

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of an Investigation of	)	
Union Electric Company d/b/a	)	Case No. EO-2006-0430
AmerenUE.	)	

**AMERENUE’S LIMITED MOTION FOR RECONSIDERATION**  
**OR CLARIFICATION OF DISCOVERY DEADLINES AND**  
**MOTION FOR EXPEDITED TREATMENT**

COMES NOW Union Electric d/b/a AmerenUE (AmerenUE or Company) pursuant to 4 CSR 240-2.160 and 4 CSR 240-2.080(16) and requests reconsideration or clarification of the Commission’s *Order Directing Staff to Investigate Union Electric Company d/b/a AmerenUE, Setting Intervention Deadline, and Establishing Protective Order* (Order) and seeks modification or clarification of the data request objection and response times ordered for this case. In this regard, AmerenUE states as follows:

1. On May 11, 2006, the Missouri Public Service Commission (Commission) issued the Order directing its Staff to begin a formal investigation of AmerenUE and to file an investigation report by June 11, 2006. Staff is ordered to report on certain aspects of AmerenUE’s business, including the three areas referenced in paragraph 1 of the Order, by June 11.

2. The Order contemplates applications to intervene by parties other than Staff and the Office of the Public Counsel. Indeed, two potential intervenors, Noranda Aluminum, Inc. and the Missouri Energy Group, have already sought intervention. AmerenUE expects others to seek intervention and Public Counsel is expected to participate in this case as well.

3. AmerenUE does not seek reconsideration of the Commission’s decision to open a formal investigation relating to AmerenUE’s earnings. However, as the Commission is well aware, the Company is preparing and intends to file, on or before July 10, 2006, a general rate

proceeding based upon a test year ending June 30, 2006 to be updated and trued-up for appropriate items, including fuel and purchased power prices through January 1, 2007.<sup>1</sup> That rate case will create, in form and substance, a comprehensive and formal review of AmerenUE's earnings, and all proper parties will have an opportunity to intervene in that case and to participate fully in that case as provided by law.

4. AmerenUE would also point out that the Commission's Order is unorthodox in that it provides a forum for what amounts to pre-rate case or complaint discovery analogous to allowing a *potential* plaintiff in a personal injury case to engage in discovery on the *potential* defendant without being required to file a lawsuit and indeed without being required to state a claim upon which relief can be granted. There is a reason the legislature gave the Commission a Staff that it may authorize to investigate the utilities the Commission regulates. There is also a reason the legislature imposed certain requirements before a complaint proceeding can be brought. The legislature did not vest potential parties to potential rate cases with investigatory powers, including discovery rights. Potential parties may be curious about a utility's earnings situation, but that is not a basis to allow unlimited discovery by non-Staff parties and it certainly does not justify expedited discovery as is currently provided by the Order.

5. In view of the foregoing, AmerenUE seeks reconsideration or clarification of the Order because as literally applied, it is unfair, unjust, and unreasonable in that it greatly restricts the time provided for by the Commission's longstanding rules for both objecting and responding to data requests to the extent those data requests are received from parties other than the Commission's Staff. Specifically, the Order provides that upon receipt of a data request, AmerenUE has just five days to object and just ten days to respond, regardless of who propounds

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<sup>1</sup> AmerenUE has confirmed with the Commission's Staff, which has indicated as much to the Commission as part of the Staff's May 4, 2006 presentation, that the Commission's Staff agrees that a June 30, 2006 test year and update/true-up that will include known and measurable fuel and purchased power prices as of January 1, 2007 (and other items agreed upon or ordered included by the Commission) is appropriate.

the data requests. This response time is half of that which is provided by 4 CSR 240-2.090(2) and with respect to the time provided for objection, could be interpreted as being contrary to Missouri Rule of Civil Procedure 44.01(a), as discussed further below.

6. While AmerenUE appreciates that the truncated discovery response times are designed to enable Staff to complete their investigation and file a report by June 11, 2006, it notes that Staff is the only party ordered to file a report at that time. The order does not require nor does it allow any intervenor to file a report. Moreover, the individuals at AmerenUE responsible for the preparation of the rate case and the undersigned counsel for AmerenUE are also the individuals who will be needed to answer any data requests issued by a party in this case. Meeting the shortened timeframe for objections and responses to data requests issued by multiple intervening parties would be extremely burdensome, unfair, and unjust, particularly in light of the upcoming rate case filing by AmerenUE. Commission rules can be waived upon a showing of good cause, 4 CSR 240-2.015, but AmerenUE respectfully submits there is no good cause for an abridged response time for data requests received from parties other than Staff. Consequently, AmerenUE asks the Commission to reconsider the Order and to determine that the expedited response time for data request objections and responses reflected in the Order as currently written applies only to those data requests received from Staff. Data requests submitted by all other parties should be subject to the normal time constraints contained in 4 CSR 240-2.090(2). In this regard, however, AmerenUE states that it is willing to consent to inclusion of a requirement that AmerenUE serve its objections and responses to Staff data requests on other proper parties to this case, subject to the Protective Order entered in this case.

7. With regard to objections to Staff data requests, AmerenUE also requests the Commission to clarify, in accordance with Missouri Rule of Civil Procedure 44.01(a), that intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the

five day deadline to object prescribed by the Order.<sup>2</sup> Not only do the Missouri Rules of Civil Procedure require this clarification, but fairness and justice require it as well. AmerenUE would point out that if a data request were received on Friday afternoon, without applying Rule 44.01(a), an objection would be due only a couple of days after it is likely those who are responsible for objecting or responding to the data request became aware of it.

8. Finally, AmerenUE asks the Commission to give this Motion expedited treatment and to take up and grant AmerenUE's requests herein at its next Agenda meeting, scheduled for May 18, 2006. This will benefit parties participating in this case by providing certainty respecting data request requirements in this docket and will not harm customers or the general public, particularly in view of the upcoming rate case filing to be made by AmerenUE in less than two months. It would also be beneficial to resolve this matter prior to the start of intervenors issuing data requests. AmerenUE also notes that it is filing this request as soon as possible after receiving notice of the opening of the case.

WHEREFORE, AmerenUE respectfully requests that the Commission take up this Motion at its next Agenda meeting on May 18, 2006, and issue an order at that time holding that intermediate Saturdays, Sundays or legal holidays are excluded from the computation of the five-day deadline to object to Staff data requests in accordance with Rule 44.01(a), that the ten day time for response to data requests applies only to Staff data requests, and that the normal deadlines for objection or response apply to data requests from any parties to this case other than Staff. AmerenUE is also willing to serve objections and responses to Staff data requests on other proper parties to this case concurrently with serving the same on Staff.

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<sup>2</sup> Rule 44.01(a), made applicable to the Commission by 4 CSRR 240-20.090(1) and Section 536.073.2, RSMo, provides that when a period of time prescribed or allowed by a rule or order is less than seven days, intermediate Saturdays, Sundays and legal holidays are to be excluded from the computation.

Respectfully Submitted:

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**Attorneys for Union Electric Company d/b/a  
AmerenUE**

Dated: May 17, 2006

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Limited Motion for Reconsideration or Clarification of Discovery Deadlines and Motion for Expedited Treatment was served to all persons on the official service list in Docket No. EO-2006-0430 via electronic filing and electronic mail (e-mail) or via regular mail on this 17<sup>th</sup> day of May, 2006.

/s/ James B. Lowery  
James B. Lowery