

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

In the Matter of Union Electric Company d/b/a)	
AmerenUE for Authority to File Tariffs Increasing)	Case No. ER-2007-0002
Rates for Electric Service Provided to Customers)	Tariff No. YE-2007-0007
in the Company's Missouri Service Area.)	

**PUBLIC COUNSEL'S REPLY TO UNION ELECTRIC COMPANY d/b/a
AMERENUE'S RESPONSE TO ORDER ESTABLISHING TIME TO RESPOND
TO ISSUE RAISED IN PUBLIC COUNSEL'S BRIEF AND MOTION TO STRIKE**

COMES NOW The Office of the Public Counsel and for its Reply to Union Electric Company d/b/a AmerenUE's Response to Order Establishing Time to Respond to Issue Raised in Public Counsel's Brief and Motion to Strike states as follows:

1. On May 4, 2007, the Commission issued an "Order Establishing Time to Respond to Issue Raised in Public Counsel's Brief." On May 9, UE and the State of Missouri filed responses to the issue raised in Public Counsel's brief. On May 17, Public Counsel filed a response to UE's May 9 pleading.

2. Shortly after the filing of Public Counsel's May 17 filing, UE filed a motion to strike it. UE argues that, rather than responding to UE's May 9 pleading, Public Counsel should have responded to Public Counsel's own brief.

3. The Commission May 4 order made clear that the Commission was affording other parties the opportunity to respond to Public Counsel's brief. The order states: "**AmerenUE and the other parties have not had an opportunity to respond** to Public Counsel's newly described issue. Therefore, the Commission will allow the parties an opportunity to offer additional argument regarding this issue." (emphasis added) Even the title of the order ("Order Establishing Time to Respond to Issue Raised

in Public Counsel's Brief') makes clear that the May 9 deadline was for parties to respond to Public Counsel. Nothing in the May 4 order established a deadline for replies to any responses filed by other parties.

4. In the absence of a specific deadline, 4 CSR 240-2.080(15) applies. That rule provides that parties "shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission." Public Counsel responded to UE's May 9 pleading on May 17, within the ten days allowed by rule.

5. The most salient point about UE's May 17 motion to strike is that UE once again does not even argue that it is holding ratepayers harmless for the Taum Sauk disaster. It is simply raising increasingly strained procedural arguments about why the Commission should be prevented from considering the matter, and why UE should not be made to live up to its commitment to hold ratepayers harmless.

6. UE cites a passage from the deposition of Michael Moehn to attempt to show that the issue of regulatory capacity sales was explored at a time earlier than the evidentiary hearing. But examination of the transcript of Mr. Moehn's deposition (Exhibit 260) reveals that sales of regulatory capacity was never discussed. Indeed, the phrase "regulatory capacity" does not appear even once in the transcript. In the portion of Mr. Moehn's deposition cited by UE, the context was UE's decision not to bid into the Illinois auctions. The Illinois auctions required bids that included both **capacity and energy** commitments. "Regulatory capacity" is something entirely different. A sale of regulatory capacity does not entitle the buyer to any energy; it simply allows the buyer to

show that it has adequate capacity for planning and reserve requirements.¹ The questions posed to Mr. Moehn were regrettably not crystal clear, but given the context that the questions were about the Illinois auctions, the bare word “capacity” should not be expanded as UE suggests to mean “regulatory capacity” but rather “capacity and energy.” There is a big difference between sales of regulatory capacity (which is the basis of Public Counsel’s “Taum Sauk Regulatory Capacity” issue) and the type of energy products that are bought and sold in the Illinois auction.

WHEREFORE, Public Counsel respectfully requests that the Commission deny UE’s motion to strike Public Counsel’s May 17 reply, and reduce UE’s rate increase request to account for regulatory capacity sales that could have been made from the Taum Sauk facility.

Respectfully submitted,

OFFICE OF THE Public Counsel

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¹ UE witness Schukar defined regulatory capacity at the evidentiary hearing:
Q. First of all, let me have you explain for the record exactly what regulatory capacity is.
A. Regulatory capacity in the way that it is marketed is capacity that is available to supply to the marketplace. There's no energy specifically associated with it, nor is there a price associated with the energy. (Tr. 1247)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 18th day of May 2007.

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