

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

Application of Union Electric Company)	
for a Certificate of Public Convenience and)	
Necessity authorizing it to construct, install,)	Case No. EA-2005-0180
own, operate, control, manage and maintain)	
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)	

**REPLY BY AMERENUE TO STAFF RESPONSE TO
COMMISSION DECEMBER 23, 2004 ORDER (STAFF’S ALTERNATIVE
PROCEDURAL SCHEDULE)**

COMES NOW Union Electric Company d/b/a AmerenUE (“Company” or “AmerenUE”), and hereby submits this Reply to the above-noted Response of the Staff of the Missouri Public Service Commission (“Staff”). In this regard, AmerenUE states as follows:

1. On December 20, 2004, AmerenUE filed its verified Application and Motion for Expedited Treatment (the “Application”) in the above-captioned case together with a Motion for Adoption of Expedited Procedural Schedule in which AmerenUE proposed a specific procedural schedule for the Commission’s consideration.

2. The parties to this case, AmerenUE, Staff, the Office of the Public Counsel (“OPC”) and Noranda Aluminum, Inc. (“Noranda”), together with two other groups who are seeking intervention, the Missouri Energy Group (“MEG”)¹ and the Missouri Industrial Energy

¹ MEG is composed of Barnes-Jewish Hospital, Buzzi Unicem USA, Inc., Emerson Electric Company, Holcim US, Inc., SSM Healthcare, and St. John’s Mercy Health Care.

Consumers (“MIEC”),² discussed an alternative procedural schedule, as set forth in the Staff Response to Commission December 23, 2004 Order (“Staff’s Response”) filed by Staff on December 27, 2004.³ With the two exceptions noted by Staff in Staff’s Response, AmerenUE indicated during its discussion with the others that it did not oppose Staff’s alternative schedule. Staff’s alternative schedule in effect lengthened to procedural schedule originally proposed by AmerenUE by approximately three weeks. As Staff’s Response also indicates, OPC and potential intervenors MEG and MIEC also support Staff’s proposed alternative schedule. As the Response by Noranda Aluminum, Inc. to Staff’s Proposed Procedural Schedule (“Noranda’s Response”) indicates, Noranda only takes issue with two aspects of Staff’s alternative schedule, namely, inclusion of a post-hearing brief (given that pre-hearing briefs and oral argument are contemplated) due March 22 and Staff’s proposal that the Commission not be asked to issue an order until on or before April 12 as opposed to March 31, the date by which Noranda indicates it needs an order. At bottom, all parties and the potential intervenors largely agree on the key milestones and dates provided for in Staff’s alternative schedule up to and including the proposed evidentiary hearing dates,⁴ but AmerenUE and Noranda disagree regarding two post-evidentiary hearing events.

3. As Staff’s Response indicates and as noted above, AmerenUE, like Noranda, objects to the inclusion of a post-hearing brief as part of the procedural schedule. AmerenUE proposed the filing of pre-hearing briefs, followed by evidentiary hearings, followed by oral argument *in lieu of* post-hearing briefs, as a means of ensuring that the Commission had the

² MIEC is composed of Anheuser-Busch Companies, Inc., The Boeing Company, DaimlerChrysler, For Motor Company, General Motors Corporation, Hussmann Refrigeration, J.W. Aluminum, Monsanto Company, Pfizer, Precoat Metals, Proctor & Gamble Manufacturing, Nestle Purina, and Solutia.

³ As with Noranda, the Company has no objection to Staff’s request that it be allowed to late-file Staff’s Response.

information it needed to properly deliberate upon and decide this case, but in recognition of the need to accelerate the presentation of this matter to the Commission for decision. AmerenUE does not believe that the important 26 days between the date of the oral argument proposed by Staff's alternative schedule and the date Staff's schedule indicates a decision is needed should be in part "consumed" by the filing and consideration of yet more briefs. The parties will have had a fair opportunity to present arguments based upon the evidentiary hearings and to answer the Commission's questions at the oral arguments at which point the case should stand submitted. AmerenUE also agrees with Noranda's comments, in ¶ 8 of Noranda's Response, that there simply has been no showing of any need to file pre-trial briefs and to present post-hearing oral arguments and to then, as Staff desires, to present yet more briefs. As Noranda points out, more briefs may lead to further "replies," "counter-replies," and perhaps even "counter-counter replies," a circumstance that should be avoided given the need for an expedited order in this case. AmerenUE would also note that Noranda's desire for an order by March 31 could more easily be accommodated if the last event on the procedural schedule, as proposed by AmerenUE and Noranda, is an oral argument on March 17, which gives the Commission a full two weeks to deliberate and issue an order. Finally, if the Commission finds after the filing of the pre-trial briefs, evidentiary hearings, and oral argument that it has any additional legal questions for the parties, it can certainly direct the parties to respond. The schedule as contemplated by AmerenUE does not preclude the Commission from taking this initiative.

4. There is one other aspect of Staff's alternate schedule with which AmerenUE disagrees. AmerenUE believes that deadlines for serving data requests (February 18, 2005 – four

⁴ AmerenUE is not at all certain four days of hearings will be necessary, but does not object to setting that many days aside, particularly given the need to ensure that the Commission is available as necessary to hear the case.

days after surrebuttal/cross-surrebuttal testimony is due) and for conducting depositions (February 25, eleven days before the scheduled hearings) should be set by the Commission. Such deadlines will allow all parties to conduct discovery that might be warranted based upon the surrebuttal and cross-surrebuttal testimonies to be filed on February 14, but will also allow discovery to close at a reasonable time prior to the evidentiary hearings. Discovery deadlines of this type are in accord with the practice in many if not most of the Circuit Courts of our state and are designed to allow the parties – all parties – to properly focus on hearing/trial preparation based upon the discovery previously completed. This should allow a more focused and orderly presentation of this matter to the Commission. The Commission may recall the multitude of exhibits and cross exhibits that were offered in the Metro East case, and time and resources spent in determining their admissibility. Much of this was due to the lack of a discovery cut off.

5. The Company would note that unlike the more “typical” case, substantial pre-filing discussions and meetings have occurred, substantial “informal” discovery has taken place, and all of the Company’s pre-filed direct testimony was filed with its Application. Thus, activities that in a case with a more extended schedule are often not complete until six to twelve weeks after the case is filed are already complete in this case. Further, the parties will have, based upon the Company’s Application, its pre-filed direct testimony, Noranda’s pre-filed direct testimony, and the substantial pre-filing discussions and meetings, if such discovery deadlines are adopted, a full two months to conduct discovery.

6. Staff objects to a discovery cut-off date, suggesting, among other things, the conditions that are necessary for AmerenUE to serve Noranda may require more analysis by Staff than other certificate of public convenience and necessity cases. Based upon comments in Staff’s November 12, 2004 filing in the Metro East case, it appears that most if not all of any

additional analysis Staff may desire would, if relevant at all,⁵ only be relevant in the Metro East case. The only “tie” between this case involving Noranda and the Metro East case is that as a matter of physics, AmerenUE simply does not have sufficient generating capacity to both retain the Metro East load (which of course would be the state of facts without the Metro East transfer) and also take on the Noranda load. But for the need to shed the Metro East load to free up capacity that serves Metro East (and to allow the Pinckneyville and Kinmundy combustion turbine transfers to occur), Metro East would never have been mentioned in AmerenUE’s Application or testimony in this case. At bottom, however, Metro East had to be mentioned because AmerenUE simply can’t do both – serve Metro East and Noranda.

WHEREFORE, AmerenUE respectfully requests the Commission to adopt the alternative procedural schedule proposed by Staff, with the following exceptions:

- a. Do not provide for the filing of post-hearing briefs;
- b. Impose a deadline for serving data requests of February 18, 2004 and for completing depositions of February 25, 2004; and
- c. Though the Company does not itself object to setting the date for a desired Commission order at April 12, 2005, the Company also would have no objection if Noranda’s request that the date for a desired Commission order be set at March 31, 2005 was granted.

⁵ The Company makes no comment in the context of this pleading on whether those analyses are or are not relevant or material in any case, but if necessary the Company will address that issue where it properly belongs – in the Metro East case.

Dated: January 3, 2005
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 3rd day of January, 2005.

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