

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

Application of Union Electric Company)	
for a Certificate of Public Convenience and)	
necessity authorizing it to construct, install)	
own, operate, control, manage and maintain)	Case No. EA-2005-0180
electric plant, as defined in §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 ENERGY GROUP
MEMORANDUM OF LAW**

COMES NOW the Missouri Energy Group (“MEG”)¹, and for its response to the Commission’s Order Directing Filing dated January 4, 2005 states as follows:

1. On December 20, 2004 Union Electric Company, doing business as AmerenUE (“AmerenUE”) filed its Application and Motion for Expedited Treatment (“Application”).
2. In its Application, AmerenUE requested that the Public Service Commission (“Commission”) find that extending its service territory to serve Noranda is in the public interest and that the extended service territory and the service to be provided to Noranda under said certificate and the accompanying tariff is prudent for ratemaking purposes. (Application at paragraph 20(a))

¹ The Missouri Energy Group filed its Application to Intervene on December 27, 2004. Said Application is still pending before the Commission.

3. On January 4, 2005 the Commission issued an Order Directing Filing which ordered parties to prepare a 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 this Commission.”

4. The question that the Commission presents in this case does not coincide with our reading of AmerenUE’s Application. AmerenUE has chosen to make its transaction with Noranda Aluminum (“Noranda”) one that is regulated by the Commission under Section 393.170 RSMo 2000 (“Section 393.170”) versus one that is unregulated under Section 91.026 RSMo Supp 2004 (“Section 91.026”), despite the fact that AmerenUE cites the legislation leading to Section 91.026 in its Application as an argument for the necessity of the Application’s approval. (Application at paragraph 14).

5. Section 91.026 is silent as to mandating use of that section when a utility is contracting with an aluminum smelting facility. Therefore it would appear that a utility could choose to have an unregulated contract under Section 91.026 or a regulated contract under Section 393.190. MEG’s understanding of Section 91.026 is that it was intended to give Noranda additional options for obtaining the power it needs to run its plant.

6. Since AmerenUE has chosen to apply to this Commission for a Certificate of Convenience and Necessity and Noranda has presumably agreed with that decision, the Application should be subjected to all the standards (including—but not limited to—economic feasibility and public interest) of any utility applying for a Certificate of

Convenience and Necessity under Section 393.170 and all requirements under 4 CSR 240-2.060 and 4 CSR 240-3.105.

7. In its Application, AmerenUE has asked the Commission to approve the tariff and rates under which it plans to serve Noranda (Application at paragraph 20(a), thereby making it a regulated transaction. Section 91.026 states: “Any transactions or contracts pursuant to **this section** for electric power and energy and delivery services shall not be subject to the jurisdiction of the commission with regard to the determination of rates.” 91.026.3. (emphasis added) If AmerenUE had filed its Application under Section 91.026, the quoted language would negate the jurisdiction of the Commission. Since AmerenUE filed its Application under Section 393.170 RSMo 2000, such language and statute do not apply to this transaction.

8. Section 91.026.4 sets up criteria by which any unregulated contract should be judged, but does not set out by whom a review of said criteria would occur in an unregulated environment. A regulated Application under Section 393.170 would best protect AmerenUE’s existing customers by ensuring that the reliability of their electric service will not be compromised and that there will be no negative financial impact from the Noranda transaction on AmerenUE’s existing customers.

WHEREFORE, the MEG submits its Memorandum of Law in accordance with the Commission’s Order Directing Filing dated February 4, 2005.

WHEREFORE, the MEG prays that the Commission accept its Memorandum of Law.

Respectfully submitted,

THE STOLAR PARTNERSHIP LLP

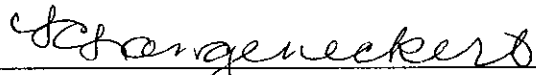


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CERTIFICATE OF SERVICE

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this 18th day of January, 2005 caused a copy of the foregoing to be served on all persons on the official service list in Case No. EA-2005-0180.



Lisa C. Langeneckert