

**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. In its May 9, 2007, pleading, UE's only two defenses are that: 1) Public Counsel discovered and raised the issue too late; and 2) Public Counsel calculated the amount incorrectly. Both of these are way off the mark, **because UE committed to hold ratepayers harmless from the Taum Sauk disaster.** If UE intended to live up to that commitment, it would have volunteered the information that it had begun making capacity sales, calculated an amount for the additional sales that could have been made with Taum Sauk capacity, and reduced its rate increase request by that amount. Instead, it has chosen to attack Public Counsel's attempts to get UE to live up to its Taum Sauk commitment on the technical – and meritless – ground that the issue was raised too late.

2. UE does not dispute the premise that it could be making capacity sales from Taum Sauk's capacity if Taum Sauk was still usable.¹ UE acknowledges that it would have about 400 megawatts more capacity if Taum Sauk was still functional. (Tr. 1237) UE admits that it would be able to make "additional capacity sales ... if Taum Sauk was still in service," but did not even attempt to quantify those sales. (Tr. 1222)

3. With respect to UE's allegation that the issue was raised too late, UE asserts that Public Counsel could have discovered UE's capacity sales earlier in the proceeding. UE's budget for this case alone is \$4.5 million. Public Counsel's budget for an entire year, for all cases, for all utilities, in all industries, is less than \$1 million. It is not too surprising that UE was able to keep Public Counsel and the other parties away from this issue until the eleventh hour.

4. Like Public Counsel, the Staff did not know that UE was making capacity sales until the hearing. Staff witness Proctor testified that he learned of these sales for the first time during cross-examination of UE witness Schukar at the hearing. (Tr. 1582-1583) The Missouri Industrial Energy Consumers likewise learned of the capacity sales, and UE's failure to adjust its case for Taum Sauk regulatory capacity sales, at the hearing. (Tr. 1642) The fact that other sophisticated parties had not discovered the issue earlier in the case highlights the fact that it was a late-breaking issue. This was not, as UE alleges, something that Public Counsel just missed.

¹ UE does point out that, historically, capacity from Taum Sauk was not sold. But that is because the Joint Dispatch Agreement, now defunct, prevented such sales. It is not because Taum Sauk's capacity had no value, and it is no indication of what additional regulatory capacity sales would be taking place now if UE had not destroyed Taum Sauk just as the JDA expired.

5. Because UE is not willing to live up to its hold-harmless commitment by making its own proposal for the amount of revenues that would result from selling Taum Sauk capacity, the best evidence the Commission has is that developed by Public Counsel at the hearing – and that evidence is sufficient to allow the Commission to make a finding as to the value of regulatory capacity sales revenues from the destroyed Taum Sauk plant. Despite UE’s refusal to offer an amount, the evidence still offers the Commission a range of values for regulatory capacity. In its brief, and in the final filed reconciliation, Public Counsel suggested using \$2/kW/month for imputing the value of Taum Sauk’s capacity. That seems to be the price that UE has done the most to support, but the record has evidence to support other values. UE witness Schukar testified, *in camera*, to a range of values for regulatory capacity sales. (Tr. 1322, lines 19-21; see also Exhibit 514HC). Public Counsel witness Kind, testifying about the value of selling regulatory capacity from the Joppa plant, used a regulatory capacity figure of \$.75/kW/month. (Tr. 2796) All of these values for regulatory capacity are supported by the record evidence; any one, or an average, could be used to calculate the additional revenues UE could have received from the sale of regulatory capacity had it not destroyed the Taum Sauk facility.

6. This is the second time in this case that UE has failed to live up to its commitment to hold ratepayers harmless for the Taum Sauk disaster. The first was the inclusion of approximately \$10 million of costs in its direct case, apparently as an oversight. This time, it appears to be intentional. At any point in this case, and particularly in its May 9 pleading, UE could have offered its own calculation of the value of the Taum Sauk regulatory capacity. Instead, it tries to shift the burden of proof to Public Counsel in a case in which by law UE has the burden (Section 393.150.2 RSMo

2000), and on an issue for which it has publicly made a commitment to hold ratepayers harmless. UE cannot hold ratepayers harmless if it refuses to adjust its rate increase request to reflect the additional revenues from the sale of regulatory capacity that could have been made if the Taum Sauk plant was still in service.

WHEREFORE, Public Counsel respectfully requests that the Commission deny UE's motion to strike a portion of Public Counsel's brief, 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

By: /s/ Lewis R. Mills, Jr.
Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(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 this 17th day of May 2007.

Office General Counsel
GenCounsel@psc.mo.gov

Steve Dottheim
Steve.Dottheim@psc.mo.gov

John B Coffman
john@johncoffman.net

James M Fischer
jfisherpc@aol.com

William J Powell
powell@smithlewis.com

James B Lowery
lowery@smithlewis.com

Steven R Sullivan
srsullivan@ameren.com

Thomas M Byrne
tbyrne@ameren.com

Wendy Tatro
wtatro@ameren.com

Paul A Boudreau
PaulB@brydonlaw.com

Russell L Mitten
rmitten@brydonlaw.com

Michael C Pendergast
mpendergast@lacledegas.com

Rick E Zucker
rzucker@lacledegas.com

Gaylin Carver Rich
gaylin@hendrenandreae.com

Todd H Iveson.
todd.iveson@ago.mo.gov

Joseph P Bindbeutel
joe.bindbeutel@ago.mo.gov

Lisa C Langeneckert
llangeneckert@stolarlaw.com

Diana M Vuylsteke
dmvuylsteke@bryancave.com

Sam Overfelt
moretailers@aol.com

Lyell H Champagne
lyell@champagneLaw.com

Stuart Conrad
stucon@fcplaw.com

Robert E Carlson
bob.carlson@ago.mo.gov

Koriambanya S Carew
carew@bscr-law.com

Rick D Chamberlain
rdc_law@swbell.net

Matthew B Uhrig
muhrig_lakelaw@earthlink.net

/s/ Lewis R. Mills, Jr.
