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February 12, 2010

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Re: Additional Responses to MEUA's First Data Requests to BAI

This document provides the Missouri Industrial Energy Consumers' ("MIEC") Additional Responses 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 contained in these Objections is intended as a waiver of any applicable privilege or doctrine.

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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 AND RESPONSES

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”?
- (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 and Response:

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, MIEC states:

- (a) Please refer to testimony submitted by Noranda Aluminum.
- (b) No, Mr. Brubaker has not undertaken a specific study of the particular statements contained in the testimony of Noranda’s witnesses. However, Mr. Brubaker has knowledge that electricity is a substantial component of the cost of producing aluminum, that there currently is an excess of supply in the aluminum markets, and that prices have been under significant pressure.
- (c) Mr. Brubaker has been aware of the importance of electricity costs for decades. Please refer to the response for MEUA-1.1(d) for additional information.
- (d) At the time Mr. Brubaker filed testimony in the aforementioned cases, he was aware of the large percentage of the cost of aluminum production represented by electricity. Mr. Brubaker was not aware of the supply/demand circumstances in the aluminum market or the number of domestic smelters that had closed.
- (e) No, Mr. Brubaker has not conducted a specific survey. Mr. Brubaker is not aware of any customer for whom electricity is as large of a percentage of the cost of production.
- (f) As a clarification to the data response, the recommendation to move the LTS class to cost of service is a policy position of the MIEC.

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(g) Yes.

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 and Response:

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, MIEC states yes.

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 and Response:

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, MIEC states that, for many years, Mr. Brubaker has been aware that electric rates play a role in economic development. The condition of the United States economy in general, and the aluminum smelting industry in particular, have become more stressed in the past eighteen months, thereby elevating the importance of electric rates.

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.

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Objection and Response:

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, MIEC states that no studies or analyses are required as the conclusion is self-evident.

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 and Response:

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, MIEC states no.

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 and Response:

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, MIEC states that customers sometimes receive rates below the cost of service because the impact of moving the rates up to the cost of service has seemed to be

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too great. This generally has been the case in Missouri with respect to residential electric rates. Sometimes rates below the full cost of service are established for purposes such as load retention or attraction of new loads. As an example, please refer to AmerenUE's tariffs concerning economic development rate credits.

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 and Response:

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, MIEC states that the data request misstates the facts. There is no shift in costs. Rather, there currently is a lack of correspondence between the revenues and the costs. The difference between the referenced cost of service and a rate of \$27/MWH is approximately \$6 million per year.

MEUA-1.12:

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

Objection and Response:

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, MIEC states that a rate at the level requested would be reasonable if the Public Service Commission finds economic development justification.

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.

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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 and Response:

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, MIEC states that the distribution of a revenue increase in any case is a matter of judgment, informed by numerous factors. Mr. Brubaker did not consider the circumstances that would be necessary to implement a movement of more than 25% toward cost of service in this case.

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 and Response:

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, MIEC states that, as a general proposition, costs should be the primary factor in setting rates. Rates which depart from costs produce a less than optimum result. However, rates must be established in the real world, and there are other factors that are considered. As set forth on page 32 of Mr. Brubaker's Direct Testimony, while cost should be the "primary" basis, there are other factors that typically are considered such as simplicity, gradualism, ease of administration, and economic development.

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.

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Objection and Response:

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, MIEC states that, as a general proposition, costs should be the primary factor in setting rates. Rates which depart from costs produce a less than optimum result. However, rates must be established in the real world, and there are other factors that are considered. As set forth on page 32 of Mr. Brubaker's Direct Testimony, while cost should be the "primary" basis, there are other factors that typically are considered such as simplicity, gradualism, ease of administration, and economic development.

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 and Response:

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, MIEC states that, as a general proposition, costs should be the primary factor in setting rates. Rates which depart from costs produce a less than optimum result. However, rates must be established in the real world, and there are other factors that are considered. As set forth on page 32 of Mr. Brubaker's Direct Testimony, while cost should be the "primary" basis, there are other factors that typically are considered such as simplicity, gradualism, ease of administration, and economic development.

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 and Response:

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, MIEC states that, as a general proposition, costs should be the primary factor in setting rates. Rates which depart from costs produce a less than optimum result. However, rates must be established in the real world, and there are other factors that are

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considered. As set forth on page 32 of Mr. Brubaker's Direct Testimony, while cost should be the "primary" basis, there are other factors that typically are considered such as simplicity, gradualism, ease of administration, and economic development.

MEUA-1.19:

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

Objection and Response:

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, MIEC states that a possibility of a concern with the income tax calculations was detected on Wednesday evening, January 20, 2010.

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 and Response:

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, MIEC states that the date was Monday, January 25, 2010.

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 and Response:

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

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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, MIEC states that a concern with the income tax calculations was confirmed on Thursday, January 21, 2010. This information was conveyed to counsel and subsequently to Noranda on the same day.

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 and Response:

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, MIEC states that it will provide a more detailed response as soon as possible.

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 and Response:

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, MIEC states that it will provide a more detailed response as soon as possible.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Diana M. Vuylsteke/jrk".

Diana M. Vuylsteke
Attorney for the MIEC