

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

In the Matter of Union Electric Company	)	
d/b/a AmerenUE for Authority to File	)	
Tariffs Increasing Rates for Electric	)	<b><u>Case No. ER-2010-0036</u></b>
Service Provided to Customers in the	)	
Company's Missouri Service Area.	)	

**MISSOURI INDUSTRIAL ENERGY CONSUMERS' RESPONSE TO  
OFFICE OF PUBLIC COUNSEL'S MOTION TO CONFORM TARIFFS WITH  
SUSPENSION AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW Anheuser-Busch Companies, Inc., The Doe Run Resources Corporation, Enbridge Corporation, and Noranda Aluminum, Inc. ("MIEC") and for its Response to the Office of Public Counsel's ("OPC") Motion to Conform Tariffs with Suspension and Motion for Expedited Treatment, states as follows:

1. In its Report and Order dated May 28, 2010 in Case No. ER-2010-0036 ("Report and Order"), the Commission rejected tariffs proposed by Union Electric Company d/b/a AmerenUE ("AmerenUE")<sup>1</sup> to increase rates by \$402 million annually, and authorized AmerenUE to file new tariffs to increase rates by approximately \$228 million annually.

2. The MIEC filed a Writ of Review on June 6, 2010 with the Cole County Circuit Court ("Court") pursuant to § 386.510 RSMo. Additionally, MIEC requested a stay pursuant to §386.520 RSMo. The OPC intervened in this proceeding pursuant to §386.510 RSMo.

3. The Court issued its "Order Granting Stay Pursuant to Section 386.520" ("Stay Order") on December 20, 2010. Soon thereafter, the MIEC and AmerenUE entered into a Standstill Agreement and attempted to reach settlement. However, the parties did not reach

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<sup>1</sup> AmerenUE is now doing business as Ameren Missouri rather than AmerenUE. The relevant Commission and Court orders refer to AmerenUE, so the MIEC will refer to AmerenUE in this pleading.

settlement and on February 15, 2011, MIEC posted the suspending bonds ordered by the Court. File-stamped copies of these bonds are included as an attachment to this pleading (“Exhibit A”).

4. The MIEC agrees with OPC that the simple principles guiding the Stay Order are as follows: (1) the Commission’s Report and Order is suspended by the MIEC’s posting of the suspending bonds; (2) this suspension applies not only to MIEC, but to all of AmerenUE’s customers; and (3) as a result of this suspension, AmerenUE cannot lawfully collect the rate increase from any of its customers. The Report and Order has been suspended by MIEC’s posting of the suspension bonds. *See* Exhibit A. These bonds were filed on February 15, 2011 after the expiration of the Standstill Agreement between MIEC and AmerenUE. Pursuant to §386.520.1 RSMo, the Stay Order became effective upon MIEC’s posting of the suspension bonds. Missouri case law supports the principle that §386.520.1 applies equally to stays in cases involving rate increases and decreases, and that the Stay Order is effective at the time that suspension bonds are posted. *See State Ex. Rel. Midwest Gas Users Ass’n*, 996 S.W.2d 608, 612-613 (Mo. Ct. App. 1999); *see also State Ex. Rel. AG Processing, Inc.*, 276 S.W.3d 303, 312-313 (Mo. Ct. App. 2008). Consequently, the Stay Order is now in effect and tariffs must be stayed at the level ordered by the Court.

5. The MIEC agrees with OPC that the Commission is legally required to conform Ameren’s tariffs to the Stay Order and has no discretion regarding whether to implement the suspension. The MIEC’s timely filing of suspension bonds pursuant to 386.520.1 RSMo has triggered the Stay Order. This Stay Order was entered by a Missouri court of lawful jurisdiction. The tariffs approved in Case No. ER-2010-0036 are now obsolete, and the Commission has the legal duty to change those tariffs to conform to the Stay Order.

6. The MIEC agrees with OPC that neither the Stay Order nor § 386.520 limit the application of the stay to the MIEC. *See* Stay Order, p. 19. The Stay Order explicitly provides that the stay applies to all of AmerenUE's customers. *See* Stay Order at 27, 37.

7. The Stay Order requires that AmerenUE's rates be suspended to the level of AmerenUE's last lawful rate, which is the rate in effect in 2007. The Stay Order provides that pursuant to the Court's decision and the separate stay order entered by the Pemiscot County Circuit Court in Case No. 09PE-CV00070-01, "AmerenUE's most recent rates that have not been stayed or suspended by this or any other court are the 2007 rates." Stay Order, p. 48. The difference between the rate increase authorized by the Report and Order and the former rate to which tariffs are to be stayed (based on 2007 rates) is roughly \$390 million per year in base rates, plus the additional amount by which AmerenUE's rates have been increased pursuant to AmerenUE's Fuel Adjustment Clause (FAC)<sup>2</sup>. This equates to a difference of almost \$1.5 million per day between the now-unlawful rates AmerenUE is currently collecting and AmerenUE's last lawful rate.

8. One week is sufficient time for the Commission to consider OPC's Motion. AmerenUE is familiar with the Stay Order and the ministerial nature of the actions required by the Stay Order should not require extensive debate on the part of the Commission. AmerenUE's customers are irreparably harmed by the continued collection of these amounts. Consequently, MIEC believes that the public interest requires expedited consideration of OPC's Motion.

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<sup>2</sup> The FAC amount is variable but is currently estimated to be \$140 million annually.

### **CONCLUSION**

For all of the foregoing reasons, this Court should grant OPC's Motion to Conform Tariffs with Suspension and Motion for Expedited Treatment.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Diana Vuylsteke

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St. Louis, Missouri 63102  
Telephone: (314) 259-2543  
Facsimile: (314) 259-2020  
E-mail: [dmvuylsteke@bryancave.com](mailto:dmvuylsteke@bryancave.com)

Attorney for The Missouri Industrial  
Energy Consumers

### **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 16<sup>th</sup> day of February, 2011, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

STATE ex rel., MISSOURI INDUSTRIAL  
ENERGY CONSUMERS, et al.,

Relators,

vs.

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI,

Respondent.

Case No. 10AC-CC00474

FILED

FEB 15 2011

RECEIVED JAN 14 2011  
BRAND A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

**SUSPENDING BOND**

KNOW ALL MEN BY THESE PRESENTS: That, organized and existing under the laws of the State of Delaware, and authorized to do business in Missouri, Anheuser Busch Companies, Inc. is held and firmly bound unto the State of Missouri to pay \$46,000 as damages due to any harm that may be caused by this Court's stay of application of the Reports and Orders of the Missouri Public Service Commission in Case No. ER-2008-0318, dated January 27, 2009, and Case No. ER-2010-0036, dated May 28, 2010.

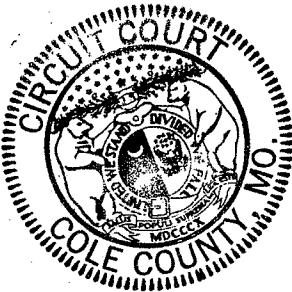
Dated this 6<sup>th</sup> day of January 2011.

Anheuser Busch Companies, Inc.

By: Steven Spinner

Steven Spinner

Director, Energy and Utilities Procurement



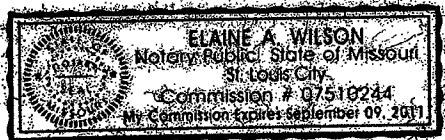
STATE OF MISSOURI     )  
                                      )  
CITY OF ST. LOUIS     )     ss.

On this 10<sup>th</sup> day of January 2011, before me appeared Steven Spinner, to me personally known, who being by me duly sworn, did say that he is Director, Energy and Utilities Procurement for Anheuser Busch Companies, Inc. and that said instrument was signed in behalf of said corporation, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.

Elaine A. Wilson  
Notary Public

My term expires:



IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

**FILED**  
FEB 15 2011  
BRENDA A. UMSTATTD  
CLERK, CIRCUIT COURT  
COLE COUNTY, MISSOURI

STATE ex rel., MISSOURI INDUSTRIAL  
ENERGY CONSUMERS, et al.,

Relators,

vs.

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI,

Respondent.

Case No. 10AC-CC00474

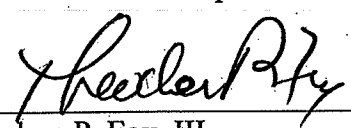
**SUSPENDING BOND**

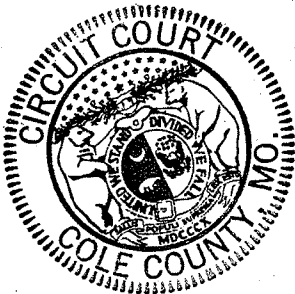
KNOW ALL MEN BY THESE PRESENTS: That, organized and existing under the laws of the State of New York, and authorized to do business in Missouri, The Doe Run Resources Corporation is held and firmly bound unto the State of Missouri to pay up to \$89,000 as damages due to any harm that may be caused by this Court's stay of application of the Reports and Orders of the Missouri Public Service Commission in Case No. ER-2008-0318, dated January 27, 2009, and Case No. ER-2010-0036, dated May 28, 2010.

Dated this 12<sup>th</sup> day of January 2011.

The Doe Run Resources Corporation

By: \_\_\_\_\_

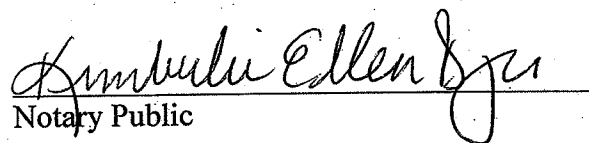
  
Theodore P. Fox, III  
Vice President-Finance and  
Chief Financial Officer



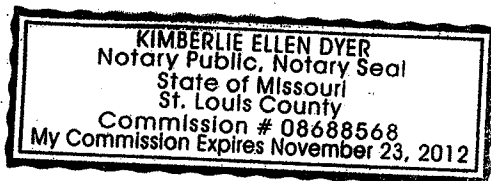
STATE OF MISSOURI     )  
                                      )  
COUNTY OF ST. LOUIS    )     ss.

On this 12<sup>th</sup> day of January 2011, before me appeared Theodore P. Fox, III, to me personally known, who being by me duly sworn, did say that he is Vice President-Finance and Chief Financial Officer of The Doe Run Resources Corporation and that said instrument was signed in behalf of said corporation, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.

  
Notary Public

My term expires:





IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

**FILED**  
FEB 15 2011  
BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

STATE ex rel., MISSOURI INDUSTRIAL  
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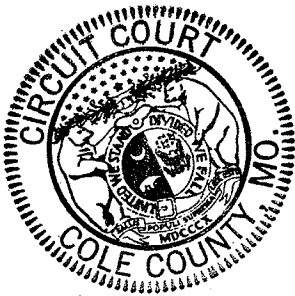
**SUSPENDING BOND**

KNOW ALL MEN BY THESE PRESENTS: That, organized and existing under the laws of the State of Delaware, and authorized to do business in Missouri, Enbridge Pipelines (Ozark) L.L.C. is held and firmly bound unto the State of Missouri to pay \$5,000 as damages due to any harm that may be caused by the stay of application of the Reports and Orders of the Missouri Public Service Commission in Case No. ER-2008-0318, dated January 27, 2009, and Case No. ER-2010-0036, dated May 28, 2010.

Dated this 12<sup>th</sup> day of ~~February~~ January 2011.

Enbridge Pipelines (Ozark) L.L.C.

By: Stephen Neyland *JNeyland*  
Steve Neyland  
Assistant Treasurer



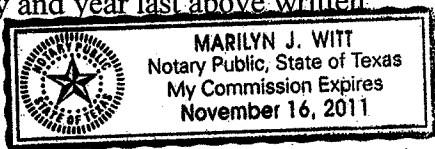
STATE OF TEXAS )

COUNTY OF HARRIS )

ss.

On this 12<sup>th</sup> day of ~~February~~ <sup>January</sup> 2011, before me appeared Steve Neyland to me personally known, who being by me duly sworn, did say that he is Assistant Treasurer, and that said instrument was signed in behalf of said corporation, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.



Marilyn J. Witt  
Notary Public

My term expires: 11-16-2011

**FILED**

**FEB 15 2011**

BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

STATE ex rel., MISSOURI INDUSTRIAL  
ENERGY CONSUMERS, et al.,

Relators,

vs.

PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI,

Respondent.

Case No. 10AC-CC00474

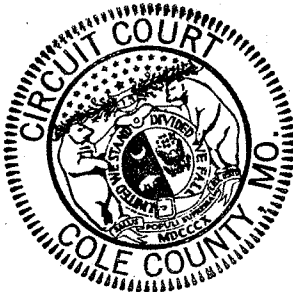
**SUSPENDING BOND**

KNOW ALL MEN BY THESE PRESENTS: That, organized and existing under the laws of the State of Delaware, and authorized to do business in Missouri, Noranda Aluminum, Inc. is held and firmly bound unto the State of Missouri to pay \$292,000 as damages due to any harm that may be caused by this Court's stay of application of the Reports and Orders of the Missouri Public Service Commission in Case No. ER-2008-0318, dated January 27, 2009, and Case No. ER-2010-0036, dated May 28, 2010.

Dated this 14th day of February, 2011.

Noranda Aluminum, Inc.

By: Mark J Walker  
Mark Walker  
Treasurer



STATE OF TENNESSEE )  
 )  
COUNTY OF Davidson )

ss.

On this 11<sup>th</sup> day of February, 2011, before me appeared Mark Walker to me personally known, who being by me duly sworn, did say that he is Treasurer of Noranda Aluminum, Inc., and that said instrument was signed in behalf of said corporation, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.

Melissa G. Laxson  
Notary Public

My term expires: November 7, 2012

