BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF RENEW MISSOURI

Andrew J. Linhares, #63973
1200 Rodgers St, Suite B
Columbia, Mo 65201
andrew@renewmo.org
(314) 471-9973 (T)
(314) 558-8450 (F)

ATTORNEY FOR EARTH ISLAND
INSTITUTE d/b/a RENEW MISSOURI

November 18, 2016

COMES NOW Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), by and through counsel, pursuant to rule 4 CSR 240-2.140 and the Commission's September 7, 2016 Order, and for its Reply Brief in the above-captioned case states as follows:

I. INTRODUCTION

Renew Missouri is very interested in programs that increase the amount of renewable energy in Missouri. It is because of this dedication to renewable energy in Missouri that Renew Missouri has joined with Ameren, the Missouri Division of Energy and Commission Staff in supporting the Non-Unanimous Stipulation and Agreement ("the Stipulation").

Because the Office of Public Council (OPC) is the only party in opposition to the Agreement, this Reply Brief will focus on responding to the issues raised in the post hearing brief submitted by OPC. OPC's opposition to the joint settlement runs counter to both the law and existing Commission practice.

II. DISCUSSION

OPC's 25-page post-hearing brief can be crystalized into three main points and one minor point. Those points are: 1) That this service is not needed; 2) that the benefits are not quantified so cannot be fairly weighed; and 3) the law requires information to be provided before Commission grants a Certificate of Convenience and Necessity (CCN). The last minor point relates to the establishment clause of the first amendment.

This Brief addresses each of those issues and argues that although the benefits of the Agreement cannot yet be precisely quantified, they are manifold and justify the cost.

A. The service is necessary or convenient for the public service.

No party argues that the additional solar energy gained by the Stipulation is necessary to meet demand. As repeated by nearly every party, "[t]he term 'necessity' does not mean

'essential' or 'absolutely indispensable, but that an additional service would be an improvement justifying its cost."[1] OPC takes the narrow view that the only way an improvement's cost could be justified is by quantifiable dollars and cents, and because some benefits of this program are largely intangible, it can never justify its cost.

The Commission disagreed with this position in EA-2015-0256. In its March 2, 2016 *Report and Order*, the Commission explained that by constructing a small solar pilot project GMO would gain "'hands on' experience in designing, constructing, and operating a solar facility,"[2] and that "[t]he benefits GMO and its ratepayers will ultimately receive from the lessons learned from this pilot project are not easily quantifiable since there is no way to measure the amounts saved by avoiding mistakes that might otherwise be made. But it is likely that future savings will be substantial."[3]

Through that proceeding, the Commission demonstrated that value to ratepayers can be realized through knowledge and experience gained, and that while financial benefits can be gained through mistakes avoided, such benefits do not show up on a balance sheet. Neither of these values were reduced to mere dollars and cents, nor could they be, yet the Commission found GMO's application to be in necessary or convenient.[4] OPC criticizes parties' reliance on EA-2015-0256, noting that it is on appeal. However, the fact that a proceeding is currently undergoing review does not reduce is persuasive value.

It is also worth restating that the benefits of this program are not limited to the intangible knowledge and experience that Ameren Missouri hopes to gain. There are also the very real, tangible benefits that will come from installing 5 MW of solar generation. These include

[1] *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm'n*, 848 S.W.2nd 593, 597 (Mo. App. W.D. 1993).
[2] *Report and Order,* EA-2015-0256, (March 2, 2016) pg.14.
[3] Id. at 15.
[4] Id. at 18.

compliance with Missouri's Renewable Energy Standard ("RES"), reductions in peak demand, savings on transmission and distribution costs, and the many other benefits that result from the installation of large-scale solar energy near load centers. These benefits are well documented and have been shared with the Commission in a number of dockets.

B. A variance, if necessary would be justified in this unique circumstance.

In its Post Hearing Brief, OPC concedes that Commission rules may be waived for "good cause."[5] So the issue, distilled to its most succinct form, is, does good cause exist in this case? Parties to the Stipulation, applicable caselaw and previous Commission findings would suggest it does.

Under OPC's interpretation of the law, each site would require a separate proceeding before the Commission, wasting valuable time and resources,[6] a burden that would ultimately be borne by the ratepayers. No party suggests that Ameren should be allowed to evade Commission oversight. The Stipulation lays out how site selection will take place and how parties may provide their input. The point of contention here is simply one of the order in which events happen.

Because the sites for the solar arrays have not been selected yet, Ameren is currently unable to provide the Commission with the information required by 4 CSR 240-3.105. However, before any ground is broken or rooftop scaled, Ameren and parties will provide the Commission with such information, as Appendix A of the Stipulation provides.

4 CSR 240-2.060(4) provides that variances can be granted to applications for good cause shown. Furthermore, 4 CSR 240-2.015 allows the Commission to waive its rules for good cause, and 4 CSR 240-3.015 provides that the chapter 2 variance and waiver rules apply for chapter 3 as

[5] *Post Hearing Brief of the Office of Public Council*, EA-2016-0208 (November 4, 2016) pg. 20.
[6] *Order Granting Certificate of Convenience and Necessity,* EA-2011-0368 (June 1, 2011) pg. 3.

well. Here, because all Commission reporting requirements will be met before construction takes place, there is good cause to grant a variance or a waiver.

C. *The Commission has the Authority to Grant a Blanket CCN*

OPC argues that the Commission has no authority to grant a blanket CCN.[7] Unfortunately, despite the well established use of this tool in Commission proceedings in the past,[8] OPC is unable to cite to any authority to support this blanket prohibition. OPC relies on *StopAquila.Org v. Aquila, Inc*., 180 S.W.3d 24 (Mo. Ct. App. 2005), which warns of granting electric companies "cart blanche to build wherever they wish."[9] However, the reason for this warning was to ensure "[A] broad range of issues, including county zoning, can be considered in public hearings before the first spadeful of soil is disturbed."[10] Appendix A of the Stipulation accounts for this by allowing parties to review site information. Additionally, nothing in the Stipulation implies that Ameren would be allowed to sidestep county zoning authority or requirements. *StopAquila* speaks directly to that point.[11]

It is also worth noting that *StopAquila* was a case about a natural gas powered electric peaking plant and substation, whereas here the issue is about solar panels. While both create electric energy, that is the extent of their similarities. Solar panels are installed every week by homeowners all across the state, the same cannot be said for natural gas plants. Therefore caution should be exercised when attempting to cross apply such rules.

D. *Establishment Clause*

In Appendix A of the Stipulation, parties agree that site selection criteria will include

[7] *Post Hearing Brief of the Office of Public Council*, EA-2016-0208 (November 4, 2016) pg. 6,7, 22.
[8] See, EA-2011-0368.
[9] StopAquila.Org v. Aquila, Inc., 180 S.W.3d 24,36 (Mo. Ct. App. 2005).
[10] Id.
[11] "While it is true that the Commission has extensive regulatory powers over public utilities, the legislature has given it no zoning authority" StopAquila.Org v. Aquila, Inc., 180 S.W.3d 24,30 (Mo. Ct. App. 2005).

categorization of the type of site including, "Type of Facility: (Office, Educational, Industrial, Manufacturing, Retail, **Religious**, Data center, Warehouse, Healthcare, Military, Recreational, Other." (emphasis added.) OPC has argued that the inclusion of "Religious" as a category violates the Establishment clause of the First Amendment. This is a blatant mischaracterization of the parties' intent. Simply recognizing whether a building is used for religious purposes does not rise to the level of a religious preference or test. Church, synagogues, mosques, and other types of religious buildings are often of a unique character, different from commercial businesses, governmental buildings, hospitals. This difference may affect the type of solar system that can could be installed on the property, and taking account of different building types is a relevant data point to consider in site selection. Nowhere in the Agreement does it state that certain religions are to be given more or less consideration, or that religious buildings in general should be favored or disfavored.

III. CONCLUSION

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

Respectfully Submitted,

/s/ Andrew J. Linhares
Andrew J. Linhares, # 63973
1200 Rogers St, Suite B
Columbia, MO 65201
T: (314) 471-9973
F: (314) 558-8450
Andrew@renewmo.org

ATTORNEY FOR EARTH ISLAND INSTITUTE d/b/a RENEW MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed, faxed, or emailed to all counsel of record on this 18th day of November 2016.

/s/ Andrew J. Linhares
Andrew J. Linhares