

**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 STRIKE PORTIONS OF MIEC / NORANDA'S
DIRECT TESTIMONY**

COMES NOW the Midwest Energy Users' Association ("MEUA"), and for its Motion to Strike Portions of MIEC / Noranda's Direct Testimony respectfully states as follows:

1. On January 6, 2010, Noranda filed Direct Testimony regarding class cost of service / rate design. Repeatedly throughout that testimony, Noranda claimed that it needed a rate of \$27 / MWH in order to compete with other domestic aluminum smelters. On February 11, 2010, Noranda filed Supplemental Direct Testimony indicating that it was no longer seeking a rate of \$27 / MWH, but instead was seeking "a rate consistent with Maurice Brubaker's cost of service study filed on behalf of Missouri Industrial Energy Consumers."¹

2. On January 28, 2010, MEUA submitted several data requests designed to elicit information relative to Noranda's request for a rate of \$27 / MWH. On February 5 and 12, 2010, Noranda objected to these data requests. Noranda claimed that, as a result of the change in position reflected in its February 11, 2010 supplemental direct

¹ Smith Supplemental Direct Testimony, filed February 11, 2010, at page 2.

testimony, any data requests regarding the \$27 / MWH rate is “not reasonably calculated to lead to the discovery of admissible evidence in this action.”²

3. Following the filing of MEUA’s Motion to Compel, and Noranda responses, the Commission issued its Order Regarding MEUA’s Motion to Compel Noranda to Respond to Data Requests (“Order”). In that March 3, 2010 Order, the Commission ruled that:

Since Noranda is no longer seeking a \$27 / MWH rate, those data requests directly tied to such a rate are no longer relevant or reasonably calculated to lead to the discovery of admissible evidence. The Commission will deny the motion to compel as it relates to data requests 1.5, 1.6, 1.10, 1.11, and 1.41.³

4. Recognizing that the Commission has found, and Noranda has admitted, that testimony regarding the \$27 / MWH rate is no longer relevant, MEUA asks that the Commission strike the following portions of MIEC / Noranda’s Direct Testimony.

Smith Direct, page 6 (last two sentences of the first answer).

Smith Direct, page 9 (question beginning on line 24) through page 10 (answer ending on line 26).

Brubaker Revised Direct, page 4 (lines 20-21)

Brubaker Revised Direct, page 38 (line 8) through page 39 (line 3)

Brubaker Revised Direct, Schedule MEB-COS-8

Brubaker Revised Direct, Schedule MEB-COS-9

5. It would inherently inequitable to allow Noranda / MIEC to present evidence on this matter and simultaneously deny other parties the right to conduct

² Noranda objections dated February 12, 2010.

³ Order Regarding MEUA’s Motion to Compel Noranda to Respond to Data Requests, issued March 3, 2010, at page 3.

discovery on that matter. As such, absent allowing such discovery, the Commission should strike this testimony.

WHEREFORE, MEUA respectfully requests that the Commission issue its Order striking testimony consistent with this Motion.

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: March 5, 2010