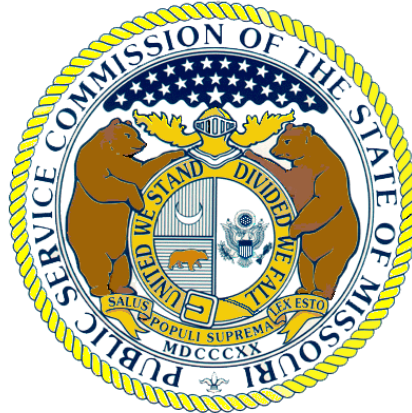


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Noranda Aluminum, Inc., et al.,)
)
Complainants,)
)
v.)
)
Union Electric Company, d/b/a)
Ameren Missouri)
)
Respondent.)

File No. EC-2014-0224

REPORT AND ORDER

Issue Date: August 20, 2014

Effective Date: September 19, 2014

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v.)	<u>File No. EC-2014-0224</u>
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Union Electric Company, d/b/a)	
Ameren Missouri)	
)	
Respondent.)	

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For the City of O'Fallon and the City of Ballwin.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

In this case, Complainants seek a change in rate design to reduce the rate assessed to the Large Transmission Service Class, of which Noranda Aluminum, Inc. is the only customer and which is the lowest-cost rate class of all customer classes served by Ameren Missouri. This proposal asks the Commission to provide rate relief that departs from traditional cost-of-service ratemaking. Complainants' request is founded on three contentions: 1) Noranda Aluminum, Inc.'s aluminum smelter is crucial to Missouri's economy; 2) the smelter cannot be sustained without the rate relief requested; and 3) all Ameren Missouri ratepayers will directly benefit from the relief requested because granting that relief is more beneficial compared to

Noranda leaving the Ameren Missouri system.¹ While there is substantial evidence in the record regarding the impact of the smelter on southeast Missouri and on the state, the evidence does not support the second and third of Complainants' contentions. Accordingly, the Commission finds that the Complainants have failed to carry their burden to show that Ameren Missouri's rate design should be modified, contrary to traditional cost of service principles, in order to give a reduced rate to Noranda Aluminum, Inc. The complaint is, therefore, denied and dismissed.

Procedural History

On February 12, 2014,² Noranda Aluminum, Inc., joined by 37 individual customers of Union Electric Company, d/b/a Ameren Missouri, filed a rate design complaint and request for expedited review. The complaint asked the Commission to revise the rate Ameren Missouri is allowed to charge Noranda for operation of its aluminum smelter located near New Madrid, Missouri. The Complainants seek to reduce the rate charged to Noranda to \$30 per MWh and to adjust the electric rates of Ameren Missouri's other ratepayers upward to make the rate changes revenue neutral to Ameren Missouri. The complaint alleges that unless Noranda receives the reduced rate it seeks, it will lack sufficient liquidity and may be forced to close.

As required by Commission rule 4 CSR 240-2.070, the Commission notified Ameren Missouri of the filing of the complaint and directed the utility to file its answer no later than March 17. Ameren Missouri filed its answer on March 17, along with a motion to dismiss the complaint. The Commission denied that motion to dismiss on April 16.

The Commission allowed the following parties to intervene: Consumers Council of Missouri; Continental Cement Company; the City of O'Fallon and the City of Ballwin; Wal-Mart Stores East, L.P. and Sam's East; the Missouri Industrial Energy Consumers; River Cement

¹ Initial Post-Hearing Brief of Noranda Aluminum, Inc., page 2.

² Date references are to 2014 unless otherwise indicated.

Company; and the Missouri Retailers Association. In compliance with an expedited procedural schedule, the parties prefiled multiple rounds of testimony. In addition, the Commission held three local public hearings to collect testimony from interested members of the public. An evidentiary hearing was held on June 16 and 17. The parties filed initial post-hearing briefs on July 8, with reply briefs filed on July 16.³

Findings of Fact

1. Union Electric Company is an investor-owned electric utility, subject to the jurisdiction of this Commission and is the largest electric utility in Missouri.⁴

2. Noranda Aluminum, Inc., is a publicly-traded (NYSE) company that operates as an integrated aluminum manufacturer. It owns and operates an aluminum smelter near New Madrid, Missouri, and also owns and operates a bauxite mine in Jamaica, an alumina refinery in Louisiana, and rolling mills in Arkansas, North Carolina, and Tennessee.⁵

3. Noranda's New Madrid smelter processes alumina into molten aluminum, which is then processed into aluminum products such as billet, rod, foundry products, and primary ingots. The process of converting alumina into molten aluminum requires prodigious amounts of electricity.⁶

4. The New Madrid smelter uses approximately 480 MW of electricity, 24 hours per day, every day of the year. It does so with a 98 percent load factor, meaning the amount of electricity it uses varies very little from hour to hour. Noranda is Ameren Missouri's largest customer, and is the largest consumer of electricity in Missouri.⁷

5. When the New Madrid smelter is at full production, at current rates, Noranda

³ United for Missouri filed an *amicus curiae* brief on July 8.

⁴ Rate Design Complaint, Paragraph 3, admitted in Ameren Missouri's Answer.

⁵ Smith Direct, Ex. 2, Pages 1-2, Lines 10-15, 1-2.

⁶ Smith Direct, Ex. 2, Page 2, Lines 2-19.

⁷ Smith Direct, Ex. 2, Page 9, Lines 17-22.

pays Ameren Missouri approximately \$160 million in base rates for electricity each year, plus additional charges under Ameren Missouri's fuel adjustment clause.⁸

6. Noranda employs 888 workers at its New Madrid smelter and is the largest manufacturing employer in the southeast area of Missouri.⁹ The smelter's estimated payroll in 2013 was \$95 million, and its presence has a large economic impact on that economically depressed region, and upon the entire state.¹⁰ The closure of the smelter could reduce the gross domestic product of the state of Missouri by nearly \$9 billion over a 25 year period.¹¹

7. The price Noranda receives for its basic aluminum product is set by world-wide market forces through the London Metal Exchange (LME).¹²

8. Noranda takes electric service from Ameren Missouri under the Large Transmission Service rate schedule. Noranda is the only customer that qualifies for membership in that rate class.¹³ Under rates established in Ameren Missouri's last rate case, File No. ER-2012-0166, which became effective on January 2, 2013,¹⁴ Noranda pays a base electric rate of \$37.94 per MWh, plus an extra amount for the fuel adjustment clause rider, which is currently \$3.50 per MWh, for a total of \$41.44 per MWh.¹⁵ In recognition of the fact that it costs Ameren Missouri less to serve Noranda, as established in the class cost of service studies presented in the last rate case, Noranda's current electric rate is lower than the rate for any other Ameren Missouri customer.

9. Noranda asks the Commission to reduce the rate it pays to \$30 per MWh for a

⁸ Smith Direct, Ex. 2, Page 10, Lines 7-10.

⁹ Haslag Direct, Ex. 11, Page 5, Lines 13-14.

¹⁰ Haslag Direct, Ex. 11, Page 18, Lines 6-8.

¹¹ Haslag Direct, Ex. 11, Page 18, Lines 6-8.

¹² Smith Direct, Ex. 2, Page 8, Lines 10-14.

¹³ Scheperle Rebuttal, Ex. 200, Page 5, Lines 25-26.

¹⁴ Scheperle Rebuttal, Ex. 200, Page 8, Lines 29-31.

¹⁵ Scheperle Rebuttal, Ex. 200, Pages 4-5, Lines 30, 1-2.

fixed term of ten years, subject only to a rate increase of up to 2 percent at the time of each general rate increase granted to Ameren Missouri by the Commission during this period.¹⁶ That rate would not be subject to Ameren Missouri's fuel adjustment clause. Noranda contends the \$30 rate is "the highest rate Noranda could bear that allows the New Madrid Smelter to be viable."¹⁷

10. Noranda concedes that the \$30 per MWh rate it requests for the next ten years is not based on cost of service principles.¹⁸ Instead, it claims that it is facing a liquidity crisis and that a reduced rate is all it can afford if it is to remain competitive with the rest of the aluminum industry.

11. In his testimony to this Commission, Kip Smith, CEO of Noranda, offered a financial model to explain the company's claim that it is facing a short-term liquidity crisis and a long-term reinvestment challenge. The results of that financial model are reported in Exhibit A to Smith's direct testimony.¹⁹ However, Noranda has designated that exhibit as highly confidential so the details of the financial model cannot be disclosed in this order. Noranda summarizes the results of that model by stating that without actions to improve its liquidity, including obtaining a reduced electric rate, Noranda would consume all its available liquidity by the end of 2015.²⁰

12. On February 19, one week after Noranda filed its direct testimony in this case, Noranda reported to its investors that as of the end of 2013, it had a total liquidity of \$196 million, representing \$117 million available borrowing capacity under a revolving credit facility

¹⁶ Smith Direct, Ex. 2, Page 3, Lines 12-17.

¹⁷ Smith Direct, Ex. 2, Page 3, Lines 13-14.

¹⁸ Transcript, Page 231, Lines 18-22.

¹⁹ Smith Direct, Ex. 1.

²⁰ Smith Direct, Ex. 2, Page 12, Lines 3-20.

plus \$79 million in cash.²¹ At that time, Smith, speaking to investors at an earnings conference call, reported that “today we have a healthy balance sheet and a solid liquidity position.”²²

13. At the end of the first quarter of 2014, Noranda reported to its investors that it had a total liquidity of \$191 million, representing \$140 million of available borrowing capacity plus \$51 million cash.²³ At that time, Dale Boyles, CFO of Noranda, told investors “We believe our flexible capital structure, combined with our focus on managing controllable costs and working capital, provides us with a solid liquidity foundation as we work through the headwinds presented by this portion of the commodity cycle.”²⁴

14. The assumptions used in the financial model that Noranda presented to the Commission to support its assertion that it is facing a liquidity crisis differ substantially from the assumptions used in the financial model that it presented to Moody’s Investors Service on January 31, 2014, less than two weeks before it filed its complaint in this case. Again, the Moody’s presentation is highly confidential so it cannot be described in detail in this order.²⁵ Far from showing a liquidity crisis, Noranda’s presentation to Moody’s showed adequate liquidity throughout the five-year-cash-flow forecast used in the financial model.²⁶

15. The cash-flow forecast Noranda presented to Moody’s is more favorable for two important reasons. First, the more pessimistic forecast Noranda presented to this Commission as a justification for a lower electric rate assumes that aluminum market prices will be lower than the anticipated prices used in the Moody’s model. Second, the model

²¹ Ex. 108.

²² Ex. 109, page 3.

²³ Ex. 112.

²⁴ Ex. 111, Page 7.

²⁵ The Moody’s presentation is attached to the testimony of Ameren Missouri witness, Robert Mudge, Ex. 102 HC, as Schedule RSM-1HC.

²⁶ Mudge Rebuttal, Ex. 102 HC, Page 13, Lines 16-21.

presented to the Commission assumes that Noranda will need to make substantially more in capital investments each year than was assumed for the Moody's presentation.²⁷

16. For purposes of the cash flow model it presented to the Commission to support its claim of a liquidity crisis, Noranda assumed that future aluminum prices would be predicted by the Forward LME price. However, for the Moody's presentation, Noranda relied on a price forecast derived from CRU's Aluminum Market Outlook for December 2013.²⁸ Over the next several years, the CRU forecast of aluminum prices is significantly higher than the Forward LME price.²⁹

17. The Forward LME price is established by the market to allow for trading of aluminum now for a future transaction price.³⁰ It is not a forecast of future aluminum prices, a fact upon which the witnesses for Noranda and Ameren Missouri agree.³¹ Ameren Missouri's witness, Robert Mudge, explained that the CRU forecast is developed by:

one of the most, if not the most respected data-gathering organizations in the industry who put together an econometric model that includes data about supply and demand, inventory, macroeconomic factors, interest rates. They have a large model they use to develop this, and they will be wrong. We don't know if they're too high or too low. But they actually produce something that is intended to forecast the price, by contrast to the LME Forwards."³²

18. If the higher CRU forecast numbers were substituted for the lower Forward LME prices in Noranda's cash flow model, Noranda's liquidity outlook improves substantially.³³

²⁷ Mudge Rebuttal, Ex. 102 HC, Page 16, Lines 9-12.

²⁸ Mudge Rebuttal, Ex. 102 HC, Page 18, Lines 1-5. The CRU Group is an industry consultant group, based in London that focuses on market analysis. Smith Surrebuttal, Ex. 4, Page 8, Footnote 8.

²⁹ Mudge Rebuttal, Ex. 102 HC, Page 17, Chart at Line 3. The chart and the prices it describes are highly confidential.

³⁰ Transcript, Page 902, Lines 7-17.

³¹ Transcript, Page 974, Lines 1-13. See also, Smith Surrebuttal, Ex. 4, Page 6, Lines 7-13.

³² Transcript, Page 974-975, Lines 18-25, 1-3.

³³ Mudge Rebuttal, Ex. 102, Page 22, Table 6. The table is highly confidential.

Noranda's witness does not dispute the accuracy of that calculation using that assumption.³⁴

19. Noranda's liquidity projections assume that Noranda will need to make \$100 million per year in sustaining capital investments for the company as a whole, not necessarily for just the New Madrid smelter.³⁵ However, for its Moody's presentation, Noranda assumed that it would make only \$75 million per year in capital investments, which is the company's average level of capital investment over the last three years.³⁶ Noranda told its investors that its sustainable capital expenditures should be in the range of \$65 to \$75 million per year.³⁷ Most of the additional \$25 million in capital expenditures Noranda claims it will need to make in the future are for unidentified growth projects.³⁸

20. Including in the cash flow model the unidentified growth projects, for which Noranda asserts the need to make an additional \$25 million per year in capital expenditures, does not yield any production or cash flow improvements within the five-year period of the forecast, when compared to the cash flow model presented to Moody's. Instead, smelter production in the model presented to the Commission is identical to that in the Moody's presentation, even though a much greater capital expenditure is incurred in the model presented to the Commission.³⁹

21. The fundamental demand for aluminum is increasing and will generally support price increases.⁴⁰ But the straight LME aluminum price is not the only factor affecting the price Noranda receives for its aluminum products. The global LME aluminum price is adjusted

³⁴ Transcript, Pages 378-379, Lines 4-25, 1-7.

³⁵ Smith Surrebuttal, Ex. 4, Pages 11 and 12.

³⁶ Transcript, Page 308, Lines 1-14.

³⁷ Ex. 111, Page 6.

³⁸ Mudge Rebuttal, Ex. 102 HC, Page 24, Lines 6-8.

³⁹ Mudge Rebuttal, Ex. 102 HC, Page 28, Lines 6-13.

⁴⁰ Transcript, Page 248, Lines 17-20. See *also*, Noranda's 1st Quarter Earnings Conference Call, Ex. 112.

to include a Midwest Premium that is paid for all aluminum produced in the United States. The inclusion of regional premiums in the LME price is designed to encourage local supply by recognizing transportation differentials between regions of the world.⁴¹ The Midwest Premium is also expected to remain strong.⁴²

22. Noranda contends it must have a reduced electric rate to effectively compete with other aluminum smelters in the United States. The electricity rate paid by Noranda is the fourth highest electricity rate among the nine U.S. smelters in 2013.⁴³ However, the rate Noranda paid for electricity in 2013 was only about three percent above the average rate paid by U.S. smelters.⁴⁴

23. Moreover, the cost of electricity is not the only factor that determines whether an aluminum smelter can compete. The cost of production will vary among smelters based on the cost of goods and services as well as the configuration of the plant. The cost of alumina, labor, and electricity account for 75 to 80 percent of a smelter's total cost, with alumina and electricity each comprising about one-third of the cost of production.⁴⁵ When the total cost of production at each smelter is taken into account, at current electricity rates, the New Madrid smelter operates at a total cost that is less than the average cost for a U.S. smelter. In fact, at current rates, it is the third cheapest producer of aluminum in the United States, largely because it benefits from the cheapest alumina supply in the nation. If Noranda were granted the \$30 rate it requests, it would have the lowest total costs of any smelter operating in the United States.⁴⁶

⁴¹ Transcript, Pages 557-558, Lines 17-25, 1-2.

⁴² Transcript, Pages 363-364, Lines 3-25, 1-3.

⁴³ Fayne Direct, Ex. 8, Page 4, Lines 18-21.

⁴⁴ Mudge Rebuttal, Ex. 102, Page 43, Lines 18-20.

⁴⁵ Fayne Direct, Ex. 8, Pages 3-4, Lines 20-23, 1.

⁴⁶ Mudge Rebuttal, Ex. 102, Page 49, Lines 1-19.

24. At the hearing, Smith testified that a few days before the hearing an event occurred that had a bearing on Noranda's liquidity position.⁴⁷ Smith's testimony was offered in camera so the details of the event cannot be described in this order. Even though the testimony was offered in camera, counsel for the Complainants said, in open court, during her opening statement, that "Noranda is currently out of cash and is paying its daily expenses by borrowing against an asset-backed loan. So the paychecks that will be issued this week to employees will be funded by debt."⁴⁸ Again, later in her argument, she said: "But the evidence shows that Noranda's clearly in a liquidity crisis. It's out of cash. It's paying its daily expenses on its asset-based loan, and its paying its employees from borrowed money."⁴⁹ Obviously, statements of counsel are not evidence. The Commission cites those statements merely to provide context for a matter that must otherwise remain highly confidential.

25. The facts of the event as actually described in the evidence are much less dire than they would appear from the statements of counsel. Noranda's cash flows can vary depending on the time of the month depending upon when its bills are due and when payments are received from customers that like to pay at the end of the month.⁵⁰ The fact that the event occurred does not have any broader implications on Noranda's long-term liquidity position.⁵¹ Noranda has not informed its shareholders of any liquidity crisis or the liquidity event through an 8-K filing with the Securities and Exchange Commission.⁵² The Commission

⁴⁷ Transcript, Pages 187-188, Lines 23-25, 1-18.

⁴⁸ Transcript, Page 49, Lines 19-23.

⁴⁹ Transcript, Page 66, Lines 6-10.

⁵⁰ Transcript, Pages 188-189, Lines 18-25, 1-8. Smith's testimony was offered in camera, but the statement as described does not contain any confidential information.

⁵¹ Transcript, Page 909, Lines 1-11. Mudge offered a more detailed explanation of the possible causes of the event and their meaning for Noranda later in his testimony but that testimony was offered in camera and cannot be described in this order. Mudge's in camera testimony can be found at Pages 933, 934, 954, and 955 of the transcript.

⁵² Transcript, Page 372, Lines 4-10.

finds that the event described by Smith does not change the analysis of Noranda's liquidity position as found by the Commission elsewhere in this order.

26. This is not the first time that Noranda has argued to the Commission that it must have a lower electric rate if its New Madrid smelter is to survive. In its Report and Order resolving Ameren Missouri's 2010 rate case, ER-2010-0036, the Commission noted that a nonunanimous stipulation and agreement that was opposed by one of the parties would have given Noranda a rate reduction, while all other Ameren Missouri customers paid substantially higher rates. The Commission stated "MIEC, and in particular, Noranda, attempt to justify these results by claiming that Noranda needs special rate consideration to remain competitive with other aluminum smelters in the United States, lest it be forced to close, resulting in economic devastation to Missouri."⁵³

27. In 2010, the Commission rejected the stipulation and agreement that would have given Noranda a rate reduction while increasing rates paid by all other customers.⁵⁴ The New Madrid smelter did not close because of that decision, but in 2011, Noranda's board of directors voted to give its shareholders a special dividend totaling \$44 million.⁵⁵

28. Noranda was purchased from its previous owner by Apollo Management, L.P., a private equity investment fund, on May 18, 2007. In a deal valued at \$1.165 billion, Apollo paid \$214.2 million in equity and the balance was from debt secured by Noranda assets and operations. Twenty-five days later, on June 12, 2007, Noranda borrowed money to pay Apollo a dividend of \$214.2 million. Thereafter, while still owning stock in the company, Apollo has fully recovered its investment and currently has no equity invested in the company. Noranda

⁵³ Ex. 120, Page 90.

⁵⁴ Ex. 120, Page 92.

⁵⁵ Mudge Rebuttal, Ex. 102, Page 39, Table 9.

was left with a capital structure of nearly 100 percent debt.⁵⁶

29. But Apollo was not done taking cash out of Noranda. On June 13, 2008, Noranda paid Apollo another dividend of \$100.7 million. Noranda conducted an Initial Public Offering (IPO) of one third of its equity in Noranda on May 19, 2010. After the IPO, Apollo received additional dividends of \$107.9 million, as well as \$151.1 million from the secondary sale of Noranda stock. In all, Apollo has realized dividends of \$422.8 million and realized stock sale proceeds of \$151.1 million, while still retaining 34 percent of Noranda's stock. In addition, Noranda has paid Apollo \$31 million in management fees since the acquisition.⁵⁷ As of the end of 2013, Noranda's ratio of long term liabilities to book capitalization is 87 percent.⁵⁸

30. Because of its debt, Noranda must pay roughly \$50 million per year in interest payments.⁵⁹

31. The Complainant's proposal to shift some of Noranda's electric costs to Ameren Missouri's other customers for a ten-year period gives Noranda a subsidy of at least \$331 million. That amount is calculated by taking the difference between Noranda's current rate base of \$37.94 per MWh and its proposed rate of \$30.00 per MWh and multiplying that difference by Noranda expected electric load of 4.169 million MWh per year, for ten years.⁶⁰

32. The basic subsidy of \$331 million likely understates the actual subsidy Noranda would receive over the ten years it proposes to receive a reduced rate, because that calculation assumes no increases in Ameren Missouri's base rates over ten years and ignores the existence of Ameren Missouri's fuel adjustment clause. The Complainants proposed that Noranda be exempted from the fuel adjustment clause and that any increases in base rates

⁵⁶ Mudge Rebuttal, Ex. 102, Pages 36-37, Lines 7-18, 1-4.

⁵⁷ Mudge Rebuttal, Ex. 102, Page 38, Lines 8-19.

⁵⁸ Mudge Rebuttal, Ex. 102, Page 37, Lines 8-9.

⁵⁹ Transcript, Page 321, Lines 14-19.

⁶⁰ Michels Rebuttal, Ex. 104, Page 6, Lines 5-9.

be limited to two percent per increase. As a result, as the rates Ameren Missouri charges the rest of its customers increase, the amount of the subsidy received by Noranda would also increase.⁶¹

33. If it is assumed that Ameren Missouri's rates actually increase by six percent in June 2015, and six percent every 36 months thereafter, the total subsidy grows to \$468 million. If it is assumed that Ameren Missouri's rate increases six percent every 24 months, the subsidy would be \$529 million.⁶² Of course, no one can know with certainty how much Ameren Missouri's costs, and consequently its rates, may rise over the next ten years, so the exact amount of the subsidy given to Noranda under the Complainants' proposal cannot be known.

34. Moreover, as a practical matter, it is unlikely that the subsidized rate given to Noranda could be ended after ten years. By that time, the rate Noranda would be paying would likely be even further below Ameren Missouri's actual cost to serve the company. If Ameren Missouri's general rates increased by six percent every other year, while Noranda's rates were allowed to increase by only two percent every other year, at the end of ten years, the rate Noranda pays would be nearly 34 percent below its cost of service.⁶³ Clearly, Noranda would not be willing, or able, to withstand a 34 percent rate increase in year eleven to return to cost-based rates. As a result, the subsidy could, in effect, become permanent.

35. The foundation for the Complainant's claim that the subsidy would benefit Ameren Missouri's other customers as well as Noranda is an assertion that while the rates paid by other customers would have to go up to pay the subsidy, those rates would climb even higher if the subsidy were not paid and Noranda closed the New Madrid smelter and stopped

⁶¹ Michels Rebuttal, Ex. 104, Page 6, Lines 9-23.

⁶² Michels Rebuttal, Ex. 104, Page 7, Lines 1-9.

⁶³ Davis Rebuttal, Ex. 100, Page 7, Lines 18-22.

taking electricity from Ameren Missouri.

36. The Complainant's witness, Maurice Brubaker, calculated that Ameren Missouri's net revenue would be reduced by approximately \$60 million per year if the New Madrid smelter closed. In contrast, if the Complainant's proposal was implemented and the smelter remained open while paying a lower rate, Ameren Missouri's net revenue would be reduced by only \$47.7 million, resulting in a net benefit to other customers.⁶⁴

37. Brubaker's calculation was based on the calculation by another Complainants' witness, James Dauphinais, of the net costs that Ameren Missouri would avoid if the smelter closed and Noranda no longer took power from Ameren Missouri. In his direct testimony, Dauphinais estimated those net avoided costs to be \$27.05 per MWh.⁶⁵ Brubaker then estimated that the difference between the avoided cost of \$27.05 per MWh and the \$30.00 per MWh would provide a benefit to other rate payers of roughly \$12 million per year. To achieve the same \$12 million per year benefit to other ratepayers, the same \$2.95 difference would have to be added to whatever avoided cost was calculated.⁶⁶

38. In his surrebuttal testimony, Dauphinais revised his calculation of Ameren Missouri's avoided cost to arrive at an estimate of between \$27.91 and \$28.49 per MWh.⁶⁷ That estimate is still below the \$30 per MWh rate for Noranda proposed by the Complainants, but to achieve the \$12 million per year benefit originally described by Brubaker, the rate would need to increase to between \$30.86 and \$31.44 per MWh.

39. Using different inputs and relying on more recent price assumptions, Ameren Missouri's witness, Matt Michels estimated Ameren Missouri's avoided costs to be \$33.89 per

⁶⁴ Brubaker Direct, Ex. 16, Pages 6-7, Lines 10-21, 1-4.

⁶⁵ Dauphinais Direct, Ex. 13, Page 3, Lines 16-19.

⁶⁶ Michels Rebuttal, Ex. 104, Page 29, Lines 5-10.

⁶⁷ Dauphinais Surrebuttal, Ex. 15, Page 5, Lines 17-23.

MWh as of May 1, 2014. To give other ratepayers the \$12 million annual benefit initially described by Brubaker, Noranda's rate would need to be set at \$36.84 per MWh, just \$1.10 per MWh less than Noranda's current base rate.⁶⁸

40. Similarly, Staff's witness, Sarah Kliethermes, using different inputs and different price assumptions, calculated that Ameren Missouri's cost to serve Noranda at the time she prepared her testimony is roughly \$31.50.⁶⁹ She estimated that a rate set at that amount would allow Ameren Missouri to recover its costs at that time, but would not contribute to Ameren Missouri's common costs. Thus, in order for other customers to be better off with Noranda on Ameren Missouri's system than they would be if Noranda left the system, Noranda would have to pay some amount greater than \$31.50 for its electric service. To give other ratepayers the \$12 million annual benefit of contributions to common costs previously described would require a rate to be set at no less than \$34.45 per MWh.

41. Ms. Kliethermes' calculation is the most persuasive of the three calculations. Mr. Dauphinais' calculation was less persuasive because his initial calculation, presented in his direct testimony, relies heavily on a single year of electric price information from a period when such prices were relatively depressed.⁷⁰ Electric prices are the largest component, approximately 95 percent, of the calculation.⁷¹ In his revised calculation for his surrebuttal testimony, he relies on a three-year average of those prices, but purports to normalize away the higher electric costs experienced in the unusually cold winter of January – March 2014.⁷² Such normalization is not appropriate because while the extreme cold associated with a polar vortex may not reoccur frequently, other, not necessarily weather-related, anomalies will occur

⁶⁸ Michels Rebuttal, Ex. 104, Page 29, Lines 10-15.

⁶⁹ Transcript, Page 791, Lines 16-20.

⁷⁰ Dauphinais Surrebuttal, Ex. 15, Page 8, Lines 20-21.

⁷¹ Transcript, Page 904, Lines 11-15.

⁷² Dauphinais Surrebuttal, Ex. 15, Page 9, Lines 10-14.

and have an impact on electric prices.⁷³ Normalizing the one such anomaly that happened to occur in the three years examined unfairly understates the expected electric prices.

42. None of the proposed measurements of cost to serve seek to determine Ameren Missouri's fully embedded cost to serve Noranda. That amount was determined in the class cost of service study presented in Ameren Missouri's last rate case and was in the \$36 range at that time.⁷⁴ No party challenges that determination in this case.

43. The value of all three calculations of Ameren Missouri's cost to serve Noranda is limited because they are based on historical values, with no attempt to determine how the cost to serve might change over the next ten years for which Noranda asks that it be given a non-cost-based rate. Dauphinais testified that he was not even attempting to project what costs might be in the future; he was merely attempting to determine a reasonable cost at this time, with the understanding that Noranda's rates would be reviewed and adjusted in Ameren Missouri's next rate case.⁷⁵

44. Following questioning by Public Counsel, Smith offered two commitments that Noranda would make if the Commission granted it the reduced rate it sought. First, he committed to continue to employ 888 full-time employees at the smelter while the special rate remains in effect. Second, he committed to invest a total of \$350 million in capital expenditures over the ten-year period of the rate design.⁷⁶

Conclusions of Law

A. Union Electric Company, d/b/a Ameren Missouri is an electrical corporation as that term is defined at Section 386.020(15), RSMo (Supp. 2013). As an electrical corporation,

⁷³ Transcript, Pages 714-716.

⁷⁴ Transcript, Page 754, Lines 9-15.

⁷⁵ Transcript, Page 712, Lines 4-12.

⁷⁶ Transcript, Pages 629-630, Lines 25, 1-12.

Ameren Missouri is subject to regulation by this Commission as described in Chapters 386 and 393, RSMo.

B. Noranda Aluminum, Inc., is not a regulated utility and is not subject to the jurisdiction of this Commission.

C. Section 386.390.1, RSMo 2000 establishes the standards for bringing complaints before this Commission. The relevant part of section states:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation of any provision of law, or of any rule or order or decision of the commission;

The section goes on to state:

Provided that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or president or chairman of the board of alderman 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 not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

This complaint alleges that the rate Ameren Missouri charges to Noranda for electricity is unreasonable because Noranda cannot afford to pay that rate. As required by the second part of the statutory section, the complaint is signed by not less than twenty-five customers, and, therefore, complies with the statutory requirements.

D. This action is a complaint against Ameren Missouri. So, the Complainants, as the party asserting the affirmative of an issue, bear the burden of proving the allegations made

in their complaint.⁷⁷

E. The complaint alleges that the rate Ameren Missouri charges Noranda, a rate established by this Commission in Ameren Missouri's most recent rate case, is now unreasonable because without a reduction in its electric rates, Noranda would have insufficient liquidity to remain viable and would be subject to closure. Those are the allegations the Complainants must prove to prevail in their complaint. But even if the Complainants are able to prove those allegations, there are other questions about whether the Commission can grant the relief they request.

F. Section 393.130, RSMo (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.

G. In sum, the statute says that utilities cannot give any "undue or unreasonable" preference to any particular customer, or class of customers. The leading case interpreting

⁷⁷ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680 (Mo. App. W.D. 2003). See also, *AG Processing, Inc. v. KCP&L Greater Missouri Operations Company*, 385 S.W.3d 511 (Mo. App. W.D. 2012).

the meaning of “undue or unreasonable” preference is *State ex rel. Laundry v. Public Service Commission*,⁷⁸ 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 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.

H. The *Laundry* decision merely decides that in the facts described in that case, the laundries should have qualified for the industrial rate. 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*,⁷⁹ 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 the 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

⁷⁸ 34 S.W.2d 37 (Mo 1931)

⁷⁹ 4 Mo. P.S.C. 412 (1916).

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.⁸⁰

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.⁸¹ No party has identified any subsequent court decision that would go as far as proscribing all economic development type rates.

I. 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.⁸² So how does the Commission determine whether a given rate is unduly or unreasonably preferential or disadvantageous? In a general rate case, the parties will submit one or more class cost of service studies. Such studies are designed to determine the amount of cost that each class of customer causes, and then recommend how rates should be established to maintain the principle that those causing the costs should be responsible for paying rates sufficient to recover those costs.

J. That does not mean all customers should pay the same rate. On the contrary, a single rate for all customers would likely be unjust because different customers cause different amounts of costs. So, Ameren Missouri's current rates recognize several different rate classes, including the Large Transmission Service class, of which Noranda is the only member. However, the rates charged to each customer class are firmly based on cost-

⁸⁰ *Civic League* at 455-456.

⁸¹ "... 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.

⁸² For example see, *State ex rel. City of Joplin v. Pub. Serv. Comm'n*, 186 S.W.3d 290 (Mo. App. W.D. 2005).

causation principles.

K. The Complainants argue that the Commission should throw out cost causation principles in order to allow Noranda a lower rate based not on costs, but rather on what it says it can afford to pay. The Complainants must shoulder a very heavy burden to show that such a rate would not be unduly or unreasonably preferential.

L. Ameren Missouri also challenges the sufficiency of the Complainant's case on the basis that they are attempting to alter rates based on consideration of only a single factor, in other words, they are asking the Commission to engage in single-issue ratemaking.

M. At its heart, the argument against single-issue ratemaking is based on the requirement that the Commission examine all relevant factors. That requirement is based on section 393.270.4, RSMo 2000, which states:

In determining the price to be charged for gas, electricity, or water 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, ...

In interpreting that statute, Missouri's courts have found that when adjusting rates, the Commission is required to consider all relevant factors.⁸³

N. The Complainants contend that because they are not asking the Commission to change Ameren Missouri's revenue requirement there is no need to produce evidence to establish the utility's current cost of service. Instead, they believe the only relevant factor is Noranda's ability to pay its electric rate. However, if Ameren Missouri's revenue requirement is to remain unchanged, then any reduction in the amount of revenue Ameren Missouri is allowed to collect from Noranda must necessarily be collected from the other rate-paying customers.

⁸³ *State Ex Rel. Missouri Water Co. v Pub. Serv. Comm'n*, 308 S.W.2d 704, 718-719 (Mo. 1957). See also, *State ex rel. Utility Consumers Council of Missouri v. Pub. Serv. Comm'n*, 585 S.W.2d 41 (Mo. 1979).

O. Public Counsel argues that the Commission could simply reduce Noranda's rate without collecting the resulting shortfall from other customers; essentially requiring Ameren's shareholders to absorb that cost. As Public Counsel points out, there is nothing in Missouri law that would allow the rates paid by other ratepayers to be automatically raised when Noranda's rates are decreased.⁸⁴

P. Public Counsel suggests that Ameren Missouri somehow has a burden to respond to Noranda's complaint by establishing that rates for other ratepayers should be increased to make up for Noranda's rate decrease. However, this is the Complainants' complaint, and only the Complainant's have a burden to prove their complaint. That burden cannot shift to the respondent utility.⁸⁵ Thus, any failure to establish that the rates Ameren Missouri charges to its other customers should be increased is a failure by the Complainants to meet the burden that is placed on them.

Decision

The Complainants have the burden of proving the rate Noranda currently pays, the rate established by this Commission in Ameren Missouri's 2012 rate case, is now unreasonable because without a reduction in its electric rates, Noranda would have insufficient liquidity to remain viable and would be subject to closure. Noranda framed this burden when it argued that the Commission must conclude its smelter is crucial to Missouri's economy, that the smelter cannot be sustained without the proposed reduced rate, and other ratepayers will benefit more from the reduced rate that they would from Noranda leaving Ameren Missouri's system. The Commission is fully persuaded that Noranda is important for the economy of

⁸⁴ Post Hearing Brief of the Office of the Public Counsel, Page 7. The Commission acknowledges that OPC's position may have changed after the briefs were filed, as is apparent through the stipulations filed in July and August.

⁸⁵ *AG Processing, Inc. v. KCP&L Greater Missouri Operations Co.*, 385 S.W.3d 511 (Mo. App. W.D. 2012).

southeast Missouri and for Missouri as a whole. However, after considering all the evidence presented, the Commission concludes that the Complainants have not met their burden in that they have not shown Noranda is suffering from a liquidity crisis, and they have not shown Ameren Missouri's other customers will be better off if the Commission granted the requested relief.

Liquidity Crisis

The Complainants have not established that Noranda is facing a liquidity crisis. By filing its complaint and demanding an expedited procedural schedule, and by proclaiming at the hearing that Noranda had run out of cash, the Complainants sought to show ~~imply~~ that Noranda was facing an emergency that must be addressed quickly if the New Madrid smelter is to be saved. However, the evidence presented at the hearing did not establish a short-term need for immediate rate relief.

Indeed, the rate relief demanded by Noranda is not designed to address a short-term crisis. Rather, in the complaint, Noranda seeks a subsidized rate that it insists must remain in place for a period of ten years if the smelter is to remain viable. The complaint does not suggest that after ten years Noranda would be able to return to a cost-based rate, and the evidence suggests that by that time Ameren Missouri's rates would have increased to a level that would make an immediate return to such rates highly unlikely. Therefore, the rate Noranda would likely be a permanently subsidized rate financed by Ameren Missouri's other ratepayers.

Even when considering the longer-term viability of the smelter, the Complainants have failed to prove that a subsidized rate is needed. The financial model that Noranda presented as the basis for its claim for subsidization is severely flawed. By relying on Forward LME prices rather than more realistic forecasts from CRU that take into account a strong fundamental demand for aluminum, Noranda's model understates the likely future price of

aluminum. Further, the financial model that Noranda submitted to this Commission assumes that the company will need to make \$25 million per year in additional unidentified capital investments that it has not made in the past and that Noranda did not claim a need to make when it described its financial projections to Moody's a few weeks before it filed this complaint.

In sum, the Commission believes the financial projections Noranda has presented to its investors, and to Wall Street in general, cast considerable doubt on the financial projections it presented to this Commission.⁸⁶

Benefit of Reduced Rate

The Complainants argue that Ameren Missouri's other ratepayers would be better off if Noranda pays a \$30 per MWh rate, with limited upward adjustments, for ten years than they would be if the smelter closes and Noranda no longer makes a contribution to Ameren Missouri's common costs. But the evidence shows that Ameren Missouri's marginal cost to serve Noranda today is above \$30 per MWh, likely in the range of \$31.50. Even Noranda's witnesses concede that the marginal cost would likely increase in future years and would need to be adjusted in future rate cases. That means the Complainants are asking the Commission to establish a rate for Noranda that would be subsidized by Ameren Missouri's other ratepayers and that would not benefit those other ratepayers. Thus, even if Complainants had succeeded in proving a liquidity crisis, they failed to establish that Ameren's other customers would benefit from the rate reduction Noranda proposed.

Although Noranda's witnesses testified that it absolutely needs a \$30 per MWh rate, sustained over ten years with only limited increases, to remain viable, the Complainants have

⁸⁶ To the extent that Noranda is experiencing financial liquidity problems, it seems likely that these problems are largely self-inflicted. The former owner of Noranda, and still its principal shareholder, Apollo Management, L.P., took \$422.8 million in cash dividends from the company after it acquired the company. Noranda had to borrow money to pay the dividends, leaving it with a current debt to equity ratio of 87 percent. Under those circumstances it is not surprising that Noranda has some cash liquidity issues, especially considering the roughly \$50 million per year in interest payments Noranda must pay on that debt.

also suggested that the Commission could craft some sort of unspecified compromise terms under which Noranda's electric rate is modified.⁸⁷ Because this is a complaint, however, the Complainants bear the burden of proof regarding the relief they seek in that complaint, not some other relief that the Commission might craft on their behalf.

Missouri law forbids a utility to charge a rate that gives an undue or unreasonable preference to any particular customer or class of customers, and the Commission cannot lawfully approve such a rate. Since the Complainants are asking the Commission to order Ameren Missouri to charge Noranda a rate that is not based on the utility's cost to serve that customer, they bear the burden of proving that such a subsidized rate is just and reasonable and is not an undue or unreasonable preference to a particular customer. The Complainants have not carried that burden.

The Commission usually determines whether a rate design - the means by which the responsibility to pay the utility's revenue requirement is distributed among the utility's customer classes - is just and reasonable by examining a class cost of service study to determine the amount of costs that should be assigned to each class on the principle that the class that causes the cost should pay that cost. The Complainants did not present a class cost of service study in this case, nor did any other party. The Commission will not state that a class cost of service study is absolutely indispensable to sustain a complaint case, but here it would be instructive. In the absence of a class cost of service study, it is impossible to

⁸⁷ After the record closed, after briefs were filed, and after the Commission publically began its deliberations at an agenda meeting, the Complainant's and other parties filed a series of non-unanimous stipulations and agreements, which have been formally opposed by Ameren Missouri and by Staff. Those stipulations and agreement propose specific compromise terms by which Noranda's rates would be set at a level above \$30 per MWh, subject to various conditions and commitments. Since those stipulations and agreements have been opposed, under Commission Rule 4 CSR 240-2.115(2)(D), they can only be treated as revised positions of the signatory parties. The Commission finds their proposals intriguing - and encourages the parties to continue to pursue negotiations on a compromise position as it could be considered in Ameren Missouri's current rate case, File No. ER-2014-0258.

determine whether Ameren Missouri's current rates are now unjust and unreasonable.

Giving a subsidized rate to Noranda would necessarily mean that Ameren Missouri's other customers would ultimately have to foot the bill.⁸⁸ No doubt the New Madrid smelter is very important to the economic health of the entire state of Missouri. The Commission sympathizes with Noranda's employees and the residents of the New Madrid area who testified at the local public hearings in this case. The Commission certainly does not want the smelter to close. But the Commission determines that the evidence presented in this case does not warrant a departure from cost-of-service ratemaking. The Complainants have not demonstrated a liquidity crisis nor adequately demonstrated that Ameren Missouri's remaining ratepayers would be better off if Noranda took service at its requested rate than they would be if Noranda exited Ameren Missouri's system. Finally, and importantly, a request for an economic development subsidy of this magnitude is more properly directed to the Missouri General Assembly.

After carefully considering all the evidence and the arguments of the parties, the Commission finds and concludes that the rate design complaint must be denied and dismissed.

THE COMMISSION ORDERS THAT:

1. The complaint brought by Noranda Aluminum, Inc. and the other complainants is denied and dismissed.

⁸⁸ Even if Public Counsel's argument were accepted and it were determined that rates on other customer classes could not be raised in this complaint case, Ameren's shareholders would only be required to absorb that cost until new rates are established in Ameren Missouri's next general rate case, which is already pending and will likely result in new rates in May of 2015.

2. This report and order shall become effective on September 19, 2014.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall and Rupp, CC., concur;
and certify compliance with the
provision of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 20th day of August, 2014.