

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

In the matter of Union Electric Company)	
d/b/a AmerenUE for Authority to File)	
Tariffs Increasing Rates for Electric)	Case No. ER-2007-0002
Service Provided to Customers in the)	
Company's Missouri Service Area.)	

**UNION ELECTRIC COMPANY d/b/a AMERENUE'S
MOTION TO STRIKE PUBLIC COUNSEL'S REPLY FILED MAY 17, 2007**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company") and moves to strike *Public Counsel's Reply to Union Electric Company d/b/a AmerenUE's Response to Order Establishing Time to Respond to Issue Raised in Public Counsel's Brief and Motion to Strike*. In support of its Motion, the Company states as follows:

1. On May 4, 2007, the Commission issued its Order Establishing Time to Respond to Issue Raised in Public Counsel's Brief (the "Order"). The Order, as its title indicates, ***established a time*** within which "[a]ny party wishing to offer additional argument regarding the Taum Sauk Regulatory Capacity issue" was to provide such argument. That time – that deadline – was 12:00 Noon on May 9, 2007. The Company, in full and timely compliance with the Order, responded to the Order. Public Counsel ignored the order. It was Public Counsel's right to ignore the Order, but Public Counsel cannot now wholly disregard it by providing additional argument on this issue eight days after the deadline this Commission set has passed, and just a few days before the Report and Order in this case will be issued. If the Commission's orders are to mean anything, the Commission should hold parties to compliance with them absent a good reason for noncompliance. Public Counsel has absolutely no such reason.

2. Bluntly stated, Public Counsel's May 17 Reply is also false. In its Reply, Public Counsel states as follows: "Like Public Counsel, the Staff did not know that UE was making

capacity sales until the hearing.” That statement is *flat out wrong*, as proven by the following excerpt from the Company’s May 9, 2007 Response to the Order and the questions and answers from AmerenUE witness Michael Moehn’s deposition taken more than *six weeks* before the hearings:

[AmerenUE’s May 9 Response]: “[P]erhaps OPC may claim that somehow the issue of regulatory capacity came up for the first time at the evidentiary hearings. If claimed, that would not be true. AmerenUE witness Michael Moehn was asked during his deposition (Exhibit 260 – taken on January 26, 2007) whether AmerenUE had or was making any sales of regulatory capacity.¹ Indeed, Public Counsel Mills himself cross-examined Mr. Moehn extensively during his deposition,² and specifically questioned Mr. Moehn *about this very issue* -- AmerenUE capacity sales.³ Consequently, any claim that OPC had no opportunity to raise this issue well in advance of the evidentiary hearings would simply be untrue, as evidenced by the fact that OPC knew about (and questioned AmerenUE witnesses about) sales of regulatory capacity many weeks before the hearings began, and had in its possession the very figures it now relies upon from Company *direct* testimony, filed many months earlier.”

[Mr. Moehn’s January 26 Deposition – Exhibit 260, p. 66, l. 20 to p. 67, l. 25]:

[By Mr. Mills]:

“Q. Now, let me back up a little bit. We’ve been discussing the fact that Union Electric decided not to bid into those [Illinois] auctions. Is it correct to understand that Union Electric does, in fact, have capacity available that could have been bid into those auctions?

A. Yes.

Q. And instead of bidding into those auctions, what has Ameren UE [sic] decided to do with what [sic] capacity?

A. They’ve been selling that capacity off in basically [the] bilateral market.

Q. Okay. Are they entering into multiple contracts or a single contract?

A. Multiple contracts.

¹ Tr. p. 1207.

² Mr. Mills’s cross-examination covered pages 51 to 102 of the 134 page deposition transcript.

³ Exh. 260 (Moehn Deposition).

Q. Do you know how much has been sold through these contracts?

A. I would be guessing.

Q. Can you narrow it down to a range?

A. A couple of hundred megawatts.”

3. Mr. Moehn testified, in deposition, in response to *Public Counsel’s* questions, that AmerenUE had already made capacity sales. How Public Counsel can now represent to this Commission that Public Counsel did not know about regulatory capacity sales until the hearing is beyond explanation. Public Counsel did know – the *record* in this case proves it.

4. AmerenUE has already timely argued this issue – in compliance with the Order. As AmerenUE’s May 9 Response indicates, whether capacity could have been sold from the Taum Sauk Plant and at what price is pure speculation and is not supported by any evidence in the record in this case.

WHEREFORE, for the foregoing reasons, the Company respectfully requests that the Commission enter its order striking Public Counsels May 17 Reply, and renews its motion that the “Taum Sauk Hold Harmless – Capacity Sales” line appearing on Staff’s Revised True-up Reconciliation, and the “Taum Sauk Regulatory Capacity” heading and paragraph following that heading on page 54 of OPC’s Post-Hearing Brief be stricken and that the same not be considered a part of the record in this proceeding.

Dated: May 17, 2007

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Union Electric Company d/b/a AmerenUE Motion to Strike Public Counsel's May 17, 2007 Reply was served via e-mail, to the following parties on the 17th day of May, 2007.

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