

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

In the Matter of the Tariff Filings of Union)	
Electric Company, d/b/a AmerenUE, to increase)	<u>Case No. ER-2010-0036</u>
Its Revenues for Retail Electric Service.)	

REPLY POSTHEARING BRIEF

OF

MIDWEST ENERGY USERS ASSOCIATION

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I. INTRODUCTION

In this Reply Brief, MEUA responds to the arguments raised in the Initial Brief of the Missouri Industrial Energy Consumers (“MIEC”)¹ as well as the Joint Post-Hearing Brief of the Signatories to the Non-Unanimous Stipulation and Agreement. To a large extent, these briefs raise the same issues. As will be shown, the positions advanced in each brief are unsupported by the evidence elicited in this case. For this reason, the Non-Unanimous Stipulation and Agreement should be rejected and, instead, the Commission should enter findings of fact and conclusions of law based upon the evidence. Once the evidence is reviewed, MEUA is confident that the Commission will issue its Order finding that the Large General Service / Small Primary (“LGS / SPS”) class should be provided significant rate relief.

Specifically, MEUA will address the following issues. ***First***, the Signatories allege that the Commission should adopt the Non-Unanimous Stipulation and Agreement because “[t]he Signatories represent consumers in all of the major customer classes.”² Undoubtedly, the Signatories rely so heavily on this point because, as demonstrated, they recognize that the resolutions contained in the Non-Unanimous Stipulation are not supported by the evidence in this case. As will be shown, the identity and limited number of the Signatories, and more specifically, the identity and large number of entities that refused to sign the Non-Unanimous Stipulation undermines the reasonableness of the Non-Unanimous Stipulation. ***Second***, despite a section heading claiming that the Non-Unanimous Stipulation is “supported by the evidence,” the Signatories fail to provide the Commission any citation to the evidence which supposedly supports the resolutions

¹ Among the MIEC members is Noranda Aluminum. Presumably because it is part of MIEC, the positions of Noranda have been contained in the MIEC Brief. Noranda has not filed a separate brief.

² *Joint Post-Hearing Brief*, at page 1.

contained in the Non-Unanimous Stipulation. As was shown in MEUA's Initial Brief, the evidence not only dictates the rejection of the Non-Unanimous Stipulation, it also mandates significant rate relief for the LGS / SPS class. **Third**, the Signatories claim MEUA's objections have been resolved by the Addendum.³ Again, the Signatories fail to provide any citations which support this utter falsehood. As will be shown, the Signatories can only reach this "conclusion" by adopting the results of the OPC Time of Use study as it pertains to the LGS / SPS class. On the other hand, the Signatories have expressly rejected the remaining conclusions and recommendations of that same study as it applies to any other class. **Fourth**, MEUA will demonstrate that Noranda's alleged need for rate relief is not only undermined by the evidence in this case, it is also undermined by Noranda's execution of the Non-Unanimous Stipulation and Agreement. Simply said, judged against Noranda's own assertions, the rates that arise from the Non-Unanimous Stipulation will put the New Madrid smelter out of business.

Ultimately, the Commission will undoubtedly conclude that the Non-Unanimous Stipulation merely represents the efforts of a small group of customers hell-bent on providing rate relief to Noranda Aluminum. Such rate relief, since it is not cost based, must be based on other considerations. MEUA contends that such concessions represent a payback for Noranda's significant lobbying and opposition efforts including: (1) FERAF funding and activities; (2) opposition to CWIP legislation;⁴ (3) support of the

³ It is important to recognize that the rate relief or increases discussed in this Brief are judged on a revenue-neutral basis (i.e., no rate relief for UE). As such, it should not be assumed that the Non-Unanimous Stipulation would give the LGS / SPS class a rate reduction. Such a reduction would only occur if the Commission grants UE no rate relief. Given that every party recommends a bottom line rate increase for UE, the LGS / SPS class will also receive a rate increase out of this case. That said, under the Non-Unanimous Stipulation, Noranda would still receive a rate reduction even if the Commission awards UE a \$250 million rate increase. Certainly, such a result offends all notions of equitable ratemaking.

⁴ 2009 Senate Bill 228

OPC assessment funding legislation;⁵ and (4) opposition to the inclusion of bad debts in the purchased gas adjustment.⁶ While individual parties may value Noranda's efforts in this regard, they do not represent proper evidentiary basis for the unreasonable rate concessions contained in the Non-Unanimous Stipulation.⁷

II. IDENTITY OF SIGNATORY PARTIES

In their Initial Briefs, both the Joint Signatories and MIEC attempt to bolster the lack of evidentiary support for the Non-Unanimous Stipulation by claiming that the resolutions contained in the Non-Unanimous Stipulation represent "consumers in all of the major customer classes."⁸ Specifically, the Joint Signatories claim that:

AARP and The Consumers Council of Missouri represent customers in the Residential class. The Missouri Retailers Association represents customers in the SGS and LGS customer classes. The MIEC represents customers mainly in the LPS and LTS customer classes. And, the OPC represents all customer classes.⁹

In fact, the Joint Signatories claim that the identity of the Signatories represents "the most compelling evidence supporting the conclusion that the Agreement is in the public interest."¹⁰ The Signatories attempt to undermine the Objection raised by MEUA by claiming that MEUA only represents "three retail customers."¹¹ As such, the Signatories believe that these MEUA members should be summarily dismissed.

⁵ 2010 House Bill 2408 and Senate Bill 897

⁶ 2009 Senate Bill 299 and 2010 Senate Bill 705

⁷ Indeed, utilities are not permitted to pass lobbying costs on to ratepayers. See, *In re Missouri Gas Energy*, Case No. GR-2004-0209, Report and Order, issued September 21, 2004; *In re Missouri Public Service*, Case No. ER-97-394, Report and Order, issued March 6, 1998; *In re Kansas City Power & Light*, Case No. EO-85-185, Report and Order, issued April 23, 1986. Just as utility shareholders must bear the cost of these lobbying costs, Noranda's shareholders should bear the cost of their lobbying efforts. Any attempts by other parties (e.g. the Non-Unanimous Stipulation) to compensate Noranda for such lobbying efforts, by shifting Noranda's costs to other ratepayers, should be rejected by the Commission.

⁸ Joint Signatory Brief at pages 1-2 and 5; MIEC Brief at page 57.

⁹ Joint Signatory Brief at pages 1-2.

¹⁰ *Id.* at page 5.

¹¹ *Id.* at page 2.

At the outset, MEUA does not simply represent three retail customers. Instead, MEUA represents Wal-Mart Stores, Lowe's Stores and Best Buy, Inc. These entities are not simply "three retail customers," but arguably three of the largest retailers operating in the State of Missouri. Given Missouri Retailers Association's failure to adequately represent retailers' interests in past cases, these three entities intervened in this case as a separate association.

Despite this failure to adequately represent retailers' interests, the Joint Signatories claim that the objection of MEUA should be rejected and, that the representation by the Missouri Retailers Association should be found to be adequate for the entire class. Given this argument, it is important to understand the extent of the Missouri Retailers Association's representation and participation. In this case, the Missouri Retailers Association did not conduct any discovery, did not retain an expert, did not file any testimony, did not take any positions in its Statement of Positions, did not conduct any cross-examination and did not file a brief.¹² Yet, given this, the Joint Signatories believe that the Missouri Retailers Association's agreement to the Non-Unanimous Stipulation is adequate to support a finding that the Non-Unanimous Stipulation "is in the public interest."¹³

As was shown in MEUA's Initial Brief, the Non-Unanimous Stipulation inadequately addresses the concerns of the Small General Service and the LGS / SPS classes. Specifically, despite the fact that all the class cost of service studies show that the Small General Service class should get a rate decrease, the Non-Unanimous Stipulation proposes to give this class a rate increase. Again, the Joint Signatories justify

¹² Such limited participation is consistent with the participation taken by the Missouri Retailers Association in both of the previous AmerenUE rate cases.

¹³ *Id.* at page 5.

such inequitable treatment on the fact that the supposed SGS representative, the Missouri Retailers Association, signed the Non-Unanimous Stipulation.

Furthermore, the class cost of service studies indicate that the LGS / SPS class is currently paying rates that are \$24.4 to \$84.6 million over cost. Nevertheless, the Joint Signatories, presumably under the belief that the Missouri Retailers Association has adequately represented this class, only propose to give the LGS / SPS class a reduction of \$4.5 million. Certainly, the signature of a party that has not conducted discovery, has not retained technical assistance, has not filed testimony, has not taken positions on the issue, has not conducted cross-examination and has not filed a brief, should not be taken as adequate assurance that any particular class has been well represented in the settlement.¹⁴

While emphasizing the identity of the four parties that signed the Non-Unanimous Stipulation, the Signatories fail to recite for the Commission the litany of parties that refused to sign the Non-Unanimous Stipulation. Most importantly, both the Staff and AmerenUE refused to support the Non-Unanimous Stipulation. Other entities that did not support the Non-Unanimous Stipulation include ACORN, Charter Communications, the Municipal Group, the Unions, Kansas City Power & Light Company, Laclede Gas Company, Missouri Department of Natural Resources, Missouri Energy Group, the Missouri Joint Municipal Electric Utility Commission, and the Natural Resources Defense Council. The Joint Signatories will undoubtedly assert that these other parties have not been active in this case regarding this issue. While such an assertion would be correct, it is also true that these non-signatory parties have been as active on this issue as the Missouri Retailers Association. As such, the fact that they have not signed the Non-

¹⁴ Indeed, Commission Davis, in questioning of MRA's witness raised the point of whether the Commission should consider the character of the signatory in judging the reasonableness of a Non-Unanimous Stipulation (Tr. 2806-2809).

Unanimous Stipulation is every bit as important as the fact that the Missouri Retailers Association has signed the agreement.

III. THE NON-UNANIMOUS STIPULATION IS NOT SUPPORTED BY EVIDENCE

In its Initial Brief, the MEUA devoted a significant number of pages to the fact that the Non-Unanimous Stipulation is not supported by evidence and does not lead to just and reasonable rates.¹⁵ Given this claim, MEUA was eager to read the Joint Signatories' Brief in which they expressly claim that "[t]he Agreement is supported by the evidence."¹⁶ While the Signatories summarily conclude that the Agreement is supported by evidence, their brief is utterly silent on the evidence which they claim support the Agreement. As will be shown, the Brief is silent because all of the evidence mandates the rejection of the Non-Unanimous Stipulation.

In this case, the Commission was presented with five class cost of service studies. Each of those studies presents a different view of the various classes' cost of service. For instance, the OPC studies tend to minimize the cost of service for the residential class while maximizing the cost for the industrial classes. On the other hand, the MIEC study minimizes the cost for the industrial classes while increasing the cost for the residential class. That said, despite the disparate views of the various sponsoring parties, all of the class cost of service studies indicate that the LGS / SPS rates are \$24.4 to \$84.6 million over cost. Attached is the class cost of service evidence presented in this case:

¹⁵ MEUA Initial Brief at pages 6-14.

¹⁶ Joint Signatories Brief at pages 4-6.

ER-2010-0036 Class Cost of Service Results

	<i>AmerenUE</i> ¹⁷	<i>OPC (TOU)</i> ¹⁸	<i>OPC (4CP)</i> ¹⁹	<i>MIEC</i> ²⁰	<i>Staff</i> ²¹
Residential	\$78,070	\$11,804	\$32,268	\$129,625	\$83,513
Small GS	(\$17,649)	(\$23,344)	(\$18,878)	(\$10,721)	(\$10,526)
Large GS / Small Primary	(\$64,785)	(\$24,388)	(\$30,320)	(\$84,603)	(\$73,664)
Large Primary	\$2,092	\$14,681	\$11,970	(\$12,700)	(\$919)
Large Transmission	\$2,272	\$21,246	\$4,960	(\$21,600)	\$4,968

(in thousands)

The results of these studies and the conclusions that can be reached from these studies stand in stark contrast to the rate shifts envisioned under the Non-Unanimous Stipulation. As can be seen, while every cost study concludes that Small General Service rates should be reduced, the Non-Unanimous Stipulation increases these rates. Furthermore, while each study finds that LGS / SPS rates should be reduced between \$24.4 and \$84.6 million, the Non-Unanimous Stipulation only offers \$4.5 million of rate relief. Finally, four out of five studies indicate that the LTS class (Noranda) should receive a rate increase. Nevertheless, the Non-Unanimous Stipulation, obviously relying on the MIEC study,²² offers Noranda over \$16 million of rate relief.

¹⁷ Data Request No. MEUA 2.6 (Exhibit 551).

¹⁸ Data Request No. MEUA 2.5 (Exhibit 552).

¹⁹ *Id.*

²⁰ Exhibit 429, Schedule MEB-COS-5 (column 8).

²¹ Data Request No. MEUA 2.6 (Exhibit 553).

²² In fact, the Joint Signatories specifically mention that the reduction for the LTS class is justified by the MIEC study. (Joint Brief at pages 5-6).

Changes under Non-Unanimous Stipulation²³

	<i>Current Revenues</i>	<i>Revenue Neutral Percentage Change</i>	<i>Revenue Neutral Dollar Change</i>
Residential	\$966,332,000	+1.5%	\$14,865,000
Small General Service	\$250,178,000	+1.5%	\$3,849,000
Large GS / Small Primary	\$652,087,000	-0.70%	(\$4,579,000)
Large Primary	\$166,927,000	+1.25%	\$2,151,000
Large Transmission (Noranda)	\$139,156,000	-11.74%	(\$16,294,000)

While relying on the MIEC study to support the rate relief provided to Noranda, the Joint Signatories then conveniently ignore all the other conclusions from that study. Most importantly to this Brief, the MIEC study indicates that the LGS / SPS class is \$84.6 million above its cost of service. That said, the Non-Unanimous Stipulation only allocates a paltry \$4.5 million rate reduction to the LGS / SPS class.

In a vain attempt to make sense of the Non-Unanimous Stipulation, MIEC notes that the MIEC class cost of service study “shows that the LTS class is the furthest above costs, that the LGS / SPS class is the next furthest above cost, followed by the LPS class and the SGS class.”²⁴ Based upon this study, MIEC supports the Non-Unanimous Stipulation claiming that under that agreement “the LTS class would move the most, followed next by the LGS / SPS class.”²⁵ While MIEC is correct in the sense of absolute

²³ The revenue neutral shifts are approximate. As the Non-Unanimous Stipulation indicates, the amount of the revenue neutral shift varies depending on the magnitude of the overall increase granted to AmerenUE. The revenue neutral dollar shifts represented in this table are those which occur at an overall UE rate increase of \$225 million.

²⁴ MIEC Brief at page 53.

²⁵ *Id.*

rankings under the MIEC study, they fail to point out that, in every other sense, the Non-Uniform Stipulation is not consistent with the MIEC Study. For instance, under the MIEC study, the LTS class is 15.5% above cost with the LGS / SPS class at 12.7% above cost.²⁶ Despite the fact that these classes are virtually in the same position, the Non-Uniform Stipulation would give the LTS class a \$16.5 million (12%) rate reduction. Meanwhile, the LGS / SPS class would only receive a \$4.5 million (0.7%) rate reduction.

Furthermore, despite adopting the MIEC study, the Joint Signatories ignore every other conclusion and recommendation made under the MIEC study. **First**, the MIEC study states that the residential class should be moved 20% towards cost of service.²⁷ This necessitates a rate increase of \$25.9 million over and above any other rate increase ordered in this case.²⁸ Despite the express conclusion, the Joint Signatories increases residential rates by approximately \$16 million. **Second**, the MIEC study indicates that Small General Service rates should be reduced by \$2.1 million.²⁹ That said, the Joint Signatories propose to increase Small General Service rates. **Third**, the MIEC study concludes that Large Primary rates should be reduced by \$2.5 million.³⁰ Again, the Joint Signatories propose to increase the rates for the Large Primary customers. Clearly, while the Joint Signatories want to use the MIEC study for purposes of providing rate relief to Noranda, they also conveniently ignore every other recommendation made under the MIEC study.³¹

²⁶ Ex. 429, Schedule MEB-COS-5.

²⁷ *Id.* at page 36.

²⁸ *Id.* at Schedule MEB-COS-6 (column 2, row 1).

²⁹ *Id.* (column 2, row 2).

³⁰ *Id.* (column 2, row 4).

³¹ Interestingly, the Joint Signatories, after recognizing the 5 class cost of service studies, claim that “the Commission could choose to rely on any or all of these experts in this case.” (Joint Brief at page 5). That said, the Joint Signatories fail to provide the Commission any direction on how the Non-Uniform Stipulation is supported by the findings and recommendations of any of these studies. As demonstrated in

**IV. THE MEUA CONCERNS ARE NOT RESOLVED
BY THE ADDENDUM TO THE NON-UNANIMOUS STIPULATION**

The willingness of the Joint Signatories to ignore the evidence is also reflected in their assessment of the MEUA objection. At pages 7-9, the Joint Signatories assert that the MEUA objection should be rejected in that the Non-Unanimous Stipulation provides the relief sought by MEUA.³² In its testimony, MEUA recommended that, under any adopted cost of service study, the Commission should move classes 20% towards the stated class cost of service.³³ Now, instead of relying on the MIEC study which supported the rate relief to Noranda, the Joint Signatories conveniently point to the OPC Time of Use study which indicates that the LGS / SPS class is paying rates that are \$24.4 million above cost of service. Relying on this OPC study, the Joint Signatories falsely claim that the Non-Unanimous Stipulation provides MEUA with exactly the relief sought in this case.³⁴

Again, this position reflects the ease with which the Joint Signatories conveniently adopt and ignore the recommendations of any specific class cost of service study. Just as the Joint Signatories want to adopt the MIEC study for treatment of the LTS rate class (while ignoring all associated recommendations), they also want to use the OPC Time of Use study for treatment of the LGS / SPS (again, ignoring all other recommendations). For instance, the OPC Time of Use study recommends that the Large

the table on page 7, none of the class cost of service studies support the recommendations reached by the Non-Unanimous Stipulation.

³² See also, MIEC Brief at pages 52-53.

³³ Ex. 550, page 7.

³⁴ As can be seen from the questioning of the MEUA witness (Tr. 2836-2837), the notion that \$4.5 million of rate relief was expressly conditioned on the Commission's adoption of the OPC Time of Use study. As has been shown, as it applies to the other recommendations in that study, the Joint Signatories expressly reject that study. Most importantly, that study finds that Noranda should receive a 15.2% rate increase.

Primary class receive an increase of \$14.7 million.³⁵ Nevertheless, the Joint Signatories ignore this conclusion and only increase Large Primary rates by \$2.1 million. Again, the OPC Time of Use study recommends that the Small General Service class receive a rate reduction of \$23.4 million.³⁶ Despite this finding, the Joint Signatories seek to increase Small General Service rates by \$3.8 million. Most egregious, the OPC Time of Use study indicates that LTS (Noranda) rates should be increased by \$21.2 million (15.2%).³⁷ That said, the Joint Signatories recommend that Noranda rates be reduced by \$16.3 million. In essence, while now claiming to use the OPC Time of Use study, the Joint Signatories provide Noranda a rate reduction of 11.7% where a 15.2% increase is found to be appropriate.³⁸

Ultimately, as can be seen, the Non-Unanimous Stipulation is not supported by competent and substantial evidence. The Joint Signatories seem intent on providing Noranda the benefits under the MIEC study while simultaneously imposing the results of the OPC Time of Use study on the LGS / SPS class. Such a recommendation is contrary to all notions of equitable ratemaking. Clearly, if just and reasonable rates are to result from this case, the Commission will have to choose the most appropriate class cost of service study and have it apply to all classes.

³⁵ Ex. 552, Response to MEUA-2.5.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Despite the fact that the outcome of the Non-Unanimous Stipulation is so completely contrary to the findings of his study, the OPC witness nevertheless claimed that the Non-Unanimous Stipulation leads to just and reasonable rates. One must necessarily question the credibility of a witness that would make such a statement where an 11.7% decrease is given in place of his recommended 15.2% increase.

**V. NORANDA’S CLAIMS ARE UNDERMINED
BY THE EVIDENCE AS WELL AS THE TERMS OF THE
NON-UNANIMOUS STIPULATION**

At pages 57-62 of the MIEC Brief, Noranda attempts to hedge its bet. While having previously executed the Non-Unanimous Stipulation, Noranda also recognizes the likelihood that the Commission will reject an agreement that cannot be justified by the present evidence. As such, Noranda asks that the Commission adopt the MIEC (Maurice Brubaker) cost study and move Noranda to that cost of service.³⁹ Recognizing that, under the MIEC study, every other non-residential class will be left with rates that are significantly above cost of service, Noranda attempts to justify its proposed discriminatory treatment. As detailed in MEUA’s Initial Brief, Noranda’s assertions amount to economic blackmail. The arguments raised by Noranda are not supported by the evidence. In fact, while Noranda claims that its “viability” and “sustainability” are threatened by the rates resulting from this case, the evidence indicates that Noranda continues to flourish while other smelters, all with higher production costs, have either closed or reduced capacity. Furthermore, Noranda’s assertions as to the cost of electricity necessary to keep the New Madrid smelter operating is directly contradicted by the rates established under the Non-Unanimous Stipulation which it has executed.

First, Noranda attempts to garner sympathy by reciting the economic benefits that the New Madrid smelter provides to the Bootheel area and the State of Missouri.⁴⁰ While the benefits to the Southeast Missouri area are indisputable, Noranda’s own evidence reveals that Noranda’s benefits are regionalized, and that any statewide benefits are marginal. By Noranda’s own evidence, the regional impact of Noranda is 3,000 jobs and

³⁹ MIEC Initial Brief at page 57.

⁴⁰ *Id.* at page 58.

tax revenues of \$16 million.⁴¹ Statewide, these numbers only grow to 3,800 jobs and \$19 million in tax revenues.⁴² As such, outside the 7 county region surrounding New Madrid, the benefits of Noranda only amount to 800 jobs and \$3 million in tax revenues.

In exchange for this \$3 million of annual tax revenue, Noranda claims that it is entitled to \$16 million of annual rate relief as provided under the Non-Unanimous Stipulation. It is unquestionable that jobs and economic development are critical given the current economy. That said, Noranda is not unique in its job creation. In fact, unrefuted evidence indicates that Noranda's job creation ability is miniscule compared to other large customers. For instance, in contrast to the 3,800 jobs indirectly supported by Noranda in the state, Walmart "supports 99,810 jobs in the State of Missouri."⁴³ This represents more than 26 times the number of jobs supported by Noranda. Similarly, as compared to the \$19 million in tax revenues provided by Noranda, Walmart collected more than \$510 million in sales tax for Missouri and paid almost \$52 million in state and local taxes.⁴⁴ Again, these figures dwarf the tax revenues provided by Noranda.

This comparison is not designed to argue that Walmart is more important economically than Noranda. Rather, it merely proves that Noranda's economic position is not unique. To the extent that the Commission seeks to provide rate relief to large employers, there are other entities that should share in the largess created under the Non-Unanimous Stipulation that Noranda now seeks to keep solely for itself.

Second, based on its perceived unique economic importance, Noranda asserts that it alone should be granted a cost based rates. Specifically, Noranda points to the cost of

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 550, Schedule SWC-2.

⁴⁴ *Id.*

service rates reflected in Mr. Brubaker's testimony.⁴⁵ As was shown in the Initial Brief, however, because it fails to properly allocate AmerenUE's increased risk and cost associated with serving Noranda, Mr. Brubaker's study understates Noranda's cost of service.⁴⁶ In fact, using the quantification provided by recent events, even Mr. Brubaker's cost of service study shows that Noranda is already paying rates below its cost of service.⁴⁷

More importantly, Noranda's request to be granted cost based rates is not supported by expert testimony. While Mr. Brubaker conducted a class cost of service study, he specifically refused to sponsor the discriminatory adjustment now sought by Noranda.⁴⁸ As such, Noranda's request remains nothing more than an unjustified party position for which no evidentiary support is available.

Third, despite Noranda's persistent threats regarding the claimed imminent closure of the New Madrid smelter, the evidence indicates that such claims are nothing more than empty rhetoric. As detailed in the MEUA Initial Brief, Noranda is required to disclose to shareholders and potential investors any "factors that make the offering speculative or risky."⁴⁹ When it filed its annual report, Noranda simply noted that "profitability may decline" as a result of the pending AmerenUE rate case.⁵⁰ In fact, Noranda's CEO admits that Noranda has not made any disclosures to shareholders or the investment community regarding the viability or sustainability of the New Madrid

⁴⁵ MIEC Brief at page 58.

⁴⁶ See, MEUA Initial Brief at pages 12-13.

⁴⁷ *Id.*

⁴⁸ Tr. 3083.

⁴⁹ MEUA Initial Brief, page 16 (citing to SEC Regulation C.F.R. Ch. II §229.503(c)).

⁵⁰ Tr. 2979-2980.

smelter.⁵¹ Such a “business as usual” demeanor stands in stark contrast to the “sky is falling” urgency demonstrated by Noranda in this case.

The fact that the New Madrid smelter is not truly threatened by the pending UE rate case is also reflected in the fact that Noranda has made numerous commitments, in return for several loans and grants by the Department of Economic Development, to maintain employment at the New Madrid smelter at current levels for at least ten years.⁵² Certainly, such a commitment is not consistent with a company whose continued viability is in peril.

Fourth, the continued long-term viability of the New Madrid smelter is assured because Noranda operates at a lower production cost than other domestic smelters. As demonstrated in the MEUA Initial Brief, Noranda admits competitive advantages associated with: (1) the price and supply of bauxite; (2) the reliability of its electricity supply; (3) its strategic geographic location; (4) its proximity to upstream bauxite / alumina supplies and downstream rolling mills; and (5) the fact that the cost of its electricity is not tied to the LME price of aluminum.⁵³ Furthermore, as was demonstrated in the MEUA Initial Brief, Noranda’s cost of electricity is actually lower than the average cost for other domestic aluminum smelters.⁵⁴

These competitive advantages ultimately roll up into a single overall cost of production. Again, as was demonstrated in the MEUA Initial Brief, Noranda’s overall cost of production has been demonstrated to be lower than virtually all other domestic

⁵¹ Tr. 2980.

⁵² Tr. 2981.

⁵³ MEUA Initial Brief at page 24.

⁵⁴ MEUA Initial Brief at pages 18-19. It is interesting to note that Noranda’s testimony relied extensively on the testimony of Mr. Fayne. As demonstrated in the MEUA Initial Brief (pages 18-23), Mr. Fayne relied on inaccurate data and manipulated the data to reach a pre-determined conclusion. Ultimately, given the inherent unreliability of Mr. Fayne and his analysis, **Noranda did not reference his testimony a single time in its Initial Brief.**

aluminum smelters.⁵⁵ While Noranda continues to operate at full capacity,⁵⁶ numerous smelters were forced, because of the low price of aluminum, to either stop or reduce production.⁵⁷

Fifth, Noranda also ignore these competitive advantages related to other significant cost inputs, when it discusses its perceived necessary cost of electricity. While electricity represents a significant cost to an aluminum smelter, the cost of alumina / bauxite, carbon anodes, labor and freight are also acknowledged as significant costs.⁵⁸ While testifying, Noranda's CEO postulated that it is critical that Noranda have a cost of electricity that equates to \$31 / MWh.⁵⁹ During cross-examination, it was revealed that the analysis underlying his conclusion merely exists in Mr. Smith's head. Recognizing the multitude of other significant costs relevant to an aluminum smelter, Mr. Smith was asked for the assumptions for alumina, carbon anodes, labor and freight that were included in his mental analysis. In each case, despite acknowledging that each cost is significant,⁶⁰ Noranda's CEO claimed that there were no such assumptions because they were not critical to his analysis of the viability of the smelter.⁶¹ Furthermore, while acknowledging that aluminum is a commodity business in which Noranda has no control over the market price for aluminum,⁶² Noranda's CEO never considered the necessary price of aluminum to continue New Madrid's operations.⁶³ Instead, without considering

⁵⁵ MEUA Initial Brief at pages 23-25.

⁵⁶ Tr. 2963.

⁵⁷ Production at the Ferndale (Tr. 2950), Alcoa Tennessee (Tr. 2953), Warrick (Tr. 2954), Wenatchee (Tr. 2956), Massena East (Tr. 2956-2957), Rockdale (Tr. 2957), Ravenswood (Tr. 2964), Hawesville (Tr. 2966), Hannibal (Tr. 2968), and Columbia Falls (Tr. 2969)⁵⁷ smelters ceased or at least been reduced.

⁵⁸ Tr. 2941.

⁵⁹ Tr. 2991.

⁶⁰ Tr. 2975-2976.

⁶¹ *Id.*

⁶² MIEC Brief at page 59.

⁶³ Tr. 2974-2975.

all of the significant costs or the commodity price of aluminum, Noranda's CEO summarily concluded that Noranda needed an electric cost of \$31 per MWh.⁶⁴

Certainly, any analysis: (1) which exists solely within the brain of a single individual; (2) which is unauditable; (3) which fails to account for the cost of significant components like alumina, freight, labor and carbon anodes; and (4) which fails to identify a necessary price of aluminum, stretches the bounds of credibility. Nevertheless, Noranda would have the Commission rely on this simplistic analysis.

Sixth, in addition to the problems inherent in the "analysis" underlying Noranda's assertion that it needs a price of electricity of \$31 / MWh, there are other pieces of evidence which further undermine the credibility of such a conclusion. For instance, Noranda initially claimed that it needed a price of electricity of \$27 / MWh.⁶⁵ Recognizing the similar lack of evidentiary support for such a conclusion, as well as the ludicrous nature of the findings that the Commission would have to make in order to implement such a position,⁶⁶ Noranda suddenly changed its position in Supplemental Direct Testimony filed just five weeks later. Recognizing that Noranda uses approximately 4.2 million MWhs per year, this change in position represents almost \$17 million of additional cost to Noranda's bottom line. It is baffling that Noranda could assert that the \$27 / MWh price is vital to its continued viability, but then just one month later increase that cost to \$31 / MWh without any supporting explanation. Given the rapid waffling as to its necessary cost of electricity, one is left to wonder what Noranda's

⁶⁴ Tr. 2991. See also, MIEC Brief at page 61.

⁶⁵ Ex. 426, as filed, at pages 9-10.

⁶⁶ A rate that results in a cost of electricity of \$27 / MWh would have necessitated rate relief of approximately \$30 million. This would have amounted to a rate reduction of over 21%.

true electricity needs are. Ultimately, Noranda's failure to explain this change undermines the credibility of Noranda's claim as to a necessary cost of electricity.

Finally, Noranda's claim that its cost of electricity "needs to be, at worst. . . \$31 / MWh,"⁶⁷ is also undermined by the fact that it executed a Non-Unanimous Stipulation which actually provides for a cost of electricity that is significantly greater than this "necessary" cost level. As Noranda admits, the \$31 per MWh cost figure would equate to "an annual cost of electricity of approximately \$128,000,000."⁶⁸ Interestingly, despite claiming that rates above \$128,000,000 would place the New Madrid smelter "on the critical path to failure,"⁶⁹ Noranda has nevertheless agreed to a Non-Unanimous Stipulation which results in rates that would exceed this figure. Specifically, the Addendum to the Non-Unanimous Stipulation envisions a minimum rate increase for AmerenUE of \$100 million.⁷⁰ In that instance, Noranda would pay rates that would equal \$130,100,000, easily greater than the threshold that would allegedly ensure failure.⁷¹ Still worse, if the Commission grants UE an increase of \$225 million, then Noranda's annual electricity cost would be \$137,056,000 or a rate of \$33.27 / MWh.⁷² Under the worst case scenario envisioned under the Addendum, UE would receive an increase of \$325 million. In that scenario, Noranda would pay annual rates of \$142,680,000 or \$34.64 / MWh.⁷³ **In essence, if one was to believe the rhetoric advanced by Noranda, then Noranda has signed a Stipulation which would result in a cost of electricity that**

⁶⁷ MIEC Initial Brief at page 61.

⁶⁸ *Id.*

⁶⁹ Ex. 426, page 8.

⁷⁰ Addendum to Non-Unanimous Stipulation, filed March 26, 2010, at page 19.

⁷¹ *Id.*

⁷² *Id.* at page 14 (\$137,056,000 / 4,119,018 MWh = \$33.27 / MWh).

⁷³ *Id.* at page 10 (\$142,680,000 / 4,119,018 MWh = \$34.64 / MWh).

would ensure the smelter's failure! Certainly, all of these actions mandate that the Commission find that Noranda's testimony is utterly lacking in credibility.

VI. CONCLUSION

Consistent with the positions advanced in this Brief as well as its Initial Brief, MEUA asks that the Commission reject the Non-Unanimous Stipulation and instead make findings that result in significant revenue-neutral shifts to the Large General Service / Small Primary Service class.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, LC

A handwritten signature in black ink, appearing to read "D. Woodsmall", with a large circular flourish at the beginning.

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ATTORNEYS FOR MIDWEST ENERGY
USERS ASSOCIATION

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.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", written in a cursive style.

David L. Woodsmall

Dated: April 30, 2010