

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Union Electric Company (dba Ameren Missouri) Project No. 2277-023

COMMENTS OF MISSOURI PARKS ASSOCIATION
AND GREAT RIVERS ENVIRONMENTAL CENTER ON NOTICE OF APPLICATION
READY FOR ENVIRONMENTAL ANALYSIS AND SOLICITING COMMENTS,
RECOMMENDATIONS, TERMS AND CONDITIONS, AND PRESCRIPTIONS



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Kimberly D. Bose
Federal Energy Regulatory Commission
Office of Energy Projects
888 First St. NE
Washington, DC 20406
Company

Re: COMMENTS AND RECOMMENDATIONS, Union Electric
(dba Ameren Missouri), Taum Sauk Pumped Storage
Project No. 2277-23

Dear Ms. Bose:

The Missouri Parks Association, an independent citizens organization of more than 3000 members dedicated to the protection, enhancement and interpretation of Missouri state parks, appreciates the opportunity to offer comments and recommendations on the application of Union Electric Company (dba Ameren Missouri) for a new major license for the Taum Sauk Pumped Storage Project No. 2277-023. Our comments and recommendations are submitted with those of Great Rivers Environmental Law Center, and immediately follow. Specifically, we ask that FERC require:

(1) A full and formal Environmental Impact Statement with respect to the re-licensing of the Taum Sauk Facility. This is warranted because the facility has never benefitted from the required consideration of all the potentially adverse environmental impacts posed by its operation, the required consideration of the possible alternatives, or a full public discourse to address the environmental risks and impacts of the Taum Sauk Facility; and

(2) Ameren Missouri transfer title of its Church Mountain and Taum Sauk Creek Valley property to the State of Missouri for management as part of the complex of state parks and natural areas in the region.

Thank you for your consideration.

Susan Flader, President
Missouri Parks Association

October 25, 2011

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
88 First Street, N.E. Room 1A
Washington, D.C. 20426

Re: COMMENTS OF MISSOURI PARKS ASSOCIATION AND GREAT RIVERS ENVIRONMENTAL CENTER ON: NOTICE OF APPLICATION READY FOR ENVIRONMENTAL ANALYSIS AND SOLICITING COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, AND PRESCRIPTIONS

AMEREN UE: Project no. 2277-023

Dear Secretary Bose:

The Missouri Parks Association and Great Rivers Environmental Center (“Great Rivers”) submit the following comments with respect to the Application for Re-licensing of the Taum Sauk Pumped Storage Project, P-2277 (the “Taum Sauk Facility” or “facility”). The Missouri Parks Association is an independent citizens organization of more than 3000 members dedicated to the protection, enhancement and interpretation of Missouri state parks. Great Rivers is a nonprofit public interest environmental organization working to promote the public health by encouraging cleaner energy, thereby achieving cleaner air and water; preserve open spaces and forests for their recreational, aesthetic, and agricultural benefits; and aid and advise citizens and organizations in asserting and defending their interests in environmental values.

In sum, and as explained in more detail below, Missouri Parks Association and Great Rivers strongly encourage FERC to require the following:

(1) A full and formal Environmental Impact Statement (“EIS”) with respect to the re-licensing of the Taum Sauk Facility. This is because the facility has never benefited from the required consideration of all the potentially adverse environmental impacts posed by the facility, the feasible alternatives to the facility, or from a full public discourse to address the environmental risks and impacts of the Taum Sauk Facility; and

(2) AmerenUE transfer title of the Church Mountain and Taum Sauk Creek Valley property to the State of Missouri for management as part of the complex of state parks and natural areas in the region.

I. Background

By way of a brief background, beginning in December 1959, Union Electric Company, AmerenUE’s parent company, purchased approximately 3,600 acres of land in southeast

Missouri to construct and operate the Taum Sauk Facility. When completed, the facility's primary features were a mountain top upper reservoir, a shaft and tunnel conduit leading to a 450-MW, two unit pump turbine, a motor generator plant, a lower reservoir, and transmission facilities, including a 30-mile-long transmission line.

Although the Taum Sauk facility went into commercial operation in 1963, it managed to evade the scrutiny of the Federal Power Commission (FERC's predecessor) as well as the public because Union Electric was engaged in litigation with the Commission over whether the Taum Sauk Facility was required to be licensed under the Federal Power Act. Subsequently, the United States Supreme Court ruled that the Taum Sauk Facility did require federal approval. After this ruling, in an order dated August 26, 1965, the Federal Power Commission issued to Union Electric a license to operate the Taum Sauk Facility, making it retroactive to July 1, 1960, and effective for a period of fifty years. As a result, to date, there never has been a comprehensive evaluation of the impacts and alternatives arising from the construction and operation of the facility.

Then, in December 2005, the upper reservoir of the Taum Sauk Facility breached, causing a catastrophic failure of the facility. As a result, billions of gallons of water flowed down the west side of Proffit Mountain into the East Fork of the Black River destroying the home of the Johnson's Shut-Ins State Park superintendent, flooding motorists and significantly damaging the surrounding state park, its campgrounds, and adjacent properties. Notwithstanding that the facility had to be completely rebuilt, Ameren characterized (and FERC agreed) that the reconstruction of the facility was merely a "repair" and as a result, the facility once again escaped an EIS required under both the FPA and NEPA.

II. The Location and Surrounding Area of the Taum Sauk Facility

The Taum Sauk Facility is within the midst of the largest and most significant complex of state parks and other public lands in the state of Missouri. Located in the heavily forested St. Francois Mountains, the facility is surrounded by state parks, conservation areas and large portions of the Mark Twain National Forest. In fact, the nearby St. Francois Mountains Natural Area, just north and east of the upper reservoir, at 7,028 acres, is the largest designated natural area in Missouri and includes nearly all of Taum Sauk Mountain State Park, Proffit Mountain Conservation Area, and eighty acres of Johnson's Shut-Ins State Park.

Critically, the facility is also located in the midst of some of the most beloved recreational trails in Missouri including the historic Boy Scout Trail along Taum Sauk Creek and the Taum Sauk section of the Ozark Trail higher on the slopes with full view of the upper reservoir.

In addition to the recreational trails and extraordinary vistas surrounding the Taum Sauk facility, the surrounding, vast landscape contains the greatest concentration of high quality geologic features known on public land in the region. These include outstanding igneous rock glaciers, igneous glade/savanna complexes, extensive gravel washes, fens, forests of oak, hickory and pines. Moreover, because the area contains significant wildlife resources, the Missouri Department of Conservation has identified this area as part of its "comprehensive wildlife

strategy.” In fact, the areas surrounding the Taum Sauk Facility have been identified as some of the best places to conserve Missouri’s native wildlife and their habitats.

In addition, the region is also home to endangered species. Most notably, populations of Mead’s Milkweed¹ are known to occur on Proffit Mountain (including where Ameren’s transmission line intersects a glade complex), and on the surrounding mountains, including Taum Sauk Mountain and Church Mountain.

Finally, the Missouri Department of Natural Resources (“DNR”) has identified certain of the surrounding area’s waters as “Missouri Outstanding State Resource Waters.” These are defined as high quality waters with significant aesthetic, recreational or scientific values. Notably, a three-mile reach of the East Fork Black River that flows through Johnson’s Shut-Ins State Park is on the State’s list of Outstanding Resource Waters, but was significantly gutted by the above-described 2005 failure and collapse of the facility. Another “Outstanding Resource Water” is Taum Sauk Creek, which is pristine because it was far from settlements in the 19th and early 20th centuries; this creek would be highly vulnerable to any overflow from the rebuilt upper reservoir.

In sum, the extraordinary geography that surrounds the Taum Sauk Facility has provided aesthetic and recreational value to the people of Missouri (and beyond) for countless generations. Accordingly, AmerenUE cannot be allowed to continue its current operation of the facility without undergoing a comprehensive analysis of the facility’s environmental impact and providing meaningful measures that will mitigate against the loss of any aesthetic and recreational value.

III. FERC Should Prepare a Full EIS

A full EIS should be required because neither FERC nor its predecessor agency, at any time, has fully evaluated the impacts arising out of the construction and operation of the Taum Sauk Facility. In fact, the facility has consistently evaded a comprehensive evaluation of impacts and alternatives. During the reconstruction of the facility after its 2005 failure, although pressed to issue an EIS, FERC and AmerenUE argued that the facility was undergoing a mere “repair” and thus was not required to undergo a full EIS.

Now that the facility is undergoing re-licensing, the time is appropriate for a full EIS. As set forth by FERC itself during the litigation over the repair of the facility:

...the statutory structure of the FPA (as well as the application of NEPA) requires the Commission to fully re-evaluate continued operation of the Taum Sauk project under a new license, when a relicensing application is filed, regardless of AmerenUE’s decision to rebuild the project now. Brief of Respondent Federal Energy Regulatory Commission at 33-34, Missouri Coalition

¹ Mead’s Milkweed is currently listed as threatened under the federal Endangered Species Act, and it is listed as endangered by the Missouri Department of Conservation. The project site sits around what are probably the largest populations of the species to survive in modern times, and one of very few that still produces viable seeds.

for the Environment v. Federal Energy Regulatory Commission, No. 08-1390 (8th Cir. October 23, 2008)(emphasis added).

AmerenUE evaded full scrutiny when the Taum Sauk hydropower plant first came on line. Ameren then evaded scrutiny again during its reconstruction. FERC should not allow it to evade scrutiny once again.

Lastly, a full and comprehensive EIS should be required because, as manifested by the facility's catastrophic failure in 2005, Ameren's ability to operate the facility without detriment to the environment has been compromised. Moreover, the breach was not caused by an Act of God or some unforeseen or unpredictable event. Instead, as confirmed by a FERC independent panel of consultants, the primary causes of the collapse were due to Ameren's mismanagement. As such, the re-licensing of Ameren's facility should be subject to careful scrutiny and public input. A thorough and comprehensive EIS is one way to ensure this is accomplished.

IV. Transfer of Title of Church Mountain

If FERC does choose to re-license AmerenUE's Taum Sauk Facility, as a condition to granting the license, FERC should (in addition to requiring an EIS) require AmerenUE to transfer the Church Mountain Property and the Taum Sauk Creek Valley Lands to the State of Missouri for recreational purposes and natural areas management.

Under the FPA, a licensee of a hydropower plant is required to mitigate, among other impacts, lost recreational value. The most effective means to compensate for the loss of the recreational value would be for AmerenUE to permanently transfer title of the Church Mountain property, currently leased to the state of Missouri for recreational purposes, to the State of Missouri. AmerenUE's property in the vicinity of the facility, including Church Mountain, is of equivalent quality to that of the St. Francois Mountains Natural Area and Taum Sauk Mountain State Park. The transfer of Church Mountain, therefore, would be not only proper but necessary to mitigate lost recreational uses arising from the operation of the Taum Sauk facility.

Specific examples of lost recreational value from the operation of the Taum Sauk facility are multifold. As an initial matter, and as set forth above, Ameren's Taum Sauk Facility is located in the midst of the largest and most significant complex of state parks and other public lands in the state of Missouri. The area surrounding the facility, which is at the geologic core of the Ozarks, provides extraordinary ecosystem and biodiversity values. Specifically, the St. Francois Mountains Natural Area, at 7,028 acres, is by far the largest natural area in the state.

Importantly, prior to the development and operation of the Taum Sauk Facility, the area surrounding the facility offered the best quality (that is: the darkest, most natural) night sky. After its reconstruction, the facility is even more glaringly visible by day and still more so by night. In fact, due to the increased lighting and white cement used in construction of the facility, most vantage points and trails within Taum Sauk Mountain and Johnson's Shut-ins state parks have been diminished.

Specifically the new upper reservoir, with its high walls and glaring white concrete, is far more intrusive than the original structure by day, and the array of lights make it even more glaringly obvious at night. Although the lands surrounding the facility have been the best place in Missouri to experience a wild landscape, and the darkest night sky - a resource that is rightfully gaining attention as it becomes ever more rare - the intrusive upper reservoir presents a major degradation of that experience. The rebuilt upper reservoir causes a highly intrusive degradation by day and by night of the viewshed from the Bell Mountain Wilderness Area on the Mark Twain National Forest and from two state wild areas, Goggins Mountain and Johnson's Shut-Ins Wild Areas, as well as from many other vantage points and trails on surrounding lands.

Additionally, as a result of the operation of the facility (both before and after the rebuild), there has been a significant rise of ATV use that is not only unauthorized but harmful to the trails and enjoyment of the general public. Specifically, the transmission line corridor and valley of Taum Sauk Creek that are adjacent to the Taum Sauk Facility have seen a rise in ATV use that not only contributes to the systematic erosion of the surrounding river banks but also decreases the general public's enjoyment of the trails and parks.

Moreover, as a result of the operation of the Facility, and its "repair" in 2005, access to important trails, including the historic Boy Scout trail in the valley of Taum Sauk Creek, has been diminished. In fact, following the 2005 breach, access to the Church Mountain trails were closed to the public. As described more fully below, access to these trails had been provided by Ameren to DNR in a long term lease arrangement between the DNR and Ameren. Currently, as a result of the breach, the public can no longer enjoy the trails surrounding Church Mountain.

In addition to lost trails access and other aesthetic damage, AmerenUE has experienced an issue of feral hog control in the areas surrounding the Taum Sauk Facility. These feral hogs have caused significant damage to both public and private property by disrupting the land surface, eating crops and contributing to erosion. Therefore, the feral hogs, mismanaged by AmerenUE property managers, contribute to the overall loss of aesthetic and recreational value of the lands surrounding the Taum Sauk Facility.

In sum, the public has suffered from the lost aesthetic and recreational value resulting from the operation of the Taum Sauk Facility and as such, FERC should require (pursuant to the FPA) AmerenUE to properly and effectively mitigate against these lost aesthetic and recreational values. The only way to effectively mitigate against both past and future loss of recreational value is for AmerenUE to transfer title of Church Mountain and the Taum Sauk Creek Valley Lands to the State of Missouri for management as part of the complex of state parks and natural areas in the region.

V. Conclusion

For the reasons stated above, Missouri Parks Association and Great Rivers respectfully urge FERC to do what is required under the law: protect some of the most treasured land in Missouri by not only requiring an EIS but also a full and total transfer of title of Church Mountain and the Taum Sauk Creek Valley property to the State of Missouri.

Thank you for your consideration.

Sincerely,

Mary Mulhearn (#F228959)
Special Projects

A handwritten signature in blue ink that reads "Bruce A. Morrison".

Bruce A. Morrison (#F168574)
General Counsel

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