

**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
STATEMENT OF POSITIONS**

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

Contested Issues

Issue 1: 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?

Position 1: Yes, the terms contained in the *Non-unanimous Stipulation and Agreement*, 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 pertinent requirements 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. Ameren Missouri will be required to 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 when the siting of locations of the proposed facilities are completed as described in the *Non-unanimous Stipulation and Agreement*. The third requirement

will require Ameren Missouri to comply with all the conditions set out in the *Non-unanimous Stipulation and Agreement*, which will be incorporated when the Commission issues an order approving the *Non-unanimous Stipulation and Agreement*. Therefore, the terms contained in the *Non-unanimous Stipulation and Agreement*, present a plan meeting the requirements set forth in the CCN statute, section 393.170 RSMo.

Issue 2: 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, is “necessary or convenient for the public service” within the meaning of Section 393.170, RSMo?

Position 2: Yes, the evidence establishes that Ameren Missouri’s proposed project as presented in the *Non-unanimous Stipulation and Agreement*, 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.” In order for the proposed Pilot 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. 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 *Non-unanimous Stipulation and Agreement*, establish that the Partnership Project fulfills the Tartan factors and is therefore “necessary or convenient for the public service” within the meaning of Section 393.170, RSMo.

Issue 3: Does the evidence demonstrate the company has provided the information required to comply with the Commission’s rules at 4 CSR 240-3.105?

Position 3: 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.

While 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.¹ Additionally, paragraphs 4, 5, and 8 of the *Non-unanimous Stipulation and Agreement*, 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.² The *Non-unanimous Stipulation and Agreement*, sets out a process where Ameren Missouri will provide all of the required

¹ EA-2016-0208, CCN Application, page 5.

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

information specified in Commission rule 4 CSR 240-3.105 and further specifies 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.

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

Position 4: A waiver of the Commission's rule at 4 CSR-3.105 is not necessary; however, if the Commission believes a waiver is necessary 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 *Non-unanimous Stipulation and Agreement*, 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 specifies 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 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 facility applications is evidence of good cause for a waiver of Commission rule 4 CSR 240-3.105 if the Commission believes a waiver is necessary.

Issue 5: Is the company's plan outlining treatment of the proposed facilities at the end of 25 years lawful under 393.190 RSMo?

Position 5: Yes, the Company's plan outlining the treatment of the proposed facilities at the end of twenty-five (25) years is lawful under 393.190 RSMo. Section 393.190. 1, states:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, ... without having first secured from the commission an order authorizing it so to do.

Therefore, Ameren Missouri will have to seek Commission approval if a host customer would like to purchase the solar array sited on its property or have such facility removed from its premises at the end of the twenty-five (25) year term of the partnership lease agreement as required by Section 393.190. 1.

WHEREFORE, the Missouri Division of Energy respectfully files its *Statement of Position*.

Respectfully submitted,

/s/ Alexander Antal

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 12th day of October, 2016.

/s/ Alexander Antal

Alexander Antal