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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for )  
Permission and Approval of a Certificate )  
Of Public Convenience and Necessity )  
Authorizing It to Construct, Install, Own, )  
Operate, Maintain and Otherwise Control )  
And Manage Solar Generation Facilities in )  
Western Missouri )

**Case No. EA-2015-0256**

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**STAFF'S INITIAL BRIEF**

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Respectfully submitted,

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L Greater )  
Missouri Operations Company for Permission and )  
Of Public Convenience and Necessity Authorizing it to )  
Approval of a Certificate of Public Convenience and )  
Necessity Authorizing it to Construct, Install, Own, )  
Operate, Maintain and Otherwise Control and Manage )  
Solar Generation Facilities in Western Missouri )

**File No. EA-2015-0256**

**STAFF'S INITIAL BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and files its initial brief supporting Commission denial of the application for Certificate of Convenience and Necessity ("CCN") submitted by KCP&L Greater Missouri Operations Company ("GMO").

**I. Overview**

This case is a request for a CCN for GMO to build a solar generation facility in Greenwood, Missouri ("the Project"). It is Staff's position that the proposed Project's purported benefits do not justify its costs. Rather than internally fund this pilot project,<sup>1</sup> GMO wants its ratepayers to pay for it.<sup>2</sup> The Staff found that the Company's application was insufficient to demonstrate that the Project is necessary or convenient for the public service under section 393.170, RSMo, so the Commission should not grant the requested CCN. However, in the event the Commission chooses to grant the CCN, Staff has provided three economic alternatives, discussed below.

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<sup>1</sup> Tr. Vol. 2, IVES, 213:10 – 14.

<sup>2</sup> Tr. Vol. 2, IVES, 205:22 – 25.

Because GMO is requesting a CCN from the Commission, GMO has the burden of proof to show, by a preponderance of the evidence, why its application should be granted. If GMO fails to meet that burden, the application for a CCN must be denied.<sup>3</sup>

For all of the reasons provided below, GMO has failed to show by a preponderance of the evidence that the Greenwood Solar Generation Facility, here called the Project, is needed; that it is economically feasible; and that it is in the public interest to build it. Because the Project is not an additional service or improvement justifying its cost, it is not necessary or convenient for the public service and the application should be denied. Should the Commission nonetheless determine to grant the application, Staff recommends the Commission include the proposed conditions, explained below.

**II. Does the evidence establish that the Solar Generation project as described in GMO's applications in this docket, and for which GMO is seeking a certificate of convenience and necessity ("CCN"), is "necessary or convenient for the public service" within the meaning of section 393.170, RSMo?**

The appellate court in *State ex rel. Intercon Gas, Inc. v. Public Service Commission* ("Intercon Gas") said that "necessity" means that an additional service would be an improvement justifying its cost.<sup>4</sup> The court specifically said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." § 393.170.3. The term "necessity" does not mean "essential" or "absolutely indispensable," but that an additional service would be an improvement justifying its cost. *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d at 219. . . . The safety

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<sup>3</sup> *In re Grain Belt Express Clean Line LLC*, EA-2014-0207, 2015 WL 4124748, at \*12 (Mo. P.S.C. July 1, 2015) *reh'g denied*, EA-2014-0207, 2015 WL 4881070 (Mo. P.S.C. Aug. 12, 2015)

<sup>4</sup> *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593 (Mo. App. 1993).

and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n, 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. Id. at 392.<sup>5</sup>

Based on this language in *Intercon Gas*, which interprets 393.170, Staff contends that in considering whether an “additional service would be an improvement, *justifying* its cost” requires that the Commission compare the benefits to the costs of the proposed project. Here, GMO has not demonstrated that the construction of the Project will be a service that justifies the additional cost.

In its evaluation of whether or not the Project is necessary or convenient, Staff considered the Tartan Factors,<sup>6</sup> and concluded that:

- There is no need for the service at this time.
- Although Staff feels GMO is qualified to provide the proposed service, GMO's entire reason for doing the project hinges on the idea that it needs to gain knowledge and experience.
- The proposal is NOT economically feasible, and
- The service does NOT promote the public interest.

Thus, considering the language of *Intercon Gas*, the Tartan Factors are not a checklist from which the Commission could make an exception.<sup>7</sup> Rather, the Factors are a balancing test to aid in determining whether a given project is convenient or necessary for the public service. After examining the Tartan factors, Staff has

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<sup>5</sup> *Id.* at 597-98.

<sup>6</sup> *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994) report and order. The Tartan factors are discussed individually in Sections II. A. through II. E.

<sup>7</sup> *In Re Tartan Energy*.

concluded that the cost ultimately borne by GMO's customers outweighs the benefits of the Project. Therefore, the Commission should not grant a CCN for the Project, as described in GMO's application, because GMO has not demonstrated that the Project is necessary or convenient for the public service.

**A. Does the evidence establish that there is a need for the Project?**

GMO has not demonstrated a need for this project. While GMO is short on capacity and uses Purchased Power Agreements to meet its customers' demands and cover the required reserve margin, the Project will not materially affect the gap between GMO's supply needs and its customers' and market's demands.<sup>8</sup> What little impact it does have is *de minimis* to meet GMO's customer demands.<sup>9</sup> In fact, GMO does not anticipate shutting down any other sources of energy as a result of this project.<sup>10</sup> GMO is able to purchase additional capacity to meet these needs at a much lower cost than the cost of this proposed facility.<sup>11</sup>

Additionally, GMO does not need Solar Renewable Energy Credits, or S-RECs, until 2027 to comply with the Missouri Renewable Energy Standard, or RES.<sup>12</sup> Any S-RECs the Project would create prior to this date will not count toward GMO's compliance with the solar requirement of the RES.<sup>13</sup> Not only has GMO met its S-REC requirements for over a decade, but even without the addition of this solar facility, GMO

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<sup>8</sup> Tr. Vol. 2, BECK, 298:17-25. See also Tr. Vol. 2, EUBANKS 409:13 – 410:12. "GMO would have the ability to offer a...standard offer contract after that ten-year period...so that could be another source of...solar renewable energy credits."

<sup>9</sup> *Id.*

<sup>10</sup> Tr. Vol. 2, EUBANKS, 402:12-19; Tr. Vol. 2, LING, 163:11-15; Tr. Vol. 2, IVES, 213:15 – 214: 12.

<sup>11</sup> See Generally Tr. Vol. 3, BECK, 307:1-8; Tr. Vol. 2, IVES, 178:5-11; Tr. Vol. 2, EUBANKS, 385:9-11; Tr. Vol. 2, PROCTOR, 463:8-10

<sup>12</sup> GMO, *Application*, p.5, ¶ 14; Tr. Vol. 2, IVES, 209:4-7.

<sup>13</sup> GMO, *Application*, p.5, ¶ 14; Tr. Vol. 2, IVES, 209:4-7.

will actually have unused S-RECs that will expire if not sold.<sup>14</sup> Although the S-RECs from this project could theoretically count toward other Renewable Energy Credit requirements, with its planned, less-expensive non-solar renewable resource additions and without this solar facility, GMO will have sufficient overall RECs to comply with the RES through 2030.<sup>15</sup>

GMO does not need this Project to comply with the Clean Power Plan (“CPP”) at this time, either. In fact, the U.S. Supreme Court granted a stay from the CPP on February 9, 2016, blocking the regulation’s implementation during the litigation in the Court of Appeals.<sup>16</sup> Even assuming the CPP will be approved as-is, GMO’s witness Mr. Ling admitted that the interim compliance period does not begin until 2022 and the final standard does not have to be reached until 2030.<sup>17</sup> If this Project is being built as a step toward compliance, it only amounts to “a small percent” of emission reduction.<sup>18</sup> As Mr. Ling testified, only if solar projects are aggregated over a number of years will they amount to any meaningful reduction in a coal-fired facility.<sup>19</sup>

Finally, GMO has expressed its need for this facility in that it believes this project would provide necessary knowledge and experience to be gained before building a larger solar facility in the future.<sup>20</sup> While Staff does not discount knowledge and experience as a possible need, GMO failed to demonstrate how the knowledge and experience it expects to gain from this project is so unique that it cannot be gained any

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<sup>14</sup> Tr. Vol. 3, EUBANKS, 382:10-13, 390:1-3, 391:16-23; Tr. Vol 2, EUBANKS, 384:4-16; Ex. No. 8 HC; Ex. No. 10 HC.

<sup>15</sup> *Id.*

<sup>16</sup> Tr. Vol. 2, LING, 138:6-10.

<sup>17</sup> *Id.* at 127:3-21, 144:12-16; See *also* Tr. Vol. 2, HYMAN, 290:2-5.

<sup>18</sup> Tr. Vol. 2, LING, 141:22-24.

<sup>19</sup> *Id.* at 142:4-14.

<sup>20</sup> KCP&L Greater Missouri Operations Company Position Statement, p. 1-2.

other way. GMO's witness Mr. Anyanwu admitted that, not having built the facility yet, GMO has already gained knowledge and experience with regard to design and construction by talking to peers, working with and talking with engineering consultants and those with experience executing these types of projects, and working with other utilities to execute similar projects.<sup>21</sup> GMO also has experience with the intermittent nature of solar from KCPL's two solar facilities, albeit those are smaller in scale than the proposed project.<sup>22</sup> Mr. Anyanwu was unable to explain why the size of the two existing solar facilities is insufficient to learn about impacts to the system but the proposed project is sufficient despite its small scale compared to what GMO implies it will seek to implement in the future.<sup>23</sup>

GMO also failed to demonstrate why this knowledge and experience is necessary at the present time. Other than the timeliness of being able to include this project in rates, GMO has not established a valid reason for building the Project at this time. In fact, its witness Mr. Anyanwu admitted at the hearing that GMO could spend additional time learning more about solar generation before installing a solar facility,<sup>24</sup> and could undergo the same process it has followed in preparation for this project at a later date to gain design and construction knowledge and experience.<sup>25</sup>

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<sup>21</sup> Tr. Vol. 2, ANYANWU, 95:3-17.

<sup>22</sup> Tr. Vol. 2, ANYANWU, 79:4-10.

<sup>23</sup> Tr. Vol. 2, ANWANWU, 96:5-19, 98:16-22.

<sup>24</sup> Tr. Vol. 2, ANYANWU, 93:12-14.

<sup>25</sup> Tr. Vol. 2, ANYANWU 95:18 – 96:1.



Given the extension of the federal investment tax credit through 2019,<sup>26</sup> which is discussed below, the fact that interim compliance with the CPP will not begin until 2022, and the fact that GMO will meet its S-REC requirements through 2026 and its non-solar RES requirements through 2030, it is clear that none of these factors would drive the need GMO claims to have for building this project now.

In a CCN case, the burden rests solely on the applicant to show, by a preponderance of the evidence, that a project is necessary and convenient for the public service.<sup>27</sup> Part of this burden would necessarily include establishing the need for the project at the present time, or at least within the 2 years during which the CCN would be valid.<sup>28</sup> The ability to include costs in a rate case is not alone sufficient to show timeliness of a CCN. GMO has not demonstrated any other need that would justify the cost of the Project.

#### Comparison to Ameren Missouri's O'Fallon Project

There were several questions at hearing regarding the similarities and differences between this Project and the Ameren Missouri O'Fallon solar project that was approved in case number EA-2014-0136. The implication from proponents of the Project was that if Staff supported the Ameren Missouri project, there should be no reason for Staff to take a different position regarding the proposed Greenwood solar facility. Staff acknowledges the similarities in the two projects, but it also notes some

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<sup>26</sup> Tr. Vol. 2, IVES 237:4-13; Tr. Vol. 2, HYMAN, 270:10-12; Tr. Vol. 2, LYONS 419:7 – 420:7; Energy.Gov. <http://energy.gov/savings/business-energy-investment-tax-credit-itc>. Last accessed Feb. 8, 2016.

<sup>27</sup> Section 393.170.3, RSMo.

<sup>28</sup> *Id.*

stark differences in circumstances that help explain the different positions.<sup>29</sup> Specifically, at the time of Ameren Missouri's filing, the Investment Tax Credit ("ITC") was scheduled to drop to 10% by the end of the same year. The same cannot be said for this case. Recently, the ITC was extended through 2019, at which point it will begin a more gradual phase-out than previously anticipated. Also, Ameren had a need for S-RECs in order to maintain compliance with the Missouri RES.

As discussed above, GMO will not need S-RECs for another ten years, and it will not need this Project to comply with the non-solar portions of the RES until 2030. Another difference between the Ameren Missouri case and this case is that at the time of the Ameren Missouri filing, "we were truly in our infancy in terms of our knowledge of what the value of an S-REC was."<sup>30</sup> Staff witness Mr. Beck indicated that he viewed the price for an S-REC to be volatile at the time of the Ameren Missouri filing but now believes that the price of an S-REC in the future is significantly less volatile.<sup>31</sup> Accordingly, Staff's recommendation in the Ameren Missouri case should not preclude it from taking a different position in the case at hand. For all the reasons discussed above, GMO has failed to meet its burden of proving that there is a need for this Project.

**B. *Is GMO qualified to provide the proposed project services?***

Staff's position is that GMO is qualified to operate and maintain the Project, given its vast experience managing a number of other non-solar plants that require much more involvement from operators and maintenance technicians than a solar plant of this

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<sup>29</sup> Tr. Vol. 2, BECK, 316:10 – 320:11.

<sup>30</sup> Tr. Vol. 2, BECK, at 319:13-14.

<sup>31</sup> Tr. Vol. 2, BECK, 343:6-8; Tr. Vol. 2, BECK, 346:20-22.

size would require.<sup>32</sup> GMO also has experience with rooftop solar that is interconnected to its system.<sup>33</sup> GMO has also contracted with experts on solar facilities to aid in the design, building, operation, and maintenance of the Project.<sup>34</sup>

Staff is confused by GMO's main argument for building the project now, which is that it has an apparent urgent need to gain hands-on experience in operating a solar electrical production facility.<sup>35</sup> This argument begs the question of the adequacy of GMO's experience and expertise. It also begs the question why GMO feels it specifically needs hands-on experience instead of agreeing to some other method for obtaining the requisite knowledge and information to potentially operate a larger scale solar facility in the future. Despite these additional concerns GMO's argument raises, Staff is confident GMO is qualified to operate and maintain the Project.

**C. *Does GMO have the financial ability to provide the project services?***

Yes. GMO has the financial ability to build the Project and to provide the resulting services. If approved, the Project will be financed using general GMO funds,<sup>36</sup> and thus, at least during construction, GMO will bear the financial responsibility for the Project.

If this CCN is issued, GMO intends to seek recovery of the cost of this Project in its upcoming rate case.<sup>37</sup> Staff does not support inclusion of these costs in rates if the CCN is issued, and GMO did not indicate that it would suffer any harm if the costs are borne by shareholders. In fact, GMO witness Mr. Ives was asked specifically on direct about Staff's economic considerations in which Staff proposes that GMO not recover

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<sup>32</sup> Tr. Vol. 2, BECK, 299:1-16.

<sup>33</sup> Tr. Vol. 2, ANYANWU, 79:4-10.

<sup>34</sup> GMO Application for CCN ¶ 9, Tr. Vol. 2, IVES, 219:6 – 220:13.

<sup>35</sup> Tr. Vol. 2, ANYANWU, 92:25 – 93:11; Tr. Vol. 2, BECK, 299:10-13.

<sup>36</sup> GMO Application for CCN ¶ 12.

<sup>37</sup> Tr. Vol. 2, IVES, 218:22 – 219:2.

some or all of the costs of the Project. Rather than discuss the harm to GMO or to its shareholders, Mr. Ives simply stated that “shareholders will not be willing to provide generation resources on their dime for our customers.”<sup>38</sup> GMO’s witnesses further had the opportunity to rebut Staff’s testimony regarding these economic considerations, and neither rebuttal witness suggested harm would result in the event the Commission grants the CCN with one of the conditions.

**D. *Is GMO’s proposed project economically feasible?***

Staff’s position is that this Project is not economically feasible. It is not the least cost option<sup>39</sup> and now is not the right time for the Project for various reasons.<sup>40</sup>

GMO acknowledges that this is not the least cost option, but it is hesitant to quantify what this means.<sup>41</sup> Staff demonstrated that wind, which has a similar environmental impact and similar reliability, is several times less costly than a fixed solar facility such as the one proposed here.<sup>42</sup>

Further, the timing of this Project leads to an unnecessary cost with potentially fewer benefits than a future project. Recent solar industry trends are that solar conversion efficiencies have improved while photovoltaic (PV) solar costs have significantly declined and are expected to continue to decline.<sup>43</sup> GMO’s witness Mr. Ives provided testimony that GMO expects solar energy to reach price parity somewhere in

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<sup>38</sup> Tr. Vol. 2, IVES, 192:1-2.

<sup>39</sup> Tr. Vol. 2, IVES, 177:7-11 “the Company knows that this is not the least-cost option to put generation in today.”; See *also* GMO Statement of Position, p. 2, Issue 1d; Tr. Vol. 2, HYMAN, 271:18-23.

<sup>40</sup> See GMO IRP, EO-2015-0252, Volume 4: Supply-Side Resource Analysis - Highly Confidential.

<sup>41</sup> Tr. Vol. 2, IVES, 177:7-11; See *also* GMO Statement of Position, p. 2, Issue 1d.

<sup>42</sup> Tr. Vol. 3, BECK, 312:6-13; Ex. No. 4 HC.

<sup>43</sup> Tr. Vol. 2, IVES, 178: 15-23 “I would say the majority position is that prices will continue to decline.”; see *also*, Ex. 13, “Solar Popularity and Trends.”<sup>12</sup>,

the range of the years 2017-2020.<sup>44</sup> He explained that price parity would occur when the price of solar, with federal incentives among other things, becomes competitive with regional residential rates.<sup>45</sup>

While building this Project now would allow GMO to take advantage of the ITC, Congress extended the energy credit for solar facilities in December of 2015.<sup>46</sup> The credit will continue at 30% of qualifying costs through tax year 2019.<sup>47</sup> GMO admitted that it does not expect to use the ITC until after 2021 due to existing net operating loss carryforwards that must be used first.<sup>48</sup> This means GMO ratepayers would not receive the benefit of the ITC until after 2021, at the earliest. Additionally, with the extension of the 30% tax credit, the ITC was also revised so the phase-out would be more gradual over a longer period of time.<sup>49</sup> There is no rush to get this project built in time for GMO to use the tax credit before it gets phased out.

However, even if the tax credit had not been extended beyond 2016, Staff's position would be no different.<sup>50</sup> The ITC is one factor among many that Staff's analysis considered regarding necessity and convenience and, more specifically, economic feasibility. In this case, the ITC would not push the balance in favor of the Project due to the other factors discussed herein. Given the hefty cost of this Project and its poor timing, the Project is not economically feasible at this time.

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<sup>44</sup> Tr. Vol. 2, IVES, 170:17 – 171:1.

<sup>45</sup> Tr. Vol. 2, IVES, 201:7-22.

<sup>46</sup> Tr. Vol. 2, p. 237 lines 4 – 13, p. 270 lines 10-12, p. 419 line 7 – p. 420 line 7; Energy.Gov. <http://energy.gov/savings/business-energy-investment-tax-credit-itc>. Last accessed Feb. 8, 2016.

<sup>47</sup> *Id.*

<sup>48</sup> Tr. Vol. 2, IVES, 237:14 – 238:10. See also Tr. Vol.2, LYONS, 421:9-23.

<sup>49</sup> Tr. Vol. 2, IVES, 239:13-23.

<sup>50</sup> Tr. Vol. 2, LYONS, 420:5-15.

Division of Energy (“DE”) witness Mr. Hyman alluded to some “back of the envelope calculations” he performed to compare the cost of this Project to the cost of the Ameren Missouri solar facility in O’Fallon.<sup>51</sup> These calculations were performed the day of the hearing and, as Mr. Beck discussed, are not a good comparison tool between the Ameren Missouri facility and the Greenwood Project.<sup>52</sup> Mr. Beck expressed concerns that the calculation “makes no sense,” because it compared the total cost to the annual output, without accounting for the life of the facility.<sup>53</sup> Conversely, Exhibit 4 HC relies on calculations that compare total cost to *total* output, over the whole life of the facility.<sup>54</sup> Mr. Beck further noted that even if the calculation simply compared one year of the Ameren Missouri facility to one year of the Greenwood Project, the calculation would only have meaning if the lives of both plants were the same.<sup>55</sup>

Mr. Beck also testified to the differences between the Ameren Missouri project and this Project, which largely explain the differences between Staff’s positions in each case.<sup>56</sup> Among those differences were the need for S-RECs,<sup>57</sup> the expectation as to the termination of the 30% tax credit,<sup>58</sup> and the fact that in Missouri, we were inexperienced with the S-REC market at the time of the Ameren Missouri filing.<sup>59</sup> “It was a Missouri

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<sup>51</sup> Tr. Vol. 2, HYMAN, 254:22 – 255:2; Specific numbers are discussed in Tr. Vol. 3., HYMAN, 256:2-21.

<sup>52</sup> Tr. Vol. 2, BECK, 357:3 – 359:16. See *also* Tr. Vol. 2, LYONS, 451:24 – 452:8.

<sup>53</sup> Tr. Vol. 2, BECK, 357:3 – 359:16.

<sup>54</sup> *Id.*

<sup>55</sup> Tr. Vol. 2, BECK, 357:3 – 359:16.

<sup>56</sup> Tr. Vol. 2, BECK, 316:22 – 320:11.

<sup>57</sup> Tr. Vol. 2, BECK, 339:2-12.

<sup>58</sup> Tr. Vol. 2, BECK, 325:6-16.

<sup>59</sup> Tr. Vol. 2, BECK, 344:12-16.

Plant; that it cut down on the risk of future cost of S-RECs, which at the time we perceived as being quite volatile.”<sup>60</sup>

As discussed above, in a CCN case, the burden rests solely on the applicant to show, by a preponderance of the evidence, that the project is necessary and convenient for the public service.<sup>61</sup> Part of this burden would include establishing the economic feasibility of the project, which GMO has not even attempted to do. GMO admits that this technology is not the least expensive generation technology available.<sup>62</sup> Instead of meeting its burden, GMO tried to establish that the need for this project was sufficient to overcome its economic infeasibility.<sup>63</sup> Unfortunately for GMO, need is a separate factor to be considered alongside economic feasibility. As discussed above, GMO has not demonstrated a significant need for this Project, and the economic factors clearly establish that the costs greatly outweigh any small benefits that may result from this Project. GMO has failed to meet its burden of proving that this Project is an improvement that justifies its cost.

**E. *Does GMO’s proposed project promote the public interest?***

The final Tartan Factor that the Commission has to consider is whether the Greenwood Project promotes the public interest.<sup>64</sup> The public interest is a matter of policy that the Commission determines.<sup>65</sup> It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be

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<sup>60</sup> Tr. Vol. 2, BECK, 343:4-8.

<sup>61</sup> Section 393.170.3, RSMo

<sup>62</sup> GMO Statement of Position, p. 2, Issue 1d.

<sup>63</sup> *Id.*

<sup>64</sup> *In re Intercon Gas, Inc.*, Report and Order, 30 Mo.P.S.C. (N.S.) 554, 561, (1991); *In Re Tartan Energy*, Report and Order, 3 Mo.P.S.C.3d 173, 177 (1994).

<sup>65</sup> *In re Grain Belt Express Clean Line LLC*, 2015 WL 4124748, at \*15 (Mo. P.S.C. July 1, 2015)(internal citations omitted) *reh’g denied*, 2015 WL 4881070 (Mo. P.S.C. Aug. 12, 2015).

served.<sup>66</sup> Determining what is in the interest of the public is a balancing process.<sup>67</sup> In making such a determination, the total interests of the public served must be assessed.<sup>68</sup> This means that some of the public may suffer adverse consequences for the total public interest.<sup>69</sup> The “public interest” necessarily must include the interests of both the ratepaying public and the investing public.<sup>70</sup>

**1. The Tartan Factors do not show the project promotes the public interest.**

The Commission stated in *Tartan* that, in determining if a project “promotes the public interest”, the Commission essentially makes a conclusion based, in some part, on whether the Commission finds the other Tartan factors favorable.<sup>71</sup>

The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.<sup>72</sup>

Thus, if the Commission determines that if GMO has failed to sufficiently support any of the other factors, the Commission may conclude that the Project does not promote the public interest. For all the reasons stated *supra*, GMO has failed to show why the Project is necessary or economical, and therefore, the Project does not promote the public interest.

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<sup>66</sup> *Id.* (Internal citation omitted).

<sup>67</sup> *Id.* (Internal citation omitted).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* (Internal citation omitted).

<sup>71</sup> *In re Tartan Energy*, 3 Mo.P.S.C.3d 173, 189 (1994).

<sup>72</sup> *In re Tartan Energy*, at 189.



First, the Greenwood Project is not needed. GMO has more than sufficiently met the Missouri Renewable Energy Standards until 2026 for S-RECs,<sup>73</sup> and more than enough RECs to last until 2030.<sup>74</sup> Moreover, the size of the proposed solar plant would not materially affect GMO's current capacity gap.<sup>75</sup> The Clean Power Plan may require changes in diversity of GMO's generation fleet, but the earliest the CPP could affect this requirement is 2022<sup>76</sup> and a recent U.S. Supreme Court decision has, for the time being, stayed compliance.<sup>77</sup>

Second, the Project is not economical. GMO admits the Project is not the least cost alternative for the amount of generation;<sup>78</sup> however, what is more telling is that the cost of solar technology has decreased and will continue to decrease.<sup>79</sup> Meanwhile, the efficiency of the technology has continued to increase.<sup>80</sup> Thus, a future similar project will likely cost less and generate more megawatts. These facts, coupled with the extension of the ITC until 2019,<sup>81</sup> create a clear comparison of a presently less-economic project compared to a more-economic future project, in the near term.

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<sup>73</sup> GMO, *Application*, p.5, ¶ 14; Tr. Vol. 2, p. 209, lines 4-7.

<sup>74</sup> Tr. Vol. 3, p. 382 lines 10 – 13, p. 390 lines 1 – 3, p. 391 lines 16 – 23; Tr. Vol 2, p. 384 lines 4 – 16; Ex. No. 8 HC; Ex. No. 10 HC.

<sup>75</sup> Tr. Vol. 2, p. 298, lines 17 – 22.

<sup>76</sup> Tr. Vol. 2, p. 127 lines 3 – 21; p. 144 lines 12 – 16; See also, Tr. Vol. 2, p. 290, lines 2-5.

<sup>77</sup> Tr. Vol. 2, p. 138, lines 6 – 10.

<sup>78</sup> Tr. Vol. 2, p. 177, lines 10 – 11 “the Company knows that this is not the least-cost option to put generation in today.”

<sup>79</sup> Tr. Vol. 2, LYONS, 418:7 – 19; Ex. 13 “Solar Popularity and Trends”

<sup>80</sup> *Id.*

<sup>81</sup> Tr. Vol. 2, LYONS, 419:9 – 19.

## **2. Other considerations do not show the project promotes the public interest.**

The Commission can and has evaluated other considerations beyond the Tartan factors when determining the public interest.<sup>82</sup> In balancing the other considerations in this matter, the facts and conclusions further show that granting the application does not promote the public interest.

### Mixed Public Interest in Solar Generation

All the parties agree that there is general public interest in solar generation, and that solar generation is a public benefit. Staff contends that the Comprehensive State Energy Plan (“CSEP”) encourages diversification of generation technology, and that such diversification has general benefits to the ratepaying public and investing public.

However, Staff also contends that there is more to the picture of the public’s interest than just general support. Specifically, the public is not interested in solar generation at any cost.<sup>83</sup> Staff’s investigation into this topic led to discovering studies

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<sup>82</sup> See, *In re Grain Belt Express Clean Line LLC*, at \*9 - 10 (considering, *inter alia*, residential proximity to the proposed transmission line, the number of public comments, and agricultural considerations); see also; *In re Tartan Energy*, at 189-191 (considering, *inter alia*, the propane and natural gas market, competition, and economic, environmental and geographic location); *In Re Aquila, Inc.*, EA-2006-0309, 2006 WL 1455774 (Mo. P.S.C. May 23, 2006)(considering, *inter alia*, county land use planning, project site surrounding land use, population density, and environmental impacts); *In re Union Elec. Co., d/b/a Ameren Missouri for Permission & Approval & A Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain, & Otherwise Control & Manage A Util. Waste Landfill & Related Facilities at Its Labadie Energy Ctr.*, EA-2012-0281, 2014 WL 3812102, at \*1 (Mo. P.S.C. July 2, 2014) *amended on reconsideration in part*, EA-2012-0281, 2014 WL 4053372 (Mo. P.S.C. Aug. 6, 2014)(considering, *inter alia*, decisions by DNR regarding environmental protection); *In re RDG Dev., LLC*, SA-2010-0096, 2009 WL 5069710, at \*4 (Mo. P.S.C. Dec. 18, 2009)(considering, *inter alia*, “good living environment for residential customers” and subdivision expansion).

<sup>83</sup> Tr. Vol. 2, LYONS, 431:6 – 21; Ex. 13, “Solar Popularity and Trends”

by the same sources that GMO relies on, which show that desire for the installation of solar generation decreases when put into context with price.<sup>84</sup>

GMO ratepayers are already paying a premium for renewable energy, the Renewable Energy Standard Rate Adjustment Mechanism - Rider (“RESRAM”) that collects \$7,582,117.18 annually, and is approximately an extra 1% added to each customer’s bill.<sup>85</sup> This RESRAM provides the mechanism whereby GMO recoups from all of its customers the approximately \$50 million in solar rebates certain consumers have taken advantage of by installing solar themselves.<sup>86</sup>

GMO tried to dispel the overall cost of the Project by asking Staff Witness Lyons to do a calculation of the hypothetical amount of the return on investment of the project.<sup>87</sup> However, the hypothetical amount calculated was only the annual return on investment that GMO customers would pay over the life of the project.<sup>88</sup> It was *not* the actual monthly cost to customers for *entire* Project as submitted in the application, and did not capture other unknown expenses, such as yearly O&M costs, taxes, labor, depreciation, and other related costs. In any event, Staff contends that whatever benefits provided by the Project do not outweigh those costs.

#### No Specific Support for Other Possible Benefits

The Division of Energy (“DE”) argued that the shift to solar generation would have environmental benefits, public health benefits, and economic development benefits. However, DE’s witness merely presented a policy position that the Division

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<sup>84</sup> Tr. Vol. 2, LYONS 437:4 - 438:21; Ex. 13, “Solar Popularity and Trends”

<sup>85</sup> Tr. Vol. 2, BECK, 327:19 – 20; 364: 8 – 12.

<sup>86</sup> Tr. Vol. 2, IVES, 222:4 – 223: 9.

<sup>87</sup> Tr. Vol. 3, LYONS, 446:8 – 448:9.

<sup>88</sup> Tr. Vol. 3, LYONS, 446:15 – 20.

has a vested interest in promoting,<sup>89</sup> and which has no binding effect.<sup>90</sup> DE provided no quantitative analysis supporting its positions.<sup>91</sup> DE's witness had only reviewed GMO's application and its 2015 IRP before forming an opinion regarding the benefits of the project.<sup>92</sup>

Nor has GMO presented any evidence, other than conclusions, of how the project would benefit health, the environment or economic development.<sup>93</sup>

#### Vague Knowledge and Experience

GMO agreed that its primary purpose to build the Project is for diversification of its generation portfolio, and the skills and experience it will gain.<sup>94</sup> GMO will ultimately have to diversify its generation fleet, in part to comply with CPP, and also to comply with other regulations, regardless of what happens in this case.<sup>95</sup> Thus, GMO's remaining primary drive is to gain experience and "hands on knowledge" regarding the operation of the generation facility and the implications to the distribution network.<sup>96</sup>

However, GMO admits that building the Project is not the only possible source of the desired knowledge and experience.<sup>97</sup> Nor has GMO done any quantitative analysis of the value or cost of hands-on experience as compared to the knowledge and experience GMO could gain in other ways.<sup>98</sup> GMO agrees that it could learn more about

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<sup>89</sup> Tr. Vol. 2, HYMAN, 284:1 – 20.

<sup>90</sup> Tr. Vol. 2, HYMAN, 287:15 – 21.

<sup>91</sup> Tr. Vol. 2, HYMAN, 290:10 – 292:2.

<sup>92</sup> Tr. Vol. 2, HYMAN, 291:23 – 292:2.

<sup>93</sup> Tr. Vol. 2, IVES, 214:13 – 215:19.

<sup>94</sup> Tr. Vol. 2, IVES, 201:1 – 6.

<sup>95</sup> Tr. Vol. 2, LING, 154:5 – 17; 157:17 – 159:2.

<sup>96</sup> Tr. Vol. 2, IVES, 174:14 – 19.

<sup>97</sup> Tr. Vol. 2, IVES, 220:9 – 17.

<sup>98</sup> Tr. Vol. 2, IVES, 214:23 – 215:3.

the technology first,<sup>99</sup> and some of the knowledge GMO seeks to gain it has already learned just by designing the Project.<sup>100</sup> GMO does not doubt that its current employees are qualified and can learn to operate and maintain the Project.<sup>101</sup>

GMO's insistence on the need for knowledge is counter-intuitive. Following GMO's own logic that it will not gain needed experience until it operates a facility like the Project suggests there is no immediate benefit to either the investing or ratepaying public, because any resulting savings or efficiencies based on experience would come *after* GMO gains that experience. As a result, there is no immediate benefit to the public for building the Project—only to GMO.

#### Timing

GMO anticipated that the Project will only take approximately four months to complete.<sup>102</sup> With this relatively short groundbreaking-to-operation turn-around, and considering the currently delayed enforcement date of the CPP, the extended ITCs, the continuing decrease in cost and increases in efficiency of solar technology, there is little explanation for GMO's insistence that now is the best time.

#### Rate Parity is the Real Motivator

GMO estimates that the energy market will reach rate parity with solar in a few years' time.<sup>103</sup> GMO admits the knowledge and experience is so that GMO may get into the market before solar technology reaches price and rate parity with GMO generation

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<sup>99</sup> Tr. Vol. 2, ANYANWU, 93:12 – 14.

<sup>100</sup> Tr. Vol. 2, ANYANWU, 94:10 – 95:17.

<sup>101</sup> Tr. Vol. 2, ANYANWU, 101:18 – 102:1.

<sup>102</sup> Tr. Vol. 2, IVES, 168:5 – 14 (“[O]ur hope is to receive the CCN . . . by the end of February . . . starting construction immediately and completing it by the end of July this summer.”)

<sup>103</sup> Tr. Vol. 2, IVES, 170:17 – 171:1.

rates.<sup>104</sup> GMO has presented no evidence how building the Greenwood Project before solar technology reaches rate parity is a benefit either to its investors, or the ratepaying public; or, if there is a benefit to GMO's investors, that the benefit outweighs the costs to the ratepaying public.

Conclusion: The Project is not in the Public Interest

The Staff agrees that solar, as a renewable resource, is beneficial and promotes the public interest.<sup>105</sup> Staff agrees that that diversification of GMO's fleet is also in the public interest. However, the Staff contends that the Project, *at this time*, does not benefit the public. When considering the negligible offset of carbon, insubstantial addition to capacity, and what little benefit the experience and knowledge provides to GMO, these benefits do not outweigh the price-tag of the Project, the waste of S-RECs, the lack of need, and the loss of efficiencies and price benefits from starting the project in the near future. Lastly, while Kansas City Power & Light employees would be receiving the knowledge and experience gained from the Project, only GMO customers would be footing the bill.<sup>106</sup>

A near-future project would mitigate many of the current drawbacks. It would be more efficient, more cost effective, somewhat closer in price to a least-cost alternative, able to continue to take advantage of extended ITCs and able to provide some assistance complying with the CPP, able to provide increased RECs for support of the CSEP, and able to provide the knowledge that GMO desires.

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<sup>104</sup> Tr. Vol. 2, IVES, 204:17 – 205:3 (“To take this first step now before there is rate parity”).

<sup>105</sup> Tr. Vol. 2, LYONS, 423:1 – 3.

<sup>106</sup> Tr. Vol. 2, IVES, 233:13 – 16 “Only GMO customers will pay for the facility that provides that knowledge, yes.”

**III. If GMO's CCN Application does not meet the criteria set forth by Tartan, is there an exception that would still permit the Commission to grant the CCN?**

As described in section II above, the language in *Intercon Gas* interprets § 393.170 in a fashion that suggests analysis with the Tartan Factors are not a checklist, but a balancing test.<sup>107</sup> The Commission is not bound by *stare decisis* based on prior administrative decisions,<sup>108</sup> but the Commission is a creature of statute and can function only in accordance with its enabling statutes.<sup>109</sup> Thus, if administrative decisions rely on statutes, the Commission must, at a minimum, adhere to the statutory requirements. Relevant here, § 393.170, RSMo, authorizes the Commission to grant certificates of convenience and necessity when the proposed project is “necessary or convenient for the public service.” And while the Tartan Factors, as originally enumerated in *In re Intercon Gas, Inc.*,<sup>110</sup> upheld in *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*,<sup>111</sup> and crystalized in the eponymous *In re Tartan Energy*,<sup>112</sup> are administrative decisions, these factors help guide the application of 393.170, RSMo.

Ultimately, the Commission must determine if a project is “necessary or convenient for the public service.” Staff argues the Tartan Factors have historically provided useful guidance to the Commission, and the Commission’s continued reliance

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<sup>107</sup> *State ex rel Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593 (Mo. App. 1993)(“The term “necessity” does not mean “essential” or “absolutely indispensable,” but that an additional service would be an improvement *justifying* its cost”)(emphasis added).

<sup>108</sup> *State ex rel. Aquila, Inc. v. Pub. Serv. Comm'n of State*, 326 S.W.3d 20, 32 (Mo.App. W.D. 2010), *opinion adopted and reinstated after retransfer* (Jan. 4, 2011).

<sup>109</sup> *State ex rel. MoGas Pipeline, LLC v. Missouri Pub. Serv. Comm'n*, 366 S.W.3d 493, 496 (Mo. 2012).

<sup>110</sup> 30 Mo.P.S.C. (N.S.) 554 (1991).

<sup>111</sup> 848 S.W.2d 593 (Mo.App. W.D. 1993).

<sup>112</sup> 3 Mo.P.S.C.3d 173 (1994).

on balancing those factors provides consistency and reliability in the Commission's administrative decisions.

**IV. Should the impact on rate payers be considered by the Commission when weighing GMO's CCN application?**

The Commission should consider the ultimate effect on ratepayers when evaluating a CCN application. First, § 393.170, RSMo, requires the Commission to consider whether an application is "necessary or convenient for the public service," which at least implies that the effect on the public must be considered. Moreover, case law further provides guidance on this issue.

In *In re UtiliCorp United Inc.*, the Commission evaluated an application for a CCN by UtiliCorp United Inc. to construct and operate a gas distribution system into the City of Salem and other unincorporated areas of Phelps County and Dent County, Missouri, that had not previously had any natural gas service.<sup>113</sup> In that case, the Commission directly considered the effect to the ratepayers. When granting the application the Commission stated that, in future evaluation, it would hold the Company responsible for any deleterious results of the project:

[T]he expansion into the Salem area will be allowed, but solely at the risk of the shareholders of UtiliCorp. Should the proposed project fail or, for any reason, prove to be economically inefficient or unsound, the Commission will likely assess project costs and operational losses against UtiliCorp and its shareholders.<sup>114</sup>

The Commission further required the company keep separate accounting records for the Salem service area, to be examined at the time of the next general rate case.<sup>115</sup> Moreover, the Commission noted that "it makes no finding or determination as to the

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<sup>113</sup> *In re UtiliCorp United Inc.*, GA-95-216, 4 Mo.P.S.C.3d 7 (1995).

<sup>114</sup> *Id.*

<sup>115</sup> *In re UtiliCorp United Inc.*, at 11.



prudence or ratemaking treatment to be given to this project and its associated costs.”<sup>116</sup>

UtiliCorp is instructive here, as GMO is proposing the expansion of its service into a new generation type (to it), primarily for its own “hands-on experience.” As a purely practical consideration, any certificate that approves the construction of a generation facility will have an impact on rates and rate payers. Staff argues that cost ought to be considered in determining whether a project is “convenient or necessary for the public service.”

Next, is the *Ag Processing* case.<sup>117</sup> In that case, AG Processing, Inc. challenged the Commission’s approved merger of two regulated power utilities.<sup>118</sup> On review, and relying on an earlier Missouri Supreme Court case involving ratemaking principles,<sup>119</sup> the Missouri Supreme Court found that the Commission had a duty to address the issue of how to treat recoupment of an acquisition premium paid by the purchasing company, regarding the Commission’s cost analysis when evaluating whether the proposed merger would be detrimental to the public.<sup>120</sup> Notably, how to treat the acquisition premium was an aspect that the Commission would have traditionally considered during a later ratemaking case.<sup>121</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n of State*, 120 S.W.3d 732, 733 (Mo. 2003).

<sup>118</sup> *Id.*, at 733.

<sup>119</sup> *State ex rel. Martigney Creek Sewer Co. v. Pub. Serv. Comm’n*, 537 S.W.2d 388, 399 (Mo. banc 1976) (stating that, for ratemaking purposes, recovery of the cost of an asset acquired from another utility depends on the reasonableness of the acquisition, among other considerations).

<sup>120</sup> *AG Processing*, at 736.

<sup>121</sup> *Id.*

*Ag Processing* involved mergers, and the instant matter is an application for a CCN; nevertheless, *Ag Processing* is relevant for two reasons. First, in evaluating merger applications under 393.190 RSMo, the Commission must consider whether the proposed action is “detrimental to the public interest.” While this standard is not the same as “necessary and convenient for the public service,” both standards require the Commission’s evaluation of how the proposed company action will affect the public.

Second, the Court required that the Commission take considerations traditionally left for ratemaking as part of the overall case, because the Court said, the Commission could determine “whether the acquisition premium was reasonable . . . as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public.”<sup>122</sup> Not only, then, should the Commission consider, as part of the case, the effect on ratepayers, but the Commission is permitted, and in the *AG Processing* case, had a duty, to consider ratemaking principles when reaching a decision.

The Commission is directed by statute to consider whether the public service—and by extension, the public—is aided through a convenient or necessary action of a regulated utility. Similar to *UtiliCorp* and *AG Processing*, the Commission should evaluate the cost to ratepayers in this case. Nothing prohibits the Commission from considering ratemaking principles, or issuing conditions that protect the ratepayer in a CCN case.

Therefore, all aspects of the Greenwood Project, including its cost and effect on rates, should be considered when determining whether it is in the public interest.

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<sup>122</sup> *AG Processing*, at 736.

**V. Who will benefit from any tax credits extended by the U.S. government should the project be approved?**

Staff agrees that, if GMO receives a CCN to build the Project, and incurs a tax liability sometime during 2021 or afterwards, for a period of up to twenty years after the construction of the Project, GMO would be able to take advantage of the ITC and reduce its tax liability.<sup>123</sup> Staff further agrees that, insofar as use of the ITC would reduce GMO's tax liability, the reduction in tax liability would create a corresponding reduction in GMO's revenue requirement, all other things being equal, which is used to calculate rates.<sup>124</sup>

**VI. If the Commission approves the CCN, should it impose any conditions?**

Section 393.170, RSMo, provides, when issuing a CCN, the Commission authority and discretion "to impose such condition or conditions as it may deem reasonable and necessary." Staff recommends the Commission not issue GMO a CCN; however, if the Commission decides to issue a CCN for the Project, Staff proposes several conditions that GMO would need to meet.<sup>125</sup>

***A. Operational Conditions***

The Staff proposed six different operational conditions for the Project:

- 1) That GMO file with the Commission a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks, or any underground facility the proposed construction will cross as required by 4 CSR 240-3.105(1)(B)1 or a statement that there are no electric and telephone lines, railroad tracks, or underground facilities on the project site.
- 2) That GMO file with the Commission the complete plans and specifications for construction of the proposed Greenwood Solar Facility that GMO has developed as required by 4 CSR 240-3.105(1)(B)2.

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<sup>123</sup> Tr. Vol. 2, LYONS, 442:8 – 443:10.

<sup>124</sup> Tr. Vol. 2, LYONS, 441:16 – 442:23.

<sup>125</sup> Staff Position Statement, p. 8 – 9.

- 3) That GMO file with the Commission all required approvals 4 CSR 240-3.105(1)(D) or seek an appropriate waiver prior to the granting of the authority sought, as provided by 4 CSR 240-3.105(2).
- 4) That GMO perform and file with the Commission an Interconnection Study demonstrating the project will not cause an adverse impact to the Company's distribution system prior to commencing construction. The major components of this study should include: an executive summary, description of the Solar PV equipment and point of interconnection, the projected distribution system conditions, load flow analysis, and fault analysis.
- 5) That GMO develop and file with the Commission a plan outlining its learning objectives for the Greenwood Solar Facility and a description of how GMO will evaluate those objectives prior to commencing construction.
- 6) That GMO file with the Commission an evaluation of its Plan required by Condition 5 after the Greenwood Solar Facility has operated for a period of 5 years or prior to GMO's application for a CCN for its next utility-scale solar facility.

During the course of the hearing, witnesses for GMO offered testimony to help satisfy these conditions. GMO made overtures to file in EFIS the information requested in (1),<sup>126</sup> (2),<sup>127</sup> and (3),<sup>128</sup> which would be agreeable to Staff to satisfy filing requirements for the Application. During testimony, GMO offered counter proposals to condition (4), proposing filing an interconnection study prior to the *completion* of construction (rather than prior to the start of construction), and condition (5), filing an outline of specific learning objectives prior to putting the plant into operation (rather than before construction), to which Staff agreed.<sup>129</sup> Lastly, GMO offered a counter-proposal to conditions (6)<sup>130</sup> that Staff rejected during the course of the hearing.<sup>131</sup>

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<sup>126</sup> Tr., Vol. 2, IVES, 187:23 – 188:7; BECK, 350:17 – 351:1.

<sup>127</sup> Tr., Vol. 2, BECK, 351:2 – 13.

<sup>128</sup> Tr., Vol. 2, BECK, 351:14 – 23.

<sup>129</sup> Tr., Vol. 2, IVES, 188:22 – 189:14; 189:15 – 191:3; BECK, 352:10 – 13; 352:14 – 353:1.

<sup>130</sup> Tr., Vol. 2, IVES, 189:15 – 191:9

<sup>131</sup> Tr., Vol. 2, IVES, 190:4 – 191:9; BECK, 353:2 – 353:18.

Staff recommends that the Commission include the six proposed conditions, numbers one through three as written, and four and five as amended by GMO. Staff recommends the Commission include condition six as previously proposed. Staff recommends that the Commission define satisfaction of the conditions to include filing the necessary documents, plans, and information in EFIS under this case number.

***B. Economic Conditions***

Additionally, Staff proposed three economic alternatives that would help balance the project in favor of the public interest, if the Commission decides to grant the CCN.

GMO acknowledges that the project is not the least cost option for this amount generation. GMO argues that the primary purposes for the project are employee experience and fleet diversification. Since the size of this project has no material impact on GMO's capacity and is "small" in comparison to the requirements of the CPP, it is not entirely clear how this particular project ultimately satisfies the fleet diversification requirement. Thus, the only remaining reason that GMO puts forward is its desire for hands-on experience.

Because GMO has been unable to articulate, beyond benefits to GMO, the particulars of any benefits the Greenwood Project will have to GMO customers, Staff contends that the primary beneficiary of the project is GMO. As a result, if the Commission chooses to issue the CCN in this case, Staff recommends that the Commission place the cost burden on the shoulders of GMO's shareholders, since they would be the primary beneficiaries. If GMO were to seek recovery of project costs in its next rate case, the Commission should disallow the costs sought at that time.

A second possible alternative Staff recommends is, if the Commission were to grant the CCN and decide to allow recovery of costs from ratepayers in GMO's next rate case, the Commission should allow recovery of no more than the amount of the least cost alternative to provide the same service as the Greenwood Project. All costs above the least cost alternative would be borne by GMO's shareholders. This option balances the *de minimis* benefits to GMO customers with the proportional cost of the Greenwood Project. As GMO remains the primary beneficiary of the project, GMO would retain the lion's share of the costs.

Finally, the third alternative Staff recommends is that GMO would be allowed to recover the least cost alternative, plus an opt-in for interested customers to who could choose to help pay the additional, non-economic, portion of the cost of the project, up to the project's full cost. Thus, consumers would be allowed to let their individual interest in solar guide whether benefit of the service would justify the cost of the project.

These economic alternatives would not be a new concept for the Commission to consider. As discussed *supra*, in the *UtiliCorp* certificate case regarding the expansion of natural gas into a previously unserved area, the Commission determined that:

[T]he expansion . . . will be allowed, ***but solely at the risk of the shareholders of UtiliCorp.*** Should the proposed project fail or, for any reason, prove to be economically inefficient or unsound, the Commission will likely assess project costs and operational losses against UtiliCorp and its shareholders.<sup>132</sup>

In any instance, Staff recommends that the Commission make no finding or determination as to the prudence or specific ratemaking treatment to be given to the project and its associated costs.

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<sup>132</sup> *In re UtiliCorp United Inc.*, GA-95-216, 4 Mo.P.S.C.3d 7 (1995)(emphasis added).

In this case, Staff opposes the CCN for the various reasons already stated. However, if the Commission chooses to issue a CCN in this case, Staff urges it to consider one of its three economic alternatives to help mitigate the issues raised today.

## **VII. Conclusion**

It is GMO's burden to prove, by a preponderance of the evidence, that the Project is necessary or convenient for the public service. In making that determination, *In re Tartan Energy* and the described Tartan Factors provide guidance, not as a checklist, but as guidance in weighing whether the Project is "an additional service justifying the cost."<sup>133</sup> Finally, the Commission may and should consider the effect to the ratepayer as part of its analysis in determining whether the Project is necessary or convenient for the public service.

GMO has not shown how there is a need for the project, or how the project is economical. Nor has GMO shown how the project is so beneficial or supportive of the public interest that such consideration would outweigh the lack of need or economics of the project.

There is little evidence why the Project should move forward now as opposed to the near future. Because there is no clear articulation of specific benefits to the investing and ratepaying public, beyond some sense of a need for experience, an observer is left wondering what the actual benefits are, and who is actually benefited. Accordingly, the Commission should deny the Application.

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<sup>133</sup> *State ex rel Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597-98 (Mo. App. 1993).

**WHEREFORE,** Staff respectfully requests the Commission deny GMO's Application, and in the alternative, require GMO to comply with one of the economic conditions herein recommended by Staff.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been delivered, transmitted by facsimile or by electronic mail, to all counsel of record on this 18<sup>th</sup> day of February, 2016.

**/s/ Marcella L. Mueth**