

Exhibit No:
Witness: Henry Fayne
Type of Exhibit: Direct Testimony
Issues:
Sponsoring Party: Noranda Aluminum, Inc.
Case No.: EO-2010-0255

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

**In the Matter of the First Prudence Review of)
Costs Subject to the Commission-Approved Fuel)
Adjustment Clause of Union Electric Company,)
d/b/a AmerenUE)** **CASE NO. EO-2010-0255**

Direct Testimony of Henry Fayne

On Behalf of

The Missouri Industrial Energy Consumers

DIRECT TESTIMONY OF HENRY FAYNE

1 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A: My name is Henry W. Fayne. My business address is 1980 Hillside Drive, Columbus,
3 Ohio 43221.

4 **Q: PLEASE BRIEFLY DESCRIBE YOUR BUSINESS AND EDUCATIONAL**
5 **BACKGROUND.**

6 A: I have been a consultant in the electric energy sector since the beginning of 2005,
7 following my retirement from American Electric Power (AEP). I was employed by AEP
8 in various positions for thirty years from 1974 through 2004, including as Executive Vice
9 President and Chief Financial Officer from 1998 until 2001, and as Executive Vice
10 President Energy Delivery from 2001 until I retired in 2004. I have a bachelors degree in
11 economics from Columbia College and an MBA in finance from Columbia Graduate
12 School of Business.

13 **Q: HAVE YOU TESTIFIED PREVIOUSLY?**

14 A: Yes. During my tenure at AEP, I testified before the regulatory commissions in the states
15 of Indiana, Kentucky, Michigan, Ohio, Oklahoma, Texas, Virginia and West Virginia on
16 behalf of various operating companies of AEP. I have also testified before the Federal
17 Energy Regulatory Commission. Since I retired from AEP, I have testified before
18 regulatory commissions in the states of Kentucky, Ohio and West Virginia. I also
19 testified before this Commission in Case No. ER-2010-0036.

1 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

2 A: The purpose of my testimony is to support the Commission Staff's conclusion that
3 AmerenUE improperly treated the costs and revenue associated with certain sales of
4 energy to American Electric Power Operating Companies (AEP) and to Wabash Valley
5 Power Association, Inc (WVPA) during the period of March 1 to September 30, 2009, in
6 determining the associated fuel and purchased power adjustment clause charges (FAC)
7 that are billed to its customers. I agree with the Staff that these transactions should have
8 been treated as off-system sales for purposes of calculating the FAC charges.

9 **Q: WHAT IS THE BASIS OF YOUR CONCLUSION THAT AMERENUE**
10 **IMPROPERLY TREATED THE AEP AND WVPA SALES AS OFF-SYSTEM**
11 **SALES?**

12 A: AmerenUE's proposed treatment of the AEP and WVPA transactions as long-term partial
13 requirements wholesale contracts is inconsistent with standard utility practice and, in
14 addition, is inconsistent with this Commission's decision in Case No. ER-2008-0318
15 Application for Rehearing and the Stipulation and Agreement approved by this
16 Commission in Case No. ER-2010-0036.

17 **Q: PLEASE EXPLAIN WHY YOU CONCLUDE THAT AMERENUE'S PROPOSED**
18 **TREATMENT OF THE AEP AND WVPA TRANSACTIONS IS INCONSISTENT**
19 **WITH STANDARD UTILITY PRACTICE.**

20 A: Typically, off-system sales are characterized as opportunity sales. They represent sales
21 of excess power that is not currently required by the utility to meet its firm long-term
22 retail and wholesale load requirement. Such off-system sales may be short term or long
23 term; moreover, they can be configured in numerous ways including bilateral transactions

1 with other utilities, transactions with RTOs, or transactions with other trading
2 counterparties. In contrast, wholesale partial and full requirements contracts are long
3 term bilateral commitments with municipalities or other utilities; but most importantly,
4 they are commitments that the selling utility includes in its resource planning. As such,
5 they represent load that is included in jurisdictional cost allocation in the ratemaking
6 process; that is, rate base and fixed and variable costs are allocated to such load, and
7 therefore, not included as part of the retail jurisdiction for ratemaking purposes
8

9 As AmerenUE witnesses Haro and Barnes explain, the sales to AEP and WVPA are
10 contracts that were entered into to replace the lost Noranda sales as a result of the ice
11 storm. The transactions are clearly opportunity sales, the sale of power that is
12 temporarily excess because Noranda was unable to purchase the power as a result of the
13 outage caused by the ice storm. AmerenUE has not indicated an intention to serve these
14 contracts once Noranda returns to full load, nor has AmerenUE indicated that it is
15 planning to have adequate resources to serve AEP and WVPA in the future. Nor are they
16 proposing that the cost of electric plant or any operating costs be allocated to these
17 contracts in setting base rates. The fact that these contracts are bilateral wholesale
18 contracts for a term in excess of a year does not obviate the fact that they are simply
19 opportunity sales. As such, they should be treated as off-system sales.

20 **Q: PLEASE EXPLAIN WHY YOU CONCLUDE THAT AMERENUE'S PROPOSED**
21 **TREATMENT OF THE AEP AND WVPA TRANSACTIONS IS INCONSISTENT**
22 **WITH THIS COMMISSION'S DECISION IN CASE NO. ER-2008-0318**
23 **APPLICATION FOR REHEARING.**

1 A: As the Commission Staff explained in its Prudence Report and Recommendation, in its
2 Application for Rehearing in Case No. ER-2008-0318, AmerenUE proposed to modify its
3 FAC tariff so the incremental off-system sales revenues made possible by Mwh not taken
4 by Noranda (but which can then be sold-off system) will be retained by AmerenUE to the
5 extent necessary to offset the loss of retail margins from Noranda due to the loss of the
6 Noranda load; revenues in excess of the lost Noranda margin would flow to customers.
7 The Commission denied AmerenUE's request on February 19, 2009. Designating the
8 sales to AEP and WVPA as "wholesale" contracts rather than "off-system" sales is
9 nothing more than an attempt to circumvent the Commission's denial of the Application
10 for Rehearing.

11 **Q: IN HER TESTIMONY, AMERENUE WITNESS BARNES JUSTIFIED THE**
12 **PROPOSED TREATMENT BY EXPLAINING THAT THE PROPOSED**
13 **TREATMENT WOULD KEEP ALL PARTIES CLOSE TO FINANCIALLY**
14 **WHOLE. SPECIFICALLY SHE NOTES THAT "BECAUSE REVENUES FROM**
15 **LONG-TERM REQUIREMENTS CONTRACTS WERE NOT FLOWED**
16 **THROUGH THE FAC UNDER THE TARIFF, CUSTOMERS WOULD NOT**
17 **CONTINUE TO RECEIVE A WINDFALL FROM THE ICE STORM; INSTEAD**
18 **THEY WOULD BE IN THE SAME POSITION THAT THEY WOULD HAVE**
19 **BEEN IF THE ICE STORM HAD NOT OCCURRED. AND AMEREN**
20 **MISSOURI WOULD BE ABLE TO RECOVER ITS COSTS SIMILAR TO THE**
21 **WAY IT WOULD HAVE RECOVERED THEM FROM NORANDA HAD THE**

1 **ICE STORM NOT OCCURRED.”¹ DO YOU AGREE WITH MS. BARNES’**
2 **CONCLUSION?**

3 A: No, I do not support Ms. Barnes’ conclusion. I believe it is inconsistent with the
4 Commission Orders in Case No. ER-2010-0036

5
6 Under the terms of the First Non-Unanimous Stipulation and Agreement in Case No.
7 ER-2010-0036, which was approved by this Commission, AmerenUE was authorized to
8 exclude system sales revenues from the FAC to offset reduced load from Noranda. This
9 change was designed to keep AmerenUE whole in the event that the Noranda load was
10 curtailed; however, this change did not become effective until June 7, 2010 and, more
11 importantly, it is effective on a prospective basis only.

12
13 Furthermore, the AEP and WVPA contracts were addressed in the Second Non-
14 Unanimous Stipulation and Agreement which was approved by the Commission and to
15 which AmerenUE was a party. Under the terms of that Stipulation, it was agreed (1) that
16 the capacity and energy requirements from those contracts would be treated as off-system
17 sales for production cost true-up runs to establish base rates and (2) fixed capacity
18 payments and energy sales under bilateral contracts (excluding bilateral full or partial
19 requirements contracts between Ameren and Missouri municipalities) shall be included as
20 off-system sales. It is important to note that neither the AEP nor the WVPA contract is a
21 bilateral contract between Ameren and a Missouri municipality.

22

¹ Direct Testimony of Lynn M. Barnes, page 8, lines 8-16

1 In short, AmerenUE has attempted to craft an approach that would mitigate its loss resulting
2 from the temporary loss of the Noranda load. The approach they have proposed, however, is at
3 odds with standard industry practice and is in direct conflict with the substance and intent of
4 Commission orders and Stipulations and Agreements among the parties. On that basis, the Staff
5 proposed refund is justified.

6 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A: Yes it does.