



Diana M. Vuylsteke
Direct: 314-259-2543
Fax: 314-259-2020
dmvuylsteke@bryancave.com

February 6, 2010

David L. Woodsmall
Finnegan, Conrad & Peterson L.C.
1209 Penntower Office Center
3100 Broadway
Kansas City, MO 64111

Re: MIEC's Objections to First Set of Data Requests to BAI

Dear David:

This document provides the Missouri Industrial Energy Consumers' ("MIEC") Objections to the Midwest Energy Users' Association's ("MEUA") First Data Requests to Maurice Brubaker, President of Brubaker & Associates, Inc. ("BAI"), dated January 29, 2010. BAI is the MIEC's retained expert witness in case number ER-2010-0036.

GENERAL OBJECTIONS

1. MIEC objects to each data request to the extent that the request improperly seeks expert testimony or comment upon expert testimony in violation of the Missouri Rules of Civil Procedure. According to Missouri Rule of Civil Procedure 56.01(b)(4), MEUA may only obtain information through: (1) interrogatories (for the sake of identification of an expert) and (2) a deposition. It is improper procedure for MEUA to attempt to require MIEC or Mr. Brubaker of BAI to respond to these data requests as such requests are directly contrary to the Missouri Rules of Civil Procedure.

2. MIEC objects to each data request to the extent that the response sought is overly broad, unduly burdensome, oppressive, and compliance with the request would be cost-prohibitive, impracticable, and/or impossible.

3. MIEC objects to each data request to the extent that the request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence in case number ER-2010-0036.

4. MIEC objects to each data request to the extent that the request seeks information and documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other privilege or doctrine. Nothing

Bryan Cave LLP
One Metropolitan Square
211 North Broadway
Suite 3600
St. Louis, MO 63102-2750
Tel (314) 259-2000
Fax (314) 259-2020
www.bryancave.com

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contained in these Objections is intended as a waiver of any applicable privilege or doctrine.

5. MIEC objects to each data request to the extent the request seeks information that is a trade secret, commercially-sensitive, or confidential financial information, the release of which may be injurious to MIEC or BAI.

6. MIEC objects to each request to the extent the request is vague, ambiguous, confusing, or fails to describe the information sought with sufficient clarity or specificity to enable MIEC or BAI to provide responsive answers.

7. MIEC objects to each request to the extent that the request calls for information or documents already in the MEUA's possession or which is readily obtainable from another source that is equally available to MEUA.

8. MIEC objects to each request to the extent that the numerous requests are not truly designed for legitimate discovery but are rather intended for an improper, ulterior purpose. Accordingly, MIEC objects to each data request to the extent that the request causes the MIEC or BAI undue harassment.

9. These General Objections are applicable to, and incorporated in, each of MIEC's Objections below as if specifically set forth therein. The failure to repeat, renew or reassert any of the General Objections or the assertion of other objections in no way implies a failure to assert each and every General Objection in any way.

SPECIFIC OBJECTIONS

MEUA-1.1:

On page 4, Brubaker references the "unique circumstances faced by aluminum smelters" to justify moving the LT class (Noranda) to cost of service while only making a "modest realignment" as it applies to other classes.

- (a) Please discuss the "unique circumstances," as understood by Mr. Brubaker, faced by aluminum smelters?
- (b) Has Mr. Brubaker attempted to independently verify any of the "unique circumstances" faced by aluminum smelters?
- (c) When did Mr. Brubaker first become aware of these "unique circumstances"?
- (d) Was Mr. Brubaker aware of these "unique circumstances" when he filed class cost of service testimony in either Case No. ER-2007-02 or ER-2008-0291?
- (e) Has Mr. Brubaker surveyed the customers in the Large General Service, the Small Primary or the Large Primary classes to determine if they face similar "unique circumstances"?

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- (f) What “unique circumstances” would a large retail customer (i.e. Wal-Mart, Lowe’s etc.) in the Large General Service class have to show so that Mr. Brubaker would support a full movement to cost of service?
- (g) Has Mr. Brubaker considered whether his decision to move the LTS class to cost of service while other non-residential classes remain above their cost of service may exacerbate the “unique circumstances” faced by other non-residential customers?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the request is speculative. Moreover, MIEC objects on the grounds that the request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence in this action. Without waiving any objections, a response will be provided to MEUA-1.1.

MEUA-1.2:

- (a) Please provide a full accounting of the compensation Brubaker and Associates has received, to date, for its participation in this proceeding.
- (b) Please provide a break-down of this compensation by particular activity. For instance, break-down by revenue requirement versus class cost of service activities.
- (c) Please provide an estimate for all remaining costs associated with Brubaker and Associates’ participation in this proceeding.
- (d) Please provide a full accounting of the compensation Brubaker and Associate[s] has received, to date, from Noranda associated with its participation in this proceeding.
- (e) Please provide a break-down of this compensation received from Noranda, to date, by particular activity. For instance, break-down by revenue requirement versus class cost of service.
- (f) Please provide any contract or other documents detailing the arrangement for billing of legal or professional services to the individual members of MIEC. Please provide a discussion of how this billing arrangement has changed with the addition of Noranda to MIEC.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects to the extent the request seeks information that is commercially-sensitive or confidential financial information, the release of which would be injurious to MIEC and BAI. Moreover, MIEC objects on the grounds that the request is overly broad and burdensome. Further objecting, MIEC objects that, to the extent that these materials exist, the materials are privileged pursuant to the attorney work-product doctrine, the attorney-client privilege, and the

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common interest privilege. Finally, MIEC objects on the grounds that the request is not truly designed for legitimate discovery but is rather intended for an improper, ulterior purpose.

MEUA-1.3:

At pages 4-5, Mr. Brubaker states that “For most regulators, cost-based rates are an expressed goal.” Does Mr. Brubaker believe in cost-based rates?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the term “believe” is overly broad and vague and is not adequately tailored to produce useful information. Without waiving any objections, a response will be provided to MEUA-1.3.

MEUA-1.4:

Please provide citations to every case in which Mr. Brubaker has recommended that a specific class be provided a cost-based rate based upon “unique circumstances.” Please provide a description of those “unique circumstances.” Please provide a copy of all relevant testimony from those cases.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the request is overly broad, unduly burdensome, and compliance with the request would be cost-prohibitive and impracticable, especially since Mr. Brubaker has served as a witness in cases for forty years. Furthermore, MIEC objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. MIEC also objects that the request is duplicative with MEUA-1.1. Finally, MIEC objects inasmuch as the likely burden of this discovery outweighs the likely benefit to MEUA.

MEUA-1.5:

Please provide citations to every case in which Mr. Brubaker has seen a public utility commission grant special class cost of service consideration to a particular class based upon “unique circumstances.”

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil

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Procedure. MIEC also objects to the extent that MEUA is improperly requesting information from an expert witness pursuant to the Missouri Rules of Civil Procedure. Moreover, MIEC objects that the request is overly broad, unduly burdensome, and compliance with the request would be cost-prohibitive and impracticable, especially since Mr. Brubaker has served as a witness in cases for forty years. Furthermore, MIEC objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. MIEC also objects that the request is duplicative with MEUA-1.1. Finally, MIEC objects inasmuch as the likely burden of this discovery outweighs the likely benefit to MEUA.

MEUA-1.6:

At page 32, Mr. Brubaker refers to the role that electric rates play in economic development, specifically job creation and job retention. Please provide all studies which support the linkage between electric rates and job creation/retention.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the request is overly broad, unduly burdensome, and compliance with the request would be cost-prohibitive and impracticable. MIEC further objects that the request is not reasonably calculated to lead to the discovery of admissible evidence. Finally, MIEC objects inasmuch as the likely burden of this discovery outweighs the likely benefit to MEUA.

MEUA-1.7:

At page 32, Mr. Brubaker refers to the role that electric rates play in economic development, specifically job creation and job retention. Despite the many similarities between his testimony in this case and the testimony that he filed in Case Nos. ER-2007-0002 and ER-2008-0318, that same statement did not appear in his testimony in either of those cases. When did Mr. Brubaker become aware of the role that electric rates play in economic development? Please provide all information that Mr. Brubaker used to reach this conclusion.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. MIEC further objects that, to the extent that these materials exist, some of the materials are privileged pursuant to the attorney work-product doctrine, the attorney-client privilege, and the common interest doctrine. Without waiving any objections, a response will be provided to MEUA-1.7.

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MEUA-1.8:

At page 32, Mr. Brubaker refers to the role that electric rates play in job creation or retention. Mr. Brubaker claims that this is particularly true for “industries where electricity is one of the largest components of the cost of production.” Please provide a copy of all studies or analyses prepared by Mr. Brubaker or relied upon by Mr. Brubaker in determining that cost of electricity plays a heightened rate on job creation or retention depending on the amount of electricity used by a particular customer.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. MIEC further objects that, to the extent that these materials exist, some of the materials are privileged pursuant to the attorney work-product doctrine, the attorney-client privilege, and the common interest doctrine. Without waiving any objections, a response will be provided to MEUA-1.8.

MEUA-1.9:

In the following article (<http://www.tms.org/pubs/journals/JOM/0202/Binczewski-0202.html>) reference is made to the notion that representatives in this area did not want another aluminum smelter because it did not generate the same number of jobs per consumer kilowatt as other alternatives. Does Mr. Brubaker have any opinion regarding the legitimacy of the notion that aluminum smelters provide less economic development (job creation) per kilowatt hour than any other commercial and industrial operations?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, MIEC objects on the grounds that the request is not truly designed for legitimate discovery but is rather intended for an improper, ulterior purpose. Without waiving any objections, a response will be provided to MEUA-1.9.

MEUA-1.10:

Under what circumstances would Mr. Brubaker believe that a particular customer or class should receive an electric rate that is below cost?

Objection:

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In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Moreover, MIEC objects on the grounds that the request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence in this action. Without waiving any objections, a response will be provided to MEUA-1.10.

MEUA-1.11:

In his revised testimony, Mr. Brubaker asserts that a cost based revenue requirement for the LTS class would require a shift of costs of \$21.6 million (cost of service of \$117,556,000). In its direct testimony, Noranda claims that it needs a rate of \$27.00/MWH. How much of a reduction below Mr. Brubaker's cost of service would be necessary in order for Noranda to have a rate that equates to \$27.00/MWH?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects on the grounds that the request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence in this action. MIEC further objects that the request is speculative. Without waiving any objections, a response will be provided to MEUA-1.11.

MEUA-1.12:

Does Mr. Brubaker believe that Noranda's recommendation for a below-cost rate is reasonable?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the term "reasonable" is overly broad and vague and is not adequately tailored to produce useful information. Without waiving any objections, a response will be provided to MEUA-1.12.

MEUA-1.13:

Please provide citations to every case in which Mr. Brubaker has recommended or agreed to a below-cost rate for a particular customer or class. Please provide copies of Mr. Brubaker's testimony in which he has either recommended or agreed to a below-cost rate for a particular customer or class.

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Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the request is overly broad, unduly burdensome, and compliance with the request would be cost-prohibitive and impracticable, especially since Mr. Brubaker has served as a witness in cases for forty years. Furthermore, MIEC objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. Finally, MIEC objects inasmuch as the likely burden of this discovery outweighs the likely benefit to MEUA.

MEUA-1.14:

In case No. ER-2008-0318, Mr. Brubaker ran two analyses that found that the LGS/SP customer class was paying either \$83.0 million or \$69.0 million over cost. In that case, Mr. Brubaker's "recommendation moved classes roughly 25% of the way toward cost of service." In this case, Mr. Brubaker's original analysis showed that the LGS/SP customer class was paying rates that had ballooned to over \$136 million over costs. Despite the fact that the amount over cost has grown by approximately 64%, Mr. Brubaker only recommended a move of "20% of the way towards cost of service." Please describe in detail the criteria Mr. Brubaker uses in recommending a movement of 25% versus 20%. What circumstances would have to be present for Mr. Brubaker to recommend a movement of more than 25% towards cost of service?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. Further objecting, MIEC objects that the request is speculative. Without waiving any objections, a response will be provided to MEUA-1.14.

MEUA-1.15:

In his testimony, Mr. Brubaker claims that a cost-based rate would further the goal of equity. In his opinion, does Mr. Brubaker believe that a below-cost rate would further the goal of equity? If so, please state how a below-cost rate would further the goal of equity.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.15.

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MEUA-1.16:

In his testimony, Mr. Brubaker claims that a cost-based rate would further the goal of conservation. In his opinion, does Mr. Brubaker believe that a below-cost rate would further the goal of conservation? If so, please state how a below-cost rate would further the goal of conservation.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.16.

MEUA-1.17:

In his testimony, Mr. Brubaker claims that a cost-based rate would further the goal of development of DSM programs. In his opinion, does Mr. Brubaker believe that a below-cost rate would further the goal of development of DSM programs? If so, please state how a below-cost rate would further the goal of DSM programs.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.17.

MEUA-1.18:

In his testimony, Mr. Brubaker claims that a cost-based rate would further the goal of cost minimization. In his opinion, does Mr. Brubaker believe that a below-cost rate would further the goal of cost minimization? If so, please state how a below-cost rate would further the goal of cost minimization.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.18.

MEUA-1.19:

On what date did Mr. Brubaker become aware of the misallocation of income taxes that necessitated the preparation of revised schedules?

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Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the phrase “misallocation of income taxes” is overly broad and is not adequately tailored to produce useful information. Without waiving any objections, a response will be provided to MEUA-1.19.

MEUA-1.20:

On what date did AmerenUE notify Mr. Brubaker of the misallocation of income taxes in his class cost of service study?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the phrase “misallocation of income taxes” is overly broad and is not adequately tailored to produce useful information. Without waiving any objections, a response will be provided to MEUA-1.20.

MEUA-1.21:

On what date did Mr. Brubaker notify Noranda of the misallocation of income taxes in his class cost of service study?

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the phrase “misallocation of income taxes” is overly broad and is not adequately tailored to produce useful information. MIEC further objects that, to the extent appropriate, some of Mr. Brubaker’s conversations with Noranda are privileged pursuant to the attorney work-product doctrine, the attorney-client privilege, and the common interest doctrine. Finally, MIEC objects on the grounds that the request is not truly designed for legitimate discovery but is rather intended for an improper, ulterior purpose. Without waiving any objections, a response will be provided to MEUA-1.21.

MEUA-1.22:

Please describe in detail Noranda’s reaction upon being notified that Mr. Brubaker’s class cost of service study included a misallocation of income taxes.

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Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. MIEC also objects that the phrase “misallocation of income taxes” is overly broad and is not adequately tailored to produce useful information. MIEC further objects that, to the extent appropriate, some of Mr. Brubaker’s conversations with Noranda are privileged pursuant to the attorney work-product doctrine, the attorney-client privilege, and the common interest doctrine. MIEC also objects that this request seeks information that is neither relevant, material nor reasonably calculated to lead to the discovery of admissible evidence. Finally, MIEC objects on the grounds that the request is not truly designed for legitimate discovery but is rather intended for an improper, ulterior purpose.

MEUA-1.23:

What is Mr. Gorman’s opinion regarding the change in AmerenUE’s business risk profile associated with the simultaneous transfer of the Metro East load and the replacement with the Noranda load (single customer representing approximately 6.5% of AmerenUE’s revenues)?

Objection:

In In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.23.

MEUA-1.24:

Please quantify the change in Mr. Gorman’s recommended return on equity associated with the change in AmerenUE’s business risk profile resulting from the simultaneous transfer of the Metro East load and the replacement with the Noranda load.

Objection:

In addition to the General Objections, MIEC objects to the extent that MEUA is improperly requesting information concerning expert witness opinions in violation of the Missouri Rules of Civil Procedure. Without waiving any objections, a response will be provided to MEUA-1.24.

The MIEC reserves the right to revise, correct, add to, or clarify any of the Objections set forth above.

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Sincerely,

Diana M. Vuylsteke
Attorney for the MIEC