

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

In the Matter of an Investigation into Whether)
Ratepayers are being Held Harmless from the) ER-2008-0015
Taum Sauk Disaster)

PUBLIC COUNSEL’S REPLY TO STAFF RESPONSE

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

1. In its Report and Order in Case No. ER-2007-0002 issued on May 12, 2007, the Commission stated:

AmerenUE has made a commitment to hold the public harmless from the effects of the Taum Sauk disaster, and the Commission intends to hold it to that commitment. Based on Public Counsel’s allegations, it appears AmerenUE could be making additional sales of regulatory capacity if not for the loss of Taum Sauk’s capacity. (Report and Order, page 118)

The Commission also stated that “it will direct its Staff to investigate whether ratepayers are being held harmless from the Taum Sauk disaster, especially with regard to lost regulatory capacity sales.”

2. On July 12, Public Counsel filed a motion requesting that the Commission open the instant case. Public Counsel stated that opening a formal case would insure that this important issue is timely addressed, and would allow other interested entities to participate. Public Counsel noted that the Commission had recently opened Case No. ES-2007-0474 regarding the Taum Sauk disaster, and that the scope and purpose of Case No ES-2007-0474 are different than the investigation in this case.

3. The Commission issued an order in this case on July 16 in which it stated that completion of Case No. ES-2007-0474 and the Commission’s analysis of the evidence adduced

therein might have a bearing on the issues raised in this case. The Commission established a deadline of August 16 for responses to Public Counsel's motion to open this case. In an order issued on August 9, the Commission extended that deadline to August 31. From the record as it now stands in Case No. ES-2007-0474, it does not appear that information helpful to the issue in this case was adduced.

4. On August 31, the State of Missouri applied to intervene, stating that it has an interest in assuring that it is not paying for the costs of the Taum Sauk disaster through its electric rates. It stated that it also has an interest in assuring that UE is truly holding ratepayers harmless for the Taunt Sauk disaster.

5. On August 31, the Staff filed its response. Staff raises a number of points, which Public Counsel will address herein. But what is most striking about Staff's response is its obvious reluctance to comply with the Commission's Report and Order in Case No. ER-2007-0002. Although it does explicitly say so, it appears from its August 31 response that Staff has yet to even begin the ordered investigation.

6. Staff states that its members who will conduct the review in this case have been busy with other cases, and that Staff did not understand that the investigation ordered in ER-2007-0002 had a "near term response time." Staff's conspicuous lack of even a vague proposed timetable indicates a need for the Commission to establish a timetable for Staff's investigation and a report.

7. Staff questions the "ER" case designation assigned to this case. Staff does not ask the Commission to change the designation, but rather asks that the Commission order Public Counsel to defend the "ER" designation. The designation of a case as "ER" or "EO" or even "CX" is purely ministerial and has no effect on the Commission's powers and duties. The

Commission, in the Report and Order in ER-2007-0002, ordered Staff to propose an adjustment in AmerenUE's next rate case or propose "other action as it believes appropriate." A rate adjustment may be an appropriate other remedy, and hence an "ER" designation is proper. Public Counsel notes that AmerenUE, the party who presumably would have the most objections to any rate adjustment resulting from this case, has not responded in any manner and has certainly not objected to the ministerial designation of the alpha-numeric case header.

8. In paragraph 3, Staff raises a number of questions about what possible remedies might lie if AmerenUE is in fact found to not have held ratepayers harmless for the Taum Sauk disaster. Public Counsel respectfully suggests that we should have a verdict before we decide the penalty. If the Commission finds, as Public Counsel expects, that AmerenUE did not fully account for opportunities it would have had for regulatory capacity sales if Taum Sauk was still in service, appropriate remedies can be determined at that time. From the day of the disaster, AmerenUE has steadfastly confirmed its intent to hold Missouri and AmerenUE ratepayers harmless. Is there any reason to believe that AmerenUE would abandon that commitment in the face of a Commission finding on lost opportunities for regulatory capacity sales? And if AmerenUE does so, is the possibility of the Commission determining and enforcing an appropriate remedy so remote that Staff should not even conduct its investigation? Staff mentions "the use of liability accounts for the accumulation of funds to be used in ratemaking as a debit or offset to revenues." While it is not clear exactly how an "offset to revenues" would function in this situation, it appears that Staff is suggesting it as one possible remedy.

9. In its paragraph 4, Staff discusses capacity sales in general and notes that they are different from energy sales. Staff states that it is not aware of capacity sales specifically tied to Taum Sauk in the period of July 1, 2005 to December 14, 2005. Whether or not specific

regulatory capacity sales tied to the Taum Sauk units were made in that particular period is beside the point. Rates were set in the rate case by modeling Taum Sauk as though it were available to provide energy after it collapsed. But nothing was done in the rate case to account for the additional regulatory capacity sales that could have been made if Taum Sauk was still operating. In order to fully hold ratepayers harmless, they must be credited for the regulatory capacity revenues that AmerenUE could have received from Taum Sauk if it had not been destroyed.

10. The discussion at paragraph 5 of the Staff's response and the table in that paragraph are apparently included to highlight that AmerenUE would have an additional 400 MWs of capacity available for purchase by third parties if Taum Sauk were available. Public Counsel agrees with this point. It is the matter of determining the value of that capacity that is the central issue in this case.

11. The Staff states that it is unclear why "Public Counsel is placing emphasis" on Staff conducting an investigation. It was not Public Counsel that ordered a Staff investigation, but the Commission. While Public Counsel is willing and eager to assist in the Staff investigation once it has begun, the Commission ordered its Staff – not Public Counsel and not AmerenUE – to investigate this issue.

12. Public Counsel asked the Commission to open this case for two reasons: to insure that the investigation proceeds in a timely manner and to provide Public Counsel and other interested entities with a vehicle in which to participate. Public Counsel's request was apparently timely and well-founded because it has revealed that the Staff has no timetable for this investigation, and it has revealed that the State of Missouri has an interest in participating.

13. Because the Staff did not propose a timetable in which to complete its ordered investigation, Public Counsel suggests that the Commission order it to do so. Once Staff has proposed a timetable, other procedural dates can be determined.

14. AmerenUE has neither applied to intervene nor filed any pleadings in this matter. Because AmerenUE is a necessary party, Public Counsel requests that the Commission make it a party.

WHEREFORE, Public Counsel respectfully requests that the Commission: order its Staff to file a timetable for the investigation that it was ordered to conduct in Case No. ER-2007-0002; and make AmerenUE a party to this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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