

**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)	Case No. EA-2015-0256
It to Construct, Install, Own, Operate, Maintain)	
and Otherwise Control and Manage Solar)	
Generation Facilities in Western Missouri.)	

POSITION STATEMENT OF UNITED FOR MISSOURI, INC.

COMES NOW United for Missouri, Inc. (“UFM”), and submits its Position Statement in response to the *Joint Statement of Contested Issues* filed on February 4, 2016, in the above referenced cases. For its position statement, UFM states as follows:

UFM must note that there is not much evidence at this time inasmuch as there is no prefiled testimony. UFM states its position based on what little evidence there is in the form of the *Non-Unanimous Stipulation of Agreed Upon Facts* and the pleadings in the case.

List of Issues:

Issue 1: *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?*

UFM Position: In *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm’n*, 848 S.W.2d 593, 597-98 (Mo. App. 1993), the Western District Court of Appeals held that while “necessity” does not mean “essential” or “absolutely indispensable,” the additional service must be an improvement

justifying its cost. The Court also held that it is within the discretion of the Commission to determine when the awarding of a certificate is in the “public interest.” In this case, the solar generation facilities do not justify the cost. There is no need for the facilities to serve GMO’s customers. Therefore, the project is not in the public interest.

Issue 1a: *Does the evidence establish that there is a need for the project?*

UFM Position: No. GMO indicated in its *Proposed Procedural Schedule* that the project is not needed at this time to provide Solar Renewable Energy Certificates (“SRECs”) for compliance with the current Missouri Renewable Energy Standard (“RES”).

Issue 1b: *Is GMO qualified to provide the proposed project services?*

UFM Position: There is virtually no evidence on this issue. While it is possible to assume that GMO is capable to provide typical generation services, the *Proposed Procedural Schedule* indicates that GMO is seeking authority to build the project in order to obtain valuable hands on experience in operating a solar electric production facility. The implication is that GMO is not yet qualified to operate such a facility and will not be qualified until it has some experience. For the moment, UFM’s position must be that GMO is not qualified to provide the proposed project services.

Issue 1c.: *Does GMO have the financial ability to provide the project services?*

UFM Position: UFM has no position on this question.

Issue 1d: *Is GMO’s proposed project economically feasible?*

UFM Position: UFM must observe that there are projects that are more economically feasible than this proposed project. GMO indicated in its *Proposed Procedural Schedule* that the proposed project is not the least cost option at this time. Therefore, UFM's position must be no.

Issue 1e: *Does GMO's proposed project promote the public interest?*

UFM Position: No. In most cases, this standard of the Tartan test is a gloss on the others. "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."¹

The public interest determination is not a gloss in this case because the evidence for the other four standards is equivocal. In this case, the public interest is the key consideration. In other types of cases the Commission is routinely called upon to decide what is in the public interest. In such cases, the Commission must consider and decide all the necessary and essential issues.² In one case, the Commission went so far as to evaluate the opportunity cost of not pursuing an available alternative. "When alternatives with economic impacts are presented, an evaluation of the detriments of a particular alternative to the public interest must include consideration of the opportunity cost of not pursuing any available alternatives."³

In this case, the proposed project is not needed to serve load in the near future. The so called need is a desire based on a speculation. "The Project will provide the Company with

¹ *In re Tartan Energy Co.*, Case No. GA-94-127, Report and Order, issued September 16, 1994), p. 23.

² *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003).

³ *In re Aquila*, Case No. EO-2008-0046, Report and Order, issued October 9, 2008, p. 16.

valuable hands on experience in operating a solar electrical production facility which the Company **believes** will assist it in evaluating the **potential** of **future** large scale solar installations.”⁴ [emphasis added] The three megawatts of AC solar are not needed for compliance with the Missouri RES. And yet, GMO needs this experience to evaluate even more large scale solar installations that are not needed. GMO’s proposed project will thereby divert its efforts away from lesser cost projects which it is more qualified to operate. Therefore, the proposed project is detrimental to the public interest.

Issue 2: 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?

UFM Position: UFM is not aware of any exception to the statutory standard expressed in section 393.170 RSMo.

Issue 3: Should the impact on rate payers be considered by the Commission when weighing GMO’s CCN application?

UFM Position: Yes. As discussed in *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm’n*, supra, the improvement must justify the cost.

Issue 3a: If so, does the evidence establish that the project will have an impact on rate payers?

UFM Position: Yes, see UFM’s response to Issue 3e.

Issue 3b: If rate payer impact is an appropriate issue, does the effect violate the public interest?

UFM Position: Yes, see UFM’s response to Issue 3e.

⁴ See GMO’s *Proposed Procedural Schedule*, filed January 19, 2016, p. 2.

Issue 4: *Who will benefit from any tax credits extended by the U.S. government should the project be approved?*

UFM Position: The immediate benefit will be to GMO in the reduction of its income tax obligation. UFM recognizes that benefits derived from and costs imposed by tax credits are difficult to assess and quantify. However, UFM also expects GMO and other parties will identify tax credit benefits associated with the project for purposes of establishing the costs and benefits of the project itself. If so, UFM notes that those “benefits” are provided at a cost. Such “benefits” are detriments to others. Frederic Bastiat describes the use of governmental force for the benefit of certain property interests in his short treatise *The Law*:

Nothing, therefore, can be more evident than this: The law is the organization of the natural right of lawful defense; it is the substitution of collective for individual forces, for the purpose of acting in the sphere in which they have a right to act, of doing what they have a right to do, to secure persons, liberties, and properties, and to maintain each in its right, so as to cause justice to reign over all.

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Unhappily, law is by no means confined to its own sphere. Nor is it merely in some ambiguous and debatable views that it has left its proper sphere. It has done more than this. It has acted in direct opposition to its proper end; it has destroyed its own object; it has been employed in annihilating that justice which it ought to have established, in effacing amongst Rights, that limit which it was its true mission to respect; it has placed the collective force in the service of those who wish to traffic, without risk and without scruple, in the persons, the liberty, and the property of others; it has converted plunder into a right, that it may protect it, and lawful defense into a crime, that it may punish it.⁵

⁵ Frederic Bastiat, *The Law* 3, 5 (Ludwig von Mises Institute, 2007).

Issue 5: *If the Commission approves the CCN, should it impose any conditions?*

UFM Position: Yes, the Commission should not perpetuate plunder. The Commission should review the application as if there were no tax credits and condition the approval of the CCN upon GMO not receiving the benefit of the ITC.

WHEREFORE, United for Missouri, Inc. respectfully requests the Commission accept this Position Statement of United for Missouri, Inc.

Respectfully submitted,

By /s/ David C. Linton
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Dated: February 8, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission on the 8th day of February, 2016.

/s/ David C. Linton
David C. Linton