BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminium, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
vs.	)	**Case No. EC-2014-0224**
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

INITIAL POST-HEARING BRIEF OF COMPLAINANTS

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INITIAL POST-HEARING BRIEF OF COMPLAINANTS

Come now, Complainants, and for their initial post-hearing brief state as follows:

I. Introduction

The aluminum smelter operated by Noranda Aluminum in New Madrid County, Missouri, has been a pillar of the community and of the state's economy for more than 40 years.[1] The smelter employs 888 individuals, and thus supports 888 families with jobs paying an average annual wage of $60,000 plus benefits.[2] With an annual payroll in excess of $95 million, the smelter contributes more than $300 million to the Missouri economy each year.[3] The closure of the smelter would have an irreversible, devastating impact on every aspect of the economy of Southeast Missouri—an area that has long

[1] Smith Direct, Ex. 2, p. 3, ll. 21-22; Priggel Surrebuttal, Ex. 18, p. 2, l. 12 – p. 5, l. 21.

[2] Smith Direct, Ex. 2, p. 3, l. 8, p. 4, ll. 10-11; Haslag Direct, Ex. 11, p. 17, l. 7.

[3] Tr. 374, ll. 5-12; Smith Direct, Ex. 2, p. 4, ll. 5 -7.

suffered from the effects of poverty and a shortage of secure well-paying jobs.[4] The fallout from the smelter's closure would be felt statewide, delivering a $9 billion hit to Missouri's Gross Domestic Product ("GDP") over the next twenty-five years.[5] By granting the relief requested by Noranda and the 37 individual complainants, this Commission can prevent that catastrophe.

The evidence presented in this case supports three conclusions: (1) the 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 rate relief requested because it will allow Noranda to continue to operate the smelter, while still paying more than the incremental and average variable costs incurred by Ameren Missouri to serve Noranda and paying a portion of Ameren Missouri's fixed costs.[6] Because of Noranda's continued contribution towards Ameren Missouri's fixed costs, other ratepayers will experience lower electric rates than they would if the smelter closed. The Commission has the legal authority to grant Noranda's rate request based on this evidence. Because the requested rate is "just and reasonable," is in the public interest, and will not result in undue or unjust discrimination under §393.130, RSMo., it meets all requirements imposed by Missouri law.

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[4] Priggel Surrebuttal, Ex. 18, p. 4, l. 10 – p. 5, l. 15; Tr. p. 11, line 9 – p. 12, l. 10 (Public Hearing testimony of County Collector Terry Swinger); Tr. p. 16, l. 8 – p. 17, l. 12 (Public Hearing testimony of Don Moore); Tr. p. 20, l. 8 – p. 21, l. 25 (Public Hearing Testimony of Prosecuting Attorney Russ Oliver).

[5] Haslag Direct, Ex. 11, p. 4, ll. 14-16.

[6] Tr. p. 769, ll. 2-5; Brubaker Surrebuttal, Ex. 17, p. 8, ll. 1-23.

II. The Commission Has the Authority to Grant the Relief Requested by Noranda.

Noranda has requested a rate of $30/MWh to allow it to continue to operate its smelter.[7] As explained in detail in section IV of this brief, this rate exceeds both Ameren Missouri's average variable cost and its incremental cost to serve Noranda.[8] By paying this rate, Noranda will cover all of the variable and incremental costs incurred to provide its service *and* will contribute to Ameren Missouri's fixed costs. This contribution to fixed costs will benefit Ameren Missouri's other ratepayers, who will thus be in a better position with Noranda on the system at a rate of $30/MWh than they would be if the rate relief is denied and Noranda closes the smelter.[9] Since the $30/MWh rate is also higher than the incremental cost, it is higher than the price Ameren Missouri would receive if it sold this power onto the electric grid rather than to Noranda.[10] While this rate does not provide for the recovery of Noranda's fully allocated embedded cost of service,[11] it nonetheless meets the requirements imposed by Missouri law, specifically §393.130, RSMo., in that it is "just and reasonable," is in the public interest, and does not constitute an "undue or unreasonable preference" or undue discrimination.

As Complainants' witness Maurice Brubaker explained in his testimony, the Commission has previously approved rates that reflect less than the full cost of service

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7 Smith Direct, Ex. 2, p. 3, ll. 13 – 17; Smith Surrebuttal, Ex. 4, p. 3, ll. 8-21.

8 Tr. p. 769, ll. 2-5; Brubaker Surrebuttal, Ex. 17, p. 8, ll. 1-23.

9 Brubaker Direct, Ex. 16, p. 6, ll. 7-9; Brubaker Surrebuttal, Ex. 17, p. 3, ll. 8-18.

10 Brubaker Surrebuttal, Ex. 17, p. 4, ll. 2-12.

11 Brubaker Surrebuttal, Ex. 17, p. 3, ll. 8-18.

where the Commission has found such rates to be just, reasonable and in the public interest.[12] This Commission has approved economic development rates that provide recovery of less than the fully allocated embedded cost of service in the cases of many Missouri utilities. In one such case, the Commission considered the validity of an economic development rider ("EDR") tariff that Public Counsel asserted "would force residential and small customers to subsidize industry discounts."[13] The Commission rejected this argument and approved the EDR, noting that "a new customer will generate revenues and defray fixed costs," and in so doing, provide a benefit to the utility's shareholders and ratepayers.[14] In another case, the Commission approved a "Special Contract Service tariff" that authorized an electric utility company to negotiate special contracts with certain customers. The tariff required the utility to offer a price that would recover the "expected average marginal costs incurred" to serve the customers—but not the fully allocated embedded cost of service. The Commission expressly found that this tariff complied with the requirements of §§393.130, 393.140 and 393.150, RSMo 1996, and established "just and reasonable rates" that were not unduly discriminatory.[15]

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[12] Tr. 770, l. 3 – 771, l. 16.

[13] Report and Order, *In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Consolidate Rates and Implement a General Rate Increase for Natural Gas Service in Missouri Service Area of Atmos*, Case No. GR-2006-0387 (Feb. 22, 2007) at p. 38.

[14] *Id.*

[15] Report and Order, *In the Matter of Kansas City Power & Light Company's Tariffs for Standby Service and Special Contracts,* Case No. ET-97-113 (June 13, 1997).

Similarly, the Commission approved a water rate reflecting a 30 percent discount for an industrial consumer that was expanding its Missouri operations.[16] The Commission expressly found that "net benefits will accrue to the state" from the industrial consumer's expansion, "in the form of an increased annual payroll subject to income taxes and in the form of other benefits to [Missouri's] citizens."[17] The Commission found that despite the 30 percent discount, the special rate provided a reasonable contribution toward the water company's costs, and "this contribution will constitute a benefit to the other customers of the [water utility's] district because it will serve to reduce the revenue requirement of the district as a whole."[18] The Commission has also approved rates that provide a subsidy for certain ratepayers for reasons other than economic development.[19] These cases, and many others like them, illustrate that: (1) economic development and the economic impact of rates on consumers are valid considerations of the Commission in setting rates; and (2) the Commission is authorized

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[16] Order Approving Agreement, Granting Waiver of Tariff Provision and Approving Tariff, *In the Matter of the Application of Missouri-American Water Company for Approval of an Agreement with Nestle Purina PetCare for Retail Sale and Delivery of Water,* Case No. WO-2009-0043 (Sept. 3, 2008).

[17] *Id.*

[18] *Id.*

[19] *State of Missouri ex rel. City of Joplin v. Public Service Commission,* 186 S.W.3d 290 (Mo. App. 2005), Report and Order on Second Remand, *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increase for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company,* Case No. WR-2000-281 (Dec. 4, 2007) (on second remand from the Court of Appeals, the Commission reiterated its approval of water rates that exceeded the cost of service for Joplin ratepayers, which it established for the purpose of subsidizing ratepayers in other districts).

to approve utility rates that do not reflect the full cost of providing service to a customer where such rates are just, reasonable and in the public interest.[20]

Utility regulators in other jurisdictions have similarly recognized that the authority to set "just and reasonable" electric rates encompasses the prerogative to establish "load retention tariffs" for large industrial customers experiencing economic distress. The Louisiana Public Service Commission, for example, approved an agreement setting a tariff that would provide "economic retention credits or other discounted rates" for certain electric customers in order "to facilitate continued operation of [the customers'] facilities for the foreseeable future, thereby retaining their associated employment and tax

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[20] *See* Report and Order, *In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Service Area,* Case No. GR-96-285 (Jan. 22, 1997) (approving an EDR that allowed a 30 percent discount in rates and provided that other ratepayers would bear 25 percent of the cost of this discount); Order Concerning Agreement and Tariffs, Application to Intervene, and Motions to Suspend Tariffs, *In the Matter of the Application of Missouri-American Water Company for Approval of an Agreement with Premium Pork, L.L.C., for the Retail Sale and Delivery of Water,* Case No. WT-2004-0192 (Nov. 20, 2003)(approving a 30 percent discount for Premium Pork LLC under Missouri-American's EDR); Report and Order, *In the matter of St. Joseph Light & Power Company's proposed tariffs to increase rates for electric service provided to customers in the Missouri service area of the Company,* Case No. ER-93-41 (June 25, 1993) (noting that the EDR proposed by SJLP "is similar to economic development riders granted to other utilities. The purpose of the economic development rider is to encourage economic development. . . ."); Report and Order, *In the Matter of Missouri Public Service, a Division of Utilicorp United Inc.'s Tariff Designed to Increase Rates for Electric Service to Customers in the Missouri Service Area of the Company, et al.,* Case Nos. ER-97-394, ET-98-103 and EC-98-126 (March 6, 1998) (concluding that the EDR proposed by UtiliCorp "is of benefit to the state of Missouri and the ratepayers.").

benefits."[21] The Louisiana Commission noted that "[t]he base revenue contributions of these customers also serve to mitigate the base rate increases to other retail customers."[22]

These recent decisions demonstrate that in evaluating the reasonableness of a proposed rate, it is appropriate for the Commission to take into account more than simply the cost of service. To support its argument that Noranda's proposed rate is unjust and unduly discriminatory, Ameren Missouri cited a 1931 Missouri Supreme Court case in its opening statement.[23] In this case, the Court explained that the Commission:

> is purely and simply an administrative agency or arm of the Legislature, is exercising a legislative or quasi-legislative function in the performance of those powers which have been conferred upon it by the Public Service Commission law, among which are the powers to regulate and fix rates or charges for public utilities, and to classify those users or consumers to whom such rates or charges shall be applicable. Such classification, in order to be valid, must comport with the rule or principle of sound legislative classification.[24]

Rate setting and rate design are obviously within the Commission's purview. The Commission's authority in making classifications is limited, as is the legislature's, in that

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[21] *Approval of Agreement for Electric Service by and between Cleco Power LLC and Boise Packaging & Newsprint, L.L.C., DeRidder, LA,* Special Order No. 50-2010 (Louisiana Public Service Comm'n, October 14, 2009).

[22] *Id., see also In the Matter of the Public Utilities Act, et al.,* Case Nos. NSUARB-NSPI-P-892, NSPI-P-202 and 2011 NSUARB 184 (Nova Scotia Utility and Review Board, Nov. 29, 2011) (concluding that the Board had jurisdiction to create a "load retention tariff" or "LRT," under statutory authority similar to the Missouri Public Service Law, and noting that "the establishment of an LRT based on economic distress is grounded on long-established and well accepted ratemaking principles applied in various jurisdictions. . . .").

[23] Tr. 140, ll. 11-15; *State ex rel. The Laundry, Inc. v. Public Service Commission,* 34 S.W.2d 37 (Mo. 1931).

[24] *Id.* at 43.

any classification it creates must include "'all who are similarly situated.'"[25] As the Court explained, "'a classification for legislative purposes must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. It cannot be an arbitrary classification.'"[26] Specifically, with respect to utility rates, the Court noted that the Public Service Commission Law expressly prohibits discriminatory special rates and any "undue or unreasonable preference."[27]

The issue before the Court in the 1931 case was whether two laundry companies should receive a reduced water rate that applied to "manufacturers." The Commission concluded the laundries were not manufacturers, and dismissed their complaint. The Missouri Supreme Court overruled the Commission's decision, based on the Court's view that "the strict construction given to the manufacturers' [water] rate schedule by the Public Service Commission necessarily results in an unjust and unfair discrimination against [the operators of two laundry facilities], who are users of water under the same or substantially similar and contemporaneous service conditions as are applicable to those users of water enjoying the benefit of the manufacturers' rate schedule. . . ."

Ameren Missouri cited this decision in its opening statement in an attempt to support its contention that the Commission has no authority to grant the relief sought by Noranda.[28] Contrary to Ameren Missouri's argument, the principles explained in this

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[25] *Id., quoting State ex inf. Hedrick,* 241 S.W. 402 (Mo. banc 1922).

[26] *Id., quoting Ex parte French,* 285 S.W. 513, 515 (Mo banc 1926).

[27] *Id., quoting* §10477, RSMo 1919 (this language is now found in §393.130, RSMo.).

[28] Tr. p. 140, l. 16 – p. 141, l. 10.

case do not bar this Commission from authorizing the rate Noranda seeks, since that rate will ***not*** result in an "unjust or unfair discrimination." Rather, the evidence shows that the $30/MWh rate will allow Noranda to continue the operations of the smelter, to pay the average variable costs of service, to pay the incremental cost of its electricity, to contribute to Ameren Missouri's fixed costs, and to thereby provide a *benefit* to Ameren Missouri and all of Ameren Missouri's other ratepayers.[29] Although the $30/MWh rate for Noranda will result in rate increases for other ratepayers, the detailed and credible evidence presented by Noranda shows that these increases will be ***less*** than the rate increases that would result from the closure of the smelter—and Noranda's departure from the state.[30] Since other ratepayers will be better off with this rate than under Noranda's closure, it follows that the rate sought by Noranda cannot be characterized as unduly harmful or discriminatory toward other ratepayers.

Noranda is Ameren Missouri's largest customer, and the largest consumer of electricity in Missouri.[31] It has a load of almost 500 MW which it uses 24 hours per day, 7 days per week, with a 98% load factor.[32] Because of this very large and uniform load, it is "very attractive to a supplier" and "provides a guaranteed and predictable load for Ameren to serve at a known price."[33] These characteristics set Noranda apart from all

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[29] Smith Surrebuttal, Ex. 4, p. 3, ll. 8 – 21; Tr. p. 768, l. 22 – p. 770, l. 2; Brubaker Surrebuttal, Ex. 17, p. 2, l. 9 – l. 20.

[30] Tr. p. 765, ll. 2-6.

[31] Smith Direct, Ex. 2, p. 9, ll. 20-22.

[32] Smith Direct, Ex. 2, p. 9, ll. 19-20.

[33] Brubaker Surrebuttal, Ex. 17, p. 5, ll. 2 -10.

other electric ratepayers in Missouri. It is currently the sole ratepayer taking power under Service Classification 12(M), the Large Transmission Service Rate. Like the new tariff proposed in this case, the tariff under which Noranda is currently served is a valid, generally stated classification, which by its terms would be applicable to any ratepayer that could establish it is similarly situated.[34] And like the economic development tariffs and special contracts approved by this Commission in the cases discussed above, the tariff proposed by Noranda is in the best interest of all ratepayers, even though it does not include all of the fully allocated embedded costs of service. This Commission has the authority to approve the tariff based on the finding that it is "just and reasonable" and in the public interest as established by the evidence.

III. <u>Noranda Has A Real and Immediate Need to Contain Its Cost of Production.</u>

** ____ **.[35] ** ________________
____ **.[36]

Noranda is in the throes of a significant liquidity crisis that, if not properly and promptly addressed, threatens imminent closure of its smelter in New Madrid, Missouri. Electricity accounts for approximately one-third of the smelter's expenses. For the smelter to be sustained, its structural costs must be reduced, and the "cornerstone" for "keeping the dominos from tipping over is rate relief."[37]

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[34] Brubaker Direct, Ex. 16, Schedule MEB-1.

[35] Tr. 187, ll. 16-22.

[36] Tr. 188, ll. 1-5.

[37] Tr. 411, ll. 2-4.

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______**.[38] **__________________________________**. These amounts are not challenged.[39] **____

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____**.[40]

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________________**.[41] **____

_______________________**. Noranda is experiencing an obvious liquidity crisis that must be addressed.

As a supplier of a commodity, a smelting operation is a price taker and cannot set the selling price of aluminum.[42] The price of aluminum is based on global supply and demand by trading activity on the London Metal Exchange ("LME"). The success or viability of an aluminum smelting operation is therefore primarily determined by its cost of production.

Unfortunately for Noranda and other smelters of aluminum, the price of aluminum worldwide has been trading at depressed levels for some time. Since the great recession of 2008, the LME price for aluminum has been depressed. Over that period, the industry has experienced just one year of price recovery followed by a further decline in price,

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38 Tr. 386, ll. 17-19; Tr. 388, ll. 2-5; Smith Direct, Ex. 1, p. 7, ll. 6-11.

39 Tr. 892, l. 24 – Tr. 894, l. 20.

40 Tr. 434, ll. 1-24.

41 Tr. 409, ll. 10-19.

42 Fayne Direct, Ex. 8, p. 3, ll. 11-18.

representing almost a double-dip recession for aluminum pricing.[43] This fact is not disputed.

Because aluminum smelters do not control aluminum prices, production costs are of critical importance. In general, the costs of alumina, labor, and electricity account for approximately 75% to 80% of a smelter's costs.[44] Alumina and electricity each account for about one-third of a smelter's total expenses.[45] The Noranda smelter in New Madrid is no exception, as electricity is the single most significant expense in production, representing approximately one-third of Noranda's production costs.[46] The cost of electricity is therefore fundamental to the New Madrid smelter's success or failure.

The importance of appropriate power costs to an aluminum smelter's success is illustrated by the contraction in the number of smelters in the United States. In 1980, there were 32 smelters operating in the United States, producing more than five million metric tons of aluminum. Today, only nine smelters are operating in this country, producing about 1.8 million metric tons annually. According to Complainants' witness Henry Fayne, each smelter closure is attributable to high power costs.[47]

Mr. Fayne is a former electrical utility executive who served as Executive Vice President and Chief Financial Officer, as well as Executive Vice President of Energy Delivery, for American Electric Power ("AEP") until his retirement in 2004. Since

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[43] Tr. 474, ll. 12-22.

[44] Fayne Direct, Ex. 8, p. 3, l. 11 – p. 4, l. 9.

[45] *Id.*

[46] Smith Direct, Ex. 2, p. 8, ll. 1-9.

[47] Fayne Direct, Ex. 8, p. 4, ll. 5-9.

retiring from AEP, Mr. Fayne has been consulting in the electric energy sector, primarily negotiating electrical contracts for various aluminum smelters.[48] Mr. Fayne has worked with a variety of smelters for the last ten years.[49] From his review of aluminum smelter closures, Mr. Fayne concluded that each closed as a result of the arrangement between the power supplier and the smelter.[50] This conclusion is unrebutted.

Mr. Fayne's review of industry data reflects that the New Madrid smelter's current electric rate is **__________**.[51] This represents the fourth-highest rate among U.S. smelters in 2013, 39 percent higher than the average rate paid by non-U.S. smelters, excluding China.[52] However, without the rate relief in this case, Noranda's current electric rate will be the second highest at this time. **____________________________ ____**.[53] While Noranda has made great strides in controlling its other expenses, it has been unable to control its electrical costs. In 2012, the cost of power to Noranda was **___________**. Indeed, Noranda's cost of electricity has increased approximately 31 percent since 2008.[54] But

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[48] Fayne Direct, Ex. 8, p. 2, ll. 5-15.

[49] Fayne Surrebuttal, Ex. 9, p. 4, ll. 1-12.

[50] *Id.*; see also Fayne Direct, Ex. 8, p. 8, ll. 6-23.

[51] Fayne Direct, Ex. 7, p. 4, ll. 16-22.

[52] *Id.*

[53] Fayne Direct, Ex. 7, HWF-1.

[54] Fayne Surrebuttal, Ex. 9, p. 2, ll. 9-21.

for that unchecked rise in electricity costs since 2008, Noranda's total production costs at New Madrid would be substantially lower.[55]

Given the depressed aluminum prices and the escalating cost of electricity, it is hardly surprising that Noranda currently suffers a liquidity crisis. To avert this crisis and to save the smelter, Noranda seeks action from this Commission in the form, generally, of a reduction in Noranda's rate of power to $30/MWh for a term of ten years, subject to a rate-increase cap of two percent for each general rate increase granted to Ameren Missouri by the Commission. Noranda also asks to be exempted from the Fuel Adjustment Charge. The requested $30/MWh rate would not bring an instantaneous, cash flow break-even impact to Noranda; that break-even rate would be approximately **_______ **.[56] Instead, the proposed $30/MWh is a sustainable rate at which, if it is maintained for the ten-year term, Noranda has projected it can continue operations at New Madrid.[57]

The premise of the requested rate is that electricity costs should remain stable over the ten-year aluminum cycle. During this cycle, aluminum prices are projected to be relatively low more than twice as often as they are projected to be relatively high.[58] To manage the business, Noranda must be allowed to maintain the $30/MWh rate. Any requests by parties to change the rate must be rejected, even when made during periods

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55 Smith Direct, Ex. 2, p. 13, ll. 1-22.

56 Smith Surrebuttal, Ex. 3, p. 3, ll. 8-21; Tr. 199, ll. 13-18.

57 *Id.*

58 Tr. 198, l. 18 – Tr. 199, l. 18; Tr. 226, l. 12 – Tr. 228, l. 7; Tr. 249, ll. 1-10.

when increased aluminum prices have improved Noranda's short-term financial performance. Noranda appreciates both that the Commission will continue to have jurisdiction over its rate and that one panel of commissioners cannot bind future commissioners, but the intent of the rate request is that it apply over the long-term aluminum cycle.

The requested rate of $30/MWh is the rate needed for the smelter to be viable. It is the highest rate at which Noranda believes the New Madrid smelter will be sustained as part of Noranda's overall operations. The rate permits Noranda to maintain a liquidity position above its minimum requirement, but below its target liquidity amount.[59] ("Enterprise Model"). This should allow Noranda to operate the smelter over the long term, as the long-term outlook for aluminum is generally positive.[60]

Various parties have made arguments questioning Noranda's request and its Enterprise Model, focusing on four areas: (1) the authenticity of Noranda's current financial needs; (2) the assumptions of LME pricing used by Noranda in the Enterprise Model; (3) the assumptions of capital expenditures in the Enterprise Model; and (4) the possibility that Noranda is attempting to obtain more favorable financial results that will benefit only a small group of investors. The evidence in this case strongly refutes each of these arguments.

Noranda's financial needs are real and immediate. **____________________

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[59] Smith Direct, Ex. 1, Ex. A.

[60] Tr. 248, ll. 4-20.

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Other options of increasing liquidity are not workable. While Ameren Missouri's expert, Robert S. Mudge, claims that Noranda should simply go borrow more money (without having done any due diligence on potential sources or terms of any lending),[64] Mudge is also critical of Noranda's already highly-leveraged condition.[65] **_______

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___________**.[66] **____

___________________________ **.[67] **________________________________

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[61] Smith Surrebuttal, Ex. 3, p. 16, ll. 2-18; Tr. 189, ll. 9-22.

[62] Tr. 401, ll. 7-23.

[63] Tr. 399, ll. 2-19.

[64] Tr. 917, ll. 7-19.

[65] Tr. 920, ll. 18-21; Mudge Rebuttal, Ex. 102, p. 37, ll. 10-12.

[66] Smith Surrebuttal, Ex. 3, p. 16, ll. 2-15.

[67] Tr. 484, ll. 6-16.

Noranda's Enterprise Model relies on the LME forward curve, available as of the date the Model was published.[68] This is the most realistic data available, as it reflects the actual price at which transactions could have been booked as of that date.[69] While future price curves will change, those changes can and will be both higher and lower than the prices reflected in the Model. Ameren Missouri is critical of Noranda's use of the LME curve, claiming instead that forecasted prices from CRU should be used. Ameren Missouri's preference for the CRU data, however, is motivated by the fact that this forecast was higher than the LME forward curve.

Ameren Missouri also criticizes Noranda for providing the CRU forecasts to Moody's when Moody's was reviewing Noranda for possible downgrade. Noranda has explained its reasons for providing Moody's with the CRU forecast, but in any event, Moody's involvement with Noranda establishes two important points. First, even though Noranda provided the CRU data -- with its higher forecast for aluminum prices -- Moody's analysis nonetheless downgraded Noranda.[70] This downgrade, while unfortunate for Noranda, demonstrates that Noranda's financial plight is genuine. Second, Moody's issued its own aluminum industry outlook.[71] Moody's Investor Service Industry Outlook relies on forecasted prices for aluminum that are even lower than those

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68 Smith Surrebuttal, Ex. 4, p. 6, ll. 4-13.

69 *Id.*

70 Smith Surrebuttal, Ex. 4, p. 7, ll. 5-16.

71 Ex. 401.

used by Noranda in the Enterprise Model.[72] This illustrates not only that Noranda's use of the LME forward curve data in the Enterprise Model is appropriate, but also that forecast data vary depending on the source.

The Enterprise Model also takes into account Noranda's future capital needs, including both "sustaining capital" and "growth capital." Sustaining capital expenditures cover long-term matters needed just to keep the business running. Growth capital is used for outlays required to meet customer demand and to avoid losing business to competitors.[73] Despite their names, both sustaining capital and growth capital are necessary to maintain the viability of Noranda's business.[74]

** ____

______________________ **.[75] ** ______________________________________

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__________________________ **.[76] While this projection of total capital needs is slightly higher than the amount scheduled to be spent in 2014 and is higher than the

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[72] Tr. 469, l. 18 – Tr. 471, l. 10.

[73] Smith Direct, Ex. 2, p. 10, l. 15 – p. 11, l. 5.

[74] Smith Surrebuttal, Ex. 4, p. 13, ll. 1-23.

[75] Smith Direct, Ex. 1, p. 10, l. 15 – p. 11, l. 5, Ex. A; Smith Surrebuttal, Ex. 4, p. 11, ll. 7-9.

[76] Tr. 481, ll. 8 – 19.

amount spent in 2013, the last few years have seen capital projects rationed due to economic conditions.[77]

Sustaining capital projects have been delayed, but many cannot be delayed much longer. Capital growth projects – such as the rod mill – have likewise been deferred due to both Noranda's financial condition and its inability to locate financing, a direct attribute of the uncertainty of Noranda's future electricity costs. Further delays in these projects create the risk of additional impairments to liquidity and the smelter's viability. Ameren Missouri and its expert Mudge have leveled criticism at what they perceive as a lack of documentation as to Noranda's plans for future capital expenditures. **______

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____**.[78] Noranda's capital needs are real and well established.

If Noranda is granted the rate relief it requests, third parties such as Apollo Management will not inordinately benefit at the cost of Ameren Missouri or its customers. Apollo acquired Noranda in a leveraged buy-out ("LBO") from Xstrata in 2007.[79] LBOs were not an uncommon method for corporate acquisitions at that time. As the name suggests, in an LBO the acquired company takes on a significant amount of debt as part of the transaction. But after using the LBO vehicle to acquire Noranda, Apollo supported Noranda throughout such catastrophic incidents as the 2009 ice storm

[77] Smith Surrebuttal, Ex. 4, p. 11, ll. 11 – p. 12, l. 20.

[78] Smith Surrebuttal, Ex. 3, Ex. B.

[79] Smith Surrebuttal, Ex. 4, p. 17, l. 15 – p. 18, l. 5.

that took out much of the smelter.[80] Noranda Chief Executive Officer Kip Smith credits Apollo with the survival of the New Madrid smelter.[81]

The concern that rate relief to Noranda will directly benefit Apollo overlooks that Apollo has reduced its stake in Noranda. Apollo – once a 100% owner of Noranda – has disposed of shares over time and now owns slightly less than 34% of the company's stock.[82] Apollo now has only four seats on Noranda's 12-member board of directors.[83] Apollo thus no longer controls Noranda.[84] Counting Mr. Smith as the fifth board member, the remaining seven seats on the Noranda board are held by "independent" directors.[85] This independence is required by the rules of the New York Stock Exchange, on which Noranda stock is traded.[86]

All twelve directors have fiduciary obligations. Because Apollo is no longer Noranda's sole owner, the interests of all shareholders must be taken into consideration. Additionally, under the terms of a refinancing, Noranda is restricted in paying dividends.[87] Moreover, CEO Smith explained his two priorities: (1) to invest in the company; and (2) to reduce Noranda's debt. Noranda currently pays a small dividend; there are no plans to change that practice or to pay any type of an additional special

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80 Smith Surrebuttal, Ex. 4, p. 18, l. 10 – p. 19, l. 16.

81 Smith Surrebuttal, Ex. 4, p. 17, l. 15 – p. 19, l. 16.

82 Tr. 326, ll. 8-11.

83 Tr. 223, ll. 13 – 19.

84 Tr. 483, ll. 6-17.

85 Tr. 223, l. 13 – Tr. 224, l. 1.

86 Tr. 472, ll. 7-22.

87 Tr. 222, ll. 17-23.

dividend.[88] If Noranda receives the rate request it seeks, the risk that Apollo or any other third party will inordinately benefit is almost non-existent, given: (1) Apollo's current lack of control over the Noranda board of directors; (2) the fiduciary obligations of all Noranda board members, including the seven independent members; (3) legal restrictions in place due to Noranda's refinancing; and (4) the chief executive officer's focus on investing in Noranda and paying down debt.

But even while Apollo has been decreasing its ownership of and control over Noranda, Ameren Missouri asks that Noranda look to Apollo as a source for additional liquidity, in terms of either additional debt or equity. Of course, Ameren Missouri would howl unearthly noises in the event Apollo regained control of Noranda and Noranda continued to battle with Ameren Missouri during every future rate increase case filed by Ameren Missouri. But Apollo is not the type of lender Noranda needs.[89] Moreover, attempting to raise additional equity at the current share price would be unduly dilutive of current shareholders.[90] In any event, borrowing more money or selling more stock is not a sustainable solution. Without a structural reduction in the cost of electricity, Noranda's issues will persist.[91]

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[88] Tr. 221, l. 16 – Tr. 226, l. 11.

[89] Tr. 483, l. 18 – Tr. 484, l. 5.

[90] Tr. 484, ll. 6-16.

[91] *Id.*

IV. Ameren Missouri's Other Ratepayers Are Better Off With Noranda Remaining a Customer at a $30/MWh Rate Than If Noranda Closed Its Smelter.

All parties that have weighed in on the issue either agree or do not dispute that if the New Madrid Smelter is forced to close, there will be a significant detriment to the economy of Southeast Missouri and to state and local tax revenues.[92] Record evidence shows that state GDP, state general revenue, and local tax revenues will each suffer a substantial adverse impact, and that a material portion of those adverse impacts will be borne by Ameren Missouri ratepayers, as they comprise 42 percent of the state's population.[93] In addition, the testimony of several union officials, three state senators, five state representatives, a United States congressman, and the directors of three well-regarded charitable organizations demonstrates the significant benefits Noranda brings to the local community as an employer, as a taxpayer, and through its charitable endeavors.[94]

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[92] *See* Statements of Position of Ameren Missouri (p. 2), OPC (p. 1), MRA (p. 1), MIEC (p. 1), CCM (p. 1), WMT (p. 1), Complainants (p. 2) and Staff opening statement at p. 79, ll. 6 - 12.

[93] Haslag Direct, Ex. 11, p. 4, l. 11 – p. 6, l. 8; Haslag Surrebuttal, Ex. 12, p. 3, ll. 1-13.

[94] *See* Ramirez Direct, Ex. 20; Tr. p. 52, l. 22 – p. 54, l. 17 (Public Hearing testimony of Stan Ivie, President, United Steel Workers 7686); Romine Direct, Ex. 21; Libla Direct, Ex. 19; Wallingford Direct, Ex. 29; Hampton Direct, Ex. 24; Keeney Direct, Ex. 26; Hodges Direct, Ex. 27; Richardson Direct, Ex. 28; Tr. p. 15, l. 8 – p. 20, l. 14 (Public Hearing testimony of State Representative John Carpenter); Congressman Smith Direct, Ex. 23; Shy Direct, Ex. 22; Fayette Direct, Ex. 25; Tr. p. 31, l. 7 – p. 34, l. 13 (Public Hearing testimony of Harvey Cooper, Executive Director of Community Sheltered Workshop).

The record evidence also overwhelmingly demonstrates the crucial point: keeping Noranda as an Ameren Missouri customer, even at the requested reduced rate, will benefit Ameren Missouri's other ratepayers. Noranda buys almost ten percent of Ameren Missouri's power. If Noranda ceases to do so, Ameren Missouri will attempt to sell that power on the electric grid at a rate even lower than the reduced rate Noranda requests. The debate among the witnesses centers primarily on what the "break even" rate is, although the various witnesses gave different labels to that rate. The break-even rate is the rate paid by Noranda that would result neither in financial benefit nor in financial harm to other ratepayers by keeping Noranda on the Ameren Missouri system.

Complainants' witness Brubaker, a highly-regarded expert in the field of utility regulation and rate-making, explained the operative rate terms to Chairman Kenney as follows. There is an "average variable cost" to produce power, which includes all costs other than fixed costs.[95] The average variable cost includes the "utility's fuel costs, its variable purchased power expense and some variable operation and maintenance expense [less its] revenues from off-system sales [divided] by the total kilowatt hours." For the power Ameren Missouri provides to Noranda, the average variable cost is **___________** and includes the type of costs included in a Fuel Adjustment Charge ("FAC").[96] At the rate Noranda requests, $30/MWh, Noranda would be contributing

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[95] Tr. 754, l. 24 – 755, l. 15.

[96] Tr. 768, l. 22 – 770, l. 2.

__________ (the requested rate less the **__________** average variable cost to serve Noranda), or **________ ** toward Ameren Missouri's fixed costs.[97]

Brubaker also explained that average variable cost is different from incremental costs, which he said is what Complainants' witness Dauphinais calculated. Brubaker stated that "incremental cost" is the same as "avoided cost": the amount Ameren Missouri effectively will pay in total to withdraw power from the grid and deliver it to Noranda. The incremental cost is typically higher than the average variable cost to produce the power.[98] Brubaker explained that FAC costs are not relevant to the incremental-cost calculation because the incremental cost is a market cost.[99] Finally, in response to a question from Commissioner Hall, Brubaker explained that the term "fully distributed embedded cost of service" refers to the "all-in cost," which includes all variable costs (like fuel) and all fixed costs (like the cost of plant). For Noranda, the all-in cost was in the range of **_______ **.[100]

Complainants' witness Dauphinais, an electrical engineer with extensive experience in energy markets and the Midcontinent Independent System Operator, Inc. ("MISO"), provided the most detailed calculations of incremental cost in his Surrebuttal

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[97] Tr. 768, l. 22 – 769, l. 6.

[98] Tr. 768, ll. 17 – 21.

[99] Tr. 769, l. 14 – 770, l. 2.

[100] Tr. 759, ll. 6 – 21. A cost-of-service base rate of $36/MWh is comparable to the $37.94/MWh current Ameren Missouri actual base rate for Noranda, which adds profit for Ameren Missouri.

testimony.[101] He determined that the change[102] in Actual Net Energy Costs ("ANEC") and other MISO charges with Noranda remaining a customer, versus Noranda shuttering its New Madrid Smelter, was between **__________** and **__________**.[103] He called that figure the "incremental cost avoided by not serving the Noranda load."[104] In other words, that amount represents the incremental cost incurred to serve the Noranda load. Thus, Dauphinais determined that under Noranda's proposed $30/MWh rate, Ameren Missouri's other ratepayers would be better off by at least **_________** ($30/MWh - **__________**) for each MWh sold to Noranda rather than selling that power to the grid, as would be the case if Noranda closes the New Madrid smelter. That is **____** more than anyone else buying that power off the grid would contribute to fixed costs if the New Madrid smelter were closed.[105]

In calculating his higher incremental-cost estimate of **_________ **, Dauphinais looked at historical energy-market prices for the three-year period ending December 31, 2013. He excluded the months of January through March 2014 because they included a once-in-twenty-years winter caused by the Polar Vortex anomaly, and the

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101 Complainants encourage the Commission to review all of Mr. Dauphinais' pre-filed Surrebuttal testimony. His analysis was the most detailed and thorough of the witnesses to address this issue. In addition, Appendix A of Dauphinais' Direct testimony, Ex. 13, details his extensive experience with the energy markets and MISO in particular.

102 Tr. 700, l. 24 – 701, l. 6.

103 Dauphinais Surrebuttal, Ex. 14, p. 2, l. 8 – p. 3, l. 12.

104 *See* Exhibit 403.

105 Tr. 765, ll. 2 – 6.

effects of anomalies are typically removed in rate cases.[106] Dauphinais used a three-year period because that has been the term used in the last five Ameren rate cases where ANEC was determined.[107] Using regression analysis, Dauphinais calculated that energy market prices would drop 1.81 percent if Noranda's massive load (almost 500 MW) were removed from the system. To be conservative (i.e. adverse to Noranda), however, he applied only a 1.5 percent reduction in energy prices if the Noranda load were lost. The lower energy price shows up not only in lost revenues from the power that would have been sold to Noranda, but also in Ameren Missouri's off-system sales revenues net of purchased-power expenses.[108]

Dauphinais followed the same methodology in calculating his lower incremental cost estimate of **__________ **, with one exception. Instead of using historical energy market prices for the three year period ending December 31, 2013, he used the three-year period ending April 30, 2014, but replaced the January-March 2014 prices with the average of the January-March 2012 and January-March 2013 prices as an alternative way to remove the Polar Vortex anomaly.[109]

In addition, Dauphinais adjusted his Direct Testimony calculation based on suggestions from the other witnesses with which he agreed. The adjustments included use of a different pricing node than used in his Direct Testimony; a 3.5 percent increase

[106] Tr. 683, ll. 4-17; Dauphinais Surrebuttal, Ex. 15, p. 10, l. 16 – p. 12, l. 8, p. 16, ll. 7-11.

[107] Dauphinais Surrebuttal, Ex. 15, p. 10, ll. 19-22.

[108] Dauphinais Surrebuttal, Ex. 15, p. 33, l. 1- p. 34, l. 21.

[109] Dauphinais Surrebuttal, Ex. 14, p. 9, ll. 3–22.

in the delivered energy price to account for Associated Electric Cooperative Inc. ("AECI") line losses; and an increased capacity price.[110] Finally, Dauphinais provided additional detail in his analysis by addressing MISO settlement charges, MISO administration charges, and MISO Schedule 26 charges (for regional transmission project costs) that would be affected by a Noranda shutdown.[111]

Staff witness Kliethermes, a lawyer with less than one year of experience as a Regulatory Economist III, also calculated the incremental-cost metric, although she referred to it as the "wholesale cost of energy for sale to Noranda." She determined that this metric was **__________**,[112] which, although higher than Dauphinais' figure, is still well below Noranda's current rate. Kliethermes' calculation differed from Dauphinais' in a two of material respects. First, Kliethermes' "most reasonable historical amount [for incremental costs]"[113] was based upon a four-year average ending March 31, 2014, rather than the three-year average used to compute ANEC in the last five Ameren Missouri rate cases. Second, she did not remove the effects on energy prices from the severe winter caused by the Polar Vortex anomaly (essentially assuming that a once-in-twenty-years event would occur every four years). Those two adjustments alone would move Kliethermes' calculated metric to **__________**, a figure that she referenced in

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[110] *Id.*; p. 4, l. 16 – p. 5, l. 23.

[111] *Id.* All of the adjustments are summarized on Exhibit 14, Sch. JRD-Surrebuttal-1.

[112] Kliethermes Surrebuttal, Ex. 203, p. 2, ll. 20-24.

[113] *Id.*

her testimony.[114] Moreover, she did not calculate the drop in energy market prices that would be expected from the removal of the largest Ameren Missouri customer from the grid. That additional adjustment would move her metric down to **__________**,[115] again materially below the $30/MWh rate requested in this case. Finally, Dauphinais made a slight adjustment to reflect an estimated change in MISO settlement charges of **________**. Kliethermes did not make this adjustment. The differences between the rates calculated by Kliethermes and Dauphinais, and between the rates calculated by Ameren Missouri witness Michels and Dauphinais, are shown on Exhibit 403:

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[114] Tr. 791, ll. 22-3; Tr. 803, ll. 2-7.

[115] *See* Exhibit 403 **____**.

Ameren Missouri
Missouri Public Service Commission Case No. EC-2014-0224

Incremental Cost Avoided by Not Serving the Noranda Load

Reconciliation of Staff and Ameren Missouri Positions to Noranda's Position

($ per MWh)

6/14/2014

Staff's Surrebuttal Position (48 months ending 3/31/2014)	$31.49
Move to 48 Months Ending 12/31/2013 (Removes Polar Vortex Anomaly)	$ (0.41)
Move to 36 Months ending 12/31/2013 (Moves to 36 Month Normalization)	$ (1.17)
Reflect Impact of Noranda Estimated 1.5% Reduction of Energy Market Prices on Energy, Transmisison Losses and Transmission Congestion	$ (0.42)
Reflect Impact of Noranda Estimated 1.5% Reduction of Energy Market Prices on Ameren Missouri OSS Revenues and Purchased Power Costs	$ (0.63)
Reflect Differences in MISO Market Settlement Charges (principally ARR Stage 2 Distribution Amounts)	$ (0.34)
Reflect Remaining Differences Between Staff and Noranda	$ (0.02)
Total	$28.49
Noranda's Surrebuttal Position (36 Months Ending 12/31/2013)	$28.49

Ameren Missouri's Historical Period Position (12 Months Ending 4/30/2014)	$ 33.99
Move to 12 Months Ending 12/31/2013 (Removes Polar Vortex Anomaly)	$ (4.50)
Move to 36 Months ending 12/31/2013 (Moves to 36 Month Normalization)	$ 0.42
Reflect Impact of Noranda Estimated 1.5% Reduction of Energy Market Prices on Energy, Transmisison Losses and Transmission Congestion	$ (0.42)
Reflect Impact of Noranda Estimated 1.5% Reduction of Energy Market Prices on Ameren Missouri OSS Revenues and Purchased Power Costs	$ (0.63)
Reflect Differences in MISO Market Settlement Charges (principally ARR Stage 2 Distribution Amounts)	$ (0.34)
Reflect Remaining Differences Between Ameren Missouri and Noranda	$ (0.02)
Total	$ 28.49
Noranda's Surrebuttal Position (36 Months Ending 12/31/2013)	$ 28.49

Notes:

Staff also presented another estimate using a 12 month period ending 4/1/2014. However, Staff has identifed its estimate for the 48 months ending 3/31/2014 as its estimate of "the most reasonable historical amount" (Kliethermes Surrebuttal at 2).

Ameren Missouri also presented estimates it prepared for various other historical periods. Many of those historical periods predate 2009.

In addition to characterizing her **_____** metric as the "wholesale cost of energy for sale to Noranda," Kliethermes referred to it, "for purposes of benchmarking," as the rate at which other customers would experience no rate impact with Noranda on the system.[116] Although her testimony was somewhat confusing on this point, she explained that as a benchmark she assumed that Noranda would still be subject to the FAC clause with no limit on future rate increases.[117] She disagreed with Dauphinais' calculation in that she believes that he took "the known cost of energy to serve Noranda's

[116] Tr. 785, ll. 7-15.

[117] Tr. 786, ll. 18-25.

load and reduc[ed] it by the profits that Ameren Missouri is able to make using ratepayer-funded assets on other sales." Her testimony in this regard appears to misunderstand Dauphinais' calculation. He in fact calculated the avoided cost with Noranda no longer on the system.[118] That cost can be compared to whatever rate the Commission sets for Noranda. That market cost "is what it is" regardless of Ameren Missouri's FAC costs and revenues. Indeed, Kliethermes admitted to Chairman Kenney that "[t]he cost to serve is what it is" "irrespective of off-system sales."[119]

The only other witness to weigh in on the calculation of an incremental or avoided cost was Ameren Missouri witness Matt Michels. Michels agreed "that comparing revenues to avoided costs is a reasonable means of illustrating the impact on Ameren Missouri's other customers if Noranda were to cease operations[.]"[120] However, he disagreed with Dauphinais' Direct Testimony calculation of incremental or avoided costs. For instance, Michels objected to Dauphinais' use of just one year of historical data; his use of the wrong pricing node; his failure to figure AECI line losses into the calculation; his failure to account for other changes in MISO charges resulting from a loss of the Noranda load; his use of a lower capacity charge; and his use of today's costs for a ten-year rate.[121]

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[118] Tr. 700, l. 24 – 701, l. 6.

[119] Tr. 792, ll. 2-19.

[120] Michels Rebuttal, Ex. 104, p. 12, ll. 7-9.

[121] *Id.*, p. 12, l. 11 – p. 26, l. 14.

As noted in Dauphinais' Surrebuttal, Dauphinais recalculated the incremental cost based upon Michels' criticisms. In particular, instead of using twelve months of historical pricing, Dauphinais used three years of historical pricing as was done in Ameren Missouri's recent rate cases. However, he excluded the pricing from three months of winter (January-March 2014) affected by the Polar Vortex, replacing them with normal January-March energy prices. That exclusion finds support in the opinion of Ameren Missouri witnesses, at least as expressed in Ameren Missouri's rate cases:

> Taking a simple three-year average does not address these market disruptions, because the averaging will only help to average out *normal* volatility that occurs in any given year. It will not address the *abnormal* impact that occurs as a result of extraordinary events like the 2005 hurricanes or the rail disruptions.
>
> and
>
> [T]hese types of events had an extraordinary impact on market conditions that cannot be expected to occur every couple years – which means taking the three-year average without further adjustments cannot be used to 'normalize' market conditions.[122]

Dauphinais also modified his calculation by using the correct pricing node (which actually lowered the incremental cost); by including AECI line losses; and by figuring smaller secondary impacts on the incremental cost due to changes in MISO charges and energy prices resulting from the loss of the Noranda load.[123] Consistent with Dauphinais' Surrebuttal, discovery obtained from Ameren Missouri indicates that some of Michels'

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122 Dauphinais Surrebuttal, Ex. 15, p. 11, l. 2 – p. 12, l. 8, citing Schukar Rebuttal in Case No. ER-2007-0002 at 4.

123 Dauphinais Surrebuttal, Ex. 15, generally with summary on p. 48, l. 18 – page 49, line 25.

criticisms of Dauphinais were unfounded because the MISO charges Dauphinais failed to consider in his Direct Testimony were either zero or were inconsequential (as in a total of $1.79 for RT Demand Response Allocation Uplift Charges over a three-year period).[124] In addition, when questioned by Chairman Kenney regarding Exhibits 33 and 34 (Ameren Missouri's responses to DRs addressing some of Michels' criticisms of Dauphinais' calculation), Michels admitted that he was not "an expert on what each of these individual charges are."[125] Indeed, these very DR responses indicated that Michels' Surrebuttal Testimony contained errors.[126] Michels' Rebuttal Testimony emphasizes that at the time of his testimony, prices for energy were higher than recent historical prices and, in fact, higher than when Complainants filed their direct testimonies.[127] For instance, he indicated that by moving the twelve-month historical term to include additional months (January through April 2014) of energy prices <u>during and immediately after</u> the Polar Vortex anomaly, and updating the capacity charge from the one used in Dauphinais' Direct Testimony, the incremental cost becomes $33.89/MWh, still well below Noranda's current rate.[128] In his rebuttal, Michels corrected one of the components used in his calculation of incremental costs, increasing that component by $.10.[129] The reconciliation document, Exhibit 403, therefore shows that Michels calculated an

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[124] *See* Exs. 33 and 34 (Ameren responses to DRs).

[125] Tr. 1027, ll. 8-19.

[126] Michels Surrebuttal, Ex. 105, p. 4-6 (no line references in document); Exs. 33 and 34.

[127] Michels Rebuttal, Ex. 104, p. 25, ll. 3 – p. 26, l. 14.

[128] *Id.*, p. 19, Table 3.

[129] Michels Surrebuttal, Ex. 105, p. 7 (answer to first question on the page).

incremental cost of **__________**. But, as explained above, it is unrealistic to include the effects of the once-in-twenty-years Polar Vortex, and particularly unrealistic to include the resulting increased prices in a twelve-month period (effectively assuming a Polar Vortex every year).

If this Commission concludes that it is appropriate to use a three-year historical period that excludes the effects of the Polar Vortex anomaly, then, as shown in Exhibit 403 (reprinted above), Michels' incremental-cost calculation yields a cost of **______________________________ **.[130] If this Commission further adjusts for the drop in energy market prices attributable to the loss of the Noranda load if the smelter closes, then Michels' incremental-cost calculation yields **______________________ ___ **.[131] Finally, if the Commission agrees that Dauphinais' last adjustment – to reflect differences in MISO market settlement charges not made by Michels – is correct, then Michels' incremental-cost calculation reconciles within $.02 of Dauphinais' calculation.[132]

In short, if the Commission uses – as it has in Ameren Missouri's last five rate cases – a three-year historical incremental cost that excludes the Polar Vortex anomaly, then the incremental, or "break even," cost calculated by all three witnesses (Dauphinais, Kliethermes, and Michels) is <u>below</u> the requested $30/MWh rate, at **_____**, when adjusted just for the three-year term excluding the anomaly period. If the Commission

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[130] Ex. 403, right column, first two corrections.

[131] Ex. 403, right column, second and third corrections.

[132] Ex. 403, right column, last correction.

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also acknowledges the laws of supply and demand, and Dauphinais' linear regression analysis of three years (26,280 hours) of data points, then the witnesses' calculations should also be adjusted for lower energy prices due to the loss of the Noranda load. That adjustment further lowers the incremental cost to **__________**. Finally, if the Commission also accepts Dauphinais' calculation of the changes in MISO market settlement charges, changes which neither Kliethermes nor Michels accounted for, it essentially will be accepting the Complainants' position in this case (within $.02) that the incremental cost is **__________**.

Unlike Kliethermes and Dauphinais, Michels also argued that forward market prices should be used.[133] Michels admitted, however, that the forward market prices were not known and measurable ("It is not only possible, it is almost certain that [the market prices] will differ" from the scenarios that he presented).[134] And in response to Michels' use of forward energy prices, Dauphinais noted that those forward prices had not recovered from the Polar Vortex anomaly at the time of Michels' testimony; that Ameren Missouri opposed use of market prices when setting its net based energy costs ("NBEC") for purposes of setting the base for its FAC; and that the Commission is free to review Noranda's rate at any time (including each Ameren Missouri rate case) if it believes that Noranda's rate is too low based upon changes in the marketplace.[135] Significantly, the approach that Dauphinais took – using three years of historical pricing and excluding the

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[133] Michels Rebuttal, Ex. 104, p. 27, ll. 3-6.

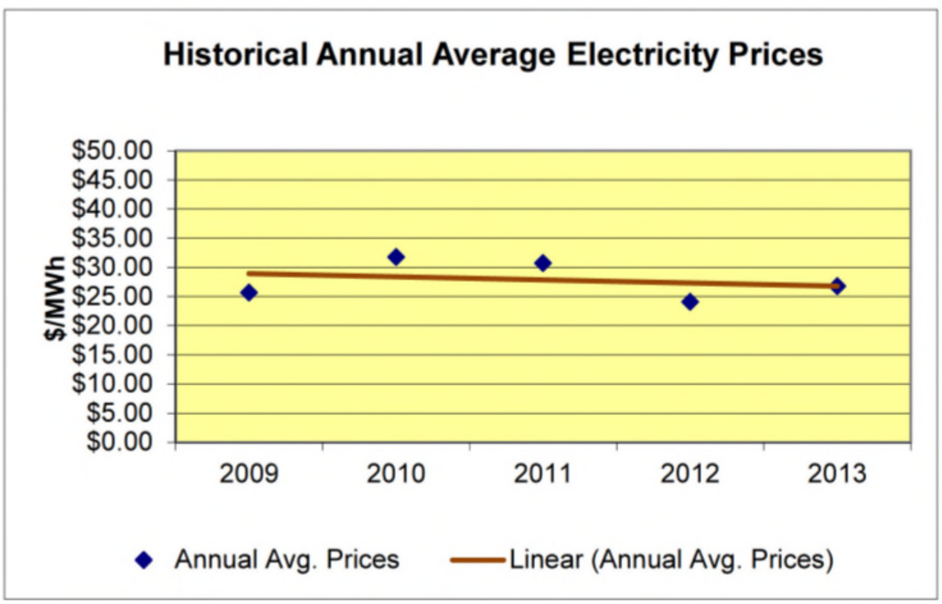
[134] *Id.*, p. 28, l. 9-10.

[135] Dauphinais Surrebuttal, Ex. 15, p. 35, l. 2 – p. 36, l. 8.

effects of anomalies – is exactly the approach taken in each of the last five Ameren Missouri rate cases.[136] Further, Ameren Missouri's own witness in Case No. ER-2007-0002 indicated "[w]e understand the reliance on forward market prices is not appropriate for the purpose of ratemaking in Missouri."[137]

Moreover, as Dauphinais made clear in his testimony, hydraulic fracking, and the low natural gas prices that it brings, has been a game changer as far as electric energy prices are concerned. Contrary to Michels' assertions, energy prices between 2009 and 2013, before the Polar Vortex, were trending lower. That fact is clearly shown by Figure JRD-2 on page 15 of the Dauphinais Surrebuttal testimony, Exhibit 15:

Figure JRD-2



In conclusion, the incremental or "break even" cost of serving Noranda is less than $30/MWh, at least for the near future. Ameren Missouri and other ratepayers will thus be

136 Dauphinais Surrebuttal, Ex. 15, p. 35, l. 21 – p. 36, l. 2.

137 *Id.*, p. 38, l. 2 – l. 5.

better off with Noranda buying power from Ameren Missouri for $30/MWh than they will be if Noranda closes its smelter and buys no power from Ameren Missouri. If a $30/MWh rate proves to be too low, the Commission is free to review Noranda's rate in any Ameren Missouri rate case.

V. <u>Noranda Agrees to Certain Commitments If Its Request Is Granted By This Commission, Which Is the Proper Forum to Consider Noranda's Request.</u>

Noranda does not make its request for rate relief in a vacuum. It realizes it is asking for a departure from the usual rate design in Commission cases. Because its request is premised in part on the distinct likelihood that the New Madrid smelter will close if rate relief is not provided, Noranda is willing to commit to ensuring the smelter stays a viable entity in Southeast Missouri if Noranda receives the requested relief. To that end, if the Commission orders the rate relief as requested, Noranda commits to maintain 888 jobs at the New Madrid facility so long as the rate is in effect. Moreover, Noranda likewise commits to capital expenditures totaling $350 million at the New Madrid smelter over the ten-year period of the rate relief, in addition to its capital expenditures elsewhere in its manufacturing business.[138]

The Commission is the appropriate forum to determine the issues presented. This case is about the cost of electricity to the largest single electrical consumer in the state. It is also about the design of rates among the various classes of electrical consumers. Moreover, as thoroughly described in Noranda's Motion for Expedited Hearing filed in this matter, Noranda requires rate relief quickly, far more quickly than could be

[138] Tr. 629, l. 17 – Tr. 630, l. 21.

anticipated from the General Assembly. This is particularly true in light of the opposition Ameren Missouri would be expected to bring to any legislative efforts to provide the relief Noranda seeks.[139]

CONCLUSION

Unless the Commission grants Noranda the rate relief it requests, Noranda's current financial distress will cause the New Madrid smelter to close, and 888 Missouri families will lose their livelihoods. Granting the requested relief will allow Noranda to continue to operate the smelter, while still contributing to Ameren Missouri's fixed costs and avoiding the rate increase that other ratepayers would experience if the smelter closed and Noranda were no longer purchasing its massive load from Ameren Missouri. This Commission should exercise its authority to grant Noranda's rate request.

Respectfully submitted,

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[139] Tr. 448, l. 23 – Tr. 450, l. 8.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 8th day of July, 2014, to all counsel of record.

/s/ Diana Vuylsteke