

overall cost of production and its “long-term sustainability”. As such, Noranda should be required to provide such information. **Second**, Noranda asserts that the cost of producing such information is unduly burdensome. As will be shown, Noranda seeks to disclose only those aspects of the CRU database which supports its misguided conclusions. Through this discovery, MEUA asks to have access to the other portions of the database which Noranda has unilaterally withheld and which likely undermine its conclusions. It is inequitable and legally baseless to allow Noranda to use certain portions of the database while unilaterally withholding those portions of that same analysis which are conflicting. If Noranda is allowed to rely on the CRU analysis, it should be required to disclose the entirety of that analysis and not simply those portions that support its desired conclusion.

REASONABLY CALCULATED TO LEAD TO ADMISSIBLE EVIDENCE

3. In his direct testimony, Mr. Fayne concedes that it is the smelter’s **overall cost of production** and its relationship to marginal cost that determines whether a smelter is profitable and ultimately survives.

Aluminum is a commodity, sold at a price that is based on global supply and demand established by trading acting on the London Metal Exchange, or LME. The price is set by the marginal producer. Therefore, if other producers have a **lower cost of production**, which is driven primarily by the cost of electricity, then the selling price will reflect such costs, and the higher cost producer will not be able to compete since the price will not cover the **higher cost of production**.

4. While recognizing the importance of the smelter’s overall cost of production, Mr. Fayne ignores overall cost and confines his analysis solely to the domestic smelters’ cost of electricity. Given that the smelter’s overall cost of production determines its profitability and that alumina and labor are conceded to be large cost

components for a smelter,² it is short-sighted to analyze the cost of electricity in a vacuum. Rather, extending the scope to include an analysis of the smelters' other major cost components, including the cost of alumina and labor, would be at least equally important in determining that smelter's overall competitiveness.

5. Not surprisingly, given its alleged electric cost disadvantage and well as its request for discriminatory ratemaking treatment, Noranda wants the Commission to focus solely on electric costs without any consideration of possible cost advantages. Such cost advantages, in some form, must exist. Despite its claimed cost disadvantage, Noranda has recently invested \$38 million to increase capacity. In discovery, Noranda concedes that such increased capacity will cause Noranda to increase electric demand by 15 MWs. Certainly, a smelter suffering from only cost disadvantages would not rationally undertake such an action. Instead, that smelter must also benefit from other cost advantages or else it would close.

6. The discovery of cost information related to the cost of alumina and labor is an attempt to identify the cost advantages that Noranda must possess. In his direct testimony, Mr. Fayne admits that "the cost of alumina, labor and electricity accounts for 75% - 80% of the [smelter's overall] cost [of production], with alumina and electricity each comprising about one-third of the cost of production."³ Given the conceded importance of both labor and alumina cost, it is logical that the search for cost advantages start with these two cost elements. As such, any discovery as to Noranda's relative cost

² See, Fayne Direct, page 3 (alumina and labor are also significant cost components for smelters).

³ Fayne Direct, page 3.

of alumina and labor would be absolutely relevant into an inquiry into the smelter's cost of production as well the smelter's "long-term sustainability."⁴

ALLEGED BURDEN OF PRODUCTION

7. As mentioned, Noranda asks the Commission to consider its relative cost of electricity in a vacuum without any consideration of the cost advantages that it must possess. By way of supporting its alleged cost disadvantage, Noranda (and Mr. Fayne) rely on a single portion (the cost of electricity) of the overall cost analysis contained in the CRU database. The brochure for CRU's primary aluminum smelting cost service makes clear that the data contained in that database goes **well beyond the cost of electricity**. This brochure specifically mentions that it provides a "breakdown of the **key cost components** for all the major plants within the global aluminum smelting industry." (emphasis added).⁵

8. In its ongoing effort to deceive the Commission as to its actual "long-term sustainability", Noranda either withheld the remaining CRU cost information from its witness OR Mr. Fayne simply ignored such data. In either case, Noranda hopes to continue its deception by hindering others from discovering the information that Noranda has withheld. Specifically, Noranda claims that the cost of producing such data to other parties would be burdensome. It is important to recognize, however, that it was Noranda that put the CRU cost data into issue. As such, Noranda should not be allowed to unilaterally pick and choose what portions of the data the Commission and the parties are allowed to see.

⁴ Smith Direct, page 3.

⁵ Brochure may be found at:

<http://cruonline.crugroup.com/Aluminium/CostServices/PrimaryAluminiumSmeltingCostService/tabid/810/Default.aspx>

9. In this case, Noranda has voluntarily raised the contents of the CRU data in the hopes of justifying its ultimate conclusion that its “long-term sustainability” is threatened and supporting its continued requests for discriminatory rate treatment. It would be inappropriate to allow Noranda to withhold those portions of the database that contradict its conclusion while simultaneously relying on and producing only those aspects which support its misguided conclusion. It is incumbent that Noranda be required to produce the entirety of the database so that the Commission may reach the appropriate conclusion as to Noranda’s relative cost of production and its long-term sustainability.

10. Noranda’s claims that it should not be required to produce the remaining pieces of cost data in the CRU database is tantamount to a police investigation that focuses solely on fingerprints, but then refuses to produce the DNA evidence that will exonerate the defendant. Similarly, it is like the medical malpractice suit that focuses solely on the EKG results without allowing a party to see the lab results that could prove the lack of malpractice. It is fundamentally inequitable to allow one party to limit its disclosure to only those pieces of a larger study that support its theory of the case. Ultimately, Noranda should be required to either produce the entirety of the CRU database that it references or withdraw those portions of its testimony that relies on that database. Furthermore, under any scenario, Noranda should not be allowed to charge parties for reviewing the remaining portions of a database that Noranda has expressly acknowledged that it has relied upon.

RENEWED MOTION TO COMPEL

11. Included in the Data Requests which the Commission compelled a response was Data Request No. 12:

Does Noranda believe that it has any cost advantages over other domestic US smelters? If yes, please list all cost advantages.

12. While not part of its Motion for Reconsideration, Noranda unilaterally withheld its response to this data request. Noranda notes:

Noranda's response to data request 1-12 depends upon its response to data requests 1-3 and 1-4. MIEC and Noranda have filed a "Motion to Reconsider the Public Service Commission's Order Regarding MEUA's Motion to Compel Noranda Aluminum to Respond to Data Requests" dated April 19, 2011 regarding data requests 1-3 and 1-4. Noranda will be able to respond to 1-12 depending upon the resolution of this motion.

13. The response to Data Request No. 12 is not dependent on the resolution of Noranda's Motion for Reconsideration of Data Request Nos. 2 and 3. Unlike Data Request Nos. 2 and 3, this data request does not seek any CRU cost data. Rather, this data request asks for Noranda's understanding as to any cost advantages that it possesses relative to other domestic smelters. Noranda can, and should, be able to respond to this request without any reliance on CRU data.

14. Noranda's continued refusal to respond to this data request is emblematic of its continued desire to keep the Commission in the dark regarding its cost advantages. While Noranda claims that its "long-term sustainability" is threatened by this case, it repeatedly refuses all legitimate discovery efforts to look behind the curtain. Public information, however, indicates that Noranda misleads the Commission and the party regarding its long-term competitiveness. Noranda's stock price has increased approximately 90% in the short eleven months that it has been traded on the New York Stock Exchange. Furthermore, despite its alleged uncompetitive position, Noranda has undertaken capital projects that will increase its electric usage by 15 MWs. Certainly, such actions are not indicative of a company with long-term sustainability problems. The Commission should allow parties to test Noranda's alleged competitive disadvantages

through discovery including the review of all aspects of the CRU database that Noranda has openly relied upon.

15. Finally, the Commission ordered Noranda to “provide all CRU data providing costs for electricity for all US smelters.” (Data Request No. 2). Unlike the last case in which Noranda provided the CRU data, Noranda in this case simply provides a spreadsheet where it has transcribed the CRU data only for the smelters referenced by Mr. Fayne. Such information is not entirely responsive to the ordered data request. As such, MEUA renews its request that Noranda provide “all CRU data providing costs for electricity for all US smelters.”

16. Given Noranda’s continued recalcitrance and the fact that the evidentiary hearing begins on April 26, MEUA asks that the Commission order Noranda to provide all information responsive to Data Request Nos. 2, 3 and 12 by the close of business on the day the Commission issues its order.

WHEREFORE, MEUA respectfully requests that the Commission deny MIEC / Noranda’s Motion for Reconsideration and order Noranda to immediately provide its response to Data Request Nos. 2, 3 and 12.

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: April 25, 2011