Notice of *Ex Parte* Contact

TO: Data Center
All Parties in Case No. **ER-2007-0002**

FROM: Chairman Jeff Davis

DATE: March 29, 2007

On March 29, 2007 I received the attached letter from Mr. Edward R. Martin, Jr. regarding Ameren. The Commission is currently considering some of the issues discussed in this document in case **ER-2007-0002** which is a contested case. In contested cases, the Commission is bound by the same *ex parte* rule as a court of law.

Although communications from members of the public and other government officials are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, I submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Commissioners
Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel

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March 29, 2007

Mr. Jeff Davis
Chairman
Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65101

Dear Chairman Davis, Mr. Chairman

This letter relates to the Ameren rate case.

I am still deeply disturbed by the events of the past few days and your refusal to honor the commitment made by the Public Service Commission that I testify yesterday.

You have joined the Attorney General in blocking my testimony. I respectfully renew my request to testify in the Ameren rate case. As part of this request, I submit my draft testimony for your review. Please distribute this testimony to all PSC commissioners. I remain ready to answer any and all questions.

All the best.

Sincerely,

Ed

Edward R. Martin, Jr.
Chief of Staff

cc: Judge Cully Dale, Chief Administrative Law Judge

Statement of Edward R. Martin, Jr.

To the Public Service Commission

March 28, 2007

I am testifying today because I have information I believe is relevant to the Public Service Commission and this rate case. I believe that Ameren has not been forthcoming with the public and the PSC – to the detriment of the ratepayers. I further believe that Attorney General Jay Nixon violated ethical and legal guidelines by soliciting campaign contributions from Ameren while serving as criminal prosecutor in the Ameren case.

To begin:

On Friday, September 1, 2006, I began serving as Chief of Staff to Governor Matt Blunt. During the next four or five weeks, I met extensively with legislators, cabinet directors, business leaders, activists, staffers, and members of the press. I quite literally met with any person who requested a meeting. These meetings were an introduction of me – a relative outsider to state government – to those who work in and around state government.

Some time during the week of September 3, I was contacted by Drue Duncan, a governmental relations professional for Ameren UE. Mr. Duncan requested an opportunity to introduce me to his boss, Steven R. Sullivan, the General Counsel of Ameren. I agreed, and the meeting was scheduled for September 11, 2006.

On September 11, I met with Mr. Duncan and Steve Sullivan in the Governor's office. Also present were Chairman Jeff Davis of the PSC and local businessman Tony Feather. The meeting served as an introduction to Ameren UE and to the utilities industry. At no time during this meeting were the specifics of the rate case or the Taum Sauk matter discussed. Rather, Steve Sullivan talked about Ameren, introduced me to the company, and otherwise sought assurances from me that I would encourage "a good relationship" between Ameren and the state and "progress" in the Taum Sauk matter. Mr. Sullivan also complained that he did not get along with Department of Natural Resources attorney Kurt Schaefer.

A few minutes into the meeting, I stopped Mr. Sullivan and told him that, though I was happy to meet with him, I trusted neither him nor Ameren. He was surprised and asked why. I told him I thought Ameren had done a terrible job with the summer wind storm in St. Louis and that the issues of the Nixon contributions deeply concerned me. He paused and then asked me if I wanted to know what happened with the Nixon contributions. I nodded. He then said that Nixon called and asked for contributions to be sent to the four legislative committees. Sullivan said Ameren cut the checks and sent them out as soon as possible. Sullivan told me he knew that Nixon would make sure the checks got where they were supposed to go. I asked him only one more question: was Nixon already the criminal prosecutor when he called and asked for the contributions? Sullivan said Nixon was the criminal prosecutor and that Ameren felt that they <u>had</u> to give. His exact words were something like "what would you do (if you got that call)?" Then he was silent – as was I.

Mr. Sullivan broke the silence and said repeatedly "we didn't break the law" explaining only that Ameren sent the money to the committees who then sent it on to Nixon. I left the meeting shocked at what I had heard – and with a new-found understanding of how intimidated Ameren was by Nixon's actions. After all, anybody knows that law enforcement cannot take money or gifts from suspects or investigative targets. Everyone knows it is wrong for a police officer or deputy to take money at a traffic stop. After all, we all know that the prosecutor in a case cannot ask the target of the investigation for money. I was shocked.

Immediately after the meeting, I asked my general counsel, Jane Drummond, if what I had heard was criminal rather than an ethical violation. More importantly, I was concerned with whether I had an affirmative duty to inform local or federal law enforcement. After consultation, I decided that I did not have that duty but that I should encourage Ameren executives to stand up for their own rights. I repeatedly did that as we sought to get Taum Sauk settled so we could move on.

During the months of September and October, I became fully engaged in the Taum Sauk settlement efforts. Over those months, the state presented settlement facts and issues to Ameren while the Attorney General stonewalled and refused to talk about when and if the criminal issues (and other civil matters) might be resolved. The Attorney General had been fired by the Department of Natural resources; he remained an interested party due to his role as criminal prosecutor. At one point in the process, the Attorney

General or his staff held public meetings in Reynolds County offering to assist business and others in their claims of damages that might be paid by FERC. At the time, Sullivan agreed that this was inappropriate conduct from the criminal prosecutor in the case (FERC claims were being processed by the feds through Ameren).

Over time, I became increasingly frustrated with Mr. Sullivan and his apparent unwillingness to confront the Attorney General's inappropriate behavior. During this time, Sullivan repeatedly told me how worried Ameren was about criminal charges and the power that Nixon was exercising over me. Sullivan made clear – again and again – that no settlement was possible until Nixon signed off on the criminal charges because Ameren's insurance companies would not pay for the Taum Sauk settlement or the rebuild in that case. Sullivan acknowledged that Ameren was bring pressured but, despite my encouragement, Sullivan refused to confront Nixon or seek other help. Also, we had a repeated problem with Mr. Sullivan's conduct. He reported confidential conversations between Ameren and the state to others and, after giving me his word that he would not do so, he held secret meetings with the Attorney General or his staff.

A brief footnote: my opinion of Mr. Sullivan is so low that I have serious reservations about the initial rate case filings that included a $10 million charge for Taum Sauk damages. Sullivan and Ameren had stated repeatedly that the ratepayers would not have to pay for the Taum Sauk mistakes, and yet Sullivan included that charge. I am not sure if Sullivan has explained this $10 million error to the PSC, but it has not been properly explained to the public or to me.

To continue:

At that time (late fall), I was introduced to Mr. Warner Baxter, a president of Ameren and Sullivan's boss. Baxter agreed that Sullivan was not helpful at this time and designated himself as the point of contact for me and for our negotiations regarding Taum Sauk. I met Baxter at the downtown Missouri Athletic Club sometime in late October or early November and we established an instant rapport.

Over the following weeks, Mr. Baxter and I set about moving the Taum Sauk settlement forward. We worked through issues surrounding the damages and found common ground. We both utilized outside experts who gave us comfort that the terms we sought were good for all parties. At all points in this process, the Attorney General's office and the Missouri Department of Conservation were informed about our progress because I had agreed that they were entitled to all information: conservation because they had some interests; and the Attorney General because he remains the criminal prosecutor. Also, Baxter made clear – as Sullivan had – that Ameren was deeply concerned about the criminal matter and Nixon's role in that. A criminal charge had the possibility of causing a loss of insurance coverage and Nixon was not communicating to them. Ameren felt pressured by Nixon.

It was during this time that the Attorney General or his staff reiterated their opposition to the Taum Sauk settlement, including the resolution of recreational damages that included the unfinished portion of the Katy Trail near Rock Island that was owned by

an Ameren subsidiary named Missouri Central Railroad Company. Baxter agreed with me that this objection seemed unprincipled and wholly political. After all, it is common practice for the settlement of recreational use damages to one area of a state to include the purchase or transfer of property from another part of the state that citizens or visitors to a state could use.

In early December 2006, I went to Ameren headquarters in downtown St. Louis to work out what would become the final details of a comprehensive settlement offer. I worked with Baxter to craft a proposal that included significant damages and real estate concessions, but with maximum flexibility for Ameren. As I left that meeting, Baxter and I shook hands with understanding that we were close to a settlement.

Back in my office, I sent the settlement offer to the conservation department and the Attorney General. Again, I did this based on the interests of conservation and because the Attorney General was the criminal prosecutor in the Ameren case. Conservation had a few comments, and the Attorney General did not respond to us.

However, a few days later, the Attorney General rushed to file suit against Ameren in St. Louis City circuit court. This lawsuit was inappropriate in numerous ways. First, the Attorney General asserted claims that are the claims of the Department of Natural Resources, even though he had been terminated by DNR months before. Also, St. Louis City is the improper venue, one chosen to cause the biggest splash and to intimidate Ameren. The Attorney General has conceded as much just a few weeks back

when he agreed that the venue is improper in St. Louis and consented to have the case moved to the proper venue, Reynolds County. DNR has filed a motion to disqualify the Attorney General; that motion has not been heard.

After the frivolous lawsuit was filed by Nixon, I had a few more conversations with Baxter. He made clear that Nixon's lawsuit was inappropriate and that the lawsuit and the on-going threat of criminal prosecution by Nixon made it impossible for Ameren to accept our offer of settlement due to their insurance companies' concerns. Mission accomplished by Nixon: progress for the state was stopped.

What did Nixon's coercion stop and how did this impact the rate case? In my opinion, it had two impacts to ratepayers:

1) Ameren had agreed to rebuild Taum Sauk starting as early as January 2007. They hoped to get it back on line quickly so that they would have that power base for customers.
2) The Taum Sauk settlement would have meant approximately $130 million in value to the state. More importantly for Ameren ratepayers, a settlement of Ameren would have erased that pending liability and Ameren could move forward with long term planning.
3) Of less value but still rate payer dollars is the money that Nixon's call coerced from Ameren. Ameren has never shown that this was not ratepayer dollars and that money came from Ameren corporate and at least one subsidiary of Ameren.

All in all, Nixon's coercion has cost rate payers hundreds of millions of dollars … dollars that show up as higher electric bills for Ameren customers.

A few weeks ago, Richard Mark, an Ameren vice president, stated publicly for the first time that Ameren was contacted by the Attorney General or his staff. His statement – saying only that someone at Ameren was contacted by someone from the Attorney General's staff – contradicts what Steve Sullivan told me. Mark may be simply trying to parse words and dance around the truth. What I know is this: what Nixon or his staff did has had a direct impact on Ameren and this rate case. And it is wrong and inappropriate for a prosecutor to request money from the target of an inquiry.

Even in the past few days, the Attorney General and his staff have acted inappropriately in attempting to keep the truth covered up. As I sought an opportunity to testify before the PSC, he – as attorney for the state mind you – refused his client's request to testify. His delays were inappropriate and he sought a kind of discovery of me that resembled what an adversary might seek. His questions were like those that Ameren might have asked.

In short, the Attorney General's conduct in this matter has been detrimental to the rate case before you. I am concerned that ratepayers will bear the burden of this conduct. This is unacceptable.

Finally, I feel some regret that I did not speak out on September 12, 2006, (and every day since) regarding the actions of the Attorney General and the impact on Ameren. I sincerely believed then that Ameren and the state could move forward and make things right. I believed that the Attorney General would not block progress and, having acted inappropriately, that he would stay away from this case. I was wrong, and it became clear two or three months ago that Ameren was not moving forward as a direct result of Nixon's actions and that this had a likelihood of substantial prejudice to the interest of the ratepayers.

Over the past few months, I have sought answers to many of the questions and issues surrounding Nixon and Ameren – usually in writing. To all of my inquiries to Nixon or his staff and to Ameren officials, I have not received a single answer. Not one. Today I have told the truth and told of my concerns that Nixon's actions and Ameren's inactions have impacted ratepayers. I respectfully request that this body seek the testimony of Steve Sullivan, Warner Baxter, Jeremiah Nixon, and any of Nixon's staff who are involved in this matter so that the truth of this important matter is more clearly known. Thank you for the opportunity to testify.