

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Rules)	
4 CSR 240-3.162 and 4 CSR 240-)	EX-2008-0105
20.091, Environmental Cost Recovery)	
Mechanisms)	

LIMITED RESPONSE OF NORANDA ALUMINUM CO.

COMES NOW Noranda Aluminum Co. (Noranda), through its attorney, and timely files this Limited Response as follows:

1. At the hearing that began on January 17, 2008, AmerenUE was permitted to submit "Prepared Remarks of AmerenUE Witness Mark C. Birk" ("Prepared Remarks") containing a response to Noranda's January 3, 2008 Comments on Selected Issues. Mr. Birk was sworn and submitted this material, asserting under oath that he had written it.

2. The nature of the proceeding was such that Mr. Birk could expect no cross-examination on his testimony.

3. Following Mr. Birk's testimony, Counsel for Noranda requested an opportunity to respond to that portion of AmerenUE's Reply Comments. The Presiding Officer recessed the hearing until January 18, 2008 thereby providing an opportunity for Noranda's Response to be submitted through midnight on the final day of the hearing on January 18, 2008. Pursuant to counsel's commitment, this Response will be limited to that portion of the "Prepared Remarks" identified hereafter.

4. The "Prepared Remarks" appear to have been filed with EFIS on January 16, 2008 at 5:58:11 p.m. Despite making direct reference to Noranda's comments, they were not served on Noranda or its counsel until the afternoon of January 17, 2008, during the initial day of the public hearing and immediately prior to Mr. Birk's testimony. The "Prepared Remarks," in part, state:

Noranda has resurrected a proposal it made in the FAC rulemaking that was **flatly rejected**. Noranda suggests that the proposed rule (4 CSR 240-20.092(2)(D)) allows the Commission to not only decide that some portion of environmental costs should be recovered in base rates, with the rest to be recovered in the ECRM, but that the Commission can just arbitrarily deny recovery of a part of the costs entirely. ***In rejecting this reading of the statutory language relied upon by Noranda***, the Commission stated that it "must disagree with this comment in that it would not allow for the setting of just and reasonable rates that allow the utility a reasonable return." (Order of Rulemaking for the FAC Rules, p. 4).^{1/}

5. Mr. Birk did not claim to be an attorney and was testifying under oath. Not only is Mr. Birk's statement plainly and materially false, his intended inference is patently false. Indeed, the Commission ruled precisely the opposite.

Industrial users [including Noranda] also favor retention of a portion in base rates, accommodating a sharing by the utility and ratepayers of a significant portion of the cost and risk, thereby aligning the utility interest with the interests of customers in low and stable rates. An important consequence of interest alignment is that less Staff time will be used in after-the-fact

^{1/} Prepared Remarks, pp. 8-9 (emphasis added).

reviews. If well designed, and coupled with robust surveillance, the system could be virtually self-policing. Rates will be lower in the first place, and administrative efficiency will be enhanced both for Staff and the utilities.

RESPONSE: ***The Commission finds that a clear statement that it may apportion fuel costs between base rates and a RAM is appropriate, as more fully set forth below.*** The Commission will not establish a fixed level of apportionment, as the inherent differences in the operation of the utilities, particularly the difference in their fuel mixes for baseload generation would render a fixed amount unreasonable in some instances. ***The Commission believes such authority is inherent in SB179, but will add the language to clarify that it has such authority.***^{2/}

6. Moreover, in the Report and Order in *In Re Aquila*, Case No. ER-2007-0004, the Commission in fact implemented such an alignment of interest and sharing mechanism as follows:

The Commission also finds after-the-fact prudence reviews alone are insufficient to assure Aquila will continue to take reasonable steps to keep its fuel and purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100% pass through of those costs. ***The Commission finds allowing Aquila to pass 95% of its prudently incurred fuel and purchased power costs, above those included in its base rates, through its fuel adjustment clause is appropriate. With a 95% pass-through, the Commission finds Aquila will be protected from extreme fluctuations in fuel and purchased power cost, yet retain a significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still***

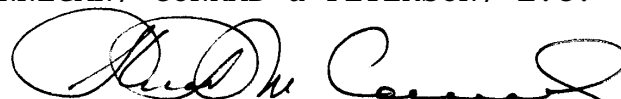
^{2/} Final Order of Rulemaking, Case No. EX-2006-0472, p. 5 (emphasis added).

***have an opportunity to earn a fair return on
its investment.***^{3/}

7. Given that the statement quoted above and contained in AmerenUE's "Prepared Remarks" is plainly false, Noranda appreciates the opportunity to correct the record in this proceeding. We take no present position as to the need for, or whether other action will be taken with regard to, this false statement made under oath.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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ATTORNEYS FOR NORANDA ALUMINUM CO.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid or by electronic mail addressed to the Commission Staff attorney of record and the Missouri Public Counsel as well as to identified counsel for the other parties that appeared at the public hearing on January 17, 2008.



Stuart W. Conrad

Dated: January 18, 2008

^{3/} Report and Order, *In Re Aquila*, Case No. ER-2007-0004, p. 54 (issued May 17, 2007, effective May 27, 2007) (emphasis added). No comment is intended regarding the sufficiency or insufficiency of the amount of sharing ordered by the Commission.