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	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

REPORT AND ORDER

Issue Date: April 29, 2015

Effective Date: May 12, 2015

3. *Should transmission revenues continue to be included in the FAC?*

This sub-issue was resolved by stipulation and agreement.[302]

15. Noranda Rate Proposal

A. 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?

1. 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?

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

3. If so, should the Commission grant the requested relief?

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

C. 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?

D. 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?

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

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

3. 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?

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

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

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

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

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

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

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302 Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, filed on March 5, 2015, Paragraph 7.

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

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

2. What revenue benefit or detriment does the Ameren Missouri system receive from provision of service to Noranda at a rate of $32.50/MWh?

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

G. Is it appropriate to remove Noranda as a retail customer as proposed by Ameren Missouri in its Rebuttal Testimony?

1. Can the Commission cancel the Certificate of Convenience and Necessity that was granted for Ameren Missouri to provide service to Noranda and, if so, would the cancellation of the CCN be in the public interests?

2. Can the Commission grant Ameren Missouri's proposal since notification regarding the impact of this proposal on its other customers' bills was not provided to Ameren Missouri's customers?

3. If the Commission grants Ameren Missouri's proposal, should the costs and revenues flow through the FAC?

4. Can Ameren Missouri and Noranda end their current contract without approval of all of the parties to the Unanimous Stipulation and Agreement in the case in which Ameren Missouri was granted the CCN to serve Noranda?

The parties identified many decision points related to Noranda Aluminum's request to receive a rate less than Ameren Missouri's fully distributed cost to serve it. While most of those decision points will need to be addressed, the Commission finds that the entire issue should be addressed as a single issue rather than as several sub-issues.

Findings of Fact:

1. Noranda Aluminum, Inc. operates an aluminum smelter in New Madrid, Missouri, that takes electric service from Ameren Missouri. The smelter has been in operation since 1971 and annually produces approximately 260,000 metric tonnes of aluminum. That amounts to approximately 0.5 percent of the world's aluminum production and about 5 percent of the United States' aluminum production.[303] It employs approximately 900 workers.

[303] Boyles Direct, Ex. 600, Page 4, Lines 1-14.

2. Noranda uses approximately 4.2 million MegaWatt Hours (MWh) of electricity from Ameren Missouri in a year to make aluminum. Noranda uses 480 MWs of power, 24 hours per day, 7 days per week, 52 weeks per year. Every dollar per MWh change in Ameren Missouri's electricity rate represents a $4.2 million change in the pre-tax cash flow of Noranda.[304]

3. If Noranda were to close, the Missouri economy would forego approximately $9 billion in economic activity over the next twenty-five years. State and local tax revenue would be reduced by approximately $350 million over those same twenty-five years. Additional unemployment benefits resulting from the closure could be as high as $9.4 million.[305]

4. Noranda also has a tremendous positive impact on the Southeast region of Missouri, one of the poorest regions in the country, providing the few high paying jobs in the area.

5. Noranda is by far Ameren Missouri's largest customer, representing over ten percent of the total retail sales made by the utility.[306]

6. Noranda's current average base rate is $37.95 per MWh. It is also subject to operation of the FAC. Adding the current FAC of $4.40 brings the total rate to $42.35 per MWh.[307] Noranda's current rate is based on Ameren Missouri's fully allocated cost of service.

7. At the start of this case, Noranda proposed that it be given an initial total rate

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[304] Boyles Direct, Ex. 600, Page 8, Lines 16-20.

[305] Haslag Direct, Ex. 606, Pages 4-5, Lines 11-24, 1-16.

[306] Wills Amended Rebuttal, Ex. 53, Page 17, Lines 22-23.

[307] Brubaker Direct, Ex. 503, Page 40, Lines 1-9.

of $32.50 per MWh, to be increased by one percent annually, with that rate structure to remain in place for seven years.[308]

8. On March 9, 2015, just before this issue was heard, several consumer parties joined with Noranda in a non-unanimous stipulation and agreement.[309] Among other things, that stipulation and agreement would set the base rate for Noranda at $34.00 per MWh, would exempt Noranda from operation of the FAC, and would increase Noranda's future rates by half of the percentage increase that Ameren Missouri might obtain in any future rate case. Under the stipulation and agreement, that rate structure would remain in place for ten years.

9. Several parties objected to the stipulation and agreement, and according to the Commission's rule, the stipulation and agreement cannot be approved if any party objects to it. However, the stipulated position may remain the joint position of the parties that signed the stipulation and agreement. The Commission can approve that position if it finds that it is supported by competent and substantial evidence.[310]

10. The first step to determining whether either of the reduced rates proposed by Noranda is reasonable is to determine Ameren Missouri's incremental cost to serve Noranda. The experts also refer to incremental cost as Ameren Missouri's avoided cost, meaning the cost that Ameren Missouri would avoid if the Noranda smelter shuts down.[311] Either term means the point at which other ratepayers would benefit from Noranda's presence on the system. At any price above that point, Noranda is making a contribution

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[308] Boyles Direct, Ex. 600, Page 3, Lines 9-13.

[309] The parties that signed the stipulation and agreement were Public Counsel, Noranda, Consumers Council, the Missouri Retailers Association, and MIEC.

[310] 4 CSR 240-2.115(2)(D).

[311] Transcript, Page 2792, Lines 23-25.

to Ameren Missouri's fixed costs.[312] At a price below that point, Noranda would not be making a contribution to Ameren Missouri's fixed costs and Ameren Missouri's other ratepayers would be better off without Noranda on the system.[313]

11. Incremental cost is largely influenced by the amount at which Ameren Missouri could sell power on the open market if it could no longer sell that power to Noranda.[314] MIEC's witness, James Dauphinais, testified that the incremental cost would be between $28.03 and $29.39 per MWh.[315] Staff's witness, Sarah Kliethermes, calculated incremental cost at $31.50 per MWh.[316] In his rebuttal testimony, Ameren Missouri's witness, Matt Michels, calculated that point at either $32.77 per MWh or $34.13 per MWh.[317] At the hearing, he testified that for the period through May of 2017, the incremental cost would likely remain below $32.50 per MWh.[318]

11. The actual future incremental cost is uncertain because it depends on the spot energy market prices and annual capacity market prices that will occur in the future.[319] 12. In setting a rate for Noranda, it is important that the rate be set, and remain, above the incremental cost. Below that cost, Noranda would not be covering any part of Ameren Missouri's fixed costs. If Noranda is not making any contribution to fixed

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[312] Transcript, Page 2793, Lines 11-19.

[313] Transcript, Page 2793, Lines 7-10.

[314] Dauphinais Direct, Ex. 508, Page 16, Lines 13-23.

[315] Dauphinais Direct, Ex. 508, Page 17, Lines 20-23.

[316] Transcript, Page 3003, Lines 14-22.

[317] Michels Amended Rebuttal, Ex. 26, Page 26, Lines 3-12. In his testimony, Michels describes those numbers as the Actual Net Energy Cost, or ANEC. At the hearing explained that ANEC is another name for incremental cost or avoided cost. See Transcript, Pages 2956-2957, Lines 22-25, 1-6.

[318] Transcript, Page 2946, Lines 10-18.

[319] Dauphinais Surrebuttal, Ex. 509, Page 25, Lines 14-18.

costs, there is no justification for allowing it to pay a reduced rate and other ratepayers would be better off if the smelter closed. But, so long as Noranda's rate remains above the incremental cost, Noranda will make a contribution to Ameren Missouri's fixed costs and other customers will pay a lower rate than they would if the smelter closed and went off Ameren Missouri's system.[320]

13. A rate below fully allocated cost of service and above incremental cost of service is only appropriate if the smelter will likely leave Ameren Missouri's system if not allowed a lower electric rate. The future viability of the smelter, and thus the likelihood Ameren Missouri would retain Noranda's load, is largely dependent on the price of aluminum metal on the world market.[321]

14. The world's aluminum price is established by trading on the London Metal Exchange (LME), which includes a U.S. Midwest premium applicable to the aluminum produced at the Noranda smelter.[322]

15. The price of aluminum is highly volatile. Over the last 30 years, the annual percentage changes in price vary from plus 44 percent to minus 33 percent. Large positive changes can be quickly followed by large negative changes. On the whole, the average annual percentage of change in price per year is 15.9 percent.[323] Removing the effect of general inflation, aluminum prices have trended downward since 1982 by an average of 0.3 percent per year.[324]

16. Demand for aluminum tends to be cyclical following the general business

[320] Transcript, Page 3003, Lines 4-13.

[321] Fayne Surrebuttal, Ex. 603, Pages 4-5, Lines 9-22, 1-12.

[322] Pratt Direct, Ex. 608, Page 3, Lines 5-12.

[323] Pratt Direct, Ex. 608, Page 3, Lines 18-24.

[324] Pratt Direct, Ex. 608, Page 5, Lines 5-7.

cycle and is concentrated in industrial sectors that experience large swings in demand. Swings in demand are amplified by an inventory cycle.[325]

17. The other side of the pricing equation, supply, tends to be inelastic because production capacity cannot be increased in the short term. Occasionally that results in large upward spikes in price. But more commonly supply is unresponsive on the downside. Aluminum smelters need to work at full capacity to minimize costs so small adjustments in production are not practical. So producers tend to keep producing even when demand falls, causing inventories to grow and prices to fall.[326]

18. The demand for aluminum is also affected by major price shocks caused by the effects of financial crises, wars, or other major world events. Such crises are certain to occur, but their timing is unpredictable.[327] As a result, forecasts of future aluminum prices can be unreliable.[328] There is little ability to predict the timing of an aluminum cycle beyond a year or two, and even a short-term prediction can be significantly wrong.[329]

19. To test its ability to survive the volatility of the aluminum market, Noranda ran several scenarios to "stress test" the smelter's ability to survive. Based on those scenarios, Noranda believes that at some point, unless it receives a lower electric rate, it will exhaust its available credit and cash and will not be able to attract new investment. At that time, it will face a "substantial likelihood of imminent closure."[330]

20. Ameren Missouri criticized the scenarios chosen by Noranda as

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[325] Pratt Direct, Ex. 608, Pages 6-7, Lines 15-16, 1-13.

[326] Pratt Direct, Ex. 608, Page 7-8, Lines 15-26, 1-10.

[327] Pratt Direct, Ex. 608, Pages 9-10, Lines 1-14, 1-2.

[328] Pratt Direct, Ex. 608, Pages 16-20.

[329] Pratt Surrebuttal, Ex. 609, Page 6, Lines 1-4.

[330] Boyles Direct, Ex. 600, Page 20, Lines 4-11. See also, Boyles Surrebuttal, Ex. 601, Page 9, Lines 5-23.

unrepresentative of the most likely aluminum price forecasts. For example, if Noranda had used the future aluminum prices forecasted by CRU, a commodity sector consultancy, based in London[331] in its scenarios, it would not face a liquidity shortage.[332]

21. However, the scenarios are not intended to be forecasts of likely aluminum prices. Rather they are scenarios of what could happen to the smelter if certain aluminum prices develop.[333] And there is a substantial possibility of encountering a significant price downturn in at least one of the next six years. Such a downturn of at least 14.7 percent has occurred in every six-year period since 1982.[334]

22. Experts do rely on scenarios such as these to stress test business plans, assess ability to service loans, and assess ability to pay for power.[335] More importantly, lenders also use such stress testing to determine whether to loan money to a company. Banks and institutional lenders look at scenarios that use conservative forecasts when determining whether it is safe to loan money to a borrower.[336]

23. And the need to consider the views of lenders is important because Noranda will need to refinance substantial amounts of debt in the near future. Noranda's revolving asset based loan facility allows the company to obtain cash to run its day to day business operations. It will need to be refinanced in February 2017.[337] In addition, Noranda has a large amount of existing debt that comes due in 2019, which it will need to start refinancing

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[331] Humphreys Rebuttal, Ex. 19, Page 3, Lines 8-9.

[332] Mudge Rebuttal, Ex. 33, Page 17, Lines 1-7.

[333] Pratt Surrebuttal, Ex. 609, Page 6, Lines 14-22.

[334] Pratt Surrebuttal, Ex. 609, Page 7, Lines 14-21.

[335] Pratt Surrebuttal, Ex. 609, Page 8, Lines 1-11.

[336] Harris Surrebuttal, Ex. 605, Page 2, Lines 4-23.

[337] Boyles Direct, Ex. 600, Page 21, Lines 17-22.

in 2018.[338]

24. Steven Schwartz, an economist who testified for Noranda, explained that Noranda's operating performance in 2015 and expectations about 2016 will "color the way that potential lenders evaluate Noranda."[339] Schwartz further explained: "Creditors will lend Noranda money if its prospects seem likely to improve. Absent prospects for improvement, however, Noranda is an unattractive borrower."[340] If it is to improve its prospects, Noranda immediately needs a lower electric rate to improve its cash flow.

25. Noranda's refinancing difficulties are not just theoretical. Noranda has already been unable to obtain financing for construction of a new rod mill at the New Madrid smelter, causing a further drain on its cash resources.[341]

26. Tom Harris, a banker specializing in leverage finance for corporations, testified for Noranda that based upon his experience as a banker and leveraged financier, "Noranda will be unable to raise capital without first fundamentally improving its cash flow and thereby demonstrating its long-term viability".[342]

27. Noranda is heavily in debt. Its current leverage ratio is nearly seven times its last twelve-months' earnings.[343] Its debt to equity ratio was at 87 percent at the end of 2013.[344] Moody's and Standard & Poors have recently downgraded Noranda's credit

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[338] Boyles Direct, Ex. 600, Page 22, Lines 20-23.

[339] Schwartz Direct, Ex. 610, Page 17, Lines 19-23.

[340] Schwartz, Direct, Ex. 610, Page 17, Lines 13-15.

[341] Harris Direct, Ex. 604, Page 3, Lines 13-22.

[342] Harris Direct, Ex. 604, Page 5, Lines 4-14.

[343] Harris Direct, Ex. 604, Page 5, lines 16-21.

[344] Mudge Rebuttal, Ex. 33, Page 37, Lines 8-9.

rating to a "highly speculative" grade of risk.[345]

28. In large part, Noranda's current financial plight is due to its heavy debt load, much of which was imposed upon it when it was acquired by Apollo, a private equity firm, in a leveraged buyout transaction in 2007. Apollo borrowed funds to buy Noranda, using the company's assets as collateral. It then used Noranda's assets to borrow more money to recoup its equity investment in the company and to pay itself additional dividends.[346]

29. Apollo no longer is the sole owner of Noranda. It is now a publicly traded company, although Apollo continues to own a third of its outstanding shares.[347]

30. Electricity is Noranda's largest single cost to make aluminum, comprising 31.8 percent of the total cost.[348] However, electricity is not the only cost to produce electricity, and Noranda has advantages over some other smelters for those costs.[349] If Noranda was granted the $32.50 rate it originally requested, it would have the lowest total production cost of any aluminum producer in the country.[350]

31. A chart prepared by Noranda witness, Henry Fayne, from data provided by CRU, shows that Noranda's current cost of electricity, at $42.50 per MWh, is the second highest among the nine remaining smelters in the United States. At a rate of $34 per MWh as proposed in the joint position, its rate would drop to the second lowest in the country.

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) states:

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[345] Boyles Direct, Ex. 600, Page 23, Lines 10-13.

[346] Mudge Rebuttal, Ex. 33, Pages 36-37, Lines 7-18, 1-9.

[347] Transcript, Page 2436, Lines 15-25.

[348] Schwartz Direct, Ex. 610, Page 8, lines 7-17.

[349] Mudge Rebuttal, Ex. 33, Page 49, Lines 8-19.

[350] Mudge Rebuttal, Ex. 33, Page 54, Lines 1-3.

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

B. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be "just and reasonable" and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

> No ... electrical corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... electricity ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

> No ... electrical corporation ... shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

C. In sum, the statute says that utilities cannot give any "undue or unreasonable" preference to any particular customer, or class of customers. The most cited case interpreting the meaning of "undue or unreasonable" preference is *State ex rel. Laundry v. Public Service Commission*,[351] a 1931 decision by the Missouri Supreme Court. The *Laundry* decision arose from a complaint brought before the Commission by two laundry companies contending that they should be allowed to receive water service at the same reduced rate made available to ten manufacturing customers. The court found that the

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[351] 34 S.W.2d 37 (Mo 1931)

special manufacturing rate had been put in place by the utility to try to draw more business into its service area. In its decision, the Supreme Court found that the laundries were similarly situated to the manufacturing customers and should have been allowed to take water at the reduced manufacturer's rate.

D. The *Laundry* decision merely decides that in the facts described in that case, the laundries should have qualified for the industrial rate. As a result, the Laundry court's views of economic development rates are largely dicta. However, Ameren Missouri cites to an even earlier Commission decision that the *Laundry* court quoted extensively for the proposition that all economic development rates are forbidden by the controlling statute. That Commission decision, *Civic League of St. Louis v. City of St. Louis,*[352] does indeed sharply criticize a water rate imposed by the City of St. Louis for the purpose of encouraging manufacturing enterprises to locate within the city and orders the city to revise those rates to avoid discrimination. However, the criticism was that the rates imposed by the City of St. Louis were set below the cost of service and that they were unreasonably low. In the words of that Commission:

> The establishment of the truth of such averment (that rates to manufacturers were below the cost of service) would reveal not only unquestionably unjust discrimination, but also an unreasonable low rate to this class (the manufacturers), and intolerable oppression upon the general metered water users in that they would be compelled to pay in part for water and service furnished to the favored class. The exercise of power crystallized into legislation that unjustly discriminates between users of water in this manner, in effect deprives those discriminated against of the use of their property without adequate compensation or due process of law, and turns it over to the favored class. It is in essence a species of taxation which takes the private property of the general or public metered water users for the private use of metered water users engaged in manufacturing. This is an abuse of power.[353]

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[352] 4 Mo. P.S.C. 412 (1916).

[353] *Civic League* at 455-456.

While this decision speaks more directly to the propriety of below-cost rates, it does not necessarily contradict the principle set forth in *Laundry* that the Commission may set preferential rates as long as the preference is reasonably related to the cost of service and is not unduly or unreasonably preferential.[354] No party has identified any subsequent court decision that would go as far as proscribing all economic development or load retention type rates.

E. Instead, the courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or disadvantage and this is what the Commission must do here.[355]

F. The evidence in this case shows that Noranda is a unique customer because it uses much more electricity than any other Ameren Missouri customer. It uses that electricity at a very high load factor. It is so unique that it has had its own rate classification for many years. G. Under these circumstances, a rate for Noranda that is less than its fully allocated cost[356], but more than its incremental cost is just and reasonable within the meaning of Section 393.130, RSMo (Cum. Supp. 2013), and is not unduly or unreasonably preferential.

Decision:

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354 ". . . that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination." *Laundry* at 45.

355 *For example see, State ex rel. City of Joplin v. Pub. Serv. Comm'n,* 186 S.W.3d 290 (Mo. App. W.D. 2005).

356 Ameren Missouri's fully allocated cost to serve Noranda would include an allocation of all fixed and variable costs. Noranda's current rate represents its fully allocated cost of service.

The Commission will start from a premise that no one really disputes; Noranda is significant to this state, to Ameren Missouri, and to its customers. Noranda's aluminum smelter near New Madrid, Missouri has a huge economic impact on a region of the state, known as the Bootheel, that is economically depressed. It buys staggeringly large amounts of electricity every hour of every day. It is by far Ameren Missouri's largest customer, by itself buying over ten percent of all the electricity Ameren Missouri sells. For many years, Noranda has come before this Commission in every Ameren Missouri rate case and proclaimed that it needs low cost electricity to remain viable. Sometimes the Commission has made decisions that Noranda would find favorable; sometimes it has not. Most recently, less than a year ago, the Commission denied Noranda's request for a reduced rate in a complaint case decided while this case was pending. The Commission denied that request because Noranda failed to meet its burden of proof to show that its current rate was not just and reasonable. But Noranda continued its quest for a lower rate in this rate case, again asking for a rate that is below Ameren Missouri's fully allocated cost to serve. This time the Commission reaches a different result because additional evidence and argument was presented. The additional evidence describes a looming problem for Noranda: it must seek to refinance its existing debt in 2017 and 2019. Noranda presented various scenarios based on the price of aluminum in which it would run out of liquidity (cash and available credit) in the next few years. Those scenarios were criticized a not the most likely to occur, and indeed, they are not intended to be forecasts of aluminum prices. Rather, they are scenarios of what would happen if aluminum prices, which are volatile, were to drop. They are worst case scenarios, but sometimes the worst happens.

Lenders do not look at a borrower and accept promises that everything will be alright if aluminum prices stay as high as the analysts think they will. Investors asked to loan millions of dollars to Noranda will want to know whether the company will be able to survive and pay back its debts even if things do not go as well as planned. Therefore, lenders will stress test the company by looking at unfavorable scenarios. Wall Street agrees that Noranda has a problem as the company's credit rating was recently downgraded to a highly speculative grade of risk. Unless Noranda's cash flow improves, it will likely be unable to refinance its debt and could be forced to close.

In this case, Noranda and the other parties presented evidence sufficient to convince the Commission that Noranda is in danger of discontinuing operations at its New Madrid smelter in the absence of a load retention rate. As a result, it is in the interest of all ratepayers for the Commission to allow Noranda a lower rate to keep it as a customer of Ameren Missouri.

In part, Noranda's precarious financial situation is the result of Apollo Management's decision to milk massive amounts of cash out of the company when it purchased it in 2007. Certainly, Noranda would be better off today if it still had the hundreds of millions of dollars that Apollo borrowed against the assets of the company to give to itself as a special dividend. Apollo no longer owns all the shares of Noranda, but it still owns a third of its shares and can influence its board of directors.

The Commission is not tasked with protecting private interests, and it does not want to reward Apollo's behavior in any way, but it must protect the public interest and set just and reasonable rates. In these circumstances, the public interest encompasses more than the economic concerns of Noranda's employees, the Bootheel, or even the state of

Missouri. Specifically, and of greatest import to this Commission's mandate, is the effect of Noranda's closure on Ameren Missouri's other customers. It is important to understand that a customer in St. Louis who has no connection to the Bootheel, will pay higher electric rates if Noranda closes its smelter. Right now, Noranda pays a large portion of Ameren Missouri's fixed costs, costs that will not go away just because Noranda no longer buys electricity. If Noranda closes its smelter, those costs will still be there, but then all Ameren Missouri's other customers will have to pick up the bill for those fixed costs. Thus, Ameren Missouri's other customers will benefit from retaining Noranda's load for Ameren Missouri.

As with everything else involving Noranda, the numbers are large. Noranda argues that the incremental cost to provide power to Noranda, that is the price at which Ameren Missouri could sell that power on the off-system market, is approximately $28 per MWh. If Noranda pays a rate of $36 per MWh and buys 4 million MWhs per year, it would contribute roughly $32 million per year towards Ameren Missouri's fixed costs. That is $32 million per year that Ameren Missouri's other customers will have to pay if the smelter shuts down. Even if it is assumed that the incremental cost is $31.50 per MWh as estimated by Staff, Noranda would still be contributing $18 million per year to Ameren Missouri's fixed costs at a rate of $36 per MWh. It is true Ameren Missouri's other customers will have to pay extra to make up for the lower rate given to Noranda. But they will have to pay even more if the smelter shuts down and Noranda contributes nothing to Ameren Missouri's fixed costs.

During the hearing, Noranda and several consumer groups, including the Public Counsel, filed a non-unanimous stipulation and agreement to which several parties objected. Because the stipulation and agreement is not unanimous, the Commission cannot approve it. However, the stipulation and agreement remains the joint position of the signatory parties and the Commission can use it as a starting point toward crafting a revised rate for Noranda.

The non-unanimous stipulation and agreement - now the joint position - has some good features, but the Commission is not willing to adopt that position in its entirety. First, the $34 per MWh rate proposed is too low. The Commission wants to ensure that Noranda remains competitive with other smelters in this country but does not want to require other customers to support a rate for Noranda that would make it the lowest overall cost smelter in the country.

Second, the ten-year term of the joint position is too long, and is largely illusory. Ten years is a very long time, and the market for electricity may look very different by that time. Attempting to set a rate at that distance, even with escalator clauses and opt-out measures, would not be prudent. Additionally, while a stipulation and agreement can be binding on its signatories for ten years, the Commission cannot bind future Commissions, nor can it preclude future litigants from presenting contrary positions in future rate cases, positions to which the Commission will need to give due consideration.

Since the Commission cannot, and will not, approve the joint position in its entirety, it will need to explain in detail the rate that will be established for service to Noranda:

1. For a period of three years, a new class of Ameren Missouri electric service ratepayer is authorized for Industrial Aluminum Smelters (IAS).
2. The existing tariff and rates for the LTS class will remain in effect and will be updated in this and future rate cases. If Noranda is not willing to accept the terms of service for the IAS class, or if it violates the conditions

set forth in this order, it shall revert to the LTS class.

3. An effective base rate of $36.00 per MWh is set for the IAS class, to become effective when new rates go into effect resulting from this case.
4. The new IAS class shall remain subject to the Rider FAC, but any increase in rates due to operation of the Rider FAC shall not exceed $2.00 per MWh.
5. The IAS class will not be subject to any rate increase resulting from this case.
6. If Ameren Missouri files any additional rate cases during the three-year existence of the IAS class, it is the intent of this Commission that the IAS class shall receive 50 percent of the system average increase and zero percent of any system average decrease resulting from such rate cases. When the FAC is rebased in such rate proceeding, the IAS shall once again be subject to no more than a $2.00 per MWh rate increase due to the Rider FAC. The intent of this Commission is not binding on a future Commission, and such future Commission must decide those cases based on the competent and substantial evidence presented in those cases.
7. The IAS class may retain its existence and rate after the expiration of the three-year term until such time as the Commission establishes a new rate in a general rate proceeding.
8. The IAS class shall be subject to 100 percent of any new surcharge, adjustment mechanism, or any other mechanism that seeks to change or

impose new rates between rate cases that takes effect during the three-year term as a result of any new Missouri legislation passed and taking effect after the implementation date of rates resulting from this case.

9. The new IAS class shall not be subject to charges, rates, or surcharges that were not in effect at the implementation date of rates resulting from this case unless specifically enumerated in this order.

10. The resulting deficiency in retail base rate revenue associated with the creation of the IAS class shall be applied among all remaining classes paying for Ameren Missouri's electric service by changing base rate revenue in proportion to current base rate revenue minus LTS base rate revenue. Any change in FAC revenues associated with the rate for the IAS class shall flow automatically through the FAC to all remaining classes paying for Ameren Missouri's electric service.

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

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

The information provided shall be classified as Highly Confidential.

12. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, the IAS customer shall expend $35 million in capital, as defined by accounting principles generally accepted in the United States (USGAAP), at the New Madrid smelter in the first year of the term, and shall provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated as Highly Confidential, detailing the nature and scope of work performed to meet the $35 million requirement with discrete expenditures accounted for by amount of capital expended.

13. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, after the first year of the term and through the period that the reduced base rate is in effect, the IAS customer shall expend an annual inflation adjusted $35 million in capital as defined by USGAAP at the New Madrid smelter, utilizing the general Consumer Price Index as published by the US Bureau of Labor Statistics, compounded annually, in the second through final years the reduced base rate is in effect, and a pro-rated inflation-adjusted monthly capital expenditure for each full months the reduced base rate is in effect

after the term to the extent there are any partial-year terms, and to provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated Highly Confidential, detailing the nature and scope of work the customer performed to meet the required aggregate capital investment level with discrete expenditures accounted for by amount of capital expended.

14. The IAS customer may elect to invest an amount greater than $35 million in capital per year, as defined above, as set forth in paragraphs 12 and 13, with a corresponding reduction in its capital spending obligation in the later years of this period, but in no event shall the IAS customer's capital investment spending credited at the end of each year be less than the compounded inflation-adjusted expenditure requirement for that same period as set forth in paragraphs 12 and 13.

15. As a condition to access the reduced rate structure available to the IAS class, and the limited exemption from the FAC, the IAS customer shall not issue any special dividend, aside from its regular, customary penny per share dividend, until after the first rate case following the expiration of the three-year term.

16. The IAS customer may remain in the IAS class only so long as it remains a stand-alone entity. Membership in the IAS class shall not be assigned to, or assumed by, any successor company, whether through direct ownership, through a holding company, or otherwise unless such assignment or assumption is approved by the Commission.

17. If the IAS customer believes that it will have to discontinue operations at the New Madrid smelter, it shall provide notice to the Commission and to all parties to this case without delay and as soon as reasonably possible.
18. As a term of the IAS tariff, if the IAS customer should materially fail – as determined by the Commission – to comply with any term or condition required to access the reduced rate provided by this order, the IAS customer shall no longer have access to the rate structure outlined herein, and the customer's rate structure shall revert to the rate structure set for the LTS class at that time, with the resulting difference in retail revenue to be allocated to the benefit of the remaining customer classes in equal proportion to their then-current contribution to retail revenue less the LTS class. Since Ameren Missouri's rates to other customers cannot be changed except through a general rate case, Ameren Missouri shall retain the extra payments collected from Noranda in that event in a regulatory liability to be returned to customers with interest in Ameren Missouri's next general rate case.
19. The Commission Staff or any party to this case may file a petition asking the Commission to determine whether the IAS customer has failed materially to comply with any term or condition required to access the reduced rate structure. Upon the filing of such a petition, the Commission shall hold a hearing or make a determination based on verified pleading within 30 days of the filing of the petition.
20. At such a hearing, the IAS customer shall bear the burden to show that it

has not failed to meet any term or condition required to access the IAS class rate structure; why its failure to meet any term or condition required to access the IAS class rate structure is immaterial; or why it should continue to access the IAS class rate structure despite a material failure to meet any term or condition required to access the IAS class rate structure.

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

    (a) Any evidence of *force majeure*;

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

In future rate cases, the Commission will once again assess whether Noranda should be allowed to continue to receive a reduced load retention rate, and may continue this rate and these conditions as it finds appropriate based on the competent and substantial evidence presented in such cases, including the economic conditions at the time of that case. In such future rate case, the Commission would consider extending the term of the special rate with additional conditions and consumer protections, including a possible price trigger based on aluminum prices on the London Metals Exchange.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Union Electric Company, d/b/a Ameren Missouri on July 3, 2014, and assigned tariff number YE-2015-0003, are rejected.