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October 28th, 2004

BY HAND DELIVERY

Mr. 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. EO-2004-0108

Dear Mr. Roberts:

Attached for filing are one (1) original and eight (8) copies of the *Motion of the Missouri Industrial Energy Consumers for Acceptance of October 25 Pleading or to File Corrected Pleading Adding Signature* and attached *Response of the Missouri Industrial Energy Consumers to AmerenUE's Application for Rehearing* in the above-referenced case.

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

cc: All parties

FILED

OCT 28 2004

Missouri Public
Service Commission

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And Bryan Cave,
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London

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

FILED
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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.)

**RESPONSE OF THE
MISSOURI INDUSTRIAL ENERGY CONSUMERS
TO AMERENUE'S APPLICATION FOR REHEARING**

Pursuant to Commission Rule 4 C.S.R. 240-2.080, Anheuser-Busch, Boeing, DaimlerChrysler, Ford, General Motors, Hussmann, J. W. Aluminum, Monsanto, Pfizer, Precoat, Procter & Gamble, Nestlé Purina and Solutia, hereafter referred to as the Missouri Industrial Energy Consumers or "MIEC", responds to *AmerenUE's Application for Rehearing and Alternative Motion for Clarification of the Commission's Order of October 6, 2004* as follows:

1. On October 6, 2004, the Commission issued its order approving with certain conditions the application of Union Electric Company d/b/a AmerenUE ("AmerenUE") to transfer its Metro East, Illinois service area ("Order"). 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". (Order p. 59). The Commission Staff, the Office of Public Counsel and other parties presented evidence and arguments that the transfer is not the least cost alternative for AmerenUE and its customers.

2. The Order offers some protection to ratepayers against the detriments of the transfer, but rejects a number of the conditions that the Commission Staff and the Office of Public Counsel have shown would be necessary to prevent unwarranted future electric rate

increases. Even though AmerenUE prevailed against the other parties with regard to a number of these proposed conditions, AmerenUE's Application for Rehearing nevertheless argues that the Commission should reject the minimal conditions it imposed, and permit AmerenUE to "assume the burden" in a future case to show that the conditions are not necessary to avoid detriment. Specifically, AmerenUE argues that the Commission should remove the conditions imposed in Ordering Paragraph 6, regarding its pre-closing costs and liabilities (*AmerenUE Application for Rehearing* p. 21) and Ordering Paragraph 4, regarding the second JDA amendment recommended by the Commission Staff (*AmerenUE Application for Rehearing* p. 27). It argues that the Commission should instead permit it to make a showing in a "future rate proceeding" regarding the very issues decided in the Order (*AmerenUE Application for Rehearing* pp. 6-7, 33). AmerenUE argues for the first time at this late stage of the proceedings for adoption of a "Possible Solution for Missouri Ratepayers" (pp. 6-7), despite its failure to provide evidentiary support for such "solutions". The Commission should reject AmerenUE's efforts to persuade it to throw out the adopted conditions based on promises of a "showing" in a future case regarding the detriments caused by the transfer.

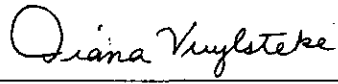
3. AmerenUE's argues that the other parties were required under 393.190.1 to prove the proposed transfer would be detrimental to the public interest. (*AmerenUE Application for Rehearing* pp. 9-11, pp. 21-22). To the contrary, it is AmerenUE's burden to show that the transfer is not detrimental to the public interest. That burden remains with AmerenUE throughout these proceedings and does not shift to the other parties. Pursuant to *Ag Processing Inc. v. Pub. Ser. Comm's*, 120 S.W.2d 732 (Mo. Banc 2003), the future rate impact of a proposed transaction must be considered in deciding whether it is detrimental to the public. The Commission correctly ruled that AmerenUE failed to meet its burden of proof under 393.190.1 that the transfer was not detrimental to the public, and rather than

reject the transfer, it imposed conditions to offer some protection against adverse rate impact.

WHEREFORE, the MIEC respectfully requests that the Commission deny AmerenUE's Application for Rehearing.

Respectfully submitted,

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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 28th day of October 2004.

Diana Vuylsteke