

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

In the matter of Union Electric Company,)	
d/b/a AmerenUE's Tariffs to Increase Its)	Case No. ER-2010-0036
Annual Revenues for Electric Service)	

**MOTION TO COMPEL AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW the Midwest Energy Users' Association ("MEUA"), pursuant to 4 CSR 240-2.090 of the Missouri Public Service Commission's Rules of Practice and Procedure, and for its Motion to Compel responses to Data Requests and Motion for Expedited Treatment respectfully states as follows:

1. PARTIES

1. Midwest Energy Users' Association is an unincorporated group of large commercial customers. Each of the members of MEUA takes electric service from AmerenUE under the Large General Service / Small Primary Service tariff. MEUA was granted intervention by the Commission in an order dated August 28, 2009.

2. Missouri Industrial Energy Consumers ("MIEC") is a group of large industrial consumers of AmerenUE. In an Application dated August 10, 2009, MIEC sought intervention on behalf of itself as an association and separately on behalf of its individual entities.¹ Among the individual entities named in that Application are: Anheuser-Busch Companies, Inc.; BioKyowa, Inc.; The Boeing Company; Doe Run; Enbridge; General Motors Corporation; GKN Aerospace; Hussman Corporation; JW Aluminum; MEMC Electronic Materials; Monsanto; Pfizer; Precoat Metals; Proctor &

¹ *Application to Intervene of Missouri Industrial Energy Consumers*, dated August 10, 2009, at page 1.

Gamble Company; Nestle Purina PetCare; Noranda Aluminum; Saint Gobain; Solutia; and U.S. Silica. On August 26, 2009, the Commission issued its *Order Granting the Application to Intervene of Missouri Industrial Energy Consumers*. In that Order, the Commission ordered that “The Application to Intervene of the Missouri Industrial Energy Consumers, as individual entities and as an association, is granted.”² Thus, pursuant to 4 CSR 240-2.010(11), the Missouri Industrial Energy Consumers and each of its individual members are parties to the above captioned proceeding.

II. BACKGROUND

3. Given their status as parties to this case, MIEC filed direct testimony on December 18, 2009 and January 6, 2010. In addition, recognizing its party status as an individual member of MIEC, Noranda Aluminum filed separate rate design testimony on January 6, 2010.

4. In the direct testimony of Maurice Brubaker, filed on behalf of MIEC on January 6, 2010, Mr. Brubaker conducts a class cost of service study. That study indicated that all non-residential rate classes were currently paying rates that were over their class cost of service. Mr. Brubaker then recommends that each customer class be moved 20% towards its class cost of service.³ In a subsequent, unprecedented step, however, Mr. Brubaker’s testimony then indicates that the Large Transmission class (i.e., Noranda Aluminum) should be moved completely to its cost of service. This movement is done by spreading the LTS adjustment to all other classes on an equal percentage, across the board, basis.

² *Order Granting Application to Intervene of Missouri Industrial Energy Consumers*, issued August 26, 2009, at page 2 (emphasis added). See, Attachment 1.

³ Brubaker Revised Direct, at page 36.

Customer Class	Current Revenues	Class Cost of Service	Step 1: 20% to Cost of Service	Step 2: LTS to Cost of Service	Adjusted Current Revenues	Revenue Neutral Change
Residential	\$977.1M	\$1,107.8M	+\$25.9M	+\$8.2M	\$1,011.2M	+\$34.1M (+3.49%)
Small GS	\$251.6M	\$240.9M	(\$2.1M)	+\$2.1M	\$251.6M	\$0 (0.00%)
Large GS / Small Primary	\$664.9M	\$580.3M	(\$16.9M)	+\$5.6M	\$653.6M	(\$11.4M) (-1.71%)
Large Primary	\$172.8M	\$160.1M	(\$2.5M)	+\$1.4M	\$171.7M	(\$1.1M) (-0.64%)
Large Transmission (Noranda)	\$139.2M	\$117.6M	(\$4.3M)	(\$17.3M)	\$117.6M	(\$21.6M) (-15.52%)

Source: Brubaker Revised Direct, Schedules MEB-COS-5 and 6.

Thus, MIEC's testimony recommends that all other rate classes take a larger rate increase than is otherwise justified in order to move Noranda to its cost of service. The result of this unprecedented request is to reduce Noranda's current rates by 15.52%.

5. Interestingly, the recommendation to move Noranda to its cost of service is not made by Mr. Brubaker, the expert witness. Rather, this unique recommendation comes from MIEC, the association. "Because of the unique circumstances faced by aluminum smelters, MIEC supports moving the Large Transmission class to its cost of service at this time."⁴

6. Brubaker's testimony does not end, however, with a recommendation that Noranda be granted a cost based rate. Rather, Mr. Brubaker also provides an analysis that would give Noranda a rate that is below its cost of service. Specifically, Mr. Brubaker suggests, despite his class cost of service recommendation of \$117.6M, that the Commission establish a revenue level for Noranda of \$111M.⁵ Thus, Mr. Brubaker

⁴ Brubaker Revised Direct, at page 37 (emphasis added).

⁵ See, Brubaker Revised Direct at page 38-39 ("This approach allows the Commission to establish an appropriate revenue level for Rate LTS by taking into account all of the evidence that is available to it, and

suggests that Noranda be granted a rate that is 5.61% below Brubaker's cost of service; and 20.2% below current rates. Furthermore, under this proposal, Noranda would then not be subject to the overall system increase arising out of this case. Therefore, if the Commission grants a \$200 million rate increase (8.9%), Noranda would be given a 20.2% decrease while residential customers would experience a 13.8% increase. Still further, while Mr. Brubaker acknowledges that Large General Service / Small Primary rates should be reduced by \$84.6 million, these customers would experience a 7.5% increase under this proposal.

7. As one can see, then, MIEC's testimony and recommendations would give Noranda a significant rate reduction. Given the unprecedented nature of MIEC recommendations, several questions immediately arise. Why would this association representing large industrial customers choose to grant favorable treatment to one single entity? Is the recommendation to give special rate treatment to Noranda solely that of the association or do all the individual entities, all parties to this proceeding, accede in this recommendation? Why are the individual members of MIEC hesitant to publicly state that they are willing to give Noranda a below cost rate? And, most importantly, what, if any, consideration was given by Noranda to MIEC, or the individual entities, in order to convince MIEC to make this rate concession?

without regard to the results of a particular cost of service study.") (emphasis added). See also, MEB-COS-9.

III. SPECIFIC DATA REQUESTS

8. Given these obvious questions, MEUA submitted, on January 27, 2009, a series of 11 data requests to each of 18 individual MIEC members:⁶

MEUA-1.1: Does [Company name] believe that electric rates should be based on cost?⁷

MEUA-1.2: Under what circumstances would [Company name] agree that a below cost rate is appropriate for a particular class or customer?

MEUA-1.3: Please identify the individual at [Company name] that is most knowledgeable to testify on [Company name's] position on class cost of service / rate.

MEUA-1.4: Please identify all cases (jurisdiction and case number) in which [Company name] has advocated for a below cost rate for a particular class or customer.

MEUA-1.5: Please provide all documents, emails, or notes within [Company name's] control or possession which discuss the arrangement reached between MIEC and Noranda regarding Noranda's inclusion in MIEC.

MEUA-1.6: What is [Company name's] position regarding the appropriate rate for the AmerenUE LTS class?

MEUA-1.7: Please identify the individual at [Company name] that is most knowledgeable regarding any arrangements made between MIEC and Noranda regarding the inclusion of Noranda within MIEC.

MEUA-1.8: Please identify all jurisdictions in which [Company name] receives electric service. Please identify the service provider in each jurisdiction from which [Company name] takes service.

MEUA-1.9: Please identify the rate schedule under which [Company name] takes electric service from AmerenUE.

MEUA-1.10: Has [Company name], as an individual entity or as a part of a group, ever filed testimony or taken a position regarding the appropriate electric rate for an aluminum smelter? If yes, please identify every jurisdiction and case number in which it has taken such a position?

⁶ These Data Requests were not submitted to Noranda Aluminum. Rather, separate Data Requests were issued to Noranda and to Mr. Brubaker. The Data Requests to Noranda will be the subject of a separate Motion to Compel.

⁷ Data Requests are contained in Attachment 2.

MEUA-1.11: Please provide all documents, e-mail, or notes with [Company name's] control or possession which discuss the positions to be taken in this case by MIEC or Noranda.

9. As can be seen, each of the Data Requests is addressed to a party in this case. Each of the Data Requests is “reasonably calculated to lead to the discovery of admissible evidence (Rule 56.01 of the Missouri Rules of Civil Procedure). And, each of the Data Requests only seeks information that is not otherwise privileged. For this reason, responses should be compelled from each of the individual MIEC members.

10. While MIEC will undoubtedly provide its own response, a copy of their objections as been provided as Attachment 3. The crux of their objection appears to be the mistaken belief that individual entities, even when they have been provided individual party status, are not subject to discovery.

The MIEC is an association and positions asserted on behalf of the MIEC in this case are set forth in case filings made on behalf of the MIEC by its counsel and the MIEC's expert witnesses. *The individual company members to whom MEUA's First Data Requests to MIEC are directed are not witnesses in this case and have not provided individual company testimony or asserted individual company positions.* Accordingly, the MIEC and its constituent members object to each data request seeking information from individual companies in MEUA's First Data Requests to MIEC, as these requests are not reasonably calculated to lead to the discovery of admissible evidence.⁸

11. Noticeably, the individual MIEC members provide no legal citations for this novel legal theory. As demonstrated, these entities are all parties to this proceeding. By these Data Requests, MEUA merely seeks to discover their positions on issues such as cost based ratemaking. Further, MEUA seeks to discover the underlying agreements that have been reached in order to secure MIEC's willingness to recommend a below-cost

⁸ MIEC Objections, page 2, paragraph 8.

rate for Noranda. This discovery is reasonable and MIEC's novel legal theory should be rejected.

12. Finally, MEUA notes that the Commission rules recognize that sanctions are appropriate where a party abuses the discovery process.⁹ MEUA assert that the individual MIEC members have no good faith basis for their objections to the MEUA discovery. Rather, such objections are solely designed for the purpose of delay and to hinder another party's ability to prepare for trial. For this reason, MEUA suggests that sanctions are appropriate. At a minimum, the Commission should recognize MIEC's blatant disregard for Commission rules and remember such disregard when considering any future requests for intervention.

IV. COMPLIANCE WITH RULE

11. Consistent with Commission Rule 4 CSR 240-2.090(8)(A), counsel certifies that he has complied with all rule prerequisites to the filing of this Motion. Specifically, counsel has conferred by telephone with counsel for MIEC and the individual MIEC members on February 10. Furthermore, consistent with 8(B) of that same rule, counsel participated in a telephone conference with the presiding officer on February 11. As such, this Motion is ripe for consideration by the Commission.

V. MOTION FOR EXPEDITED TREATMENT

12. Pursuant to 4 CSR 240-2.080, MEUA seeks expedited treatment for this Motion. Consistent with that request, MEUA asks that the Commission rule on this matter at its regularly scheduled agenda session on February 24, 2010 with an Order compelling responses from Respondents by February 26, 2010. MEUA asks for this treatment because the evidentiary hearing in this matter is scheduled to commence on

⁹ 4 CSR 240-2.090(1).

March 15. Action by this date will allow counsel to send additional clarifying discovery as well as engage in any necessary depositions. Consistent with this request and in order to allow the Commission to process this request at its February 24 agenda meeting, MEUA asks that any response be filed by February 22. This will allow MEUA to file a response if necessary in time to be reviewed by the Commission.

13. This Motion was filed as early as reasonably practical. MIEC's objections were received on February 4 with any responses due on February 12. In addition, as required by the Commission's rule, counsel was required to engage in a telephone conversation with counsel as well as a subsequent telephone conference with the presiding officer. As such, this Motion and the request for expedited treatment are timely and appropriate.

WHEREFORE, MEUA respectfully requests that: (1) the Commission act on this matter in an expedited fashion and (2) the Commission issue its Order compelling responses to Data Requests from each of the named MIEC members. Further, MEUA requests that the Commission issue any orders in the way of sanctions that it deems appropriate and reasonable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: February 15, 2010