

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

In the Matter of an Investigation into Whether )  
Ratepayers are being Held Harmless from the ) Case No. ER-2008-0015  
Taum Sauk Disaster )

**STAFF RESPONSE TO COMMISSION ORDER**

Comes now the Staff of the Missouri Public Service Commission in response to Public Counsel's Motion To Open A New Case To Investigate Whether Ratepayers Are Being Held Harmless From The Taum Sauk Disaster filed on July 12, 2007. In an Order Resetting Time For Response To Public Counsel's Motion To Open Case issued on August 9, 2007, the Commission set August 31, 2007 as the date by which the Staff and any other entity was to respond to the Motion of the Office of the Public Counsel (Public Counsel). In response, the Staff states as follows:

1. First, the Staff would note that the issue raised by Public Counsel regarding Taum Sauk was respecting capacity sales and Public Counsel has captioned the formal investigation it is requesting the Commission to initiate as a more encompassing "investigation into whether ratepayers are being held harmless from the Taum Sauk disaster," presumably on the basis of the Commission's statement in its Report And Order at page 118 that the Commission "will direct its Staff to investigate whether ratepayers are being held harmless from the Taum Sauk disaster, especially with regard to lost regulatory capacity sales."

2. Second, the Staff would note that the Commission in its May 22, 2007 Report And Order placed no timeframe on the Staff's "investigation" and the Staff has proceeded accordingly. Members of the Staff that would be involved in such a review have recently been engaged in the Missouri-American Water Company rate increase proceeding, Case Nos. WR-

2007-0216 and SR-2007-0443, and therefore members of the Staff have been concentrating their efforts on that proceeding. So that the Staff not miscommunicate with the Commission, based on the directions to the Staff in the Commission's May 22, 2007 Report And Order in Case No. ER-2007-0002, the Staff had not considered that its review was a short-term matter with a near term response time. The Commission's May 22, 2007 Report And Order states at page 118 that "[i]f Staff finds that such regulatory capacity sales have been lost, it shall propose an appropriate adjustment in AmerenUE's next rate case or other action it believes appropriate." Public Counsel's Motion seems to assume that the Staff is conducting a ratemaking review contemporaneous with the Commission's Case No. ES-2007-0474, which is not the situation.

3. Third, the Staff would note that Public Counsel filed its Motion with the designation "ER" indicating that the case is a rate proceeding and the Commission has left that designation on the case. The Staff suggests that the Commission direct Public Counsel to indicate why this case should not be redesignated "ES" or "EO." How does Public Counsel hypothetically propose that AmerenUE's rates be changed as a result of this investigation if AmerenUE's customers have not been held harmless? Does Public Counsel propose that a complaint case follow the investigation and the Commission authorize the General Counsel to seek statutory penalties for violation of the Commission's Report And Order that AmerenUE's ratepayers be held harmless? Does Public Counsel contend that AmerenUE's rates can be reduced on the basis of this issue alone if AmerenUE's ratepayers have not been held harmless? The Staff recommends that the Commission direct Public Counsel to fully indicate what ratemaking action Public Counsel would have the Commission take under the circumstances against AmerenUE if AmerenUE has not placed its Missouri retail ratepayers in a hold harmless position as a result of the Taum Sauk disaster.

The Commission and Public Counsel are well aware of the use of liability accounts for the accumulation of funds to be used in ratemaking as a debit or offset to revenues. AmerenUE has not filed another rate increase case, and the Staff has no plans in the near-term to conduct an earnings audit of AmerenUE. Neither the Commission nor Public Counsel has proposed the use of a liability account the use of which might be effectuated in a future rate proceeding.

4. The Staff suggests that no one following this matter should confuse capacity sales with energy sales. The two of course are not the same. There was testimony in Case No. ES-2007-0474 regarding energy sales from Taum Sauk. In the test year used in Case No. ER-2007-0002, Taum Sauk was available from July 1, 2005 to December 14, 2005 for capacity sales, and the Staff is not aware of anything that indicates that capacity sales of Taum Sauk were made by AmerenUE. A capacity sale generally involves the sale by AmerenUE of a level of megawatts from an AmerenUE unit or units for a specified period regardless of whether any energy is taken by the purchaser who pays a separate charge for any energy taken. An energy sale generally involves the sale by AmerenUE of megawatthours of power from no particular AmerenUE unit or units over a specified timeframe.

5. AmerenUE has had capacity available for purchase by third parties because of capacity available to AmerenUE from its combustion turbine generating units (CTs) at Peno Creek, Venice, Pinckneyville, Kinmundy, Audrain, Goose Creek and Racoon Creek. AmerenUE has had capacity available as its capacity situation has increased over time based on the acquisition of this capacity and the availability of power from these units and its other generating units:

<u>Generating Site</u>	<u>Units</u>	<u>MWs Per Unit</u>	<u>Available</u>	<u>Total MWs</u>
Peno Creek	4 units	48 MWs each	May 2002	192 MWs
Venice	Unit 2	48 MWs	June 2002	48 MWs
	Unit 3	165 MWs	June 2005	165 MWs
	Unit 4	165 MWs	June 2005	165 MWs
	Unit 5	117 MWs	Nov. 2005	117 MWs
Pinckneyville	4 units	44 MWs each	May 2005	176 MWs
	4 units	36 MWs each	May 2005	144 MWs
Kinmundy	2 units	116 MWs each	May 2005	232 MWs
Audrain	8 units	80 MWs each	March 2006	640 MWs
Goose Creek	6 units	75 MWs each	April 2006	450 MWs
Raccoon Creek	4 units	83.5 MWs each	April 2006	334 MWs
Total				2,663 MWs

6. The Staff is unclear as to why Public Counsel is placing emphasis on opening an investigatory docket for the Staff to conduct an investigation of possible “lost Taum Sauk capacity sales” when Public Counsel has not relied on the Staff in the past to conduct such a narrowly focused investigation. Public Counsel has personnel which can conduct such an investigation. In fact, on occasion Public Counsel has conducted its own excess earnings investigations of public utilities within the Commission’s jurisdiction. If Public Counsel has any additional information in support of its position and calculation of “lost regulatory capacity sales,” it should make such information available now for the Commission’s consideration in support of its request for a formal proceeding. Public Counsel’s Motion seems to assume that the Staff is conducting a ratemaking hold harmless review contemporaneous with the Commission’s Case No. ES-2007-0474, which as explained above is not the situation. Again,

the Commission in its Report And Order placed no timeframe on the Staff to conduct its investigation, and respecting any immediate review, the same Staff that would conduct that review have been occupied in the Missouri-American Water Company rate proceeding.

Wherefore the Staff responds to the Commission's Orders in this proceeding initiated by request of the Office of the Public Counsel.

Respectfully submitted,

**/s/ Steven Dottheim**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 31st day of August 2007.

**/s/ Steven Dottheim**