BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff.	)))))	File No. EA-2016-0208

REPLY BRIEF OF AMEREN MISSOURI

In accordance with the Commission's September 7, 2016, *Fourth Order Amending Procedural Schedule*, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), for its Reply Brief, states as follows:

INTRODUCTION/GOVERNING LAW

It is obvious when one reads the Office of the Public Counsel's ("OPC") Initial Brief that its opposition to the solar partnership pilot program is a re-litigation of a case that was already decided against it; that is, a re-litigation of the Commission's decision to grant a certificate of public convenience and necessity ("CCN") for KCP&L Greater Missouri Operations Company's ("KCPL-GMO") Greenwood solar facility.[1] Indeed, OPC's arguments in this case are essentially the same arguments rejected by the Commission in its Greenwood Order. Moreover, OPC's opposition in this case ignores the Commission's 2011 decision granting a CCN to Kansas City Power & Light Company ("KCP&L") for a distributed solar program through which multiple KCPL-owned solar facilities would be located on others' premises by asserting already-rejected arguments regarding claimed limits on the Commission's ability to grant the CCN requested in this case.[2] The bottom line, as discussed further below, is

[1] *Report and Order*, KCPL-GMO, File No. EA-2015-0256 (the "Greenwood Order"), of which the Commission has taken administrative notice in this case. Tr. p. 202, l. 14-16; p. 203, l. 4-5.
[2] *Order Granting Certificate of Convenience and Necessity*, KCP&L, File No. EA-2011-0368 (the "KCP&L DG Order"), of which the Commission has also taken administrative notice in this case. Tr. p. 188, l. 1-18.

that all of the reasons underpinning the Commission's decisions to grant CCNs in those cases equally support a Commission decision to approve the pilot program at issue here.[3]

In addition to its continuing disagreement with decisions the Commission has already made, OPC's position ignores the relatively well-developed case law arising under the CCN statute, Section 393.170, RSMo, which squarely supports approval of the pilot program, including the CCN. In advancing its opposition, OPC incorrectly equates the statutory language "necessary or convenient for the public service" with "the utility must be short capacity," yet the case law makes quite clear that the statute imposes no such standard before a CCN can be granted for new generation. To the contrary, under the applicable cases this Commission is given broad latitude to determine when the necessary or convenient requirements of Section 393.170 have been satisfied. "Necessary," as used in the statute, means a determination by the Commission that the improvement (the facilities that will be built through this pilot here) are "highly important to the public convenience and desirable for the public welfare." *State ex rel. Missouri, Kansas and Oklahoma Coach Lines, Inc., et al. v. Pub. Serv. Comm'n,* 179 S.W.2d 132,136 (Mo. App. W.D. 1944). The case law tells us that there is no requirement that the facility that is the subject of a CCN request be "essential or absolutely indispensable" for the utility to keep the lights on. *Id.* That obviously means there is no requirement that Ameren Missouri "must" need generation capacity now to serve its load, as OPC claims. To the contrary, the Commission need only conclude that granting the CCN "serves a genuine and reasonable public interest in promptness and economy of service….." *In the Matter of Applications of Churchill Truck Lines, Inv. et al.,* 27 Mo. P.S.C. (N.S.) 430 (June 20, 1985),

[3] The approval the Company seeks is approval of the pilot program, including the CCN, on and subject to the terms and conditions set forth in the August 31, 2016 *Non-Unanimous Stipulation and Agreement* ("Stipulation") filed in this docket among the Company, the Staff, the Missouri Department of Economic Development – Division of Energy ("DED"), Earth Island Institute d/b/a Renew Missouri ("Renew Missouri), and United for Missouri, Inc..

(citing *State ex rel. Beaufort Transfer Co. v. Clark,* 504 S.W.2d 216, 219 (Mo. App. W.D. 1973)). In summary, the cases teach us that decisions in CCN cases come down to whether the public interest is served by granting the CCN. *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597-98 (Mo. App. 1993) ("[I]t is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served by award of the certificate.").

For the reasons discussed in the Company's Initial Brief, and below,[4] the public interest indeed will be served by approving the solar partnership pilot.

ARGUMENT

I. Competent and substantial evidence supports approval of the pilot, including approval of the requested CCN, because the facilities to be constructed as part of the pilot are necessary or convenient for the public service.

Without citation to any support, OPC first argues that a decision approving the pilot would not be supported by competent and substantial evidence.[5] OPC's unsupported argument is refuted by the case law. Substantial evidence is evidence that is probative of the issues it is offered to prove. *State ex rel. Office of the Public Counsel v. Pub. Serv. Comm'n*, 293 S.W.3d 63, 72 (Mo. App. S.D. 2009). Competent evidence is evidence that is relevant and admissible. *Id.* The record in this case is replete with admissible (indeed, admitted without objection) evidence that is probative of – that tends to prove – that Ameren Missouri both needs to gain an understanding of the role distributed generation of this type can or should play in meeting its not-too-distant in the future generation needs, and that in the absence of this pilot, Ameren Missouri lacks that understanding. OPC may disagree with the evidence, but that disagreement does not render the evidence insubstantial or incompetent. Indeed, whether the evidence is credible and is

[4] And as discussed in the Staff's, the DED's and Renew Missouri's Initial Briefs.
[5] OPC's Initial Brief at 3.

sufficient to convince the Commission to approve the pilot is a matter squarely within the Commission's discretion, notwithstanding OPC's opinions about it. *See, e.g., State ex rel. Public Counsel v. Pub. Serv. Comm'n,* 293 S.W.3d 63, 69 (Mo. App. S.D. 2009) (Stating the well-settled rule that it is the Commission that judges the credibility of a witness's testimony).

The evidence in this case establishes that Ameren Missouri has no ownership or operational experience with distributed generation of the type proposed here, and that it is beneficial to it (and ultimately to its customers) for it to gain that knowledge. Among other things, Ameren Missouri doesn't know:

- the extent to which customers may be willing to subsidize these kinds of facilities, by making land available or covering part of the cost;
- the terms and conditions of agreements with potential customers that may be needed to obtain their participation;
- whether there are system reliability benefits from such generation;
- whether there are distribution system challenges (or advantages, such as reduced line losses) from such generation; or
- whether there are advantages to meeting future renewable generation needs using this kind of distributed generation throughout its service territory as compared to large, central station renewable generation;[6]

Ameren Missouri witnesses also testified that it must gain these learnings now; otherwise, when future generation decisions, in particular for renewable generation, need to be made it will be too late.[7] As Ameren Missouri witness William Barbieri testified, the Company

[6] Ex. 2, p. 8, l. 1-4 (Barbieri Direct); Tr. p. 97, l. 6 to p. 98, l. 18; p. 101, l. 6-8.
[7] Tr. p. 82, l. 12 to p. 84, l. 19. The record also indicates that additional renewable generation will be needed by 2019 for Renewable Energy Standard ("RES") compliance alone, and that more renewable generation may be needed for other compliance needs, including arising from carbon regulation. Ex. 2, p. 4, l. 23 to p. 5, l. 3.

is proposing to invest this $10 million "to ensure that we're utilizing the most effective and operational forms of generation."[8]

It is not just Ameren Missouri that recognizes that it lacks knowledge it needs and that gaining that knowledge now will be beneficial. The Staff recognizes, just as the Commission did in the Greenwood Order, that the purpose of the pilot is to allow Ameren Missouri to gain knowledge that it does not presently have.[9] The Staff agrees that it is beneficial for the Company to learn things now so that the Company may avoid mistakes before it launches into a much greater investment later.[10] And the Staff agrees that there may be reliability benefits from this kind of generation similar to the reliability of micro grids, and that this kind of program will aid in RES compliance in the future.[11] There is also agreement among the Company and the Staff that the Company can't just review information from other utilities that may have more experience with distributed generation, but instead, will benefit from having this generation on its own system.[12] It is also undisputed the diversification of generation sources is promoted by a pilot such as this and its facilitation of future renewable generation, which is one of the goals of developing an integrated resource plan under the Commission's integrated resource planning rules.[13] Finally, it is clear that the Stipulation signatories agree that just because the generation

[8] *Id.*, p. 84, l. 15-17.
[9] *Id*., p. 126, l. 19-24. DED, Renew Missouri and United for Missouri agree, as evidenced by their signatures on the stipulation filed in this case.
[10] *Id.*, p. 127, l. 3-8; p. 129, l. 20 to p. 130, l. 3.
[11] Tr. p. 141, l. 1-4, 14-17.
[12] Ex. 2, p. 5, l. 3-6; Tr. p. 140, l. 5-12 (Staff witness Eubanks testifying that "[I]t's beneficial for Ameren to have that [this kind of generation] on its own system for that knowledge."). Similarly, modeling or simulating how these kinds of facilities will perform is inferior to gaining actual experience. Tr. p. 63, l. 6-13 (Ameren Missouri witness Michael Harding testifying that a simulation would leave the Company to rely on speculation about how the generation would perform with the system).
[13] Tr. p. 128, l. 12-18 (Testimony of Staff witness Eubanks). Even OPC didn't dispute that this is true. Tr. p. 178, l. 12-21, p. 179, l. 12-15 (Testimony of OPC witness Burdge). Federal law, specifically, the Public Utility Regulation Policies Act ("PURPA"), also calls upon utilities to minimize dependence on one fuel source to ensure the energy it sells comes from a wide variety of sources, including from renewable sources, as OPC also admits. Tr. p. 181, l. 19 to p. 182, l. 20.

to be constructed under this pilot is not the least cost generation[14] that could be built today, the pilot is nevertheless beneficial. Even OPC admits that least cost is not the only criterion that should be evaluated when a utility determines what its generation mix should be, as utilities must do as part of their integrated resource planning.[15]

II. The Commission's Rationale in its Greenwood Order Applies with Equal Force Here.

What the Commission said in the Greenwood Order when it approved a solar facility to allow KCPL-GMO to gain knowledge about renewable energy generation with which it has no experience is equally applicable here, as the following excerpts from the Greenwood Order demonstrate:

> GMO [Ameren Missouri] proposes to [build distributed generation on customer premises] . . . to give it 'hands on' experience . . . with a view toward eventually building additional solar facilities. Gaining that experience now is important so that GMO [Ameren Missouri] can remain in front of the upcoming adoption curve.[16]
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> The benefits GMO [Ameren Missouri] and its ratepayers will ultimately receive from the lessons learned in this pilot project are not easily quantifiable since there is no way to measure the amounts saved by avoiding mistakes that might otherwise be made. But it is likely that future savings will be substantial.[17]
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> ***
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> GMO's [Ameren Missouri's] customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere. It is clear, solar power will be an integral part of this development, building a bridge to our energy future. The Commission can either act to facilitate that process or temporarily hinder it.[18]
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> Of course, the impact on ratepayers must be considered when weighing GMO's [Ameren Missouri's] application to construct a pilot . . .. The financial cost that

[14] Interpreting "least cost" in terms of dollar impact of the generation addition.
[15] Tr. p. 179, l. 20-23 (OPC witness Burdge admitting that least cost is not the only criteria that should be evaluated when determining a preferred resource plan).
[16] Greenwood Order, p. 14. As noted earlier, Ameren Missouri too needs the knowledge now for the same or very similar reasons.
[17] *Id.*, p. 15. The same is true in this case. *See, e.g.*, Tr., p. 147, l. 16-18, and the above-cited discussion of the many benefits of the pilot.
[18] *Id.*

> will result from construction . . . will be very small when compared to the amount of money GMO [Ameren Missouri] must spend each year to provide electric service to its customers. As a result, the impact on customer rates will be minimal. The small increase in rates that may result [from the pilot] . . . will be amply offset by the less tangible benefits that will result from the lessons GMO will learn . . ..[19]

It is not just Ameren Missouri that recognizes that the reasons the Commission issued the Greenwood Order justify approval of the pilot here, as evidenced by the following testimony from Staff witness Claire Eubanks:

> **Q. I take it the point of quoting those provisions [of the Greenwood Order] . .. is that you believe that the things the Commission said about the Greenwood facility can also be said essentially about this particular proposal in terms of the Commission's rationale, et cetera; is that true?**
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> A. That's true.[20]

While OPC disagrees that the foregoing reasons and rationale are sufficient reasons to approve pilot programs designed to allow utilities to learn important lessons about renewable generation, this Commission has rightly ruled otherwise in other cases. It should do so again in this case.

One final point regarding OPC's continued opposition to the rationale of the Greenwood Order bears noting. It is quite apparent that OPC's opposition in this case is philosophical and has little to do with the facts and circumstances of the proposed pilot. This can be seen in OPC's witness's very limited knowledge about, and lack of analysis of, the actual proposal before the Commission for decision. For example, OPC witness Burdge criticized the proposal in his pre-filed testimony as being vague for not having specified what upgrades to the distribution system might be needed, yet he admitted that in the four months that this case was

[19] *Id.*, p. 16. The evidence is undisputed: the pilot, when fully built, will cost the average residential customer a mere 42 cents per year. Tr. p. 80, l. 6-13. Moreover, the $10 million investment (over 3 years) is not a significant investment as compared to Ameren Missouri's overall capital spending. Tr. p. 127, l. 23 to p. 128, l. 11.

[20] Ms. Eubanks went on to agree more specifically that the pilot must proceed to learn what the benefits are, and that such benefits are not easily quantifiable, that she had no reason to believe that Ameren Missouri customers were not strongly interested in more solar development, as are KCPL-GMO customers, and that solar energy is going to be an integral part of future renewable generation in Missouri. Tr. p. 126, l. 25 to p. 127, l. 22.

pending he never asked Ameren Missouri for any details regarding any required upgrades.[21] Mr. Burdge also apparently did not read, or read very carefully, the Stipulation that had been filed six days before he filed his testimony because, had he done so, he would have known that one of the agreed-upon criteria for site selection is that significant upgrades to the distribution system will *not* be required.[22] Mr. Burdge also lacked basic knowledge in other areas. He was not aware of the KCP&L DG Order.[23] That lack of awareness is striking, given that the KCP&L DG Order is one of only less than a handful of orders this Commission has ever issued for solar facilities, it was issued just five years ago, and it deals directly with the blanket CCN issues raised in this case. Basic due diligence should have required that OPC's witness have some familiarity with relevant prior Commission orders, particularly where OPC is providing testimony claiming that the Commission cannot do what in fact it already did just five years ago. And while Mr. Burdge was highly critical of Ameren Missouri's application's claimed lack of compliance with the Commission's CCN rules, Mr. Burdge had not even read those rules when he filed his pre-filed testimony.[24] One wonders how a claim of non-compliance can reasonably be made absent knowledge of what the requirements are.

Finally, Mr. Burdge makes the claim that adding solar generation will not reduce overall carbon emissions, citing to a statement by the Company in its *Response to Comments of Parties* in its annual RES compliance report docket. Mr. Burdge, however, fails to understand the comment, which may not be surprising since his experience in this area is limited given that prior to joining OPC less than a year ago he had worked in the Water Protection Program of the

[21] Tr. p. 183, l. 20 to p. 184, l. 19.
[22] Tr. p. 186, l. 1-9.
[23] Tr. p. 188, l. 1-4; p. 189, l. 5-16.
[24] Tr. p. 201, l. 20- 23.

Missouri Department of Natural Resources.[25] While the addition of this solar generation may not cause Ameren Missouri to reduce the output of its own generators, since those generators may remain "in the money" when bid into the Midcontinent Independent System Operator, Inc.'s ("MISO") market, as DED witness Hyman explained, if Ameren Missouri has more kilowatt-hours from its own generation to serve its load, it will buy less energy from MISO for its load and, somewhere within MISO, generation, likely generation that burns fuel that produces carbon that would have otherwise run, will have to back down.[26]

III. Approval of the pilot will not "dispossess" the Commission of regulatory oversight.

On the assumption that the Commission will impose the terms and conditions in the Stipulation through an order approving this pilot and the requested CCN, it is undisputed that construction, indeed siting, of the facilities to be built as part of this pilot will not occur unless and until the Company has filed in this docket every item (or proof that the item is not applicable, e.g., that utilities or railroad tracks won't be crossed) required by the Commission's CCN rules. Moreover, there would be nothing to stop any party, including OPC, from at that time claiming that one of those items was not properly submitted. Moreover, CCN orders are not ratemaking orders. Bluntly stated, OPC's claim that the Commission would be "dispossessed" of its regulatory oversight if it approves this pilot, including the requested CCN, is not true.

If what OPC is trying to say is that without having located the sites and drawn up engineering plans the Commission cannot make a "necessary or convenient" determination, such a claim is also clearly not true. The need to gain the knowledge the Company does not

[25] Ex. 200, p. 1.
[26] Tr. p. 160, l. 21 to p. 161, l. 21.

now have and the benefits of doing so don't depend on the locations or the intricate details of the plans that will need to be drawn to build a particular facility at a particular location.

IV. *StopAquila* does not preclude approval of a blanket CCN.

In yet another instance where OPC refuses to accept a decision this Commission has already made, OPC claims that the holding in *StopAquila.org v. Aquila, Inc.*,180 S.W.3d (Mo. Ct. App. 2005), means that no utility could ever have a program, pilot or otherwise, to utilize distributed generation within its service territory unless the utility literally files a series of CCN cases for each discrete facility. *StopAquila* says no such thing. To the contrary, the holding in *StopAquila* was that an *area certificate* was not itself sufficient permission and authority for the construction of a large, central station gas-fired power plant, particularly when the area certificate had literally been granted decades earlier without any consideration given at that time for the construction of the power plant at issue in that case. Unlike this case, in *StopAquila*, Aquila, Inc. argued that it did not need a generation-specific CCN *at all* and could simply rely on its area certificate. The Court disagreed. Here, Ameren Missouri *is* seeking a *generation-specific CCN* for up to a handful of small distributed generation facilities, and that CCN, to use the language of *StopAquila*, will be issued "roughly contemporaneously" with the construction of the units. OPC overreads and indeed misapplies *StopAquila*.

The Commission has already recognized that *StopAquila* does not stand for the proposition that OPC claims it does. KCP&L DG Order, p. 3 (rejecting the same argument when KCP&L sought a blanket certificate for distributed solar generation sites, recognizing that the "purpose of the statutory requirement [discussed in *StopAquila*] is to ensure the public interest is protected" and recognizing that to do so did not require CCN after CCN for each

discrete site, further noting that to impose such a requirement would "be a waste of resources for both the utility and for the Commission.").

V. OPC's claim that approval of the blanket CCN would "skip" the requirement of obtaining the consent of proper municipal authorities is incorrect.

While it is highly unlikely that the facilities to be constructed in this pilot will utilize municipal roads, streets or alleys pursuant to any municipal franchise (rendering "municipal consent" in that sense, inapplicable), to the extent a facility would utilize such roads, streets or alleys the Company will file (or ask the Commission to take notice of in the Commission's own files) any such franchise in this docket before construction, just as it will file all other information required by the Commission's CCN rules, including, for example, copies of required building permits. This is all Section 393.170 requires: evidence of proper municipal consent, to the extent applicable, before construction.

VI. The Company's application, as now reflected by the Stipulation, complies with the Commission's CCN rules. Alternatively, a waiver should be granted if deemed necessary or appropriate.

OPC claims that what can fairly be characterized as documentation or administrative requirements[27] of the Commission's CCN rules literally preclude the Commission from approving the proposed pilot, including the requested CCN. The Commission has consistently refused to handcuff its ability to decide CCN cases in the manner advocated for by OPC.

The Company fully contemplates that an order approving the pilot and the CCN in this case will also contain conditions subsequent that must be satisfied before construction could begin, namely, a condition requiring that all the items listed in the Commission's CCN rules will have been provided as to a particular site before construction at that site begins (or that it will have been shown that an item does not apply). This is a common approach taken by the

[27] *E.g.*, Submission of information about other utilities that are crossed (if any) (4 CSR 240-3.015(B).1); submission of plans and specifications (4 CSR 240-3.105(B).2).

Commission in CCN cases. *See, e.g., Report and Order,* Ameren Missouri, File No. EA-2012-0281 (Where the Commission granted Ameren Missouri a CCN to construct a utility waste landfill at its Labadie Energy Center, but imposed conditions subsequent that required Missouri Department of Natural Resources permits be provided before the construction actually began); *In re: Tartan Energy Co, LLC,* 3 Mo. P.S.C. 3d 173, Case No. GA-94-127 (Sept. 16, 1994) (This is the case that established the "Tartan Criteria." The Commission granted a CCN, but made actual construction under it subject to obtaining and filing franchises that the utility did not yet have); *In re: Midstate Telephone Co.,* 10 Mo. P.S.C. (N.S.) 193, Case No. 14,835 (April 6, 1962) (Where the Commission granted a CCN allowing the applicant to serve several communities even though franchises had not been obtained for all of them, conditioning the ability to provide service in a particular municipality on obtaining the franchise in that municipality).

To the extent OPC's claim is that in order to grant a CCN with such conditions subsequent the Commission needs to waive 4 CSR 240-3.105(2), the Company would note that the Commission has not interpreted its rule to require such a waiver, as evidenced by the Labadie utility waste landfill and other orders cited above, where a CCN was granted with conditions subsequent without the issuance of a waiver. Indeed, no one, OPC included, claimed a waiver was needed. However, if the Commission believes a waiver is necessary or appropriate in this case, it has full authority to grant one and should do so here for good cause shown.

OPC argues that good cause hasn't been (or cannot be) shown, but a review of the law and the record in this case completely refutes OPC's argument. "Good cause" "'lies largely in the discretion of the officer or court to which the decision is committed' and 'depends upon the circumstances of the individual.'" *Report and Order, In Re: Aquila Inc.,* Case No. ER-2007-0004

(2007) (*citing Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963) and *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo. App. E.D. 1980)). Or as the Missouri Supreme Court has stated, "good cause" is "…a cause or reason sufficient in law; one that is based on equity or justice or that would motivate a reasonable man under all the circumstances." *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

As Mr. Barbieri testified, accepting OPC's approach of requiring finalization of the sites, engineering and construction plans, and procurement of any permits (like a building permit) creates an insurmountable "chicken and egg" problem that would effectively kill the pilot (a result OPC obviously would favor). This is because the potential partners with whom the Company has discussed the pilot are waiting to see if this Commission approves the pilot before investing time, energy and resources in negotiating and entering into an agreement to host a facility.[28] Yet under OPC's view, those partners must act first without any decision by the Commission that it in fact will facilitate further solar development for Ameren Missouri as it did by issuing the Greenwood Order, and not hinder it. In fact, a failure of the Commission to approve the pilot and CCN requested here would send a signal to these potential partners that the Commission has for some reason changed its mind about the important factors that led it to issue the Greenwood Order. It would also be very difficult if not impossible to explain to potential partners why the KCP&L DG Order was issued, including the blanket CCN, but such an order was not issued here.

For these reasons, and if the Commission determines that granting a waiver is necessary or appropriate, it is clear the record in this case supports the conclusion that there is good cause for the Commission to exercise its broad discretion to waive the stated requirement of 4 CSR

[28] Tr. p. 94, l. 17-21; p. 102, l. 18 to p. p. 104, l. 6; p. 115, l. 15-19

240-3.105(2) that all the items required by the CCN rules be provided before authority is granted.

VII. Whether approval will be required at the end of the facilities' lives, under Section 393.190 or otherwise, is irrelevant to this proceeding.

OPC argues that the Company's application is fatally deficient because it does not outline what will happen at the end of these facilities' useful lives. While the Company has not examined every CCN order issued by the Commission throughout its history, it is safe to say that it would be surprising indeed to find any order that addressed that issue. The CCN orders for Ameren Missouri's other recently-added renewable energy facilities (the Maryland Heights landfill gas facility; the O'Fallon solar facility) did not address end-of-life issues. Nor did the KCP&L DG Order (where, as here, solar facilities would be located on others' property), or the Greenwood Order.

The bottom line, as Ameren Missouri witness Michael Harding testified, is that if there is some legal requirement at the end of the facilities' lives that requires Commission approval, the Company will seek the approval at that time.[29]

VIII. Response to Brightergy, Wal-Mart and Miscellaneous Matters.

Neither Brightergy nor Wal-Mart contend the Commission should not approve the solar partners pilot on the terms reflected in the Stipulation. Instead, they both ask the Commission to essentially make clear that by approving this particular pilot the Commission is not endorsing this exact approach for future programs that may involve siting utility-owned renewable generation on customers' premises. The Stipulation the Company signed already expressly

[29] Tr. p. 77, l. 17 to p. 78, l. 2. OPC assumes that just because an asset was part of a utility's franchise, works or system necessary or useful in the performance of its public service duties that the asset will always remain necessary or useful. That may or may not be true, meaning that Section 393.190 may or may not apply. Regardless, that question is not ripe today.

provides that it "does not serve as a precedent for future solar facility programs."[30] The Company has no objection if the Commission desires to include that language in its approval order. As already noted, the Company expects the terms of the Stipulation to be incorporated into any approval order.

One additional argument in the briefs also bears brief mention. OPC has made much of the fact that one of the considerations for site selection specified in Appendix A to the Stipulation is the "Type of Facility," and that among a list of 12 different types of facilities listed there, the word "religious" appears. The intention of that provision was not to give any weight to whether a site was, or was not, owned by a religious organization. To the contrary, the list was illustrative of the site characteristics for various possible sites. Churches often have large parking lots or large roofs, and churches tend to be longstanding and stable. Those characteristics, which might make a church property a good candidate to host a site and are purely secular, and have nothing to do with whether or what type of religious activities take place there. Instead, they pertain only to the physical characteristics of the site and the stability of its owner. OPC's extended argument about the First Amendment is truly a tempest in a teapot.[31]

CONCLUSION

Perhaps understandably, OPC is doggedly holding onto the arguments it made in the Greenwood case and that it continues to make in its appeal of the Greenwood Order.[32] OPC may feel it has no choice, given its pending appeal. However, the Commission rightly

[30] Stipulation, p. 3.
[31] While OPC's arguments are off-base since neither the Company (nor the Staff or other signatories) are proposing to favor a property owned by a religious organization because of *religion*, if the Commission so desires it could strike the word "religious" from the list. Doing so should not preclude consideration of such properties, if for purely secular reasons, such a property would make a good site.
[32] Case No. WD 79551, Court of Appeals, Western District of Missouri.

recognized in that case (and in the KCP&L DG Order) that those arguments are flawed, both from a legal and policy perspective.

Moreover, before the Commission in this case, urging it to approve the solar partners pilot, are a diverse group of stakeholders who most definitely do not always see eye-to-eye. They agree that this pilot should be approved (or do not oppose it), with OPC standing alone in its opposition. This too is a strong indication that approval should be granted.

As indicated in the Company's Initial Brief, this case offers the Commission an uncomplicated question: do the learning opportunities offered by this pilot program justify the very minor cost impact to customers? The answer is clearly "yes." The Commission should approve the pilot and the blanket CCN on the terms and conditions contained within the Stipulation.

Respectfully submitted,

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Dated: November 18, 2016

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been e-mailed, this 18th day of November, 2016, to counsel for all parties of record.

/s/ James B. Lowery