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 Annual Revenues for Electric Service.	)))	Case No. ER-2014-0258

REPLY BRIEF OF MISSOURI RETAILERS ASSOCIATION

I. Introduction

The Commission's principal interest is to serve and protect ratepayers.[1] The evidence in the case establishes that the long-term interest of all Ameren ratepayers is for Noranda to remain a customer of Ameren Missouri, to continue to contribute to Ameren's fixed costs of services, and to continue to represent its own interests and those of all other Ameren consumers before the Commission and the General Assembly.

II. The Commission can Grant Relief to Noranda as a Matter of Law

The Company has argued that the Commission cannot grant any relief to Noranda on the basis that any difference in rates must be based upon a difference of *service*.[2] The company argues Noranda's request for relief has nothing to do with a difference in service. They inquire into the motives and reasons why Noranda is requesting a relief,

[1] *State ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993) (citing *State ex rel. Crown Coach Co. v. Pub. Serv. Comm'n*, 179 S.W.2d 123, 126 (1944)).

[2] Initial Post-Hearing Brief of Ameren Missouri, pp. 157-158.

and suggest to this Commission that such reasons do not relate to a difference in service. That inquiry is not part of the test, as the Company quoted from the *Laundry* case.[3]

The only question is – is the difference in charge based upon difference of service? This difference and the uniqueness of Noranda has already been established and recognized by this Commission as evidenced by the Unanimous Stipulation and Agreement approved by the Commission in the original CCN case for the area that includes Noranda, as discussed in the Post-Hearing Brief of the Office of the Public Counsel. As noted in MIEC's Initial Post-Hearing Brief, "Noranda is Ameren Missouri's single largest customer representing about ten percent of Ameren Missouri's sales. Under normal operations, Noranda consistently uses about 485 MW of power with an approximate 98% load factor."[4] As detailed by Staff during the hearing, this use of a large amount of electricity and stable load factor account for the current difference in Noranda's rates versus the average residential consumer.[5] These differences allow this

[3] See *State ex rel. Laundry v. PSC*, 34 S.W.2d 37, 44 (1931). Services under different circumstances or conditions are not required to have the same charge. *Id.* ("[L]aws designed to…prevent unjust discrimination require the same charge for doing a like and contemporaneous service (e. g., supplying water) under the same or substantially similar circumstances or conditions.").

[4] Initial Post-Hearing Brief of MIEC, p. 32.

[5] Tr. 3004:16-3005:21.

Commission, as a matter of law, to grant the type of relief present in the Agreement as described herein.

Others have made a slippery slope argument – that if this Commission grants relief to Noranda, others with similar requests will not be far behind. This argument is not supported by the evidence or prior commission precedent. Currently, Noranda is in a customer class by itself – precisely because it is unique for all the reasons described above. No other customer consistently uses about 485 MW of power with an approximate 98% load factor. The evidence in this case demonstrates Noranda is the only customer of its kind. This defeats both the slippery slope arguments and the Company's argument that Noranda's request cannot be approved as a matter of law.

III. The Nonunanimous Stipulation and Agreement

As the Missouri Retailers presented to this Commission in its Initial Brief, the Nonunanimous Stipulation and Agreement ("Agreement") that was filed on March 10, 2015 was the result of numerous meetings and many hours of extensive negotiations. The signatories include the Office of the Public Counsel (OPC), the Missouri Industrial Energy Consumers (MIEC), the Consumers Council of Missouri and the Missouri Retailers Association ("Signatories"). Two other parties were also "deeply involved" in

the negotiation of the Agreement: Wal-Mart Stores East, LP, And Sam's East, Inc. and Midwest Energy Consumers Group (MECG).[6]

It has since been suggested to the Commission that the "substance" of the Agreement reveals it does not represent a "compromise position." To the contrary, the substance of the Agreement is evidence of significant compromise. The Agreement shows significant movement by Noranda from its previous proposals and original proposal in this case and (for the first time, in this case) the Agreement includes significant consumer protections.

It has also been suggested, most recently, that the Commission should be "skeptical" of MRA's support of the Agreement because of the relationship between Noranda and MRA. MRA has consistently and openly argued before this Commission that MRA works with Noranda on certain issues where an alignment of interests exists, particularly before the General Assembly. Still, the Missouri Retailers Association collectively represents customers in the SGS and LGS customer classes. As explained at the hearing, if the smelter closes, Missouri Retailers will lose sales that are multiples of Noranda's annual payroll and will be at risk for picking up the balance of Noranda's contribution to Ameren's fixed costs. MRA supports the Agreement because it is in the best interest of its members in the SGS and LGS customer classes. The Commission

[6] Tr. 2667:19-23. MECG also admitted it was involved in the negotiations of the nonunamious stipulation. Tr. 2324:16-19

should not reject the Joint Position as represented in the Agreement on the grounds that not all parties ultimately signed on the bottom line.[7]

There is no evidence in the record that the parties have not continued to pursue negotiations on a compromise position as directed by the Commission. The evidence shows extensive negotiations occurred amongst most parties and that the signatories did, in good faith, negotiate to a compromise position. The Agreement itself is the best evidence of such a compromise and the evidence in this case also supports the Joint Position contained therein.

[7] Particularly in light of the fact that this allegation is made by party who although "deeply involved" in the negotiations, has attacked the Agreement at every chance. And, as was pointed out by Commissioner Hall, while MECG originally took "no position" on Noranda's requested rate of 32.50, (Tr. 2324:3-7), it now "vehemently opposes" the rate in the Agreement of 34.00, a rate that is better for consumers. MECG's reason for the change in position was: "There was also the hope that we could do something with consumer protections in the stipulation to make us more comfortable, and that didn't happen." Tr. 2325:16-19. Yet, consumer parties, including MRA, negotiated a number of consumer protections into the Agreement: (in addition to the higher base rate and higher escalator) a prohibition on special dividends, full exposure to any "new" surcharge or adjustment mechanism, and the two liquidity thresholds.

IV. Conclusion

Finally, MRA reiterates that there would be significant harm to ratepayers in moving Noranda to wholesale service and that such harm cannot be mitigated by the General Assembly. The Missouri Retailers Association respectfully requests that the Commission approve the Joint Position reflected in the Agreement as resulting in a just and reasonable resolution of the issues therein.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by email this 10th day of April, 2015, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Stephanie S. Bell