

**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) File No. EA-2016-0208
Necessity Authorizing It to Offer a Pilot Distributed Solar)
Program and File Associated Tariff)

INITIAL POST-HEARING BRIEF OF RENEW MISSOURI

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COMES NOW Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”), by and through its undersigned counsel, pursuant to rule 4 CSR 240-2.140 and the Commission’s September 7, 2016 Order, and for its initial post-hearing brief in the above-captioned case states as follows:

I. INTRODUCTION

Union Electric Company d/b/a Ameren Missouri (“Ameren”) filed its Application for Blanket Certificate of Convenience and Necessity on April 27, 2016. Renew Missouri was granted intervention on May 17, 2016.¹ Ameren and other intervening parties met several times in the following months. On August 31, 2016 as a result of these meetings, Ameren, Missouri The Staff for the Missouri Public Service Commission (“Staff”), Missouri Department of Economic Development-Division of Energy (“DE”), Renew Missouri and United for Missouri, Inc. filed a Non-Unanimous Stipulation and Agreement (“the Agreement”). Although not all the parties were signatories to the Agreement, the Office of Public Counsel (OPC) is the only party which opposes it.

The Agreement would grant Ameren a blanket Certificate of Convenience and Necessity (“CCN”), which would allow it to construct its Solar Partnership Pilot (“Pilot Program”) facilities across its service territory on the properties of participating customers.² While the sites have not yet been selected, the Agreement provides that Ameren will seek the approval of the Commission before construction begins.³ The cost to Ameren of the Pilot Program is capped at \$10 million and no more than \$2.20/watt; any additional costs beyond \$2.20/watt would be borne by the host site. Any energy generated and RECs created from the Pilot Program would be owned exclusively by Ameren, and Ameren will not make lease payments to the host site

¹ Order Granting Applications to Intervene, EA-2016-0208 (May 17, 2016).

² Non-Unanimous Stipulation and Agreement, pg. 1-2, EA-2016-0208 (August 31, 2016).

³ *Id.* at 2.

owner.⁴ The only direct benefit to Ameren’s partners would be the public relations benefit stemming from a visual, public commitment to renewables. Although the Pilot Program is not ideal and does not adequately address consumer demand for renewables, Renew Missouri is a signatory to the Agreement because it will lead to the installation of new renewable energy in Missouri. Additionally, the program will provide Ameren and the Commission with necessary information that will encourage other distributed generation programs in the future.

This brief argues that the Commission should grant Ameren Missouri a CCN because the program (as modified by the Agreement) meets the standard for a CCN and because it will benefit renewable energy in Missouri.

II. DISCUSSION

The authority for granting a CCN is found in Section 393.170 RSMo., which provides in part: “[n]o ...electrical corporation ...shall begin construction of... electrical plant... without having first obtained the permission and approval of the commission.” Section 393.170.3 RSMo. provides the standard to be applied when evaluating a CCN application, stating:

[t]he commission shall have the power to grant the permission and approval... whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

The Missouri Court of Appeals has further explained the legal standard for CCNs: “[t]he term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable,’ but that an additional service would be an improvement justifying its cost.”⁵

In addition, Section 393.170.2 requires that before a CCN can be issued, “a certified copy of the charter of such corporation shall be filed in the office of the commission, showing that it

⁴ Direct Testimony of Michael W. Harding, EA-2016-0208 (April 27, 2016), pg. 4, lines 4-9.

⁵ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

has received the required consent of the proper municipal authorities.”

The Commission should grant a CCN in this case because Ameren’s application as modified by the Agreement meets the requirements of Section 393.170, RSMo, as applied by the Missouri Courts.

A. The proposed Non-Unanimous Stipulation and Agreement meet the Tartan Criteria

The “Tartan Criteria” is a set of five objective standards that the Commission uses to determine if a proposal is “necessary or convenient for the public service,” as defined by Section 393.170, RSMo.⁶ The five criteria are, 1) is the service needed; 2) is the applicant qualified to provide the service; 3) does the applicant have the financial ability to provide the service, 4) Is the applicant’s proposal economically feasible, 5) does the service promote the public interest.

1. *The Service is Needed.*

This program is born of necessity and in the interest of responding to current and future needs. While this program is not being pursued solely for RES compliance, Ameren will likely use the output from the Pilot Program (up to 5 MW) for RES Compliance in the future.⁷ In addition, Ameren has a need to develop expertise in large distributed generation facilities. Similar distributed solar program offerings will likely be a major part of Ameren’s business in the coming decades, as RES compliance targets increase and federal carbon standards are rolled out. Furthermore, demand for renewables from Ameren’s corporate, commercial, and industrial customers has increased drastically, and is likely to continue to increase. The Pilot Program provides an educational stepping stone for Ameren and its consumers to other renewable projects which assist with RES compliance and future federal regulations that are sure to emerge.

⁶ *In the Matter of the Application of Tartan Energy Company, LLC, d/b/a Southern Missouri Gas Company*, 3 Mo P.S.C. 3d 173, 177 (1994).

⁷ Surrebuttal Testimony of William J. Barbieri, EA-2016-0208 (September 30, 2016), pg. 2, lines 3-10.

As the Western District has made clear, “necessary” does not mean “essential” or “absolutely indispensable” but only that the new service would be an improvement justifying its cost.⁸ This line of reasoning applies squarely to the situation in this case.

2. *Ameren is qualified to provide the service.*

Ameren is a large public utility company, the largest in Missouri. No party has alleged that it is not qualified to provide this service. Furthermore, because the program is a pilot and is intended to assist Ameren in learning about the effect of large distributed generation on its system, this program will only make Ameren more qualified to offer expanded distributed solar programs in the future. Without a CCN for programs of this nature, no utility will be able to become more qualified in this area of service.

3. *Ameren has the financial ability to provide this service.*

The predetermined \$10 million spending cap for this limited pilot program ensures that ratepayers will not be overly burdened. Since any additional funding would come from Ameren’s Solar Partners, this factor is easily met.

4. *The Pilot Program is economically feasible.*

As stated above, the \$10 million spending limit puts this program well within Ameren’s capability, and the limited scope of the pilot makes the program feasible

5. *This program promotes the public interest.*

The public interest is served when more renewable energy is provided to the citizens of Missouri, because it insulates ratepayers from fluctuating fossil fuel prices and from rising costs due to environmental regulations. Furthermore, this program may pave the way for future renewable energy programs, which could be more cost-effective and more efficiently designed as a result of the Pilot Program.

⁸ *Intercon*, 848 S.W. 2nd at 597.

As discussed by Staff, the Commission in EA-2015-0256 concluded that GMO's solar pilot program was in the public interest, stating:⁹

[T]he 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. . . thus, it will promote the public interest.

B. If Needed, the Commission Should Grant a Variance from 4 CSR 240-3.105.

The Commission's rule at 4 CSR 240-3.105 supplements Section 393.170, RSMo. and provides specific filing requirements for a CCN. The Agreement satisfies the requirements of the Commission's rule because it establishes a clear procedure for presenting all required information after each specific site is chosen. Appendix A (pg. 7) of the Agreement spells out the process for site documentation following the selection of a site:

Process for Signatory verification that the site(s) selected meets the specified criteria.

- A. Ameren Missouri files information required by 4 CSR 240-3.105(B) in docket EA-2016-0208. This filing will also include an assessment that the identified site meets the Minimum Application Conditions listed below as well as documentation regarding the Additional Considerations for Site Selection listed below.

The Agreement specifically cites the rule at 4 CSR 240-3.105(B) and commits Ameren Missouri to filing all information required by that rule. After each site is selected and Ameren files the required site-specific information, the Commission and stakeholders will have opportunity to review and comment.

The Office of Public Counsel ("OPC") objects to the Agreement because Ameren's CCN application does not include much of the information required by 4 CSR 240-3.105.¹⁰ Even if the Commission finds deficiencies in Ameren's application for a blanket CCN, the Commission

⁹ Rebuttal Testimony of Claire M. Eubanks, P.E., EA-2016-0208 (September 7, 2016) *citing* EA-2015-0256.

¹⁰ Public Counsel's Objection to the Non-Unanimous Stipulation and Agreement, EA-2016-0208 (September 7, 2016) pg. 105.

should grant a variance from 4 CSR 240-3.105 for good cause. 4 CSR 240-2.060(4) provides that variances can be granted to applications for good cause shown. Furthermore, 4 CSR 240-2.015 allows the Commission to waive its rules for good cause, and 4 CSR 240-3.015 provides that the chapter 2 variance and waiver rules apply for chapter 3 as well. Here, there is certainly good cause to grant a variance or a waiver.

OPC believes that the lack of specificity in Ameren's application regarding sites for the Pilot Program should be fatal to the application. The terms of the Agreement however, still provide for Commission oversight and public input. All of the necessary information that OPC requires would be available before construction begins.

Because of the nature of this case (an application for a "blanket" CCN), Ameren is unable to provide much of that information because the sites do not yet exist. The process spelled out by the Agreement represents the only workable way to obtain a CCN without needlessly wasting Commission time and resources. As the Commission stated in EA-2011-0368:¹¹

If Staff's interpretation of the requirements of the Statute [§ 393.170, RSMo.]... were correct, then KCPL would have to come back before the Commission with a new application for a certificate of convenience and necessity each time it identifies a new structure on which it wishes to install a small solar production facility. That would be a waste of resources for both the utility and the Commission.

III. CONCLUSION

For the aforementioned reasons, Renew Missouri strongly urges the Commission to approve the Non-Unanimous Stipulation and Agreement and grant Ameren Missouri a Certificate of Convenience and Necessity in this case.

¹¹ Order Granting Certificate of Convenience and Necessity, EA-2011-0368 (June 1, 2011), pg. 3.

Note: Although Renew Missouri is a signatory to the Non-Unanimous Stipulation and Agreement and recommends that the Commission grant a CCN in this case, we urge the Commission to not view the Pilot Program as a model for future utility solar programs in Missouri. Renew Missouri echoes the concerns of Wal-Mart that while this program may be well suited to some of Ameren's customers it should not be the only model for future endeavors.¹²

Under the Pilot Program, Ameren would own all the energy generated, retain the RECs, and even risk additional costs being borne by its solar partners.¹³ Participating solar partners would gain no economic benefit and no environmental benefit of any kind as a result of this program. Companies that wish to access the financial advantages of generating their own electricity would not benefit from this program.

As of today, 65 major corporations have signed the Corporate Renewable Energy Buyer's Principles; many of these corporations (such as Wal-Mart, Unilever, Cargill and Nestle) have a major presence in Missouri. These principles demonstrate a continuing-increase in corporate demand for renewable energy, already more than 45 million MWh nationwide.¹⁴ Ameren does not offer any way for these businesses to meet their internal renewable goals, short of defecting from the grid entirely and constructing all their own renewables on-site. To attract more businesses to locate in Missouri, we will need to find a way to make more renewable energy available so that these corporations can meet their renewable energy commitments. For this reason, we ask that the Commission grant the CCN sought in this case but not view this program as a model for future solar programs going forward.

¹² Statement of Positions of Walmart Stores, Inc. EA-2016-0208 (October 13, 2016).

¹³ Direct Testimony of Michael Harding, at pg.2.

¹⁴ <http://buyersprinciples.org/>

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed, faxed, or emailed to all counsel of record on this 4th day of November 2016.

/s/ Andrew J. Linhares

Andrew J. Linhares