BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Amendment to Commission Rule 4 CSR 240-3.105, Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity.	))))	File No. EX-2015-0225

ADDITIONAL COMMENTS OF AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), and submits additional comments to address matters raised in earlier-filed comments on the proposed amendments to 4 CSR 240-3.105, as follows:

STAFF'S APRIL 29 COMMENTS

"Begin construction"

The Staff's argument is that the *StopAquila* decision has somehow transformed the meaning of "construction" in the CCN statute so that it now encompasses a "substantial rebuild, renovation, improvement, retrofit and/or other construction" that causes either a "substantial increase in the capacity of the electric generating plant beyond the planned capacity of the plant at the time the Commission granted the prior certificate" or a "material change" in discharges/emissions. The facts and holding of *StopAquila* do not support the conclusion that the General Assembly intended "construction" to encompass those activities.

StopAquila involved a greenfield site where a brand new power plant was proposed for construction. The meaning of "construction" was not at issue in *StopAquila* because all agreed that Aquila had not yet begun construction. Consequently, there were no retrofits, rehabilitations, improvements, etc. at issue – the plant did not yet exist.

The case arose because Aquila decided to ignore local zoning (the plant site was not zoned for a power plant) by claiming that its existing *area* certificate qualified it for a statutory exemption from local zoning control that was available in cases where the Commission had specifically authorized a particular improvement. The question in the case was centered on land-use regulation – did the zoning exemption apply – which turned on the question of what had the Commission previously approved.

The holding of the *StopAquila* case was that the existing *area* certificate did not specifically authorize a utility to begin construction of a new power plant on a greenfield site, but rather, only authorized Aquila to provide service in its certificated area and to extend its lines within that area when needed to provide that service. Consequently, the zoning exemption did not apply. In reaching that decision, the Court of Appeals held that when a new power plant is proposed on such a greenfield site, a roughly contemporaneous CCN is required for the specific plant before the first "spadeful of soil" on the site is disturbed. The clear, primary basis of the decision is that

when there is land on which there is no existing power plant – where no spadesful of dirt have been disturbed – it is necessary for the Commission (or at least local zoning authorities) to examine the appropriateness of beginning construction of a new power plant at such a site.

The Staff (and, as discussed later, Dogwood) attempt to stretch the case to somehow apply to retrofits, refurbishments, etc., even though those activities had absolutely nothing to do with the case. Their attempts to stretch the case rest on mere *dicta*, meaning on language in the opinion that was completely unnecessary to its holding, because there was no question of renovation, improvement, etc. before the Court. To the contrary, the Court's ultimate ruling was that the "county commission *or* the Public Service Commission" (emphasis added) must first approve a new power plant's construction on such a site. This shows that the point of the case is that before this new land use (a new power plant) should be allowed at a particular site, someone – the county, the Commission – ought to look at the suitability of the site for a power plant.

As explained in Ameren Missouri's April 29 Comments and noted above, *StopAquila* did not turn on the meaning of the word phrase "begin construction." Even now the Staff admits in its comments that "construction" means "the creation of something new, as distinguished from the repair or improvement of something already existing." *Black's Law Dictionary*, cited by Staff at p. 4 of its Comments. Nonetheless, for reasons that fail to withstand scrutiny, the Staff then disregards that definition and tries to convert construction from the creation of something new into the "modification or improvement of something existing at an existing power plant site." Notably the Staff, whether consciously or unconsciously, expresses doubt about its own position when it states that it "does not find that the *StopAquila.Org* opinion is as explicit as ideally would be the case . . ." on the question of what "begin construction" means. *See* the Staff's April 29 comments, p. 4.[1]

Under the plain meaning of the term "construction" and under the facts and holding of *StopAquila,* if something is being done to something that already exists – retrofitting it, rehabilitating it, improving it or rebuilding it – then what is being done is "retrofitting, rehabilitation, improvement or rebuilding." It is not, however, "construction" within the agreed-upon meaning of that term. A utility might "begin retrofitting" an existing power plant, but the statute does not apply to beginning to retrofit, it applies to beginning to construct.

In trying to sustain its tenuous argument, the Staff also focuses on the word "new" as used by the Court in *StopAquila*, but instead of supporting the Staff's argument, the Court's use of that word

[1] The Staff strains to apply *StopAquila* to modifying existing power plants in two ways. First, the Staff claims that "construction" occurs if an existing plant has a "substantial" increase in capacity as a result of a retrofit, etc. What "substantial" means is left wide open by the Staff, and itself would likely lead to all kinds of problematic disputes about when the capacity increase has triggered the rule. Second, the Staff says construction occurs when there is a "material change" in emissions as the result of a retrofit, etc. Like the use of the term "substantial," it is very unclear what "material" would mean in this context. Regardless, also noteworthy about the Staff's comments is the fact that nowhere does *StopAquila* discuss triggering the CCN statute based upon a "substantial increase" or a "material change."

actually rebuts the Staff. For example, a utility cannot rebuild or improve part of a power plant unless the power plant already exists, but if it already exists, then it is not a "new" plant.

Other statements in the Staff's April 29 comments also demonstrate that "begin construction" within the meaning of the CCN statute can't mean what the Staff's proposed language tries to force it to mean. On page 5 of its April 29 comments, the Staff lists several projects that it refers to as a "rebuild," but then indicates that none of them would fall within the meaning of "construction" in the rule the Staff proposes. Ameren Missouri agrees. Adding major environmental equipment to an existing power plant is not "construction" because the power plant already exists. Such additions are an improvement, rebuild or retrofit, but they are an improvement or a retrofit to something *that already exists*.

The bottom line is that if the project at issue does not reflect beginning construction on something that does *not* already exist – and by definition rebuilding, retrofitting, improving or rehabilitating only occur on something that *does* already exist – then there is no "construction" within the meaning of the CCN statute. And since there is no construction within the meaning of the CCN statute, it doesn't matter (under the CCN statute) if the rebuild, etc. causes a "substantial increase" in capacity or a "material change" in emissions because application of the statute was not triggered in the first place.

Competitive Bidding

As noted in the Company's April 29 Comments, just a couple of years ago the Staff told the Commission that it did "not consider such [competitive bidding] provisions any more appropriate for 4 CSR 240-3.105(1)(E) [the CCN rule] than for Chapter 22 [the IRP rule]."[2]

In its April 29 Comments, the Staff says something similar: "an application for a CCN is not intended to duplicate or replace Chapter 22 Electric Resource Planning." Staff's April 29 Comments, p. 3. But after telling the Commission two years ago that competitive bidding provisions had no place in a CCN rule at all, and after telling the Commission about two weeks ago that IRP process ought not to be duplicated, the Staff is now inconsistently supporting competitive bidding language – middling as it is – that would do what it said was inappropriate – put competitive bidding provisions in the CCN rule, and that would inject (and thus duplicate to some extent) the IRP process.

The Company's April 29 Comments explain in detail why such language should not be included in the CCN rule. However, since the Staff has changed its position and is suggesting language that is different than that contained in the proposed rule, the Company will briefly address it.

Part "A" of the Staff's recommended language deals with the contracts to design, engineer and build a project for which a CCN is sought. As indicated in Ameren Missouri's initial comments, no party has suggested there was any need for such provisions in the CCN rule, and the Staff presents no rationale whatsoever for why this new requirement is being proposed. Instead, it having not been mentioned by any party in the workshop process that preceded this docket, or

[2] *Staff Response to Commission Order Directing Staff the Investigate and File a Recommendation,* File No. EX-2014-0205, at 3 [EFIS Item No. 3].

even by any Commissioner at the time the then-Commission decided to initiate this rulemaking, the Staff's original and now revised language has simply appeared out of thin air.

The Company agrees with the Staff on two points respecting these kinds of contracts. First, management is ultimately held accountable for the prudency of its decisions. Bidding or not bidding on these contracts, or what the terms of the bidding that is used for these kinds of contracts may be, is part of the *execution* of the construction project which often takes place after the CCN is granted. There was no demonstration before, nor has there been a demonstration now, of any need for Commission involvement in that process. Second, involving the Commission in a review in a CCN case of decisions on when and when not to use bidding for contracts in these areas, at whatever stage of the execution of a construction project, would inappropriately intrude on the utility's management of the utility's operations. Part A should not be adopted.

While Part B of Staff's revised suggestions regarding competition bidding for purchased power agreements ("PPAs") is less intrusive than the provisions of the proposed rule, as explained in Ameren Missouri's April 29 Comments, injecting competitive bidding issues regarding PPAs into a CCN case at all is inappropriate. Doing so is inappropriate because inviting comparisons of PPAs and utility-owned and operated generation in a CCN case fails to recognize that the two are simply not equivalent. A utility's decision to enter into a PPA instead of building capacity is a very complex one, involving numerous questions that are ill-suited for a CCN case, as the Company's April 29 Comments explain in detail. The time for a discussion of those complex issues is in the utility's ongoing resource planning process, including triennial IRP dockets, annual update filings and filings between each triennial filing if the preferred resource plan changes. The Staff presents no justification or rationale whatsoever for injecting such issues into a CCN case.

Finally, as already addressed in the Company's April 29 Comments, the phrase "electric transmission line(s)," has no place in any rule (even if the IRP rules were at issue) that seeks to examine whether and under what circumstances a utility might contract for energy or capacity instead of owning and operating generation.

Other Staff Comments

Ameren agrees with the minor edit the Staff suggests to paragraph 3.105(1)(B)1 (pp. 7-8 of the Staff's April 29 comments).

DOGWOOD'S APRIL 29 COMMENTS

Ameren Missouri's Initial Comments addressed many of Dogwood's arguments, and the Company will endeavor not to repeat those Comments here. However, Dogwood makes some points that bear addressing more specifically.

The Commission's Authority

Ameren Missouri does not take issue with the idea that the Commission has significant, broad authority over ensuring that public utilities discharge their duties to provide safe and adequate

service at just and reasonable rates. However, that authority is not without limits. If the authority was plenary (as Dogwood's comments seem to suggest), then the Commission could lawfully take over the utility's management, but the cases are clearly contrary and prohibit the Commission from doing so.[3]

In addition, if the general powers cited by Dogwood were as broad as Dogwood suggests (e.g., by citing sections 386.020, 386.030, 386.250), then General Assembly should have adopted a PSC Law containing only such general powers, leaving the Commission free to take whatever steps it thought appropriate if in any way, shape, or form it believed those steps to be in the public interest. The General Assembly did no such thing, however. Instead, the General Assembly adopted provisions of the PSC Law that pertain specifically to a number of topics, and those statutes govern the Commission's actions on those topics, section 393.170 among them.[4] Other examples of statutes that dictate the extent of the Commission's authority in particular areas include when financing approvals are required (sections 393.180 and 393.200), and when and under what terms a utility may transfer its franchise, works or system (section 393.190).

The Commission has broad authority to be sure, but that authority does not allow it to re-write section 393.170 by turning the phrase "begin construction" into "begin modification" or "begin improvement" or "begin rehabilitation." If that's what the General Assembly meant, it would have said so, as it has in other instances cited in Ameren Missouri's April 29 Comments, and as other state legislatures have done, as also cited in Ameren Missouri's April 29 Comments.

StopAquila

The Company addressed this case in some detail earlier in connection with the Staff's comments. Dogwood over-reads *StopAquila* (and a related case, *Cass County*) by effectively claiming that together, those cases stand for the proposition that unless the Commission effectively evaluates the full economics of every new power plant, *in the CCN case*, no meaningful review of the new power plant will ever occur. *See generally*, Dogwood's April 29 Comments, pp. 3-5. However, *StopAquila* and *Cass County* were, at their core, about roughly contemporaneous reviews of the suitability of a site for a new power plant where one did not exist before.

Notably, Dogwood fails to point to a single instance where a new power plant was built by a Missouri electric utility where the Commission was somehow hamstrung in protecting customers because the definition of "construction" is not to Dogwood's liking, or because there were no competitive bidding provisions in the CCN rule. The best Dogwood can do is to point to *dicta* in *StopAquila* and *Cass County* observing that the Commission's *post hoc* authority to disallow capital improvements from a utility's rate base could be ineffective if a major disallowance would jeopardize customers or the utility. But if such *dicta* were controlling (it is not), the same could be said of major transmission projects in the utility's service territory (which the parties here and the courts agree require no additional CCN), or major environmental improvements, to

[3] *See, e.g., State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 36 (Mo. 1930).
[4] *See, e.g., State ex rel. Baker v. Goodman*, 364 Mo. 1202, 1212, 274 S.W.2d 293, 297 (1954) (stating the well-established rule of statutory construction that specific statutory provisions prevail over broad general provisions).

name just two examples, neither of which would be covered by the proposed revisions to the rule. The issue of the effectiveness of the Commission's *post hoc* authority was not before the Court in either of those cases. Had it been, that the Commission has exercised its *post hoc* authority in a rate case to disallow significant investments would have undoubtedly been a matter of discussion before the Court, and might very well have caused the Court to temper or re-think its *dicta* entirely.

For example, the Commission disallowed approximately $384 million of the Company's approximately $2.9 billion investment in the Callaway plant. While a $384 million disallowance today would be very significant, at the time it was several orders of magnitude more significant, reflecting fully one-fourth of the Company's pre-Callaway rate base, and 10 percent of the post-Callaway rate base. Clearly, the Commission effectively exercised its *post hoc* powers. Ameren Missouri's approximately $90 million net investment in the new Taum Sauk upper reservoir was also disallowed by the Commission, with the disallowance being upheld by the courts.[5] Ameren Missouri did not seek a CCN for the rebuild of the reservoir; the Commission was again not powerless to exercise its *post hoc* powers, notwithstanding the lack of a CCN proceeding.

With all due respect to the Western District, the idea that the Commission cannot effectively evaluate the prudence of large rate base additions other than by injecting such a review into a CCN is plainly incorrect, as these and other examples show, and as noted, the question was not before the Court. Dogwood acts as though the Commission has no involvement in resource planning and no opportunity to influence in a substantial way resource decisions, despite pages and pages of detailed IRP rules that require robust triennial resource planning, annual updates and notifications when preferred resource plans change. Through that involvement and the information and evidence it provides, the Commission can (and has) protected customers as part of the prudence review process in rate cases. Expanding the CCN process beyond the intent of the CCN statute by ignoring what "construction" actually means (and has meant, for 103 years) and otherwise complicating it with complex, apples-and-oranges debates about competitive bids is neither necessary nor appropriate.

Dogwood's Mud-Slinging

Dogwood next attempts to paint a picture of "evasion" of Commission oversight of utility projects, pointing to the Crossroads plant purchased by Aquila, Inc. (before Great Plains Energy purchased Aquila[6]) and to Empire's conversion of its Riverton Unit 12. KCPL-GMO is in a better position than the Company to address the Crossroad issues is detail, but it is the Company's understanding that the Commission has exercised its *post hoc* authority to disallow Crossroads-related costs that it found to have been imprudent, and the Commission's disallowance was upheld by the courts. Once again, the theory that the Commission cannot effectively protect customers through prudence reviews is simply not borne out by the facts.

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[5] *In re Tariff Filings of Union Elec. Co. v. Mo. Pub. Serv. Comm'n*, 369 S.W.3d 807 (Mo. App., W.D. 2012) (Per curium opinion affirming the Commission's disallowance).

[6] Now Kansas City Power & Light Company – Greater Missouri Operations ("KCPL-GMO").

As for Empire's Riverton Unit 12, Ameren Missouri's April 29 Comments noted the Staff's thorough defense of the IRP process as well as Empire's decision-making regarding Riverton Unit 12. Insofar as Dogwood would undoubtedly have liked to have enhanced its shareholders' interests by selling capacity and energy to Empire, the Commission should take Dogwood's comments for what they are: comments of an unregulated merchant generator who wanted to sell more capacity and energy and who is hoping that this Commission will make changes to its CCN rules to enhance its ability to do so in the future.

Another point about Dogwood's comments about Crossroads and Riverton Unit 12 bears noting. Dogwood suggests that if only the CCN rule had contained Dogwood's now-favored provisions, litigation would have been avoided about cost disallowances regarding Crossroads. What Dogwood ignores is that if CCN cases become forums for debates about "substantial increases" in capacity or about complex issues relating to PPAs with unregulated merchant generators, CCN cases will become extended, complex pieces of litigation where the Commission will be called upon to sort out these complex and contentious issues. Litigation won't go away, but rather, it will shift to a different time and place. However, litigating such issues in a contested CCN case is a far less desirable and efficient than to have those debates in a resource planning proceeding that is designed to evaluate just that type of issue.

Dogwood's Attempt to Extend Missouri Law Beyond Its Borders

Dogwood's last major area of comment is its claim that the Commission has engaged in "unlawful" activity for the past 103 years since it has not required CCNs for out-of-state power plants owned by an electric utility providing service to Missouri customers.[7] Dogwood also suggests all kinds of customer and utility shareholder harm arising from this claimed failure on the Commission's part to adhere to the statute, although it woefully fails to identify any such harm.[8]

There are numerous power plants owned by Missouri utilities which are located in other states for which a CCN was not required, including Empire's Plum Point facility in Arkansas; KCP&L's interest in the Wolf Creek nuclear Plant, the LaCygne coal plant, and the Spearville I and II wind farms in Kansas; KCPL-GMO's interest in the Jeffrey Energy Center in Kansas; and Ameren Missouri's Venice, Goose Creek, Raccoon Creek, Pinckneyville and Kinmundy plants in Illinois.[9] The Company is unaware of issues of ratepayer or shareholder harm arising from not obtaining CCNs for those facilities and, as noted, Dogwood does not provide any.

The Commission has not acted unlawfully in not attempting to regulate siting, construction or acquisition of properties in other states, but instead, correctly understood that it cannot reach beyond Missouri's borders to preempt or regulate the siting and construction of power plants outside the state. This is made clear by section 386.030, which states that "[n]either this chapter,

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[7] The "proposed rule unlawfully fails to fully meet the requirements of the [CCN] statute . . .." Dogwood's April 29 Comments, p. 13.

[8] *Id.*, generally at pages 9-14.

[9] The Staff has advised the Commission that it has not identified a single CCN case involving a power plant located in another state that is owned by a Missouri electric utility. *Staff Response to Commission Order Directing Staff to Investigate and File Recommendation,* File No. EX-2014-0215 (Dogwood's prior rulemaking Petition), p. 13.

nor any provision of this chapter, except where specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states ...." Section 386.030 reflects longstanding decisions of the United States Supreme Court, which demonstrate that a state's authority stops at its borders. *See, e.g, State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003), citing *Huntington v. Attrill*, 146 U.S. 657, 669 (1892). In *State Farm*, the authority of Missouri courts to award damages was limited to damages arising from State Farm's activities in Missouri, even though the plaintiff had claimed that punitive damages should arise from State Farm's actions outside Missouri. The United States Supreme Court also noted that a state law has no force beyond the particular state's territory, except through the comity of other states. *Id.* Neither Kansas, Arkansas nor Illinois have agreed that this Commission can apply Missouri law within their borders to prevent an entity qualified to do business in those states from buying land in those states and building a power plant on it.

Finally, in making its contention that the Commission has failed to follow the law by not requiring CCNs for these many out-of-state power plants, Dogwood fails to acknowledge the facts of the *StopAquila* decision into which it puts so much stock. As noted earlier, the Court in *StopAquila* held that a new power plant in Missouri could not be constructed in bypass of county zoning requirements applicable to the site at issue unless the Commission examined the construction of the plant "roughly contemporaneously" with its construction, or unless the plant site fell within a county master zoning plan, and even then, a county hearing was needed. 180 S.W.3d at 37-38. The Court did not purport to apply section 393.170 to a plant built in another state, where the propriety of the use of the land in that other state would presumably be subject to land use controls in those other states.

Other Dogwood Comments – Dogwood's Specific Edits

Dogwood supplied a tracked changes version of the proposed rule suggesting a number of edits.

Purpose Provision: For the reasons given above, Ameren Missouri opposes the edits directed toward extending the Commission's authority beyond the state's borders. Ameren Missouri supports some of the clarifications Dogwood suggests. For clarity, Ameren Missouri would support a purpose clause that reads as follows, which reflects many but not all of Dogwood's suggestions:

PURPOSE: This amendment revises the filing requirements for applications, pursuant to Section 393.170 RSMo, which request that the commission grant a certificate of convenience and necessity to an electric utility for either a service area or to construct in Missouri electric generating plants, electric transmission lines, ***substations,*** *or gas transmission lines to facilitate the operation of electric generating plants.*

PURPOSE: Applications to the commission, pursuant to section 393.170 RSMo, requesting that the commission grant a certificate of convenience and necessity to an electric utility for a service area or to construct in Missouri an electric generating plant, an electric transmission line, ***a substation,*** *or a gas*

transmission line to facilitate the operation of an electric generating plant, must meet the requirements of this rule. As *noted in the rule, {additional] general requirements pertaining to such applications are set forth in 4 CSR 240 2.060(1). In Missouri, a certificate of convenience and necessity is needed to construct an electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area. However, a separate certificate of convenience and necessity is not needed for the construction of an electric transmission line,* ***a substation,*** *or for the construction of a gas transmission line to facilitate the operation of an electric generating plant if the* ***facility*** ~~*line(s)*~~ *to be constructed is*~~*(are)*~~ *in the electric utility's certificated service area. Finally, this rule is not intended to replace or duplicate the electric utility resource planning requirements or procedures of 4 CSR 240-22.010- .080.*

Other Provisions:

- Dogwood's edit in 3.105(1) should not be made.
- The addition of "or substations" in 3.105(1)(B) should be made; the other edit should not be made.
- Clarifying that substations are covered is appropriate in 3.105(1)(B)2. Ameren Missouri had previously suggested edits to this provision, which it repeats here, but with the addition of the substation language:

> 2. A description of *[T]the* plans and specifications ~~for the complete scope of the construction project~~ and estimated cost **for the complete construction project available as of the time of filing the application** ~~of the construction project *for],*~~ **and a** ~~which also clearly~~ clear **identificationes** of the operating and other features of the electric generating plant(s), electric transmission line(s), **substation(s),** and gas transmission line(s) to facilitate the operation of the electric generating plant(s), when the construction is fully operational and used for service; the projected beginning of construction date and the anticipated **in-service** ~~fully operational and used for service~~ date of each electric generating plant, each electric transmission line, **each substation,** and each gas transmission line to facilitate the operation of each electric generating plant for which the applicant is seeking the certificate of convenience and necessity; and **an identification** of ~~identify~~ whether the construction project for which the certificate of convenience and necessity is being sought will include common electric generating plant, common electric transmission plant, or common gas transmission plant to facilitate the operation of the common electric generating plant, and if it does, **an identification** of ~~then~~

~~identify~~ the nature of the common plant. If this information is **not available at the time of the application** ~~currently unavailable~~, then a statement of the reasons the information is ~~currently~~ unavailable and a date when it will be *[furnished] filed*. **The utility, by filing the same in the docket created by the application, shall supplement the information required by this subsection 2 if there are material changes to such previously-filed information**;*[and]*

- The addition of "substation(s)" in 3.105(1)(B)3 is appropriate.
- As indicated in Ameren Missouri's April 29 Comments, 3.105(B) 4 and 5 should not be included in the rule.
- As indicated in Ameren Missouri's April 29 Comments and as further discussed above, 3.105(1)(B)6 should be omitted entirely.
- "In Missouri" should remain in 3.105(2)(A).
- The references to "substation(s)" in 3.105(2)(B) should be added; Dogwood's other changes should not.
- As indicated in Ameren Missouri's April 29 Comments and as further discussed above, 3.105(2)(C), (D) and (E) should be omitted entirely.
- New 3.105(5) and 3.105(6) are unnecessary.

OPC'S APRIL 29 COMMENTS

Ameren Missouri does not take issue with the general idea behind OPC's proposal to provide for notice and public meeting requirements. However, OPC's specific language was at times unclear or presented practical (not philosophical) concerns and, in a couple of instances, appeared to attempt to suggest how the Commission should later rule if an issue about notice came up in a CCN case. Below is a mark-up of OPC's proposal designed to implement OPC's general idea, but in a way that is clear, workable and fair to the utility and landowners alike. The rationale for changes appear in *italics* below each subparagraph.

7. An affidavit or other verified certification of compliance with the following notice requirements to landowners directly affected by ~~all proposed~~ electric transmission line routes or substation locations proposed by the application. The proof of notice shall include a list of all directly affected landowners to whom notice was sent and a statement of whether any formal contact between the utility and the landowner related to the proceeding ~~between the utility and the landowner~~ other than the notice has occurred.

All of these changes are to clarify what appeared all along to be the intention of OPC's proposal, including to acknowledge that transmission lines have "routes" and substations have "locations," and to make clear (per OPC's definition of "directly affected" in subparagraph a) the landowners to whom notice is to be given.

a.~~A.~~Applicant shall provide notice by certified mail, return receipt requested, of its application to the owners of land, or their designee, as stated in the records of the county assessor's office as of a date not more than 60 days prior to the date the notice is sent ~~on the previous year's tax rolls~~, who would be directly affected by the requested certificate, including the preferred route or location, as applicable, and any alternative route or location, as applicable, of the proposed facilities~~y~~. For purposes of this paragraph (1)(B)7, land is directly affected if a permanent easement or other permanent property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 ~~500~~ feet of the centerline of a transmission project.

The changes regarding how notice is given and the source of the information and timing are to minimize disputes. The reference to "designee" recognizes the reality that (a) some tracts are listed in the assessors' offices in a name other than the owner, and (b) often a tract has many owners, but only one is listed in the assessor's records. Also, "tax rolls" is an undefined term (could be assessor records, could be recorder's records). "Prior year's" could be quite stale if notice is given later in the next year. In past CCN cases, when the Commission imposed conditions about disturbing homes, 300 feet was the typical distance.

b.~~B.~~ Any letter sent by the applicant shall be on that representative's letterhead or on the letterhead of the utility, and it shall clearly set forth:
(I). The identity, address and telephone number of the utility representative;
(II). The identity of the utility attempting to acquire the certificate;
(III). The general purpose of the proposed project;
(IV). The type of facility to be constructed;
(V). The contact information of the Public Service Commission and Office of the Public Counsel.

c. ~~C.~~ If 25 or more persons in a given county would be entitled to receive direct mail notice of the application, applicant shall hold at least one public meeting in each such county containing ~~affected~~ land that is directly affected. The public meeting shall be held in a ~~public~~ building open to the public with reasonable accommodations, if available, sufficient to accommodate a number of persons equal to the number of tracts of land that are directly affected in the county at issue ~~matching the number of affected landowners~~. For purposes of this subparagraph (c), different parcels owned by the same landowner according to the assessor's records shall be considered to be one tract of land. The time for the meeting shall be calculated to give all ~~affected land~~ owners of land directly affected by the project a reasonable ~~sufficient~~ time to pose questions or to address their concerns, and ~~the~~ shall be held at a time of day to ~~reasonably~~ allow to the extent reasonably practicable such ~~affected~~ landowners to participat~~ion~~ in said meeting. Direct mail notice of the public meeting shall be included in the notice sent by certified mail under this paragraph (1)(B)7 ~~to each of the owners of lad, as stated on the previous county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility~~.

Reference to "in a given county" was added to address the situation where a project might affect, e.g, 30 landowners in county A and only 3 in county B. The 3 landowners should be able to travel to the county A meeting. Also the changes now consistently use "directly affected" instead of "affected," per the definition in the rule. The meaning of "public" building was also unclear. In terms of "reasonable accommodation," particularly in rural counties, there literally may not be a location available that complies with ADA requirements and that otherwise is suitable. As noted earlier, to accommodate literally all landowners may not be possible because on a large project there could be dozens or hundreds of total owners (a tract could have many owners, e.g., a trust with 6 trustees). The "time for meeting" and "time of meeting" provisions proposed by OPC were too absolute and failed to balance the ability of landowners to attend and participate with the practical inability, in some cases, to hold the meeting at precisely the time all landowners would prefer or to allow enough time for every landowner to engage with the utility at that meeting to the extent every landowner might prefer; landowners always have the ability to contact the utility for further discussions outside the meeting as utility contact information will be provided. The last phrase was deleted because it was already covered by other language and thus was redundant.

d. ~~D.~~ If the applicant, after ~~Upon the~~ filing of proof of notice ~~as~~ described in this paragraph (1)(B)7 ~~of this section, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the applicant~~ finds that an owner of directly affected land has not received notice of the project that is the subject of the application, it shall within a reasonable time ~~immediately~~ advise the commission by written pleading that it has provided ~~and shall provide~~ notice to such landowner(s) by certified mail, return receipt requested priority mail~~, with delivery confirmation~~, containing the information required by ~~in the same form described in~~ subparagraph B of this paragraph. At that time, ~~T~~the applicant shall also ~~immediately~~ file a supplemental affidavit of the additional notice that was given with the commission.

Such a provision should not suggest that a lack of notice may violate the rule, nor should it impose impractical "immediate" notice requirements. The point should be that if the utility used the assessor's information but then later finds out that someone was missed, that it promptly provide the notice and update the Commission.

~~**e. Failure to provide notice in accordance with this paragraph shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.**~~

This provision is unnecessary and inappropriate. If a notice is not given, the Commission is free, upon request of OPC or a landowner, to consider the circumstances of why a notice was not given, the adequacy of any existing representation of interests at the

Commission (such as a landowner group, or OPC, or otherwise) and whatever other factors the Commission deems relevant if a contention is made that a deadline should be extended due to a lack of notice. This rule should not mandate to the Commission what is or is not "cause" of what it may be "cause" for.

Ameren Missouri has no objection to OPC's suggested revision to 3.105(1)(B)1.

GRIDLIANCE'S APRIL 29 COMMENTS

There is one aspect of Gridliance's comments with which Ameren Missouri disagrees, and it was addressed in Ameren Missouri's April 29 Comments. The genesis of the discussion taking place in this docket regarding competitive bidding was Dogwood's push to have PPAs considered as replacements for utility-owned generation. Putting aside for a moment that the premise of Dogwood's efforts (that PPAs and owned generation are equivalent) is a false one, even it if were not it has no application to an electric transmission line, as the Company has already explained. The phrase "electric transmission line(s)," should not be included in any competitive bidding language at all. Consequently, Gridliance's extended discussion of RTO processes to choose who builds RTO-approved transmission lines irrelevant.

The only other noteworthy Gridliance comment from the Company's perspective is that the Company agrees that the word "new" in the "construction" definition would not mean that a rebuilt transmission line that was destroyed in some fashion and that needs to be replaced is a "new" line. As the Company's earlier comments indicated, there should be no "construction" definition at all and, under the plain meaning of the term, since the line would have already have been in existence, replacing it if it were destroyed would not be "construction" within the meaning of the CCN statute in any event. However, the Commission should make this clear in his rulemaking order, if the word "new" remains in the revised rule at all.

WIND ON THE WIRES APRIL 29 COMMENTS

Wind on the Wires is correct in suggesting that the word "and" be replaced with "or" in 3.105(B)2. The workshop parties, including the Staff, clearly intended the CCN rule (setting aside the area certificate provisions) to apply to three kinds of projects: (a) electric generating plants, (b) electric transmission lines, and (c) gas lines to facilitate generation.

Wind on the Wires also makes a good suggestion in terms of clarifying that field inspections should not be required to comply with 3.105(1)(B)1. At the CCN case stage, the utility may, and often will, have no ability to access the land in the field. The existing rule has never been applied in a manner that would require field inspection, and the Commission, in its rulemaking order, should make clear it isn't requiring such inspection here.

Similar to the earlier discussion herein, there is no need to limit competitive bidding to only utilities constructing a transmission line if that utility has end-use retail customers, since even if there were competitive bidding requirements relating to PPAs, those requirements do not and should not have anything to do with electric transmission lines.

For the reasons outlined in Ameren Missouri's April 29 Comments and above in response to Dogwood's April 29 comments, the Company disagrees with Wind on the Wires' support for competitive bidding requirements in the CCN rule. There is one aspect of Wind on the Wires' comments regarding competitive bidding that have not been addressed previously, that is, its contention that not only should the CCN rule contain competitive bidding provisions but that an "independent monitor" process should be layered-onto any such process.

When the role of competitive bidding for PPAs is properly addressed – in IRP cases or in general rate proceedings if there are legitimate issues about a resource decision a utility has made which it seeks to rate base – the Staff, OPC and other parties are well-equipped to bring their perspectives to the Commission on the prudency of a utility's actions. This has long been the Staff's position, and on this point, Ameren Missouri agrees.

For example, in 1993 the Commission opened a docket to consider standards under Section 712 of the Energy Policy Act of 1992 (Case No. EO-93-218). One of the standards under consideration (paraphrased) was whether there should be a pre-approval process if a utility entered into a PPA. The Staff opposed a pre-approval process. In support of the Staff's position, current Manager of the Commission's Auditing Unit, Mark Oligschlaeger, testified that the Staff had on many occasions reviewed PPAs and the circumstances surrounding them. Oligschlaeger Rebuttal, Case No. EO-93-218. The bottom line Staff position on the question was that evaluations of PPAs should be "in the context of (1) the individual filings required every three years by the Commission's electric utility resource planning rules . . . and (2) [in] particular rate cases." Hearing Memorandum, p. 7, Case No. EO-93-218. There has been no showing that the Staff or other parties are incapable of fully informing the Commission of relevant facts and viewpoints relating to PPAs, including bidding issues. There is no need to layer on yet another administrative process to intrude on utility decision-making in this area. Oversight in this area belongs where it has always been, with the Commission, through its Staff.

Respectfully submitted,

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