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	)	

STAFF RESPONSE TO PUBLIC COUNSEL'S PETITION TO OPEN A CASE

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the Public Counsel's Petition To Open A Case filed on October 6, 2008. Given the present timing of AmerenUE's next 4 CSR 240-22.010-.080 (Chapter 22) Electric Resource Planning filing, the present prospects for revising the Chapter 22 Electric Resource Planning rules (considering the cases presently pending at the Commission and the cases likely to be filed in the near term), and the present and possible future limitations of the Chapter 22 Electric Resource Planning rules, the Staff is not opposed to the Public Counsel's Petition To Open A Case, but the Commission must set the bounds of the case. The Staff's instant response is limited to addressing the Commission's authority, which Union Electric Company, d/b/a AmerenUE (AmerenUE) has questioned. Many of the cases cited herein are not of recent vintage, and some parties might even question their relevance. Nonetheless, the Staff thought they might be of benefit to the Commission in its deliberations. The Staff also wants to be very clear that its response is not intended to suggest in any manner that AmerenUE's First Amendment rights should be impaired. Thus, in response to the Public Counsel's Petition To Open A Case, the Staff states that the Commission has the authority to open an investigation respecting the matter of the construction and financing of a second unit at the Callaway Nuclear Plant site by AmerenUE:

Introduction

1. Union Electric Company, d/b/a AmerenUE has a very narrow view of the authority of the Commission. On September 12, 2008 in Case No. EO-2007-0409, AmerenUE filed AmerenUE's Response To Reports. Among other things, AmerenUE's Response To Reports, cited the narrow scope that the Commission had identified for the Chapter 22 rules. But AmerenUE went much further. AmerenUE incorrectly asserted, at pages 6-8 of its September 12, 2008 Response To Reports in Case No. EO-2007-0409, that the Commission, in identifying a narrow scope for the Chapter 22 rules, had recognized that its powers were limited to looking at process and making after the fact prudence reviews. AmerenUE stated as follows:

> When the IRP rules were adopted, the Commission noted that it was
>
> > …wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework. *Order of Rulemaking*, Docket No. EX-92-299, December 8, 1992.
>
> The Commission also noted that the IRP rules are not designed to "dictate either the strategic decision itself or the decision-making process." *Id*.
>
> . . . .
>
> The Commission findings in the above cited rulemaking docket are consistent with the well-recognized legal principle that the Commission does not have authority over utility management decisions. It is only when an electric utility seeks to put the capital and expenses arising from its resource decision(s) into rates that the Commission considers the issue of whether or not a particular resource decision was prudent. "…the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." State ex rel Public Service Com'n v. Bonacker, 906 S.W.2d 6, 899, (Mo. App. S.D. 1995), *citing* State v. Public Service Commission, 406 S.W.2d 5, 11[8] (Mo. banc, 1966).

Statutory Provisions

2. The Commission has the authority to conduct the necessary investigation requested by Public Counsel as indicated by the following statutory provisions:

Section 393.140: The Commission shall: . . .

(1) Have general supervision of all gas corporations, **electrical corporations**, water corporations and sewer corporations **. . . and all** gas plants, **electric plants**, water systems and sewer systems **owned, leased or operated by any** gas corporation, **electrical corporation**, water corporation, or sewer corporation.

(2) . . . examine or **investigate** the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same . . . and **have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such** gas, **electricity**, water, or sewer system, **and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of** gas corporations, **electrical corporations**, water corporations, and sewer corporations.

. . . .

(5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and **whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.**

. . . .

(7) Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, powerhouses, ducts, conduits and offices of any such corporations or persons.

. . . .

(9) Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. **The commission may require of all such corporations or persons specific answers to questions upon which the commission may need information**, and may also require such corporations or persons to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. . . .

(10) Have power in all parts of the state, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it, in reference to any matter under sections 393.110 to 393.285.

. . . .

(12) **In case any electrical corporation,** gas corporation, water corporation or sewer corporation **engaged in carrying on any other business than owning, operating or managing** a gas plant, **electric plant,** water system or sewer system **which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such** gas plant, **electric plant,** water system or sewer system, **said corporation in respect to such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the consent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such** gas plant, **electric plant,** water system or sewer system, **and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such** gas plant, **electric plant,** water system or sewer system **as distinguished from such other business.** In any such case if the owning, operating, managing or controlling of such gas plant, electric plant, water system or sewer system by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business.

Section 386.610 A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. **The provisions of this chapter shall be liberally construed with a view to** the public welfare, **efficient facilities** and substantial justice between patrons and public utilities.

Section 386.420:

. . . .

2. Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.

386.040. A "Public Service Commission" is hereby created and established, which **said public service commission shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter**.

386.250. The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(1) To the manufacture, sale or distribution of gas, natural and artificial, and **electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to** gas and **electric plants, and to persons or corporations owning, leasing, operating or controlling the same;**

. . . .

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

Case Law: Callaway Nuclear Generating Station - *UCCM* I (1978)

3. In July 1973, Union Electric Company (UE) announced its decision to build Callaway I and II nuclear generating units. On July 7, 1974 UE filed an application with the Commission for a certificate of convenience and necessity (CCN), pursuant to §393.170(3) RSMo. 1969, to construct and operate in Callaway County a nuclear-powered steam electric generating plant. The plant site for the Callaway I and II nuclear generating units was beyond the regular service territory of UE. UE's plans called for it to construct, operate and maintain two nuclear generating units, each with a nominal electrical output capacity of 1,150 megawatts, which were planned as a single project. The operation of the first unit was planned for 1981, and the operation of the second unit was planned for 1983. *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 562 S.W.2d 2d 688, 690-91, *cert. denied*, 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978) (*UCCM 1*)[1]; *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 765 S.W.2d 618, 619, 624 (Mo.App. W.D. 1988).

4. The Staff notes that in *UCCM 1*, Utility Consumers Council of Missouri, Inc. (UCCM) sought judicial review of the Commission's granting a CCN to UE. The Court held that in order for the Commission "[t]o arrive at its determination, [i.e., whether to grant a CCN,] the Commission must find that the nuclear facility is adequate to meet the needs of the public and is economical when compared with alternative sources of energy." 562 S.W.2d at 698 n.1. The Court further stated that "[t]he Commission's considerations pertain to economic feasibility,

[1] The Missouri Supreme Court's 1979 decision styled *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41 (Mo. banc 1979) respecting electric fuel adjustment clauses and Section 393.135 should not be confused with the earlier St. Louis District Court of Appeals decision styled *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 562 S.W.2d 688 (Mo.App. 1978), and a later decision of the Western District Court of Appeals styled *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 606 S.W.2d 222 (Mo.App. 1980) should not be confused with the earlier St. Louis District Court of Appeals decision styled *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 562 S.W.2d 688 (Mo.App. 1978). Prior to the *Cass County – StopAquila.org – South Harper* cases, the *UCCM* I decision was frequently cited, in part, for the principle that a utility need not apply for authority to construct plant in an area for which it has a certificate of convenience and necessity to provide utility service, 562 S.W.2d at 690.

need for increased power and financing." *Id.* at 698. The Commissioners may find a complete quotation of the third to last paragraph of the Per Curiam decision of the Court of Appeals, St. Louis District, of interest, in particular the portion of the paragraph starting with the sentence containing footnote 18:

> The doctrine of federal pre-emption with respect to the safety issue is aptly expressed in the leading case *Northern States Power Co. v. State of Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd mem.*, 405 U.S. 1035, 92 S.Ct. 1307, 31 L.Ed.2d 576 (1972), written by Judge Matthes who was formerly of this court. The court there held that the federal government has exclusive authority to regulate the construction and operation of nuclear power plants. The holding is compatible with the relevant federal statutory provision, 42 U.S.C.A. s 2021(k), reserving to the States the regulation of "activities for purposes other than protection against radiation hazards." The basis for the ruling in Northern States Power Co. was that the control of radioactive effluents discharged from the power plant was closely intertwined with the planning, construction and operation of the nuclear facility. Herein lies the distinction in the present case. **The federal government regulates how nuclear power plants will be constructed and maintained; the State of Missouri regulates whether they will be constructed.[18] The federal regulations pertain to plans, specifications, safety mechanisms and the like. The Commission's considerations pertain to economic feasibility, need for increased power and financing. It is obvious that the considerations of the State of Missouri do not affect the control of how the nuclear facility will be constructed and physically maintained. The considerations of the Commission do not attempt to protect the citizens of Missouri against radiation hazards. The issue of safety rests in the exclusive domain of the federal government. We find no error in the refusal of the circuit court to remand for further evidence regarding the economic impact <u>of nuclear accidents</u> on the overall cost of the nuclear power plant.**
>
> **[18] The Commission must determine whether it will issue its certificate of convenience and necessity. To arrive at its determination, the Commission must find that the nuclear facility is adequate to meet the needs of the public and is economical when compared with alternative sources of energy.**

562 S.W.2d at 698; Emphasis added.

Case Law: Partial Construction And Cancellation Costs Of Abandoned Callaway II

5. On December 3, 1982, UE filed with the Commission, starting Case No. ER-83-163, proposed tariffs, among other things, to increase retail electric rates to recover UE's approximately $106 million investment in the cancelled Callaway II nuclear generating unit, but

not a return on the investment over a period of five years. UE chose this method because the Commission previously had approved, in Case No. ER-77-154, recovery of the costs associated with two-coal fired generating plants, Rush Island III and IV, previously cancelled. *Id.* at 619-20.

6. On October 21, 1983, in the Report And Order in Case No. ER-83-163, the Commission disallowed recovery of the partial construction and cancellation costs of the abandoned Callaway II unit on the basis that the terms of Proposition One, Section 393.135, precluded the Commission from allowing recovery of any amount from ratepayers relating to abandoned construction. In the first appellate court decision respecting UE's effort to recover in rates the costs associated with the abandoned Callaway II unit, the Missouri Supreme Court held that Proposition One, Section 393.135, did not have the purpose, and did not have the effect, of divesting the Commission of the authority to make any allowance for the costs of abandoned generating plant construction. The Court based its conclusion on "the established practice of allowing such charges, absent a statutory command to the contrary, and on the absence from Proposition One of explicit language dealing with abandoned construction." The case was remanded to the Commission for further proceedings. *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 687 S.W.2d 162, 168 (Mo. banc 1985).

7. After further proceedings on the remanded issues, the Commission again rejected recovery in rates of the construction and cancellation costs of Callaway II. The Commission decided, in a Report And Order On Remand that was challenged by UE and upheld, that UE's shareholders had already been compensated for some of their loss through the rates of return in prior UE cases. 765 S.W.2d at 621. Among other things, the Commission determined that UE shareholders had received some compensation for the risk of their investment in UE which

included a risk of cancellation of Callaway II. The Court held that the Commission's decision to treat the cancellation costs as an expense outside the rate base and different from normal or extraordinary operating expenses was well within its discretion to determine what items should be included as normal or extraordinary operating expenses and was supported by competent and substantial evidence. 765 S.W.2d at 623.

8. The Western District Court of Appeals stated: "The increased costs of the project and the eventual cancellation of Callaway II were risks taken into account by stockholders who invested in Union Electric." 765 S.W.2d at 624. The Court further stated as follows:

> . . . we believe that the Commission properly performed its duty which is to balance the interest of the ratepayers with that of the shareholders. The Commission must insure just and reasonable rates. To determine whether the rates were just and reasonable, we must consider whether the order could reasonably be expected to maintain financial integrity, attract necessary capital, fairly compensate investors for the risk they assume, and protect relevant public interest. *See Union Electric Company v. Federal Energy Regulatory Commission*, 668 F.2d 389, 392 (8th Cir. 1981). We believe the action of the Commission meets these requirements.

765 S.W.2d at 625.

. . . .

> The Commission adopted the view of the Vermont Supreme Court in *In re Central Vermont Public Service Corporation,* 144 Vt. 46, 473 A.2d 1155 (1984), which held that economic risks are part of the utility business and that even the risk of economic catastrophe may be properly assigned to owners of the utility rather than to its customers.
>
> We believe that the Commission's decision was supported by the record. Judgment affirmed.

765 S.W.2d at 626.

Commission Case: UE Generation Expansion Case 1979-1983 – Callaway I and II

9. The Commission, on August 14, 1979, on its own motion, ordered the Staff to commence an investigation into the generation expansion program of UE "in response to a Staff report raising certain issues with respect to the Company's forecasting methods and projected

peak demand" *Re Union Electric Co.* (*In the Matter of the Investigation Ordered by the Commission on its Own Motion of the Union Electric Company's Generation Expansion Program*), Case No. EO-80-57, Report And Order, 26 Mo.P.S.C.(N.S.) 36, 38-39 (1983):

> In its order establishing this docket, the Commission directed the Staff to investigate the Company's generation expansion program which includes, but is not limited to: energy need forecasting; cost of alternative facilities; and the addition of generation facilities including the addition of Callaway II.
>
> . . . .
>
> The Staff recommends that no action be taken regarding either Callaway I or Callaway II. However, the Staff recommends that the Company submit an advanced planning program for Commission approval including but not limited to: an updated load forecast; an updated capacity expansion model; an updated construction budget; an updated optimal reserve margin; and a long-range conservation plan.
>
> The Public Counsel recommends that no action be taken regarding Callaway I, however, the Public Counsel recommends immediate cancellation of Callaway II.
>
> [Coalition for the Environment and Missourians for Safe Energy] propose immediate cancellation of Callaway I. . . .
>
> The Department of Natural Resources recommends that the Commission order the Company to undertake a cost benefit analysis comparing investment in conservation with the cost of constructing new generation capacity and to implement cost effective conservation measures.

10. Evidentiary hearings were originally scheduled to commence April 7, 1980, but hearing dates were revised several times. Evidentiary hearings were held during the months of May and June 1980 and briefs were subsequently filed. 26 Mo.P.S.C.(N.S.) at 37-38. Although the evidentiary hearings concluded well in advance of UE's October 1981 announcement of its decision to cancel Callaway II, the Commission did not issue its Report And Order in Case No. EO-80-57 until May 20, 1983, well after UE announced its decision to cancel Callaway II. In fact, the May 20, 1983 issue date of the Report And Order in Case No. EO-80-57 was over five months after December 3, 1982, the date UE filed the rate case, Case No. ER-83-163, in which it

sought to recover in rates approximately $106 million in costs of the cancelled Callaway II project. UE's October 1981 announcement of its decision to cancel construction of Callaway II related that it was doing so because of reduced demand for electricity, rampant inflation, Proposition One (Section 393.135), increased regulatory scrutiny and escalating massive increases in construction costs due to the requirements resulting from the accident at Three Mile Island. 765 S.W.2d. at 620.

11. Was UE looking to the Commission for a Report And Order directing the cancellation of Callaway II in Case No. EO-80-57? Did the Commission delay issuing a Report And Order in Case No. EO-80-57 so that UE would not have the cloak of a Commission Report And Order directing it to cancel Callaway II?

Commission Case: SJLP Ordered To Divest Part Of Its Ownership Share Of Iatan Generating Station As A Condition Of Interim Rate Relief - 1977

12. On November 16, 1976, St. Joseph Light & Power Company (SJLP) filed with the Commission an application for emergency/interim rate relief with revised tariff sheets designed to increase annual revenues by approximately $2.5 million on an annual basis.[2] SJLP contended that without emergency/interim rate relief, it would default on the Iatan project because no other alternatives for meeting its construction commitments were available. SJLP further contended that default on Iatan would jeopardize its ability to provide adequate service, which would compromise SJLP's status as an independent electric utility and possibly require SJLP to merge with a larger electric utility. The Commission stated that "the pivotal issue in this case is Company's need for the additional generating capacity which Iatan will provide and the

[2] Subsequently on December 20, 1976, as a result of the enactment of Section 393.135 (Proposition One) by voters on November 6, 1976, SJLP filed revised tariff sheets effective as of February 1, 1977 reducing rates by $1.4 million by removing construction work in progress from rate base. As a consequence, SJLP's requested emergency electric rate increase was for $3.9 million over the rates on file and in effect as of February 1, 1977.

secondary issue is how will Company finance its participation in Iatan with or without the emergency rate relief requested in this case." 21 Mo.P.S.C.(N.S) at 358.

13. The Commission found that (1) appropriate cost/benefit economic analysis indicated that SJLP should postpone completion of Iatan 1 for at least one year from its planned in service date of 1980, but (2) SJLP was the junior partner of KCPL, no great savings would result to KCPL from bringing Iatan 1 on line in 1981 over 1980, and (3) SJLP had no authority to postpone Iatan 1, one or more years. On March 4, 1977 in *Re St. Joseph Light & Power Co.*, Case No. ER-77-93, Report And Order, 21 Mo.P.S.C.(N.S.) 357, 368, 373 (1977), the Commission approved emergency/interim rate relief for SJLP contingent upon, among other things, SJLP entering into a binding agreement disposing of 57 to 67 megawatts (MWs) of its 157 MWs entitlement to Iatan 1 capacity by the effective date of the final Report And Order issued in connection with SJLP's permanent rate case, *Re St. Joseph Light & Power Co.*, Case No. ER-77-107, Report And Order, 21 Mo.P.S.C.(N.S.) 466 (1977). [3]

14. The Commission authorized emergency/interim rate relief in the amount of an increase of annual gross electric revenues of $1.3 million, exclusive of gross receipts and franchise taxes, pending resolution of SJLP's pending permanent rate increase case on the basis that the "Company's financial integrity and credit worthiness will be impaired to the extent that the capital necessary for the provision of safe and adequate service cannot be raised." 21 Mo.P.S.C.(N.S) at 372, 373. The Commission went on to state that it could not ignore the extreme financial burden which full participation in the Iatan project placed on SJLP and its customers. Therefore, the Commission conditioned its authorization of emergency/interim rate relief on SJLP being required to refund the emergency/interim rate relief to its customers if:

[3] The Case No. ER-77-93 Report And Order reported at 21 Mo.P.S.C.(N.S.) 356 does not reflect the correction made to the date by which SJLP was directed to dispose of 57 to 67 MWs of Iatan 1 capacity. The correction is reflected in an unreported Correction Order issued by the Commission on April 26, 1977 in Case No. ER-77-93.

(1) its return on common equity exceeded 13.5% during the period that the emergency/interim rates were in effect;

(2) it did not submit to the Commission documentary evidence that it had entered into a binding agreement disposing of 57 to 67 MWs of its Iatan 1 entitlement by the effective date of the final Report And Order issued in connection with SJLP's permanent rate case, ER-77-107; and

(3) the interim rates authorized by the Commission were found by the Commission in the permanent rate case to be unreasonable.

Id.

15. On June 3, 1977 KCPL and SJLP executed an amending supplement to their Iatan Memorandum Of Understanding, which adjusted their ownership interests in Iatan upon authorization by the Commission. By a joint application filed July 26, 1977 in Case No. EO-78-12, KCPL and SJLP sought Commission approval of the proposed adjustments to their ownership interests in Iatan as to the site, common facilities and Iatan 1 generating unit. On August 22, 1977 in Case No. EO-78-12, the Commission issued an Order Granting Application To Adjust Ownership Interests (unreported decision) authorizing KCPL and SJLP to adjust their ownership interests in Iatan as requested and as reflected in the First Supplement to their Iatan Memorandum Of Understanding. The Commission concluded, at page 2, that "the authority sought is in the public interest in that it permits SJLP, within the time dictated, to divest itself of a portion of its entitlement at Iatan in compliance with the Commission's order in Case No. ER-77-93."

16. By a joint application filed July 26, 1977 in Case No. EO-78-12, KCPL and SJLP sought approval of the proposed adjustment to their ownership interests in Iatan as follows:

Class of Property	From: Ownership Interests[4]		To: Ownership Interests[5]	
	KCPL	SJLP	KCPL	SJLP
Site	93.75%	6.25%	96.25%	3.75%
Common Facilities	75%	25%	85%	15%
Iatan Unit #1	75%	25%	85%	15%

Commission Case: MoPub Ordered To Issue New Common Stock As A Condition Of Interim Rate Relief – 1978

17. On September 1, 1978, Missouri Public Service Company (MoPub) filed with the Commission interim electric rate schedules, docketed as Case No. ER-79-59, designed to temporarily increase MoPub's retail electric revenues by approximately $8.5 million annually, not including franchise and occupational taxes. *Re Missouri Public Service Co.*, Report And Order, Case Nos. ER-79-60 and GR-79-61, 23 Mo.P.S.C.(N.S.) 150 (1979). Also on September 1, 1978, MoPub filed with the Commission interim electric rate schedules, docketed as Case No. ER-79-60, designed to permanently increase MoPub's retail electric revenues by approximately $22.1 million annually, not including franchise and occupational taxes. In addition, on September 1, 1978, MoPub filed a permanent gas rate increase case docketed as Case No. GR-79-61.

18. On December 1, 1978, the Commission issued its Report And Order in the interim electric rate increase case to become effective December 15, 1978, directing MoPub to file tariffs: (1) designed to increase electric gross revenues by approximately $4.3 million annually,

[4] Previously, KCPL and SJLP had entered into an amended Memorandum of Understanding on May 14, 1976, which adjusted their ownership interests to the percentages below. The Commission approved these percentages by order effective July 13, 1976 in Case No. 18,744.

[5] Subsequently, in 1978, the Commission authorized a further change in the ownership interests in Iatan from the percentages below in *Re Kansas City Power & Light Co., St. Joseph Light & Power Co. and Empire District Electric Co.*, Case No. EM-78-277, Report And Order, 22 Mo.P.S.C.(N.S.) 249 (1978).

exclusive of gross receipts and franchise taxes; and (2) with the condition that if MoPub did not sell $3.0 million of new common stock by public offering on or before the operation of law date in its permanent rate cases, Case Nos. ER-79-60 and GR-79-61, MoPub would be required to refund the entire $4.3 million to its customers with 9.0 percent simple interest added to the amount of the refund. The Commission clearly noted in its Report And Order that the reason that MoPub engaged in the public offering of new common stock to lower its debt to equity ratio, was the Commission conditioned the permanence of the interim rate relief on the sale of the new common stock:

> . . . Another significant factor in the Company's inability to earn its authorized rate of return is the Company's policy of maintaining a high debt to equity ratio. The Commission majority took the unique step in Case No. ER-79-59 of ordering the Company to issue equity or refund to ratepayers the amount of the emergency relief granted. In that Report and Order we allowed Company an interim increase of approximately $4.2 million upon the express condition that if Company did not complete the sale of $3 million of new common stock by public offering before the operation of law date in this present case (July 19, 1979), the entire amount of additional revenue collected as a result of the interim case was to be refunded to its customers with 9 percent simple interest. We do not need to reach the question of the refund provision because Company's Late-Filed Exhibit No. 37 shows that on June 6, 1979, Company offered 300,000 shares of its common stock through a negotiated public offering which resulted in total proceeds of $3,525,000. We thus find that the condition of the interim rate order has been satisfied, but note that Company's stated intention of seeking a lower debt to equity ratio seems only to result from Commission action, not Company initiative.

23 Mo.P.S.C.(N.S.) at 170. The Commission stated in its December 1, 1978 Report And Order in Case No. ER-79-59 at page 9: "It should be emphasized that the Commission is not directly ordering Company to make a sale of common stock, it is only making such a sale the prerequisite of obtaining interim relief."

KCPL Experimental Alternative Regulatory Plan - 2005

19. On May 6, 2004 Kansas City Power & Light Company (KCPL) in Case No. EO-2004-0577 filed an Application To Establish Investigatory Docket And Workshop Process

Regarding Kansas City Power & Light Company. KCPL styled the caption of the case as follows: In the Matter of the Future Supply, Delivery and Pricing of the Electric Service Provided by Kansas City Power & Light Company. On June 3, 2004, the Commission established Case No. EW-2004-0596 in lieu of Case No. EO-2004-0577 utilizing the same style for the caption of the case. Activity in Case No. EW-2004-0596 ultimately resulted in the Stipulation And Agreement known as the KCPL Experimental Alternative Regulatory Plan that was filed and approved by the Commission in Case No. EO-2005-0329. The Sierra Club and the Concerned Citizens of Platte County sought judicial review of the Commission's Report And Order in Case No. EO-2005-0329, but eventually reached a settlement of all litigation with KCPL relating to the Iatan 2 generating facility.

Wherefore the Staff maintains that the Commission has the authority to open an investigation respecting the matter of the construction and financing of a second unit at the Callaway Nuclear Plant site by AmerenUE and the Staff is not opposed to the Public Counsel's Petition To Open A Case, but the Commission must set the bounds of the case. The Staff response is not intended to suggest in any manner that AmerenUE's First Amendment rights should be impaired.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 20th day of October, 2008.

/s/ Steven Dottheim
Steven Dottheim