

**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-</u>
Plan to Construct and Finance a Second Unit)	
At the Callaway Nuclear Plant Site)	

PUBLIC COUNSEL'S PETITION TO OPEN A CASE

COMES NOW the Office of the Public Counsel and for its Petition to Open a Case states as follows:

1. In Case No. EO-2007-0409, AmerenUE's current Integrated Resource Planning (IRP) case, AmerenUE has analyzed a number of options to most cost-effectively meet the needs of its customers in the years to come. While AmerenUE has taken great pains to preserve its ability to claim that it has not yet decided to build a second nuclear generating unit at the Callaway site, all of the potential resource plans it gives most credence to in its IRP case have AmerenUE investing in such a second unit. Public Counsel asks the Commission to open a case to allow interested entities and the Commission to investigate some of the many issues created by the prospect of a huge investment in a new nuclear generating unit.

2. AmerenUE has been criticized by parties in EO-2007-0409 for not adequately analyzing the underlying cost of constructing a second unit at Callaway, and especially for not adequately analyzing the financing options and financing costs of constructing a second unit at Callaway. Moreover, in Case No. EO-2007-0409, AmerenUE has refused to answer data requests about any analysis it may have performed about the costs of financing. While Public Counsel could file a motion to compel

responses to those data requests and slog it out in adversarial fashion, it is likely that a much better result could be achieved by proceeding in a more collaborative way. Having the stakeholders work together to determine the most accurate cost projections for a nuclear plant and the most cost-effective way for AmerenUE to finance such a plant – and indeed whether there is any cost-effective way – is by far the best approach. This approach would be impossible in the IRP case where AmerenUE steadfastly maintains that such topics are way beyond the scope of that case.

3. Basing a decision about a new nuclear power plant, the largest investment in a single plant of any Missouri utility ever, on the scant analysis AmerenUE conducted for the IRP case really amounts to shooting in the dark. AmerenUE has no idea what the real cost of building Callaway 2 might be because it does not know what it would cost to finance it or even whether it is possible to finance it.

4. AmerenUE repeatedly states that it has not yet made a decision to move ahead with Callaway 2 – a position uncomfortably like its position in AmerenUE’s last rate case that it had not yet made a decision to relicense Callaway 1. Both positions, whether or not accurate in a hyper-technical sense, serve a purely procedural purpose. In ER-2007-0002, AmerenUE wanted the higher depreciation expense that a shorter life for Callaway 1 would have provided. In the instance of Callaway 2, AmerenUE wants to avoid doing (or revealing) the analysis of the real financial impact of building Callaway 2, and wants to be able to tell regulators and legislators that it has not yet made a decision to move forward with Callaway 2. 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. Ameren’s entire leadership

team is eager to construct more nuclear facilities.¹ AmerenUE has already filed a Construction and Operating License Application (COLA) with the Nuclear Regulatory Commission (NRC). Nothing in that application indicates that it is just a placeholder; AmerenUE has affirmatively stated to the NRC that it wants permission to build another nuclear unit at the Callaway site. AmerenUE expects the NRC to devote resources to processing and evaluating that application, not to simply put it on a shelf until some later time when AmerenUE tells the NRC that it has decided to proceed.

5. In its application to the NRC, AmerenUE states:

The [Callaway 2 project cost] estimate assumes CWIP will be included in rate base in the State of Missouri. In November, 1976, a voter referendum, Proposition 1, was passed prohibiting CWIP in rate base. It is the position of AmerenUE that **AmerenUE can effectively work with the Missouri legislature and the citizens of Missouri** to exempt Callaway Plant Unit 2 and its associated facilities from this regulation. Should this effort be unsuccessful, the construction cost estimate would likely increase and AmerenUE would need to reevaluate its options. [AmerenUE COLA, page 1-12; emphasis added]

If AmerenUE truly wants to “work with...the citizens of Missouri,” it should not be presumed that the results of working together will be the repeal of an initiative petition. If AmerenUE wants the repeal to be one option analyzed in this case, or in whatever alternative venue in which this working together occurs, that is not unreasonable. But it should not be the **only** option. All options should be considered and the one that best

¹ Q. [D]oes that mean you're enthusiastic about the idea of **building more nukes**?

A. Yes, I am.

Q. Is that enthusiasm shared by other senior executives at AmerenUE?

A. Yes, it is.

Q. And by whom?

A. Gary Rainwater, Tom Voss, my boss, Warner Baxter. You know, I would say **the entire senior team of Ameren**.

Case No. ER-2007-0002; Exhibit 262, deposition of Charles Naslund, questions by Public Counsel, page 89; emphasis added.

serves the public interest – not AmerenUE’s interest – should be the only option allowed by the Commission or the legislature.

6. AmerenUE has repeatedly stated that it must have a repeal of the anti-CWIP statute that was passed overwhelmingly as an initiative petition. AmerenUE conducted no analysis of the cost of financing Callaway 2 in connection with choosing Callaway 2 as the cornerstone of its preferred resource plan. If it has belatedly conducted such an analysis, it has refused to provide it to Public Counsel. Although AmerenUE has refused to confirm its plans when asked in a data request in Case No. EO-2007-0409, all indications are that AmerenUE plans to push hard for a repeal of Section 393.135 RSMo 2000 during the upcoming legislative session. Rather than having a debate about such repeal guided solely by rhetoric, the Commission should open a case to investigate, among other questions, whether allowing CWIP or not allowing CWIP would provide better results for ratepayers and AmerenUE. The Commission can, under the auspices of this case, put together a group of experts from the stakeholders to work together to undertake the technical analysis of this and similar questions. An early prehearing conference could serve to bring stakeholders together to begin this process. While it is unlikely that such an effort would be without conflict, it would certainly produce more meaningful answers than a debate driven by lobbyists. At the very least, it 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.

7. As part of Public Counsel’s ongoing investigation of utility financing issues, Public Counsel has developed a framework to model different regulatory

approaches to the treatment of major plant construction costs. This model, along with a general description of it, is attached to this pleading. Public Counsel's analysis indicates that repeal of the anti-CWIP statute will not allow AmerenUE to finance a 1600 MW nuclear plant without suffering serious financial harm. In fact, the only regulatory regime that would allow AmerenUE to finance a 1600 MW nuclear plant without either suffering financial meltdown or charging ratepayers usurious rates of return is a "Cash Metrics" approach similar to that approved by the Commission for the Kansas City Power and Light Company in Case No. EO-2005-0329.

8. Public Counsel believes that its model can serve as the starting point for discussions about financing major plant additions. It is certainly not intended to definitively answer questions such as "Should AmerenUE build Callaway 2?" or "Should the legislature repeal Section 393.135?" But it should help to inform and elevate the discussion about such questions.

9. AmerenUE contends in Case No. EO-2007-0409 that the Commission's IRP process is not designed to, and indeed cannot be used to, determine AmerenUE's appropriate resource choices. AmerenUE's position is that the only determination to be made in an IRP case is whether the utility has technically complied with the requirements of Chapter 22. If that technical compliance yields a plan that has serious flaws or even one that makes little sense, AmerenUE's position is that the inquiry in the IRP case is at an end once a determination about compliance (or lack thereof) has been made, and it matters not if the plan makes little sense. In Case No. EO-2007-0409, AmerenUE's current IRP case, AmerenUE has identified a need for a baseload power plant during the IRP's planning horizon. Despite the identification of this need, AmerenUE insists that its

preferred plan does not provide for the construction of such a plant, but only keeping an option open to build one. In AmerenUE's view, a planning process that identifies a need but does not produce a plan to fill that need is compliant with the Commission's IRP rules. Not surprisingly, other parties disagree. Fighting over such basic disagreements over the purpose and process in the IRP case would distract from the questions that Public Counsel proposes be addressed in this case. This case will provide a much broader framework in which to address such questions, and will provide the best forum for the collaborative efforts that AmerenUE wants to have with the public.

10. The Commission must be proactive in investigating AmerenUE's decision-making process on Callaway 2. On its website, Ameren states that "If a new plant is built, it will be the largest single construction project in Missouri's history." The Commission should make every effort to be as informed and as knowledgeable as possible about: AmerenUE's decision to build Callaway 2; the costs, benefits and risks of new nuclear plants; the prospects and costs financing such a plant; and a host of other critical issues. The largest single construction project in Missouri history demands a corresponding response from the Commission. In addition to opening this case, the Commission should hire consultants, beef up its engineering staff, and do everything within its power to be able to fully and responsibly address AmerenUE's decision-making process as well as AmerenUE's ultimate decision.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Lewis R. Mills, Jr.

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-4857
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties in Case No. EO-2007-0409 this 6th day of October 2008.

By: /s/ Lewis R. Mills, Jr.