

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

In the Matter of an Investigation into an)	
Incident in December 2005 at the Taum Sauk)	
Pumped Storage Project Owned and)	<u>Case No. ES-2007-0474</u>
Operated by the Union Electric Company,)	
doing business as AmerenUE.)	

**OPINION OF COMMISSIONER ROBERT M. CLAYTON III,
CONCURRING IN PART AND DISSENTING IN PART**

This Commissioner files this opinion to applaud the work of staff in completing a detailed and comprehensive report on AmerenUE's actions and omissions in the Taum Sauk disaster. The staff report recounts and explores the mistakes that led to a disaster that could have become a tragedy. This docket was created as an "uncontested case" to collect and compile information related to the incident of December 14-15, 2005. Because "uncontested cases" do not afford the standard rights of substantive and procedural due process, this case cannot be used to further substantive changes on any party. This Commissioner must concur in the majority's Order to receive the investigative staff report.

However, this Commissioner must dissent because further action is necessary to effectuate the recommendations made by the staff of the Missouri Public Service Commission (staff) in the case. This Commissioner believes that those recommendations, in which the Public Counsel concurs, warrant further consideration and possible implementation, even if over the objections of AmerenUE. Without an additional Order demanding compliance with those recommendations, the Commission is ignoring the severity of the disaster by simply trusting AmerenUE to follow recommendations outlined by the staff. Although this Commissioner offered an amendment to address this critical issue and empower staff, the majority rejected the

proposal leaving much work left undone.

In general, Commission investigations are tracked with a case number and usually conclude with a staff report and list of recommendations. If the company is agreeable with the recommendations, then the Commission orders that the utility comply with the recommendations in an Order. If the utility disagrees with the recommendations, then either the case proceeds to hearing to offer all of the parties the opportunity to present additional evidence and cross-examine witnesses or a new case is opened to address the dispute. In addition, if the staff finds evidence of a rule or statute violation, then the investigation may be closed and a new case opened with a Complaint. The Commission concludes its involvement with any such investigation by either an Order implementing recommendations, rejecting staff's proposals or possibly levying penalties against a utility.

During the Agenda meeting of December 6, 2007, the public meeting at which this Order was presented, this Commissioner offered an amendment that would have directed the staff to take the necessary steps to begin the process of implementing their recommendations. However, the Commission declined that amendment and merely accepted the report without taking any additional action on the recommendations. The Order does not mandate AmerenUE's compliance nor does it direct enforcement through another case. This Commissioner's proposed amendment, which was defeated during the Commission meeting, reads as follows, "Staff is directed to take the steps necessary to open a new case for the purpose of implementing Staff's recommendations contained in its October 24, 2007, Incident Report."

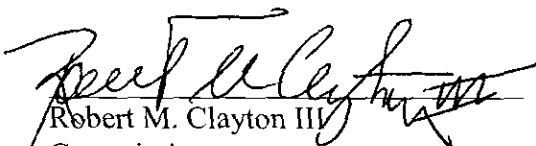
This Commissioner believes additional steps should be taken for the Commission to consider staff's recommendations. While this Commissioner is not prejudging the merits of each of the recommendations, those proposals are designed to protect rate payers from the mistakes

made by the utility and to prevent similar future occurrences. Positive change can only occur with an Order of the Commission derived from a contested case with full due process protections for all of the parties. It appears that the majority is comfortable relying on staff to monitor further activity associated with its recommendations, but, without a Commission Order directing AmerenUE to implement some or all of staff's recommendations, there is no process for enforcing compliance and no potential penalty for failure to comply. In addition, the staff must be given the authority to act through a complaint if it feels it is necessary. This Commissioner believes an Order setting out clear policy and the decision of the Commission, is the best way to proceed.

The staff is to be commended for compiling a detailed and thoughtful report fully describing the events that occurred before, during and after the disaster at Taum Sauk. This report deserves to be received and made available to the public for further review. Legally, no additional action may be taken in this case because of its investigative and uncontested design and this docket has no real use beyond acceptance and release of the report. It is in a new case where this Commission can take up and address the substantive recommendations made by the staff. This Commissioner's defeated amendment would have authorized that additional action.

For the foregoing reasons, this Commissioner concurs in part and dissents in part.

Respectfully submitted,


Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 17th day of December, 2007.