BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area	**)** **)** **)** **)** **)**	**Case No. ER-2007-0002**

Motion of Union Electric Company d/b/a AmerenUE
To Remove Page Limit for Post-Hearing Briefs

Comes now Union Electric Company d/b/a AmerenUE ("AmerenUE") and moves the Commission to remove the page limit on post-hearing briefs set in the Order issued September 12, 2006, and as grounds therefor states as follows:

1. The Commission, in its Order Adopting Procedural Schedule and Test Year, dated September 12, 2006, ("Order"), among other things provided for a single round of post-hearing briefs for all parties to file simultaneously, and in separate paragraph D of the Order set a page limit of just 50 pages for those briefs. The same Order adopted a schedule for filing pre-hearing briefs (due March 6, 2007), but set no page limit on those briefs.[1]

2. Subsequent to the Order, 15 depositions have been taken in this case and more may be scheduled, the case has been complicated by the filing of an Overearnings Complaint by Staff, and testimony from nearly 70 different witnesses covering thousands of pages has been prefiled. Additional surrebuttal testimony will be filed on or before February 27, 2007, just one week before pre-hearing briefs are due to be filed.

3. In various filings before the Commission, this case has been described (accurately) as the biggest and most complex rate case ever filed with the Commission. AmerenUE's tariff

[1] Intervenor Noranda Aluminum, Inc. ("Noranda") filed a timely Application for Rehearing or Reconsideration of the Order on September 20, 2006 ("Application"), seeking, among other things, in section B thereof, pages 1-10, deletion of paragraph D from the Order, which set a 50-page limit on post-hearing briefs. Although multiple other matters and motions have been ruled upon, and the Order has been both altered and clarified by subsequent orders of the Commission, Noranda's request in this regard remains unaddressed. AmerenUE agrees with most of the arguments made in section B, pages 1-10 of Noranda's Application.

filings seek a rate increase totaling approximately $361 million annually, and seek the initial establishment of a fuel adjustment clause pursuant to the provisions of Senate Bill 179 and the Commission's new rules promulgated thereunder. Staff's Overearnings Complaint seeks rate decreases of between $136 million and $168 million annually. Thousands of Data Requests have been issued and responded to, including more than 1,500 issued to AmerenUE alone. The responses to these data requests encompass untold thousands of pages. In addition, work papers of the nearly 70 witnesses who have thus far prefiled testimony totaling additional thousands of pages have been produced. This case has an extremely large number of parties (16), and it is believed that there were more local public hearings held in this case (16) than in any previous case.

4. The Order requires the parties to submit a list of issues no later than March 2, 2007, just four days before the pre-hearing briefs are due, and just ten days before the hearing is set to commence. The hearing itself is scheduled to last three full weeks.

5. Although issue lists can perhaps provisionally be prepared at this time, there is no agreement in sight on what will be the contested issues to be resolved by the Commission in this case. Based upon the prefiled testimony to date, AmerenUE's current estimate is that there will be as many as 24 contested issues and eight sub-issues, for a total of 32, each of which will require a separate section of each brief filed under the Order. If this prediction is correct, the post-hearing briefs could use an average of only 1.5 pages per issue under the Order.

6. AmerenUE, along with other parties, takes seriously its obligation to assist the Commission in sorting through the complexities of this case in order to reach a fair and just result in a timely manner, and believes that in this case that obligation must be addressed fully in the post-hearing brief, for both practical and legal reasons, as discussed further below.

7. As noted by Noranda, there are practical problems that are likely to interfere with the effectiveness of the combination of a pre-hearing brief without a page limitation and a post-hearing

brief limited to just 50 pages, including the following. This case is quite contentious, as demonstrated by the pleadings, motions, and other documents filed. The length of the scheduled hearing is quite long. Definition of issues will be shaped in part by the questions posed by Commissioners at the hearing, and will have to be addressed, with citations to the record, in post-hearing briefs. Attorneys for the parties will properly be reluctant to reveal fully their trial strategies in the pre-hearing briefs, and certainly will not divulge matters such as credibility issues of witnesses and perceived fallacies in the internal logic of positions presented by opponents, which are most effectively presented during the hearing and in the post-hearing briefs. Indeed, attorneys for the parties have an ethical obligation to work to represent their clients as effectively as they can, which requires that they not reveal fully all of their trial strategies before the hearing if it is not in their clients' best interest to do so. Attorney work product is unlikely to be disclosed in pre-hearing briefs, but may become evidence in the case.

8. ***Most fundamentally of all***, the parties cannot provide via any brief or any filing except the post-hearing brief any assistance to the Commissioners which will enable them to truthfully provide the certification required before they render a final decision in this case. Section 536.080 RSMo states:

> 1. In contested cases each party shall be entitled to present oral arguments or written briefs **at or after** the hearing which shall be heard or read by each official of the agency who renders or joins in rendering the final decision.
>
> 2. In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, **either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs.**

See ***T.J. Moss Tie Co. v. State Tax Comm'n,*** 345 S.W. 2d 191, 193 (Mo. 1961) (reversing a commission decision because it was apparent that the requirements of Section 536.080 had not been met). The requirements of this statute ***cannot be met*** using a pre-hearing brief because there is no record and no evidence that can be cited to at the time pre-hearing briefs will be filed. Indeed, a

record, and evidence, is not developed until the hearings commence. That is precisely why Section 536.080 grants parties the ***right***, at or after the hearing (not before) to file briefs. Under the circumstances of this case as it has now evolved, it is highly questionable whether the 50-page limit under the Order could be met except with a mere heading for each of the contested issues and a string of bare citations to pages and line numbers in the transcript or exhibit numbers under each heading. That or anything close to it would be of very little value to the Commissioners in sorting out the issues and merits of the case and is contrary to the spirit, if not the letter, of Section 536.080.

9. While no two rate cases are exactly alike, it is noteworthy that in Kansas City Power & Light Company's ("KCPL") just completed rate case (Case No. ER-2006-0314), the Commission imposed no limit on the number of pages that could be contained in the parties' post-hearing briefs, and indeed two rounds of post-hearing briefs were filed in that case. Pre-hearing briefs were also filed. Both of KCPL's post-hearing briefs exceeded the 50-page limit contained in the Order in this case (77 and 61 pages, respectively), as did Staff's initial post-hearing brief in the KCPL case (74 pages). The KCPL case was certainly no more complex than the present rate case and involved roughly the same number of parties. The Empire District Electric Company's ("Empire") recently concluded rate case (Case No. ER-2006-0315) had one-half of the parties (just 8), and involved far fewer issues than the present rate case, but Empire filed a 77-page brief.[2]

10. In summary, AmerenUE seeks a Commission order lifting the arbitrary 50-page limit on post-hearing briefs to be filed in this case not for the sake of consuming more pages than necessary, but rather, to ensure that it (and others) have a fair opportunity to present the Commission with helpful information so that the Commission can fulfill its statutory responsibilities and reach a decision that is fair and just. It is highly likely, indeed almost certain,

[2] It is believed Staff's post-hearing brief was also likely in excess of 50 pages, but for some reason Staff only filed a Highly Confidential version of its post-hearing brief rendering it unavailable to AmerenUE.

that a 50-page limit deprives the parties of this fair opportunity and deprives the Commission of the briefs that it needs to discharge its duties and to reach a fair and just decision.

11. For the reasons stated, AmerenUE respectfully moves the Commission to withdraw paragraph D of its Order issued September 12, 2006, thus removing the page limit on post-hearing briefs. AmerenUE respectfully suggests that such an order be granted expeditiously so as to allow all parties to plan all of their briefing in this case, including the pre- and post-hearing briefs, in a manner that will aid in the most efficient presentation of this case to the Commission.

Date: February 9, 2007

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion of Union Electric Company d/b/a AmerenUE To Remove Page Limit for Post-Hearing Briefs was served via e-mail, to the following parties on the 9th day of February, 2007.

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