

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

In the Matter of Union Electric Company,)
d/b/a AmerenUE’s Tariffs to Increase Its) Case No. ER-2011-0028
Annual Revenues for Electric Service)

**MIEC AND NORANDA’S MOTION FOR RECONSIDERATION OF THE
COMMISSION’S ORDER**

COME NOW the Missouri Industrial Energy Consumers (“MIEC”) and Noranda Aluminum, Inc. (“Noranda”), and respectfully request that the Commission reconsider a portion of its Order Regarding MEUA’s Motion to Compel Noranda Aluminum to Respond to Data Requests. Specifically, MIEC and Noranda respectfully request that Noranda not be compelled to respond to MEUA’s Data Requests Nos 1.3 and 1.4, because 1) their witnesses did not rely on the data requested in 1.3 and 1.4 when rendering their opinions in this case; 2) their witnesses did not refer to the data requested in 1.3 and 1.4 in their testimony; 3) the information sought in 1.3 and 1.4 is not reasonably calculated to lead to the discovery of admissible evidence as it is not germane to any issue in this case; and 4) the cost of producing the requested information far exceeds any probative value it may have.

1. MEUA’s Data Requests 1.3 and 1.4 seek all CRU data providing costs for alumina and labor respectively.
2. None of MIEC’s witnesses (including Henry Fayne) relied on CRU data related to costs for alumina or labor in drafting their testimony.
3. None of MIEC’s witnesses’ testimony (including Henry Fayne’s) cites, notes, refers to or relates in any way to CRU data related to alumina and labor costs.
4. CRU data related to alumina and labor costs is not germane or relevant to any issue in this proceeding.

5. Notwithstanding the above facts, On April 21, 2011, in an effort to comply with this Commission's Order, Noranda contacted CRU to seek permission to disclose the data.

6. That same day, MIEC learned that if it disclosed the requested data, it would be forced to pay CRU a fee of £10,000.00 (which equals \$16,548.20), because disclosing the data in this proceeding is beyond its intended use under the contract between Noranda and CRU.¹

See 4/21/11 Email from CRU to Noranda, attached hereto as Exhibit A.

7. Missouri Rule of Civil Procedure 56.01(b)(1) prohibits the discovery of information that is not "reasonably calculated to lead to the discovery of admissible evidence." Further, the Rule states that "[t]he party seeking discovery shall bear the burden of establishing relevance." Missouri Rule of Civil Procedure 56.01(b)(1).

8. The data sought in Data Requests 1.3 and 1.4 is not likely to lead to the discovery of any admissible evidence, because it does not refer or relate to any issues in this case, was not relied upon by any witnesses in this case and is not discussed in any of the testimony in this case.

9. In light of its total lack of probative value in this case, the cost of producing it (\$16,548.20) is, by any measure, unduly burdensome. *See State ex rel. Anbeuser v. Nolan*, 692 S.W.2d 325, 328 (Mo. App. E.D. 1985) and this Commission's ruling in Case No. TO-2000-667 (denying a motion to compel because the probative value of the information sought was outweighed by the burden to the party from whom it was sought).

10. If MEUA insists on the production of this irrelevant and costly information, MEUA should bear the cost of procuring it.

¹ Noranda will produce the CRU data requested in MEUA DR 1.2 without further objection. Producing CRU data regarding costs for electricity for all US smelters will not result in Noranda incurring a fee under its contract with CRU.

WHEREFORE, MIEC and Noranda respectfully request that the Commission (1) deny MEUA's Motion to Compel with respect to Data Requests 1.3 and 1.4, or in the alternative (2) order MEUA to pay the \$16,548.20 fee to cover the costs of producing the requested information.

Dated: April 22, 2011

Respectfully submitted,

BRYAN CAVE, LLP

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Attorney for The Missouri Industrial
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 22nd day of April, 2011, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke

From: Irv Adler [mailto:Irv.Adler@crugroup.com]
Sent: Thursday, April 21, 2011 07:37 AM
To: Habisreiting, John (NORALINC))
Cc: Paul Williams <Paul.Williams@crugroup.com>; Kelly Driscoll <Kelly.Driscoll@crugroup.com>
Subject: FW: Motion to Compel - PSC Order

John,

Good morning! In response to your e-mail below regarding Noranda's request to use CRU data as part of a disclosure to the Missouri Public Service Commission, and as a result of internal consultation within CRU, CRU will "permit Noranda to disclose certain CRU data on a "highly confidential" basis pursuant to an order issued ... by the Missouri Public Service Commission."

Only the following CRU data will be permitted:

1. All CRU data providing costs for electricity for all US smelters.
2. All CRU data providing costs for alumina for all US smelters.
3. All CRU data providing labor costs for all US smelters.

As above, we request that the data be treated in a "highly confidential" manner.

Since the use of the subject data is beyond its intended use, as internal data for the subscribing-client only, and especially in this situation, where the data is going into a court record, CRU is requesting a license fee of UK£ 10,000 for the disclosure of this data to the Missouri Public Service Commission.

Also, should Noranda be requesting additional analyst support regarding the data and the disclosure of same with regard to the subject proceedings, or any CRU data that gets put into the records of the court, CRU would treat this as going beyond CRU's normal analyst support activity. It would be treated as providing consultation in a legal matter that would involve experts from our CRU Strategies consultancy.

Best regards,

Irv

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Exhibit A