

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

In the Matter of Complainants' Request)
for Revisions to Union Electric Company d/b/a) File No. EC-2016-0199
Ameren Missouri's Industrial Aluminum Smelter)
(IAS) Tariff to Decrease its Rate for Electric Service.)

ANSWER

COMES NOW Union Electric Company d/b/a Ameren Missouri (the “Company” or “Ameren Missouri”), and for its answer to the Complaint filed in this case (the “Complaint”), states as follows:

I. Introduction

1. Noranda Aluminum, Inc. (“Noranda”), the state of Missouri’s largest electricity user,¹ is facing serious financial challenges, as evidenced by the filing of a bankruptcy petition and plan of reorganization under Chapter 11 of the United States Bankruptcy Code on February 8, 2016. These financial challenges, driven largely by adverse aluminum market conditions and more recently exacerbated by operating issues experienced at its aluminum smelter in January 2016, have resulted in the curtailment of its operations at the smelter and significant layoffs of its employees. The long-term implications of these layoffs to the families of the employees and communities in Southeast Missouri could be devastating. One key factor in helping Noranda address its financial challenges and to resume and sustain its operations at the smelter is the need to provide it with a sustainable, long-term power contract at a rate lower than the rate they pay for electricity today. Recognizing the adverse market conditions facing Noranda, and consistent with the approach taken by several state legislatures for other aluminum smelters facing similar challenges across the United States, Noranda and Ameren Missouri have been collaboratively working together for several months on legislation that would include a sustainable, long-term electric rate structure for Noranda.

¹ When operating at full load.

2. The months-long collaboration with Noranda described above was no accident.

While Ameren Missouri and Noranda have had differences at times in the past, Ameren Missouri has always recognized Noranda's importance to the state in general and southeast Missouri in particular. Moreover, Ameren Missouri was well aware of the significant and extended reduction in the market price of aluminum that began earlier in 2015 and its obvious impact on Noranda's operations and financial condition, as well as the recent closures of several additional smelters in the United States, which further signaled the difficulties Noranda was facing. In light of these factors, Ameren Missouri sought to engage in a dialogue with Noranda to address its needs. Noranda welcomed that dialogue and, as noted, the parties have worked together diligently over the past several months to fashion a broadly-supported electric rate solution that gives Noranda its best chance for long-term success.

3. Implementing a legislatively-sanctioned, long-term electric rate structure for Noranda is more important than ever, as evidenced by Noranda's Chapter 11 filing and the accompanying announcement of the idling of Noranda's last operating pot line next month. As the Commission is aware, a Chapter 11 filing in general terms seeks to restructure the petitioner's debt and otherwise put into place a plan of reorganization in order to create the opportunity for the petitioner to emerge from bankruptcy and continue its operations. Noranda's bankruptcy filing is consistent with this purpose, as evidenced by its statements made in connection with the filing, including the statement that "this court-supervised process will provide us with time and financial flexibility to evaluate options to enhance the sustainability of our major business operations" and that it will provide Noranda "additional time and financial flexibility to evaluate options for its various business operations."

4. While on the surface, it would appear that the instant complaint filed last week by the Missouri Industrial Energy Consumers (“MIEC”)² would appear to help address the electric rate structure matter described above, it unfortunately fails to provide the kind of sustainable, long-term electric rate structure that is needed to address Noranda’s financing needs to resume and sustain operations at the smelter. Instead, and as noted in the very first paragraph of the Complaint the relief it is seeking for Noranda is “temporary.” Consequently, and for the additional reasons outlined below, Ameren Missouri respectfully opposes the relief sought by the Complaint.

5. As noted, the nature of the Complaint is “temporary,” at best, as MIEC admits. A temporary solution implemented through a regulatory process that does not bind future commissions will not provide the certainty, predictability and sustainability Noranda and its financiers need to invest in and support the smelter. Simply put, if Noranda is to have an opportunity to weather its current financial difficulties and resume operations as and after it restructures its debt, it and its financiers must have a solid, long-term commitment from the state to reduce its electric rate, as contemplated by the anticipated legislation.

6. Not only does the relief sought by the Complaint fail to address Noranda’s needs, but as has been well documented in prior filings at the Commission and in the Courts, the Commission cannot lawfully give Noranda a special rate based on Noranda’s private financial circumstances because those circumstances have nothing to do with any difference in the character of the service Ameren Missouri provides to Noranda.³

² The Complaint was also signed by the minimum 25 Ameren Missouri electric customers necessary to file a complaint as to rates at the Commission.

³ These legal concerns would overhang the relief sought by the Complaint even if it were granted, impairing Noranda’s ability to count on such relief and undermining its efforts to obtain the financing it needs to operate its business and, hopefully, be in a position to operate the smelter long term. However, because of Ameren Missouri’s ongoing cooperative efforts with Noranda to find it a long term solution, and as a show of good faith, Ameren Missouri has decided to dismiss its currently-pending appeal of these issues arising from the Commission’s rate order in Ameren Missouri’s last rate case. Dismissing this appeal does not, however, change the underlying legal problems with attempts at the Commission to discount a customer class’s rates based on that class’s private circumstances. Legislation does, however, solve those problems.

7. Aside from the legal issues is the fact that it is simply not sound policy for a state utility commission, whose primary role is to ensure safe and adequate utility services in the state at cost-based rates, to make economic development or retention decisions such as those sought by the Complaint. This Commission has recognized that a decision of this magnitude, with statewide policy implications, should be made by those elected to make such decisions, as evidenced by the Commission's rejection two years ago of a very similar request. In rejecting a request of similar magnitude, where the Commission stated that "a request for an economic development subsidy of this magnitude is more properly directed to the Missouri General Assembly."⁴ That statement remains just as true today as it was then.

8. While it was always appropriate for the General Assembly to address Noranda's needs, it is even more appropriate – and critical – that it do so now, given the Chapter 11 filing and the announcement regarding idling its third pot line next month. Insofar as the legislative process is underway and will be concluded in no more than approximately three months, if not sooner, Ameren Missouri will continue to focus its efforts, as it believes all stakeholders with an interest in Noranda's future should do, on working with Noranda to obtain passage of legislation that will provide the sustainable, long-term relief Noranda needs because doing so is the best means to promote Noranda's long-term viability in the state.

II. Answer to Numbered Paragraphs of MIEC's Complaint

7. For its answer to Paragraph 1, Ameren Missouri admits that Noranda is, when operating at full load, its largest electric service customer and that if the relief sought by the Complaint were granted the rates of all of Ameren Missouri's other customers would have to increase. For its further answer, Ameren Missouri admits, as noted above, that aluminum prices have experienced a substantial and sustained drop over the past year, that other smelters in the

⁴ *Report and Order*, File No. EC-2014-0224.

United States have closed, and that Noranda has now definitively indicated its intention to idle the third pot line at its New Madrid smelter in March of this year. Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the remaining allegations of Paragraph 1 and therefore denies the same.

8. For its answer to Paragraph 2, Ameren Missouri admits the allegations of the first three sentences and sentences 6 and 7, and admits that when operating at full capacity Noranda's aluminum smelter consumes a very large quantity of electricity and that electricity costs are a significant cost component for an aluminum smelter. Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the remaining allegations of Paragraph 2 and therefore denies the same. Ameren Missouri also denies that Noranda is a party to this case and, based upon information and belief, states that Noranda does not support the Complaint and recognizes that sustainable rate relief for Noranda is best addressed by the Missouri General Assembly.

9. For its answer to Paragraph 3, Ameren Missouri admits that MIEC is a not-for-profit corporation and has in the past represented the interests of certain industrial customers in matters before the Commission including at times Noranda, and admits that Noranda is not a participant in this Complaint, but is without knowledge or information sufficient to form a belief regarding the truth or falsity of the remaining allegations of Paragraph 3 and therefore denies the same.

10. For its answer to Paragraph 4, Ameren Missouri admits that 25 of the 32 individuals listed on the attachment to the Complaint are electric service customers of Ameren Missouri, but is without knowledge or information sufficient to form a belief regarding the truth or falsity of the remaining allegations of Paragraph 4 and therefore denies the same.

11. For its answer to Paragraph 5, Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 5 and therefore denies the same.

12. For its answer to Paragraph 6, Ameren Missouri admits the allegations of Paragraph 6, except those relating to references to “MIEC members,” which if they exist (and depending on how they are defined), are unidentified by the Complaint. Ameren Missouri further states that it does not sell electricity to MIEC. For its further answer to Paragraph 6, Ameren Missouri states that it and Noranda are currently working with entities that traditionally have identified themselves as MIEC “members” on the legislation referenced above, and states that the fact that the not-for-profit corporation that calls itself MIEC⁵ has filed this Complaint does not necessarily reflect support of this Complaint by such traditional MIEC “members.”

13. In response to Paragraph 7, Ameren Missouri states that it consists solely of legal conclusions to which no response is required, but if a response is required, Ameren Missouri denies the allegations of Paragraph 7.

14. In response to Paragraph 8, Ameren Missouri states that it consists of quotations of a statute, which speaks for itself.

15. In response to Paragraph 9, Ameren Missouri states that it consists of quotations of a statute, which speaks for itself.

16. In response to Paragraph 10, Ameren Missouri states that it consists of quotations of a rule, which speaks for itself.

17. In response to Paragraph 11, Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 11 and

⁵ MIEC’s public filings indicate that it is a not-for-profit corporation formed by the Bryan Cave law firm and that, until recently, its only officers and directors were Bryan Cave personnel. More recently, a representative of one St. Louis area industrial company has been added as officer and board member. MIEC’s address is the Bryan Cave law firm and its President is a Bryan Cave partner.

therefore denies the same except to state that no circuit or other facility owned or controlled by Ameren Missouri failed or failed to properly function and that, based upon information and belief, the failure that led to production problems at Noranda's smelter was a circuit owned and controlled by Noranda. For its further response, Ameren Missouri states, based upon information and belief, that Noranda did experience a circuit failure, has stopped production on two of its three pot lines and has now stated publicly, in connection with its Chapter 11 bankruptcy filing referenced earlier, that it intends to idle its third pot line in March, 2016, but has also stated that the reorganization process "will provide us with time and financial flexibility to evaluate options to enhance the sustainability of our major business operations" and will provide "additional time and financial flexibility to evaluate options for its various business operations." For its further answer to Paragraph 11 Ameren Missouri states that it believes that the legislation referenced above is critical to enabling Noranda to be able to sustain its smelter operations in the future as it emerges from bankruptcy.

18. In response to Paragraph 12, Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 12 and therefore denies the same except to state that when operating at full load, Noranda is Ameren Missouri's largest customer and, at current rates (base rates under the Industrial Aluminum Smelter class rate and the fuel adjustment clause rate), Noranda's year-round (non-seasonally adjusted) rate is approximately \$37.79 per megawatt-hour. For its further response, Ameren Missouri states that Noranda has failed to operate at full load since at least August, 2014.

19. For its answer to Paragraph 13, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 13 and therefore denies the same except to state that aluminum prices have fallen significantly in the past approximately one-year period and that the reduction in aluminum prices

was one of the events precipitating Ameren Missouri's efforts to work with Noranda over the past several months on a sustainable, long-term solution for Noranda's electric service.

20. For its answer to Paragraph 14, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 14 and therefore denies the same except to state that it is generally aware, based upon press reports, that there have been recent closures of aluminum smelters in the United States and that economic conditions for United States aluminum smelting operations are currently difficult, which was one of the bases for Ameren Missouri's efforts to work with Noranda over the past several months on a sustainable, long-term solution for Noranda's electric service.

21. For its answer to Paragraph 15, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 15 and therefore denies the same except to state that it is aware, based upon press reports and information provided by Noranda, that Noranda laid off or is in the process of laying off a few hundred of its employees, citing as the basis for the layoffs the circuit failure and resulting closure of two of its three pot lines and that it is aware of the now-announced idling of the third pot line, as described above. For its further response, Ameren Missouri states that a reduction in operations by Noranda at its New Madrid smelter will have a significant impact on tax revenues and gross domestic product.

22. In response to Paragraph 16, Ameren Missouri admits that a reduction of (or elimination of) load at Noranda's smelter would reduce the amount of load cleared in the MISO market and that this reduction manifests itself predominantly as an increase in reported net off-system sales and otherwise as a decrease in reported net purchases. The Company denies that the average price of off-system sales in any period represents the price of energy applicable to increases in reported net off-system sales volumes. The Company admits that the average price for energy

applicable to loads, including Noranda, cleared at the AMMO.UE CpNode for December 2015 was approximately \$20.08/MWh and for January 2016 was approximately \$21.74/MWh. To the extent not specifically admitted, the Company denies the remaining allegations of Paragraph 16.

23. In response to Paragraph 17, Ameren Missouri admits that it has filed a 60-day notice and has indicated that it may file an electric rate case after that 60-day period runs (the 60-day period runs on March 11, 2016) and that it is considering filing an electric rate case within the next six months, and admits that since Noranda's load has been less than the load assumed in setting the revenue requirement in Ameren Missouri's last electric rate case, and has been reduced further recently, Ameren Missouri's revenue requirement in its next electric rate case will increase to account for lower Noranda revenues. Ameren Missouri further admits that the historical, normalized price used to set the "OSSR" component of its net base energy costs is likely to be less than the retail electric service rate Noranda is paying. Except as specifically admitted in this paragraph above, Ameren Missouri is without knowledge or information sufficient to form a belief regarding the truth or falsity of the remaining allegations of Paragraph 17 and therefore denies the same.

24. For its answer to Paragraph 18, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 18 and therefore denies the same, except to state that it is aware of Noranda's publicly reported liquidity position as of the end of the third quarter of 2015 (when it reported liquidity of \$112.7 million) and, based upon information and belief, is aware that Noranda's revenues have declined significantly since it ceased production on two of its three pot lines after the failure of its circuit on January 7, 2016, which might reasonably be expected to reduce its liquidity, which in turn might reasonably be expected to create significant risks to the smelter's continued viability. Noranda's bankruptcy filing confirms that Noranda faces significant financial difficulties. For its

further response, Ameren Missouri states that the legislation referenced above is designed to provide Noranda with sustained, long term rate relief that should substantially improve its liquidity.

25. For its answer to Paragraph 19, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 19 and therefore denies the same, except to state that based upon information and belief, Noranda's stock was delisted by the New York Stock Exchange for failure to maintain a share price of at least \$1, has fallen further since the delisting and has now lost nearly all of its value as a result of its Chapter 11 filing.

26. For its answer to Paragraph 20, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 20 and therefore denies the same, except to state that it is aware that the price of aluminum is currently significantly lower than it was in March 2015.

27. For its answer to Paragraph 21, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 21 and therefore denies the same except to state that Ameren Missouri is aware of Noranda's Chapter 11 filing and its announcement that it will idle its third pot line in March, 2016.

28. In response to the allegations of Paragraph 22, Ameren Missouri states that the Commission's *Report and Order* in File No. ER-2014-0258 speaks for itself and admits that it has filed a 60-day notice regarding a possible rate case filing as referenced above. For its further response and except as specifically admitted in this paragraph, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 22 and therefore denies the same.

29. For its response to Paragraph 23, Ameren Missouri states that the same consists of a request for relief and is not an allegation of facts to which a response is required, but if it is deemed

that a response is required, Ameren Missouri denies the same. For its further response to Paragraph 23, Ameren Missouri states that Complainant MIEC's prior and consistent positions regarding both the lawfulness of deferrals and the terms and standards MIEC has previously claimed should apply to deferrals are directly inconsistent with MIEC's proposal to utilize a regulatory asset mechanism as described in Paragraph 23. Ameren Missouri further states that in part because of the prior positions MIEC has taken, there exists a significant question whether such a mechanism would protect Ameren Missouri's earnings from the financial impact of the large rate discount MIEC seeks in this case. For its further response to Paragraph 23, Ameren Missouri states, however, that it believes, as it has consistently indicated, that a deferral such as that outlined by the Complaint is lawful and would be an appropriate means to ultimately, if not immediately, mitigate the loss of Noranda revenues that Ameren Missouri is and will continue to experience given that those revenues are and will be far less than the level of revenues assumed in the rate setting process, and further states that it will likely request such a deferral in connection with its next general rate proceeding. For its further response, Ameren Missouri also states that for the reasons it has previously explained in detail in filings with the Commission and in the courts and as noted in its affirmative defenses outlined below, the rate relief requested by the Complaint is unlawful and unreasonable and any rate relief for Noranda should and must be afforded as a matter of state policy through legislation adopted by the Missouri General Assembly.

30. For its response to Paragraph 24, Ameren Missouri states that the same consists of a request for relief and is not an allegation of facts to which a response is required, but if it is deemed that a response is required, Ameren Missouri denies the same. For its further response to Paragraph 24, Ameren Missouri states, for the reasons it has previously explained in detail in filings with the Commission and in the courts and as noted in its affirmative defenses outlined below, that the relief requested is unlawful and unreasonable and any rate relief for Noranda should and must

be afforded as a matter of state policy through legislation adopted by the Missouri General Assembly.

31. For its answer to Paragraph 25, Ameren Missouri denies the allegations of Paragraph 25 except to state that Noranda's current retail rate is materially higher than the current market price of power and materially higher than the historical, normalized price that will likely be used to set the "OSSR" component of its net base energy costs in Ameren Missouri's next electric rate case. For its further response to the allegations of Paragraph 25, Ameren Missouri states that for the reasons it has previously explained in detail in filings with the Commission and in the courts and as noted in its affirmative defenses outlined below, the relief requested is unlawful and unreasonable and any rate relief for Noranda should and must be afforded as a matter of state policy through legislation adopted by the Missouri General Assembly. For its further response, Ameren Missouri states that based upon information and belief, the relief requested by the Complaint will not address Noranda's needs or otherwise prevent any further curtailment or shut down of its smelting operations and will not allow it to sustain smelter operations long-term.

32. For its response to Paragraph 26, Ameren Missouri states that it is in the best interest of the State of Missouri, its citizens, Noranda, Noranda's employees, Ameren Missouri and Ameren Missouri's other customers that Noranda's smelting operations are able to operate in the long-term, and admits that a further curtailment of the smelter's operations would reduce State gross domestic product and tax collections. With respect to the remaining allegations of Paragraph 26, Ameren Missouri states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of said remaining allegations of Paragraph 26 and therefore denies the same. For its further response to the allegations of Paragraph 26, Ameren Missouri states that for the reasons it has previously explained in detail in filings with the Commission and in the courts and as noted in its affirmative defenses outlined below, the relief requested is unlawful and unreasonable and any

rate relief for Noranda should and must be afforded as a matter of state policy through legislation adopted by the Missouri General Assembly. For its further response, Ameren Missouri states that based upon information and belief, the relief requested by the Complaint will not address Noranda's needs.

33. For its response to Paragraph 27, Ameren Missouri states that the same consists of a request for relief and legal conclusions and is not an allegation of facts to which a response is required but, if it is deemed that a response is required, Ameren Missouri denies the same.

34. For its response to Paragraph 28, Ameren Missouri states that to the extent the allegations in this paragraph are a request for relief, no response is required, but that for the reasons given below, relief of any kind, including expedited relief, should not be granted and the Complaint should be dismissed and, for its further response, states that it is without knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 28 and therefore denies the same.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint cannot be sustained because the Commission lacks the power to grant the requested relief because of the prohibition against undue or unreasonable preferences or advantages, which prohibits the Commission from sanctioning unduly, unjustly, or unreasonably discriminatory rates. These principles mean that the Commission lacks the statutory authority to grant Noranda a special rate in order to support Noranda's private business interests or to otherwise promote economic development or business retention in Southeast Missouri or elsewhere because such a rate would not be based upon differences in the character of the service rendered by the Company to Noranda as compared to the character of the service rendered by the Company to its other customers.

Consequently, the only lawful means to provide Noranda rate relief upon which it can rely is through duly-enacted legislation passed by the Missouri General Assembly. Such legislation is also the only sustainable means by which Noranda can obtain relief insofar as if complaints like this one were lawful, there would be nothing to stop others from filing complaints to reverse or amend any relief this Commission might otherwise grant, either for Noranda or for any other customer or class of customers.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint cannot be sustained because the Commission lacks the power to grant the requested relief because of the prohibition against single-issue ratemaking.

FOURTH DEFENSE

The Complaint is an unlawful collateral attack on the Commission's order approving Ameren Missouri's current rates and on Ameren Missouri's current and lawfully in effect rate tariffs because it fails to allege a substantial change in circumstances and also fails to allege any violation of any existing order, rule, or tariff.

RELIEF REQUESTED

Because this Commission lacks the power to grant the relief requested by Complainants, there is neither a need nor a justification for proceeding any further with the Complaint, and the same should be promptly dismissed with prejudice. Noranda is not asking for relief from this Commission. Based upon information and belief, Noranda recognizes that relief from this Commission will be insufficient to provide it an opportunity to re-commence its New Madrid operations and sustain them for the long-term. Moreover, for the reasons discussed above, relief from this Commission is unlawful because it simply cannot be granted without engaging in

unlawful discrimination because any rate that would be set would necessarily have nothing whatsoever to do with differences in the character of the service provided by Ameren Missouri to Noranda as compared to other customers or classes of customers.

WHEREFORE, having fully answered, Ameren Missouri, requests that the Commission dismiss the Complaint with prejudice.

SMITH LEWIS, LLP

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

Dated: February 9, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of February, 2016, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to counsel for all parties of record.

James B. Lowery

James B. Lowery