

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

In the Matter of Public Counsel's Petition)	
To Open a Case to Investigate AmerenUE's)	Case No. EO-2009-0126
Plan to Construct and Finance a Second Unit)	
At the Callaway Nuclear Plant Site.)	

**AMERENUE'S RESPONSE TO
PUBLIC COUNSEL'S PETITION TO OPEN A CASE**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company"), and for its Response to the Petition to Open A Case filed herein by the Office of the Public Counsel ("OPC"), states as follows:

1. On October 6, 2008, OPC filed a petition in this proceeding, requesting that the Commission open an investigative docket to review AmerenUE's decision-making process regarding whether it should move ahead with building the Callaway 2 nuclear plant. OPC argues that it wants to proceed in this investigation "in a collaborative way," but then goes on to incorrectly imply that AmerenUE (a) has already made a decision to build Callaway 2, and (b) is lying to the Commission about the fact that it has already made such a decision. ("Just as the Commission recognized in ER-2007-0002 that AmerenUE's position on Callaway 1 was pure sophistry, it should recognize that AmerenUE's position on Callaway 2 here is also sophistry.")

2. The truth is that AmerenUE has not made a decision to build Callaway 2, as it has stated on numerous occasions. In fact, just nine days ago and *under oath*, AmerenUE Vice President of Regulatory Affairs Steve Kidwell unequivocally stated that no such decision has been made and that, moreover, no such decision will be made until

mid-2011, at the earliest. OPC's claim that the Company's position is "sophistry" is tantamount to calling Mr. Kidwell a liar. OPC should withdraw its irresponsible claim.

3. To repeat: as the Company has stated on numerous occasions, a decision regarding whether or not to build Callaway 2 will not be made until at least mid-2011, after extensive pre-filing workshops with stakeholders, after AmerenUE's next Integrated Resource Plan ("IRP") has been filed, and after interested stakeholders have been permitted to comment on that filing. Given the timeframe for this decision, in AmerenUE's view, an investigation into the decision-making process now is clearly premature.

4. OPC's true agenda in proposing this investigation docket is revealed beginning on p. 3 of its pleading where it is critical of any effort to "repeal...an initiative petition"¹—a clear reference to the Section 393.135 RSMo., which prevents electric utilities from adding construction work in progress ("CWIP") to rate base until the construction project is complete and the plant is fully operational and in service. On p. 4 of its pleading OPC is more direct, suggesting that an administrative proceeding before the Commission is preferable (to OPC) than a "debate driven by lobbyists" at the Legislature.

5. OPC's petition to open this docket is a transparent attempt to provide a platform from which it can undermine any effort on AmerenUE's or anyone else's part to facilitate the construction of new baseload generation in Missouri by seeking an

¹ OPC also implies there is something untoward about exercising one's Constitutional right to seek action from the Legislature that might repeal or amend §393.135, RSMo. Though adopted using the initiative petition process provided for in Article III, § 50 of the Missouri Constitution, § 393.135 is a *statute* and is not a part of the Missouri Constitution. A *statute* adopted via initiative petition, is to be "judged on the same basis as any statute passed by the legislature..." Labor's Educ. And Political Club – Independent, et al v. Ashcroft et al., 561 S.W.2d 339, 343 (Mo. 1977).

exemption from the anti-CWIP statute from the Legislature. Indeed, a review of OPC accountant Russell Trippensee’s “White Paper” confirms that what OPC wants is for the Commission to somehow impose a Kansas City Power & Light Company-style “Cash Flow Metrics” model on AmerenUE. At a minimum, OPC seeks to foreclose even the *option* to include CWIP in rate base by misusing the Commission’s administrative processes to promote OPC’s arguments and to impede the Company’s legitimate right to seek a modification of the anti-CWIP legislation. What financial model will best allow Callaway 2 to be built remains an open question, but certainly use of CWIP in rate base is an option the Company believes needs to be available. Ultimately, whether it is available is and should be up to the Legislature. The Commission should not allow itself to be drawn into the legislative process, on either side of any debate about CWIP or Cash Flow Metrics, or otherwise, particularly when any decision to build new baseload generation is years away. At bottom, although OPC is certainly free to lobby the Legislature directly in any way it feels appropriate, it should not be permitted to misuse Commission proceedings in an attempt to interfere with other parties’ rights to do so.

6. AmerenUE acknowledges that the Commission and the public have a legitimate interest in fully investigating the justification for an investment of the magnitude required for the construction of a nuclear plant before a decision is made to proceed with the project.² AmerenUE would therefore support the initiation of an investigative proceeding similar to the proceeding OPC has recommended in the fourth

² However, the Commission itself has previously indicated that it should not dictate to utility management the particular resource decision the utility should make. *See, e.g. Order of Rulemaking*, Case No. EX-92-299 (The IRP Rule docket), wherein the Commission stated that it is “wary of assuming, either directly or in a *de facto* fashion, the management prerogatives and responsibilities associated with strategic decision making” and that it should put rules in place “to promote proper, accurate and increasingly necessary long-range planning, but not to dictate either the strategic decision itself or the decision-making process.”

quarter of 2009. This would dovetail with the commencement of the stakeholder process that will occur in advance of the Company's next IRP filing. AmerenUE would suggest that the stakeholders provide bimonthly reports of their progress to the Commission, and, following the filing of each bimonthly report, appear at an on-the-record proceeding to answer any questions that the Commission may have. This will provide at least a year-long window for the investigation docket even before the Company's IRP filing is made. It will afford the stakeholders and the Commission the opportunity to consider more current information concerning (a) carbon legislation or lack thereof, (b) CWIP legislation or lack thereof, (c) the success of AmerenUE's energy efficiency programs to be implemented beginning this fall, (d) the condition of financial markets, (e) AmerenUE's credit rating, and (f) any other factors that may impact loads or supply options for AmerenUE.

7. Proceeding in this fashion will avoid "dictating the decision-making process," which seems to be a central component of OPC's attempt to force the Company into a process at this premature date when the availability of all financing options are simply not yet known. The Company desires input from the Commission and its stakeholders, and is strongly supportive of creating a framework for that input. Beginning that process more than 30 months before the earliest possible date a decision might be made is, however, premature. In summary, consideration of these issues closer to the time that a decision will be made will be far more beneficial than beginning an investigative docket at this point in time.

WHEREFORE, AmerenUE respectfully requests that the Commission delay initiation of the investigative docket requested by OPC until the fourth quarter of 2009, and require stakeholders to report to the Commission periodically, and appear at on-the-record proceedings as recommended herein.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Public Counsel's Petition to Open A Case was served on the following parties via electronic mail (e-mail) on this 15th day of October, 2008.

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