

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

In the Matter of the Cancellation of the Certificate of)
Convenience and Necessity Originally Approved in) File No. ED-2019-0309
File No. EA-2005-0180 and the LTS Rate Schedule)

MOTION FOR HEARING

COMES NOW the Office of the Public Counsel (“OPC”), the Missouri Industrial Energy Consumers (“MIEC”), and the Midwest Energy Consumers Group (“MECG”) (collectively referred to as the “Consumers”) and for their Motion for Hearing respectfully state as follows:

1. Through this pleading, Consumers ask that the Commission schedule an evidentiary hearing in this matter. As will be explained, an evidentiary hearing is required not only as a result of the standard historically applied by the Commission, but also as a result of Section 386.430. In order to properly consider Consumer’s request for a hearing, the Commission must appreciate the standard to be applied in this case. As such, this pleading will set forth the standard historically applied to requests to cancel a certificate or abandon utility service.

2. It is well established that “a public utility may not abandon service without Commission approval.”¹ In exercising this authority, the Commission, as it does when it initially considers a request for a convenience of convenience and necessity under Section 393.170.3, applies a standard of necessary or convenient to the public service.

The standard generally utilized by the Commission in abandonment cases is the converse of that applied in the grant of a certificate of public

¹ *Kansas City Power & Light Company*, Case No. HO-86-139, 29 Mo.P.S.C. (N.S.) 232, 247 (1987) (citing to *State ex rel. City of Kirkwood v. P.S.C.* (50 S.W.2d 114, 118 (Mo. banc. 1932)) (“KCPL”).

convenience and necessity: the public convenience and necessity no longer require the operation of the service in question.²

Recognizing then that the standard is the converse of that applied when a utility initially applies for a certificate of convenience and necessity, it logically follows that the Commission should follow that same procedure when it considers a request to cancel the CCN. In this regard, Section 393.170 provides the statutory framework for the consideration of an application for convenience and necessity. Subsection 3 provides that “[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall **after due hearing** determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.”³ Therefore, just as the Commission is required to conduct a hearing for the consideration of an application for a certificate, logic would dictate that the Commission must also hold such a hearing when considering a request to cancel the certificate.

3. The need to hold an evidentiary hearing in this matter is not only required by statutory considerations, but also by the standard to be applied in this matter. In 1987 KCPL filed an application to abandon its steam operations and convert those customers to electric service. In that case the Commission established a balancing test to determine whether “the public convenience and necessity no longer require the operation of the service in question.”

The standard is met by applying a balancing test, weighing the losses incurred by the utility against any public need for the service. The essential factors to be considered are: (1) the cost of providing the service; (2) whether the service can be operated at a profit; (3) the customer demand for the service; (4) whether an alternative service is available.⁴

² *Id.* (citing to *St. Joseph Light & Power Company*, 22 Mo.P.S.C. (N.S.) 180, 182 (1978)).

³ Section 393.170.3 (emphasis added).

⁴ *Id.* at 247. Consumers don’t necessarily agree that the 32 year old *KCPL* balancing test completely recognizes all of the appropriate factors for a utility abandonment of service. For instance, at a minimum,

Clearly, the Commission's ability to consider the factors included in its balancing test may only be undertaken by conducting an evidentiary hearing and accepting evidence on these factors.

4. Finally, a hearing is mandated by Section 386.430. That section provides that:

In all trials, actions, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

Clearly, through its Application, Ameren seeks to "set aside" the Commission's previous determination that the M7M certificate is "necessary or convenient for the public service." Section 386.430 provides that in meeting its burden of proof, Ameren must show "by clear and satisfactory evidence" that the Commission's previous determination is no longer reasonable. Ameren is only able to provide this "clear and satisfactory evidence" through a Commission evidentiary hearing.

5. The procedure for a request to cancel a certificate of convenience and necessity was also demonstrated in the previously referenced KCPL case. As the Commission's order in that matter readily demonstrates, the Commission conducted a "formal evidentiary hearing."⁵ Just as the Commission conducted a formal evidentiary hearing in the KCPL case, the Commission should also conduct an evidentiary hearing in this matter.

the Commission should consider public interest just as it does under the Tartan standard for the grant of a certificate of convenience and necessity.

⁵ KCPL at 234.

