

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 27th day of
April, 2011.

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2011-0028</u>
Ameren Missouri's Tariff to Increase Its Annual)	Tariff No. YE-2011-0116
Revenues for Electric Service)	

**ORDER REGARDING MIEC AND NORANDA'S MOTION FOR
RECONSIDERATION**

Issue Date: April 27, 2011

Effective Date: April 27, 2011

On April 19, 2011, the Commission granted in part and denied in part Midwest Energy Users' Association's (MEUA) motion asking the Commission to compel MIEC and Noranda Aluminum to respond to certain data requests. On April 22, MIEC and Noranda filed a motion asking the Commission to reconsider a portion of that order. In particular, MIEC and Noranda ask the Commission to set aside the portion of the order that would compel them to respond to MEUA's data requests 1.3 and 1.4 by producing all CRU data regarding the cost of alumina and labor costs for all U.S. aluminum smelters. The motion explains that CRU, the owner of the data, intends to charge Noranda a license fee of UK£10,000 (\$16,548.20) if the data in question is disclosed. MIEC and Noranda contend this cost would far exceed any probative value of the information and suggest that if MEUA wants the information it should be required to pay the license fee.

MEUA responded to the motion for reconsideration on April 25 and supplemented that response on April 26. MEUA explains that it is seeking the CRU data regarding

alumina and labor costs because Noranda's witness testified that those two items, plus the cost of electricity, are the three most important components of an aluminum smelter's cost of producing aluminum. Noranda's witness wants to focus on the cost of electricity as a factor in Noranda's competitive position as compared to other U.S. aluminum smelters. However, MEUA contends Noranda's alumina and labor costs may give it a competitive advantage over other smelters that would offset a relatively higher cost of electricity. For that reason, it believes it needs to be able to examine the CRU data regarding all three components, not just the single component for which Noranda may have a higher than average cost.

MEUA is correct. Noranda has placed its cost of production directly into issue in the case by arguing that it should receive special rate consideration so that it can remain competitive in the aluminum smelting industry. MEUA is entitled to engage in discovery to discern the full basis for that argument.

It appears from his testimony that Noranda's witness, Henry Fayne did view CRU data regarding alumina and labor costs in preparing his expert testimony and MIEC and Noranda have not denied that fact. That data is therefore subject to discovery by a party seeking to "intelligently cross-examine" Mr. Fayne concerning the facts he used to formulate his opinion.¹

MIEC and Noranda argue that Noranda should not have to disclose the CRU data on alumina and labor costs because its expert witness did not rely on that data when offering his opinions. However, whether the witness relied on those aspects of the data is

¹ *State ex rel. Tracy v. Dandurand*, 30 S.W.3d 831, 835 (Mo. banc 2000).

not the controlling factor, as there is no exception to disclosure requirements for when an expert witness has not relied upon information that was shared with them.²

MIEC and Noranda also argue that the probative value of the CRU data is outweighed by the \$16,548.20 license fee it says it must pay to CRU to disclose the data. They claim that the disclosure of the CRU data on the cost of alumina and labor costs would therefore be unduly burdensome.³ The license fee is large enough to give the Commission pause, but the determination of the basis for Noranda's claim that it needs a reduced electricity rate in order to remain competitive in the aluminum-smelting marketplace is key to MEUA's position. On balance, the Commission will require Noranda to disclose all the information that was shown to its expert witness when he formulated the opinions expressed in this testimony. That includes the CRU data on the cost of alumina and labor costs that MEUA sought in data requests 1.3 and 1.4.

MEUA's response to the motion for reconsideration also states that Noranda has refused to respond to data request 1.12 pending the Commission's ruling on their motion for reconsideration. That data request asks Noranda to list all cost advantages it believes it has over other domestic U.S. aluminum smelters. Since the Commission is denying the motion for reconsideration, the Commission will also reaffirm its previous order requiring Noranda to respond to data request 1.12.

THE COMMISSION ORDERS THAT:

1. MIEC and Noranda's Motion for Reconsideration is denied.

² *Id.*

³ Interestingly, MIEC and Noranda indicate they will disclose the CRU data regarding electricity costs without further objection as they claim such disclosure will not incur an additional fee from CRU. It is not at all clear why CRU would impose a fee for disclosure of the alumina and labor cost data, but not for the disclosure of the electricity cost data.

2. Noranda shall respond to MEUA's data requests 1.3, 1.4, and 1.12 no later than April 28, 2011.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett and Kenney, CC., concur;
Clayton, C., dissents.

Woodruff, Chief Regulatory Law Judge