

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff

AmerenUE

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Project No. 2277

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 2, 2006)

1. With this order the Commission approves a Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Union Electric Company, doing business as AmerenUE (AmerenUE). The Agreement resolves all issues arising from a preliminary investigation of AmerenUE, a wholly-owned subsidiary of Ameren Corporation, conducted by Enforcement and the Office of Energy Projects, pursuant to Part 1b of the Commission's Regulations.<sup>1</sup> The Agreement requires AmerenUE to pay a total of \$15 million and to implement a program to improve the safety and compliance aspects of managing AmerenUE's licensed hydroelectric facilities. We approve the Agreement as appropriate under the circumstances and in the public interest.

**A. Background**

2. AmerenUE is the licensee for the Taum Sauk Hydroelectric Project No. 2277, which is located on the East Fork of the Black River in Reynolds County, Missouri. The Taum Sauk project is subject to the Commission's jurisdiction under the Federal Power Act (FPA).<sup>2</sup>

3. On December 14, 2005, there was a breach of the upper reservoir of the Taum Sauk Project. The breach released over 1 billion gallons of water and caused personal

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<sup>1</sup> 18 C.F.R. Part 1b (2006).

<sup>2</sup> 16 U.S.C. § 792 *et seq.* (2000).

injury and significant environmental and property damage. A house downstream from the Taum Sauk Project in the Johnson's Shut-Ins State Park was destroyed, injuring the five residents, including three children. Water from the reservoir toppled trees and left mud and debris on the land and in a river downstream from the project, including the Johnson's Shut-ins State Park.

4. Prior to the breach, AmerenUE experienced an overtopping of the Taum Sauk upper reservoir on September 25, 2005. On September 27, 2005, AmerenUE discovered that its instruments were giving inaccurate readings of the water level in the upper reservoir. On October 4, 2005, AmerenUE discovered that the transducers measuring the level of water were not operating properly. AmerenUE made various changes in its instrumentation, including adjusting the readings from the transducers, changing the level of probes designed to shut off the pumps to the upper reservoir, and altering the timing and sequence in which the probes operate. AmerenUE did not report any of these matters to the Commission until after the December 14, 2005 breach of the upper reservoir.

5. Section 12.5 of the Commission's regulations provides that a licensee must use sound and prudent engineering practices in any action relating to the design, construction, operation, maintenance, use, repair, or modification of a water power project or project works. Section 12.10(a) of the Commission's regulations requires that licensees report to the Commission any condition affecting the safety of a project or project works. Section 12.11 of the Commission's regulations requires licensees to report any modification of the project or project works to the Commission.

6. In addition to the Commission's regulations, Article 27 of the license for the Taum Sauk project requires AmerenUE to obtain the Commission's approval prior to making any substantial alteration or addition to the project not in conformity with the approved plans, except when required by an emergency, and Article 20 of Form L-11 of the license for the Taum Sauk project requires AmerenUE to install and maintain such gages as the Commission may deem necessary. AmerenUE can alter the number, character, and location of such gages and other measuring devices only with the Commission's approval.

## **B. Alleged Violations**

7. Enforcement alleges that AmerenUE violated the Commission's regulations and the Taum Sauk license conditions, and that the breach of the upper reservoir may have been prevented if AmerenUE had reported conditions affecting the safety of the project to the Commission or if AmerenUE had used sound and prudent engineering practices by operating the upper reservoir at a safe water elevation and properly repairing and maintaining critical instrumentation.

8. Specifically, Enforcement alleges that AmerenUE committed four violations of the notification requirements in sections 12.10 and 12.11 of the Commission's regulations by failing timely to notify the Commission that (1) an overtopping of the upper reservoir of the Taum Sauk project occurred on September 25, 2005; (2) one of the transducers used to measure the water level in the upper reservoir was giving an inaccurate reading on September 27, 2005; (3) AmerenUE discovered on October 4, 2005, that the system for anchoring the transducers used to measure the water level in the upper reservoir failed; and (4) AmerenUE changed the height of the emergency shutoff probes on October 1, 2005.

9. Enforcement further alleges that AmerenUE committed seven violations of the sound and prudent operation requirements of section 12.5 of the Commission's regulations when it (1) operated the project with the water too close to the top of the upper reservoir's parapet wall; (2) did not repair loose transducers used to measure the water level in the upper reservoir; (3) changed the software used to calculate the water level in the upper reservoir after it discovered, on September 27, 2005, that one of the transducers that measured the water level in the upper reservoir gave a faulty reading; (4) raised the two probes that shut off the project's pumps if the water level got too high; (5) changed the software that controlled the probes by adding a one-minute delay after the probes were activated before the pumps were shut off; (6) programmed the probes to operate in series rather than in parallel; and (7) changed the software that controlled the project's emergency alarm system to activate only when the second probe was triggered.

10. With respect to license condition violations, Enforcement alleges that AmerenUE violated Article 20 of license Form L-11 when, without Commission approval, it: (1) programmed the emergency cutoff probes to operate in series rather than in parallel; (2) added a one-minute delay to the activation of the probes; and (3) raised the probes. Finally, Enforcement alleges that AmerenUE violated Article 27 of its license when it raised the probes without prior Commission approval.

11. AmerenUE neither admits nor denies the alleged violations, but indicates that it has entered into the Agreement in view of the costs and risks of litigation, and in the interest of resolving any dispute with the Commission.

### **C. Stipulation and Agreement**

12. Enforcement and AmerenUE have entered into the attached Agreement to resolve Enforcement's investigation. The Agreement requires AmerenUE to pay a total of \$15 million, including a \$10 million civil penalty and \$5 million into an escrow account to fund project enhancements at or in the vicinity of the Taum Sauk project. In addition, AmerenUE has agreed to implement a detailed safety program for its hydroelectric facilities.

13. AmerenUE will pay the \$10 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. At the same time, AmerenUE will pay the \$5 million for project enhancements into an interest-bearing escrow account. The project enhancements will be developed by AmerenUE, and will include an advanced emergency management system to serve the medical and evacuation needs of the Johnson's Shut-Ins State Park and the Taum Sauk project Emergency Action Plan. Other project enhancements will be directed toward some or all of the following purposes: (1) enhancing economic development and quality of life for persons residing near the Taum Sauk project; (2) protecting and enhancing environmental resources, including animal habitats, at or near the project; and (3) ensuring and promoting educational and recreational opportunities at or near the project, including access to such opportunities for disabled persons.

14. All proposals and plans for all project enhancements funded by the escrow account must be submitted to Commission staff for review and approval, such approval not to be unreasonably withheld, and each approved project enhancement must be timely completed to the satisfaction of Commission staff, irrespective of whether the final costs exceed \$5 million. In the event AmerenUE does not complete the project enhancements by the earlier of (i) December 31, 2007 or (ii) completion of the reconstruction of the Taum Sauk upper reservoir, AmerenUE will pay the amounts remaining in the escrow account as an additional civil penalty to the United States Treasury.

15. Appended to the Agreement is a detailed Dam Safety Program (DSP) covering both of AmerenUE's licensed hydropower facilities.<sup>3</sup> The DSP will be implemented immediately upon the Commission's approval of the Agreement. The DSP provides for safety and environmental checks and balances designed to avoid similar problems in the future. AmerenUE will create a new position of Chief Dam Safety Engineer. The Chief Dam Safety Engineer will report to senior management and will have primary responsibility for dam safety throughout AmerenUE's system. The Chief Dam Safety Engineer will have authority to order all necessary corrective action if dam safety is in question, including issuance of cease generation or stop work orders when necessary. In addition, the Chief Dam Safety Engineer will review and approve all changes to a dam's structure, operating system, control system, or critical maintenance or operational procedures before implementation, and serve as the primary point of contact with the Commission on all non-emergency safety and regulatory compliance matters. The DSP provides for periodic audits and assessments of the effectiveness of the safety program (including audits by independent third parties) to be submitted to the Commission.

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<sup>3</sup> In addition to the Taum Sauk project, AmerenUE is the licensee for the Osage Project No. 459.

**D. Determination of the Appropriate Remedy**

16. We have considered the factors set forth in Rule 1505 of our regulations in determining the appropriateness of the remedy to which AmerenUE has agreed.<sup>4</sup> We find that the total penalty and remedy is appropriate. We find that the Agreement provides a fair and equitable resolution of this matter and is in the public interest. The size of the civil penalty, the financial commitment that AmerenUE has made to project enhancements, and the enhanced safety program are all appropriate given the facts of this case.

The Commission orders:

(A) The Commission approves the attached Stipulation and Consent Agreement in its entirety and without modification.

(B) The Commission's approval of the Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>4</sup> 18 C.F.R. § 385.1505(b) (2006).