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 Operated by the Union Electric Company, doing business as AmerenUE.	))))))	Case No. ES-2007-0474

AMERENUE'S RESPONSE TO STAFF'S INITIAL INCIDENT REPORT

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE", "UE" or "Company"), and in response to the Staff's Initial Incident Report ("Staff's Incident Report") hereby states as follows:

I. BACKGROUND

1. This proceeding was established to investigate the collapse of the upper reservoir of AmerenUE's Taum Sauk Pumped Storage Project, which occurred on December 14, 2005. The case was initiated by a motion to open a contested proceeding filed by the Missouri Public Service Commission Staff ("Staff") on June 8, 2007,[1] almost 18 months after the incident occurred. This investigation followed 5 previous investigations of the incident which were conducted by (1) an expert consultant retained by AmerenUE, Paul C. Rizzo, Ph.D., P.E. ("Rizzo"); (2) the Federal Energy Regulatory Commission ("FERC") Staff; (3) an independent panel of expert consultants retained by FERC (the "FERC independent panel"); (4) the Missouri Department of Natural Resources' ("MDNR") Water Resources Center, Dam and Reservoir Safety Program; and (5) the Missouri State Highway Patrol. These investigations generated numerous reports

[1] Staff's Motion to Open an Investigation Into the Taum Sauk Incident ("Staff's Motion").

about the incident that total thousands of pages. The Taum Sauk failure is arguably the single most investigated incident in the history of the State of Missouri.

2. This proceeding was also initiated in the wake of, and at least as a partial response to, a June 4, 2007 news article in which AmerenUE was accused (incorrectly) of tampering with evidence following the collapse in order to impede the investigations, failing to provide documents requested as part of the investigations, and failing to identify the persons who moved the Warrick probes at the reservoir immediately after the event. This news article was specifically quoted in the Staff's motion, and the Staff stated that "these new allegations require thorough investigation by this Commission." (Staff's Motion, p. 14.)

3. AmerenUE opposed the opening of this proceeding for several reasons. First, AmerenUE argued that the allegations contained in the June 4, 2007 news article were demonstrably false and provided no basis for initiating an investigation. Second, the Company argued that a sixth investigation of the Taum Sauk incident would be redundant and unnecessary given the exhaustive investigations of the incident which had already been conducted. Third, AmerenUE argued that the initiation of a sixth investigation could actually be harmful to the State of Missouri, because it could create an obstacle to AmerenUE's efforts to reach a mutually acceptable resolution of the incident with the Missouri Department of Natural Resources and the Attorney General.[2] Moreover, AmerenUE noted that it had already taken full responsibility for the effects of the incident.

4. Notwithstanding AmerenUE's objections, on June 19, 2007 the Commission issued an order granting the Staff's request to open a case "for the purpose of receiving

[2] Resolution of this matter has not yet been achieved.

an Incident Report." However, the Commission denied the Staff's motion to open a contested proceeding, and specifically held that no action could be taken against AmerenUE as part of this proceeding.

5. The Commission conducted lengthy hearings in these proceedings during portions of three weeks in July and August, 2007. No prefiled testimony was submitted, but each of the thirteen subpoenaed witnesses (including AmerenUE's CEO) was subjected to many hours of cross-examination by Commissioners, the Staff, the Office of the Public Counsel, and the MDNR. Witnesses were sequestered during the proceeding so that they could not hear the testimony of other witnesses. In addition, as part of this proceeding AmerenUE responded to more than 40 Data Requests made by the Staff, answering dozens of questions and producing thousands of pages of documents.

II. STAFF FINDINGS

6. On October 24, 2007 the Staff filed its Incident Report containing proposed findings and recommendations. AmerenUE is pleased to see that the Staff's Incident Report is generally consistent with the findings of the previous investigations of the Taum Sauk failure.

7. AmerenUE agrees with many of the proposed findings contained in the Staff's Incident Report. Most importantly, the Staff's Incident Report finds that the news article allegation that AmerenUE tampered with evidence related to the failure was incorrect. (Staff's Incident Report, p. 61 ("[T]he Commission specifically finds that no tampering with any evidence occurred.").

8. AmerenUE also agrees with many of the proposed findings contained in the Staff's Incident Report regarding AmerenUE's mistakes that contributed to the Taum

Sauk event. These findings are generally consistent with the findings in the previous investigations, and they are also generally consistent with the list of errors that AmerenUE provided in this proceeding at the request of the Office of the Public Counsel. (*See* Exhibit 53.) Specifically, AmerenUE acknowledged:

(a) poor communication between the engineering and operating groups;

(b) lack of proper understanding of the design basis of the upper reservoir;

(c) failure to recognize the severity of problems and to act in a sufficiently conservative manner; and

(d) problems with the initial construction of the upper reservoir.

(Staff's Incident Report, p. 52; Exhibit 53.)

9. AmerenUE does not agree with all of the proposed findings in the Staff's Incident Report, however. Most significantly, AmerenUE does not believe that the evidence adduced in this proceeding shows that financial pressure caused the Company's employees to intentionally or recklessly compromise safety at the Taum Sauk facility. AmerenUE's employees were, of course, generally aware of the financial considerations involved in operating the Taum Sauk plant, as they would be with any AmerenUE facility. Efficient, cost effective operation of plants ultimately benefits ratepayers, and is therefore an appropriate and necessary consideration. However, AmerenUE's employees consistently testified that financial considerations never caused them to compromise safety. (*See, for example,* Tr. pp. 868, 870-71, 914-15, 977-81, 1147-48, 1461, and 2434-35.) Moreover, critical Company documents, including the operating manual for the Taum Sauk plant and an e-mail directive issued more than a year before the failure by Mark Birk, the AmerenUE officer in charge of all of the generating plants, clearly show

that the Company's policy was to place safe operation of its plants above financial considerations. (*See* Exhibits 25 ("Caution must be exercised to operate in accordance with sound operating judgment, within the constraints of the FERC license, Taum Sauk Operating Manual and any additional Operating Orders."), 44 ("The Operations Department…is responsible and accountable for the safe and efficient operation of the generating units. If tripping of equipment or the unit is warranted due to safety or asset preservation requirements that decision must be made in a timely manner by the operating group aside from any requirements Trading, Generation Services or the ESO may have."), and 47.) It was undisputed that if plant personnel believed that the safety of the plant was compromised, they had the absolute authority to shut it down and make the necessary repairs. (*See, for example*, Exhibit 44; Tr. pp. 416, 1226-27, 1253-54, 1279, and 1435-36.) Thus, the evidence showed that the failure of the Taum Sauk upper reservoir was fundamentally due to a series of errors regarding whether the plant's safety was in jeopardy, in combination with inherent weaknesses in the structure due to original construction defects, and was in no way the result of an effort to increase profits by compromising safety.

10. There are a number of specific findings contained in the Staff's Incident Report that are erroneous or incomplete based on the evidence in the record. Appendix A contains an analysis of some of those errors and omissions. Although Appendix A is not intended to be a comprehensive list given the length of the Incident Report, the Company believes its analysis of the Staff's findings discussed in Appendix A should be considered by the Commission when it issues its order in this case.

III. STAFF'S RECOMMENDATIONS

11. The Staff's Incident Report contains a number of recommendations for the Commission's consideration. However, as the record establishes, the Company has already taken steps to address the issues that contributed to the Taum Sauk failure. As Mr. Birk testified, the Company has, among other things:

a. Established a dam safety group that has the responsibility for, among other things, design review, procedure development, training, and facility inspections. It also has the authority to shut a facility down if it believes the facility is being operated unsafely. (Tr. pp. 1613-14.)

b. Developed and implemented a quality management system, which provides training on design basis and takes into account procedure development. This system applies to all of AmerenUE's fossil and hydro units. (Tr. p. 1614.)

c. Changed and updated its operating procedures, and issued directives that reiterate that AmerenUE's philosophy is that employees should take a conservative approach and always favor making the safe decision. (Tr. pp. 1614-15.)

d. Put in place procedures and review systems to ensure that if the Taum Sauk facility is rebuilt it is done safely and pursuant to industry standards. (Tr. p. 1615.)

e. Cooperated fully in all investigations into the Taum Sauk breach event, and taken responsibility for the effects of the breach. (Tr. p. 1615.)

f. Reached settlement with the family injured during the failure in less than 90 days after the event.

g. Spent more than $48 million to date for restoration of Johnson's Shut-Ins State Park and the Black River.[3] (Tr. p. 1615-16.)

h. Paid a $10 million fine to the FERC and set aside an additional $5 million for projects to enhance the area around Taum Sauk. (Tr. p. 1616.)

i. Voluntarily removed the effects of the Taum Sauk breach, the lack of generation from Taum Sauk, and the costs associated with the Taum Sauk investigations, clean-up, and settlements from its most recent rate case (Case No. ER-2007-0002), long before this proceeding was instituted, so that they do not impact customers. (Tr. p. 1616.)

j. Performed a risk analysis of all of AmerenUE's generating plants to identify potential risks. (Tr. p. 1617.)

12. AmerenUE took many of these actions and implemented many of these changes on its own initiative. Others of these actions and changes were implemented as part of AmerenUE's settlement with the FERC, the agency with primary regulatory authority over the Taum Sauk facility. The Company believes that the steps it has taken appropriately respond to and address the issues that contributed to the Taum Sauk event, and are more than sufficient to ensure that the safety of the public, AmerenUE's employees, public and private property, Taum Sauk, and AmerenUE's other plants is protected. Nonetheless, AmerenUE is willing to voluntarily adopt most of the

[3] At the time of the hearings in this matter AmerenUE had spent approximately $40 million.

recommendations the Staff has submitted.[4] Each recommendation is separately addressed below.

13. Staff's first recommendation is as follows: "That any and all costs, direct and indirect, associated with the Taum Sauk incident be excluded from rates on an ongoing basis. This includes, but is not limited to, the exclusion of rebuilding costs and treating the facility as though its capacity is available for dispatch modeling."

AmerenUE has already committed to protecting its customers from bearing the costs of the Taum Sauk failure. To that end, in its most recent rate case, AmerenUE excluded from its revenue requirement the costs of investigating the failure, the costs the Company incurred for the clean-up at Taum Sauk, the costs of compensating parties adversely affected by the failure (including, for example, compensation paid to the family that was injured during the failure and the $48 million paid—so far—to restore Johnson's Shut-Ins State Park), and the cost of the fine paid to the FERC related to the failure. In addition, in setting rates the Company modeled its system as though the Taum Sauk plant continued to operate in order to give customers the full benefit of the plant and the economic power it could generate during peak periods.

However, AmerenUE believes it would be inappropriate for the Commission to make any findings concerning the treatment of any rebuilding costs in a future rate case as part of this proceeding. One reason is that such ratemaking issues exceed the scope of this proceeding by a considerable margin. AmerenUE had no notice that such issues would be considered, it had no opportunity to provide testimony on these issues, and indeed it would be inappropriate to consider these issues prior to a rate case.

[4] AmerenUE's agreement to voluntarily implement certain recommendations is not an indication that it believes or agrees that formal action can or should result from this matter, and it reserves the right to challenge the imposition of any requirements or recommendations in this or any other proceeding.

If AmerenUE reconstructs the Taum Sauk facility, and *if* the Company seeks rate recovery of some portion of the costs, a number of issues will have to be considered. For example: Does the new facility have greater or less capacity than the old facility? Does it have a longer useful life? Is it superior or inferior in other ways? Were some activities undertaken during the reconstruction that would have been required even if the failure had not occurred? How should insurance payments/settlements be taken into consideration? These are fact intensive inquiries that can only be undertaken if the facility is in fact rebuilt and only if and when AmerenUE seeks recovery of some of the costs.

Moreover, Section 393.135 RSMo. 2000 prohibits consideration of including the costs of any electrical plant in rates before it is "fully operational and used for service." As a consequence, it is premature and inappropriate for the Commission to make any determination regarding these issues at this time.

14. The Staff's second recommendation is as follows: "That appropriate accounting treatment be given to the monies expended to rebuild the Taum Sauk plant in order to protect the interests of Missouri ratepayers."

AmerenUE agrees that it will give appropriate accounting treatment to such monies.

15. The Staff's third recommendation is as follows: "That UE shall submit to Staff, on an ongoing basis, its accounting treatment for all transactions relating to the reconstruction of the Taum Sauk plant."

AmerenUE agrees with this recommendation, but believes that "on an ongoing basis" is vague. The Company agrees to submit its accounting treatment to the Staff on a semi-annual basis.

16. The Staff's fourth recommendation is as follows: "That a single, on-site, supervising engineer shall be assigned to oversee all engineering projects at a given UE facility. This supervising engineer shall be responsible and accountable for the satisfactory completion of the work, shall have all necessary authority, including authority to determine when, and whether, the unit may be released for operation, and shall report to an officer of UE."

AmerenUE generally agrees with this recommendation with two caveats. First, the recommendation should be limited to AmerenUE's generating plants. Second, the supervising engineers should report to an AmerenUE manager, but should have the obligation to report any unresolved safety issues to the AmerenUE safety officer responsible for the facility.

17. The Staff's fifth recommendation is as follows: "That UE's officers, executives and managers shall work only for UE and shall not simultaneously work for affiliates of UE or for UE's parent."

AmerenUE does not agree with this recommendation. Although on January 1, 2007 AmerenUE was reorganized so that it has a Chief Executive Officer (Tom Voss) who has ultimate authority over AmerenUE matters, and the AmerenUE operations officers who report to Mr. Voss work exclusively for AmerenUE, the Company has other officers who simultaneously work for other affiliates and are responsible for non-operating functions. AmerenUE does not believe that this structure results in less focus

or attention on AmerenUE operations, or that it had anything to do with the causes of the Taum Sauk failure. In addition, implementation of this recommendation would unnecessarily limit AmerenUE's ability to efficiently manage its business. Because the Company sees no basis for or potential benefit from implementing this recommendation, it does not agree with it.

18. The Staff's sixth recommendation is as follows: "That only UE's officers, executives and managers shall be authorized to make decisions affecting UE's facilities and services."

AmerenUE generally agrees that AmerenUE officers should be responsible for decisions affecting the Company. However, AmerenUE operates as part of a holding company structure, and many services are provided to AmerenUE by service company employees at cost. For example, Ameren Services Company provides accounting, human resources, and legal services to AmerenUE at cost. Similarly, Ameren Energy Fuels and Services Company provides fuel acquisition services to AmernUE at cost. Employees of these and other affiliate companies necessarily make day-to-day decisions affecting the Company's facilities and services, and use of these service companies is the most efficient and effective way to meet the Company's needs. AmerenUE is currently structured such that its officers, executives and managers are ultimately responsible for decisions affecting the Company's facilities and services. However, it would be costly and unjustified to require that they make every decision that could possibly affect the Company's operations.

19. The Staff's seventh recommendation is as follows: "That these internal controls shall be reflected in UE's policies, procedures and job descriptions."

AmerenUE agrees that any recommendations that it has agreed to will be reflected in relevant policies, procedures and job descriptions.

20. The Staff's eighth recommendation is as follows: "That UE shall implement a 'whistleblower' program whereby employees may report safety concerns directly to UE's officers without exposure to retaliation. Any such reports shall be immediately communicated to Staff."

AmerenUE agrees to implement this recommendation, and agrees to provide the Staff with a semi-annual report detailing these reports rather than reporting them "immediately" before any investigation can be undertaken.

21. The Staff's ninth recommendation is as follows: "That UE shall designate an officer or executive as its system-wide safety officer. This officer shall have appropriate duties and authority in order to act effectively to protect UE's assets and system, its employees and customers, as well as the general public, private and public property, from undue risk."

AmerenUE agrees with this recommendation, but believes three separate safety officers need to be designated—one officer for the Callaway nuclear plant, one officer for the other generating plants, and one officer for the transmission and distribution systems. The different nature of these facilities requires a different safety officer for each.

22. The Staff's tenth recommendation is as follows: "That UE shall produce and file, within 90 days hereof, its plan for implementing these recommendations."

AmerenUE agrees to file such a plan for implementation of the recommendations it has agreed to, as outlined above.

WHEREFORE, AmerenUE respectfully requests that the Commission accept this Response to the Staff's Incident Report.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

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APPENDIX A

AmerenUE believes that the Staff's Incident Report includes certain statements and conclusions that are not supported by the record or are contrary to other evidence in the record. While AmerenUE does not believe it is useful to identify every statement in the Incident Report with which it takes issue, it has identified below those instances where it believes there is a material error or misstatement of the facts.[5]

1. The Incident Report states that FERC's independent panel described the storage of water against the upper reservoir parapet wall at Taum Sauk as "unprecedented." (Incident Report ¶ 31, p. 23.) While AmerenUE agrees that this was the description used by the independent panel, AmerenUE notes that the design of the Taum Sauk facility, including the storage of water against the upper reservoir parapet wall, was reviewed, approved, and licensed by the FERC, and that the facility was inspected by the FERC on an annual basis. (Tr. pp. 67 and 293.) In addition, the Taum Sauk facility successfully operated with this design for more than 40 years. (*See* Exhibit 3, p. 11 (FERC independent panel report, which notes that Taum Sauk went into operation in 1963).)

2. The Incident Report quotes AmerenUE witness Warren Witt's testimony regarding the change in the upper reservoir operating level in October 2005. Mr. Witt said that his understanding was that the change in the operating level from elevation 1596 to elevation 1594 was a change to the "indicated level," and that "an indicated level of 1594 would be a real elevation of 1596 because that's what we had always operated." (Incident Report ¶ 35, pp. 24-25.) However, Jeff Scott, the Supervisor for Power Production/Engineering at Taum Sauk, who

[5] Simply because Ameren has not identified a particular statement or conclusion as one with which it disagrees does not mean that it adopts or agrees with it. Ameren reserves the right to challenge any of the statements and conclusions in the Report in this or any other proceeding.

was at the facility every day and was involved in making the two foot adjustment, testified that when the operational level was lowered to 1594, it resulted in an actual two foot reduction in the water level at the upper reservoir. (Tr. pp. 2091-2094.) Shawn Schukar, Steve Schoolcraft, and James Bolding all understood that this was the case. Mr. Schukar is the Vice President of Ameren Energy, and he testified that the amount of energy offered into MISO for the Taum Sauk facility decreased in October, 2005 because the reservoir was operating with less water. (Tr. pp. 2426 and 5221-22.) Mr. Schoolcraft, a Generation Coordinator, and Mr. Bolding, an Energy Dispatcher, likewise testified that they understood that the water level in the upper reservoir had actually been reduced. (Tr. pp. 1370-71 and 1723-24.)

3. The Incident Report analyzes an email from David Fitzgerald, then Manager of Taum Sauk, dated May 20, 2000 in which Mr. Fitzgerald discussed his expectations regarding the operation of Taum Sauk within prudent operational limits. (Incident Report ¶¶ 44-45, pp. 27-28.) The Incident Report fails to explain, however, that the email states and Mr. Fitzgerald testified that the concern being addressed in the email had nothing to do with the upper reservoir, but with requests to generate the Taum Sauk units too long such that the lower reservoir could not hold all the water and water would flow over the top of the lower dam into the Black River, which could have violated the FERC license. (*See* Exhibit 25; Tr. p. 854 (the issue addressed in the email was "the requirement that we did not generate over the top of the lower reservoir dam").) Mr. Fitzgerald testified that he sent the email because he believed there was a lack of complete understanding on the part of certain individuals in the Ameren Energy Trading and Energy Supply organizations about the technical operation of Taum Sauk and the FERC license constraints at Taum Sauk, in large part because those departments were staffed with individuals that "had more of a commodities trading background rather than a power plant background."

(Tr. p. 857.) After sending this email Mr. Fitzgerald set up tours of the Taum Sauk plant and provided information about Taum Sauk's operations to personnel in the Energy Trading group. (Tr. p. 862.) Importantly, Mr. Fitzgerald testified that he never permitted the facility to be operated outside its license constraints (Tr. p. 859) and that after he provided the tours and education he received no additional requests to operate the Taum Sauk facility in an imprudent manner or in a manner that was inconsistent with its FERC license requirements. (Tr. p. 862.)

4. The Incident Report concludes that Rick Cooper was under "pressure" after he lowered the operating level of the upper reservoir by two feet in the fall of 2005. (Incident Report ¶ 62, p. 33.) However, Mr. Cooper never stated that he was under any pressure – in fact, in the email cited by the Incident Report Mr. Cooper merely stated that he believed that "everyone" wanted to know what the plan was because they were generating fewer megawatts from the facility. (Exhibit 31.) There is no evidence that Mr. Cooper was subjected to pressure as a result of his decision to lower the upper reservoir operating level. In fact, Steve Schoolcraft, the Generation Coordinator for the Ameren Energy trading floor, testified that he had no recollection of Taum Sauk generating fewer megawatt hours in the fall of 2005, and that any reduction was "certainly insignificant" and "wasn't noticed." (Tr. p. 1241.) He also testified that he believed 2 feet of water in the upper reservoir had a "fairly small" overall value. (Tr. p. 1238.)

5. The Incident Report purports to summarize AmerenUE's policies regarding the scheduling of plant outages (Incident Report ¶¶ 111-122, pp. 52-56) and concludes that Steve Bluemner's efforts to schedule an outage to repair the upper reservoir gauge piping in the fall of 2005 were "rebuffed by the Ameren marketing unit" (Incident Report ¶ 63, pp. 33-34). The Incident Report's analysis and conclusions on these issues are incomplete and fail to consider

other evidence in the record. First, the testimony shows that AmerenUE's policy on plant outages for safety issues was clear and understood by all employees – plant superintendents and managers have the authority and ability to take units off line any time they believe there is a safety concern – such outages are not "scheduled" but are simply taken when necessary. (Exhibit 44; Tr. pp. 416, 815, 858, 1226-27, 1253-54, 1279, 1435-36, 1745-47, 2174-75, and 2533-34.)

Second, with respect to Mr. Bluemner's efforts to schedule an outage in the fall of 2005 in order to fix the gauge piping, the Incident Report ignores evidence which shows that part of the difficulty in scheduling the outage was caused by trying to coordinate with a diver who was to perform the repairs. (Ex. 11; Tr. pp. 1361-62.) And, importantly, Mr. Bluemner worked to schedule the outage, as opposed to taking Taum Sauk off line immediately, because neither he nor Mr. Schoolcraft knew or believed that the gauge piping problem raised a dam safety concern. (Tr. pp. 354-55, 407-08, 1281-82, and 1363.) Had they believed or been told that it raised a safety issue, they testified that they would have taken steps to ensure that an outage was taken immediately. (Tr. pp. 410, 415-16, 1253-54, and 1279.)

6. The Incident Report suggests that emails sent by Mr. Cooper and Mr. Bluemner in November of 2005 indicate that they were considering delaying the repair of the gauge piping until the spring of 2006. (Incident Report ¶¶ 64, 65, p. 34.) The evidence is to the contrary. First, the spring outages discussed in the November 14, 2005 email from Mr. Cooper were to complete the digital controls upgrade and had absolutely nothing to do with the gauge piping repair. (Exhibit 11, p. 1 ("Presently Taum Sauk is scheduled for spring 2006 outages of three weeks per unit, one at a time, leaving the other unit in service…The purposes for the outages are to complete the digital controls on both units and inspect/repair the runners.").) The November

14 email clearly indicates Mr. Cooper's understanding that the gauge piping repair would take place in the fall, before the spring outages. It states that "[w]e still have to repair the level gage piping ***soon and by the spring we would be able to see if this repair is a permanent fix or not***." (Exhibit 11, p. 2 (emphasis added).) Second, Mr. Bluemner's response email dated November 23, 2005 likewise confirms that he was working to get the gauge piping repaired that fall. (Exhibit 11, p. 1.) Mr. Bluemner also testified that the items he mentioned in the first paragraph of Exhibit 11 had nothing to do with the gauge piping repair. (Tr. pp. 310-11.) Third, Mr. Bluemner testified that it was his understanding that the gauge piping needed to be repaired "as soon as possible" (Tr. pp. 312-13) and that he never planned to delay the gauge piping repair until the spring of 2006 (Tr. pp. 313 and 413-14). Likewise, Mr. Birk testified that he understood the gauge piping repair would be done in the fall of 2005, and that the repair could then be inspected during the spring outages. (Tr. pp. 1438-39.)

7. The Incident Report quotes from the Missouri State Highway Patrol's notes of its interview of Tom Pierie, and states that Mr. Pierie told the State Highway Patrol that in October, 2005 he found the Hi and Hi-Hi Warrick probes at "seven and four inches from the top of the reservoir wall" and that "[t]hey should have been twenty-four and twenty-two inches from the top of the wall." (Incident Report ¶ 79, p. 40.) The Incident Report fails to explain, however, that Mr. Pierie corrected the State Highway Patrol interview notes during his testimony. With respect to that sentence in the State Highway Patrol interview notes Mr. Pierie testified that "I should say I originally set them at 24 and 22 inches from the top of the wall." (Tr. p. 489.)

8. The Incident Report concludes that AmerenUE employee Jeff Scott participated in the December 1, 2004 movement of the Hi and Hi Hi Warrick probes along with consultant Tony Zamberlan. (*See* Incident Report ¶ 81, p. 41 and ¶ 83, p. 42.) While AmerenUE agrees

that the probes were moved on that date to an elevation on the upper reservoir parapet wall such that they were not effective, there is no evidence that Mr. Scott was involved in any way with moving the probes. None of the evidence cited in the Incident Report as support for its conclusion that Mr. Scott was involved in moving the probes indicates that Mr. Scott had any involvement. (*See* Exhibit 9, p. 3 (letter from AmerenUE to the Missouri State Highway Patrol quoting Tony Zamberlan's email in which he stated that he was at the reservoir on December 1, 2004 to "pull up the HI level Warrick probes" but that "neither AmerenUE personnel nor Mr. Zamberlan recall who moved the probes on that date"); Exhibit 28, p. 1 (Missouri State Highway Patrol notes of interview with Warren Witt which state that "Mr. Witt also stated that Tony Zamberlan…was the one responsible for moving the 'high and high-high' level indicators higher"); Tr. pp. 153-54 and 231 (Mr. Zamberlan's testimony about his involvement in moving the probes makes no mention of Mr. Scott); Tr. p. 474 (Mr. Pierie's testimony about his understanding of Mr. Zamberlan's involvement in moving the probes makes no mention of Mr. Scott).) In addition, records show that Mr. Scott was not at Taum Sauk on December 1, 2004, but instead was in St. Louis attending training (*see* records attached as Appendix B), and Mr. Scott testified that he was not aware that the Warrick probes had been moved (Tr. pp. 2085-86). As a consequence, the Commission's findings should make it clear that Mr. Scott did not participate in the movement of the Warrick probes on December 1, 2004.

9. The Incident Report concludes that Mr. Cooper asked that "employees involved with Taum Sauk consider cost involved in modifying repair schedules, including repair to the gauge piping anchoring system and general UR liner repair." (Incident Report ¶ 120, p. 55.) This conclusion is not supported by the email that the Incident Report cites as support. In that November 14, 2005 email, Mr. Cooper raised questions about whether the then-scheduled spring

outages for the two Taum Sauk units should be modified in light of the need to perform additional maintenance and work that was not contemplated at the time the spring outages were originally scheduled. (Exhibit 11.) Mr. Cooper asked what the cost implications would be if the outage schedule was modified. In a November 23, 2005 responsive email Mr. Bluemner simply notes that he does not think that inspecting the penstock liner and upper reservoir alone economically justify draining the reservoir in the spring. (Exhibit 11, p. 1; see Tr. pp. 311-12.) Again, the spring outage work referred to in these emails had nothing to do with the gauge piping repairs, which were still expected to be done that fall, and cost was never raised as a consideration in scheduling those repairs.

10. The Incident Report states that Rick Cooper told the Missouri State Highway Patrol that "he was pressured by his supervisors to keep the plant running" and "that in the past he had been overruled when he requested outages." (Incident Report ¶ 122, pp. 55-56.) The Incident Report's summary of Mr. Cooper's statement (which was not marked as an exhibit) is misleading, as the State Highway Patrol notes clearly indicate that Mr. Cooper said that he had never been overruled regarding safety issues and that he had never been overruled regarding this incident. (Missouri State Highway Patrol Interview of Richard Cooper, March 16, 2007, ¶ 19, p. 4.) The State Highway Patrol's notes of Mr. Cooper's statement are as follows (emphasis added):

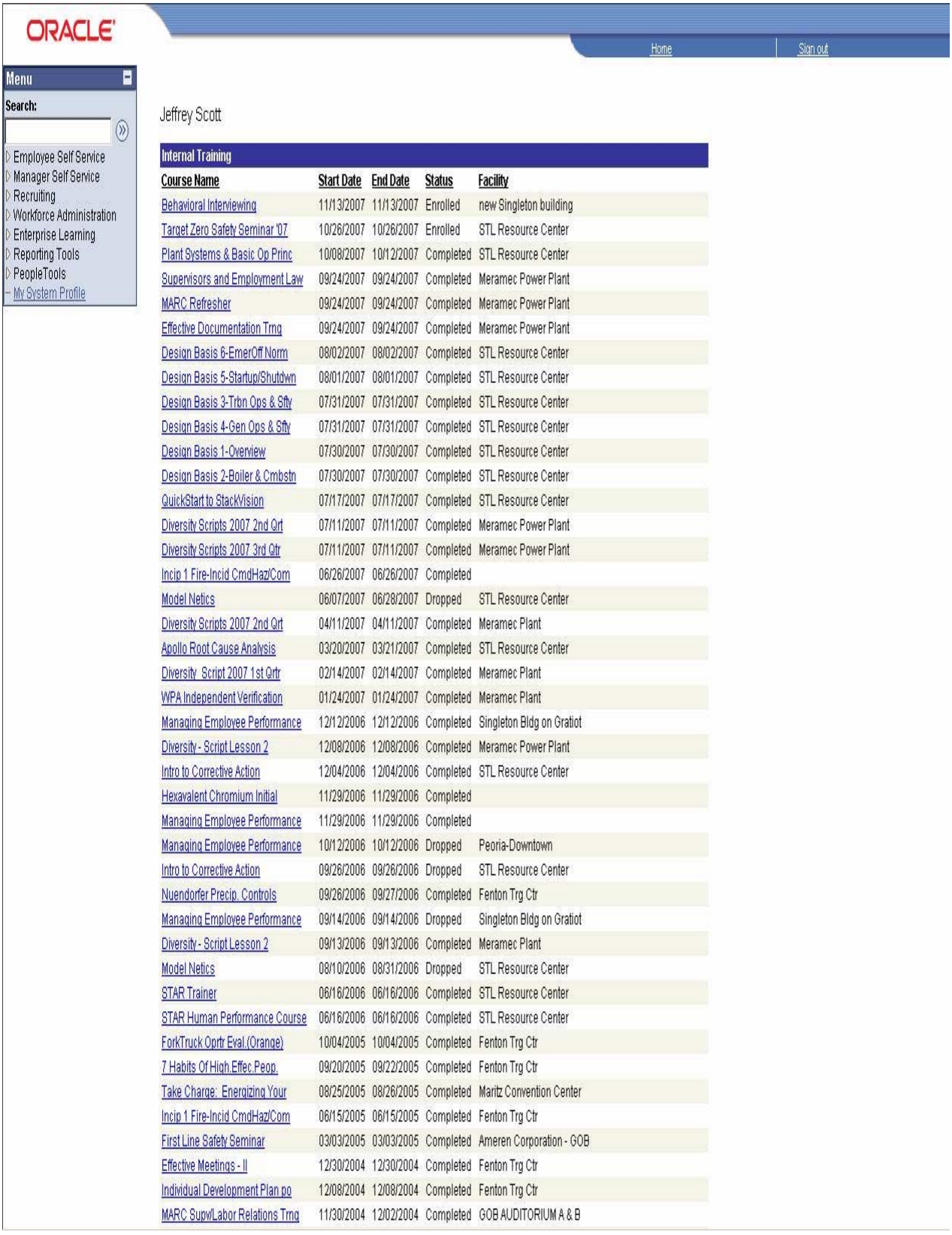
> Sergeant Breen asked Cooper concerning his working relationship with power supply. Cooper stated, "I had the power to stop it," when commenting who had the final authority to decide to stop generating from the upper reservoir. Cooper added, "They (power supply) had issues and needs and I take measures to make it safer to provide for their needs. I still have the power to stop it. If I say 'no' I have to do something about it. If I don't, it would get back to me." ***Cooper was asked if he received pressure from supervisors to keep the upper reservoir running. He answered, "In this incident, no. In the past, yes, I have been over-ruled."***

When asked if he had ever been over-ruled concerning safety issues, Cooper stated, "No."

11. The Incident Report concludes that AmerenUE knew by early October 2005 that the level indicators were malfunctioning and that the fail-safe probes were improperly set (Incident Report p. 77) and that AmerenUE operated Taum Sauk "knowing that the Hi and Hi-Hi probes were effectively disabled" (Incident Report p. 78). While AmerenUE agrees that certain employees knew that the level indicators were malfunctioning due to the gauge piping problem, the evidence shows that everyone involved believed that prudent steps had been taken to compensate for this problem, including lowering the reservoir's operating level and conducting regular visual inspections of the water level, such that there was no concern with continuing to safely operate the facility. (*See, for example,* Tr. pp. 354-57, 1116-18, 1184-85, and 1432-33.) And there is no evidence that anyone realized in the fall of 2005 that the Hi and Hi Hi probes had been placed so high on the upper reservoir wall that they were essentially disabled. (*See, for example,* Tr. pp. 563-55, 610-11, and 739-40.)

12. The Incident Report concludes that "the UR [upper reservoir] was overtopped again on September 27." (Incident Report p. 79.) This conclusion is not supported by the email that the Incident Report cites as support. In that email Mr. Cooper merely states that there were "wet areas on the west side of the reservoir parapet wall" on September 27. (Exhibit 20, p. 1) Mr. Cooper did not explain where those wet areas were, and did not indicate in any way that he believed there had been any overtopping of the reservoir separate and apart from the September 25 wave event. Moreover, every witness who was asked testified that they were not aware of any overtopping events other than the December 14, 2005 event and the September 25, 2005 wave event. (*See, for example,* Tr. pp. 846, 1197, and 1610-11.)

APPENDIX B



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Jeffrey Scott

Internal Training

Course Name	Start Date	End Date	Status	Facility
Behavioral Interviewing	11/13/2007	11/13/2007	Enrolled	new Singleton building
Target Zero Safety Seminar '07	10/26/2007	10/26/2007	Enrolled	STL Resource Center
Plant Systems & Basic Op Princ	10/08/2007	10/12/2007	Completed	STL Resource Center
Supervisors and Employment Law	09/24/2007	09/24/2007	Completed	Meramec Power Plant
MARC Refresher	09/24/2007	09/24/2007	Completed	Meramec Power Plant
Effective Documentation Trng	09/24/2007	09/24/2007	Completed	Meramec Power Plant
Design Basis 6-EmerOff Norm	08/02/2007	08/02/2007	Completed	STL Resource Center
Design Basis 5-Startup/Shutdwn	08/01/2007	08/01/2007	Completed	STL Resource Center
Design Basis 3-Trbn Ops & Sfty	07/31/2007	07/31/2007	Completed	STL Resource Center
Design Basis 4-Gen Ops & Sfty	07/31/2007	07/31/2007	Completed	STL Resource Center
Design Basis 1-Overview	07/30/2007	07/30/2007	Completed	STL Resource Center
Design Basis 2-Boiler & Cmbstn	07/30/2007	07/30/2007	Completed	STL Resource Center
QuickStart to StackVision	07/17/2007	07/17/2007	Completed	STL Resource Center
Diversity Scripts 2007 2nd Qrt	07/11/2007	07/11/2007	Completed	Meramec Power Plant
Diversity Scripts 2007 3rd Qtr	07/11/2007	07/11/2007	Completed	Meramec Power Plant
Incip 1 Fire-Incid CmdHaz/Com	06/26/2007	06/26/2007	Completed	
Model Netics	06/07/2007	06/28/2007	Dropped	STL Resource Center
Diversity Scripts 2007 2nd Qrt	04/11/2007	04/11/2007	Completed	Meramec Plant
Apollo Root Cause Analysis	03/20/2007	03/21/2007	Completed	STL Resource Center
Diversity Script 2007 1st Qrtr	02/14/2007	02/14/2007	Completed	Meramec Plant
WPA Independent Verification	01/24/2007	01/24/2007	Completed	Meramec Plant
Managing Employee Performance	12/12/2006	12/12/2006	Completed	Singleton Bldg on Gratiot
Diversity - Script Lesson 2	12/08/2006	12/08/2006	Completed	Meramec Power Plant
Intro to Corrective Action	12/04/2006	12/04/2006	Completed	STL Resource Center
Hexavalent Chromium Initial	11/29/2006	11/29/2006	Completed	
Managing Employee Performance	11/29/2006	11/29/2006	Completed	
Managing Employee Performance	10/12/2006	10/12/2006	Dropped	Peoria-Downtown
Intro to Corrective Action	09/26/2006	09/26/2006	Dropped	STL Resource Center
Nuendorfer Precip. Controls	09/26/2006	09/27/2006	Completed	Fenton Trg Ctr
Managing Employee Performance	09/14/2006	09/14/2006	Dropped	Singleton Bldg on Gratiot
Diversity - Script Lesson 2	09/13/2006	09/13/2006	Completed	Meramec Plant
Model Netics	08/10/2006	08/31/2006	Dropped	STL Resource Center
STAR Trainer	06/16/2006	06/16/2006	Completed	STL Resource Center
STAR Human Performance Course	06/16/2006	06/16/2006	Completed	STL Resource Center
ForkTruck Oprtr Eval.(Orange)	10/04/2005	10/04/2005	Completed	Fenton Trg Ctr
7 Habits Of High.Effec.Peop.	09/20/2005	09/22/2005	Completed	Fenton Trg Ctr
Take Charge: Energizing Your	08/25/2005	08/26/2005	Completed	Maritz Convention Center
Incip 1 Fire-Incid CmdHaz/Com	06/15/2005	06/15/2005	Completed	Fenton Trg Ctr
First Line Safety Seminar	03/03/2005	03/03/2005	Completed	Ameren Corporation - GOB
Effective Meetings - II	12/30/2004	12/30/2004	Completed	Fenton Trg Ctr
Individual Development Plan po	12/08/2004	12/08/2004	Completed	Fenton Trg Ctr
MARC Supv/Labor Relations Trng	11/30/2004	12/02/2004	Completed	GOB AUDITORIUM A & B

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via electronic filing with the Missouri Public Service Commission, and via electronic mail (e-mail) and hard copy on this 7th day of November, 2007, to:

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