

**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)
Necessity Authorizing it to Offer a Pilot Distributed)
Solar Program and File Associated Tariff.)
File No. EA-2016-0208

**MISSOURI DIVISION OF ENERGY'S
INITIAL BRIEF**

COMES NOW the Missouri Division of Energy, by and through the undersigned counsel,
and for its *Initial Brief* in the above styled matter, states:

Contested Issues

*Do the terms contained in the Non-unanimous Stipulation and Agreement (now
a Joint Position statement) present a plan meeting the requirements set forth in the CCN
statute, section 393.170 RSMo?*

Yes, the terms contained in the *Non-unanimous Stipulation and Agreement*
("Stipulation") present a plan meeting the requirements set forth in the Certificate of
Convenience and Necessity ("CCN") statute, Section 393.170, RSMo. Section 393.170, RSMo.
states:

1. **No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.**
2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. **Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and**

secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The 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. **The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.** Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void. **(Emphasis added.)**

Section 393.170, RSMo. sets out three requirements pertinent to the present CCN application: (1) Ameren Missouri must obtain the permission and approval of the Commission before beginning construction; (2) Ameren Missouri must file with the Office of the Commission a certified copy of its corporate charter and a verified statement showing that Ameren Missouri has received the consent of municipal authorities; (3) Ameren Missouri must comply with any condition(s) imposed by the Commission.

The first requirement is the subject of this proceeding. No party has alleged that Ameren Missouri has started construction of the proposed facilities described in the Company's testimony as the "Partnership Program." Therefore, Ameren Missouri will have obtained the permission and approval of the Commission when the Commission issues an order finding the proposed facilities are necessary or convenient for the public service.

Compliance with the second requirement will depend on where the proposed facilities are ultimately located. When the sites of the proposed facilities are known, Ameren Missouri will file with the Office of the Commission a certified copy of its corporate charter and a verified statement showing that Ameren Missouri has received the consent of the applicable municipal authorities, siting as described in the Stipulation.

The third requirement will require Ameren Missouri to comply with all the conditions set out in the Stipulation, which will be incorporated when the Commission issues an order approving the Stipulation. Therefore, the terms contained in the Stipulation present a plan meeting the requirements set forth in the CCN statute, Section 393.170, RSMo.

The Commission approved a CCN for a similar request in *In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval and a Certificate of Public Convenience And Necessity Authorizing It to Acquire, Construct Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in the Smart Grid Project Area of Jackson County, Missouri*, (“Smart Grid application”) in which Kansas City Power and Light Company (“KCPL”) was granted authority to construct and operate multiple small solar energy electrical production facilities located in Kansas City, Missouri.¹ The Smart Grid application explained that the solar facilities would be located primarily on the rooftops of schools, commercial facilities, and residences; the solar facilities would be small, ranging in size from 5 kW and 100 kW; contractors installing the solar facilities would obtain any necessary local building permits; and the solar facilities would be financed using KCPL’s general funds.² Additionally, the Smart Grid application explained that not all of the locations for the solar facilities had been identified.³ The Commission held that the placement of solar arrays on a few buildings, subject to local building permits in a way that does not implicate local zoning requirements, was distinguishable from the facts in *Stopaquila.org v. Aquila, Inc.*, 180 S.W. 3d 24 (Mo Ap. W.D. 2005), which concerned the placement of a natural gas-fired turbine electrical generating plant that could potentially disrupt a residential

¹Order Granting Certificate of Convenience and Necessity, pg. 1, File Number EA-2011-0368, Issued June 10, 2011.

² Order Granting Certificate of Convenience and Necessity, pg. 1-2.

³ Id. at 2.

neighborhood without regard to local zoning requirements.⁴ The Commission further stated that interpreting *Stopaquila.org* to require KCPL to have to come back before the Commission with a new application for a CCN each time it identifies a new structure on which it wishes to install a small solar production facility would waste both utility and Commission resources.⁵

As in the Smart Grid application case, Ameren Missouri's Partnership Program seeks to site, construct, and operate small-scale solar generation facilities on property owned by Ameren Missouri business customers.⁶ Ameren Missouri hopes to build three to five solar facilities at a capacity of 100 kW to two MW in size.⁷ Similarly, contractors installing the solar facilities will obtain any necessary local building permits and solar facilities will be financed using Ameren Missouri's general funds (with potential contributions from host sites). While the specific locations for these solar facilities have not yet been determined, paragraphs 4, 5, and 8 of the Stipulation, as well as Appendix A, provide that the Company will use specified criteria to select a site and file information regarding the selection process. Signatories will evaluate this information and take any disputes about site eligibility to the Commission.⁸ Despite these provisions related to solar facility site review, the Office of the Public Counsel ("OPC") argues that the Court of Appeals' *Stopaquila.org* decision requires Ameren Missouri to come back before the Commission with a new application for a CCN each time it identifies a new structure on which it wishes to install a small solar production facility or to negotiate multiple agreements with potential partners to locate solar facilities on their properties prior to seeking Commission approval. OPC's position is in direct opposition to the Commission's order in the Smart Grid application decision and would waste utility and Commission resources. Additionally, as

⁴ *Id.* at 3.

⁵ *Id.*

⁶ Barbieri Direct Testimony, pg. 3.

⁷ Tr. Vol. 1, 75.

⁸ EA-2016-0208, Stipulation, pages 2 and 3 and Appendix A.

Ameren Missouri witness Mr. Barbieri testified at the evidentiary hearing, it is not realistic for Ameren Missouri to develop detailed plans to site distributed generation on customer-owned property prior to seeking Commission approval for those locations because business customers don't want to spend considerable resources developing plans to site generation on their property without assurances of the timeline for installation, which can vary significantly based on stakeholder positions at the Commission.⁹

Therefore, the terms contained in the Stipulation present a plan meeting the requirements set forth in the CCN statute, Section 393.170, RSMo., and are consistent with the Commission's findings in the Smart Grid application decision. Ameren Missouri will have obtained the permission and approval of the Commission when the Commission issues an order finding the proposed facilities are necessary or convenient for the public service. While the specific locations for these solar facilities have not yet been determined, paragraphs 4, 5, and 8 of the Stipulation, as well as Appendix A, provide that the Company will use specified criteria to select a site and file information regarding the selection process. Signatories will evaluate this information and take any disputes about site eligibility to the Commission.¹⁰ These conditions can be incorporated into the Commission's order approving a CCN for the Partnership Program when the Commission issues an order approving the Stipulation.

⁹ Tr. Vol. 1, 102-104.

¹⁰ EA-2016-0208, Stipulation, pages 2 and 3 and Appendix A.

Does the evidence establish that Ameren Missouri's proposed project as presented in the Non-unanimous Stipulation and Agreement (now a Joint Position statement), for which it seeks a CCN, "necessary or convenient for the public service" within the meaning of Section 393.170, RSMo?

Yes, the evidence establishes that Ameren Missouri's proposed project as presented in the Stipulation for which it seeks a CCN is "necessary or convenient for the public service" within the meaning of Section 393.170, RSMo. As stated above, Section 393.170, RSMo. states in part, "The 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." For the proposed Partnership Program to be "necessary or convenient for the public service," the courts have held, **"[t]he 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. Public Service Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993); citing, *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d at 219. Although not required by law, the Commission has traditionally used the "Tartan factors" from its 1994 report and order in the case *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994), to evaluate whether a proposed production facilities are "necessary or convenient". The evidence provided by Ameren Missouri and the other Signatories to the Stipulation, establish that the Partnership Program fulfills the Tartan factors and is therefore "necessary or convenient for the public service" within the meaning of Section 393.170, RSMo.

The Tartan factors are:

- There must be a need for the service;
- The applicant must be qualified to provide the proposed service;
- The applicant must have the financial ability to provide the service;
- The applicant's proposal must be economically feasible; and
- The service must promote the public interest.

The first Tartan factor is “need.” Ameren Missouri has stated that it does not presently need the solar facilities contemplated in the Partnership Program to meet capacity or statutory requirements. Even if the Company does not “need” this project today to meet capacity or statutory requirements, the project is still an improvement which would justify its cost because Ameren Missouri has stated that there are customers who want the “additional service” this project would provide, and that the project would provide a learning experience for the Company.¹¹ Notably, more than 60 percent of the largest companies across the country have established goals to increase their use of renewable energy, demonstrating the increased commercial and industrial customer interest in gaining access to zero carbon emitting, renewable energy.¹² The Partnership Program will provide other improvements, specifically: providing the Company with a learning opportunity regarding distributed solar generation on customer-owned property; allowing the Company to reduce carbon emissions; and improving Ameren Missouri's ability to comply with future environmental compliance and renewable energy requirements.¹³

This evidence of need is consistent with the Commission's findings in its recent decision in *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*

¹¹ Missouri Public Service Commission Case No. EA-2016-0208, *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 Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, Application for a Blanket Certificate of Public Convenience and Necessity, April 27, 2016, page 3.

¹² Corporate Renewable Energy Buyers' Principles. 2016. Home page. <http://buyersprinciples.org/>.

¹³ Division of energy witness Hyman Surrebuttal Testimony, p. 4.

to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri, (“Greenwood”), in which the Commission found that the evidence demonstrated a need for the additional solar generation facilities because the project would give the utility, “‘hands-on’ experience in designing, constructing, and operating a solar facility with a view toward eventually building additional solar facilities. Gaining that experience now is important so that GMO can remain in front of the upcoming adoption curve. Furthermore, GMO will need to build more solar generating facilities, as well as other renewable generating resources; to comply with the federal Clean Power Plan or other regulations designed to reduce the injection of carbon dioxide and other pollutants into the atmosphere.” Here too Ameren Missouri will gain from the “hands-on” experience of designing, constructing, and operating small-distributed solar facilities sited on customer-owned property. Gaining this experience now is important so that Ameren Missouri can determine the optimum mix of utility-scale and distributed solar to construct to comply with the federal Clean Power Plan or other regulations designed to reduce the injection of carbon dioxide and other pollutants into the atmosphere.

OPC has not challenged the Ameren Missouri’s qualifications or financial ability to provide the proposed services, so those factors are not at issue in this case. Nonetheless, finding that Ameren Missouri has fulfilled these two factors is consistent with the Commission findings in its recent Greenwood decision, where it stated, “GMO has constructed and operated electrical generation facilities of various types for many years. Its desire to gain more experience in constructing and operating a pilot solar plant provides no reason to doubt its ability to build and operate that plant.”¹⁴ Similarly, Ameren Missouri has constructed and operated electrical generation facilities of various types for many years and its desire to gain more experience in constructing and operating small distributed solar facilities on customer owned property provides

¹⁴ *Report and Order*, 14-15.

no reason to doubt its ability to build and operate the solar facilities contemplated in the Partnership Program. The Commission also stated in its Greenwood decision, “The cost to construct the proposed pilot solar plant is relatively small compared to GMO’s financial resources. As a result, GMO will be able to pay those construction costs from its available funds.”¹⁵ Again, the cost to construct the solar facilities contemplated in the Partnership Program are relatively small compared to Ameren Missouri’s financial resources; therefore, Ameren Missouri will be able to pay those construction costs from its available funds.

OPC has challenged the economic feasibility of the Partnership Program and whether the project promotes the public interest arguing that the Commission should not approve the CCN for the Partnership Program because Ameren Missouri has not conducted a quantitative cost-benefit or economic feasibility analysis of the project. While Ameren Missouri admits it has not done a quantitative cost-benefit or economic feasibility analysis, it states that to perform such an analysis would be highly speculative at this point.¹⁶ Ameren Missouri has however calculated the average annual rate impact of the Partnership Program will be \$0.42 per customer.¹⁷ This average annual rate impact is lower than the average annual rate impact calculated in the recent Greenwood case.¹⁸ The Commission stated in the Greenwood decision, “The 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.”¹⁹

Similarly, the benefits to Ameren Missouri and its ratepayers from the learning objectives identified in the Stipulation are not easily quantifiable at the outset, but in light of the

¹⁵ *Report and Order*, 15.

¹⁶ Tr. Vol. 1, 101-102.

¹⁷ Tr. Vol. 1, 80.

¹⁸ File No. EA-2015-0256, Tr. Vol. 2, 447 & 448.

¹⁹ *Report and Order*, 15.

need for additional renewable energy in the near future to meet environmental regulations and growing customer demands it is likely that future savings will be substantial. Additionally, the Commission did not require a quantitative cost-benefit analysis to be performed in its Greenwood²⁰, Smart Grid application,²¹ or O’Fallon²² cases, all of which resulted in approved CCN’s for solar facilities. In finding that the solar facility in the Greenwood case would promote the public interest the Commission stated, “GMO’s customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere. It is clear, solar power will be an integral part of this development, building a bridge to our energy future.” Here too Ameren Missouri’s Partnership Program will promote the public interest because its customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere.

As discussed above, the Partnership Program will create improvements that benefit both Ameren Missouri and its ratepayers at a justifiable cost. Since the evidence establishes that the Partnership Program will create improvements at a justifiable cost, Ameren Missouri’s proposed project as presented in the Stipulation for which it seeks a CCN is “necessary or convenient for the public service” within the meaning of Section 393.170, RSMo.

²⁰ *Report and Order*, File No. EA-2015-0256, March 2, 2016.

²¹ *Order Granting Certificate of Convenience and Necessity*, File No. EA-2011-0368, June 10, 2011

²² *Order Approving Amended Non-Unanimous Stipulation and Agreement*, File No. EA-2014-0136, April 8, 2015.

Does the evidence demonstrate the company has provided the information required to comply with the Commission's rules at 4 CSR 240-3.105?

Yes, the evidence demonstrates that the Company has provided the information required to comply with the Commission's rule at 4 CSR 240-3.105, or will provide the information prior to constructing the proposed facilities. Commission rule 4 CSR 240-3.105 requires, in pertinent part, an application for a CCN for electrical production facilities to include: (1) a description of the route of construction; (2) the plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable; (3) plans for financing; and (4) evidence of approval of affected governmental bodies when applicable.

As stated previously, not all of this information has been filed with the Commission to date. The original CCN application states that Ameren Missouri does not have specific sites selected, but will provide information about the selected sites once they are known.²³ Additionally, paragraphs 4, 5, and 8 of the Stipulation, as well as Appendix A to that agreement, provide that the Company will use specified criteria to select a site and file information regarding the selection process. Signatories will evaluate this information and take any disputes about site eligibility to the Commission.²⁴ The Stipulation sets out a process where Ameren Missouri will provide all of the required information specified in Commission rule 4 CSR 240-3.105 and further provides for a process by which parties to this case may bring disputes about that information to the Commission prior to Ameren Missouri constructing the proposed facilities. The Stipulation is consistent with the Commission's findings in the Smart Grid application case, in which KCPL applied for a blanket CCN to construct a specific amount

²³ EA-2016-0208, CCN Application, page 5.

²⁴ EA-2016-0208, Stipulation, pages 2 and 3 and Appendix A.

of solar facilities in the Kansas City area. Therefore, the evidence demonstrates that the Company has provided the information required to comply with the Commission's rule at 4 CSR 240-3.105, or will provide the information prior to constructing the proposed facilities.

Does the evidence show that good cause exists to support a waiver of the Commission's rules at 4 CSR-3.105?

A waiver of the Commission's rule at 4 CSR-3.105 is not necessary;²⁵ however, if the Commission believes a waiver is necessary, then the evidence shows that good cause exists to support a waiver of the Commission's rule at 4 CSR-3.105. Section 393.170, RSMo. gives the Commission authority to issue conditional CCNs, which the Commission has utilized in prior CCN applications. As stated previously, the Stipulation sets out a process where Ameren Missouri will provide all of the required information specified in Commission rule 4 CSR 240-3.105 and further provides for a process by which parties to this case may bring disputes about that information to the Commission prior to Ameren Missouri constructing the proposed facilities. Therefore, the evidence demonstrates that the Company has provided the information required to comply with the Commission's rule at 4 CSR 240-3.105, or will provide the information prior to constructing the proposed facilities. However, if the Commission believes that a waiver is necessary, then the evidence shows that good cause exists because the Partnership Program is unique in that it proposes to site utility-owned electrical production facilities on customer property. The customer siting requirements of the Partnership Program will require Ameren Missouri to work with host customers on a case-by-case basis to determine the optimum siting locations as well as terms and conditions for the operation of those facilities. These additional considerations, which are not present in utility-sited electrical production

²⁵ The Commission made no such waiver in the Smart Grid case.

facility applications, are evidence of good cause for a waiver of Commission rule 4 CSR 240-3.105 if the Commission believes a waiver is necessary.

Is the company's plan outlining treatment of the proposed facilities at the end of 25 years lawful under 393.190 RSMo?

Yes, the Company's plan outlining the treatment of the proposed facilities at the end of twenty-five (25) years is lawful under Section 393.190 RSMo. The Commission imposed no conditions regarding the treatment of the proposed solar facilities at the end of their useful life which were utility owned but customer sited when the Commission approved the application in the Smart Grid decision.²⁶ Ameren Missouri's witness Mr. Harding testified at the evidentiary hearing that Ameren Missouri thinks it is reasonable at the end of the 25 year term of the Partnership Program that participating customers have the option of having the solar facilities removed; purchase the solar facilities at their salvage value, of which would go back to ratepayers generally; or even renew the lease if there was remaining value to the customer in having the solar panels located on its property.²⁷ Mr. Harding further testified that if there were any legal requirements before Ameren Missouri were able to remove, sell, or renew the lease of the customer sited solar facilities he expected Ameren Missouri would comply with those requirements at that time.²⁸ Because there is no legal requirement that the Commission consider the treatment of the proposed facilities at the end of the 25 year term of the Partnership Program and Ameren Missouri has testified that it will comply with any legal requirements Ameren Missouri's plans giving participating customers the option to remove, sell, or renew the lease of the customer sited solar facilities is legal under Section 393.190 RSMo.

WHEREFORE, the Missouri Division of Energy respectfully files its *Initial Brief*.

²⁶ *Order Granting Certificate of Convenience and Necessity*, File No. EA-2011-0368, June 10, 2011

²⁷ Tr. Vol. 1, 74.

²⁸ Tr. Vol. 1, 77-78.

Respectfully submitted,

/s/ Alexander Antal

Alexander Antal

Associate General Counsel

Missouri Bar No. 65487

Department of Economic Development

P.O. Box 1157

Jefferson City, MO 65102

Phone: 573-522-3304

Fax: 573-526-7700

alexander.antal@ded.mo.gov

Attorney for Missouri Division of Energy

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 4th day of November, 2016.

/s/ Alexander Antal

Alexander Antal