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BY HAND DELIVERY

January 18, 2005

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

Re: Case No. EA-2005-0180

Dear Mr. Roberts:

Attached for filing in the above-referenced case are an original and eight (8) copies of the *Missouri Industrial Energy Consumers' Memorandum of Law Addressing Whether a Certificate of Convenience and Necessity is Required*.

Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,

Diana M. Vuylsteke
DMV:rms

Enclosures (9)
cc: All Parties (Electronic Mail)

FILED

JAN 18 2005

Missouri Public
Service Commission

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And Bryan Cave,
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London

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

JAN 18 2005

In the Matter of the Application of Union Electric)
Company for a Certificate of Public Convenience)
and Necessity Authorizing it to Construct, Install,)
Own, Operate, Control, Manage and Maintain)
Electric Plant, as Defined in Section 386.020(14),)
RSMo, to Provide Electric Service in a Portion of)
New Madrid County, Missouri , as an Extension)
of its Existing Certificated Area.)

Missouri Public
Service Commission

Case No. EA-2005-0180

MISSOURI INDUSTRIAL ENERGY CONSUMERS'
MEMORANDUM OF LAW ADDRESSING
WHETHER A CERTIFICATE OF CONVENIENCE AND NECESSITY IS REQUIRED

Comes now Anheuser-Busch Companies, Inc., The Boeing Company, DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, Hussmann Refrigeration, J.W. Aluminum, Monsanto, Pfizer, Precoat Metals, Proctor & Gamble Manufacturing and Solutia, and pursuant to the Commission's January 4 *Order Directing Filing*, provides its memorandum of law addressing whether or not a provider of energy to an aluminum smelter pursuant to a contract under Section 91.026, RSMo Supp. 2004 requires a certificate of convenience and necessity issued by the Commission.

In response to the narrow issue presented in the Commission's order, the MIEC does not believe that Section 91.026 requires the Commission to issue a certificate of convenience and necessity. Section 91.026 provides at Subsection 2 that "any aluminum smelting facility **shall have the right** to purchase and contract to purchase electric power and energy and delivery services from any provider, wherever found or located", and further provides at Subsection 3 that "any provider of such electric power and energy and delivery services, **whether or not otherwise under Missouri regulatory jurisdiction, shall have the right** to transact for and sell electric power and energy and delivery services to an aluminum smelting facility" (emphasis supplied). Section 91.026 provides an

affirmative right of Noranda Aluminum and Union Electric Company doing business as AmerenUE (“AmerenUE”) to contract regardless of whether AmerenUE has obtained the Commission’s “permission and approval” in the form of a certificate of public convenience and necessity pursuant to 393.170 RSMo. As pointed out by the Commission in its order, “the existence of a power supply contract appears to be the only authority that the parties require”.

However, beyond the narrow question of whether a certificate is **required** is the broader question of whether the Commission **may** issue a certificate based on AmerenUE’s application. Although this certificate is not necessary in order for AmerenUE to serve Noranda, it may nevertheless be in the public interest for the Commission to consider whether or not to issue a certificate and permit AmerenUE to serve Noranda as a regulated consumer. Section 91.026 neither mandates nor precludes issuance of a certificate in this case.

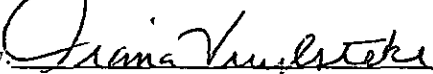
The MIEC believes that the public interest is best served by consideration of AmerenUE’s application. AmerenUE and Noranda obviously desire to submit to Commission regulation and to waive the rights granted them by 91.026. If Noranda desires regulated service and AmerenUE is willing to offer it, there is nothing in 91.026 to prevent it. Consideration of AmerenUE’s application will allow the Commission to ensure that the contract between AmerenUE and Noranda is in the public interest by determining, among other things, whether the rates to be charged Noranda are just and reasonable and whether service to Noranda will have an adverse impact on existing AmerenUE customers.

The MIEC believes that the Commission should consider AmerenUE’s application. The MIEC also believes that, having chosen to submit to Commission regulation with both its protections and risks, AmerenUE should demonstrate in this case that its service to Noranda results

in no detriment to existing customers. It should also be required, in this case and in future rate cases, to demonstrate that its proposed rates to Noranda are just and reasonable.

Respectfully submitted,

BRYAN CAVE, LLP

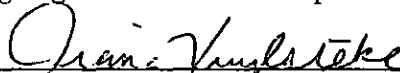
By: 

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ATTORNEY FOR THE MIEC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have served on all parties by electronic service this 18th day of January, 2004.


Diana M. Vuylsteke