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BY HAND DELIVERY

December 29, 2004

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

Re: Case No. EA-2004-0108

Dear Mr. Roberts:

Attached for filing in the above-referenced case are an original and eight (8) copies of the *Comments of the Missouri Industrial Energy Consumers Regarding Scope of Issues and Evidence in the Event that Rehearing is Granted*.

Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,

Diana M. Vuylsteke
DMV:rms

Enclosures (9)
cc: All Parties

FILED³
DEC 29 2004
Missouri Public
Service Commission

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*And Bryan Cave,
A Multinational Partnership,
London*

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

FILED³
DEC 29 2004

Missouri Public
Service Commission

In the Matter of the Application of Union Electric)
Company, Doing Business as AmerenUE, for an)
Order Authorizing the Sale, Transfer and Assign-)
ment of Certain Assets, Real Estate, Leased) Case No. EO-2004-0108
Property, Easements and Contractual Agreements)
to Central Illinois Public Service Company, Doing)
Business as AmerenCIPS, and, in Connection)
Therewith, Certain Other Related Transactions.)

**COMMENTS OF THE
MISSOURI INDUSTRIAL ENERGY CONSUMERS
REGARDING SCOPE OF ISSUES AND EVIDENCE
IN THE EVENT THAT REHEARING IS GRANTED**

Pursuant to Commission Rule 4 C.S.R. 240-2.080, Anheuser-Busch Companies, Inc., The Boeing Company, DaimlerChrysler, Ford Motor Company, General Motors Corporation, Hussmann Refrigeration, J. W. Aluminum, Monsanto, Pfizer, Precoat Metals, Procter & Gamble Manufacturing, Nestlé Purina and Solutia, hereafter referred to as the Missouri Industrial Energy Consumers or "MIEC", comments regarding the scope of issues and evidence in the event that rehearing is granted in this case.

1. On October 6, 2004, the Commission issued its order ("Order") approving with certain conditions the application of Union Electric Company d/b/a AmerenUE ("AmerenUE") to transfer its Metro East, Illinois service area ("Metro East Transfer"). The Commission concluded that "in the absence of these conditions, the transfer would cause substantial detriment to the public interest such that it could not be approved". Rather than reject the Metro East Transfer, the Commission approved it subject to conditions designed to offer some protection from the cost increases to Missouri ratepayers that it determined would otherwise result from the transfer. (*Order* p. 58).

2. AmerenUE filed its application for rehearing on October 15, 2004 ("Application for Rehearing"). In its Application for Rehearing, it argued that the Commission should reject the conditions imposed by the Order, and permit AmerenUE to "assume the burden" in a future case to show that the conditions are not necessary to avoid detriment.

3. On December 20, 2004, AmerenUE filed a separate, unrelated application for a certificate of public convenience and necessity to serve an area near New Madrid County, Missouri which would encompass an aluminum smelting plant facility owned by Noranda Aluminum ("Noranda Application"). AmerenUE maintains that granting the Noranda Application is essential to Noranda's continued viability, which is in turn critical to the economy of Southeast Missouri and the state of Missouri. (*Noranda Application* pp. 7-8). AmerenUE requests expedited treatment of the Noranda Application. AmerenUE maintains in testimony filed simultaneously with its Noranda Application that it will not serve Noranda unless the Commission provides it with an order to AmerenUE's satisfaction in the present case (*Direct Testimony of Craig D. Nelson* pp. 5-7, December 20, 2004, Case No. EA-2005-0180). It references its Application for Rehearing in this case, which requests elimination of ratepayer protection conditions imposed by the Commission on the Metro East transfer, and implies that unless the Commission removes the contested conditions that it will refuse to serve Noranda, despite its statements that service to Noranda is essential to Noranda's viability and the economic health of the Southeast Missouri region.

4. No evidence or pleadings have been submitted in this proceeding relating to the Noranda Application.

5. If the Commission decides to grant rehearing in this case, the MIEC urges it to take evidence and hear argument from the parties regarding the whether there indeed is

any relationship between this case and the Noranda Application. In particular, the Commission should consider whether there is any rational relationship between the Noranda Application and the present case that should lead the Commission to abrogate the ratepayer protection conditions imposed in its Order.

6. The MIEC is mindful of the Commission's desire to expedite a decision on the issues that AmerenUE has tied to the Noranda Application. Although there is no evidence in the present case to support removal of the ratepayer protection conditions imposed by the Commission on the Metro East Transfer, the Commission may feel particular urgency to address the assertions made by AmerenUE despite this lack of evidence. Nevertheless, the Commission must ensure that its decision in this case is not based on facts or arguments outside of the record. Given that the Noranda matter has been in process for over one year, it is especially important not to curtail the parties' opportunity to respond to AmerenUE's assertions regarding the Noranda Application (See *Response by Noranda Aluminum in Support of Motion for Adoption of Expedited Procedural Schedule and Motion for Expedited Treatment*, Case No. EA-2005-0180, December 21, 2004 p. 2 par. 4). It is reasonable to conclude that AmerenUE has been planning to file the Noranda Application for an extended period of time while this case was pending, and had ample opportunity to submit evidence regarding these issues previously. It would therefore be particularly unfair to hinder the parties from making a record to respond to AmerenUE. The Commission should ensure that its decision in this case is based on competent and substantial evidence, and that it affords all parties an adequate opportunity to be heard consistent with the requirements of due process.

Respectfully submitted,

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ATTORNEY FOR THE MISSOURI
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent to all parties by electronic service this 29th day of December, 2004.

Diana Kuylsteke