

**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)	<u>Case No. EO-2009-0126</u>
Plan to Construct and Finance a Second Unit)	
At the Callaway Nuclear Plant Site)	

PUBLIC COUNSEL'S REPLY TO AMERENUE'S RESPONSE

COMES NOW the Office of the Public Counsel and for its Reply to AmerenUE's Response states as follows:

1. On October 6, 2008, Public Counsel filed a motion asking the Commission to open an investigation into the costs, particularly financing costs, of a second unit at the Callaway nuclear site. On October 16, AmerenUE filed a response to that motion.

2. AmerenUE's somewhat hysterical response indicated its vehement opposition to beginning a public discussion based on facts and figures about the options and costs for financing a new nuclear plant. In AmerenUE's view, informed public discussion would "impede the Company's legitimate right to seek a modification of the anti-CWIP legislation." It certainly was not – and is not – Public Counsel's intent to "impede" AmerenUE's ability to seek legislative changes. Until AmerenUE can demonstrate how an investigation by the state's designated utility expert (the Commission) would hinder rather than help the legislature, the Commission should proceed. Public Counsel's intent in asking the Commission to begin its investigation

was not to foreclose legislative debate as AmerenUE alleges,¹ but rather to inform that debate.

3. AmerenUE also argues that Public Counsel “implies there is something untoward” about seeking to amend or repeal Section 393.135. It is difficult to respond to a vague accusation of implying impropriety, so Public Counsel will simply reiterate what it said (as opposed to what AmerenUE inferred): a Commission investigation “[a]t the very least ... would identify and highlight areas of agreement and areas of disagreement, thus allowing interested persons (regulators, legislators, members of the public, investors, etc.) to make more informed decisions.” It is clear that AmerenUE is strongly opposed to allowing interested persons the ability to make more informed decisions.

4. AmerenUE argues stridently that it has not yet made a final decision to build a second unit at Callaway. But this argument is misleading because AmerenUE is doing everything within its power to ensure that it will be able to build that second unit. It has ordered forgings, submitted an application with the Nuclear Regulatory Commission, has re-started its political contribution practice,² has begun lobbying for the overturn of the 1976 initiative petition (Section 393.135), and remains committed to repealing that citizen-created law. It is telling the St. Charles Chamber of Commerce, for example, that “The Callaway Plant **will need** additional generation capacity by 2018 to

¹ In one of the most over-the-top statement in its pleading, AmerenUE asserts that Public Counsel seeks to “misuse” Commission proceedings by asking the Commission to investigate various options including allowing CWIP in rate base, while at the same time asserting that Public Counsel “seeks to foreclose” the option of allowing CWIP.

² St. Louis Post-Dispatch, October 24, 2008

<http://www.stltoday.com/stltoday/news/columnists.nsf/tonymessenger/story/7ED4DEFCEF0F8C1B862574EC00CC61B?OpenDocument>

meet future needs.”³ AmerenUE is like a man who needs a new car. He has picked out a model, he has an idea of the price, and he is headed to a car dealer. The buyer needs to do certain things in order to buy a new car (negotiate a good deal on the car, get a decent trade-in price, work out financing, etc.), but he **will** buy a car if those details work out and he **will** try his best to work them out. Has the buyer made a decision to buy the car contingent on details working out, or is the decision not finally made until after the details work out? When the decision involves not an individual buying a car but a public utility providing a public necessity and contemplating expenditures of billions of customers’ dollars, looking for such a fine point of distinction is sophistry.

5. An important aspect of AmerenUE’s response is what is **not** there. AmerenUE does **not** point out flaws in Public Counsel’s analysis. In particular, it does **not** dispute that – even with CWIP – AmerenUE would have to be allowed returns on equity reaching almost 20% during construction in order to remain investment grade. AmerenUE also does **not** argue that traditional regulation without CWIP, traditional regulation with CWIP, and a Kansas City Power and Light Company-style “Cash Flow Metrics” are models not worth studying. AmerenUE does **not** explain how a Commission investigation into matters squarely under its jurisdiction and entirely within its expertise will be a misuse of Commission proceedings. Finally, AmerenUE does **not** allege that it will be harmed (beyond some imagined slight to its ability to effectively lobby to repeal Section 393.135) if the Commission chooses to proceed.

6. AmerenUE asks that the Commission not even begin its investigation for another year, in the fourth quarter of 2009. AmerenUE argues that such a lengthy delay

³ St. Charles Chamber of Commerce newsletter, page 8, emphasis added.
http://stcharleschamber.org/member_files/Newsletters/Oct08Connection.pdf

would allow the Commission to consider, among other things, the success of AmerenUE's energy efficiency programs and factors that may affect supply options. But AmerenUE has stated that even "aggressive energy-efficiency programs" will not obviate AmerenUE's need for capacity in 2018-2020 and has publicly ruled out coal, either as new construction or retrofit.⁴ AmerenUE has already spent at least \$50 million on Callaway 2, and there is no reason to believe that the rate of expenditure will slow down in 2009. Once a lot of money has been spent pursuing a power plant, it becomes more difficult for a utility to walk away from its sunk costs and it becomes more difficult for regulators to make disallowances. It just makes sense to begin the investigation as early as possible.

Respectfully submitted,

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⁴ The St Charles County Business Record, September 30, 2008 reported that AmerenUE spokeswoman Julie Feast said that AmerenUE "must add capacity during the 2018-202 timeframe ... even if the country pursues aggressive energy-efficiency programs..." It also reported that Rick Eastman, supervisor of business planning and communications for AmerenUE, stated: "building or retrofitting a coal-burning plant to reduce harmful emissions was not economically feasible..."

<http://www.redorbit.com/modules/news/tools.php?tool=print&id=1572327>

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties in Case No. EO-2007-0409 this 27th day of October 2008.

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