likelihood of imminent closure of the New Madrid smelter."<sup>21</sup> He further testified:

Market conditions are creating short-term liquidity challenges throughout the aluminum industry. Unfortunately, if the New Madrid Smelter is not granted the rate relief requested and in an expedited manner, based on current market conditions, I expect that the New Madrid Smelter will be required to reduce its workforce by 150-200 employees before the end of 2014. Although this work force reduction will not provide savings equal to Noranda's proposed electrical rate reduction, it would allow the smelter to survive for a period of time, and it is the maximum headcount reduction we believe that we could attempt without affecting our ability to meet our commitments to the New Madrid Smelter's external customers.<sup>22</sup>

According to CEO Smith, "Without the requested rate reduction, even with our planned reductions in other costs, the New Madrid Smelter would have insufficient liquidity and

---

<sup>17</sup> Ex. 3, p. 16; Tr. 6:187-88 (HC); Tr. 7:919.

<sup>18</sup> Ex. 8, p. 4; Tr. 5:313.

<sup>19</sup> Ex. 8, pp. 4, 6; Tr. 5:320; 7:901.

<sup>20</sup> Ex. 8, p. 5.

<sup>21</sup> Ex. 3, p. 2; Tr. 6:189-190 (HC); Tr. 7:892; Tr. 8:666 (HC).

<sup>22</sup> Ex. 1, p. 5.

be subject to closure \*\* \_\_\_\_\_ \*\*, resulting in the loss of all jobs at the smelter.”<sup>23</sup>

Liquidity consists of cash on hand plus available borrowings.<sup>24</sup> According to Mr. Smith, Noranda’s liquidity crisis is the result of (1) a long-term depressed price for aluminum and (2) significant electricity costs that are not within Noranda’s control.<sup>25</sup>

\*\* \_\_\_\_\_

---

\_\_\_\_\_ .<sup>26</sup> \*\* Ameren Missouri’s expert, Robert Mudge, stated he had no reason to doubt Mr. Smith’s testimony.<sup>27</sup>

Ameren Missouri’s expert, Robert Mudge, acknowledged that Noranda has the largest debt load of any American smelter.<sup>28</sup> Mr. Mudge further testified that Noranda’s greatest present need is for financing to complete the rod mill and that the likely returns on that investment are so great that he is surprised that it hasn’t yet happened.<sup>29</sup> Mr. Mudge stated that the \$50 million that disappeared from Noranda’s liquidity position in the first half of June almost certainly went to the rod mill project.<sup>30</sup> Nothing in Mr. Mudge’s testimony refuted Kip Smith’s testimony that Noranda is experiencing a

---

<sup>23</sup> Ex. 1, p. 6.

<sup>24</sup> Ex. 1, p. 7; Tr. 6:191 (HC); Tr. 8:955 (HC).

<sup>25</sup> Ex. 3 HC, pp. 2-3.

<sup>26</sup> Tr. 6:187-89 HC.

<sup>27</sup> Tr. 7:909.

<sup>28</sup> Tr. 7:920.

<sup>29</sup> Tr. 8:927 (HC). An \$11 million augmentation of EBITDA and saving earnings that are 2x the expected value added. Tr. 7:957-58.

<sup>30</sup> Tr. 8:954-5 (HC). See Ex. 3, p. 12: “Noranda must spend approximately \$45 million, mostly this year, on the rod mill next to the New Madrid Smelter.” *Id.*, p. 13: “Exiting the rod market would result in the loss of approximately \*\* \_\_\_\_\_ . \*\*” Noranda also has a strong need to spend \$29 million on rectifiers. *Id.*

liquidity crisis that, if unrelieved, might soon lead to the closure of the New Madrid smelter.

**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?**

Staff originally took no position on this issue. While Staff did no independent analysis of this issue, evidence was presented at the hearing indicating that the closure of the New Madrid smelter would represent a significant detriment to the economy of Southeast Missouri, to local tax revenues, and to state tax revenues.

Noranda's CEO, Kip Smith, testified:

The New Madrid Smelter is the largest direct and indirect manufacturing employer in Southeast Missouri. Hundreds of Southeast Missouri families would be placed in financial peril if the New Madrid Smelter was forced to shut its doors. Millions of dollars flow into the homes and businesses of Southeast Missourians as a result of the revenues from Noranda products, which are sold mostly outside of the state. The New Madrid Smelter's economic benefit to the state of Missouri is estimated to be in excess of \$300 million annually.<sup>31</sup>

Noranda presented the testimony of economist Dr. Joseph Haslag to the effect that the impact of the New Madrid smelter on the Missouri economy will be \$8.917 billion over the next 25 years; this is also the amount that its closing would cost over the same period.<sup>32</sup> Over the next ten years, the loss in real GDP to the Missouri economy is \$3.646 billion if the smelter closes.<sup>33</sup> Dr. Haslag further testified that, at the state level, net general revenue funds over the next twenty-five years, after discounting, would be \$338.87 million lower if the Noranda Smelter closed permanently

---

<sup>31</sup> Ex. 1, pp. 3-4.

<sup>32</sup> Ex. 11, p. 4.

<sup>33</sup> Ex. 11, p. 4.



compared with an economic projection in which it does not close.<sup>34</sup> Over the ten-year period, the present value of lost net general revenue funds is \$138.55 million.<sup>35</sup> Additionally, the cost of unemployment insurance benefits could be as high as \$10.3 million under the current rules governing unemployment insurance benefits.<sup>36</sup> The present value of local property receipts would be reduced by \$51.45 million if the lost revenue from Noranda is not made up by increased collections on remaining taxpayers.<sup>37</sup> Over the next ten years, Dr. Haslag testified that the value of the local property receipts would be reduced by \$20.24 million, provided the lost taxes paid by Noranda are not made up by increased collections from remaining taxpayers.<sup>38</sup>

State Senator Doug Libla testified that, even with Noranda, New Madrid County and four others in his district are the poorest in Missouri.<sup>39</sup> Noranda contributes 18 percent of the property taxes paid in New Madrid County and 28 percent of the property taxes paid to support the New Madrid County Central R-1 School District.<sup>40</sup> Congressman Jason Smith, whose Eighth District includes the Bootheel, testified that Noranda provides some of the best jobs available in the area.<sup>41</sup> Congressman Smith testified that, “[t]here is no question that if the Noranda smelter were to close, it would have a huge impact on the economy of Southeast Missouri[.]”<sup>42</sup> Representative Steve

---

<sup>34</sup> Ex. 11, p. 4.

<sup>35</sup> Ex. 11, at pp. 4-5.

<sup>36</sup> Ex. 11, p. 5.

<sup>37</sup> Ex. 11, p. 5.

<sup>38</sup> Ex. 11, p. 5.

<sup>39</sup> Ex. 19, p. 4.

<sup>40</sup> Ex. 19, p. 2; Ex. 21, p. 2..

<sup>41</sup> Ex. 23, p. 4.

<sup>42</sup> Ex. 23, p. 4.

Hodges testified that Noranda has an annual payroll of \$95 million.<sup>43</sup> He further testified:

To say that Noranda has a significant economic impact on my district and Southeast Missouri is an understatement. The ripple effect of the commerce Noranda generates is profound. Noranda and its employees support local merchants who, in turn, support other merchants.<sup>44</sup>

Hodges also testified, “It would be devastating to my district, to Southeast Missouri and to the state of Missouri if the manufacturing jobs at Noranda were lost, since it is not likely they could be replaced by other high-paying jobs.”<sup>45</sup> State Representative Todd Richardson gave similar testimony.<sup>46</sup>

Ameren Missouri presented testimony from William R. Davis, an economist employed by Ameren, to refute Noranda’s claim that the closure of the New Madrid smelter would be an economic disaster for the Bootheel region of Missouri. Mr. Davis testified both (1) that relatively few of the residents of the Bootheel are Ameren Missouri customers<sup>47</sup> and (2) that the economic impact of Noranda’s operations and, therefore, of its ceasing those operations, is quite small from a state-wide perspective.<sup>48</sup>

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

Staff’s position is that the Commission can grant the requested relief if, upon consideration of all relevant factors, the Commission determines that the requested relief is in the public interest and is neither unduly preferential nor unduly discriminatory.

---

<sup>43</sup> Ex. 27, p. 2.

<sup>44</sup> Ex. 27, p. 3.

<sup>45</sup> Ex. 27, p. 5.

<sup>46</sup> Ex. 28, pp. 2-3.

<sup>47</sup> Ex. 100, pp. 9-11. His point is that the beneficiaries of the special rate sought by Noranda in this case would not, for the most part, have to contribute to it.

<sup>48</sup> Ex. 100, pp. 11-14.

This matter is a complaint as to the price of electricity brought by more than twenty-five customers of Ameren Missouri, of which Noranda is the dominant and moving force.<sup>49</sup> When such a complaint is filed, the Commission is authorized to conduct such investigation as it deems necessary to determine the requisite facts,<sup>50</sup> including inspecting the property and examining the books of the subject utility.<sup>51</sup> The Commission is required to give notice to the subject utility<sup>52</sup> and to convene a hearing upon the complaint.<sup>53</sup> Thereafter, the Commission “within lawful limits may, by order, fix the maximum price of . . . electricity . . . service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished[.]” In setting the price of electricity, “the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.”<sup>54</sup>

What standard must the Commission apply in its investigation and determination of this complaint? The law requires that “[a]ll charges made or demanded by any . . . electrical corporation . . . for . . . electricity . . . or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of

---

<sup>49</sup> Sections 386.390.1 and 393;.260.1, RSMo. A complaint as to rates must be brought by either at least twenty-five customers or by one of a specified list of public officials or entities.

<sup>50</sup> Section 393.270.1, RSMo.

<sup>51</sup> Section 393.260.2, RSMo.

<sup>52</sup> Section 393.270.1, RSMo. The notice must advise the respondent

<sup>53</sup> Section 393.270, .1 and .2, RSMo. Thus, this matter is a “contested case” within the intendments of the Missouri Administrative Procedures Act, Chapter 536, RSMo.

<sup>54</sup> Section 393.270.4, RSMo. The Missouri Supreme Court has held that the Commission *must* consider all relevant factors when setting rates. ***State ex rel. Missouri Water Co. v. Public Service Commission***, 308 S.W.2d 704, 719 (Mo. 1957).

the commission.”<sup>55</sup> The law further provides that “[e]very unjust or unreasonable charge made or demanded for . . . electricity . . . or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”<sup>56</sup> Finally, the law specifies what the Commission must do if, after investigation and hearing, it determines that the rates of the subject utility are not “just and reasonable”:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed[.]<sup>57</sup>

What is a “just and reasonable” rate? It is a rate that balances the interests of the various stakeholders in the light of the public interest.<sup>58</sup> A just and reasonable rate is fair to both the utility and to its customers<sup>59</sup> and is no more than is necessary to “keep public utility plants in proper repair for effective public service, [and] . . . to insure to the investors a reasonable return upon funds invested.”<sup>60</sup> In 1925, the Missouri Supreme Court stated:

---

<sup>55</sup> Section 393.130.1, RSMo.

<sup>56</sup> *Id.*

<sup>57</sup> Section 393.140(5), RSMo.

<sup>58</sup> See ***State ex rel. Union Electric Co. v. Public Service Commission***, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988) (“Ratemaking is a balancing process”).

<sup>59</sup> ***St. ex rel. Valley Sewage Co. v. Public Service Commission***, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

<sup>60</sup> ***St. ex rel. Washington University et al. v. Public Service Commission***, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (banc 1925).

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. \* \* \* These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.<sup>61</sup>

In striking the balance between the utility and its customers, the Commission must be particularly solicitous of the latter: “the dominant thought and purpose of the policy is the protection of the public . . . [and] the protection given the utility is merely incidental.”<sup>62</sup> However, the Commission must at least afford the utility an opportunity to recover a reasonable return on the assets it has devoted to the public service.<sup>63</sup>

How does the Commission determine just and reasonable rates? The Commission uses traditional cost-of-service ratemaking to set just and reasonable rates.<sup>64</sup> This is a two-step process.<sup>65</sup> In the first step, the Commission determines the utility’s “revenue requirement,” that is, the total amount of money that the ratepayers must provide to the utility in a year’s time to cover the cost of service:

The determination of utility rates focuses on four factors. These factors include: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses. The

---

<sup>61</sup> *Id.*

<sup>62</sup> *St. ex rel. Crown Coach Co. v. Pub. Serv. Comm'n*, 238 Mo. App. 287, \_\_\_, 179 S.W.2d 123, 126 (1944).

<sup>63</sup> *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979) (“*UCCM*”).

<sup>64</sup> FERC, *Cost-of-Service Rates Manual*, 1 (1999) [available electronically at [www.ferc.gov](http://www.ferc.gov)]: ““Under cost-of-service ratemaking, rates are designed based on a [utility’s] cost of providing service including an opportunity for the [utility] to earn a reasonable return on its investment.”

<sup>65</sup> See generally L.E. Alt, *Energy Utility Rate Setting* (2006). Commentators disagree as to the number of steps in the process, sometimes subdividing rate design into two or more steps.

revenue allowed a utility is the total of approved operating expenses plus a reasonable rate of return on the rate base. The rate of return is calculated by applying a rate of return to the cost of property less depreciation. The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.<sup>66</sup>

In the second step, rates are designed to recover the revenue requirement from the utility's customers, matching costs to cost-causers so far as possible. "Rate design' is the method used to determine the rates to be charged to individual classes of customers."<sup>67</sup> It is "the allocation of the burden of paying a utility's overall revenue requirement among its various customer classes"; while "rate design does not alter the overall revenues received by the utility, [it] may dramatically change the rates paid by individual customers."<sup>68</sup> The allocation of rates among the various classes of service rests on questions of fact.<sup>69</sup>

One aspect of just and reasonable rates is that they are neither unduly preferential nor unduly discriminatory with respect to any customer or class of customers.<sup>70</sup> The Commission has no authority to approve discriminatory rates.<sup>71</sup> The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests, and the making of pragmatic adjustments; in determining rates, a

---

<sup>66</sup> *State ex rel. Union Electric Co. v. Public Service Comm'n of State of Missouri*, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988).

<sup>67</sup> *State ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 791 (Mo. banc 1986).

<sup>68</sup> *State ex rel. Fischer v. Public Service Com'n of Missouri*, 645 S.W.2d 39, 41 n. 1 (Mo. App., W.D. 1982) (internal punctuation omitted).

<sup>69</sup> *Smith v. Public Service Commission*, 351 S.W.2d 768, 772 (Mo. 1961).

<sup>70</sup> Section 393.130.3, RSMo.; see *State ex rel. City of Joplin v. Public Service Com'n of State of Mo.*, 186 S.W.3d 290, 296 (Mo. App., W.D. 2005).

<sup>71</sup> *City of Joplin*, *supra*, 186 S.W.3d at 296.

regulatory body is not bound to the use of any single formula or combination of formulae.<sup>72</sup> In the final analysis, it is not the methodology or theory used but the impact of a rate order of the Commission which counts in determining whether rates are just, reasonable, lawful and non-discriminating.<sup>73</sup>

In this case, Noranda – by which is meant all of the Complainants – has alleged that the rates it is charged are unreasonable.<sup>74</sup> However, Noranda has not asserted in this case that Ameren Missouri's rates are unreasonable because they provide an excessive profit or because they unfairly allocate the revenue requirement among the customer classes.<sup>75</sup> Rather, Noranda has asserted that Ameren Missouri's rates are unreasonable because Noranda faces a financial emergency that may soon force it out of business; that its failure would constitute a regional catastrophe; and that disaster would be averted if this Commission were to give it a preferential rate, low enough to keep it in business and yet high enough that Ameren Missouri's other customers would be better off keeping Noranda as a customer even at the reduced rate rather than losing Noranda from Ameren Missouri's system altogether.<sup>76</sup> None of the evidence adduced in

---

<sup>72</sup> *State ex rel. Office of Public Counsel v. Public Service Com'n*, 367 S.W.3d 91, 108 (Mo. App., S.D. 2012), quoting *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602-3, 64 S.Ct. 281, \_\_\_, 88 L.Ed. 333, \_\_\_ (1944).

<sup>73</sup> *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of Missouri*, 706 S.W.2d 870, 879 (Mo. App., W.D. 1985).

<sup>74</sup> *Complaint*, p. 4, ¶ 9.

<sup>75</sup> Noranda *has* made such an assertion in its companion over-earnings complaint, Case No. EC-2014-0223, filed simultaneously with this case.

<sup>76</sup> Load retention rates are not unknown in utility regulation: "By allowing a public utility to offer contract rates below the prevailing tariffs for retail electric service in its certificated territory, [the law] provides a means by which a regulated electric, gas, or steam utility may retain existing customers who are contemplating reduction or elimination of their power purchases from it. These lower-than-standard rates, referred to as load retention rates, function to retain existing customers for participation in the rate base allocation and recovery of fixed and variable costs. The principle is that all customers benefit from lower rates through greater economies of scale when the public utility retains customers, especially large-use

this case shows either that Ameren Missouri is overearning or that the existing rate design unfairly allocates too much of the revenue requirement to Noranda.<sup>77</sup> In the absence of such evidence, the Commission cannot grant Noranda the specific rate it has requested as a permanent rate.

However, the Commission does possess discretionary authority to grant interim<sup>78</sup> rate relief to ameliorate emergencies that threaten the public interest.<sup>79</sup> The Missouri Supreme Court has acknowledged that “[a]n interim rate increase may be requested where an emergency need exists.”<sup>80</sup> The Commission has concluded that it possesses “broad discretion” to grant interim rate relief when “extraordinary circumstances” constitute a “compelling reason” for such relief.<sup>81</sup> The applicable standard is *not* the “just and reasonable” standard that governs permanent rates, but rather the Commission’s “sound discretion.”<sup>82</sup>

it would be unreasonable to construe this statutory section [i.e., § 393.140(5), RSMo.] as imposing a duty upon the Commission to set ‘just and reasonable rates’ in a special hearing for the limited purpose of

---

customers who may have the ability to reduce or eliminate demand by generating their own power within plant boundaries or by other legal means.” **Public Service Co. of Colorado v. Trigen-Nations Energy Co., L.L.P.**, 982 P.2d 316, 323 (Colo.,1999).

<sup>77</sup> Also pending is **Noranda et al. v. Union Electric Company dba Ameren Missouri**, Case No. EC-2014-0223, in which the same Complainants assert that Ameren Missouri *is* overearning.

<sup>78</sup> “Interim” means “temporary”; **Black’s Law Dictionary**, 819 (7<sup>th</sup> ed., 1999).

<sup>79</sup> **State ex rel. Fischer v. Public Service Commission**, 670 S.W.2d 24, 26 (Mo. App., W.D. 1984): “the Commission’s authority to grant an interim rate increase is necessarily implied from the statutory authority granted to enable it to deal with a company in which immediate rate relief is required to maintain the economic life of the company so that it might continue to serve the public.”

<sup>80</sup> **UCCM**, *supra*, 585 S.W.2d at 48; **State ex rel. Laclede Gas Co. v. Public Service Comm’n**, 535 S.W.2d 561, 568 (Mo. App. 1976). The **Laclede** Court also noted that the Missouri Supreme Court has long recognized that the Commission has authority to implement experimental or test rates. 535 S.W.2d at 567 n. 1, and cited cases.

<sup>81</sup> **In the Matter of Union Electric Company dba AmerenUE**, 19 Mo.P.S.C.3d 169, 177-78 (**Report & Order Regarding Interim Rates**, iss’d Jan. 13, 2010).

<sup>82</sup> **Laclede**, *supra*, 535 S.W.2d at 566. *Contra*, **AmerenUE**, 19 Mo.P.S.C.3d at 177: “However, any rate, including an interim rate, the Commission approves must be just and reasonable to both the utility and its ratepayers.”



considering an interim increase, since the setting of fair rates is the purpose and subject of the full rate hearing. To construe § 393.140(5) as applicable here would make the hearing on interim rates coextensive with that on the permanent rates and would therefore in practical effect make accelerated action on interim rates impossible.<sup>83</sup>

An interim rate is necessarily set upon consideration of only *one* factor, namely, the extraordinary circumstance to which it is the remedy. It is the limited nature of the consideration required that permits the Commission to quickly respond with appropriate rate relief to an emergency. Thus, an interim rate *cannot* be just and reasonable because it is not based on the mandated consideration of all relevant factors.

[W]hether the rates in effect at any given time are just and reasonable depends upon many facts and can only be determined after rather extended investigation and study. Thus, for example, the Missouri statute provides in § 393.270(4) that '(i)n determining the price to be charged for gas \* \* \* the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question \* \* \* with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.' Because of the necessity to make these investigations, hold hearings and permit arguments with respect thereto, the proceedings before regulatory bodies for rate increases inevitably entail considerable time and have led to delay in the granting of increases which is generally referred to as 'regulatory lag.' While this delay is regrettable, the courts have recognized that some lag is unavoidable and have generally held that no deprivation of constitutional rights occur because of suspension of the proposed increase pending a hearing thereon, provided the delay for purposes of such hearing is not unreasonably long.<sup>84</sup>

Beginning in 1949, the Commission has entertained requests for interim rate increases from utilities facing financial emergencies.<sup>85</sup> In 1997, based on

---

<sup>83</sup> *Laclede, supra*, 535 S.W.2d at 569.

<sup>84</sup> *Id.*, at 570.

<sup>85</sup> *In the Matter of Southwestern Bell Telephone Co.*, 2 Mo.P.S.C. (N.S.) 131 (1949); *In the Matter of Sho-Me Power Corp.*, Case No. 17,381 (1972); *In the Matter of Union Electric Co.*, Case No. 17,965 (1974); *In the Matter of Laclede Gas Co.*, Case No. 18,021 (1974); *In the Matter of Missouri Public Service Co.*, Case No. 18,502 (1975); *In the Matter of St. Joseph Light & Power Co.*, Case No. ER-77-93 (1977); *In the Matter of Missouri Public Service Co.*, Case No.ER-79-59 (1978); *In the*

§ 393.140(11), RSMo., the Commission acknowledged its authority to grant interim rate relief “for good cause shown.”<sup>86</sup> Under this standard, the Commission has occasionally granted rate relief in cases in which no emergency existed.<sup>87</sup>

Interim rate relief has consistently taken the form of a temporary rate *increase* intended to succor a utility while a permanent rate increase request is pending. However, given the reciprocal nature of the relationship of a public utility with its customers and the Commission’s role of adjusting the balance of that relationship to meet ever-changing circumstances in the light of the public interest,<sup>88</sup> there is no reason that interim rate relief cannot be available to ratepayers on the same basis that it is available to utility companies. Since a utility company facing an imminent threat of ruinous financial disarray can obtain the temporary relief of a rate increase on an expedited basis, it necessarily follows that a ratepayer in similar circumstances can

---

***Matter of Kansas City Power & Light Co.***, Case No. ER-80-204 (1980); ***In the Matter of Kansas City Power & Light Co.***, ER-81-42 (1981); ***In the Matter of Missouri Public Service Co.***, Case No. ER-81-154 (1981); ***In the Matter of The Empire District Electric Co.***, Case No. ER-81-229 (1981); ***In the Matter of Missouri Power & Light Co.***, Case Nos. GR-81-355 and ER-81-356 (1981); and ***In the Matter of Sho-Me Power Corp.***, Case No. ER-83-20 (1982).

<sup>86</sup> ***In the Matter of The Empire District Electric Co.***, 6 Mo.P.S.C.3d 17, 21 (1997). Section 393.140(11), RSMo., prohibits utilities from making changes to their tariffs on less than 30-days’ notice to the Commission, but authorizes the Commission to allow tariff changes on less notice “for good cause shown.”

<sup>87</sup> Under the “good cause shown” standard, the Commission has granted interim relief in connection with a special contract under which an electric utility served a single customer and no other customers would be affected, ***In the Matter of Kansas City Power & Light Co.***, 3 Mo.P.S.C.3d 396 (1995); to a wires-only company in the wake of a significant cost increase in its wholesale supply contract, ***In the Matter of Citizens Electric Corp.***, 11 Mo.P.S.C.3d 30 (2001); and to a small sewer company in order to provide the benefit of a largely-uncontested revenue requirement increase while an objection to one aspect of the increase was heard, ***In the Matter of Timber Creek Sewer Company, Inc.***, 2007 WL 3243348 (2007).

<sup>88</sup> “The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state. It is a fact-finding body, exclusively entrusted and charged by the Legislature to deal with and determine the specialized problems arising out of the operation of public utilities. It has a staff of technical and professional experts to aid it in the accomplishment of its statutory powers. Its supervision of the public utilities of this state is a continuing one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission, in its discretion, may deem to be in the public interest.” ***State ex rel. Chicago, R.I. & P.R. Co. v. Public Service Comm’n***, 312 S.W.2d 791, 796 (Mo. banc 1958).

obtain the temporary relief of a rate *decrease* on an expedited basis.<sup>89</sup> That is the very case presented here.

In summary, the Commission may, in its sound discretion, grant interim rate relief to Noranda. The Commission has previously stated that it will grant interim rate relief upon a showing of “extraordinary circumstances” constituting a “compelling reason” for such relief.<sup>90</sup> Should the Commission find such “extraordinary circumstances” here, the Commission could grant interim rate relief to Noranda in the form of a Load Retention Rate. Should the Commission do so, Staff recommends a rate no lower than \*\* \_\_\_\_\_ \*\* per MWh,<sup>91</sup> subject to the FAC and not capped with respect to future increases.

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

Staff continues to have no position on this issue, but provides the Commission an alternative to consider.

**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?**

Staff understands this issue to require a comparison between the rate impact on Ameren Missouri’s customers other than Noranda if Noranda leaves the system entirely

---

<sup>89</sup> Other jurisdictions have recognized the authority of the state utility regulatory agency to grant interim rate decreases to ratepayers. *E.g. (New Mexico)*: “When it was determined that an applicant for a rate increase “was losing over one million dollars per month considering what had been determined to be its fair rate of return” and “it became obvious that it would be a considerable length of time before permanent rates could be fixed,” this Court concluded that the Commission “had a constitutional duty to fix interim rates that would minimize the confiscation of [the applicant's] property.” It is not unreasonable to infer that the Commission would have a similar power to commence an investigation and order an interim reduction in rates for the benefit of ratepayers when a significant regulatory lag threatens its ability to ensure that rates are just and reasonable.” *In re Commission Investigation Into 1997 Earnings of U S West Communications, Inc.*, 127 N.M. 254, 260-261, 980 P.2d 37, 43 - 44 (N.M.,1999) (internal citations omitted).

<sup>90</sup> *In the Matter of Union Electric Company dba AmerenUE*, 19 Mo.P.S.C.3d 169, 177-78 (**Report & Order Regarding Interim Rates**, iss'd Jan. 13, 2010).

<sup>91</sup> Ex. 203 HC, p. 8.

to the rate impact on Ameren Missouri's customers other than Noranda of continued service to Noranda at the proposed \$30/MWh rate. Based on Staff's analysis, the answer to the question is "no." Staff calculates that Ameren Missouri's other customers will experience a greater rate impact if Noranda remains a customer at \$30/MWh than if Noranda leaves the system entirely.

Staff estimates Ameren Missouri's other customers would experience a rate impact in the range of a \$12.3 to \$21.6 million annual increase if Noranda leaves the Ameren Missouri system.<sup>92</sup> This increase represents the fixed costs that Noranda would no longer pay and that the remaining customers would therefore have to pay.

Staff also estimates that Noranda's requested \$30/MWh rate is approximately \*\* \_\_\_\_\_ \*\* per MWh *below* Ameren Missouri's variable cost of providing service to Noranda.<sup>93</sup> Therefore, Staff estimates that providing service to Noranda at \$30/MWh would result in an additional cost to other customers of approximately \$15.5 million per year, using this year's estimated wholesale power costs, and approximately \$6.2 million using the four-year average wholesale power costs.<sup>94</sup> Together, the difference between what other customers would pay if Noranda leaves Ameren Missouri's system and what other customers would pay if Noranda receives service at \$30/MWh is approximately \$27,760,000 annually.<sup>95</sup> Thus, it would be more expensive for Ameren Missouri's other customers if Noranda remained on the system at \$30/MWh than if Noranda left the system altogether.

---

<sup>92</sup> Ex. 203 HC, p. 5.

<sup>93</sup> Ex. 203 HC, p. 2.

<sup>94</sup> By "additional," Staff means additional to the \$12.3 to \$21.6 million annual increase in fixed costs that Ameren Missouri's other customers will pay if Noranda leaves the system entirely.

<sup>95</sup> *Id.*, p. 6. This is calculated as Fixed Costs (\$12.3 to \$21.6 million) plus Subsidized Variable Costs (\$6.2 to \$15.5 million) = \$18.5 to \$37.1 million annually, mid-point \$27.8 million.

Staff expert witness Sarah Kliethermes explained:

Noranda is requesting to purchase energy from Ameren Missouri at a rate that is below the cost to Ameren Missouri of purchasing the energy on the wholesale market, and the difference between those prices is an additional cost to customers. If Noranda receives service at a rate below variable cost, not only is Noranda not contributing to overhead, but it is also increasing the total cost that other ratepayers must provide to Ameren Missouri over the amount that they would pay if Noranda were not a retail customer.<sup>96</sup>

**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 Ameren Missouri's system entirely?**

No, as explained above, Staff has determined that it would *not* be more beneficial from a rate perspective for Noranda to remain on the system at \$30/MWh.<sup>97</sup> Staff has determined that it *would* be more beneficial to Ameren Missouri's ratepayers other than Noranda for Noranda to remain on Ameren Missouri's system rather than for Noranda to leave Ameren Missouri's system entirely at a rate of \*\* \_\_\_\_\_ \*\* per MWh or more, and that a rate of \*\* \_\_\_\_\_ \*\* per MWh is the minimum rate that will provide the benefit to other customers described by Mr. Brubaker, subject to the FAC and not capped as to increases.<sup>98</sup>

**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?**

The Commission has ample authority to require changes in Ameren Missouri's rates and tariffs based upon the evidence received at the hearing on this matter.

---

<sup>96</sup> Ex. 203 HC, p. 6.

<sup>97</sup> Ex. 203 HC, p. 6.

<sup>98</sup> Ex. 203 HC, p. 8.

Section 393.140(2), RSMo.:

[The Commission shall] Investigate and ascertain, from time to time, the quality of gas or water supplied and sewer service furnished by persons and corporations, examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and in supplying and distributing water for any purpose whatsoever, and in furnishing a sewer system, **and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such . . . electricity . . . system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of . . . electrical corporations[.]** (Emphasis added.)

Section 393.140(3), RSMo.:

[The Commission shall] Have power, by order, . . . to prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons or corporations generating and selling electric current . . . . For the purpose of . . . determining whether the efficiency of the electric supply system, of the current supplied and of the lamps furnished . . . conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying . . . electricity . . . and shall have access, through its members or persons employed and authorized by it, to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission or distribution of . . . electricity by any such person or corporation . . . .

Section 393.140(5):

[The Commission shall] Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. **Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service**

**to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters. (Emphasis added.)**

Section 393.140(11), RSMo.:

[The Commission shall] Have power to require every gas corporation, electrical corporation, water corporation, and sewer corporation to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation, or sewer corporation; but this subdivision shall not apply to state, municipal or federal contracts. **Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe.** No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time

prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time. (Emphasis added.)

Section 393.270.2, RSMo.:

After a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, **the commission within lawful limits may, by order, fix the maximum price of . . . electricity . . . service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished; and may order such improvement . . . in the manufacture, transmission or supply of electricity . . . or in the methods employed by such persons or corporation as will in its judgment be adequate, just and reasonable.** (Emphasis added.)

Staff recommends that, if the Commission grants Noranda rate relief, its rate be set no lower than \*\* \_\_\_\_\_ \*\* per MWh,<sup>99</sup> subject to the FAC, and with any subsequent rate increase – as well as the continuation of the LRR – to be determined by the Commission in each successive general rate case. Staff recommends that the Commission *not* grant the specific relief requested by Noranda because that would result in a rate increase to Ameren Missouri’s other customers of some \$27,760,000 annually, over what those rates would be if Noranda were no longer an Ameren Missouri customer.<sup>100</sup>

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

It is Staff’s position that Noranda should *not* be exempted from the FAC.<sup>101</sup> The FAC rider is a component of Ameren Missouri’s variable cost to serve Noranda. Noranda’s current rate is \$37.94/MWh plus the FAC Rider of \$3.50/MWh for a total per

---

<sup>99</sup> Ex. 203 HC, p. 8.

<sup>100</sup> *Id.*, p. 6. This is calculated as Fixed Costs (\$12.3 to \$21.6 million) plus Subsidized Portion of Variable Costs (\$6.2 to \$15.5 million) = \$18.5 to \$37.1 million annually (midpoint \$27.8 million).

<sup>101</sup> Ex. 200, p. 3.



megawatt hour price of \$41.44.<sup>102</sup> If Noranda is exempted from paying the FAC rider, in the future it is likely that it would not pay all of the variable costs incurred in serving it.

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

It continues to be Staff's position that Noranda's rate increases should *not* be capped in any manner.<sup>103</sup> That said, Staff recommends that, should the Commission grant an emergency interim LRR to Noranda, that any rate increases imposed on the LTS class during the life of the LRR be specifically determined by the Commission in the applicable general rate case. In fact, whether or not the LRR continues should also be a matter for rate case determination.

**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?**

Noranda's only obligation to Ameren Missouri is to pay for service pursuant to Ameren Missouri's Commission-approved tariff. If the Commission determines, after consideration of all relevant factors, that the public interest would be best served by according the unique customer class that is Noranda the requested rate treatment, then the Commission can effectively change the terms of Ameren Missouri's service obligation to Noranda by requiring Ameren Missouri to make corresponding changes to its rates and tariffs.

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

This case has not addressed the amount of Ameren Missouri's revenue

---

<sup>102</sup> Ex. 200, pp. 4-5; Ex. 16, pp. 2-3. Noranda also pays \$1.50/MWh to Associated Electric Cooperative to wheel power to the smelter for a total delivered price at Noranda's meter of \$42.94/MWh. Ex. 16, p. 3 n. 1.

<sup>103</sup> Ex. 200, p. 4.

requirement; therefore, the revenue requirement remains that determined in Case No. ER-2012-0166. To the extent that the Commission reduces the amount of revenue collected from Noranda on a going-forward basis, the Commission must adjust the rates of Ameren Missouri's other customers to collect the *pro forma* shortfall from them.

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

The resulting *pro forma* revenue deficiency should be calculated by subtracting from Noranda's present per MWh rate whatever new rate the Commission grants and multiplying the difference by Noranda's usage going forward. Noranda's current rate is \$37.94/MWh, plus the FAC of \$3.50/MWh, for a total of \$41.44/MWh.<sup>104</sup> Were the Commission to grant an emergency interim Load Retention Rate of \*\* \_\_\_\_\_ \*\*, plus the FAC of \$3.50/MWh, for a total of \*\* \_\_\_\_\_ \*\* per MWh, for example, the *pro forma* revenue deficiency would be determined by subtracting \*\* \_\_\_\_\_ \*\* for a total of \*\* \_\_\_\_\_ \*\*/MWh or about \$14,591,000 on an annual basis.<sup>105</sup>

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

No part of the *pro forma* revenue deficiency may lawfully be charged to the shareholders. "Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility

---

<sup>104</sup> Ex. 200, pp. 4-5.

<sup>105</sup> \*\* \_\_\_\_\_ \*\* x 4,169,000.

company of its property in violation of the Fourteenth Amendment.”<sup>106</sup> “The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so ‘unjust’ as to be confiscatory.”<sup>107</sup> “If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.”<sup>108</sup> “A rate is too low if it is ‘so unjust as to destroy the value of [the] property for all the purposes for which it was acquired,’ and in so doing ‘practically deprive[s] the owner of property without due process of law.”<sup>109</sup>

The Commission can compel Ameren Missouri to serve Noranda with an emergency, interim load-retention rate if that is what it determines that the public interest demands, but it cannot require Ameren Missouri to do so for free. Any resulting *pro forma* revenue deficiency must necessarily be allocated to Ameren Missouri’s other ratepayers.

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

Staff recommends that, if the Commission grants Noranda relief, that the revenue deficiency be allocated as a revenue-neutral adjustment to each customer class (except the Large Transmission Service (“LTS”) Class) on their retail revenue requirement

---

<sup>106</sup> *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690, 43 S.Ct. 675, 678, 67 L.Ed. 1176, \_\_\_ (1923).

<sup>107</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307, 109 S.Ct. 609, 615, 102 L.Ed.2d 646, \_\_\_ (1989) (quoting *Covington & Lexington Tpk. Rd. Co. v. Sandford*, 164 U.S. 578, 597, 17 S.Ct. 198, 205, 41 L.Ed. 560, \_\_\_ (1896)).

<sup>108</sup> *Id.*, 488 U.S. at 308, 109 S.Ct. at 615, 102 L.Ed.2d at \_\_\_.

<sup>109</sup> *Covington & Lexington Tpk. Rd. Co. v. Sandford*, 164 U.S. 578, 597, 17 S.Ct. 198, 205, 41 L.Ed. 560, \_\_\_ (1896).

percentage basis to the total retail revenue requirement less the LTS class.<sup>110</sup> This would also include the Lighting Classes and the Metropolitan St. Louis Sewer District (“MSD”) Class. This allocation is outlined in Schedule MSS-R3 (attached below).<sup>111</sup> Staff’s recommendation is that only the retail portion be used to allocate any revenue-neutral adjustment.<sup>112</sup> The Pre-MEEIA and MEEIA revenue requirement portion would not be used to allocate any revenue-neutral adjustment.<sup>113</sup>

**Missouri Public Service Commission  
Case No. EC-2014-0224**

(1) Line	(2) Class	(3) Retail Revenue Requirement	(4) Staff Revenue Neutral Adjustment
1	RES	\$ 1,242,406,832	\$ 15,922,614
2	SGS	\$ 309,885,557	\$ 3,971,475
3	LGS	\$ 572,217,635	\$ 7,333,508
4	SPS	\$ 219,049,323	\$ 2,807,324
5	LPS	\$ 200,484,019	\$ 2,569,392
6	LTS	\$ 158,163,699	\$ (33,100,000)
7	Lighting	\$ 38,604,323	\$ 494,751
8	MSD	\$ 73,024	\$ 936
9	Total	\$ 2,740,884,412	\$ (0)

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

Staff recommends that, if the Commission grants relief, that the intra-class portion be increased as follows:

---

<sup>110</sup> Ex. 200, pp. 16-17.

<sup>111</sup> From Ex. 200, Mike Scheperle’s Rebuttal Testimony. These rates are illustrative only; actual rates would be developed through a compliance filing in the event that the Commission authorizes rate relief for Noranda and orders interclass and intra-class rate design adjustments.

<sup>112</sup> *Id.*, p. 17.

<sup>113</sup> *Id.*

In the limited circumstances of this case, without a class cost-of-service study, Staff recommends that only the volumetric energy charges be increased proportionally for the Residential Service (“RES”) Class and the Small General Service (“SGS”) Class. No increase should be made to the customer charge in these classes.<sup>114</sup> No increase should be made to Pre-MEEIA and MEEIA charges in these classes.

Staff recommends that the customer charge, demand charge and energy charge be proportionately increased for the Large Commercial Service (“LGS”), Small Primary Service (“SPS”), and Large Primary Service (“LPS”) Classes. No increase should be made to Pre-MEEIA and MEEIA charges in these classes.<sup>115</sup> Staff also recommends that certain uniform interrelationships among the non-residential rate schedules be maintained as outlined in the Revised Non-Unanimous Stipulation and Agreement in Case No. ER-2012-0166. The following features are uniform and will remain uniform:

1. The value of the customer charge will be uniform across rate schedules, with the customer charge on the SPS, LPS, and LTS rate schedules being the same.
2. The rates for Rider B voltage credits will be the same under all applicable rate schedules.
3. The rate for the Reactive Charge will be the same for all applicable rate schedules.
4. The rate associated with Time-of-Day meter charge will be the same for all applicable non-residential rate schedules (LGS, SPS, LPS, and LTS).

Staff recommends that each component of the lighting classes and MSD be increased proportionately.<sup>116</sup>

---

<sup>114</sup> Tr. 7:820.

<sup>115</sup> Ex. 200, p. 17.

<sup>116</sup> Tr., 7:823-4. The Commission should require that the present proportion of employees and not contractors not be altered.

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

If the Commission grants a Load Retention Rate to Noranda, Staff recommends that the Commission require from Noranda the commitments offered by Mr. Smith:

(1) That Noranda will employ not less than 888 persons, both employees and contractors, at its New Madrid facility for as long as the emergency LRR is in effect;<sup>117</sup> and

(2) That Noranda will spend a total of \$350 million in capital expenditure dedicated solely to the New Madrid facility over the next ten years.<sup>118</sup>

At the hearing, a question was raised as to the enforceability of these commitments.<sup>119</sup> Section 386.390.1, RSMo., authorizes the Commission to hear and determine a complaint against any person or corporation that violates a Commission order. If such a complaint is sustained, substantial penalties are possible.<sup>120</sup>

**5. What is Ameren Missouri's variable cost of service to Noranda?**

Considering only energy costs, Ameren Missouri's variable cost of providing retail service to Noranda is Ameren Missouri's wholesale cost of energy for sale to Noranda at retail, plus an allowance for other costs assessed to load-serving entities based on load or demand, and any other costs directly assignable to Noranda, adjusted to reflect losses to Noranda's meter.<sup>121</sup> The range of estimates established by the experts providing testimony in this case is Mr. Dauphinais' figure of \$27.91/MWh on the low

---

<sup>117</sup> Tr. 7:629-30; 648.

<sup>118</sup> *Id.*

<sup>119</sup> Tr. 7:639-40.

<sup>120</sup> Sections 386.570 and 386.590, RSMo.

<sup>121</sup> Ex. 201 HC, p. 7.

end<sup>122</sup> to Mr. Michels' correction of Mr. Dauphinais' calculation, which results in \$38.26, at the high end.<sup>123</sup>

Mr. Dauphinais adjusted his estimate to remove the prices experienced in 2014, which causes his number to be understated. As discussed in the rebuttal testimony of Ms. Kliethermes, it is reasonable to assume some level of the increase in those months is attributable to weather, which is not likely to directly impact market prices going forward, and some level is attributable to market changes, which may impact market prices going forward. In particular, the MISO South region was integrated into the MISO in mid-December 2013.<sup>124</sup> Staff's estimate of \*\* \_\_\_\_\_ \*\* per MWh, at Noranda's meter, or about \$130,700,000 - \$140,000,000 per year is within this range.<sup>125</sup> Of the range calculated by Ms. Kliethermes, she testified that the low-end, \*\* \_\_\_\_\_ \*\* per MWh, was the most reasonable figure to use as a benchmark of Ameren's cost to serve Noranda in recent history.<sup>126</sup> According to Ms. Kliethermes, \*\* \_\_\_\_\_ \*\* is the "break-even point" at which all variable costs of serving Noranda are covered, with no contribution to fixed costs.<sup>127</sup>

Noranda requests a departure from embedded-cost-of-service ratemaking, but

---

<sup>122</sup> Ex. 14 HC, p. 3. In testimony, Ms. Kliethermes stated that Mr. Dauphinais' number was \$29.91/MWh, Tr. 7:791.

<sup>123</sup> Ex. 105, p. 7. Mr. Michels also provides a forecasted rate of approximately \$48.24, although he cautions against reliance on either of his calculations for purposes of setting rates.

<sup>124</sup> Ex. 201 HC, p. 5.

<sup>125</sup> Ex. 203 HC, p. 2.

<sup>126</sup> Tr. 7:791; 8:783 (HC).

<sup>127</sup> Tr. 8:785-6 (HC).

relies on an average variable cost calculation that assumes embedded-cost-of-service ratemaking. In his Direct Testimony, Noranda's expert witness Maurice Brubaker stated that the average variable cost of providing service to Noranda is \$18.19/MWh, calculated as the average variable cost included in base rates in Case No. ER-2012-0166 of \$14.69/MWh plus the current FAC factor of \$3.50/MWh.<sup>128</sup> In his Surrebuttal Testimony, Mr. Brubaker corrected the figure he had provided earlier to \$22.10/MWh, calculated as \$18.60/MWh<sup>129</sup> for base fuel costs and certain non-fuel items plus the current FAC factor of \$3.50/MWh.<sup>130</sup> Mr. Brubaker explained that he considered the average variable cost of service to be:

the total cost of the components that are included in Ameren Missouri's Fuel Adjustment Clause ("FAC") divided by total retail sales. It essentially is those cost components which vary with the number of kilowatthours supplied by the utility. It is calculated using the variable cost components that are included in Ameren Missouri's Commission-determined revenue requirement.<sup>131</sup>

Significantly, both the average variable cost included in base rates in Case No. ER-2012-0166 and the average net energy charge that is part of the FAC calculation are net of off-system-sales-margin revenues. It is not reasonable to offset the actual variable cost of service to Noranda with the revenues provided by generating facilities for which Noranda does not pay.

- a. Should this quantification of variable cost be offset by an allowance for Off-System Sales Margin Revenue?**



No. For purposes of determining variable cost to provide service, only the wholesale energy cost should be considered, and offsetting revenues should not be considered.<sup>132</sup>

As stated by Mr. Dauphinais:

As a participant in the MISO Regional Transmission Organization (“RTO”), Ameren Missouri must clear all of its generation and all of its load in the MISO market. Ameren Missouri’s generation clears in the MISO market based on the offer price Ameren Missouri submits for each of its generators to produce energy (or provide capacity) and the market prices set by MISO. Those market prices are set by MISO based on: (i) the generation offers of Ameren Missouri and all other MISO market participants; and (ii) the total load within the MISO market that needs to be served. As a result, the clearing of Ameren Missouri’s generation facilities in the MISO market (including the commitment and dispatch of those generation facilities) would not be affected by Ameren Missouri’s loss of retail sales to Noranda unless MISO market prices changed enough to influence that clearing as a result of the loss of those retail sales by Ameren Missouri. Because the loss of Ameren Missouri’s retail sales to Noranda would negligibly affect MISO market clearing prices in most hours of the year and act to lower those prices when there is more than a negligible effect, it can be reasonably and conservatively assumed that Ameren Missouri’s market settlements for its generation facilities are unaffected by the loss of those retail sales. *Thus, the reduction in Ameren Missouri’s ANEC can be reasonably and conservatively estimated as the cost avoided by Ameren Missouri by not having to clear the Noranda retail sales in its MISO market and transmission settlements for its load.* This can be calculated using recent historical MISO market prices and current forecasted regional transmission rates for 2014 under the MISO Tariff.<sup>133</sup>

Because off-system sales margin (“OSSM”) revenues are the difference between the money Ameren Missouri receives for generating energy, and the money Ameren Missouri pays to buy energy to serve its load, OSSM revenues do not reduce Ameren Missouri’s variable cost to serve Noranda. In fact, as established by Mr. Dauphinais, Ameren Missouri’s OSSM revenues are inversely related to Ameren Missouri’s service of Noranda (or any other customer).

---

<sup>132</sup> Ex. 202, p. 8.

<sup>133</sup> Ex. 13, pp. 4-5 (emphasis added).

Ms. Kliethermes testified, “[t]he cost to serve is what it is. It’s a function of the LMPs and some folks in Carmel and a lot of generators’ bids and a number of other factors.”<sup>134</sup> It is not affected by off-system sales revenues.<sup>135</sup> It is not appropriate to take the known cost of acquiring energy to serve Noranda’s load and reduce it by the profits that Ameren is able to make using ratepayer-funded assets on other sales.<sup>136</sup>

**b. What revenue benefit or detriment does the Ameren Missouri system receive from provision of service to Noranda at a rate of \$30/MWh?**

Using Mr. Dauphinais’ estimate of \$27.91/MWh,<sup>137</sup> and Mr. Michels’ correction of Mr. Dauphinais’ calculation of \$38.26/MWh,<sup>138</sup> and Noranda’s metered load of 4,169,000 MWh,<sup>139</sup> the experts in this case project a range from a benefit of about \$8.8 million to a detriment of about \$34.5 million. However, neither Mr. Dauphinais nor Mr. Michels was actually attempting to calculate Ameren Missouri’s variable cost of serving Noranda.<sup>140</sup>

Staff calculates the rate impact on Ameren Missouri’s customers other than Noranda, if Noranda were to receive service at \$30/MWh, to be an *increase* of approximately \$27,760,000 annually over what Ameren Missouri’s customers would pay if Noranda ceased receiving retail service.<sup>141</sup> More particularly, at a rate of \$30.00/MWh and a cost per MWh of \*\* \_\_\_\_\_ \*\*, the Ameren Missouri system would receive a real revenue detriment of \$6.2 to \$15.5 million annually from provision of

---

<sup>134</sup> Tr. 7:792.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Ex. 15, p. 3.

<sup>138</sup> Ex. 105, p. 7.

<sup>139</sup> Ex. 16, p. 6 n. 4.

<sup>140</sup> Tr. 8:785-87.

<sup>141</sup> Ex. 203 HC, p. 6.

service to Noranda at \$30/MWh because that rate is insufficient to cover all of the variable costs incurred in providing that service. The Ameren Missouri system is worse off by \$27,760,000 annually from provision of service to Noranda at \$30.00/MWh than if Ameren Missouri provided no service to Noranda at all.

**6. Should Noranda be served at a rate materially different than Ameren Missouri's fully distributed cost to serve them? If so, at what rate?**

If the Commission grants rate relief to Noranda, the rate should not be less than \*\* \_\_\_\_\_ \*\* per MWh, subject to the FAC, and with any subsequent rate increase, as well as the continuation of the Load Retention Rate, to be determined by the Commission in each successive general rate case.

**WHEREFORE**, Staff prays that the Commission will resolve each contested issue as recommended herein by Staff; and grant such other and further relief as may be just in the circumstances.

Respectfully submitted,

**/s/ Kevin A. Thompson**

Kevin A. Thompson  
Missouri Bar Number 36288  
Chief Staff Counsel

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
573-751-6514 (Voice)  
573-526-6969 (Fax)  
[kevin.thompson@psc.mo.gov](mailto:kevin.thompson@psc.mo.gov)

Attorney for the Staff of the  
Missouri Public Service Commission

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **8<sup>th</sup> day of July, 2014**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**/s/ Kevin A. Thompson**