

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

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

**PUBLIC COUNSEL’S OBJECTION TO THE NON-UNANIMOUS
STIPULATION AND AGREEMENT**

COMES NOW the Office of Public Counsel (“OPC” or “Public Counsel”) and pursuant to Commission Rule 4 CSR 240-2.115(2)(B) hereby files its Objection to the Non-unanimous Stipulation and Agreement filed on August 31, 2016 by Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), the Commission’s Staff (“Staff”), Missouri Department of Economic Development – Division of Energy (“DE”), Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”), and United for Missouri, Inc. (“UFM”) as follows:

1. On April 27, 2016 Ameren Missouri filed its *Application for a Blanket Certificate of Public Convenience and Necessity* requesting the Missouri Public Service Commission (“Commission”) issue a blanket certificate of public convenience and necessity (“CCN”) “authorizing it to construct, install, own, operate, maintain and otherwise control and manage various solar generation facilities in its service territory.” Doc. No. 18, p. 1.
2. On August 31, 2016, Ameren Missouri, Staff, DE, Renew Missouri, and UFM filed their *Non-unanimous Stipulation and Agreement* wherein those parties recommended that Ameren Missouri be granted a CCN permitting it to “partner with customers to construct and own distributed solar facilities located on those customers’ premises[.]” Doc. No. 65, p.1.

3. Public Counsel objects to the *Non-unanimous Stipulation and Agreement* because it fails present a plan meeting the requirements set forth in the CCN statute, section 393.170 RSMo, and the Commission's Rules.

4. The authority for granting a CCN is found in section 393.170 RSMo. Section 393.170.1 RSMo provides, in part, "[n]o ...electrical corporation ...shall begin construction of ...electrical plant ... without having first obtained the permission and approval of the commission."

5. Before a certificate can be issued "a certified copy of the charter of such corporation shall be filed in the office of the commission, showing that it has received the required consent of the proper municipal authorities." Section 393.170.2 RSMo.

6. Section 393.170.3 RSMo. provides the standard to be applied when evaluating an application, stating:

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

7. The Missouri Court of Appeals has explained the legal standard as follows:

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. Intercon Gas, Inc. v Pub. Serv. Comm'n, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

8. When evaluating applications for certificates of convenience and necessity, the Commission frequently considers the five “tartan factors”. The Tartan factors, first described in a Commission decision regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest. *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173, 177 (1994).

9. The company’s application, as supplemented by the *Non-unanimous Stipulation*, does not demonstrate the project is necessary to provide safe and adequate service or that it is an improvement justifying its cost. According to the company’s application, Ameren Missouri:

(1) “does not yet know which customers will participate in this program.” Doc. No. 18, p. 5.

(2) “does not have exact locations at which these solar facilities will be sited.” Doc. No. 18, p. 5.

(3) admits “construction plans have not been finalized” Doc. No. 18, p. 5.

(4) admits it has not identified or requested “the permits and approvals required for the construction of each facility.” Doc. No. 18, p. 5.

(5) admits it has not determined if any facilities will require crossing any “electric or telephone lines, railroad tracks or underground facilities.” Doc. No. 18, p. 5.

10. The *Non-unanimous Stipulation and Agreement*, does not provide such required information for the Commission to consider when making its determination. The stipulation merely provides that “Signatories will review” the information upon submission by the company. This procedure developed by Ameren Missouri would minimize the Commission’s oversight. In

effect, the signatories to the *Non-unanimous Stipulation and Agreement* ask the Commission to pre-approve Ameren's request to spend 10 million dollars without *any* specific plans. Such a proposal does not actually give the Commission anything to consider and, if granted, is not the specific authority required for the construction of an electric plant. *See generally StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. Ct. App. W.D. 2005). The Commission must address conditions existing at the time the CCN is requested. Ameren Missouri's application, as supplemented by the *Non-unanimous Stipulation and Agreement*, is devoid of any required details and so must be rejected by the Commission.

11. Furthermore the company's application, as supplemented by the *Non-unanimous Stipulation and Agreement*, fails to demonstrate the proposed project is an improvement justifying its cost. The cost is known – 10 million dollars. However, the company does not provide any quantification of putative benefits that would enable Ameren Missouri to meet its burden to show the cost of the project is required to provide safe and adequate service or otherwise justified.

12. The signatories to the *Non-unanimous Stipulation and Agreement* attempt to justify the project as a means for Ameren Missouri to explore "learning opportunities" and "key questions to explore." Absent from either is any quantification of putative benefits. In fact, a review of the items listed in Appendix B of the *Non-unanimous Stipulation and Agreement* reveals it to be little more than a list of (1) marketing research plans ("[e]xplore which types of customers are most interested in the program, and under what terms they would participate"), (2) documentation the company should develop before undertaking a project ("[w]hat contract terms are necessary in order to make this type of arrangement work"), and (3) questions that could be

answered without the 10 million dollar project (“[w]hat levels and structures of host site compensation are offered by other IOUs”).

13. Importantly, Ameren Missouri does not explain why investigating these “opportunities” and “questions” provides any benefit to ratepayers. One listed “learning opportunity” suggests that “Ameren Missouri should also be able to determine if there are any specific financial benefits from this form of solar generation.” Ameren Missouri inverts the CCN process by attempting to justify its project with a commitment to determine the very things it is required to prove *before* a CCN is granted.

14. The Commission’s rules at 4 CSR 240-3.105 supplement the CCN statute and require applicants to provide certain information with a petition. This information has not been provided. The company has not filed with the Commission a list of all electric and telephone lines of regulated and non-regulated 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. The company has not filed the complete plans and specifications for construction of the proposed facilities with the Commission as required by 4 CSR 240-3.105(1)(B)2. The company has not filed with the Commission a statement that approval of affected governmental bodies is unnecessary or evidence of all required approvals as required by 4 CSR 240- 3.105(1)(C) and (D).

15. For the foregoing reasons, Public Counsel objects to the *Non-unanimous Stipulation and Agreement*. Public Counsel will provide further explanation in its rebuttal testimony.

WHEREFORE Public Counsel OBJECTS to the *Non-unanimous Stipulation and Agreement* filed on August 31, 2016.

Respectfully,

/s/ **Tim Opitz**

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 7th day of September 2016:

/s/ **Tim Opitz**
