

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

<b>In the matter of Union Electric,</b>	)	
<b>d/b/a AmerenUE's Tariffs to</b>	)	<b>Case No. ER-2010-0036</b>
<b>Increase Its Annual Revenues for</b>	)	Tariff Nos. YE-2010-0054
<b>Electric Service</b>	)	

**NORANDA ALUMINUM, INC.'S MOTION FOR A  
PROTECTIVE ORDER CONCERNING THE  
SUBPOENA DUCES TECUM OF MISSOURI ENERGY USERS ASSOCIATION  
DIRECTED TO LAYLE "KIP" SMITH**

Noranda Aluminum, Inc. ("Noranda"), by and through counsel, respectfully moves the Commission to issue a Protective Order concerning the subpoena duces tecum issued for the deposition of Layle "Kip" Smith by Intervenor Missouri Energy Users' Association ("MEUA"). Noranda moves for an Order that the deposition not occur on Thursday, March 18, but that it occur at a date, time, place and under conditions mutually convenient for the parties and counsel. In support of this motion, Noranda states as follows:

1. The hearing in this matter was scheduled by the Commission's Order Adopting Procedural Schedule dated September 14, 2009 to commence on Monday, March 15, 2010 and is currently scheduled to run for the next two weeks.

2. On Monday evening, March 8, 2010 at 8:30 p.m., counsel for MEUA emailed counsel for Noranda and inquired of a date for the deposition of Mr. Smith, the Chief Executive Officer of Noranda. Mr. Smith has submitted written testimony in this case and is expected to testify on Thursday, March 25, 2010 or Friday, March 26, 2010. Mr. Smith's direct testimony was pre-filed on January 6, 2010 and his supplemental direct testimony was pre-filed on February 11, 2010. As a result of the filing of this written testimony, MEUA was aware of Mr. Smith's intent to testify and has had approximately nine weeks to depose Mr. Smith.

3. The contact between counsel on the evening of March 8, 2010 was the first time that MEUA had expressed intent to depose Mr. Smith. On Wednesday, March 10, 2010, counsel for MEUA demanded an immediate response concerning the deposition. Counsel for MIEC quickly answered that it was not possible to provide an immediate response. Several hours later, counsel for MEUA obtained a subpoena duces tecum from this Commission, commanding Mr. Smith's attendance at 9 a.m. on March 18, 2010 in Jefferson City, MO.

4. Mr. Smith is unavailable on March 18, 2010.<sup>1/</sup> Counsel for MIEC has requested rescheduling of Mr. Smith's deposition, but MEUA refuses to cooperate with MIEC in rescheduling the deposition for a date and time that the witness is available.

5. On or about January 28, 2010, MEUA served 66 Data Requests on Noranda seeking detailed information about a host of topics, many of which had no bearing on the issues in this case. Noranda timely lodged a number of objections to MEUA's Data Requests, and on February 22, 2010, MEUA filed a Motion to Compel responses to the Data Requests.

6. On March 3, 2010, the Commission held a hearing on the Motion to Compel. At that hearing, MEUA orally argued that Noranda should be compelled to answer the Data Requests claiming, among other things, that the Data Requests should be responded to as Data Requests are more efficient than depositions. MEUA also argued that the Data Requests should be considered a "Deposition Upon Written Questions," under Mo. Sup. R. 57.04. As a result of the hearing, Noranda was compelled to answer many of the Data Requests to which Noranda had lodged objections. Noranda timely answered the Data Requests as ordered by this Commission.

7. MEUA's subpoena to Mr. Smith issued two and a half business days prior to the start of this proceeding, in light of the fact that MEUA could have deposed Mr. Smith weeks or

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<sup>1/</sup> Mr. Smith was not personally served with the subpoena. Out of a spirit of cooperation, counsel for MIEC agreed to accept service of the subpoena.

even months ago, is untimely. Indeed, scheduling the deposition during the pendency of the hearing is highly impractical. Given the timing of the contemplated deposition of Mr. Smith and the previous responses of Noranda provided through the responses to the Data Requests, good cause exists to quash the subpoena. This notwithstanding, Mr. Smith is willing to be subject to a deposition, but Noranda asks that this Commission issue its Order that the deposition be done at a date, time, place and location that is convenient for the witness, the parties and counsel.

8. Given the timing of the subpoena, lack of sufficient notice and the unavailability of Mr. Smith, good cause exists for this Commission to enter its Protective Order that the deposition not proceed in Jefferson City, MO on March 18, 2010, but that the deposition occur: (i) at a different date and time mutually convenient to the witness and counsel; and (ii) for the deposition to be held either telephonically or in a different place than Jefferson City, MO.<sup>2/</sup>

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<sup>2/</sup> Mr. Smith's office at Noranda is physically located in Franklin, TN.

WHEREFORE Petitioner respectfully requests that the Court quash the Subpoena for the deposition of Mr. Smith or, in the alternative, to issue its Protective Order for the deposition to take place on a different date or time mutually convenient for the witness and counsel or under different circumstances other than for the witness to appear live in Jefferson City, MO for the deposition.

Respectfully submitted,

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ATTORNEYS FOR NORANDA AND MIEC

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by electronic mail this 15<sup>th</sup> day of March, 2010, to each person on the Commission's official service list in this case.

/s/ Diana Vuylsteke