Exhibit No.:	
Issues:	*Noranda Lost Revenue Amortization; Solar Rebate Under-Collection Amortization*
Witness:	*John P. Cassidy*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Rebuttal Testimony*
Case No.:	*ER-2016-0179*
Date Testimony Prepared:	*January 20, 2017*

MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

AUDITING DEPARTMENT

REBUTTAL TESTIMONY

OF

JOHN P. CASSIDY

UNION ELECTRIC COMPANY, d/b/a Ameren Missouri

CASE NO. ER-2016-0179

Jefferson City, Missouri
January 20, 2017

**** <u>Denotes Highly Confidential Information</u> ****

NP

TABLE OF CONTENTS OF

REBUTTAL TESTIMONY

OF

JOHN P. CASSIDY

UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI

CASE NO. ER-2016-0179

REBUTTAL TESTIMONY

OF

JOHN P. CASSIDY

UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI

CASE NO. ER-2016-0179

Q. Please state your name and business address.

A. John P. Cassidy, 111 North 7th Street, Suite 105, St. Louis, MO 63101.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission ("Commission") as a Utility Regulatory Auditor V.

Q. Are you the same John P. Cassidy who filed direct testimony as part of Staff's Revenue Requirement Cost of Service Report ("Report") that was filed on December 9, 2016, as part of this rate proceeding?

A. Yes.

<u>EXECUTIVE SUMMARY</u>

Q. Please provide a brief summary of your rebuttal testimony in this proceeding.

A. My rebuttal testimony will address the proposal in Ameren Missouri witness Laura M. Moore's direct testimony to defer and recover approximately $81.5 million of lost revenues (Ameren Missouri refers to these amounts as "lost fixed costs") related to changes in load pertaining to the Noranda Aluminum Inc. ("Noranda") aluminum smelter during the period covering April 1, 2015 through May 28, 2017. Staff witness Sarah L. Kliethermes' rebuttal will specifically address the quantifications of "lost fixed costs" that are contained in

Ameren Missouri witness William R. Davis' direct testimony as well as the intent and the impact on those calculations of the N factor in the FAC tariff that was triggered by Noranda's load changes. Staff witness Mark L. Oligschlaeger's rebuttal testimony will provide a policy overview with regard to Ameren Missouri's Noranda deferral proposal.

This Noranda lost revenue recovery proposal is very similar to Ameren Missouri's Noranda Accounting Authority Order ("AAO") lost revenue recovery proposal that was rejected by the Commission in Ameren Missouri's most recently completed rate case, Case No. ER-2014-0258. I will explain why the Commission should also reject Ameren Missouri's proposal to recover lost revenue as part of this rate proceeding.

My rebuttal testimony will also address Ameren Missouri's proposed amortization to recover under-collected solar rebate costs. Staff's position is that it is premature for Ameren Missouri to request recovery of this amount because the terms and conditions of the *Non-Unanimous Stipulation and Agreement* in Case No. ET-2014-0085 have not yet been met.

Finally, I will explain two corrections that Staff has completed since the time of Staff filing its Accounting Schedules and Report on December 9, 2016.

NORANDA LOST REVENUE DEFERRAL AND AMORTIZATION

Q. Please provide a summary of the chronology of the events that occurred during the period covering April 1, 2015, through May 28, 2017, that pertain to this issue and to Noranda's operations that impacted Ameren Missouri's sale of electricity to Noranda.

A. The following listing provides a summary of the major events that have occurred since the time of the last rate case:

1. The Commission's *Report and Order* in Case No. ER-2014-0258 resulted in a $121.5 million rate increase for Ameren Missouri with rates going into effect on May 30, 2015.

2. As part of that rate case the Commission granted a discounted rate for Noranda, referred to as the Industrial Aluminum Smelter rate ("IAS"). On pages 133 through 139 of its *Report and Order* issued for Case No. ER-2014-0258, the Commission outlined several required conditions for receiving and retaining the IAS rate. Among the terms was a condition that at least an 850 average daily employment level be maintained.

3. The rates for all customers that the Commission established in Case No. ER-2014-0258 were designed to fully recover Ameren Missouri's total cost of service which includes the costs to serve Noranda at full load.

4. During August 2015, a molten metal explosion that occurred in the cast house of the smelter facility impacted Noranda's production capability.[1]

5. On January 7, 2016, an electric supply circuit failure on Noranda's property caused extensive damage to two of the smelter facility's three "pot lines," significantly affecting Noranda's production capacity. Essentially, two of Noranda's three pot lines were rendered inoperable until the completion of lengthy repairs. Noranda explained that the facility would only be able to operate at 23% of its capacity following the incident and for the foreseeable future, and therefore its workforce would need to be adjusted.[2]

6. On February 3, 2016, Staff filed a petition asking the Commission to determine whether Noranda had materially failed to comply with the workforce level condition required to access the reduced cost IAS rate class. On February 4, 2016, the Commission established Case No. EO-2016-0203 and issued its *Order Directing Response* requiring Noranda to respond to Staff's petition. On February 9, 2016 Noranda provided its response. A complete copy of Noranda's response to Staff's petition is attached to this rebuttal testimony as Schedule JPC R-1.

7. After considering the verified response of Noranda, the Commission issued its *Order Dismissing Petition* on March 2, 2016, indicating that, through application of the *force majeure* exception, Noranda had not materially failed to comply with the workforce condition established by the Commission for the IAS rate. This ruling permitted Noranda to continue utilizing the IAS rate.

8. During February 2016, Noranda filed for Chapter 11 bankruptcy protection, and in March 2016, it shut down the operation of its third pot line, reducing Noranda's electricity consumption to a very small fraction of its prior levels.

9. The Noranda New Madrid facility was put up for auction in September 2016, with ARG, International, a metals trading company based in Switzerland,

[1] Source: Case No. EO-2016-0203, *RESPONSE BY NORANDA ALUMINUM, INC. TO PETITION OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION, page 2, paragraph 3.*
[2] Ibid, page 6, part A, paragraph 10.

placing the winning bid. At this time, Staff is not aware of any plans to resume operations at the New Madrid facility.

10. In the current case, Ameren Missouri is seeking recovery of "lost fixed costs" associated with Noranda not reaching full load capability for the period covering April 1, 2015, through May 28, 2017. Ameren Missouri's quantification of the "lost fixed charges" totals to approximately $81.5 million. Ameren Missouri has requested to recover this balance by utilizing a ten year amortization, amounting to approximately $8.1 million to be recovered annually. Ameren Missouri witnesses William R. Davis and Laura M. Moore filed direct testimony supporting this recovery.

Q. Is the quantification of the proposed amount for recovery that was calculated by Ameren Missouri witness William R. Davis at issue?

A. Yes. Staff witness Sarah L. Kliethermes' rebuttal testimony addresses the quantification of the proposed recoverable amount as calculated by Mr. Davis.

Q. What is Staff's position with regard to Ameren Missouri's proposed recovery of these lost fixed costs associated with changes in Noranda's production capabilities during the period covering April 1, 2015, through May 28, 2017?

A. Staff opposes Ameren Missouri's attempt to recover what has been characterized as a recovery of lost fixed costs during this time period. Ameren Missouri is seeking authorization from the Commission to recover a quantification of revenues that it did not receive from Noranda. This proposal is very similar to the Ameren Missouri proposal in Case No. ER-2014-0258 to recover lost fixed costs / lost revenues that had been authorized for deferral by the Commission as part of the AAO request in Case No. EU-2012-0027. The Commission ultimately rejected recovery in rates for the deferral that was the subject of the AAO case in its *Report and Order* in Case No. ER-2014-0258. The Commission should also reject Ameren Missouri's proposal to recover lost revenues in this rate case.

Q. Has Ameren Missouri recovered all of the fixed costs associated with serving Noranda at full load?

A. Yes, by virtue of having recently earned a positive return on equity (ROE) and rate of return (ROR). Ameren Missouri has earned both a positive ROE and ROR during the entirety of the April 1, 2015, through September 30, 2016, time period. By earning a positive ROR, Ameren Missouri fully recovered all of its expenses, both fixed and variable in nature. By earning a positive ROE, Ameren Missouri fully recovered all of its expenses as well as its required interest payments to debt holders. In fact, during the period **

**

Staff has not yet received the quarterly fuel adjustment clause surveillance report regarding Ameren Missouri's 2016 fourth quarter earnings; however, Staff anticipates that Ameren Missouri will report a positive ROE for that time period as part of that filing.

[3] The Commission authorized ROE of 9.8% in Case No. ER-2012-0166 was in effect January 2, 2013 through May 29, 2015. The Commission authorized ROE of 9.53% in Case No. ER-2014-0258 went into effect on May 30, 2015 and will remain in effect through May 27, 2017. Therefore, an authorized ROE of 9.8% was in effect for approximately two-thirds of the second quarter of the 2015 time period.

Q. Ameren Missouri did not earn its full authorized ROE during portions of the time period in which Noranda operated at less than full production capacity. Does this fact affect your opinion on this issue?

A. No. Ameren Missouri is allowed a reasonable opportunity to earn a fair rate of return. It is important to realize the distinction that the Commission's authorization of a given ROE for any utility represents an opportunity, not a guarantee, to earn the authorized ROE.

Secondly, revenues from a particular customer or group of customers should not be guaranteed in whole or in part to any utility. A customer's usage of utility service may fluctuate, change significantly, or even end permanently, for several reasons including natural disaster, economic downturn, and technological changes within a particular industry. Changes in customer usages, whether industrial, commercial, or residential, should not be permitted for deferral and recovery through an amortization. Ameren Missouri remained financially viable in that it earned a profit during the entire time period in question.

Q. What is the distinction that Staff is making between what Ameren Missouri characterizes as lost fixed costs and what Staff distinguishes as lost revenues?

A. As explained above, Ameren Missouri has fully recovered its fixed costs since its last rate case. Ameren Missouri is seeking recovery of lost revenues, which translates to lost profits. Ameren Missouri failed to realize these revenues and profits because of unexpected changes in electricity sales to Noranda as a result of various events that reduced, and eventually eliminated, Noranda's production capability.

Q. Are there any time period distinctions to be made regarding Ameren Missouri's ratemaking proposal to recover lost revenue over the April 1, 2015, through May 28, 2017, time period?

A. Yes. Ameren Missouri's proposed time frame for examination and recovery must also be addressed in two parts. For the first portion of the time period covering April 1, 2015, through December 31, 2016, what Ameren Missouri is attempting to do is to recover lost revenues (lost profits) as a result of changes in Noranda's production capabilities that have already been reflected on Ameren Missouri's financial statements. December 31, 2016, is the true-up cutoff date established by the Commission for this case. It is inappropriate to attempt to recover a level of lost revenues from the April 1, 2015, through December 31, 2016, time period in higher customer rates going forward in order to recoup a past financial loss.

For the second portion of the time period covering January 1, 2017, through May 28, 2017, Ameren Missouri should have sought permission through an AAO request to defer these amounts and then seek recovery as part of their next filed rate case. The calculated amounts for this time period are beyond the Commission established December 31, 2016, true-up cutoff for this rate case, and the components used to compute these amounts are not known and measurable. Therefore, the amounts are not eligible for recovery in this rate case. However, Staff maintains its position that even if Ameren Missouri had requested permission to defer the amounts during 2017 through an AAO request, Staff would likely oppose such a deferral request and any subsequent inclusion in rates in a future rate proceeding for the reasons described above.

Q. Are you aware of any case where the utility has attempted to defer and recover lost revenues through an AAO?

A. Yes. In Case No. GU-2011-0392, Southern Union Company, the previous owner of Missouri Gas Energy ("MGE") sought permission from the Commission to defer lost revenues that were caused by a catastrophic tornado that struck Joplin, Missouri. MGE's request indicated that it had experienced a reduction in sales from customers that were unable to take gas service from MGE due to the widespread damage that was caused by the tornado. The Commission in that case denied MGE's request to defer the lost revenue. On page 25 of the Commission's Report and Order the Commission stated the following:

> The Company's claim is different. Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other. The Company showed no instance when service not provided resulted in recording any revenue or cost, lost or generated, on a deferred or current basis. That is because the Company cannot have an item of profit or loss when it provides no service, whether the cause of no service is ordinary or extraordinary. Services not provided and revenues not generated are mere expectancies, are things that simply did not happen, and are not items at all.
>
> An AAO only determines the period for recording an item but the Company seeks an AAO to create the item itself by layering fiction upon fiction. To issue an AAO for ungenerated revenue would create a phantom loss, and unearned windfall, for the Company. Therefore, the Commission will deny the AAO as to ungenerated revenue.

The Commission continued on page 26 with the following as part of its Order:

> The application is denied as to ungenerated revenue as described in the body of this order.

Q. What did the Commission's Order in Case No. ER-2014-0258 state with regard to Ameren Missouri's proposal to recover deferred lost revenue in that case?

A. The Commission stated the following on page 42 of its Order:

> When Ameren Missouri chose to provide service to a customer the size of Noranda, it understood that the profits it could earn from the business relationship came with a substantial risk. The risk that Noranda's production would fall and that it would be unable to sell as much electricity as it anticipated was a risk the

> company's shareholders, who benefit from the profits earned by serving Noranda, should bear. Ratepayers are not the insurers of Ameren Missouri's profits and should not have to bear the risk that those profits are not as great as anticipated because of a drop in production at Noranda. To now alter the consequences of that drop in production would be to retroactively change the allocation of risk approved by the Commission for the fuel adjustment clause was in effect at the time.

The Commission also stated on page 43:

> Finally, Ameren Missouri experienced more than sufficient earnings to cover its fixed costs during all time periods between the ice storm and this rate case. While not a determinative factor alone in deciding whether to grant recovery of any AAO, this is one of the relevant factors the Commission must consider in setting just and reasonable rates in this case.
>
> After considering all relevant factors, the Commission decides that recovery of the amounts deferred under the previously established accounting authority order is not appropriate.

Q. Please summarize Staff's position in this proceeding concerning Ameren Missouri's request for permission to defer and recover lost revenues through a ten year amortization that are related to changes in Noranda's load.

A. The amounts that Ameren Missouri seeks to defer and recover clearly represent ungenerated revenues or lost profits. To allow Ameren Missouri to recover any amount through a ten year amortization in this rate case for these lost profits would allow the utility to create a phantom loss and an unearned windfall. Furthermore, this request is inappropriate as it is intended to offset the financial impact of changes in load experienced by one of its customers, albeit formerly its largest customer. The result would be to inflate profit margins in the future through recoveries of these deferred lost revenues / lost profits from an earlier time period. Staff's position on this issue in this rate case is consistent with the Commission's Report and Order issued on a very similar Ameren Missouri proposal to recover lost revenues in Case No. ER-2014-0258, as was described earlier in this rebuttal testimony. As a result, Staff recommends that the Commission deny authorization to Ameren Missouri to defer and recover any amounts pertaining to changes in Noranda's production capability in the determination of rates in this rate case or in any future case.

OVER OR UNDER-COLLECTION OF SOLAR REBATES

Q. In her direct testimony, on page 24, lines 13 through 19, Ameren Missouri witness Laura M. Moore proposes that a regulatory asset be established to address an estimated $4.1 million under-collection of solar rebates, to be amortized over three years. Does Staff agree with Ms. Moore's proposal?

A. No. Ms. Moore estimates that through December 31, 2016, there is an under-collection of approximately $4.1 million associated with the solar rebate regulatory asset that is due to differences in billing units. Ameren Missouri proposes to include the amortization of approximately $1.36 million annually over three years to address this estimated shortfall. It is Staff's position that Ameren Missouri's request for a recovery of under-collected solar rebates is premature. Because the costs are not yet eligible for recovery, the Staff has not made a determination of the appropriateness of the calculations made by Ms. Moore. These calculations will need to be fully evaluated and addressed in a future rate case.

Q. What is the basis for a proposal to defer and amortize over or under-collected amounts associated with solar rebates?

A. Because of the likely difference between the normalized billing units used to determine rates in a general rate proceeding compared with actual billing units associated with cost recovery of the amortization(s), the Commission approved *Non-Unanimous Stipulation and Agreement* from Case No. ET-2014-0085 requires Ameren Missouri to defer over or under-collections of solar rebates in rates. The following sections from paragraphs 7 d. and e. of the stipulation in Case No. ET-2014-0085 specifically addresses this ratemaking treatment:

> 7. d. Solar rebate amounts paid by Ameren Missouri after July 31, 2012, including the additional amount provided for in the immediately following sentence, shall be included in a regulatory asset to be considered for recovery in rates after December 31, 2013, in a general rate case. Ameren Missouri shall record to the regulatory asset the actual dollar amount of solar rebates paid, not to exceed $91.9 million, from August 1, 2012 through the later of (i) the end of the test year, (ii) the end of the test year update period or (iii) the end of the true-up period in Ameren Missouri's next general rate proceeding, plus ten percent (10%) of that amount. If Ameren Missouri has not paid $91.9 million in solar rebates from August 1, 2012 through the later of (i), (ii) or (iii) above in Ameren Missouri's next general rate proceeding, then one or more additional regulatory assets shall be subsequently reflected on Ameren Missouri's books to record additional solar rebate payments made by Ameren Missouri equaling the difference between the amount of solar rebate payments deferred in the initial regulatory asset and $91.9 million, plus 10% of the amount of those additional deferred solar rebate payments. The Signatories agree not to argue that the solar rebate payments should have been suspended in 2013. Ameren Missouri agrees solar rebate payments and the additional amount provided for above will only be reflected in a general rate proceeding and recovered in a general rate case through a three-year amortization, and cannot be included in a Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM"). The regulatory asset provided for in this subparagraph d shall not include any additional sums, and no return, carrying costs or income tax mark-up shall be allowed on the unamortized balance. Upon the Commission's approval of this Agreement, the balance of the regulatory asset provided for by this subparagraph d shall be reduced by an amount equal to the cumulative interest recorded by Ameren Missouri related to solar rebates paid since August 1, 2012. The Signatories agree not to object to Ameren Missouri's recovery in retail rates of prudently paid solar rebates and the additional amount provided for above. The Signatories reserve the right to raise issues related to whether the solar rebates were prudently paid in future general rate cases.

> 7. e. Because of the likely difference between the normalized billing units used to calculate rates in a general rate proceeding where some or all of the balance of the regulatory asset provided for in subparagraph d will be included in rates through the three-year amortization and actual billing units associated with cost recovery, and also because of the likely difference between the three year amortization period and the actual time interval between when rates are set in rate cases, a true-up will be required to reflect whether the sums billed to customers through the amortization are greater or less than the sums that it was assumed would be billed to customers based on the billing units and amortization period used to calculate rates in the general rate proceeding. Because of this, Ameren Missouri shall track such differences. In the first general rate case occurring after the general rate case when the last dollar of the balance of the regulatory asset provided for in subparagraph d was included in rates, the difference shall be included as either a positive or negative amortization in rates over a three-year period. It is the intent of the Signatories that Ameren Missouri shall ultimately bill customers for an amount as close as reasonably practicable (separately for the residential and nonresidential customer classes) to the total solar rebates paid plus the additional amount provided for in subparagraph d above.

Q. Please explain Staff's position with regard to Ameren Missouri witness Moore's proposal to include an amortization of under-recovered solar rebate collections.

A. Through September 30, 2016, Ameren Missouri has spent approximately $91.52 million for solar rebates ($88.1 million in Case No. ER-2015-0258 plus $3.4 million in Case No. ER-2016-0179). Ameren Missouri is still approximately $380,000 short of the $91.9 million limit for total solar rebate spending based upon the terms of the stipulation in Case No. ET-2014-0085.

Ameren Missouri estimates that it will under-collect approximately $4.1 million of solar rebates associated with the $91.52 million regulatory asset due to differences in billing units. Ameren Missouri proposes to include an amortization of approximately $1.36 million annually over three years to address this estimated shortfall.

Staff has excluded this amortization from the cost of service calculation because it believes Ameren Missouri's proposed adjustment is premature based upon the following excerpt of from the aforementioned stipulation:

> In the first general rate case occurring after the general rate case when the last dollar of the balance of the regulatory asset provided for in subparagraph d was included in rates, the difference shall be included as either a positive or negative amortization in rates over a three-year period.

Staff interprets this language to mean that once the last dollar of the $91.9 million of the Commission-approved solar rebate spending is included in rates, the difference in collections resulting from differences in billing units can be addressed by a three-year amortization in the next general rate case. As described earlier, Ameren Missouri has spent approximately $91.52 million through September 30, 2016, and is still $380,000 short of full recovery.

On January 18, 2017, Ameren Missouri provided Staff with an update of solar rebate spending through the December 31, 2016, true-up cutoff established by the Commission in this case. Staff has not had adequate time to fully evaluate this information at the time of this rebuttal testimony filing. Preliminarily, it appears that Ameren Missouri has not yet paid the last dollar of the $91.9 million by December 31, 2016. However, assuming Ameren Missouri had paid the last dollar of the $91.9 million by the December 31, 2016, true-up cutoff in this case, and the Commission authorized recovery of the full amount in rates in this rate case, then Ameren Missouri could seek recovery for the differences in collections that result from differences in billing units in its next general rate case. If Ameren Missouri has not paid the last dollar of the $91.9 million by the December 31, 2016, true-up cutoff in this case, then Ameren Missouri would not be able to seek recovery until the rate case following Ameren Missouri next rate case, assuming Ameren Missouri meets the $91.9 million target on or before the true-up cutoff in that next rate case and the Commission authorizes recovery for the full amount.[4]

CORRECTIONS

Q. Please describe the first correction that Staff has made since the time of its Accounting Schedules on December 9, 2016.

A. Since the time of filing its Accounting Schedules, Staff discovered that it incorrectly posted an adjustment related to the reset of the amortization of netted regulatory asset and liability amortizations that was described on page 130, lines 16 through 27, in Staff's Report. The sign of the adjustment needed to be changed from a negative to a positive. The revenue requirement impact of making this correction, increases Staff's cost of service calculation by $316,625

Q. Please describe the second correction that Staff has made.

A. The second correction addresses the regulatory asset balance related to the Callaway license extension that was described in the Report on page 126, lines 27 through 30, and page 127, lines 1 through 29. Staff failed to post the correct intangible regulatory asset balance through the December 31, 2016, true-up cutoff. As a result, rate base was overstated by an estimated $637,380. The revenue requirement impact of making this correction decreases Staff's cost of service calculation by $62,678.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

[4] Based on a preliminary review of the solar rebate spending through December 31, 2016 it appears that Ameren Missouri had not yet paid the last dollar of the Commission approved $91.9 million spending level.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service	))))	Case No. ER-2016-0179

AFFIDAVIT OF JOHN P. CASSIDY

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

COMES NOW JOHN P. CASSIDY and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing Rebuttal Testimony; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

John P. Cassidy

JOHN P. CASSIDY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the City of St. Louis, State of Missouri, at my office in St. Louis, on this 18th day of January, 2017.

LISA M. FERGUSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: June 08, 2020
Commission Number: 16631502

Lisa M. Ferguson

Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Noranda Aluminum, Inc.'s Possible Material Default in a Condition Necessary to Remain on the IAS Rate Schedule Established in Case No. ER-2014-0258	)))))	Case No. EO-2016-0203

RESPONSE BY NORANDA ALUMINUM, INC. TO PETITION OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION

Comes now Noranda Aluminum, Inc. ("Noranda"), and provides the following response to the Petition of the Staff of the Missouri Public Service Commission ("Staff").

Overview

1. In its Report & Order in Case No. ER-2014-0258 ("Report & Order"), this Commission granted badly needed rate relief to Noranda, subject to certain conditions. One such condition was that Noranda maintain a minimum employee headcount of 850 people at Noranda's New Madrid Smelter ("Smelter"). *See* Report & Order, pages 135-136, ¶ 11. In its Petition to the Commission, filed February 3, 2016, the Staff questioned whether the Smelter continued to meet that employee threshold. The Staff referenced a *Southeast Missourian* article on recent Smelter layoffs. It asked that this Commission open a docket to determine if, in light of this news, Noranda has failed materially to comply with any term or condition required to access the reduced rate structure. In response, on February 4, 2016, this Commission issued an order directing Noranda to reply to Staff's Petition no later than February 9, 2016.

2. Noranda now submits that it has been forced recently to temporarily reduce its Smelter workforce below the levels provided in the Report & Order. This is an unfortunate and challenging development. However, this reduction alone does not mean that Noranda has failed

to comply with the Report & Order. The employee-count requirement was subject to an exception for *force majeure* or other events considered by the Commission to be outside of Noranda's control. And, as this Response will show, Noranda has had to confront several such unforeseen, disruptive events in recent months.

3. Three critical events beyond Noranda's control have occurred since the Report & Order was issued. First, on January 7, 2016, an electrical supply circuit failure caused extensive damage to two of the three pot lines at the Smelter. It will be several months or more before the necessary repairs can be completed. In the interim, Noranda is left with only one operable pot line at the Smelter. Second, the London Metals Exchange ("LME") price for aluminum has fallen to levels beyond even the worst case scenarios envisioned in Case No. ER-2014-0258. The current LME price of aluminum, including the Midwest premium, is approximately $ 0.76 per pound, a 25% price drop as compared to the date of the Report & Order. At the current price, Noranda loses money on each pound of primary aluminum it produces. Finally, on August 5, 2015, a molten metal explosion occurred at the cast house of the Smelter facility. Fortunately, the explosion caused no fatalities. However, the explosion did cause major structural and production equipment damage which has led to the suspension of production of one of Noranda's highest margin products. Noranda does not know when production can resume at the cast house, but production is unlikely to resume in the near or intermediate future.

4. In order to sustain the Smelter in the short and intermediate time frames, Noranda has reduced operations in two of its three aluminum pot lines and, as a result, has been forced to lay off its employees associated with that reduction. The resulting layoffs have caused the Smelter's employment level to drop below 850.

5. Most recently, on February 8, 2016, Noranda and its wholly-owned direct and indirect subsidiaries voluntarily filed to initiate a court-supervised restructuring process under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Missouri.[1] In February 8, 2016 press releases, Noranda has stated that its objective is to stabilize its upstream operations as it explores ways to make them economically viable. Noranda's downstream Flat-Rolled Products business is profitable, generates positive cash flow, and continues to serve customers in the ordinary course of business. Noranda remains committed to strong relationships with its customers and suppliers and continuing its longstanding dedication to operational safety and environmental stewardship in its communities. Noranda expects to continue operating the single remaining pot line at the New Madrid Smelter until March 2016. At that point, all remaining operations at New Madrid will be curtailed, although Noranda will maintain the flexibility to restart operations at New Madrid should conditions allow.

Notice of Force Majeure Events and Incidents Beyond Noranda's Control

6. In order to sustain its business at the Smelter, in Ameren Missouri's last rate case, Docket No. ER-2014-0258, this Commission granted Noranda a discounted electric rate for a period of three years. *See* Report & Order in ER-2014-0258, April 29, 2015, pages 133-139. This discounted rate, which is applicable to a new class of Ameren Missouri electric service ratepayer known as Industrial Aluminum Smelters ("IAS"), consists of an effective base rate of $36 per MWh, plus up to $2 per MWh pursuant to Ameren Missouri's Rider FAC.

7. In approving this discounted rate, the Commission noted that Noranda has a unique position as Ameren Missouri's largest customer. *See* Report & Order, pages 130. Based

[1] Bankruptcy Court filings and other information related to the court-supervised bankruptcy proceedings are available at the following website administered by Noranda's claims agent, Prime Clerk, at https://cases.primeclerk.com/noranda/.

on the substantial amount of electricity that Noranda purchases (approximately ten percent (10%) of Ameren Missouri's total load), the revenues collected pursuant to the IAS discounted rate would be greater than the incremental cost of power to serve Noranda's Smelter, and much greater than the overall rate impact of the Smelter reducing or ceasing operations. After considering these facts, the Commission determined that the IAS discounted rate would result in overall lower rates for customers. Specifically, the Commission stated as follows:

> "[T]he 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's fixed costs. That is $32 million per year that Ameren Missouri's other customers will have to pay if the smelter shuts down." Report & Order, p. 132.

Based on these unique circumstances, the Commission concluded that "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." Report & Order, p. 131.

8. The Commission imposed several requirements on Noranda to access this rate, including certain minimum employment levels at the Smelter:

> 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 <u>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,</u> 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, <u>or due to *force majeure* or other events considered by the Commission to be outside the IAS customer's control</u>.

> The information provided shall be classified as Highly Confidential.
>
> [. . .]
>
> 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; <u>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</u>.
>
> 21. <u>In assessing whether a violation of any term or condition is material, the Commission shall weigh all relevant factors, including:</u>
> <u>(a) Any evidence of *force majeure*;</u>
> (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.

Report & Order, pages 135-136, 138-139 (Emphasis added).

9. Pursuant to these conditions, Noranda is hereby providing notice that, due to the culmination of three events that qualify as *force majeure* and/or incidents outside of Noranda's control, Noranda has been forced to drop below the 850-employee threshold. First, the recent unexpected electric supply circuit shutdown on January 7, 2016, which led to the cessation of operations on both pot lines 1 and 2. Second, the LME price for aluminum has dramatically declined to levels below any prices contemplated in the stress testing aluminum price scenarios

that Noranda presented to the Commission in the 0258 docket. Third, Noranda experienced an explosion at the Smelter which has taken out one of its most profitable product lines. Each of these circumstances is described further below.

A. NORANDA HAS EXPERIENCED A *FORCE MAJEURE* EVENT RELATING TO AN ELECTRICAL CIRCUIT FAILURE AT THE SMELTER

10. On January 7, 2016, an electrical supply circuit failure shut down two of the three pot lines at the Smelter. While this sudden unforeseen failure did not result in any employee injury, it did interrupt power supply to two of the pot lines. Without the necessary electricity, the liquid metal hardened in the individual pots, thus rendering them temporarily useless. The lines will not be operational until this material is removed and the pots are repaired, a process that will take months. Fortunately, the Smelter's third pot line was not affected significantly by the power failure. It is now the Smelter's only operational production line. For the foreseeable future, the Smelter will only be able to operate at 23% of capacity, and its full-time workforce will need to be adjusted accordingly if the Smelter is to have any chance of remaining viable.

B. DUE TO UNFORESEEABLE MARKET CONDITIONS, THE PRICE OF ALUMINUM HAS DRAMATICALLY DECLINED

11. In the period since the Commission issued its Report & Order, there has been a significant and sustained decline in the price of aluminum. The price of aluminum is a critically important variable in Noranda's business model, as noted by the Commission in its Report & Order:

> 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 as 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, <u>but sometimes the worst happens</u>.

Report & Order, pages 129-130 (Emphasis added).

12. At the time of the Commission's decision on April 29, 2015, the LME price of aluminum, including the Midwest premium, was $1.00 per pound. During that proceeding, various forecasts of aluminum prices were presented for the Commission's consideration, with the "worst case" scenario modeling a price decline to $0.91 per pound in the year 2018. *See* Boyles Direct, Exhibit A3, page 4, step 3.

13. Unfortunately, due to a number of unforeseeable global and macro-economic factors, market prices for aluminum have fallen far below even the worst case models in a very short period of time. The current LME price of aluminum, including the Midwest premium, is $0.76 per pound. This is twenty-four percent (24%) lower than the LME price at the time of the Report & Order and sixteen percent (16%) lower than the worst case scenario modeled in testimony.

14. The sharp drop in aluminum prices is totally beyond Noranda's control and was obviously not anticipated by any party in Case No. ER-2014-0258. Indeed, Noranda's "worst case" volatility scenario did not show a nominal aluminum price (with Midwest premium) below $ 0.91 per pound in any year for ten years starting in 2014. At the current price, Noranda loses money on each pound of primary aluminum produced.

15. The reasons for this decline are varied, but largely stem from a sharp increase in China's production in recent years, paired with a slowdown in China's aluminum consumption, government support for Chinese aluminum smelters, and a comparatively strong American Dollar that encourages export. These factors have led to a huge surplus of Chinese aluminum being dumped into the global market at exceptionally low prices. There have also been well-documented concerns that a large portion of aluminum being exported out of China has been

misclassified as a "semi-manufactured" product, thereby avoiding China's fifteen percent (15%) export tax and instead qualifying for a rebate.[2]

16. Taken in concert, these factors have led to a unforeseeable and dramatic decrease in the LME price for aluminum. In recent reports, Harbor Aluminum Intelligence Unit LLC ("Harbor Aluminum"), a respected expert on aluminum markets, has downgraded its assessment of aluminum prices. In its December 10, 2015 report, Harbor notes that there is no evidence indicating that the market has bottomed out, and its current base scenario price for aluminum for 2016 is $0.67 per pound and for 2017 is $0.69 per pound. Its downside case is lower.

17. The impact of these lower prices is being felt by smelting facilities across the United States. In response to the current market conditions, Alcoa already shuttered one smelter in Washington State in January; it plans to indefinitely idle another smelting facility there starting in June.[3] So far it has managed to keep its Massena, New York facility open, thanks in large part to a $70 million assistance package provided by the State of New York. Similarly, Century Aluminum has started shuttering its two pot lines at its Mount Holly, South Carolina smelter. In December, Century announced that it has negotiated a deal with Santee Cooper, its power provider, that will allow it to continue operating at 50 percent capacity until a legislative solution can be developed later this year.[4] Likewise, Century has credited its decision to delay

---

[2] *See, e.g.*, Andy Home, *What Can Mend Aluminum Market's Bleeding Heart?*, Reuters, Jan. 21, 2016, *available at* http://www.reuters.com/article/us-alumninium-market-ahome-idUSKCN0V002I; Luc Cohen, *Aluminum Industry Body Asks U.S. Authorities to Probe China Exports*, Reuters, Sep. 17, 2015, *available at* http://www.reuters.com/article/us-aluminum-china-exports-idUSKCN0RH2FG20150917; Press Release, The Aluminum Association, *The Aluminum Association Concerned About CNIA Call for Removal of Export Tax on Primary Aluminum* (Sep. 9, 2015), *available at* http://www.aluminum.org/news/aluminum-association-concerned-about-cnia-call-removal-export-tax-primary-aluminum..

[3] Tom Banse, *Aluminum Smelting's Questionable Future in the Northwest*, KUOW, Jan. 27, 2016, *available at* http://kuow.org/post/wither-aluminum-smeltings-future-northwest.

[4] David Wren, *Mount Holly Closure Notice Creates Tight Deadline for Power Talks*, The Post and Courier, Jan. 7, 2016, *available at* http://www.postandcourier.com/article/20160107/PC05/160109526/1177/latest-mount-holly-closure-notice-creates-tight-deadline-for-power-negotiations; David Wren, *New Deal Will Keep Mount Holly Smelter Operating While Lawmakers Address Power Issue*, The Post and Courier, Dec. 18, 2015, *available at* http://www.postandcourier.com/article/20151218/PC05/151219335/1180/new-deal-will-keep-mount-holly-smelter-

shuttering a portion of its production at its Sebree, Kentucky smelter to access low-cost market power stemming from "cooperation among Kentucky state legislators and regulators, the local utility, and the Company."[5]

C. NORANDA HAS EXPERIENCED A *FORCE MAJEURE* EVENT RELATING TO AN EXPLOSION AT THE SMELTER

18. On August 4, 2015, an explosion struck the cast house of the Smelter facility. Fortunately, the explosion caused no serious injuries. However, the explosion did cause significant property damage and forced Noranda to indefinitely suspend billet production at the cast house. This has a significant impact on Noranda's business, as the cast house is the site where extrusion billet, cylindrical aluminum rod, is produced. Aluminum billet is one of Noranda's most profitable products, and was a key component in Noranda's plan to sustain the Smelter's operation in the face of extraordinarily low aluminum pricing. Noranda does not know when production at the cast house can resume, but it will likely remain out of service for the near and intermediate future.

D. THE UNFORESEEABLE EVENTS DESCRIBED ABOVE HAVE REQUIRED NORANDA TO FALL BELOW 850 EMPLOYEES

19. In order to sustain the Smelter in the short to intermediate term, Noranda has been forced to reduce its operations until such time as it can resume operations economically. With current market prices having declined to such a degree that Noranda is losing money on each pound of aluminum produced, it is not possible to continue full production at all three lines.

20. As described above, the urgency and necessity of these actions has been significantly increased due to the explosion at the cast house and the subsequent forced cessation

---

operating-while-lawmakers-address-power-issue.]

[5] Press Release, Century Aluminum, Century Announces Continued Operations of Its Sebree, KY Smelter (Dec. 17, 2015), *available at* http://investor.shareholder.com/cenx/releasedetail.cfm?ReleaseID=947511.

of operations there. With the cast house no longer operational, Noranda is not able to produce billet, one of its highest margin products. Without billet production, it is impossible for Noranda to sustain its current level of operations under the current economic conditions.

21. Also, the urgency and necessity of these actions has been increased by the recent electric supply circuit failure on January 7, 2016 and the resulting damage to two of the Smelter's pot lines. Without these lines, Noranda can only operate the facility at 23% capacity. This development by itself might have required Noranda to make workforce adjustments. The fact that it comes now in the wake of market turmoil and other facility failures makes Noranda's position practically untenable.

22. As a result of the confluence of these unforeseeable events, Noranda has been forced to decrease its employee levels below the 850 employee threshold identified by the Commission as a condition to participation in the IAS rate class. However, in the Report & Order, the Commission recognized that this condition may be waived for instances in which decreases in employee numbers are "due to *force majeure* or other events considered by the Commission to be outside the IAS customer's control."

23. Now more than ever, with the current economic and operational constraints placed upon Noranda, it is vital that Noranda continue utilizing the load retention rate that was approved by the Commission a mere seven months ago. Even with the IAS rate, the current environment has taken a significant toll in the Company, as most recently evidenced by Noranda being de-listed by the New York Stock Exchange and its bankruptcy filing on February 8, 2016.[6]

24. With unsustainable market prices, the suspension of production of one of its highest margin products, and decreased production from the pot lines, Noranda will not be able to continue operating the Smelter if it is now asked to also bear a significant increase in its

---

[6] *See* Noranda Aluminum Holding Corp, 8-K, filed December 21, 2015.

electricity rates. As the Commission noted in its Report & Order, such a development for Noranda, which is currently Ameren Missouri's largest customer by far, would only serve to increase the rate burden placed on the remainder of the utility's customers.

25. For all of the reasons described above, Noranda believes that the confluence of the electric supply circuit failure causing the shutdown of pot lines 1 and 2, the dramatic decline in aluminum prices and the explosion at the Smelter qualifies as *force majeure* and/or events outside of Noranda's control, such that Noranda may continue to participate as a customer in the IAS rate class.

WHEREFORE, Noranda respectfully submits this Response pursuant to the Order in Case No. EO-2016-0203 and requests the Commission issue an Order authorizing Noranda to utilize the current the IAS rate.

Respectfully submitted,

POLSINELLI PC

Frank A. Caro

Frank A. Caro, Jr.,
Missouri Bar No. #42094
Anne E. Callenbach
Missouri Bar No. #56028
900 W. 48th Place
Suite 900
Kansas City, Missouri 64112
(816) 572-4760
(816) 572-6496 (fax)
fcaro@polsinelli.com
acallenbach@polsinelli.com

Attorneys for Noranda Aluminum, Inc.

VERIFICATION

STATE OF MISSOURI)
) **ss**
COUNTY OF JACKSON)

The undersigned, being first duly sworn upon his oath, states that the facts in this Notice are true and correct to the best of his knowledge and belief.

Signature: Frank A. Caro, Jr.
Frank A. Caro, Jr.

Subscribed and sworn to before me, this 9th day of February, 2016.

Andrea J. Chilton
Notary Public

ANDREA J. CHILTON
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Nov 14, 2017
Commission # 13404320

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this February 9, 2016 to all parties of record on the service list maintained in Case Nos. EO-2016-0203 and ER-2014-0258.

/s/ Frank A. Caro, Jr.